

Technical Component 1

Legal and Institutional Framework

1.1 Background

To date there has been no comprehensive approach to planning for development of the water resources in Zambia. This has partly been due to unclear definition of responsibilities between various organisations and thus resulting in poor co-ordination and management. Institutional responsibilities are rather fragmented.

With the adoption of a National Policy on Water in 1994, government has made some progress in the development and management of the water sector. The Policy recognises the importance of water in public health, food production, the productivity of industry, the production of energy, the natural environment and other aspects of the quality of life. Some key policy measures adopted include: recognising water as an economic good; institutional and legal reforms in which water supply and sanitation functions are separated from water resources; legal reforms to strengthen capacity for the effective administration of the Water Act Cap 198; regulatory and executive functions are separated; introducing ground water resource regulations and; the adoption of an integrated water resources management approach.

The MEWD is responsible for overall management of the water resources in the country including assessment of both quality and quantity. However, there are other institutions involved in the planning, development and management of water resources in Zambia. The nature and extent of their involvement ranges from executive to regulatory functions. On the other hand several pieces of legislation are used in the development and management of water resources. This situation has led to duplication of effort and important functions falling between the institutions consequently resulting in poor utilisation of resources. In particular co-ordination of activities is very complex and non-existent in some cases.

1.2 Legal Issues

1.2.1 General

Although water is generally considered to be plentiful in Zambia, harnessing it to the use of the Zambian people requires careful control. This can be effected through legislation, as the major objective of water law is to establish a framework for the protection and control of water resources in the country. However, until recently, there has been no deliberate policy or effort made to manage the water resources in the country. Emphasis has been on water supply in towns and rural areas.

There is no comprehensive law on water resource management in Zambia. The Water Act, enacted in 1948, is outdated in some respects and does not reflect Government policy on water resource management. It is inadequate for efficient and integrated water resources management and is weakly enforced. Effective water resources management requires appropriate and adequate legislation and a mechanism for it to be enforced.

1.2.2 The Legislative Framework

The major pieces of legislation relating to the development and management of the water resources are the:

- Water Act, Cap 198 and
- Environmental Protection and Pollution Control Act, Cap.204 which is the primary legislative basis for managing water pollution.

A review of these laws reveals numerous links, relationships and overlaps. The laws reveal overlapping responsibilities in the management of the water resources and particularly in the control of water pollution. There is urgent need to harmonise the existing laws to eliminate the identified duplication, conflicts and inconsistencies.

Water Act Cap. 198

The main objective of the Water Act is to provide for the ownership, control, and use of water. The law is inadequate and weakly enforced. The Act mainly regulates surface water. The use of ground water, on the other hand, is not properly monitored or regulated. Ground water is the source of wells and the springs that feed streams, rivers and lakes. Its use should, therefore, be brought under the control of Government so that both groundwater and surface water are properly regulated. The Act distinguishes between public and private water. This is because it is inherited from an era when water demand was low. The distinction, if maintained, would restrict a water management authority.

Furthermore, the Act does not:

- Provide for flood control and drought management;
- Make sufficient provision for water quality control and does not adequately address the question of sustainable environmental protection in water resource management; or
- Provide for an autonomous body to regulate the use and development of water resources.

Significantly, the Water Act does not provide for shared watercourses; it is not in harmony with current international water law principles and should, therefore, be harmonised. International instruments on shared watercourses are not applicable to Zambia unless their obligations are incorporated into the Water Act.

In the past several attempts have made to amend the Water Act, although the work has not progressed. It is envisaged that the revision will now be done under the WRAP. The enactment of appropriate legislation that will deal with water resources management and encompass international shared watercourses is, therefore, top priority under this program.

