



Local water management in Tajikistan: legal framework

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Abstract

Water management plays an important role in the economy of Central Asian states. With the transition into the post-Soviet era, the States implemented several phases of agricultural reforms. The establishment of Water User Associations (WUAs) in Tajikistan started in the 1990s following the implementation of the first phase of Land Reforms in 1998-2000. Main purposes of creating such WUAs, often initiated and supported by international donors, are to operate, maintain and use on-farm irrigation system with the purpose of on-time, adequate and reliable water supply to its water users. No reforms take place in a vacuum. An effective legislative framework is needed to support new initiatives and institutional settings. While being a separate legal entity, a WUA has certain obligations both provided in law and in the contracts they sign. These obligations then are transformed into liabilities, when non-performance or mal-performance occur. Therefore, it is important to know what the law says about the chain of water management and the relationships involved, where WUA stands as an intermediate institution between State water organizations and farmers, the ultimate water users. This paper will look into these legal settings and endeavours to explain the complex nature of local water management in Tajikistan from the perspective of the law.

Keywords: Tajikistan, WUA, water law, water management, contract.

1. Introduction

Tajikistan is a civil law country with laws being codified in the codes and legal-normative acts, and the judicial decisions as legal precedent, unlike in common law countries, are not the sources of law. Since its independence in 1991, Tajikistan has undertaken an effort to build its legal system entirely anew, and towards the end of 1990s has seen most of the laws and other normative acts being adopted by independent Tajikistan.

However, it should be noted that many laws in Tajikistan, especially the ones that are believed to play important role in the legal system and in the economic development, have been developed with the assistance of foreign legal experts. Therefore, in the context of water, the presumption is that, when it comes to the players on the local level, no clarity exists on the prescription of the law regarding the rights and obligations of WUAs and farmers, who are the ultimate water users. The law, which regulates WUA, its status in the society, and its relationship with other water players in the chain of water management is *the Law on Water Users Associations* (hereinafter, the WUA Law) adopted in 2006. Although WUA creation began in the country several years' prior adoption of the law, the

WUA Law was expected to fill the gap in the law. It is supposed to provide, alongside other laws such as Civil Code of the Republic of Tajikistan, a legal framework for the establishment and operation of WUAs throughout the country.

This paper will explore the relevant provisions in the law that define the relationships among the stakeholders in the chain of water management in Tajikistan with the view that it will contribute to fill the knowledge gap in this important sector of the economy. After all, effectiveness and long-lasting positive impact of any reform depend on the laws, the clarity of the rights and obligations, and the legal awareness of the subjects of that reform. When things go wrong one better knows his/her point of redress.

Introduction section is followed by a general background text on the relationship among different types of legal regulatory acts and those are subject to discussions in this paper. Then, relevant provisions are discussed in terms of institutional framework: main actors involved, definitions, and who has what competence in the chain of water management, including WUAs, their operations, finances and etc. Remaining sections will cover dispute resolution, issues of water quality and a small discussion on gender as covered in the law, with a brief conclusion ending the paper.

Disclaimer should be made at this stage that this is a purely legal paper, which looks into the law and gives a picture of what the law says. Direct references are made to the relevant provisions of the law with some analysis from the author on implications for practice. Real picture on the ground can be substantially different, provided this is a general tendency in the post-Soviet world: laws are adopted for the sake of adoption, but not altering the practice.

2. General background

According to the Constitution, Tajikistan is a state based on the rule of law [1]. The legal system in Tajikistan is based on the hierarchy of legal norms, which are also divided based on the area of regulation. This hierarchy is provided by *the Law of the Republic of Tajikistan on Legal and Normative Acts*, a principal document, which sets up the relationship of different legal acts (laws, by-laws, decrees and regulations and etc.).

Article 7 provides the following system of laws:

- Constitution of the Republic of Tajikistan;
- Laws of the Republic of Tajikistan, adopted through referenda;
- International legal acts (treaties), recognised by Tajikistan;
- Constitutional laws;
- Codes, Laws (legislative acts adopted by the Parliament);
- Joint resolutions of the Majlisi milli (upper house) and Majlisi namoyandagon (lower house) of Majlisi Oli (*Supreme Council*, the Parliament);
- Resolutions of the Majlisi milli and Majlisi namoyandagon of Majlisi Oli (the Parliament) of the Republic of Tajikistan;

- Orders of the President of the Republic of Tajikistan;
- Decrees of the Government of the Republic of Tajikistan;
- Directives of the ministries and state committees (of the Government).

