

**EXPLORING THE CHALLENGES OF IMPLEMENTING THE
RIGHTS-BASED APPROACH TO DEVELOPMENT: THE CASE OF
THE RIGHT TO WATER IN PERI-URBAN ZAMBIA**

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DECLARATION

By means of this note, I declare that the ideas contained in this work are the original views of the author and they have not been submitted to any university other than the University of KwaZulu-Natal. Ideas borrowed from other works have been duly acknowledged within the text and in the bibliography.

Signature:

Date.....

ABSTRACT

Water is an essential element of life. On average, 60 to 70 percent of a human body mass is water¹. In order to perform its functions properly, it is estimated that a human body needs about 2 to 3 litres of clean water per day². For this reason, access to adequate, clean and safe water is indispensable to achieving human well-being, and securing human freedom and dignity. Given the important role water plays in sustaining human life, enhancing human dignity, freedom and development, it has been widely submitted that access to clean water should be recognised as an inalienable right. Ironically, although water is a basic requirement for life, access to water has not been adequately proclaimed and treated as a human right, especially in domestic law. Other than the international human rights instruments, there are very few countries which have explicitly protected access to water in the national constitutions and other major pieces of legislation.

Arising from this is the question of whether explicit recognition of the right to water makes a difference for people living without access to safe sources of water. The main argument pursued in this study is that although explicit recognition of the right to water can make a difference in the lives of millions of people who have no access to clean sources of water, mere recognition of the right to water does not constitute a 'magic bullet' for the challenges of access to clean water. Realizing the right to water requires moving beyond mere recognition to deeper levels of commitment which includes taking appropriate measures and implementing them. Moving beyond mere recognition, in turn, requires adequate and responsive institutions through which the rights can be asserted, contested and effectuated. In this context, civil society constitutes an important component of the institutional set up through which the right to water can be effectuated. The importance of civil society in realizing the right to water lies in the fact that human rights are not just given on a *silver platter*; they must be asserted, sufficiently contested for, and claimed. While the deployment of a rights-based approach to issues of access to water is in its infancy stages, it is apparent from the evidence gathered in this study that the rights-based approach is weak in unlocking and hooking into the real-politik, despite its rhetorical strength.

This study explores the challenges faced in implementing the right to water. Focus in the study is on processes that produce situations where the right to water is, first of all, not well recognized as a human right; and secondly, processes that lead to the right to water not being fulfilled for millions of people. What the Zambian case has revealed is that failure to ensure that people have access to clean sources of water is not solely a question of lack of or inadequate resources as the situation is often made to appear in conventional political discourse. There are multiple factors involved, including inappropriate management of processes, systems and resources, which often is a consequence of lack of political will and commitment. Given the nature of the issues under investigation, a multi-method approach, which is a combination of different research methods and strategies, has been employed. Field work for the study was conducted in three different peri-urban communities in Zambia.

¹ For some body parts such as muscles, the percentage content is higher. Lean muscle is estimated to contain 75% water by weight, blood contains 83%, while fat has about 25%, and bone has about 22% water by weight (see IOM Report, 2004).

² The Institute of Medicine 2004 report estimates that an adult female needs 2.2 litres while an adult male needs 3.0 litres per day to avoid dehydration (see IOM Report 2004). The United State National Research Council puts the figures at 2.7 litres for females and 3.7 litres for males per day. Despite these differences, it is agreed that the amount needed for normal physiological functions depends on a number of factors including the physical activity of the person, the climatic conditions, age, gender, and nutritional status. Most importantly, the water must be clean; free from harmful substances, in constant and adequate supply, and physically and economically accessible (WHO, 2003; *General Comment 15*).

ACRONYMS

ACHPR	African Charter of Human and People's Rights
ACRWC	African Charter of the Rights and Welfare of the Child
AEJPN	Africa-Europe Justice and Peace Network
ANC	African National Congress
AWDR	African Water Development Report
BBC	British Broadcasting Corporation
BSACo	British South African Company
BWR	Basic Water Requirement
CBO	Community Based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Right of The Child
CSO	Central Statistics Office
CU	Commercial Utility
DfID	Department for International Development
DISS	Department of Infrastructure and Support Services
DRD	Declaration on the Right to Development
DTF	Devolution Trust Fund
ECZ	Environmental Councils of Zambia
ERP	Economic Recovery Programme
FAO	Food and Agriculture Organization
FfNDP	Fifth National Development Plan
FNDP	First National Development Plan
FrNDP	Fourth National Development Plan
GDP	Gross Domestic Product
GNP	Gross National Product
GRZ	Government Republic of Zambia
GTZ	German Technical Aid
HDR	Human Development Report
HIP	Harmonization in Practice
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDEA	Institute for Democracy and Electoral Assistance
ILO	International Labour Organization

ACRONYMS

IMF	International Monetary Fund
INDECO	Industrial Development Corporation
JAF	Joint Assistance Funding
JICA	Japanese International Cooperation Agency
LCMS	Living Conditions Monitoring Survey
LWSC	Lusaka Water and Sewerage Company
MACO	Ministry of Agriculture and Cooperatives
MDG	Millennium Development Goals
MEWD	Ministry of Energy and Water Development
MFNP	Ministry of Finance and National Planning
MINDECO	Mining Development Corporation
MLGH	Ministry of Local Government and Housing
MMD	Movement for Multi-Party Democracy
MOH	Ministry of Health
MTENR	Ministry of Tourism, Environment and Natural Resources
NCCM	Nchanga Consolidated Copper Mine
NERP	New Economic Recovery Programme
NGO	Non-Governmental Organisation
NIEO	New International Economic Order
NWASCO	National Water and Sanitation Council
NWP	National Water Policy
NWSC	Nkana Water and Sewerage Company
O & M	Operation and Maintenance
OHCHR	Office of the High Commission for Human Rights
OMCT	World Organization Against Torture (Organization Mondiale Contre Torture)
PSP	Private Sector Participation
PRA	Participatory Rural Appraisal
RBA	Rights-Based Approach
RCM	Roan Copper Mine
RDC	Resident Development Committee
RtD	Right to Development
SADC	Southern African Development Community
SAG	Sector Advisory Group

ACRONYMS

SAP	Structural Adjustment Programme
SNDP	Second National Development Plan
SWAp	Sector Wide Approach
TDP	Transitional Development Plan
TNDP	Third National Development Plan
UDHR	Universal Declaration of Human Rights
UDI	Unilateral Declaration of Independence
UNDP	United Nations Development Programme
UfW	Uncounted for Water
UNESCO	United Nations Education and Scientific Council
UNIP	United National Independence Party
UNWWDR	United Nations World Water Development Report
USAID	United States Agency for International Development
WDR	World Development Report
WHO	World Health Organization
WRAP	Water Resource Action Programme
WSP	Water and Sanitation Programme
WSS	Water Supply and Sanitation
ZCCM	Zambia Consolidated Copper Mine
ZIMCO	Zambia Industrial and Mining Corporation
ZPA	Zambia Privatization Agency

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CHAPTER ONE: GENERAL INTRODUCTION

A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed towards promoting and protecting human rights. A rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development (WHO, 2003:10)

1.1 Subject Matter of the Study

Water is a basic element of life. Access to adequate, clean and safe water³ is indispensable to achieving human well-being, securing human freedom and dignity (Scanlon, Cassar and Noemi 2004; WHO, 2003; Petrella, 2001; Gleick, 1998; Jolly, 1998; *Global Water Supply and Sanitation Assessment Report 2000*). Nelson Mandela in his speech at the 53rd *General Assembly of the United Nations* argued that the unavailability of basic services including water is a denial of the right to be human: “[t]he very right to be human is denied every day to hundreds of millions of people as a result of poverty and the unavailability of basic necessities such as food, jobs, water, and shelter, education, health care, and a health environment” (1998: 28). British Broadcasting Corporation’s (BBC) commentary on the situation of water in Africa points out that “access to water is the cornerstone of any effort of development” (*BBC News*, March, 2006). Thus, the importance of water in bringing about social and economic development is beyond question. As the *Human Development Report 2006* (HRD) observes,

Water pervades all aspects of human development. When people are denied access to clean water at home or when they lack access to water as a productive resource their choices and freedoms are constrained by ill health, poverty and vulnerability. Water gives life to everything, including human development and human freedom (2007: 2).

