

WATER LEGISLATION WITH EMPHASIS ON WATER SOURCES IN DAR ES SALAAM

By

J.M. Kobalyenda

Principal Water Officer

1.0 INTRODUCTION

Water as a social and economic good is a rare national resource. According to the country's Water Utilization Legislation all water in Tanzania is vested in the United Republic (Section 8). Therefore the Government being the custodian issues drawing rights.

In Tanzania the Water legislation is divided in two broad categories namely:

- Water resources management
- Water supply aspects.

Water resources management is governed by the Water Utilization (Control and Regulation) Act No.42 of 1974. This principal legislation has been amended three times.

The following are pieces of the principal legislation:

- Water Utilization (Control and Regulation) (Amendment) Act No.10 of 1981.
- Written Laws (Miscellaneous Amendment) Act No.17 of 1989.
- Water Utilization (Miscellaneous Amendments) Act No.8 of 1997.

At the national level there is a Regulatory Agency - Central Water Board and at the basin level there is a Basin Water Board.

The functions of the Boards, among other things include:

- to administer grant of water rights, water quality standards and pollution control.

Water supply services is governed by the following:

- Urban Water Authority Act No.7 of 1981 as amended by Act No.8 of 1997 which covers Dar es Salaam City and areas of the Coast region.
- Waterworks Ordinance Cap.281 as amended by Act No.8 of 1997 covers the Urban Regional Centres (Mainland Tanzania).
- Public Health (Sewerage and Drainage) Cap.336 and its amendment No.8 of 1997.

Presently water supply in the country is regulated by the Government. With the advent of private investment in the water sector, change is eminent and two scenarios are contemplated.

- Reconstitute and expand the current functions of the Central Water Board to cover water supply and sewerage regulation, issues of tariff approval, dispute resolution, customer protection, fairness to operators, quality of service etc.
- This is not set by statute, but by agreement between the successful operator and the government. The two parties may negotiate to appoint a temporary regulator during the transition period or as the two parties may find it appropriate.

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2.0 OTHER PIECES OF LEGISLATION WITH A BEARING TO THE WATER SECTOR

There are other pieces of legislation in force which have a bearing to the water sector. The Local Government Act, 1982 states that Municipal (Regional) and District Authorities are responsible for planning building and operation of water supply and sanitation facilities in their respective areas.

The National Urban Water Authority was established under Act. No.7 of 1981 and the objective of this legislation was to secure the continued supply of water in towns, or water works connected with the supply of water to towns and to develop and maintain water works in towns or water works connected with the supply of water to towns.

Municipal and District Authorities under above reference they are also charged with the duty controlling pollution in their respective areas of operation. Also the defunct NUWA now DAWASA is legally charged with the duty of controlling pollution.

For the purposes of this paper, the thrust will be focused to water resources management. In order to have a better understanding of the water legislation in this area, it may be necessary to have a bird's eye view on the various pieces of principal legislation on water resources management.

3.0 OVERVIEW OF THE WATER RESOURCES MANAGEMENT PIECES OF LEGISLATION

Water Utilization (Control and Regulation) Act No.42 of 1974

This was the first post independence piece of water legislation on water resources management and effectively repealed the water ordinance Cap.410. The thrust of the Act is to provide administration of grant of rights to the use of water. The Ministry of Water is mandated to deal with all matters pertaining to the use of water, granting of water rights for irrigation, hydropower domestic, etc.

Water Utilization (Control and Regulation) Amendment Act No.10 of 1981

The object of the above amendment was to provide for control of water pollution since the Principal Act No.42 of 1974 did not provide for the same. The new role under the amendment is to control water pollution.

Temporary water standards were also set in respect of effluent and receiving waters which shall be complied with by users of water before or during discharge into water courses.

Written Laws (Miscellaneous Amendments) No.17 of 1989

The object of the amendment was to enhance the penalties for those polluting water sources.

Water Utilization (Miscellaneous Amendments) Act No.8 of 1997

The thrust of the amendment is directed towards several areas namely:

- Composition of the Basin Board members was reconstituted to include private, public, NGOs and women organisations and membership was restricted to seven for smaller basins and ten for bigger basin.
- Basin Water Boards were made financially autonomous.
- Penalties were once again enhanced.

4.0 RIGHT TO LIMITED QUANTITIES OF UNDERGROUND WATER

The abstraction and use of ground water is regulated by Section 11 of the Water Utilization (Control and Regulation) Act No.42 of 1974. It provides right to limited quantities of underground water.