For the purpose of this paper the following legal mechanisms will be subject to analysis:

1. The Constitution of the Republic of Tajikistan – Article 13 provides that “the land, its resources, *water*, airspace, fauna and flora, and other natural resources are exclusively the property of the State, and the State guarantees their effective use”;
2. The Water Code of the Republic of Tajikistan, adopted in 2000 with the latest amendment being made in 2012.

A code is “a unified and ordered law through which a particular area of public relations is in full, directly and systematically regulated” [2]. It has to be borne in mind that the text of the Code is approved and adopted by a separate law of the Parliament. In other words, the Parliament adopts the law to approve the Code. And because of this fact, it is suggested that the normative status of the Code is equal to any other laws (legislative acts), similarly adopted by the Parliament, such as the next instrument;

3. The Law on Water Users Associations (the WUA Law) of the Republic of Tajikistan, adopted in 2006.

Law (in a narrower sense) is “a normative legal act adopted by the legislative authority in accordance with the established procedures, which regulates the most important public relations”[3];

4. The Law on Environmental Protection of the Republic of Tajikistan, adopted in 1994. The document is relevant, when it comes to issues of environmental protection of water resources and water quality issues;
5. Decree No. 281 of the Government of the Republic of Tajikistan on approval of the Regulations on the procedure of charging consumers of public irrigation systems for water supply services, adopted in 1996.

Decree (or Resolution), in this context, is defined as “a normative legal act of the Government of the Republic of Tajikistan, adopted in the form of *Decree* of the Government of the Republic of Tajikistan” [4].

6. Decree No. 39 of the Government of the Republic of Tajikistan on approval of the Regulation on the delineation of the powers of specially authorized state bodies for regulating the use and protection of water resources, adopted in 2002.

The document established clearly defined responsibilities on relevant ministries and State committees in the sphere of water management and protection.

The above mentioned instruments are provided in a hierarchal order. As mentioned, the normative statuses of the Water Code and the WUA Law are equal and referring to the Article

3 of the Water Code, both are constituent parts of the water legislation of the Republic of Tajikistan.¹

What if there is a conflict of laws? The Constitution is the supreme law in the country and no national law may contradict its provisions. However, Article 10 of the Constitution provides that in case of a conflict between the laws and the recognized international legal treaties, the international mechanism shall prevail.

Article 70 (1) of the Law on Legal-Normative Acts provides that if there is conflict between two different instruments applicable on one particular issue, the privilege is given either to (1) the instrument that is adopted later than the one it is in conflict with or if (2) the instrument is considered to be more specifically tailored to deal with the situation or question under consideration (*lex specialis*).

3. Institutional framework

3.1. Main actors and definitions

The primary source of water legislation in Tajikistan is the Constitution and the Water Code of the Republic of Tajikistan. The Constitution guarantees that the water is the exclusive property of the State², while the Water Code elaborates that principle setting detailed guidance for all kind of sectors dealing with water.

Article 1 of the Code in its provision 1 provides that the Code aims for ‘strengthening of the lawfulness and protecting the rights of individuals and legal entities in the field of water relations’. The next section of this paper shall discuss *the water relations* as performed by various actors, bodies responsible for water management and use on the local level – namely (i) local executive bodies, (ii) water management organizations (*vodkhoz*es or basin authorities), (iii) water user associations (WUAs) and (iv) water users (individual farming entities). The complex nature of the water relations played by the above mentioned actors shall make up the institutional framework for the local level water management in Tajikistan.

For the purpose of clarity and intellectual curiosity, it is important that legal definitions for certain terminology and concepts are to be brought at this stage of the study. The Code in its Article 2 defines the following terms, some of which will be referred throughout this study:

- *General water use* – water use without use of water infrastructure or engineering tools;
- *Special water use* – water use with the means of water infrastructure and engineering tools;
- *Primary water users* – natural and legal entities, who are provided with water bodies for use;

¹ Article 3 reads as follow: “Water legislation of RT is based on the Constitution of RT and consists of the present Code, laws, and legal-normative acts of the RT and the international acts recognized by the RT”.

