Zambia

References


Country information

<table>
<thead>
<tr>
<th>Key dates (policy, legislation and regulations)</th>
<th>1949. Water Act (under revision since 2003)</th>
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<tbody>
<tr>
<td>1997. Water Supply and Sanitation Act</td>
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<tr>
<td>2005. IWRM plan (draft)</td>
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</table>

| Performance deficiencies (Why is reform necessary?) | Regarding the current institutional set-up, according to (Phiri, 1999), some responsibilities are absent due to a number of factors including lack of capacity, enabling conditions (legal and other) and resources generally. There are many organs involved in for instance domestic water supply (and sanitation) without a defined order of involvement. None of the entities works completely and each suffers from a lack of technical and administrative personnel and insufficient funds. There are duplications in the allocation of regulatory and operational functions. It is the hope of water sector stakeholders that the current reform process will address some of these shortcomings. |

| Initiators, initiatives and objectives | No information |

| Water allocation before reforms | Zambia is in the middle of a water reform process, and the Water Act from 1949 is still valid. Therefore this section seeks to describe the present picture, whereas the next section presents some of the directions of future Zambian water policy and legislation. The Water Act (1949) and its subsidiary legislation stipulate the following provisions, from (a) to (k): |
(a) Ownership of Water
Ownership of water is vested in the President, provided that a landowner maintains his right to take “private water” free of charge, which is situated wholly within the boundaries of the land legally occupied by one person and is not naturally discharged into a water course beyond the boundary or which is brought to the surface of the aforesaid land.

(b) Water Right
The Act allows for any person to use “public water” which is defined as all water other than private water, for domestic purposes and support of animal life (“primary use”) where the access to the land may be lawful. Any person may make application to the Secretary of the Water Board for permission to impound and store or to divert water from a public stream for (1) primary use, (2) secondary use and (3) tertiary use

For the purposes of the Act, the various uses are defined thus:
“Primary use” means the use of water for domestic purposes and the support of animal life (including dipping of cattle).
“Secondary use” means the use of water for the irrigation of land and aquaculture.
“Tertiary use” means the use of water for mechanical or industrial purposes or for the generation of power.

(c) Priorities among different users
Applications for water rights on public water are permitted only after an examination of the effect on “primary use” and existing water rights

(d) Order of the Water Board
The Water Board has been established as the authorising entity for water use. The Water Board may, at its discretion, grant, refuse or modify an application in whole or in part; or attach conditions to the granting

(e) Renewal of Water Right
Every water right shall be renewable. Every renewal shall be deemed to be a continuation of the original grant

(f) General Powers of the Minister
The Minister, currently the Minister of Energy and Water Development, may make regulations, by statutory instrument, for effective administration of the Act.

(g) Forfeiture of Rights
Any water right or appurtenant right not registered under the provisions of the Act within proper time (i.e. 12 months) shall be declared null and void. Failure to make full beneficial use of water for a consecutive period of 3 years or failure to comply with attached conditions may lead to the forfeiture of the right.

(h) Pollution
Any person who wilfully or through negligence, pollutes or fouls any public water so as to make it harmful to man, beast, fish or vegetation shall be guilty of an offence.

(i) Water Rights (Procedure and Application) Rules
This sections provides details of the required procedures
(j) Water Board (Charges and Fees) Regulations
The regulation stipulates the various charges that applications attract.

(k) Water board (Works) regulations
The regulations cover the design, approval of the design, supervision and inspection of works to be constructed or installed on public streams for the execution of a water right

Procedure on water rights applications:
Any person who wishes to be granted any water right shall submit an application to the Water Board secretary. The secretary shall thereupon cause an advertisement of the application to be published at the expense of the applicant in the Gazette and in at least one newspaper circulating in the area concerned. Such advertisements shall call upon any person who wishes to object to the application to send notice of objection so as to reach the secretary within one month of the date of publication of the advertisement. The secretary shall send by registered post to any persons registered as owners of water rights, which in the opinion of the secretary are likely to be affected by the application and of the date by which notices of objection must be received. The secretary shall send a copy of every application to the Water Officer. On receipt of such copy, the Water Officer shall cause an investigation to be made into the application, and shall report the result of such investigation to the Water Board. On the expiry of the period for sending notice of objection, the secretary shall submit the application, together with copies of the advertisements and any objections received, to the Water Board. The Water Board may, pending investigation and consideration of an application, grant to the applicant a temporary permit to use water for such period and on such conditions as the Water Board may think fit.

Water charges
Fees on application for water right:
There shall be paid at the time of lodging an application:
- a fee of 20 fee units in respect of every application for a water right for land up to 250 hectares; and
- a fee of 100 fee units in respect of every application for a water right for land above 250 hectares.

Fees for registration of orders
The fee to be paid for the registration of any order shall be 20 fee units.