The water Act needs to be amended in order to provide for sustainable water resources management and development and a participatory approach to water resources management. Possible amendments to the Water Act arising from institutional changes recommended under the WRAP will be elaborated upon during the initial stages of the WRAP implementation. Preliminary studies show that the Water Act should be amended to take care of, inter alia, the following issues:

- (i) establish an autonomous water resources management authority and define its functions;
- (ii) make adjustment to the institutional framework and clarify operational arrangements between the Water Board and the Department of Water Affairs;
- (iii) regulate the development and use of ground water;
- (iv) enhance water quality control by providing for water pollution standards;
- (v) introduce flood control and drought management measures;
- (vi) establish an appropriate raw water tariff structure and provide for its implementation; and
- (vii) extend the application of the Act to international waters.

The process of reviewing the Water Act will create an opportunity for wide and exhaustive consultations with stakeholders. The participation of stakeholders in the development of legal mandates of various institutions and of the regulatory framework will give efficacy and greater compliance to the resulting water resources law.

1.2.3 Constraints, Opportunities and Priority Issues

Constraints:

- The Act does not adequately reflect government policy on water resource management.
- It does not reflect the provisions of international instruments relating to shared watercourses.
- It does not provide for an autonomous body to regulate water resource management.
- It provides for officers who are civil servants and who as a result are constrained in their operations by problems associated with Government bureaucracy.
- It does not adequately address the question of sustainable environmental protection in water resources management.
- It distinguishes between public and private water and therefore makes no provision for the control and regulation of groundwater.
- It does not make sufficient provision for water quality control.
- It does not adequately provide for the adequate financing and the attainment of economic benefits from the water resource management.

Priority legal issues:

- Amend Water Act to take care of inadequacies and create autonomous water resources management authority
- Harmonise Water Act with environmental and water supply legislation
- Enhance the role of the Water Development Board
- Important point of focus is taking into consideration the requirements of customary law

1.3 Institutional Issues

1.3.1 Existing Water Resources Management System

At independence, DWA's responsibilities for development of water supply for townships and rural areas became the dominating activity, and the water resources management function was marginalised. Institutional reforms have recently been made, shifting the responsibility of water supply, with regard to operations and maintenance, from the Department of Water Affairs (DWA) to the Ministry of Local Government, thus separating regulatory functions from executive functions. Thus, at present, the main mandate of DWA is water resources development and management.

The Water Development Board (WDB) provides management of the nation's water resources in terms of administering water rights. The WDB, whose members represent a range of public and private stakeholders, has long been responsible for water allocation; although weak and poorly funded, it provides a foundation for water resources regulation.

The Ministry of Energy and Water Development has moved away from direct involvement in the implementation of programmes in the water sector, and assumed greater involvement in the functions of policy-making, planning, monitoring and co-ordination of programmes. The Water Board was originally part of the Department of Water Affairs, with a Water Officer as a senior executive in charge of water allocation and issuing of water licences. As part of the Water Supply and Sanitation Sector Reform Program in Zambia, the water utility functions have been transferred from the MEWD/DWA to the Ministry of Local Government. The responsibilities of the Water Development Board are now discharged by a Water Officer and Secretary to the Board seconded from DWA. DWA is temporarily involved in the development of water supplies in their former areas of responsibility. The reform is a good opportunity to improve the management and development the water resources for the long-term benefit of the nation as well as the region. Although there is some water resources management skill within the Water Development Board, the capacity is quite limited, and the need to build and extend capacity within national water management institutions, as well as within society at large, is fundamental.

The Water Board was established under an Act of Parliament of the laws of Zambia to control the use and abstraction of all surface water resources by considering and granting water rights. The Minister of MEWD appoints the Water Board members, with its chairman reporting to the Permanent Secretary. All WDB staff is currently seconded from the Department of Water Affairs. The Water Board manages currently about 2-3000 licences and some 150 licences are granted or renewed annually.

The pre-WRAP process revealed that the administrative systems for licensing and billing need upgrading, and it is equally obvious that due to capacity constraints, WDB has not been able to provide appropriate water resource assessments in connection with granting of water rights. There is also large revenue potential that has not been exploited for financing of water management and development services and interventions.