² Article 13 of the Constitution of the RT provides that ‘the land, its resources, water, airspace, fauna and flora, and other natural resources are exclusively the property of the State, and the State guarantees their effective use’. Article 5 of the Water Code reiterates this provision.

- *Secondary water users* – natural and legal entities, who are given permission by the primary water users to use water bodies on a contractual basis and with the authorisation of the State regulatory bodies in the field of use and protection of water resources;
- *Water User Association* – non-commercial organization, established by legal entities, who have the right to agricultural land use and commercial organizations;
- *Basin Water Management Organization (BISA)* – Water management organization serving water users within a river or main canal basin³.

3.2. *The scope of competence of various actors*

Due to the fact that the focus area of this study is the local level actors in the water management hierarchy, the study will concentrate primarily on the relationship between various actors at local level as provided by the relevant laws. Reflections are the result of legal opinion based on the statutory law as it stands, but where necessary reflections are also drawn on the implications of the law for practice.

The principles and the hierarchy of the water management is provided in Article 9 of the Water Code which states that:

“The State management in the field of use and protection of water resources is based on the combination of basin and border, and administrative-territorial management principles, and implemented by the Government of the Republic of Tajikistan, the executive authorities, local authorities, as well as by the authorized State agencies on water management and protection.”

The sequence of *implementers* in the provision can be interpreted as the intention of the legislators in terms of setting up the *institutional hierarchy* in water relations, which provides for the following order in the local water management context:

1. Executive authorities (provincial);
2. Local authorities (district);
3. Authorised state water management agencies (*Vodkhoz*es and/or basin authorities);

Thus to have a full picture of water relations on the ground it can be concluded that *beneficiaries* would be:

4. WUAs (as primary water users); and
5. Individual water users (as secondary water users).

3.3. *Competence of the local executive branches of the State (Khukumats)*

Article 7 of the Water Code defines jurisdictional scope of the local state authorities within their respective territories. It includes but not limited to:

³ BISAs are created to replace provincial water management organizations called “OblVodkhoz”es”, while RayVodkhoz”es refer to previous district water authorities. Newly created organizations are gradually being replaced as the local executive branches of the Agency for Land Reclamation and Irrigation, central executive authority in the area of land reclamation and irrigation.

- *Determining main direction of water management and protection in the territory of their respective jurisdiction.* In practice, it may mean that local executive authority dictates or should dictate the trend of water management in their respective territories.
- *Guaranteeing lawfulness and legal order in the field of regulating water management and protection.* The practical implication of this provision is that, in case of breach of the law and established norms, a party at loss may bring a claim against a party at fault to the attention of local executive branches of the State. In addition, this provision should be read together with Article 12 of the Water Code, which provides that the State control on water use and protection shall be vested upon authorised state water management agencies (*Vodkhoz*es or basin authorities). The implication of the combined reading of these provisions might suggest that local executive bodies of the State should maintain more of role of a watchdog, while authorised state water management agencies are the ones responsible to take an action. However, it has to be noted that *the claim* mentioned above is an administrative claim and there is nothing in the law that prohibits parties to sue each other for an alleged wrongdoing.
- *Registration and assessment of the water bodies and all other water-related aspects, control of water use and protection, observance of the established water use limits;*
- *Carrying out activities for the conservation and improvement of the status of water bodies, prevention and liquidation of harmful effects, as well as of water pollution, restore facilities damaged by accidents, floods, landslides and other natural disasters.* This has to be read together with other provisions of this Code and other relevant laws on rehabilitation and construction of works. It can be suggested that the responsibility of the local executive authorities in rehabilitating and restoring water infrastructure primarily covers overseeing overall functioning of the whole water system in the territory it administers, and that responsibility particularly becomes important in emergency situations;
- *Cooperation with the specially authorised state water management and protection agencies (Vodkhoz*es).

