



## Why can't we secure legal access to our water?

# How Water Use Permitting is failing vulnerable communities Mbulu District

### At a glance

The Water Resources Management Act (2009) requires that all water resource use should be authorised via a Water Use Permit issued by the Basin Water Boards<sup>1</sup>. The Water Use Permit system is the foundation for sustainable water use in Tanzania (See Box 1) and the Ministry of Water has long been seeking for all water users to apply for water use permits and pay user fees.

This case study in Mbulu shows that the Basin Water Boards are struggling to administer the water use permit process because of a lack of resources and an overly bureaucratic system. This is directly undermining the water security of vulnerable communities.

The Uhakika project worked with six village communities in Mbulu of over 8000 people. Well aware of the importance of a permit, each community has applied to the Basin Water Board to have their water use legally recognised. To date, none has received a Water Use Permit despite having applied up to 5 years ago, paying an annual water use fee and letters requesting that the permits be issued.

The case shows the clear and urgent need to improve the permitting system and provide the BWBs with the resources they need to operate it fairly and effectively. Large investors tend to get permits more quickly than communities. If the system continues to fail then Tanzania's water will soon be in the exclusive hands of the rich and powerful, coordinated use will be impossible, and chaos and conflict will be the norm.

### Background to the case

Mbulu District has a population of 320,279 and lies to the west of Manyara Region. The Uhakika team of civil society and government staff visited Village Offices across the District in November 2013.

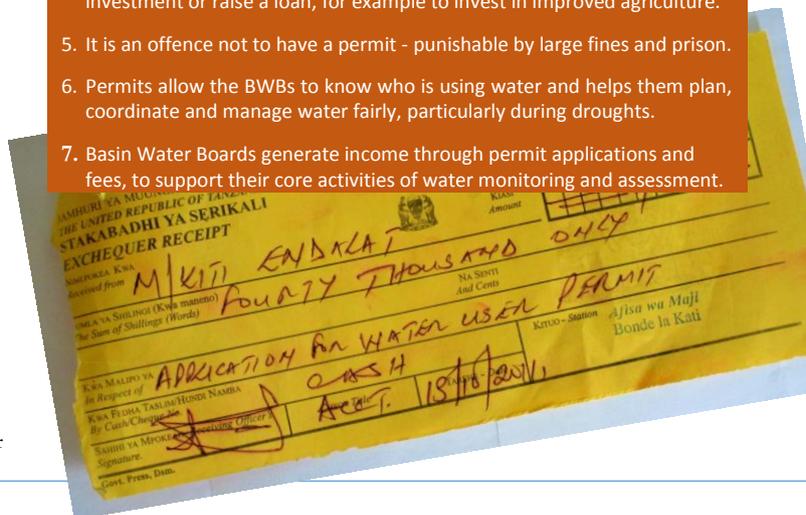
<sup>1</sup> Except for domestic use where no works are constructed and from wells shallower than 15 metres which are exempt from the need for a permit under Section 20 of the Water Abstraction Regulations 2010.

Many of the villages were already aware of the need for a Water Permit, had applied and were paying annual user fees. However, none had received a permit. During further visits the issues were explored and action plans developed via 'Mashahidi wa Maji' to channel concerns to their respective Basin Office.

Subsequent visits tracked the responses and involved meetings with the Basin Office to understand the institutional bottlenecks. This provides vital insights on why the system is not working and what needs to change.

#### Box 1. The importance of a Water Use Permit

1. A Water Use Permit (WUP) provides security of tenure to users and can protect their access rights when competition for water increases.
2. The permit sets the amount, location and rate of use so that other water users and the environment are protected from over-abstraction.
3. WUPs set out who gets what water and ensure fair allocation between investors and communities and minimise the risk of conflicts.
4. Water users often need to have a water use permit if they are to attract investment or raise a loan, for example to invest in improved agriculture.
5. It is an offence not to have a permit - punishable by large fines and prison.
6. Permits allow the BWBs to know who is using water and helps them plan, coordinate and manage water fairly, particularly during droughts.
7. Basin Water Boards generate income through permit applications and fees, to support their core activities of water monitoring and assessment.



This bulletin was produced by the Uhakika wa Maji Programme, a joint initiative between Shahidi wa Maji, TaWaSaNET and Water Witness International. Uhakika wa Maji undertakes high quality action research to generate evidence and advocacy materials to improve water resource management and water security for all Tanzanians.

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...kwa sababu sisi sote tupo mtoni

## Box 2. Why is the Water Permit System failing? (testimony of the Basin Office 12.02.2016)

There is no strategy or planning for how we deal with permit applications. They all get handled the same way. We need to visit site to verify capacity and ownership, but the application fee alone doesn't cover the cost of this. In most applications the bottleneck is simply that the Basin Office does not have the resources to do its work. There is no budget for inspections.

We have 54 permit applications like these. Another reason that permits weren't issued is misinformation on the forms...and the BWB told us that they should come from user groups or COWSOs not village leaders. There was no feedback to the communities on this. There has not been a custom of this. There is an expectation that we will do it, but it gets delayed and we forget. There is a problem with communication.

Another delay is that the Board is supposed to sit four times a year, but actually they sit about once a year because there is no money for allowances.

Another issue is that the basin staff are not able to fill the forms – we're trapped by bankruptcy and low capacity. We are lacking 42 staff. Our budget may arrive from the Treasury a year late or not at all. We also lack capacity to plan and use the budget. There is low understanding of whole process from application to enforcement.