By and large, WDB is not able to deliver appropriate services to users. For instance, this is evident when it comes to avoiding issuing of water rights that exceed the capacity of the consumers. It has also failed to be recognised as a legitimate authority to deter individuals from constructing illegal dams or intervene in other water abstraction activities.

1.3.2 Public Sector Management and Improved Governance

In response to the significantly declining cost-effectiveness of the public service, the government adopted in September 1993 a Public Sector Reform Program (PSRP). The program aims, inter alia, at reducing public employment, decompressing public sector salaries, and strengthening public payment and improving performance management systems. Some progress has been made towards realising these goals. A revised action plan was prepared in the first half of 1999, and its implementation has begun. The PSRP process has direct bearing on the institutional development for integrated water resources management. The WRAP process has made Zambian ownership and capacity-building a key issue, placing greater emphasis on governance, especially improving public sector transparency and accountability in increasing public sector capacity and efficiency.

A report on the restructuring of the MEWD proposes that the ministry move away from direct involvement in the implementation of programmes in the water sector and place more emphasis on its functions of policy-making, planning, monitoring and co-ordination. The report recommends that the WDB should be de-linked from DWA and strengthened in terms of size and scope. The WRAP process has led to a different proposal suggesting the creation of an autonomous WRM body with sufficient mandate and authority to manage the nation's water resources in a holistic and sustainable manner. It is of major importance that the MEWD participates in introducing the suggested institutional arrangement to become part of the PSRP process during the transitional phase of the WRAP.

1.3.3 Institutional structure

A fundamental question concerning the desired level of water resource management in Zambia is whether there is public and political will to establish a strong regulatory body to manage and police the nation's water resources across sector interest. To maintain the status quo would retain a weak institution with marginal influence on strong and diverging development forces. The pre-WRAP proposes the creation of an autonomous WRM authority as the main regulator and planner responsible for integrated WRM with sufficient mandate and authority to manage the nation's water resources in a holistic and sustainable manner. The key guiding principles for the WRAP process are:

- Separate the water resource management function from the service delivery function
- Create institutional framework with autonomy and integrity primarily designed to benefit the users
- Decentralise water resources management structure
- Promote public awareness and participation in water resources management across civil society
- The WRAP shall be as much action- as product-oriented

Figure 1 shows a functional outline of an option for an institutional framework for decentralised water resources management under the auspices of the Ministry of Energy and Water Development. The pre-WRAP team underlines that this option is meant to be the basis for further assessment and discussion among Zambian policy-makers and stakeholders. It is proposed that the Water Resources Management Bureau will combine the resources of DWA and those of the present WDB, and reinforce the competence to include institutional and human resources development, resource economics, law and strategic planning. The water resources management

bureau will be answerable to a governing board with members from ministries, private sector and other stakeholders. The technical committee will be a multi-sectoral body with consultative and preparatory functions.

It is proposed that the water resources management bureau will have the following functions:

- Water allocation and licensing
- Management of the abstraction fees
- Hydrological & hydrogeological services
- Water information services
- Water resource assessment and modelling
- Water resources planning and investment opportunities
- Control of hydraulic works (dams and water abstraction structures etc.)
- Human resources development
- Water public awareness building
- Policy making and legal services
- International water affairs

The pre-WRAP team also discussed a possible structure of the regional (catchment) level of water resources management. Based on the Water Policy (1994) and the Water Resources Master Plan (1995) it is proposed to establish four catchment level administrations: (i) Kafue, (ii) Zambezi, (iii) Luangwa; and (iv) Luapula, Chambeshi, and Lake Tanganyika. The centres for the catchment administration units, as well as the sub-catchment structure, should be considered taking into consideration the existing DWA structure of Provincial Water Engineers and district offices. The proposed functions at catchment level are:

- Water allocation and licensing control
- Billing and collection of abstraction charges
- Hydrological and hydrogeological data administration
- Human resources development
- public awareness services at basin level
- promote initiation of sub-catchment water committee