Given the indisputably important role water plays in enhancing human dignity, freedom and development, it has been argued that access to water should be recognised and treated as an inalienable right that should be protected in both national and international legal instruments (Mehta and Ntshona, 2004: 2; Gleick, 1998; *General Comment 15*, # 1). This has been underscored in the *United Nations Economic and Social Council’s Committee on Economic Social and Cultural Rights*, particularly in *General Comment 15* which has argued that the right to water is a “prerequisite for the realization of

³ In this study, access to water is limited to water for basic life activities. This is in line with the notion of the right to water being that of basic water for maintaining life. On average, an adult human being needs about 2 litres per days for a hydro-osmotic balance in the body, but that is not enough to maintain life. Human life is more than just maintain the biological or physiological processes. In a broader sense, water used for watering back-yard plants can be said to be a way of maintaining life and therefore becomes part of basic water. However, for the sake of clarity and in line with the core concept of the right to water, the study will use “access to water” to mean basic water, that is water for drinking, cooking, bathing and hygiene (see Gleick, 1996).

other human rights” (#1). Ironically, even if it is widely acknowledged that every person should have access to clean water, there are billions of people in the world who still live without access to clean sources of water. *Human Development Report 2006*, estimates the figure of people without access to clean water at 1.1 billion people, while 2.3 billion have no access to adequate sanitation⁴. To add to the problem of failing to meet basic water needs for more than one billion people, there is wide spread resistance to (and in some cases total denial) asserting access to basic water as a fundamental human right (*General Comment 15*, # 1; Hodgson, 2004). Although water is a basic requirement for life, the right to water has not been adequately proclaimed and treated as a human right especially in domestic law.⁵ Other than the international human rights instruments, there are very few countries⁶ that have explicitly protected the right to water in the national constitutions and other major pieces of legislation.

Apart from this apparent gap in securing access to clean water as a human right, the question of whether explicitly recognizing the right to water makes a difference for people living without access to safe sources of water needs to be explored. Drawing on the *Zambian case*, it is argued in this study that while explicit recognition of the right to water can make a difference in the lives of billions of people who have no access to clean water, recognition of the right to water is only a first step. Making the right to water a reality for people without access to water requires moving beyond mere recognition to deeper levels of commitment which include taking steps, appropriate measures, and implementing these measures (see Section 3.2.8). This requires adequate and responsive institutions through which the right can be asserted, contested and effectuated.

This study has investigated the challenges encountered in implementing a rights-based approach to development (RBA), using the right to water in Zambia as an entry point. The study focuses on the origins, nature and extent of the challenges encountered in implementing the right to water⁷.

⁴ Although this study focuses on water, it acknowledges that sanitation which is closely related to water is also a major problem.

⁵ Even at the international level there is a recognizable vacuum as far as an explicit recognition of the right to water is concerned. For instance the *Universal Declaration of Human Rights* (UDHR) only indirectly mentions water as a human right. The 1966 covenants on socio-economic, and civil and political rights do not explicit mention water as a human right. Water is explicitly mentioned only in 1989 in the *Convention on the Rights on the Child* and in 1979 in the *Convention on the Elimination of all Forms of Discrimination Against Women* (see Chapter 4).

⁶ In fact it has been noted that South Africa is the only country that has officially recognized and provided for the right to water (see Mehta and Ntshona, 2004:2; Mosdell & Leatt, 2005). Uganda has also provided for the right to water in the bill of rights, but there are no implementing regulations to effectuate the right like the case of South Africa (see Section 27 (1) (b) of the 1996 *South African Constitution* and *Article 14* of the 1995 *Ugandan Constitution*).

⁷ There is a difference between the “right to water” and “water rights.” The right to water is often used to signify the right to the use of water in its natural environment while water rights encompass a wider range of entitlements which include the right to divert and store water from its natural course or environment. Water rights often are linked to the removal of water

In order to comprehend the factors that constrain the realization of the right to water, this study has reviewed different processes related to access to water from the formulation of policies and legislation, funding to the water sector the actual delivery of water in communities. The core argument advanced is that human rights are not just a gift on a *silver platter*; they have to be asserted, contested and claimed. It is further argued that the challenges faced in implementing the right to water are not only financial but institutional in nature. Critical to the realization of human rights, particularly the right to water, is the existence of *adequate* and *responsive* institutions which include active civil society organizations. In situations where these institutions are missing or inadequate, as the Zambian case demonstrates, it is very difficult to fulfil the right to water in any significant way. As regards the basis for asserting the right to water in Zambia, it is suggested here that though access to basic water⁸ is not explicitly⁹ recognised as a fundamental human right, the right to water can be affirmed on the basis of the international human rights instruments to which Zambia is a signatory¹⁰.

To appreciate the current challenges associated with access to water, this study has critically analysed the processes which have influence on access to water, mainly the commercialization of water services. Further, attention is drawn to *power relations* between the actors at the three levels: policy formulation (policymakers including legislators), programme/project operation (service-providers) and the communities in which water is delivered.

1.2 Background to the Study

This study is based on research carried out in three communities in Zambia; all of them located in what is known as peri-urban areas. Peri-urban areas are low income communities which started mostly before independence as unauthorized settlements or slums. Officially, the Zambian government defines peri-urban communities as:

and subsequent use out of its natural environment. For an elaboration on the distinction between the right to water and water right see Hodgson (2004:10) "Land and Water—The Rights Interface". In this research, the focus is on the right to water, and particularly, basic water. There is controversy over what constitutes basic water, but there is some agreement as to what the range should be (see appendix II and Foot not 8 below for details).

⁸ What constitutes "basic water" can be difficult to determine categorically, since water needs vary from one community to another. However, there is a generally agreed standard of what can be regarded as basic water. According to the international organizations involved in water provision, which includes World Health Organisation (WHO), recommend that Basic Water Requirement (BWR) is between 20 and 40 liters per capita per day (lpcd). However this excludes water for cooking, bathing and basic cleaning. Adding these requirements Gleick (1998) recommends 50lpcd (See Appendix II). In Zambia a 30lpcd has been recommended though it has not been implemented (See *Peri-urban WSS Strategy Draft 1999*).

⁹ Access to water is referred to in Section 112 of the 1996 Constitution, but this provision is preceded by a clause which says that although access to water is referred to as a human right, it is not a right that should be enforced in any courts of law (see Section 4.3.2).

¹⁰ Apparently, Zambia has ratified all the six major human rights instruments (see HDR, 2000:51).

...formal or informal settlements, within the area of jurisdiction of a local authority, with high population density and high density low cost housing having inadequate or lacking basic services, such as water supply, sewerage, roads, stormwater drainage and solid waste disposal (*Peri-Urban Water Supply and Sanitation Strategy, 1999:vii*).

Research was conducted in three of these peri-urban communities. Two communities are located in Lusaka (Kanyama and Mtendere Compounds) and one on the Copper-belt.¹¹ **Figure 1.1** below shows the position of Zambia in Southern Africa as well as the location of the study sites in Zambia. While water endowments for the region and Zambia is not shown in this map, the location of the study sites gives an idea of where the study was conducted, emphasising the distance between the two sites.

