

**STRENGTHENING CAPACITY OF WATER UTILITIES TO
PROVIDE WATER SUPPLY AND SANITATION SERVICES,
ENVIRONMENTAL AND HYGIENE EDUCATION IN A
SUSTAINABLE WAY TO LOW INCOME URBAN AREAS.**

CASE STUDY OF LUSAKA WATER AND SEWERAGE COMPANY

Practice Number 1

**Legal And Regulatory Framework For Water And Sanitation In
Zambia - Specific To Peri Urban Sector**

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CONTEXT

In 1994, at the beginning of the water sector reform process, the Proposed Strategy and Institutional Framework for the Water Supply and Sanitation Sector, stated:

"The Zambian water supply and sanitation sector is in considerable disarray. The sector is generally under financed, under staffed, and unable to meet its service delivery obligations. The Government of the Republic of Zambia (GRZ) recognises that ultimately local authorities need to be able to provide local services, and that delivery effectiveness depends not only on technical competence but also on cost recovery and financial viability. Because this conclusion applies not only to water supply and sanitation, GRZ is implementing a general policy of decentralisation and devolution of responsibility to local authorities. At the same time, GRZ has decided to examine the need to reduce the often conflicting responsibilities for the sector of various ministries and agencies and determine what structure and policy changes would make the sector more effective."

What is the practice

The process of reform of the water sector, the identification of water supply and sanitation as requiring special attention and the resulting legal and regulatory framework for the implementation of new sector policies are the subject of this case study.

Purpose

The purpose of the act is to implement reforms in the water sector in order to address new objectives, clarify roles and responsibilities and provide the legal framework for these changes.

Who initiated/manages it

In 1987 GTZ was asked to look at a reorganisation of the water and sanitation sector with the then Ministry of Decentralisation and the Ministry of Local Government. This report was shelved. In 1991 a new initiative was undertaken and a consultative meeting with international experts as well as local and government people recommended restructuring of the sector and formulated a basic set of principles which have continued to guide the sector. The principles were adopted by Cabinet in 1993 and a Programme Co-ordination Unit (PCU) established to oversee the reform strategy for water supply and sanitation.

Sector Principles

- ◆ Separation of water resources management from water supply and sanitation
- ◆ Separation of regulatory and executive functions within the water supply and sanitation sector.
- ◆ Devolution of authority to local authority and private enterprises.
- ◆ Full cost recovery - in the long run.
- ◆ Human resource development leading to more effective institutions.
- ◆ Technology appropriate to local conditions, and
- ◆ Increased government priority and budgetary allocation to the sector.

Who initiated / manages it

For administrative purposes the PCU reports to the Permanent Secretary, MEWD, who is its chairman. The PCU created the Water Sector Development Group (WSDG) as the secretariat for the PCU in 1994. The WSDG is a group of specialists tasked with implementing the reforms under the instruction of the PCU.

The Programme Co-ordination Unit

The PCU is an inter-ministerial committee established by Cabinet in 1993 to co-ordinate the water sector reforms and is made up of representatives from the following institutions:

- The Ministry of Energy and Water Development
- The Ministry of Local Government and Housing
- The Ministry of Health
- National Commission for Development Planning
- Environment Council of Zambia
- Ministry of Environment and Natural Resources
- National Council for Scientific Research
- Ministry of Works and Supply
- Ministry of Agriculture Food and Fisheries

The WSDG technical specialists are responsible for implementing reforms in line with the sector principles outlined above. Activities include optimising the technology in use in the water and sanitation sector and ensuring that the technology is appropriate to local conditions; improving the quality of manpower available to the sector and addressing issues of working environment; developing strategies for a commercially viable water and sanitation sector; and ensuring that the reform process is well understood by both stakeholders and service users and that the reforms enjoy the goodwill of the public.