3.4. Competence of the State agencies on water management and protection (*Vodkhoz*es)

The State agencies on water management and protection on provincial and district level, namely *Vodkhoz*es or/and basin water management agencies, are in the position of entering into contractual relations with *the primary water users* for special water use, whereas primary water users can establish contractual relations with *the secondary water users* for this purpose (Article 25 of the Water Code). The following mechanisms define the contractual rights and obligations of the parties:

1. Contract itself;
2. The Water Code;
3. 2006 Law on Water Users Associations (the WUA Law).

The rights of water users for the special water use can be restricted by the authority, who vested those rights upon them, that is *Vodkhoz*s upon primary water users and primary users upon secondary users (Article 44(4), Water Code). This provision is also reflected in Article 49, which provides for the circumstances when the right to water use can be terminated. This includes but not limited to expiration of the permission for a special water use or systematic violation of a water supply contract by a water user. *Vodkhoz*s as water supply agencies maintain direct right to terminate water use right of a primary water user (e.g. WUA) and a supervisory role in case of a primary water user terminates the right of a secondary water user (e.g. WUA terminating the right of its member) (Article 50 of the Water Code). However, as stated above, water users maintain the right to challenge the legality of the decision on termination of their respective water use rights and bring it to the attention of a respective *Vodkhoz* and/or local executive body of the State.

Water users can establish a water user association (WUA). WUAs then become a *primary water user* for the purpose of acquiring special water use rights under Article 25 above, and its respective members are classified as *secondary users*. Water users have the right to demand from *Vodkhoz*s to take necessary measures to prevent exhaustion and contamination of the water fund and providing water resources in appropriate quantity and quality (Article 43 of the Water Code, Rights of Water Users). However, the latter should be read in the light of obligations of the water users to make timely payment for water delivery services; maintaining irrigation and drainage systems in an appropriate functioning state and comply with established requirements and conditions of a water supply contract with *Vodkhoz*s (Article 45 of the Water Code).

3.5. Responsibility of *Vodkhoz*s in relations to water users

Article 48 of the Code defines the responsibilities of *Vodkhoz*s and it includes but not limited to:

- *Providing appropriate maintenance of irrigation systems in order to deliver the necessary quantity of water to water users as indicated in water supply contracts.* The implication of this provision for practice would be that the law as such does not define what irrigation systems are meant by this provision. However, as the delivery of water takes place at the point of water distribution –a WUA gate e.g. – it can be suggested that it is up to that point of irrigation system that a *Vodkhoz* has to undertake maintenance work;
- *Preparing drains, water catchment-discharge systems, water ways, and water supply;*
- *Supplying water to water users according to norms and at fixed times⁴;*
- *With the agreement of water users, installing water level indicators at the point of water distribution in order to identify the quantity of delivered water in accordance with a water supply contract.* Implications for practice would be that it is the

⁴ Subject to Article 44 of the Water Code as stated above

responsibility of *Vodkhoz*es to install water measurement units at WUA water in-take gates.

The above mentioned responsibilities are positive obligations held in relation to the water users, violation of which may serve as a ground for claim by the water users.

3.6. Competence of water users

According to Article 27 of the Water Code, “natural and legal persons, no matter of the form of ownership, whose activities are based in the territory of the Republic of Tajikistan and on the laws of the Republic of Tajikistan can become a water user”. Water users of general water use benefit from the use free of charge, while water users benefiting from special water use shall make payment for the use of water and the delivery service (Article 3 of the Water Code). Any analysis on the competence of the water users should also be undertaken in the light of the responsibilities of the players in the higher hierarchy of water relations, as those responsibilities are translated into the rights for water users.

In the following sub-section, the competence of WUAs is discussed in the context of a water user (primary), while the next sub-section will look at WUA competence in terms of a water supplier (to individual members/farmers).

3.7. Responsibilities of water users

Responsibilities of water users can be defined as contractual obligations and those provided in the Water Code and other normative acts, such as the WUA Law. If looked from the perspective of *Vodkhoz*es, those responsibilities laid down in the Water Code are applicable both on WUAs and its members. However, the WUA Law makes the responsibilities of WUAs and individual water users clearly distinctive from each other. Therefore, assuming individual water-users are members of a WUA, their responsibilities are held in relation to that WUA. Meanwhile, the responsibilities of the WUA are held in relation to the respective *Vodkhoz* in the capacity of a water user and in relation to its members in the capacity of a water supplier.