Fees for registration of water right
The fee to be paid for the registration of a water right shall be 20 fee units.

Renewal
A fee of 20 fee units shall be paid in respect of an application for the renewal of a water right.

Charges on application for water right
All water right holders shall pay for the water they will abstract as follows:
- up to 500m³/day, 100 fee units and
- 1 fee unit per every excess cubic metre per day.

Charges on application for renewal of water right
The following charges shall be paid in respect of an application for the renewal of a water right:
- up to 500m³/day, 100 fee units; and
- 2 fee units per every excess cubic metre per day.

Charges on application for temporary water right
The following charges shall be paid in respect of an application for the temporary use of water:
- up to 500m³/day, 40 fee units; and
- 1 fee unit per every excess cubic metre per day.

According to (Chileshe et al., 2005) water rights are not issued for volumes below 500 cubic metres/day. Such volumes are considered domestic and not applicable for water right application. The Water Board co-ordinates the water rights at the national level especially for large-scale water users like water suppliers, industrial users and commercial farmers. Only for the large-scale users, property rights and common law are prominent. It is likely that water charges have still not been levied on irrigation abstractions.

Water rights in Zambia are linked to the right of occupancy or title to the land where the water body is located. This applies to surface water and groundwater even though the latter is not well documented.

Water rights in Zambia follow a common law property rights system in urban centres whereas customary law is more applicable in rural areas. The rights based approach has only been alluded to in the National Water Policy and the Water Act. Whereas other official Zambian water laws and policies exhibit legal pluralism.

Use, diversion and apportionment of all water are assumed to fall under the Water Act, which provides for the ownership, control and use of mainly surface water.

Any person shall have the right to the primary use of public water that is found in its natural channel or bed at such places to which access may be lawfully had. Primary uses of water have priority where conflict over water uses and allocations arise.

Administration
There are many ministries and government agencies which have interests or are involved in water in Zambia. The Water Board and the Department of Water Affairs are the major organisations in water resources development while the resource conservation function is discharged by the Ministry of Environment and Natural Resources and the Environmental Council of Zambia. The Ministry of Local Government and Housing is responsible for providing water supply and sanitation.

Customary water rights
This section looks at the role customary law plays in water management especially when related to land tenure. The information is based on two case studies, one in the Western Province of Zambia near Mongu and the other in the Northern Province near Mbala.
Water management in Sefula, Western Province, is not circumscribed by the Water Act, and is governed as a riparian system. The land in Sefula is classified as traditional land that is under the custody of a traditional ruler on behalf of his people. Customary land tenure is exercised for a period of 14 years following authorisation by the chief. The Induna’s (local chief) authorisation gives the applicant a right of occupancy to the land.

Traditionally owned land is not subject to state law though it amounts to around 70 per cent of Zambia. Therefore, traditional water laws and regulations are quite significant.

In traditionally governed systems, water rights are riparian, which is juxtaposed with the non-priority permit system that the government administers on public water. Formally, the occupier of traditionally governed land must register the water bodies on their land and any intended use for the water body including estimated daily volumes. The register is held at the land and deeds register. However, enforcement of the registration is rather weak and most traditional landowners do not adhere to the legal requirement.

The local chief (Induna) has a right to withdraw land rights for a valid reason like non-cultivation or if the owner is not abiding by the rules and regulations of the chiefdom. There is a local court where any conflict matters are resolved. If the Induna is not able to handle the matter it is referred to the main court held by the Litunga (the paramount chief of the Lozi people). In Sefula, once land is allocated by the Induna, it can be sub-let by the occupier, especially if the occupier is not making productive use of the land. The sub-letting is a private arrangement that the Induna may not always be aware of.

In Sefula, the local communities have their own perceptions of water rights, which are closely linked to their land title or occupancy. The community obtains no formal water rights for their irrigation purposes. Even though the volumes used in irrigation are substantial. The water rights should be obtained through the Ministry of Agriculture and Cooperatives which is the authority on the setting up of irrigation schemes. The internal relations within the government and among the different institutions mean there is no enforcement of the water rights for irrigation schemes. The schemes seem exempt from official registration of water uses as required by the Water Board.

The Sefula case study highlights some of the challenges faced in the plural legislation of water in Zambia. The water rights system remains in the common law realm and is apparently not translated into customary law and local perceptions of water management.

It should be noted that Zambian customary water regulations are not homogeneous. There are over 70 tribes in Zambia and each body of “law” associated with these tribes has its peculiarities.

