

# Have the Poor Suffered Because of Lack of Water Rights?

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# Poor people lack water rights



- Too often, the poor lose access to water (quantity and quality), without effective means to respond
- Insecure access discourages productivity
- Poor people rely on streamflows, aquifers, and aquatic habitats that are unprotected
- Water is reallocated without compensation or mitigation

# Better water rights systems are needed



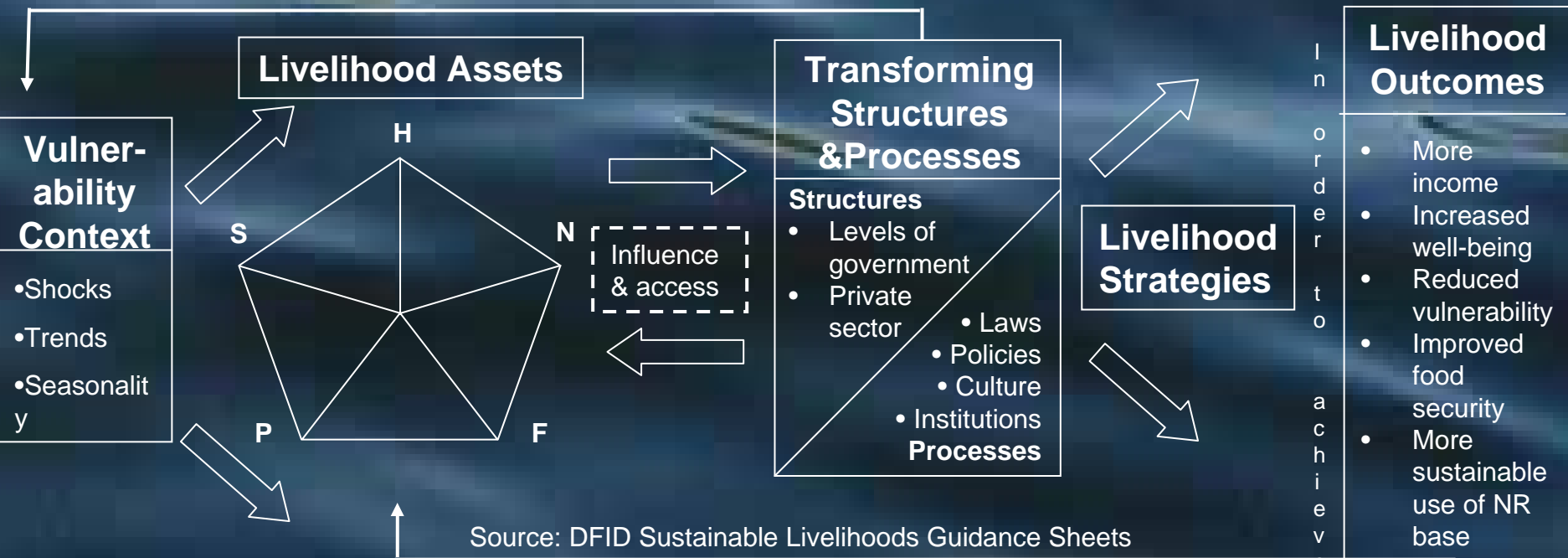
- Demographic and economic changes are pulling people and water to cities
- Most countries lack good institutional frameworks for equitably managing water disputes and transfers
- Inadequate water governance hurts both the rural poor and the urban poor

# Water rights can help the poor

- Safeguard access to basic needs
- Sustain livelihoods
- Participate in governance
- Prevent and resolve conflicts
- Invest in improving their lives

## Key

H= Human capital  
 N= Natural capital  
 F= Financial capital  
 S= Social capital  
 P= Physical capital



# What are water rights?



- Socially recognized claims to water
- A broad definition includes many institutions involved in allocating access and resolving conflicts
- Bundles of rights: to use, manage, transfer
- Principles and procedures; rules and means for enforcement

# Where do water rights come from?



- Many sources: community organizations, local practices, laws, regulations, agency policies, project procedures  
*- legal pluralism and polycentric governance*
- Many forms of water rights already exist, explicit or implicit, to which users feel entitled
- However, growing scarcity increases interaction between water users, requires better coordination -  
*resolving competing claims*
- If water allocation institutions are not properly developed, then the poor suffer

# Reconstituting water governance



- Governance=institutions for enabling agreements and resolving conflicts
- Not just new rules (water licenses, irrigation schedules, reservoir operations, drought plans, etc.), but remaking the institutions through which rules are made and applied
- Need to ensure the poor have a voice in the process
- Stakeholder participation in negotiating new rules helps devise institutions that are appropriate, acceptable, and effective