Figure 1.1 Zambia in Southern Africa And Study Sites



Source: Compiled by Author

Initially, Chawama and Mtendere Compounds were chosen in Lusaka while Kamatipa was picked in Kitwe. But when the actual field work started, different research sites were chosen. Kanyama was chosen instead of Chawama for two reasons. First, Kanyama has several modes of providing water

¹¹ All the three research sites are informal or squatter settlements lying on the outskirts of two major cities. No site from the rural area has been chosen in this study because of total absence of government programmes in most rural areas. Secondly, a number of studies about access to water have been conducted in rural areas. For instance the study by Chileshe, Trottier and Wilson (2005) has two case studies which were both located in rural communities. Most of the World Bank studies about access to water focus on the rural areas. For instance the 1994 *Zambia Poverty Assessment Study* had most of its study sites in rural areas. Thirdly, research in rural areas requires more resources to cover the travel and other expenses. Further, notions of water as a human right are likely to be very scanty in the rural areas.

when compared to Chawama. In Kanyama, water is provided by the utility company (LWSC), community run water schemes (Water Trusts), and also by well owners as well as individual 'wheelbarrow' vendors. These different ways of providing water offered more learning opportunities which may not have been possible in Chawama. Second, in Kanyama problems of access to water seem to be more acute than in Chawama. And since the research is based on a rights-based approach which focuses mainly on people whose rights are most at risk, Kanyama was chosen instead of Chawama. In Kitwe, Race Course was selected mainly because this is the compound where water kiosks¹² were first introduced. In Kamatipa water is still provided through communal taps. Since information about the operation of communal taps had already been secured in Kanyama, Race Course offered new lesson from the operation of kiosks (see Section 6.1.1.1 for definition of kiosks).

As noted in the official definition of peri-urban areas, the general characteristics of these communities, like many other peri-urban communities in Zambia, include high incidence of poverty, informal employment, low levels of education, poor housing units, low household income, large household size and low levels of access to safe water and adequate sanitation. In most cases, "most houses in the unauthorized urban settlements were built out of cheap unconventional building materials, such as mud bricks (for making walls), cardboards, tins and plastic materials and even grass (for roofing)" (Mulenga, nd: 8). Based on these features, one could safely conclude that peri-urban areas are enclaves of poverty, vulnerability, social exclusion and precarious livelihoods.

In all the three communities, hand-dug or shallow wells (See Section 6.1.1.3 for details) constitute an important source of water. For some households, this is the only source of water, while for a large number wells are an alternative source which is often the last resort when it is not possible to get water from safe sources (see Section 5.1.2).

Although several peri-urban communities have been legalised (gazetted as residential areas by the state), there are many that have not yet been legalised and are often regarded as illegal settlements constantly under the threat of being demolished or relocated. This makes it difficult to plan and implement infrastructure improvement since the status of these communities remains uncertain. A number of respondents indicated that this is one of the problems they face.

¹² See Photo 1 in Chapter six

1.2.1 Peri-Urban: Evolving Legacies of Enclavity

Most Peri-urban communities in Zambia emerged before independence. During the colonial era, especially the post World War II period, the booming copper industry following from high copper prices induced a higher demand for labour on the copper mines and other towns. The promise of modern life in the city together with poor prospect of a 'better life' in the rural areas resulted in a huge influx of indigenous people from rural Zambia to urban centres in search for work and a 'better life'. This influx of people into urban centres created a huge shortage of housing since the housing units in urban areas were mainly provided for whites settlers (Mwimba, 2002). During colonial rule, few Africans were allowed to stay in urban areas permanently—they were all expected to sojourn in the city for the duration of the work contract. In most cases African workers were required to go back to their villages over the weekend. As Mhone observes,

Underlying the emerging approach to social policy was the general unquestioned assumption that the majority of the Africans were to be resident in rural villages, and that only a small proportion as needed would be absorbed into modern employment and hence reside in urban areas (2004: 14).

Mwimba makes a similar observation when he argues that,

Such a policy was manifested in construction of single quarters (these, for example, can still be found in Wusakili Township, Kitwe) for African workers since the wives, dependants and children were expected to remain in rural areas and the workers were expected to return to the villages after retirement (2002: 1-2).

But due to the high demand for labour during the boom period, the colonial government had no choice but to permit Africans to build temporary structures where they could stay while working in the mines and related industries. Eventually, this gave rise to the self-help "authorized" and "unauthorized" African settlements that have today evolved into what is known as peri-urban communities. Though Lusaka was not a copper mining town, it was affected by the housing crisis during the boom period.

A confidential government report of 1957, for example, put the number of persons housed in the unauthorised locations at 33,500 or 44 per cent of the total Lusaka Urban African population. The report also noted that between 50 and 100 new buildings were being erected in authorised locations each month, 'or ...900 new buildings housing 4,500 persons each year' (in Mulenga, n.d: 7).

Unauthorized settlements often sprung up on farms nearby major cities and towns like Lusaka and Kitwe. From the beginning of informal settlements, authorized settlements differed from unauthorized settlements in that the former were provided with clean water through communal taps while the latter had no water services—they entirely relied on shallow wells as Mulenga explains.

The striking feature of the early self-help housing, both authorised and unauthorised was the use of unconventional building materials and their location just outside the city/town boundary. The

unauthorised locations were, however, not provided with any municipal services. In consequence, the living conditions in the authorised self-help housing areas were generally better than in the unauthorised self-help settlements, because the former had access to some municipal services, notably potable water and were less crowded than the unauthorised settlements (ibid)¹³.

Thus, shallow wells have been an important source of water for many people in peri-urban areas. Elderly people interviewed in this study confirmed that they have been getting water even for drinking from wells from the time they settled in these communities.

Although the post-colonial government made efforts to improve living conditions in these communities, services remained poor mainly because the government could not cope with the huge influx of migrants from rural areas to the cities in search of a 'better life.' Two major factors contributed to the huge number of rural migrants after independence. One is that after independence Africans without a job were allowed to stay in urban areas as long as they could—something that was not allowed during the colonial government. The other factor that contributed to the rural-urban influx is the disparities in the levels of development between rural and urban areas as explained in Chapter Two. Poor living conditions in rural areas when compared to those in the cities forced many young males (mainly) to migrate into the cities in search of the promise of the modern society. As indicated in Chapter Two, this was essentially a problem created by the dual nature of the economy developed during the colonial era when a modern flourishing copper economy was grafted on the traditional, subsistence, rural economy. The modern economy, maintained as an enclave, resulted in highly pronounced disparities between those living along the line of rail and those away from this seemingly development "strip" (Jolly, 1984). Unfortunately, as illustrated in Chapter Two, these disparities have not been addressed until today. Since independence, peri-urban communities have not only persisted but have increased in number and size as the rural-urban disparities deepen.

However, the growth of peri-urban areas since the 1990s can be attributed to two major factors. First, the large scale privatization embarked on by the government during the 1990s resulted in many people

¹³ However, authorised self-help housing projects even before independence were upgraded to low cost housing units which still exist today like Matero, Chilenje, Libala and Kamwala in Lusaka; Mindolo, Chamboli and Wusakili in Kitwe. These settlements are today referred to as the low income areas. As for the unauthorised settlements, little was done to improve services until after independence when the government tried to upgrade some of the settlements by bringing water and sanitation services, roads, drainage as well as other social facilities like schools, clinics etc. These communities today are called peri-urban areas/communities instead of *slums* or *informal settlements* or *shanty compounds* or *squatter camps* (DTF, 2005:3).

loosing formal employment. Most of them could not afford to continue staying in either medium or low income housing units. The only option was either to go back to the rural areas or settle in peri-urban areas (See Ferguson, 1999). And because of the poor prospects for a good life in rural areas, most of the retrenchees chose to stay in peri-urban areas as one of the respondents explains:

But you know even those who lost jobs were not going back to rural areas, they were actually staying, because they have lived all their lives in the urban. So most of them could only find space in the peri-urban, by just scrounging on any land available or actually going to rent (*Service Provider Interviews, 2007*).

The second reason is that the economic restructuring programmes impacted more heavily on rural areas than urban areas thereby triggering further influx into urban areas. Incidence of extreme poverty in rural areas rose to 84% in 1993 (LCMS, 2004:118). The consequence of this is that,

...more people in the rural areas still believe that jobs can only be found in the cities or in fact in the informal sector, so the trekking to the cities. Still..., we continue having people coming to the city where some have nowhere to sleep. So we see an influx of increased population in the peri-urban areas (*Service Provider Interviews, 2007*).