Responsibilities of the water users as provided in the Water Code include but not limited to (applicable both on individual water users and WUAs as collective water users) [5]:

- *Rational use of water, saving water resources, and rehabilitating and improving water quality;*
- *Making timely payments for water use and water use services.* Implication of this provision would be that individual water users shall make payment to WUAs and WUAs to *Vodkhoz*es;
- *Maintain irrigation, drainage, wastewater treatment and other facilities in a repaired condition and improve their performance.* One can suggest that individual water users are responsible to maintain the infrastructure in their own territory, including tertiary canals and in some cases secondary canals, and WUAs are responsible for main (the part located in WUA’s territory) and secondary canals. However, the provision itself provides no clarification in terms of territorial limits of this responsibility.

- *Comply with the established requirements and conditions of water supply contracts.*

Furthermore, the WUA Law places particular responsibilities to WUAs in its capacity as a water user. These responsibilities basically reiterate those mentioned above, namely making timely payment to *Vodkhoz*s for the water supply services and maintaining water infrastructure in a working condition, although the latter is more of a responsibility in the capacity of a water supplier (Article 11 of the WUA Law).

3.8. *Competence of water user associations as a water supplier*

The Water Code provides fundamental aims of establishing a WUA, which are:

- (i) Maintenance and exploitation of inter-farm amelioration and irrigation systems, which are in collective and individual use;
- (ii) Provision of fair, effective and timely allocation of water resources among farming entities;
- (iii) Collection of payments for water supply services; and
- (iv) Solving disputes among its members on matters related to water allocation (Article 43(2)).

The WUA Law reiterates the above mentioned aims in a more elaborative manner in Article 3 (aims and tasks of a WUA) and in Article 11 (responsibilities of a WUA). In addition, the Law gives right to a WUA to enter into contractual relations with a respective *Vodkhoz* and individual water users, members and non-members alike. Under the contract, a WUA shall collect payment from its members and non-members and make payment to *Vodkhoz*s for the amount of delivered water.

In addition to the *aims*, there are also *principles* upon which WUAs shall function. Interestingly, from the list of principles, the first comes ‘*involvement of the WUA members in the management, repair and rehabilitation of the irrigation systems*’ (Article 4 of the WUA Law). If the provision is read together with the first *aim*, which is on maintenance too, one can draw a conclusion that the Law clearly places responsibility on WUAs to undertake necessary repair and reconstruction works, and the WUA members are under a positive duty to avail themselves when their involvement is required. Accordingly, the role of a WUA is more of a mobilizer of collective efforts. However, this statement may also be a misleading because it is impossible to separate a member from a WUA and vice-versa. A WUA is association established by members, with collegial managerial body, composed also from the members. Then if a WUA is responsible according law, then this responsibility is the equal subsidiary responsibility of each member of a WUA.

Operation and functioning of a WUA shall be organized in the following manner/order (Article 21 and 22 of the WUA Law):

1. The amount of water to be delivered to each water user and the schedule under which the delivery takes place is provided in the water supply contract – amount and schedule can be referred as *the plan*.

2. Then, *this plan* is reflected in the internal timetable (plans) of a WUA.
3. Then, these plans are brought to the attention of water supply organization to seek their confirmation.
4. Then, the approval is sought from local executive bodies for these plans.

As the Law stands, it is not quite clear how this works: whether contractual arrangements are made first and reflected within internal plans of a WUA or contractual calculations are the reflection of the WUA internal plans. The whole process is referred as State regulation over the activities of WUAs.

4. Payment for water supply services

The 2006 WUA Law defines two types of payment the members shall make to a WUA (Article 2):

1. *Membership fee* – payment to be collected from the WUA members according to the decision of the general meeting (the highest management body) and to be utilized on management and maintenance of irrigation system and the functioning of the WUA⁵;
2. *Payment for the water supply services* – payment to be collected from the members and other water users in order to make payment to *Vodkhoz*es for the provision of water to the zone of WUA coverage.

The membership and thus the above mentioned payments give right to water users (members and non-members alike) to claim the water as stated in their contract and claim for damages from the WUA in case of the breach of the contract by the WUA (Article 8).

In addition to collecting membership fees, there is nothing in the Law that prohibits a WUA to obtain extra funding from various sources to maintain its activities. A WUA also has a right to acquire a property, property and non-property rights [6].