Process and approach

The government's decision to embark on the reforms was as a result of a long history of neglect of the sector. The sector has perpetually been under funded, ill staffed and little appreciated. Services had been continually running down in the 1980s and it was in an attempt to redress this situation that GOZ acted. Based on the sector principles, Government in Nov. 1994 decided to restructure the sector in the following manner:

- The PCU will be transformed into a statutory body to be called the National Water and Sanitation Council (NWASCO) to perform the required regulatory functions.
- The executive (operational) functions of water supply and sanitation would move from the Ministries of Energy and Water and Works and Supply, to the Local Authorities under the overall supervision of the MLGH. To assist the Local Authorities with the water supply and sanitation services delivery obligation they should form commercially viable water utilities. An individual council may decide to do so or a number of councils together.
- MLGH should create a Department of Infrastructure and Support Services to monitor and co-ordinate investment into the sector. DISS would not only be for WSS but also other municipal functions such as roads, markets etc.
- As an initial step, a feasibility study followed by pilot programmes would be commissioned in the Copperbelt and north western Provinces. The aim being to establish commercially viable utilities to assist Local Authorities in service provision.

For water and sanitation the main Acts had previously been the Water Act, which dealt with water resources, and the Local Government Act which dealt with water and sanitation provision by the local authorities. By July 1994 the PCU had approved a strategy document (Proposed Strategy and Institutional Framework for the Water Supply and Sanitation sector) on how the sector would be established. This was adopted by Cabinet later in the year.

The Strategy

Key elements of the Strategy document:

The devolution of authority to local authorities was described as an effort to:

- increase their participation in the nations development,
- bring decision making power closer to the local community,
- increase their participation in the service delivery process and thus to make it more responsive and efficient, and
- wean the sector from central government financial support.

"Local authorities will have to prepare business development plans with projections of future investments, revenues and expenditures, based on the obligation to provide services to all consumers, regardless of income. The plan will include consideration of the standard and level of service to be provided, the financial ability of the consumer to pay for these services, the amount of internal cross subsidies likely to be generated under specific tariff structures, and the grants needed for specific coverage."

The same section on devolution refers to peri urban and rural services and recognises that special efforts will be required by the service provider to encourage community participation in the:

- development, implementation and operation of facilities,
- selection of service delivery standards and technology,
- design of cost recovery mechanisms,
- delegation of operating and maintenance responsibilities to communities, community groups or NGOs, and
- technical assistance requirements.

The Water Policy

Parallel to these activities, the MEWD developed a National Water Policy. This dealt mainly with water resources and only briefly referred to water supply and sanitation but left the details to the water supply and sanitation strategy.

The Water and Sanitation Act

On the basis of the sector guidelines, the water policy and the sector strategy the WSDG prepared legislation to support their implementation. The first draft was produced by Sept. 1995. There followed a period of intense consultation over 3 months. The revised draft was then submitted to Ministry Legal Affairs. It then took a period of 18 months for internal deliberations which particularly involved debates between the ministries of Local Government and MEWD over responsibility for the legislation. The legislation did not emerge for any further public consultation and was eventually passed by parliament in October 1997 with presidential assent in November 1997.

Summary of the Water Supply and Sanitation Act, (No. 28 of 1997).

PART I, Introductory information.

PART II, National Water Supply and Sanitation Council. This describes the establishment, functions and structure of the Council. NWASCO is the regulating agency for the sector providing advice, developing guidelines, establishing and enforcing standards.

PART III, Water Supply and Sanitation Utilities. Local authorities are obliged to provide services and may form a utility as a company or may contract with others to provide the services.

PART IV, Licensing of Utilities and Service Providers. This requires utilities and service providers to apply to NWASCO for licensing service providers, setting conditions under which they must operate and supervising performance.

PART V, Powers of Utilities or Service Providers. Land may be compulsorily purchased and this provides for the access and powers to carry out works as well as conditions under which service level may be reduced. A utility or service provider shall construct and maintain facilities to the boundary of the consumers property and the utility has the power to address private facilities where there may be a threat to health, public safety or service delivery.