The sub-catchment/community level of the water resources management structure is a very important element in promoting water management at the lowest applicable level. The water committees have to work in close collaboration with catchment conservation committees and other locally rooted environmental management initiatives. The hydrological block division for surface water resources in Zambia, as presented in the national master plan, is attached as Annex XX. The optimal division into sub-catchments area will, however, be based on a trade-off between several aspects, such as demographic distribution, environmental and water interests and possible areas of conflict, logistics and communication and the existing DWA premises. This will need to be further elaborated during the next phase of the WRAP. The proposed functions at sub-catchment level cover:

- Water allocation monitoring
- Primary data collection
- Public awareness building at sub-catchment and community level
- Local co-operation

1.3.4 Priority Issues

Priority institutional framework issues are:

- To separate the regulatory functions from supply functions (e.g. water supply, hydropower generation, irrigation) to avoid conflicts of interest, ensure compliance and guarantee commercial autonomy where necessary.
- To manage water within the boundaries of a basin (or sub-basin), not within administrative boundaries, decentralising regulatory and supply functions to the lowest appropriate level.
- To ensure wide stakeholder participation – regulation without participation is rarely effective.
- To build awareness and instil water resources responsibility and management at the watershed level by harnessing the cultural tradition of community participation – and associated traditional institutions – without overexploiting it.
- To ensure adequate separation from MEWD’s energy functions, as well as resolving the interface with other existing and planned regulators (including the Energy Council, the Environmental Council and the planned Water and Sanitation Council).
- To facilitate the private sector’s potential contributions to achieving WRAP objectives, playing roles in financing and delivery of water supply and sanitation services, irrigation development, and power generation.

1.4 *Linkages and Interactions with other Building Blocks*

The development of the legal and institutional arrangements for the water resource management will depend significantly on interaction with other Building Blocks. Both the legal and the institutional aspects of the component impact on all the other components in the WRAP. The legal and institutional frameworks to be established will serve as an umbrella under which the other components will operate. Guidelines and principles established for planning and management elements such as allocation of water, setting of raw water tariffs, and overall priorities for environmental considerations will need legal backing.

In a modern society, water management consists of technical, institutional, managerial, legal and operational activities, which are used to plan, develop, operate and manage a country’s water resources. Management of water is meant to produce optimum and efficient use of the resource through the application of various technical, economic, and institutional measures. Therefore, the legal framework will contain provisions that will enable the:

- formulation and implementation of an appropriate tariff structure,
- regulation of infrastructure development,
- development of efficient human resources,
- protection of the environment including water pollution control,
- establishment of an appropriate data and information system, and
- promotion of public awareness and participation.
- adjustment of the institutional framework.
- water tariff structure and mechanisms for tariff adjustments

1.5 *Interpretation of the Terms of Reference*

The main objective of this Component is to propose immediate and long-term legal and institutional arrangements for the management of water resources in Zambia, including reviewing key issues and assessing the responsibilities of the various stakeholders. Major

constraints and gaps are to be highlighted with recommendations for further investigations to be executed in the WRAP Phase.

The scope of work performed by the technical task force shall include but not be limited to:

- A review of existing legal and institutional, internal organisational framework to identify weaknesses, gaps, overlaps in the current framework
- Evaluation of the institutional framework for development and management of water resources including but not limited to, legislation, regulatory and administrative framework.

The work in Phase I will be a process involving significant interaction with stakeholders and approvals by decision-makers. The main results of this technical component will be establishment of short- and long term options and an indicative action plan for the implementation of the building block including interconnections with other building blocks and required time and resources, while the later phases will comprise planning and implementation activities, which will have to be prioritised within the time and resources available.

1.6 Recommendations for WRAP Strategy Management Process

The annexed LFA Matrix and Activity Schedule specifies the recommended Component in terms of objectives, outputs, activities and inputs.

1.6.1 Goal

The Goal for all the seven components is:

“Zambia’s water resources being managed and utilised for maximum economic benefit in an equitable and sustainable manner with strong stakeholder participation”.