Another respondent noted that,

...because of the poverty situation in the villages and rural areas, people still flock to the urban areas to look for employment or a better life. When they come here they have nowhere to stay. Initially they put up makeshift structures to live in, but eventually these makeshift structures become permanent structures and therefore they are not planned settlement and so there is no water supply there. Not only water, most of the social amenities are not there, education, health, everything... (*Service Provider Interviews, 2006*).

1.3 Problem Statement

1.3.1 Access to Water in Zambia

The *Living Condition Monitoring Survey Report* (LCMS 2002-2003) estimates that 53% of households in Zambia have access to basic water leaving 47% of households without access to safe sources of water. The *HDR 2003* puts the figure of people with access to 'improved sources' of water at 64%, while the *HDR 2005* put the figure at 55%. Even if we take the *HDR 2003* figure it means that 36% of the population are without access to basic clean water¹⁴. This study, however, has used the figure from the official Zambian statistical office (that is, the LCMS) despite the problems associated with the data (see Section 5.1.7 below). And if we use the LCMS (2005) figures, it is apparent that more than half the population have no access to safe sources of water¹⁵. And that is where the problem lies. Majority

¹⁴ The argument here is not that 4 million people have absolutely no access to water, but that these people may have access to water which may be unsafe for human consumption. For instance they may have water from the rivers, lakes, shallow wells or open dams, but these sources are unsafe and pose a great danger to people's lives and to the healthy of the society at large.

¹⁵ LCMS reports access to water at the household level. Given the fact that most of the households that do not have access to safe sources are in rural and peri-urban categories (LCMS, 2005), and that the household size in the rural and peri-urban

of the people without access to water are in peri-urban communities and rural areas. Given this situation, the question of why so many people have no access to basic clean water is a legitimate one, taking into account the fact that Zambia is not a water stressed country (see Section 5.1.3 below). Zambia has abundant water resources when compared to other neighbouring countries in the Southern African region (World Bank, 1996). Thus, the problem of water in Zambia is not that of “first order scarcity”, but mainly of “second and third order scarcity,” which is a socio-politically produced condition.¹⁶ Accordingly, this study builds on the hypothesis that the problem of access to water in Zambia is essentially a socio-economic and political problem¹⁷.

1.3.2 Institutional Framework

Though the management of water resources falls under the Ministry of Energy and Water Development, there are many institutions directly involved in the management, control and use of water resources. These include the Ministry of Local Government and Housing (which is responsible for the provision of water and sanitation services), Ministry of Environment and Natural Resources, Ministry of Lands, Ministry of Agriculture and Cooperatives, and the Ministry of Health. In the past, (and to a certain extent, currently), this multiplicity of institutions resulted in confusion as well as tensions between the different institutions. Much of the misunderstandings arise from the unclear roles that each of these different institutions is expected to play. Lack of coordination has not only resulted in the duplication of roles, but has prevented effective and efficient planning and optimal use of water resources. Further, fragmentation characteristic of this sector makes it difficult to strengthen the lobbying for resources in the national ‘resource envelope’ as highlighted in Chapter Five below. Although the on-going sector reforms have managed to clarify the roles, there is still reported in-fighting between departments of different ministries.

area are larger (for instance in 2001, out of the total 1 300 000 population of Lusaka, 800 000 lived in peri-urban see World Bank (2001), it is justified to infer that the reported proportion of households translates into more than half the people having no safe sources of water.

¹⁶ First order scarcity is often defined as the natural scarcity of water due to low rainfall or poor geological formations, while second order scarcity is seen as a socio-political construct which arises as a macroeconomic, institutional and micro-political problem. See Chileshe, Trotier and Wilson (2005); Perret (2002) for a detailed account. For definition of Second and Third Order Scarcity see Section 5.1.3)

¹⁷ Phiri (1999) for instance, in his survey of the country’s water legislation and policy framework locate the problem surrounding access to water in Zambia within the weak political institutions. Concluding his survey, he notes that the major problem regarding access to water in Zambia is that of fragmented policy and legislation, lack of political will and the way water is perceived as a human right. The 1996 World Bank Workshop also blames the problems in the water sector on lack of legislative and regulatory capacity. According to the report, prior to 1994, Zambia “had no coherent policy for planning, management, and development of its water resources” (World Bank, 1996:204).

1.3.3 National Water Policy

For a long time, Zambia did not have a clear water policy. Policy on water began to receive attention only in 1993 culminating in the *National Water Policy* of 1994. One of the key aims of the *National Water Policy* is to reorganize the water sector so that water resources can contribute to national development. For this reason, the policy document has repeatedly stated that water plays an important role in social and economic development. In order for water to play this role, the national policy was envisioned to provide some guidelines on critical issues including the clarification of roles among the different key actors, as well as the development of the sector itself. Despite efforts at clarifying water policy, it has been noted that the water sector has been characterized by duplication of institutions, and roles, lack of funds, lack of capacity, inertia and inefficiencies (Phiri, 1999). Nevertheless, the overall objective¹⁸ of the water policy in Zambia is:

to promote sustainable water resources development with a view of facilitating an equitable provision of adequate quantity and quality of water for all competing users at acceptable cost and ensuring security of supply under varying conditions (*National Water Policy*, 1994: # 2.1)

The thrust of water policy, especially water supply and sanitation, has been commercialization. The understanding behind commercialisation is that such a move would improve service delivery, widen service coverage and bring about sustainability in the sector. But 13 years after the policy was adopted, funding to the water sector is only about 0.5% of total government expenditure (see *Economic Report*, 2006). And the much publicized private capital investments are yet to come. Similarly, while the policy strongly recommends coordination as one way of strengthening the institutional framework in the sector, evidence from this study suggests that the sector is still fragmented and seriously under funded. This can pose a big challenge in the area of water development which requires long-term planning and the ability to implement plans over longer periods of time.

1.4 Objectives of the Study

1.4.1 Overall Objective

Problems related to access to water in Zambia arise from failure to effectively manage water resources and processes. This failure is manifested in many ways including inadequate and uncoordinated funding, inefficient use of available resources, inadequate regulatory and policy framework (World Bank, 2002), lack of political will and commitment to ensuring that all people have access to basic water (Phiri, 1999). Most of the explanations offered for the apparent failure to implement the right to water have focused on lack of resources: human, physical and financial (IMF, 2002). It is however shown in this study that inadequacy of resources is not the only reason that accounts for the failure to

¹⁸ See Appendix IV for details on the objectives of the water sector reforms.

realize the right to water. In this context, the study highlights other possible factors which contribute to the apparent failure to ensure that everyone has, at least, basic water.

The overall objective of this study is:

To investigate factors that influence access to safe sources of water in Zambia focusing on their origin, nature and extent.

In order to understand the origin, nature and extent of these challenges, the study has attempted to map out the implementation process in the complex social and political context from which these challenges arise leading to a situation where millions are unable to have access to safe sources of basic water.

1.4.2 Specific Objectives

The main aims of the study include:

- Assessing the extent to which the right to water is being or not being fulfilled.
- Identifying major challenges in the process of implementing the right to water.
- Assessing the level of commitment to the right to water among the different actors, particularly the state.
- Suggesting possible explanations for the observed phenomenon.
- Contributing to efforts being made to find solutions to the problem of access to safe sources of water.

Consequently the basic question that the study addresses is whether the right to water ‘recognized’ in domestic and international human rights instruments is being realised¹⁹. If the right is not being fulfilled, (as evident from the millions that still have no access to basic water), it is only appropriate to examine factors that have caused to this condition. For instance, are there any programmes or policies that are directed towards ensuring that everyone has access to safe sources of water? If such programmes exist, do they comply with the human right principles and values? And if such programmes do not exist, what are the explanations for the absence? If they do exist and are implemented, what are the outcomes? If they exist but are not implemented, what explanations are given for the failure to implement?

1.4.3 The Study’s Contribution to the Body of Knowledge

This study has contributed the following to the existing body of knowledge:

¹⁹ Studies that have made reference to the right to water in Zambia are Phiri’s 1999 “*Water Law, Water Rights and Water Supply (Africa) Zambia –Study Country Report*,” where the author tries to investigate the situation of water law in Zambia, and Chileshe, Trottier and Wilson’s 2005 “*Translation of Water Right and Water Management in Zambia*” where the authors review management of water in Zambia focusing on water right as opposed to the right to water.