A WUA can establish its own membership fee and any other fees (this may include punitive fees for non-compliers), which has to be incorporated in its Charter. The Law provides that WUA has a right “to demand fee for water supply services and any other established fees” [6]. Thus, the scope of *any other fees* can be wide enough, to the extent not prohibited in the Law. Furthermore, the Law does not prohibit WUAs to build up a capital surplus.

Chapter 6 of the Water Code establishes that water supply for irrigation purposes is subject to payment, which has to be performed on contractual basis. The contractual relations between a water supplier and a user create certain rights and obligations, which are specified in Chapter 7 of the Code. Making payment for water supply is one of the obligations of the water users, breach of which may result in partial or full termination of the water supply. The same Chapter also provides for implicit risk assignments in case of emergency or low water availability, where the user’s right to a particular amount of water shall be limited in order to

⁵ Article 19 of the Law asserts that the repair and reconstruction works to be covered from the WUA budget.

accommodate State interests and the interests of other water users. Drinking and domestic water uses shall be given priority in situations mentioned above [7].

Detailed methods of charging for water supply are provided in the regulatory document *Decree No. 281 of the Government of the Republic of Tajikistan on approval of the Regulations on the Procedure of Charging Consumers of Public Irrigation Systems for Water Supply Services*, adopted in 1996.

Accordingly, the Ministry of Melioration and Water Resources and other sub-organizations, such as *Vodkhoz*es and Irrigation System Authorities are defined as a *water supplier* and agricultural water consumers (and others) are defined as a *water consumer*.

Article 1.2 provides that water supply is to be conducted on the basis of a contract between supplier and consumer, whereas Article 1.3 provides that non-legal water consumers/users can unite within an association that is a single water consumer, who will be entitled to enter into a water supply contract with the Water supplier (the case with WUA).

Article 1.5 provides for dealing with emergency situations, according to which, 'both parties shall participate with their respective technical, material and other means to eliminate the consequences of emergency situation and each side bears the cost of the works undertaken in its own respective side'. The same principle applies when the provision is interpreted in the WUA context, that is to say expenses for accident's repair and liquidation of its consequences must be covered by respective institution, who owns this part of irrigation system. This provision if read together with the responsibilities of WUAs, once again clarifies that each side is responsible to bear its own cost in its respective territories.

Measurement unit for water is m^3 and for irrigated land is hectare (ha). The amount of water delivered to the consumer is measured with special gauges. Where there is no a gauge, delivered water is measured with instrumental measurement techniques and the processes is supervised by authorised persons from each side and duly recorded. On the basis of these records at the end of each month an act of receiving a water supply is made. The act serves as a document for payment collection (Article 2).

Article 3 and its provisions define the order of payment. Payment is calculated according to the tariff for each m^3 delivered to a consumer. Tariffs for water supply services are determined based on the total regulatory costs: for maintenance and repair of public irrigation and drainage systems and their structures, full restoration of depreciated assets, mandatory payments, the insurance fund to cover expenses during events such as extremely low availability of water or flooding, expansion of production, scientific, technological and social development of the Supplier. Salary costs of the staff of a water supply organization are not mentioned in the provision, as the water supply organization is not a self-sustaining commercial entity and thus it is under the state budgeted.

40% advance payment is applicable for water supply services for irrigation purposes as provided in Article 3.7. Payment for water supply services is paid according to established

tariff as long as water withdrawal remains within established agreed limits. Over the limit water withdrawal will be charged with multiplying factor equal to 1/2 and an unauthorized withdrawal will be charged three times more.

Within associations united as a single consumer (e.g. WUA), tariffs (how much water is requested) will be determined by consumers, subject to agreement by the Supplier.

5. Conflict resolution

The hierarchy of the institutions with the capacity to resolve disputes related to water management is as follow:

1. The Government of the Republic of Tajikistan;
2. Local State Authorities;
3. Authorised Water Management Bodies; and
4. The Court.

A WUA has a positive duty to resolve disputes among its members and non-members [8] through establishing an *ad hoc* commission comprising three people. The commission adopts an act with the decision and the act is given to an appropriate body of the WUA for implementation [9].

