

## **Extract**

In many jurisdictions including Kenya, the term ‘law’ is generally assumed to refer to enacted rules emanating from the state. Consequently, legal systems for water resource governance are considered largely as consisting of statutory law – rules enacted by state organs. Nonetheless, in many countries aspects of water resource management, particularly at the local level, include systems of rules that are beyond the scope of statutory frameworks, with local users developing informal norms and institutions to govern their water resources. This chapter uses the term ‘customary law’ to refer to these informal/ non-statutory normative and institutional frameworks. Customary law systems for natural resource governance continue to exist in many countries. The resilience of customary water governance regimes has led water law practitioners and researchers in the last two decades to acknowledge that these regimes constitute a factor to be reckoned with when preparing ‘modern’ legislation for water resource governance. Research has demonstrated that in some cases, their resilience is the result of an inherent adaptive capacity that makes customary law systems more sustainable than state developed systems. Further, as these customary governance forms are self-developed, they represent a more democratic process of development of law and thus are more likely to be successful at achieving sustainability.