- Identifying the challenges involved in implementing Rights Based Approach (RBA). Since the emergence of RBA, development practitioners and agencies have enthusiastically popularized this approach without clearly outlining the challenges involved.
- On the basis of the challenges identified in the study, ways of addressing these challenges have been suggested. The RBA Assessment Matrix presented in Chapter Three is one example. By focusing on issues related to the implementation of the right to water, this study has contributed to the understanding of the major challenges faced in implementing the right to water in particular and RBA in general. No study has so far explored these issues in the Zambian context.
- Applying the understanding of processes that produce particular social conditions such as people failing to have access to clean sources of water. The emphasis in this study is that instead of focusing on the actual socio-political conditions, much more can be gained by shifting attention (without ignoring the conditions) to the processes that produce these conditions.
- Demonstrating how human rights principles can be used when evaluating development policies, programmes or projects. The study has established that a clear identification of duties can benefit policy makers by outlining what they are expected to do, while at the same time clarifying what the beneficiaries of a particular right are entitled to.

The key finding of the study is that implementation of the rights-based approach faces a number of serious challenges including the reluctance of governments to adopt the approach, the “Cranstonian hegemony”, lack of conceptual clarity and inadequate empirical evidence of value-added of RBA.

1.5 Structure of the Thesis

Chapter One presents the general introduction of issues addressed in the study. This chapter briefly discusses the conceptual framework, the methods used to collect data, how the gathered information is analysed, the statement of the problem under investigation, the general background to the case study, objectives and fieldwork experience.

Chapter Two briefly discusses Zambia’s development strategies. The main objective of this chapter is to provide a basis on which the development challenges in the country can be assessed. Since the main task of the study is to identify the origin, nature and extent of the challenges of RBA, an outline of the development policy and strategies in the country provides the context. While this chapter discusses the development policy of Zambia in the post independence period, focus is on understanding how

development has been conceptualised and implemented at different times and how this has impacted on access to water. Major shifts in approach to development policy and strategy are noted, highlighting the influencing factors which directly or indirectly impact on access to water.

Chapter Three situates RBA debates in the larger human rights discourse focusing on understanding what constitutes RBA. The main objective of this chapter is to position the rights-based discourse in the larger context of development and human rights. Arguments for and against human rights, in general, and RBA in particular, are presented. Reasons for adopting RBA in this study are also discussed.

Chapter Four focuses on the general debates on the right to water. The right to water touches on two different dimensions: human rights, and water resources and its components. Thus, this chapter discusses the right to water in the context of international human rights and global hydro-politics. Discussions of issues at the international level is made under the supposition that events at the global level do influence national issues related to the right to water including challenges of access to water.

Chapter Five presents the general condition of access to clean water in Zambia under which the right to water is discussed. Focus here is on how issues related to access to clean water have been handled by the government and other major actors including the service providers, non-governmental organisation and the communities. The discussion in this chapter centres on the process of commercialization and its impact on access to water in peri-urban areas.

Chapter Six discusses the status of access to water in peri-urban Zambia based on evidence from the three communities. Using the information from these communities, suggestions on the origin, nature and extent of the challenges are offered. This chapter also looks at the processes that produce the condition where many people have no access to safe sources of water. In this section, the analysis goes beyond the actual condition of inadequate or lack of access to safe sources of water to the processes that produce this condition.

Chapter Seven presents the main findings, the conclusion and recommendations of this study. This chapter brings together the major lesson that have emerged from the study.

1.6 Conceptual Framework

1.6.1 Human Rights Theories

To discuss RBA appropriately, it is helpful to situate the discussion in the larger human rights debate. From the beginning, it must be acknowledged that ideas about human rights are heavily contested in both political and social theory (see Chapter Three). Commenting on the rights debate, Amartya Sen (2004) argues that in the context of controversies over human rights, there is need to elaborate a theory of rights, and he attempts to do that in his "Elements of a Theory of Rights". However, though Sen

describes his main task as presenting a theory of human rights and justification for a “general idea of human rights”, he actually does not come up with a theory of human rights, but proposes elements that a theory of human rights should contain. Contrary to Sen’s assertion that there hasn’t been a theory of rights as yet, there have been two major competing schools of human rights theory offered thus far: *the interest/benefit* theory of rights (Raz, 1986 and the *Choice/Will* theory of rights (H.L.A. Hart, 1982). **Table 1.1** below summarises the two theories. As evident from **Table 1.1** below, both theories have strengths as well as limitations.

Table 1. 1 Two Theories of Rights

	<u><i>Choice Theory</i></u>	<u><i>Interest/Benefit Theory</i></u>
Main Proponents	L.A. Hart	Joseph Raz
<u>MAIN FEATURES</u>	i)Duty neither necessary nor sufficient ii) Duty Implies ability to choose iii) Right give control over another’s duty iv)Protects individual autonomy v) Right Implies options/alternative	i)Benefit/interest the condition for duty ii)Focus on individual interest iii)Focuses on well-being of the individual iv)Right prior to duty v)Right without duty possible
<u>LIMITATIONS</u>	i) Unduly exclusive ii) Choice not the only good iii)Choice may be exercised wrongly	i)Leads to individualism ii)Right and benefit not always joined iii)No clear relation of duties and rights

Source: Compiled by Author

Nevertheless, the question of how these theories should be put into practice is often left open. Among the many brilliant authors on human rights, very few provide concrete ways on how, for instance the right to water can be made a reality in the lives of people who do not have access to clean water. Regarding the implementation of human rights, especially social economic and cultural rights, Gewirth (1996) suggests that there should be *suitable* institutions for the “effectuation” of rights in what he calls the “community of rights.” In his view the effectuation of rights cannot, and should not, be left to neither the *market* nor “private *charity*.” Like Polanyi, Gewirth argues out that the market should be subordinated or embedded in society and not society subordinated to the market²⁰. When it comes to the effectuation of human rights, “markets cannot be relied on for this purpose because the persons in need of help do not have the economic resources to compete for the needed commodities” (1996: 59).

²⁰ Polanyi argues that the humane foundations of society requires that the “self-regulating market” be subordinated to a “democratic society” and not vice versa), that the market be embedded in society and not society to be embedded in the market (1944: 234)

Other than proposing social democratic welfare as constituting a set of suitable institutions for the advancement and effectuation of human rights, Gewirth (1996) further argues that the state is the primary respondent to the rights of individuals. The proposed way in which the community of rights (the state) should achieve the *effectuation* of rights is through a “*political*” as well as an “*economic*” *constitution*”, followed by the implementation of these constitutions (ibid, 328).

Gewirth’s assertion that the state bears the primary responsibility to respect, protect and fulfil human rights through implementation of legislation and policies fits well with the position adopted in this study. Gewirth defends this assertion on the basis that human rights properly understood logically imply that public attention be drawn to those who live in situations of severe deprivation. He calls this principle “*deprivation focus*”, which according to him does not conflict with the principles of the universality of rights and impartiality (ibid, 110-111).

1.6.2 Thesis Statement

Based on the understanding that there are documents providing for the right to water, and that there are many people with no access to basic clean water in Zambia, the question of whether the contents of these documents have been implemented or not is a valid one. A situation where a large proportion of people has no access to basic clean water merits an investigation into the factors that contribute to this. It is in view of this that this study has explored the challenges encountered in implementing (or failure to implement) the ‘right to water’²¹ in Zambia.