Resolving inter-WUA disputes is the responsibility of the authorised water management body (*Vodkhoz*), who gave them the right for water use [10, 11]. Any dispute can be brought to the attention of the Court if the above mentioned institutions are not able to settle dispute for the parties.

6. Water management and water quality – legal framework

A special chapter of the Water Code deals with the water protection issues (Chapter 21 Water Protection). According to it, “all waters (and water infrastructure) are subject to protection from pollution, clogging and depletion”. But some harm is permissible, as long as it does not undermine the natural capacity of water to self-rehabilitate.

The Law obliges all legal entities, whose activities have impact on the quality of water, “to undertake technological, forest-ameliorative, agro-technical, hydro-technical, sanitary and other measures to provide protection against water pollution, clogging and depletion and facilitates improvement of water quality and water regime” [12]. These rules are one of a preventive character.

Two practical implications can be drawn from the above provision:

- 1) all legal entities include water user associations, as well as WUA members alike with a legal entity status;
- 2) the Law does not actually prohibit all the harm, but it obliges entities causing harm to undertake measures to mitigate the harm and thus improve quality of the water. In other,

words the rule is one of due diligence⁶. Thus, a conclusion would be an entity who is causing harm and *not* addressing it shall be considered as the one who is causing harm to the quality of water. This conclusion will be relevant for the purposes of remedy.

Water pollution and clogging is considered to be a violation of the Law [13] and subject to damages in the amount and order established by the Law [14, 15]. However, payment in the form of remedy does not discharge the violator from undertaking the measures to mitigate and eliminate the harm [16].

Territorial planning of water protection measures is the responsibility of the local executive authorities, while implementing costs of water quality measures shall be borne by the State and the water users [17].

Water users (both legal and individuals) are obliged to undertake measures to warn and liquidate adverse impact on water caused by accidents and emergency situations. These measures are subject to coordination and agreement with the state water management agencies [18].

Coordination of urgent matters related to warning and liquidation of adverse impacts on water will be undertaken by a commission established by the Cabinet of Ministries and the state local authorities [19].

Overall control and monitoring of the changing quality of water resources is the responsibility of the State Committee on Nature Protection⁷.

6.1. Right to a healthy environment

The foundation of *the right to a healthy environment* is to be found in the Constitution of the Republic of Tajikistan. Article 36 provides that the State guarantees each citizen's right to a healthy environment. This right is further reiterated in the Law on Environmental Protection (2014), whose scope is extended to cover the surface as well as groundwater water resources [20]. The Law gives right to both individuals and public and non-governmental associations (this includes WUAs) to bring a complaint to the authorised state agencies in the field of environmental protection, who then may take an administrative and legal action against a party at fault [21].

Individuals and public and non-governmental associations may also bring a direct legal claim to the court in case their right to a healthy environment is infringed [22, 23]. This means WUAs fall within the latter category and thus having the right to act as a claimant in legal proceedings.

⁶ Due diligence is an extremely important concept in environmental regulation and compliance. When properly done, it provides a defence to regulatory charges or, at least, can mitigate the amount of fines imposed.

⁷ Decree No. 39 of the Government of the Republic of Tajikistan on approval of the Regulation on the delineation of the powers of specially authorized state bodies for regulating the use and protection of water resources, adopted in 2002

However, it has to be noted that if an environmental harm is caused due the fault of one of the members of a WUA, the respondent (defendant) shall be the member itself but not the WUA, because, according to the legislation, the WUA is not responsible for the activities of its members [8].

Remedies under the Law includes *damages, specific performance* (that is rehabilitation and maintenance works and etc.) and *potential losses* [24]. The Water Code also provides that the right to use water may be taken away from the entity in case, if environmental balance is *substantially* violated [25]. It can comfortably be suggested that ecosystems and environmental flows can be included in this provision, meaning if a share of environmental flows is taken away from the environment this may mean that environmental balance is infringed. These rules mentioned above are of a remedial character.

7. Law, gender and equality

The Constitution of the Republic of Tajikistan recognizes the international law as a component part of the national legal system, and Tajikistan is a Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and to other fundamental human rights treaties. In 2014, the parliament ratified the Optional Protocol to CEDAW, which allows individual women in Tajikistan to submit complaints to the CEDAW Committee and gives them an additional remedy for violations of the convention. Important steps have also been taken to implement the UN Security Council resolutions on women, peace, and security (1325 and 2122) with the drafting of a national action plan.