This is as outlined bellow:

Section 11.-(1) The owner or occupier of any land may:

- (a) sink or enlarge any well or borehole thereon and abstract water therefrom, not exceeding 22,700 litres in any one day:

Provided that this section shall not authorize the sinking of any well or borehole within 230 metres of any other well or borehole or within 90 metres of any body of surface water or enlargement of any well or borehole which is within those distances from any other well or borehole or body of surface water, as the case may be;

- (b) construct any works thereon for the conservation of rainfall, otherwise than in a river or stream and abstract and use the water so conserved.
- (2) A Water Officer may determine for the purposes of paragraph (b) of subsection (1) whether any watercourse is a river or stream, and the determination of the Water Officer thereon shall be final and conclusive for the purposes of this Act.

Under Section No.14 of Act No.42 of 1974, no person shall divert, dam, store, abstract or use water for domestic purposes, mining purposes, forestry, industry, livestock, irrigation or for any such purpose construct or maintain any works except in accordance with an existing right or with a water right granted under this Act.

Section 15(1) stipulates:

" A Water Officer may grant to any person the right to divert, dam, store, abstract and use water from such source. in such quantity, for such period, whether such purpose as may be specified in the water right, subject to such terms and conditions as he may deem fit".

5.0 THE WATER UTILIZATION (GENERAL) REGULATIONS 1997

In terms of Section 38(2) of Water Utilization (Control and Regulation) Act No.42 of 1974 the Minister responsible for Water is empowered to make regulations for better carrying into effect the provisions of the principal legislation. Under these regulations Part II Section 3 procedures pertaining to control, regulation and Licensing of ground water are given. These regulations are contained in the Government Notice No.370 published on 25 July, 1997.

Regulation 1 and 2 deal with interpretation. For the purpose of these regulations, "water source" means all water in a spring, stream, swamp, natural lake, river, dam, charco, shallow well and borehole in a basin or catchment. The definition becomes more apparent in terms of Section 15 of the Principal Act (No. 42 of 1974) in connection with the Application for a water right. Regulation 3 gives procedures for application of abstraction of groundwater.

- (3) Where an application is made for abstraction and use of ground water in accordance with section 11 of the Act. the Water Officer shall prepare a notice setting particulars of application as hereunder;
 - (a) the applicant shall submit data and information collected during the ground water exploration and drilling activities
 - (b) the quantity and quality of the water abstracted
 - (c) the area of activities in the basin.
 - (d) the purpose for which the water will be used domestic/commercial/industrial/any other use.

Under these circumstances, all wells (Shallow Wells and Boreholes) drilled throughout the country including those in Dar es Salaam should be registered and have a water right.

For the purpose of Water Utilization Legislation and these regulations, it is necessary to apply for a Water Right for different water uses.

Apart from this legal requirement, there is a great need to monitor both the quantity and quality of water in the boreholes particularly those in the Dar es Salaam area.

The requirement is important because in terms of Water Utilization (General) Regulations - Second Schedule, Application and Economic Water Use Fees have to be paid. These have been prescribed as follows:

Item	Matter	Fees Tshs.
1.	Water Rights application for Domestic/ Livestock/Small Scale Irrigation/ Fish Farming.....	35,000/=
2.	Water Rights Application for Large Scale/ Irrigation/Power Generation/Industrial/ commercial	120,000/=
3.	All other Applications	35,000/=
4.	On every appeal to the Minister	70,000/=
5.	Economic Water User Fees	
	(a) Domestic/Livestock/Fish farming/District Centres/Rural for every 100m ³	30/=

(b) Irrigation

- Small scale for every 1000m³ 30/=
- Large scale for every 1000m³ 60/=
- Business (e.g. flower export)
for every 1000m³ 1000/=

(c) TANESCO Power Royalty Fees 105m/=

(d) Power Royalty Fee per 1 MW installed
capacity 280,000/=(e) Industrial for every 100m³ 100/=(f) Institution/Regional Centres for every
100m³ 80/=(g) Commercial for every 100m³ 120/=

6.0 CONCLUDING REMARKS

- 6.1 Water Resources should be developed, apportioned and managed in such a manner as to enable all user sectors to gain equitable access to the desired quantity, quality and reliability of water, using conservation and other measures to manage demand where this is required.
- 6.2 The objective of managing the quantity, quality and reliability of the nation's water resources is to achieve optimum long term social and economic benefit for society from their use, recognising that water allocations may have to change over time.
- 6.3 The State has a responsibility to provide a framework within which individual activities and enterprise can flourish. Effective control and management of water is of interest to all and can only be achieved through public co-operation and intervention.
- 6.4 Last but not least may I request the participants of to identify some loop holes in the country's legislation (s) in order to properly regulate and control private drillers.

