

Institution: SOAS
Unit of Assessment: 20 Law
Title of case study: Influencing Water Law and Governance in India (Philippe Cullet)
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>The Government of India has put forward a National Water Framework Act arising from part of the work of the national Planning Commission. Philippe Cullet's research on water law and governance has directly impacted upon the nature of India's planned legislation on the issue, facilitated by his chairmanship of a group within India's Planning Commission. This is of great significance in a country where 12% of the 1.2 billion-population lacks access to improved drinking water and where there are major concerns around sustainability of supply.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Philippe Cullet is Professor of International and Environmental Law at SOAS, where he has been researching since 2002, and is Chair of its Law, Environment and Development Centre (LEDC). He is the Founding Editor of the peer-reviewed <i>Law, Environment and Development Journal</i>, and his research includes environmental law, natural resources, human rights and the socio-economic aspects of intellectual property on an international level and in India. He is also Senior Visiting Fellow at the Centre for Policy Research in New Delhi.</p> <p>Much of Cullet's research focuses on water law and governance, specifically on groundwater, drinking water, sanitation and institutional reforms in India. Water governance is a contentious issue in India, where a significant percentage of the population do not have sufficient access to drinking water for reasons including falling water tables, declining infrastructure, economic factors and social norms. These problems, however, have long been ignored in the drafting of water law, which is concerned primarily with water's economic potential and the rights of landowners. The unprecedented number of water reforms adopted since the late 1990s have thus been conceived within a narrow framework, overlooking existing scientific knowledge and new challenges, such as those posed by the increase in groundwater use.</p> <p>Cullet's research addresses the failure of the conceptual framework informing water law reforms to consider the multiplicity of water uses and functions, especially its human right, social and environmental dimensions, issues widely explored in his 2009 monograph, <i>Water Law, Poverty and Development: Water Sector Reforms in India</i>. Using primary sources and an analysis of legal frameworks and their underpinning ideas, Cullet proposes broad-based reforms to water laws at the national level informed by a human rights, equity and sustainability perspectives. Such reforms would help to ensure that water laws contribute to the realisation of the human right to water for the poor and marginalised, particularly in rural areas, rather than focussing simply on water's economic dimension.</p> <p>Similarly, output b examines the on-going development of Indian case law concerning water, specifically the relationship between water and the environment and control over water. Cullet assesses the most recent water sector and law reforms, which propose drastic changes to the sector, and outlines the problems posed by the Indian courts' lack of a unified response. Output c continues to evaluate water laws in India, demonstrating that, while the fundamental right to water has been a part of Indian law for over two decades, there is no binding drinking water legislation to support this right. Cullet contends that all reforms should be based on the clear-cut premise that the fundamental right to water prevails over other rights.</p> <p>More recently, Cullet published "Groundwater: Towards a New Legal and Institutional Framework" in his co-edited book on water conflicts in India (output d). Cullet here underlines the deficiencies of the existing legal framework governing groundwater in India (which is based on nineteenth-century principles), asserting that it leads to further deterioration of the resource annually. With 80% of the</p>

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country's drinking water needs derived from groundwater, Cullet argues for the necessity of reforms that ensure a delinking of access to groundwater from land rights, but in such a way as to preclude a more damaging form of privatisation that would adversely affect groundwater users.

Taken together, Cullet's research is the only sustained academic effort to analyse the multi-pronged reforms taking place in water law in India since the 1990s.

3. References to the research (indicative maximum of six references)

- a. *Water Law, Poverty and Development: Water Law Reforms in India*. Oxford: Oxford University Press, 2009.
- b. "Water Sector Reforms and Courts in India – Lessons from the Evolving Case Law." *Review of European Community & International Environmental Law* 19/3 (2010): 328-38.
- c. "Realisation of the Fundamental Right to Water in Rural Areas – Implications of the Evolving Policy Framework for Drinking Water." *Economic and Political Weekly* 46/12 (2011): 56-62.
- d. "Groundwater: Towards a New Legal and Institutional Framework." In *Water Conflicts in India: Towards a New Legal and Institutional Framework*, edited by P. Cullet et al., 58-71. Pune: Forum for Policy Dialogue on Water Conflicts in India, 2012.
- e. et al., eds. *Water Law for the Twenty-first Century – National and International Aspects of Water Law Reforms in India*. Abingdon: Routledge, 2009.
- f. et al., eds. *Water Governance in Motion – Towards Socially and Environmentally Sustainable Water Laws*. New Delhi: Cambridge University Press, 2010.

4. Details of the impact (indicative maximum 750 words)

In July 2009, Cullet was invited by the Indian Government to participate in a meeting convened to debate a discussion paper on Integrated Water Management – Policy and Actions. Following this meeting, Dr Mihir Shah, member of the Indian Government's Planning Commission with responsibility for water, requested that Cullet contribute a law section to the discussion paper in question. Dr Shah also subsequently read Cullet's *Water Law, Poverty and Development – Water Law Reforms in India*, as evidenced by the direct (and indirect) references to the text in the Planning Commission's Mid Term Appraisal for the Eleventh Five Year Plan, 2007-2012. Cullet then attended informal meetings with the Commission throughout 2010, being formally included in the working group on water governance for the preparation of the twelfth five-year plan set up in October 2010 (5 to 8, below).