# Making water rights feasible

- Start with forums, platforms, federations, committees, and other institutions for participatory governance
- Acknowledge existing claims
- Sequence reforms:
  - develop institutions to resolve conflicts
  - clarify rights
  - after users have secure rights, work on transfers based on voluntary agreements with adequate regulatory safeguards

# Practical strategies



- Enable demand-driven formalization: selective and gradual, by basins and sub-basins
- Let irrigation system and sub-basin level institutions handle internal allocation
- Solve priority problems, deliver benefits
- Offer more reliable water and fair sharing of shortages
- Develop laws, regulations, and pilot procedures in parallel

# Implications



- Build capacity of poor people, and organizations representing and serving them, to participate in revising rules for water governance
- Provide a framework for water allocation institutions to evolve, over decades
- Prioritize institutions to manage intersectoral competition

# Examples



- Customary users in Japanese River Law: “Deemed” to have rights, as if registered
- Proportional principles, not absolute prior rights, in Chile and elsewhere
- Evolution of water markets in Australia: Caps (limits) and trading for water quality (salinity) and quantity
- Stalled water laws in Sri Lanka and Thailand: Lessons from lack of consensus
- Reallocation for the poor in South Africa: Product of stakeholder consultation

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# Extra Slides

# **ADB Water Policy: Water Allocation**

- **31. Reallocation of water among competing uses is rapidly becoming a common challenge in the region. This impacts most on the poor who are insufficiently empowered to claim water rights.**
- **ADB will encourage the DMCs to adopt participatory and negotiated approaches for water allocation.**
- **It will support the evolution of water allocation through markets of transferable water rights once the necessary policy, legal, and institutional framework for IWRM in a river basin context have been put in place.**
- **Regulatory agencies will be helped to develop water rights in a manner that protects the rights of the poor to equitable water services.**
- **Until such time as transferable water rights are properly developed, ADB will support the introduction of systems of water entitlements, or usage rights, as currently contemplated in Sri Lanka and Viet Nam.**

# Deeming Customary Rights in in Japan's River Law

Japan's River Law (Law 167 of 1964, as amended in July 1997), in Chapter VI. on Miscellaneous Provisions (Transitory Measures) Article 87., states that (underlining added):

**A person who, on the basis of the competency and as of the day of the designation of a *class A river, class B river, river zone, river conservancy zone, projected river zone, spatial river conservancy zone* or *projected spatial river zone* is doing an act for which permission according to the provisions of this Law must be obtained or setting up a structure for which permission according to the provisions of this Law must be obtained shall be deemed to have obtained the permission according to this Law concerning the act or the setting up of the structure on the same condition as before. ...**

Sources: IDI (Infrastructure Development Institute, River Bureau, Ministry of Construction, Japan). 1997. The River Law [as amended in July 1997, English translation]. Tokyo: Infrastructure Development Institute; Sanbongi, Kenji. 2001. Formation of Case Law and Principles in Watershed Management. Paper read at Regional Conference on Water Law: Legal Aspects of Sustainable Water Resources Management, Bosnia.

<b>Enable</b>	9. Framework providing status and recourse for organizations and individuals, Accountability based on organizational charter, reporting and auditing requirements, property rights, contracts, liability, etc.
<b>Advise</b>	8. Provision of information, guidance and other technical assistance as input to decisions, guidance for voluntary compliance, e.g, extension, statistical information and research, promotion of voluntary initiatives and coordination
<b>Establish autonomy</b>	7. Autonomous decisions by communities, organizations, or individuals, subject to compliance with specific laws and regulations, e.g. regulatory review for issuance and renewal of permits and licenses, enforcement of environmental standards
<b>Delegate authority</b>	6. Decisions by a group or organization with specific authorization, e.g. devolution by legal mandate, management concession, operating franchise, commission delegated power for final decision, court-sanctioned dispute settlement
<b>Partner</b>	5. Joint decisions by mutual agreement, co-operation where both sides hold veto power, e.g. some co-management agreements, intergovernmental organizations, public-private partnerships, contracts
<b>Collaborate</b>	4. Stakeholder representatives "at the table," active as team members in formulating and recommending alternatives, although final decision by one party. Task forces, working groups, negotiated rulemaking
<b>Involve</b>	3. Interactive discussion and dialogue, as a supplement to an existing internal decision process. Workshops, town hall meetings, some advisory groups
<b>Consult</b>	2. Two-way communications, receiving input, listening, exchange of views. Public hearings, written comments, question & answer sessions, interviews, focus groups, questionnaire surveys, etc.
<b>Inform</b>	1. One-way information dissemination about problems, analysis of alternatives and decisions, e.g. announcements, lectures, brochures, press releases, press releases, websites, reports, etc.