The study is based on the hypothesis that the state is not a ‘*neutral space*,’ but a highly contested space. This view is clearly elaborated by Lefebvre (1994) in his book *The Production of Space* argues that *social space* (socio-political) is not a passive *surface* or *ether*, but an active product of power relations. Accordingly, social relations are seen as *producers of active space* that I refer to as *state-space*. These social relations produce and generate *meanings* assigned to all activities in the *state-space*. Human rights in general and the right to water in particular are part of what is produced in this *active space*. In view of this, for us to be able to understand elements of the *state-space*, the analysis should not end at the right to water as a ‘thing’ in the *active space*, but should be extended to the “actual production of

²¹ Although it can be argued that water is not explicitly recognized as a human right in Zambian Law, the case of the right to water in Zambia can be made on the basis of international human rights instruments relevant to water which Zambia has recognized and accepted. Not only that, Phiri (1999) reports that there is a strong perception among the Zambian citizens that water should be recognized as a fundamental human right although there is lack of clarity even among officials about what the right to water entails. In another research paper, Chileshe, Trottier and Wilson, endorse the view that Zambian law recognizes the right to water. This has been argued on the basis of article 112 of the 1996 Constitution (see foot note 14 above). This study has also confirmed the existence of a strong belief that water should be recognized as a human right.

space” in which the right to water is contested—recognised or denied, realised or ignored. In other words, social-political relations are key to understanding the dynamics that surround issues of access to water. Since the delivery of rights via the *state-space* is an activity of constant contestation, human rights in general, and the right to water in particular, are subject to these contestations. And if it is accepted that rights contest for attention with other ‘activities or interests’ in the *state-space*, then it follows that rights are not *a given*, but can only be realized through a contestation in the *state-space*.

1.6.3 RBA and the Normative Approach

The right to water can be situated within the broader context of the Right to Development (RtD)²² which was adopted by the *United Nations General Assembly* in 1986. In affirming the right to development, focus has been shifted from development goals *per se* to human beings, “[r]ecognizing that the human person is the central subject of the development process, and that development policy should therefore make the human person the main *participant* and *beneficiary* of development” (*DRD: Preamble*; emphasis added). Since both development theory and human rights operate within the normative structure, this study has adopted the normative framework in its conception and analysis. A normative approach to human rights resonates with the argument that if human rights are seen as “valuable” properties that we ascribe to every human being (Feinburg, 1973:75); valuable properties that a community gives to itself (Sengupta, 2000:553), then the existence and legitimacy of these rights does not ‘essentially’ depend on their ability to be enforced, but on the fact that these rights are widely accepted by the community. If we are to accept Phiri’s observation (confirmed in this study) that within the Zambian population there is “a general recognition that indeed access to water and the right to receive water should be considered as a basic human rights and treated as such” (1999: 27), then we have a strong argument for asserting the right to water.

Taking a normative approach which sees the community (in this case both the Zambian people together with the international community) as the creator, grantor and protector of these rights, provides a strong basis upon which rights can be asserted and claimed. The other advantage of taking a normative approach is that it focuses on the processes through which the norms are generated and implemented or

²² The Right to Development (RtD) is distinguished from social economic and cultural rights, which protect social rights such as education, housing, health, social security, and other social services. While the RtD may be envisioned to include all social, economic and cultural rights, the right’s main focus is in assigning duties and responsibilities of distributing resources fairly (See the *Declaration on the Right to Development*, #s 4,10; Sengupta, 2000: 559; Nyamu-Musembi and Cornwall, 2004: 19, 8).

failed to be implemented (Mangu, 2002)²³. As such, the legitimacy of human rights and development norms have been generated and endorsed by the international community in the form of the *United Nations Charter* and other international human rights and development compacts.

Therefore this study, to a large extent, draws on the concept²⁴ of human rights adopted by the international community through the relevant bodies and instruments. The inherent advantage of taking this normative rather than a positive approach is that a normative justification for human rights widens the scope of human rights such that it becomes possible to establish the linkages between human rights and development. For example, underdevelopment manifested in extreme poverty and deprivation is then seen not only as a development challenge, but as a human right concern. This was clearly expressed in the *Vienna Declaration and Programme of Action* which saw severe deprivation as an infringement of human rights (1993, # 14)²⁵.

1. 6.4 Origin of RBA

Since the first *Human Development Report* in 1990, there has been a growing realization that fulfilment of human rights is an indispensable component of the development process. Although this integration of human rights and development has been an underlying concern since the *French Revolutions* (1789), it is only in recent years that integration of human rights and developmental concerns has received momentous attention (HDR, 2000:19). The value added of integrating these two concepts has spurred many development practitioners and agencies to adopt what is known as the “rights-based approach” to development (Nyamu-Musembi and Cornwall; 2004: 1)²⁶.

²³ There are however a number of weaknesses that have been associated with a normative approach. Included among them is the inflexible adherence to set rules and norms which may stifle the interaction with the richness of social dynamics (see Mangu, 2002: PHD Thesis).

²⁴ Although there does not seem to be a homogenous concept of human rights in the international community given the ideological differences in the way rights have been conceived, the major international human rights instruments, treaties, declarations and programmes of actions tend towards a common concept of rights reconciling the differences. For instance, the *UN Declaration on the Right to Development* has arguably reconciled the earlier conceptual differences between the so called “first generation rights” and the “second generation rights.” As it has been observed, the 1986 Declaration brought “to a close the split that had occurred earlier. The right to Development unifies civil and political rights with economic, social and cultural rights into an indivisible and interdependent set of human rights and fundamental freedoms...”(see Sengupta, 2000).

²⁵ *Paragraph 14 of the Vienna Declaration and Programme of Action* states that, “The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community”

²⁶ Up to now, there are different views as to what this rights-based approach is. Different development agencies use the term to mean different things. However, what seems to be common among all the different development practitioners is that human rights are seen as an intrinsic part of the development process highlighting the fact that both identify human being as the centre of the development and human rights processes. See Nyamu-Musembi & Cornwall (2004: 13)

The recent upsurge of the rights talk in development discourse works from the assumption that integrating human rights and development adds value to development theory and practice by drawing attention to issues of equality, accountability, empowerment, participation, respect and protection of human dignity. Not only that, human rights,

...bring legal tools and institutions – laws, the judiciary and the process of litigation—as means to secure freedoms and human development. Rights also lend moral legitimacy and the principle of social justice to the objectives of human development. The rights perspective also helps shift the priority to the most deprived, especially to deprivations because of discriminations (HDR, 2000: 2).

Although there are controversies²⁷ as to what exactly a rights-based approach to development entails, it is generally agreed that integrating human rights norms in development planning and policy implementation constitutes a new and distinct way of conceptualizing human needs and aspirations. This development has emerged from the realization that human development and human rights pursue common objectives, namely, improving human capabilities and well-being, and protecting human dignity and fundamental freedoms. While human rights seek to secure the protection of human dignity and basic freedoms, development seeks to advance people's freedom by improving their capabilities and well-being. In this sense, "[w]hen human development and human rights advance together, they reinforce one another—expanding people's capabilities and protecting their rights and fundamental freedoms" (HDR, 2000:2). When viewed from this complementary perspective, the rights-based approach to development then suggests that, "human development is essential for realizing human rights, and human rights are essential for full human development" (ibid).

1.7 Legal Basis for the Right to Water

1.7.1 International Human Rights Law

Although there is wide-spread denial of water as a human right, a legal and moral foundation for asserting the right to water exists, especially in public international human rights law²⁸. At the international level, there are both explicit and implicit provisions on the right to water. Among the implicit provisions are *Articles 11(1) and 12* of the International Covenant on Economic, Social and Cultural Rights (ICESCR), *Article 6(1)* of the International Covenant on Civil and Political Rights

²⁷ There are some scholars for example Ferguson (1999) who argue that the "rights-based approach" is a distinctly new and different way of thinking about development while others (like Uvin, 2000) issue a cautionary warning that this could be a new fashion "being used to dress up the same old development in what may amount to the Emperor's New Clothes" (See Nyamu-Musembi and Cornwall, 2004:1).

²⁸ Zambia being a signatory to all the instruments listed, has recognized and accepted the obligations and duties that these instruments entail.