The Constitution guarantees equal rights on the basis of sex (Article 17), and principles of non-discrimination are enshrined in the basic legislation, for example, the Family Code, the Labour Code, the Land Code, the Criminal Code, the Law on Education, and the Law on Public Health.

No laws that have been discussed above in the context of water management make reference to gender issues. But if to read in the light of national and international mechanisms in the field of protection of women's right, the laws in the field of water management have equal application on both man and woman.

8. Concluding remarks

The paper has reviewed the legislative framework in Tajikistan in order to understand the functioning of water user associations and whether the law supports smooth operation of local water management if interpreted and applied correctly. Reforms and transition become sustainable if they are supported by law and order. Effective functioning of the law and order depends to the extent people can rely on them. Reliance becomes stronger if people know what the law says in terms of their rights and obligations, making legal capacity building and raising awareness an important component of any developmental endeavours.

The analysis shows that the frame is good enough to provide for fair and equitable water management system. However, due to the nature of the legal system of the country (this is true for almost the entire post-soviet world), making sense out of the law is not easy as documents make endless reference to *existing legislation*. This becomes particularly erroneous for organizations when resources are limited. But then, even one takes an effort for detailed analysis, there is still lack of clarity in the law, e.g. in terms of responsibilities of the stakeholders for rehabilitation works, water measuring and competences of Local Executive Branches of the Government and *Vodkhoz*es.

Moreover, water is still a political phenomenon in Tajikistan and in neighbouring states. This makes power politics in resources management as an integral part of the system. But if one talks about *sustainability*, efforts should be made to abandon old habits and make the way for clear, effective and just laws to do the job for the good of wider public.

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10. Reference

1. Article 1 of the Constitution of the Republic Tajikistan, of November 6, 1994.
2. Article 17 of the Law of the Republic of Tajikistan on Normative Legal Acts of 2009 with the latest update being made in 2011.
3. Article 18 of the Law of the Republic of Tajikistan on Normative Legal Acts of 2009 with the latest update being made in 2011.
4. Article 21.2 of the Law of the Republic of Tajikistan on Normative Legal Acts of 2009 with the latest update being made in 2011.
5. Article 45 of the Water Code of the Republic of Tajikistan of November 29, 2000.
6. Article 10 of the Law on Water Users Associations of Tajikistan of November 8, 2006.
7. Article 44 of the Water Code of the Republic of Tajikistan of November 29, 2000.
8. Article 11 of the Law on Water Users Associations of Tajikistan of November 8, 2006.
9. Article 17 of the Law on Water Users Associations of Tajikistan of November 8, 2006.
10. Article 116 of the Water Code of the Republic of Tajikistan of November 29, 2000.
11. Article 117 of the Water Code of the Republic of Tajikistan of November 29, 2000.
12. Article 120 of the Water Code of the Republic of Tajikistan of November 29, 2000.
13. Article 142 of the Water Code of the Republic of Tajikistan of November 29, 2000.

14. Article 144 of the Water Code of the Republic of Tajikistan of November 29, 2000.
15. Article 20 of the Law on Environmental Protection of Tajikistan of 2014.
16. Article 20 (4), of the Law on Environmental Protection of Tajikistan of 2014.
17. Article 122 of the Water Code of the Republic of Tajikistan of November 29, 2000.
18. Article 129 of the Water Code of the Republic of Tajikistan of November 29, 2000.
19. Article 130 of the Water Code of the Republic of Tajikistan of November 29, 2000.
20. Article 6 of the Law on Environmental Protection of Tajikistan of 2014.
21. Article 9 on the Competence of the Authorised State Agencies in the Field of Environmental Protection , Law on Environmental Protection
22. Article 12 of the Law on Environmental Protection of Tajikistan of 2014.
23. Article 13 of the Law on Environmental Protection of Tajikistan of 2014.
24. Article 77-81 on dispute settlement and remedies of the Law on Environmental Protection of Tajikistan of 2014.
25. Article 49 (2) of the Water Code of the Republic of Tajikistan of November 29, 2000.