During the initial meetings of the working group, it was decided that three sub-groups would be formed, each tasked with the preparation of three new draft laws. Cullet was asked to chair the sub-group working to draft a new groundwater model bill, and to become a member of the sub-group dealing with national framework legislation (1, 2). The latter group prepared a draft National Water Framework Act with the aim of ensuring that the country has one set of overall principles guiding the water sector at the union level (3, 4). This Act constituted a reaction to the fact that none of the states in India has ever adopted legislation that outlines the basic parameters and principles governing the water sector.

The task of the sub-group on groundwater, however, was more challenging, since it required an updating of the Indian Government's existing model bill on groundwater, previously modified in 2005, but which reflected substantially an earlier draft from 1970. The group was highly critical of the inadequacies of the existing legal framework for groundwater, pointing to its failure to reflect

the fundamental right to water, and to address the direct links between rights to groundwater and land ownership that exclude a vast number of landless people. Its members agreed that an entirely different approach to groundwater legislation was needed and, in particular, a re-thinking of the rules governing access to and control over groundwater that had been in force since the late nineteenth century. The group thus drafted alternative legislation, along with a reasoned explanation for their decisions, a task which was made more challenging by the recommendation of a previous expert group on groundwater that no substantial changes to the legal framework were necessary.

Informed by Cullet's research, the central objectives of the new model bill include the need to regulate and control iniquitous groundwater use and distribution; to ensure safe drinking water for all; to regulate groundwater extraction to ensure its sustainability; and to prevent the contamination of groundwater resources. Such changes to the legal framework are intended to aid in guaranteeing that the use of groundwater in India becomes both more socially equitable and environmentally sustainable.

While it is too early to judge the eventual impact of the model bill, the two broader consultations conducted during 2011 indicated that experts and central and state government representatives were largely in agreement with the general scheme proposed in the draft model bill. Moreover, in April 2012, the Indian Prime Minister Manmohan Singh called for a new legal framework to govern groundwater extraction and use and naming groundwater conservation as an 'urgent priority' (9, 10). Impact will take time to materialise since, under the Indian Constitution, a bill adopted by the central government must then be legislated by each state individually; there is thus a time lag from adoption to implementation. In this case, however, the process may be shortened because the Planning Commission aims to use financial conditionality as a means of imposing the adoption of the new model bill by state governments.

The future of India and its neighbours is very much dependent on decisions taken now to protect and provide equitable access to water for the region's growing population, particularly in light of consistently falling water tables and the fact that 80% of India's population rely on groundwater to meet their drinking water needs. Philippe Cullet's research and provision of expert advice directly to Indian senior policy makers has had a notable impact on the conceptual framework informing water law and governance, shifting patterns of ownership from individual landowners to the state, and thereby rendering water use both more socially equitable and environmentally sustainable.

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Planning Commission, Order – Sub-group on Legal Issues related to groundwater management and regulation, including the strengthening of the groundwater regulatory authorities at the Centre and States, 08.04.2011 (File No: 25(1)/A/3/2010:WR). [mentioning the composition of the working group and its mandate]. Supporting documentation available upon request.
2. Draft Model Bill for the Conservation, Protection and Regulation of Groundwater, 2011: http://www.planningcommission.nic.in/aboutus/committee/wrkgrp12/wr/wg_model_bill.pdf [Most recently accessed 15.11.13].
3. Planning Commission, Order – Constitution of Sub Group on "National Water Framework Law", 15 October 2010 (File No 25(1)/A/6/2010-WR). [mentioning the composition of the working group and its mandate]. Supporting documentation available upon request.
4. Draft National Water Framework Act, 2011: http://www.planningcommission.nic.in/aboutus/committee/wrkgrp12/wr/wg_wtr_frame.pdf [Most recently accessed 15.11.13].

5. Report of The Steering Committee on Water Resources and Sanitation for Twelfth Five-Year Plan (2012-2017):
http://planningcommission.gov.in/aboutus/committee/strgrp12/str_sani.pdf [Most recently accessed 15.11.13].
6. Planning Commission, Mid-Term Appraisal, Eleventh Five-Year Plan (2011):
http://planningcommission.nic.in/plans/mta/11th_mta/chapterwise/Comp_mta11th.pdf
[paragraph 21.41 cites Cullet's *Water Law, Poverty and Development. Water Law Reforms in India*, 21.52 calling for new legislation] [Most recently accessed 15.11.13].
7. Planning Commission, Faster, Sustainable and More Inclusive Growth – An Approach to the Twelfth Five Year Plan (2011):
http://www.planningcommission.nic.in/plans/planrel/12appdrft/approach_12plan.pdf
[at paragraph 5.18 calling for the legislation already prepared] [Most recently accessed 15.11.13].
8. Planning Commission, Twelfth Five Year Plan (2012–2017) – Faster, More Inclusive and Sustainable Growth - Volume I (2012) [pages 176-78]:
http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol1.pdf [Most recently accessed 15.11.13].
9. Nigam, Aditi. "PM Favours Strong Laws to Regulate Groundwater Use." *BusinessLine*, 11 April 2012: <http://www.thehindubusinessline.com/economy/pm-favours-strong-laws-to-regulate-groundwater-use/article3299514.ece?css=print>. [Most recently accessed 15.11.13].
10. Anonymous. "PM Calls for Regulating Use of Groundwater." *The Hindu* 11 April 2012: <http://www.thehindu.com/todays-paper/tp-in-school/pm-calls-for-regulating-use-of-groundwater/article3301568.ece?css=print>. [Most recently accessed 15.11.13].