(ICCPR), **Article 55** of the United Nations Charter, **Article 25** of the Universal Declaration of Human Rights (UDHR), **Article 24** of the *African Charter on Human and People's Rights* (ACHPR), **Article 8(1)** of Declaration on the Right to Development (DRD), Geneva Conventions and Optional Protocols particularly *articles 20, 26, 29 and 46*. A number of commentators argue that although these articles do not explicitly mention access to clean water, water is implied. For instance it has been argued convincingly that it is absurd to grant someone the right to a higher standard of living in a situation where someone has no access to clean water. While the above international human right instruments do not explicitly mention water as a human right, water is explicitly provided for in, **Article 14(2)(h)** of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), **Article 24(2)(c)** of the *Convention on the Rights of the Child* (CRC) and **Article 14 (c)** of the *African Charter on the Rights and Welfare of the Child* (ACRWC) (see Chapter 4 for a detailed discussion on this).

1.7.2 Domestic Legal Basis

As noted above, assertions of the right to water in Zambia can largely be based on international human rights instruments listed above which Zambia has rectified. However, the right to water can also be affirmed (a weak assertion though) on the existing Zambian domestic law. *Article 112 (d)* of the *1996 Constitution* of the Republic of Zambia in particular, states that “the State shall endeavour to provide clean and safe water, adequate medical and health facilities, and decent shelter for all persons, and take measures to constantly improve such facilities and amenities.”²⁹ Though this is not a justiciable part of the constitution, the directive to provide these basic services to all, creates a moral obligation on the state to ensure that it fulfils this obligation and shows commitment to the duties imposed by the constitution. Most importantly, this directive creates a norm against which policy and legislation should be assessed.

1.7.3 Normative Content of the Right to Water³⁰

One of the important requirements in the implementation of any right is a clear specification of its content. Clear outlining of obligations or duties, identifying the duty bearers as well as beneficiaries is an essential step toward the realisation of a particular right. **Table 1.2** below summarises the content of the right to water with the obligations that the right imposes on State Parties to the Covenant (i.e ICESCR).

²⁹ A Report by the OMCT argues that the Article 112 of the constitution “clearly show that the current Zambian legal system fails to recognize that economic, social and cultural rights are in fact rights.... [And] ...the legal system, which do not recognize the justiciability of economic, social and cultural rights, clearly hampers their full realization...(2001:9).

³⁰ A detail explanation of the substantive content of the right to water, the obligation it imposes on national governments as well as international entities, and indicators of non-compliance is given in *General Comment 15* of the UN Committee on Economic, Social and Cultural Right which is the legitimate jurisprudential body on ICESCR.

Table 1. 2 Normative Content of the Right to Water

Normative Content	State Obligations	Violation Indicators
1) Availability: Sufficient + Continuous	To Respect: refrain from activities that interfere with the right or limit access	i) Absence of measures or steps
2) Quality: Safe, Free from harmful substances (micro-organisms + chemicals).	To Protect: Prevent third parties from interfering with access	ii) Inequitable distribution and access to opportunities
3) Accessibility: a) Physical: (within safe and physical reach) b) Economic: (affordable to all) c) Non-discrimination: (accessible to all including vulnerable and marginalized) d) Information: Seek, receive + impart	To Fulfil: Facilitate, promote, provide. For those who cannot for themselves a) Progressively realize their right b) Guarantee equality of opportunity c) Take measures (Legislative and otherwise) d) Adopt comprehensive programmes	ii) Non-compliance with core obligations iii) arbitrary disconnections iv) pollution of water sources v) failure to regulate or control water services vi) Failure to enact laws vii) Failure to implement policy viii) Misallocation of funds ix) Failure to take into account international obligations

Source: Compiled by Author

In order to investigate the nature of the challenges faced in implementing the right to water, it is important to have a clear statement of what a successful implementation of the right constitutes. This means that the content and the entitlements the right generates should be clearly outlined. In general, international human rights instruments stipulate that human rights generate the obligation to *respect, protect, promote and fulfil*.

The obligations deriving from rights may be analysed by reference to the duties to respect, protect and fulfil. *The duty to respect* requires the duty-bearer not to breach directly or indirectly the enjoyment of any human right. *The duty to protect* requires the duty-bearer to take measures that prevent third parties from abusing the right. *The duty to fulfil* requires the duty-bearer to adopt appropriate legislative, administrative and other measures towards the full realization of human rights (OHCHR, 2002).

Other principle contents of international human rights normative framework include the principles of equality and non-discrimination, participation, empowerment, accountability and progressive

realisation (see Chapter Three). Thus, in trying to assess the state's compliance with its obligations these factors should be taken into account. For instance, a situation where there are enormous inequalities in access to water would be seen as an instant of failure to realize the right for those without adequate access. Similarly, a situation where no concrete and targeted programme aimed at progressively realising a given right constitute strong evidence of the failure to comply with the covenant obligations. If resource constraint is given as an excuse for failing to improve access to water, *General Comment 15* argues that where,

...resource constraints render it impossible for State Party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above (#41).

1.7.4 Legislation Necessary but not Sufficient

Like many other human rights, while the right to water has been provided for in international and a few national legislative and policy instruments, its implementation often falls short of the objectives envisioned in these documents (WHO, 2003). For instance in South Africa, while the right to water is clearly provided for in the Bill of Rights (Section 27), which is a commendable achievement, the implementation of this right has been short of what the relevant pieces of legislation envision (Mehta and Ntshona, 2004). Michael Kidd (2004), while noting that there have been significant improvements in access to water in South Africa since 1994, concludes that massive disconnections of water supply enforced without following the legally stipulated procedures infringe on the constitutional right to access to water. What this points to is that while legislation is essential, it is not sufficient for realizing human rights. Legislation has to be translated into concrete programmes and action through which rights can be given effect³¹.

1.8 Rationale

The main reason for investigating access to water in this study is the fact that the right to water provides important opportunities for understanding the challenges of implementing RBA. Access to water has ripple effects on other aspects of social development. Lack of access to safe water endangers not only the health of individuals but also communities at large. Accordingly, issues of access to water are not just a matter of private interest for those who have no access to safe sources of water, but are "directly linked to public health and environmental concerns" (Prasad, 2006: 673). Lack of access to safe water affects people's development, education, poverty reduction, and human dignity and

³¹Article 27 of *The Vienna Declaration of the Law of Treaties* for instance stipulates that a State Party to a treaty should not invoke domestic laws as justification for non-compliance with treaty obligations.

capability prospects. The World Health Organization (WHO) publication on the right to water identifies these ripple effects when it points out that, “[l]ack of access to safe water has a major effect on people’s health. Poor health [in turn] constrains development and poverty alleviation. Poor water and sanitation have an impact on education...” (2003:7). According to the Second UN-World Water Development Report, “[c]urrent evidence shows that 1.7 million deaths could also be avoided each year by providing access to safe drinking water, sanitation and hygiene” (2006: 19). In addition, recent estimates on the impact of water-borne diseases reveal that more lives are lost from lack of access to water than from wars or even HIV/AIDS. WHO reports that diarrhea has killed more people than those lost in armed conflict since the Second World War. For example, in 1998, diarrhea killed six times (2 million died from diarrhea compared to 308 000 killed in war) more people than war (ibid). Apart from the loss of lives, lack of access to safe water,

...results in high costs to families, communities and governments in the form of direct medical expenses, lost work time, lost education and opportunities for families, lost economic productivity of sick workers, therefore contributing to household and community poverty. A 1993 estimate using the equivalent in 1970 US dollars placed the costs of water-related diseases at over \$125 billion per year (Calaguas, 1999:11).

In view of the above facts, having close to half the population without access to safe sources of water becomes a matter of concern in a society that acknowledges the values of human dignity, equality and fundamental freedoms (*Preamble, Constitution of the Republic of Zambia, Act No. 18 of 1996*).

Secondly, access to water is investigated here because it makes a stronger moral argument for access to water to be treated as a human right. This arises from the fact that water is an indispensable element of life and well being; and therefore, if human rights are about enhancing people’s quality of life, then there is a strong justification for access to water to be brought under the umbrella of human rights and development. The *World Development Report 2006* reiterates this point when it acknowledges that access to safe water and sanitation influence human development outcomes. It is in this regard that to achieve an acceptable level of human development, other factors such as clean water, improved sanitation, adequate nutrition and employment should be considered together (Foster, 1992:7). Further, as *General Comment 15* (2003) points out, realization of many other human rights are likely to be futile without access to safe sources of basic water (*General Comment 15, #3*).