PART VI, Inspections. Inspectors shall be appointed by NWASCO to supervise Utility performance.

PART VII, Miscellaneous. This provides for appeal against decisions of NWASCO and penalties. The minister and local authorities may make by laws and regulations in support of the Act. Where a Utility is formed in accordance with this Act the Minister shall provide for the transfer of assets and liabilities from the local authority to the utility.

Schedule (section 3) Part 1, The National Water Supply and Sanitation Council. This provides for procedures and the composition of the Council which shall include relevant government ministries and agencies, the private sector and the public.

Part II, Funds of Council. Apart from monies granted by government the Council may raise monies from fees. It may also establish a devolution Trust Fund for the purpose of assisting Utilities established under the Act.

Consultations and consensus building

The public consultation process began with provincial meetings attended by government, local government, selected community leaders and the private sector. Also around the same time were a series of radio television and news items which addressed the broader reforms taking place in the water sector. Two national consultative meetings were held in late 1995 with NGOs, consumer groups, Chamber of Commerce, other national organisations and stakeholders. Further comments and observations which had not been discussed during the provincial consultative meetings were raised and discussed. The draft legislation was freely available and comments were given by several international and local experts, consultants, international agencies and other interested parties. These collective comments were used by a committee of five experts representing Local authorities, LWSC, Zambia Chamber of Commerce and Industry, department of Water Affairs, MLGH and WSDG to prepare the draft for submission to the Ministry of Legal Affairs. Further consensus building was achieved by the holding of a PSP seminar in the late 1997 to promote the new Act and publicise the private sector opportunities in the new legislation. This was over 130 people from all walks of life.

The idea of full privatisation was dropped in favour of the local authority maintaining a majority shareholding in the commercial utilities. There was an amendment to ensure that participating LAs in one utility had equal voting rights regardless of size. The Association of Commerce and Industry wanted full privatisation but this was not accepted. The utility was given powers to enforce the by laws. The licensing of utilities through NAWASCO was introduced by legal affairs. Other responses to the publication of the Act were received from civil society but without any significant changes raised.

What is expected from the new Act?

The new Act will strengthen the management and sustainability of existing services of piped supplies. This has already been demonstrated in Lusaka where the LWSC (although operating under different circumstances) has been operating for 8 years and providing a significantly improved service over the previous situation. Point sources will not fall under the utility unless specifically included in the utilities contract by the LA. The Act is silent on the need for contractual agreements between the utility and the LA and by implication a licensed utility could operate in a LA area without LA approval or LA inputs on standards and performance required. The Act leaves the cost of developing new WSS but at standards conforming to the Utility license. It is expected that there will be full cost recovery and therefore until the utility is operating profitably it is unlikely to be able or willing to extend services to new areas without subsidy. Peri urban WSS could be carried out under separate license by the community or other service provider

Analysis

Why is it rated as successful?

The legal framework supports the implementation of key sector principles for water supply and sanitation. These principles are in tune with international thinking on the most important means of improving access of all people to improved water supply and sanitation.

Whilst the whole process is not complete and may still take several years before the full impacts are seen, the adoption of the legislation, and the process of consultation show that government and the people are aware of, and support the reforms. Despite delays the process from development of the sector principles to the adoption of legislation with far reaching changes in how the water and sanitation sector will operate was quite rapid and completed in only 4 years.

Gaps or weaknesses in the legislation will be identified as implementation progresses. At the present time the legislation does not make clear what will happen to government owned assets or exactly how the LA will play a role in the management, control or regulation of the utility serving its own municipal area. As the Act obligates the LA to provide the service this may be an important omission. At present the LCC site and service schemes do not have any services provided. The responsibility for development rests with the LA and in the absence of any agreed financing and cost recovery agreements with the LCC there is no incentive for the utility to move into unserved areas. For the utility there must be full cost recovery for all investment.