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<th>Water allocation after reforms</th>
<th>According to (Phiri, 1999), the current Water Act has some deficiencies and a major revision is being drafted by the Water Board. The proposed revision contains the following:</th>
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<td>• Review of areas where the Act is to be applied</td>
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<td>• Shift of provisions, from subsidiary regulations, on procedure for approval and reporting regarding construction of dams or other facilities for storage and abstraction,</td>
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(Chileshe et al., 2005).
Clarification on general rules covering application, issue, registration, and the exercising of water rights
Substantial additions of provisions on abstraction of groundwater in respect to conditions, registration of borehole construction, water right and inspection
Additional powers of Minister for emergency measures during drought and flood, and for establishment of river committees

The current Water Act provides that the concession of water rights in “African Areas”, (comprising reserves, trust land and other areas) for the exclusive use of indigenous African natives, shall not be granted without the agreement of the minister. The provision might, according to (Phiri, 1999) hinder the overall water resource development and river basin management. The revision of the Act contains cancellation of this section so as to place all water under the management of the Water Board.

If the above mentioned revisions are followed, Zambia’s water resources legislation will, according to (Phiri, 1999) be generally comparable to any in the region. But to be of any value, the new legislation will have to be followed by detailed statutory instruments, regulations, standards and administrative arrangements.

Under “obligation to provide water supply and sanitation services”, the Water Supply and Sanitation Act (1997) contains the following sections:
(1) Notwithstanding any other law to the contrary and subject to the other provisions of this Act, a local authority shall provide water supply and sanitation services to the area falling under its jurisdiction, except in any area where a person provides such services solely for that person’s own benefit or a utility or a service provider is providing such services
(2) Notwithstanding sub-section (1) and any other law to the contrary, and subject to the other provisions of this Act, where a local authority is unable, for whatever reason, to supply water and sanitation services to a locality within its jurisdiction, and no such services are being provided by a service provider, the local authority may contract any person or other service provider to do so.

Utilities or service providers can only operate in accordance with the Act and under authority of a licence issued under this Act.

In November 1994, the Government of Zambia adopted a National Water Policy. The main aim of the policy is to promote a holistic management approach to the water sector. Some of the specific policies and strategies for each water related sub-sector are describe below:
(a) Water Resources Management – Policy Measures and Strategies
- Recognising the important role of the water sector in overall socio-economic development of the country
- Vesting ownership of water resources under state control
- Promoting water resources development through an integrated management approach
- Recognising water as an economic good

(b) Rural Water Supply and Sanitation (RWSS)
- Ensuring that RWSS programmes are community-based
Developing a cost recovery approach as an integral part of RWSS which will ensure sustainability

(c) Urban Water Supply and Sanitation (UWSS)

- Carrying out investigations regarding regionalisation of operations and management of UWSS schemes
- Ensure that water tariffs take account of all economic costs

As a long term measure, an interministerial coordination body, the Programme Coordination Unit (PCU) was established to spearhead the reorganisation of the water supply and sanitation sector. The PCU mandate is guided by the 7 sector principles adopted by the Government of Zambia, namely:
1. Separation of water resource management from water supply and sanitation
2. Separation of regulatory and executive functions
3. Devolution of authority to local authorities and private enterprise
4. Full cost recovery in the long run
5. Human resource development leading to more effective institutions
6. Technology appropriate to local conditions
7. Increased government priority and budgetary allocation to the sector

Most urban water supplies are run by local authorities and most rural supplies are managed by the Department of Water Affairs (DWA). The supplies run by DWA are being handed over to local authorities – in line with the current water sector reforms.

Water supply services in 2 urban centres, Lusaka and Chipata, are managed by private companies. They were originally established as municipal undertakers of the respective councils. Plans are underway to establish more water commercial undertakings in other parts of the country.

All land allocations for any development purposes, including irrigation, are the responsibility of the Ministry of Lands (MOL), which is also responsible for issuing title deeds. Its current policy is to set aside at least 30 percent of the demarcated land for women and other vulnerable groups.

The Water Policy of 1994 recognized water as an economic good by drafting a water tariff legislation to cover the provision and allocation of water resources for consumptive and non-consumptive use.

Two land tenure systems, customary tenure and statutory tenure, exist according to the draft Land Policy of 2002.

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<th>Performance impacts</th>
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<td>(social equity, economic growth, environmentally sustainability)</td>
<td>No information</td>
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<td>Public</td>
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<td>involvement</td>
<td>Challenges ahead</td>
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<tr>
<td>(in reform process)</td>
<td>According to (Chileshe et al., 2005), there is a danger that the national water policy framework, legal framework and institutional framework will focus on the urban water sector and provision of water rights to the more affluent Zambian communities. Whereas grassroots institutions and traditional norms are excluded from policy formulation.</td>
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<td>According to (Phiri, 1999), despite the law reform, institutional models remain autocratic, bureaucratic, authoritarian and top down.</td>
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<td>The present institutional set up for water management is, according to (Phiri, 1999), characterised by duplications, overlaps, inertia, insufficient funds, lack of technical and administrative personnel, inefficient communication and a host of other classical problems associated with lack of capacity and underdevelopment.</td>
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