This represents the defined Objective of WRAP and will contribute substantially to the overall Programme Goals of reduced poverty, increased food security and enhanced economic development. Important assumptions for achieving this objective are that regulations are complied with and that there is minimal corruption.

1.6.2 Objective

The defined Objective of the Component is:

“Effective institutional and legal framework for water resources development and management established and functioning”.

Important assumptions for achieving this Objective are that stakeholders accept their redefined roles; that other institutions working in the sector are performing effectively; that the Government gives necessary approvals and show commitment as regards legal and institutional changes made under WRAP; that there is regular interaction between involved institutions and related projects, such as PRB and ESP; and that necessary qualified personnel and other inputs are available for the operation of the water resource management system.

1.6.3 Activities

The activities under Component 1 are directly related to the progress of change, which has been elaborated in detail in Figure (Critical Actions and Milestones) overleaf.

1.6.4 Resource Requirements

The resources required for implementing Component 1 will be a portion of the total resources required by WRAP.

1.6.5 Performance Monitoring

Monitoring is the continuous or periodic surveillance of the implementation of the Programme. Monitoring entails checking/control of the Programme's achievements compared to the planned inputs, activities and outputs. There should be one format for monitoring and reporting throughout the life of the project. The format should be such that inputs, activities and outputs are monitored with reference to the Goals and Objective of the Programme and the Components. Monitoring will be based on the indicators, and changes in assumptions, which are relevant to the development of the Programme, must be registered in the Programme reports.

As for Component 1, monitoring of legal and institutional changes will to a large extent be checking of progress involving government actions and approvals on recommendations initiated by WRAP.

Figure 2: WRAP – Critical Actions and Milestones for the Process of Change

No	Action	Res-pons.	Date	2000	2001	2002	2003					
	Pre-WRAP Transition Phase			Pre-WRAP Transition	Phase 1	Phase 2						
1	Preparation - approval of Inception Report	MEWD Board	04.02.2000	XX◆								
2	Decision to strengthen link between DWA and WDB	MEWD	03.04.2000	◆								
3	Assignment of WRAP Co-ordinator	MEWD	03.04.2000	◆								
4	WRAP Steering Team (ST) and WRAP Advisory Team in place	MEWD	01.03.2000	◆								
5	WRAP Technical Task Team in place	ST*)	07.02.2000	◀								
6	Establishment of WRAP Network	ST	01.03.2000	◀								
7	Decision on institutional concept for WRM	ST	31.03.2000	XX*								
8	WRM Institutional framework adopted by PSRP	ST	17.04.2000)	◆							
9	Cabinet approval in principle to amend Act	Cabinet	31.03.2000		X◆							
10	Drafting of the Water (Amendment) Bill	WDB	01.06.2000		XX◀							
11	Passing Bill through Parliament	Government	.12.2000		◆							
12	Application for donor funding of WRAP	MEWD	04.02.2000	X◀								
13	Donor appraisal and approval	Donors	07.02.2000		XXXX◆							
14	High Level Policy Seminar	ST	06.2000		X◆							
15	Business Plan for Upgrading the WRM operations	WRAP TEAM	01.08.00		X◆							
16	Towards effectiveness of new WRM structure	WRAP TEAM	01.02.2001			XXXX◆						
	WRAP Implementation											
	Implementation of WRAP components (details in diagrams)	ST				XXXX	XXXXXX	XXXXXX	XXXXXX	XXXXXX		
	Quarterly Progress Reports from WRAP Management	WRAP Co-ordinator			◆	◆	◆	◆	◆	◆	◆	◆
	Performance Monitoring and Review	Donors			◆	◆	◆	◆	◆	◆	◆	◆
	Donor co-ordination meetings	PS MEWD				◆	◆	◆	◆	◆	◆	
	Regular WRM Operations	WRMB**									→	

*) ST: WRAP Steering Team

**) WRMB: Water Resources Management Bureau (working title)