300 permits are pending. In the basin as total, about 3000 permits are needed. We replied to the communities saying we will grant the permits in 1 or 2 years.

This information should be shared – it's not secret. The structural set up of

## The facts: What's happening in Mbulu?

### Fact 1. Communities are aware of the need for water use permits, have applied and are paying user fees

Water use permits for hand pumped wells, boreholes and gravity schemes have been applied for but none had been granted:

- ◆ Masqaroda: Applications for 3 water points serving 820 people and paying for water user fees since 2011.
- ◆ Hhando Secondary School in Masqaroda: Application for 1 BH and paying for water user fees since 2012.
- ◆ Dirim: Applications for 3 water points benefiting about 1,000 people and paying for water user fees since 2011.
- ◆ Diomat: Application for 2 BHs benefiting about 2,000 people and paying for water user fees since 2011.
- ◆ Bashay: Application for 1 BH serving about 1,000 people and paying for water user fees since 2011.
- ◆ Muslur: Application for 1 BH serving about 700 people and paying for water user fees since 2012.
- ◆ Dongobesh: Application for a water supply scheme serving 2,000 people and paying for water user fees since 2005.
- ◆ Agriculture cooperative, DIDIHAMA AMCOs applied for permit for their irrigation schemes from Yaeda River benefiting about 1,500 people. Paying user fees since 2011.

### Fact 2. Collecting water user fees in the absence of a permit has questionable legality

Although the principle of paying for water use is sound and proper, the BWB may be acting illegally in collecting annual use fees from users where a water use permit has not been issued.

### Fact 3. Lack of resources and systems prevents Basin Water Boards from processing permit applications

The following testimony is taken from an interview with BWB staff and highlights the bottlenecks they face in serving water users adequately (see Box2).

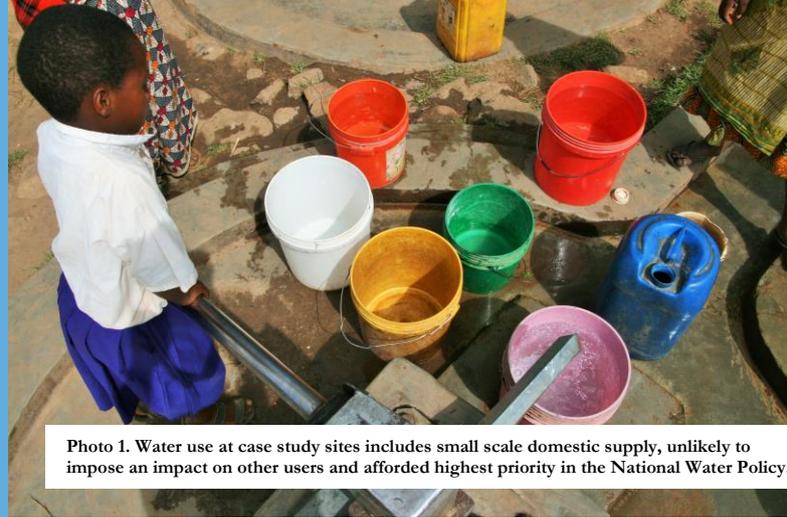


Photo 1. Water use at case study sites includes small scale domestic supply, unlikely to impose an impact on other users and afforded highest priority in the National Water Policy.

## What needs to change?

### Locally:

1. The Internal Drainage Basin Office should expedite Water Use Permits for domestic use in Mbulu District, following up with village authorities and District.
2. Legal advice is needed to verify the legal basis for the annual fee charges in the absence of legal documentation or permits. Improper legal mandate could land BWBs with huge liabilities and claims.
3. The legal or policy rationale for why the BWB insists on formation of a COWSO before issuing permits needs verification.

### Nationally:

1. A modern, 'risk-based' system for processing and inspecting water use permits is urgently needed. This will see low risk permits such as domestic use processed more quickly at lower cost with less data and consultation. This will free up time and resource to manage high risk, larger abstractions such as irrigation which need detailed assessment and regular compliance checks.
2. As a priority, adequate staff and budget should be allocated to the Basin Water Boards to enable them to control abstractions and WUPs effectively. Budgets should be transferred in a timely manner to allow front line operations of the BWBs.
3. Water permitting processes should be clear to the applicants. For example, application forms and guidance should be in Swahili as well as English, be easily available, and district/basin staff should be properly trained to provide advice and operate the system.
4. 'Standards of service' which set out target processing times for issuing and consultation on permits (e.g. 4 months) should be established and monitored against
5. The long awaited water resource management financing study should be completed as soon as possible. This may show that low cost registration of minor water uses (such as domestic) may be much more cost effective and realistic than blanket permitting. With a small registration fee this could still provide important information to be considered in larger applications, health protection work, drought or monitoring surveys. It would release BWB time to focus on higher risk issues.
6. The process for determining whether a permit should be issued and the volumes and rate of abstraction would benefit from thorough review to ensure that resources are being allocated in line with sustainable yields, seasonal availability and protection of priorities set out in national water policy (e.g. human health, environment, livelihoods and economy).

**PRIORITY ACTION:** Urgent attention and investment is needed to improve the Water Use Permitting system in Tanzania so that it protects the water security of local communities and allows water use to be properly coordinated at a realistic cost.