It is unlikely that the private sector will be willing to invest in the proposed water utilities at

the present time. The condition of the asset base is unsure, the information on revenues expected may be affected by the political support given to tariff adjustment, and government has also not shown itself to be committed to payment for services supplied to government departments. The lack of controlling interest by the private sector is therefore likely to leave them as observers in the first phase until the new utilities reach the first stage of viability where they generate sufficient revenues to pay for operation and maintenance. The WSS strategy envisages that this will take two years and that full cost recovery will be achieved within 10 years of establishment. The experience of the LWSC suggests that this may be optimistic unless government institutions adopt a more supportive role to commercialisation in recognising that they also have to pay for services.

This will mean that the urban poor are likely to remain unserved for the medium term unless specific actions are taken at policy level to develop strategies for financing and implementation. A peri urban working group has been established specifically to address this issue and will be feeding its findings to NWASCO as it becomes established.

Commercial utilities are not traditionally comfortable or competent in dealing with the software components of community managed water supplies and it is demanding in manpower. For this reason also, a commercially minded utility may be unwilling to incorporate peri urban areas without significant government guarantees.

The Act identifies the types of utility that the LA may form as:

- a public or private company;
- a joint venture with an individual or with any private or public company;
- a joint venture with another local authority or several other local authorities;

provided that the majority shareholding shall be held by the authority.

The Act also provides for the local authority to contract with any service provider should it wish to do so. This means that a wholly private company can contract with the local authority to manage the WSS services - effectively privatising the services. Although this is not clear in the Act the difference is that a local authority owned utility may own the infrastructure, whereas a private utility will not be able to own the infrastructure. The Act therefore does not provide real clarity on the relationship between the LA and the utility and this could be the source of future misunderstanding.

Outstanding issues

Supporting regulations not yet in place. NWASCO not yet formed, agreement on the supervising ministry awaited. Utilities formed under the new act will begin in the Copperbelt Province. We can predict how they will perform from the experience of LWSC as well as Chipata and these two companies have laid much of the groundwork with government to enable the new utilities to get off to a smooth start. However it remains to be seen how they will relate to NAWASCO and the new regulatory environment. There is no guideline on how the local authority will relate to or contract with the utility. This is a weakness as the Act charges the Local authority with the responsibility to provide the service. Questions arising which were not resolved in the Act for various reasons include ownership of assets between government, the LA and the utility as well as the transfer of historical debts and liabilities. The Act says that the LA assets will be transferred to the Utility but does not make clear what will happen to government owned assets and this may affect implementation as well as willingness of private sector to participate.

Lessons learned

Legal and regulatory reform is a long process and the success is difficult to measure in a short time frame. It is also dependent upon government willingness to support the reform with Institutional and regulatory systems. The adoption of new legislation benefits considerably from consultation and the gaps in the legislation adopted for Zambia could be avoided by other countries.

The process of dealing with peri urban areas cannot be separated from the broader legislative framework. Whilst services for the urban poor are important they cannot be addressed without ensuring that the water supply and sanitation institutional system is also addressed. Peri urban areas largely fall out of the legislation even though they are addressed in both the policy and strategy documents. This shows the inevitable benefits of linking the provision of services to the urban poor to a well functioning utility. In all likelihood, without a well functioning utility operating on the basis of cost recovery, any services

provided to the urban poor would not be sustainable.

Whilst not yet in place, the conclusion following the above statements emphasises the importance of addressing the issue of the urban poor (30% of all Zambians) in the context of standards, guidelines and implementation strategies which allows for these areas to be addressed even under the competitive financial environment of a commercial utility.

Annexes - references

1. Water Supply and Sanitation Act, 1994. 1st draft
2. Water Supply and Sanitation Act, No. 28 of 1997. Final.
3. Proposed Strategy and Institutional Framework for the Water Supply and Sanitation Sector, Water Supply and Sanitation Sector Development Group, July 1994.
4. National Water Policy, Ministry of Energy and Water Development, Nov. 1994
5. Draft sanitation strategy