FORMS

FIRST SCHEDULE

FORM A

MINISTRY OF WATER

APPLICATION FOR WATER RIGHT

The Water Utilization (Control and Regulation) Act, 1974

(Section 15)

(To be completed in quintuplicate)

To: The Water Officer

P.O. Box

.....

1. Name of Applicant.
2. Postal Address.
3. Particulars of land in respect of which application is made -
 - (a) District.....Region.....
 - (b) Location or Village.....
 - (c) Name.....

- (g) Power: Fall available:.....Metres
 Horsepower to be developed.
 Type of power plant proposed.
- (h) Mining: Description of plant in use.
 Type of ore to be crushed or treated.
- (i) Public Supply:
 Total quantities of water:
 (4) Point of Intake.
 (5) Point of Return.

*Strike out whichever does not apply.

+A separate application must be made in respect of each body of water.

State amount in litres daily.

5. (a) Particulars of possible pollution.
 (b) Measures to be taken to avoid pollution.
6. Particulars of works.
 (a) Constructed.
 (b) To be constructed.
7. (a) Is application made for the grant to be made appurtenant to the land specified in paragraph 3?
 (b) If the applicant is not the owner of the land, has the owner been informed that application is made for such declaration?
8. The name and address of other users who may be affected by the grant of the water right for which application is made.
9. Fees Paid Tshs _____ ERV No. _____ Date _____

Date: _____

Name/Signature of Applicant

If the applicant does not own the whole interest in the land, attached to this application the consent of the owner to the application that the grant be made appurtenant to the land.

Use space below for a SKETCH MAP which must contain the following particulars:-

- (a) the plan of the property and the adjoining properties.
- (b) the body of water referred to.
- (c) the point on the body of water where it is desired to abstract water or construct works and the line of furrow; and
- (d) the true North.

If possible use a tracing from the plan attached to your little deeds.

NOTE:

The applicant is requested to give the distance in metric units and simple description of the road to the property from the turn-off on a main road, or any well-known landmark, to facilitate inspection

MINISTRY OF WATER
DESCRIPTION AND PLANT OF WORKS CONSTRUCTED
AND/OR PROPOSED

For Official Use Only

No.

Zone.

Region

NOTICE OF APPORTIONMENT OF WATER RIGHT ON SUBDIVISION OF LAND

The Water Utilization (Control and Regulation)

Act, 1974 (Section 16 (4))

To: The Water Officer

P.O. Box

.....

1. Name of person acquiring right.
2. Address.
3. Particulars of land subdivided and the owners thereof before subdivision.
4. Particulars of subdivision and the owner of the parcels.
5. Particulars of Water Right.
6. Particulars of declaration of appurtenance of water right specified in paragraph 5 to land specified in paragraph 3.
7. Particulars of apportionment of water right.
8. Particulars of works in respect of apportionment.
9. Fees paid..... ERV No. Date

Name/Signature of Grantor

Date:

Name/Signature of Grantee

NOTICE OF INTENTION TO APPEAL

The Water Utilization (Control and Regulation) Act, 1974

(Regulation 23)

Only

For Official Use

Reference:

To: The Water Officer

I/We
of.....wish to appeal against the decision
of the Water Officer which notified to.....by
notice No..... dated the
.....

Signed

Date

- DATE: (1) A copy of this notice must be sent to the
Minister responsible for water,
- (2) The fee of Shs. 70,000/= must accompany
this notice.

MINISTRY OF WATER

APPLICATION FOR A GRANT OF CONSENT TO DISCHARGE
WATER OR EFFLUENT INTO RECEIVING WATER THE WATER
UTILIZATION (CONTROL AND REGULATIONS) ACT, 1974

(section 15A (2))

To: The Water Officer

P.O. Box.....

.....

- 1. Name of Applicant
- 2. Address
- 3. Particulars of Water Right
- 4. Source of water where the effluent is to be discharged
- 5. Possible persons to be affected downstream
- 6. The quantity of Effluents to be discharged
- 7. Methods of controlling pollution in details.

Date Name

Signature.....

MINISTRY OF WATER

THE WATER UTILIZATION (CONTROL AND REGULATION) ACT, 1974

WATER OFFICER'S CONSENT TO DISCHARGE WASTE OR EFFLUENT

INTO RECEIVING WATER

To: Water Officer

P.O. Box

.....

- 1. Name of Applicant
 - 2. Address.....
 - 3. Consent No.
 - 4. Particulars of Water Right
- is hereby authorized to discharge waster or effluent into for a period of with effect from the day of 19... at a rate not exceedinglitres per day or litres per hour and at the rent of Shs. per day paid in advance by the day of 19.....

This consent is granted subject to the conditions stated hereunder.

.....
Signature of Water Officer

CONDITIONS

- 1.
- 2.
- 3.