Third, access to clean water is critical for improving the quality of life of the people. Lack of access to clean water compromises not only people’s health, but endangers their dignity, freedoms and

capabilities. Unsafe sources of water contribute to dangerous water borne diseases that can result in the loss of productive time, and loss of lives (see Section 6.1.4.6). From an economic perspectives, the social cost of not providing safe water to communities has been found to be much higher than the cost of ensuring access to safe water (WSP, 2004). Money spent on controlling cholera outbreaks is often more than what is required to provide basic clean water to those who do not have access. Evidence coming from various studies show that the benefits of providing clean water out-weighs the cost. The First UN-World Water Development Report also demonstrates that improvements in access to water result in 70% reduction of diarrhoea burden and other gastro-intestinal infections (2003: 11-10). The report further argues that such reductions in health burden are at a lower cost than the treatment of infections resulting from lack of access to water.

Fourth, the fact that problems related to access to water largely affect the poor who have a weak voice in decision-making processes provides good opportunities for learning the nature of the challenges of implementing RBA. Thus, this study is justified on the grounds that,

...focus of the human rights-based approach to development is on the poor, as they are the ones who are denied their basic rights to life and dignity. The poor also often have less social, political, economic resources for achieving their rights (Galagwas, 1999:6)

1.9 Methods and Data Gathering

Research often involves the use of a method(s) or strategy to gather and analyse information. In the social sciences, there are a number of methods and strategies that a researcher can choose from to assemble data and explain the collected pool of information in an effort to understand a specific problem. As such, conducting research entails making a choice among the available methods, a situation that Denscombe refers to as “a matter of ‘horses for courses’ ”(1998: 83). Like any instance of making a choice, “[e]ach choice brings with it a set of advantages and disadvantages. Gains in one direction will bring with them losses in another, and the social researcher has to live with this” (ibid, 3).

What is crucial though, is not that the researcher chooses a “*right*” or superior method, but that the researcher chooses a method that is *appropriate* to the objectives of the research (ibid). The suitability of the method chosen largely depends on the assumptions and principles under which the research is conceptualized.

One of the basic principles which have been adopted in this study is that theory or the theoretical framework informs the methods. The rationale behind this principle rests on the fact that our interest in the research is shaped by how the problem is conceptualized. In order to highlight the importance of linking methods to the conceptual or theoretical framework, Maxwell (1996) places the conceptual framework at the centre of the research, noting that it is the conceptual framework that helps to assess the purpose of the research, and guides the selection of research questions as well as methods to be employed. In other words, how the problem in the study is conceptualized determines the *what* and the *how* of a research. Denscombe makes a similar point when he argues that a good research is not one that follows strictly a set of *dos* and *don'ts*, but one that chooses strategies that are appropriate to the study and choices that can be reasonably justified bearing in mind the purpose of the study (1993: 83). Fundamentally, it is the notion of "*what is possibly going on*"(Maxwell,1996) which informs the selection of methods to be used to investigate what is *actually* going on.

1.9.1 Multi-Method Approach

In this study, given the nature of the issues under investigation, a multi-method approach, which is a combination of different research methods and strategies, has been employed. The advantage of taking a multi-method approach is that the weaknesses of one method may be offset by another. Bearing in mind that each method has its own strengths and weaknesses, the use of several methods has an advantage of being complimentary. Denscombe for example, argues that though there is a cost for using a multi-method, this approach allows the "researcher to see the thing from different perspectives and to understand the topic in a more rounded and complete fashion than would be the case had the data been drawn from just one method" (1998: 84). The rationale behind a multi-method approach is that the validity and credibility of the information is improved through the corroboration of various methods (Fiskel, 1959; Denscombe, 1998).

Further, given the normative approach which this study has adopted, it has been found helpful to use triangulation techniques to capture different facets of the complex problem and the context under investigation (Ghuri, Gronghaug & Kristanslund, 1995: 94). Counter-posing information from the three layers of actors (community, service provider and policymaker) has enabled the study to assess the processes in a more objective way, weighing the validity of the statements of one source against the others. Multi-method is also advantageous in that if the evidence from independent sources converge, a higher degree of credibility and confidence can be inferred (Bromley, 1986:10; Folch-Lyon, Evelyn & Trost, J.F, 1995: 444; Denscombe, 1998: 85). It is for this reason that information was collected not

just from the community leaders, but also from the service providers, policy makers and members of the community through focus group discussions.

1.9.2 Survey of Policy Documents

Although the different methods of collecting data have not been employed in any sequential order, it was practically essential to begin by reviewing government or official documents related to the right to water. Review of official documents provided clear loci that the other methods later focused on. In order to clearly enter into the discourse on the right to water, conducting a survey of the relevant policy documents and strategies proved to be helpful. As Denscombe has observed, surveys in social science are often restricted to surveying people, but documents can be surveyed as base data (1998:10-11).

1.9.3 In-depth Interviews

Face to face In-depth interviews were conducted at the three levels (Policy, Service Provider, and Community) of implementing the right to water. The purpose of these interviews was to try and identify factors that constrain the implementation of the right. Through the face-to-face in-depth interviews, important insights into the challenges of implementing the right to water have surfaced. Here again the combination of information from different sources has been helpful in bringing out the complexities and dilemmas associated with the issues investigated in this study. For instance, the way issues of access to water are perceived in the communities is significantly different from the perception of the service providers and the policy makers. It was indeed a privilege to be able to gather information on this topic from all these diverse perspectives.

Information was gathered in two phases: Phase I took place between June and October 2006, while Phase II was conducted between December 2006 and February 2007. The second phase largely involved going back to the communities to find out if any significant changes had occurred.

1.9.4 Focus Group Discussions

A total of 15 focus groups discussions were conducted—five in each community. To promote free interaction and participation of all the members in the groups, it was planned that groups would be constituted according to sex and age. However, it was difficult to get groups of men only, mainly because they were not found at home during the day. It was reported that most of them were out looking for money. In all three communities, women were the majority in the focus groups. This is probably an indication that women are much more concerned about water because they suffer most from lack of access to water.

One common phenomenon with focus groups was that there was a tendency to agree with what the first speaker had said, especially if the speaker was a man among women. While a very lively debate ensued in the groups for the youth, it was quite difficult to generate active discussions in mixed groups. It was also noted that particular issues that could not be raised by the community leaders surfaced in the focus groups. An example of this was the problem of the inability to pay as well as the feeling that the water companies are only interested in collecting money. It was also from the focus group discussions where it became apparent that women recommended individual connections as the solution to the water problems no matter the cost, while men, generally, were of the view that communal taps would be the appropriate solution.

From the understanding that rights are given a shared meaning in society, the use of focus group discussions was a valuable source of information regarding the meaning assigned to the idea of water as a human right. As Neuman rightly points out, focus group discussions are generally suitable to studies that try to explore issues of “public concern” (1997:253) like access to water, as well as topics in which the main concern is to get the *general perception*. The main focus of this part of data collection was to get a sense of the notions of water as a human right from ‘*below*.’

Each focus group had about seven participants on average. The discussions were conducted in the local language spoken in the community. Each participant was given a chance to contribute something on each of the questions. All the groups were pre-arranged by the research assistants and the time was set. In most cases, the discussions took place at the home of one of the group participants. A number of focus groups discussions took place at the market because that was the place where participants preferred to meet.

1.9.5 Observations, Field Trips and Guided Tours

Observation exercises were conducted in all the three communities. Information about illegal connections, unaccounted for water (UfW), leakages, shallow wells, and queues at water points in the morning and evenings was all collected from observations and guided tours. Field trips mainly to the water treatment plants were conducted for the two water companies providing water to the communities in which the research was done. Guided tours were conducted in community-run projects in Kanyama as well.

1.9.6 Research Sites

1.9.6.1 Kanyama Compound

Kanyama Compound is an informal settlement on the western outskirts of Lusaka City with a population of about 198 000 people. The compound started before independence around the late 1940s. Currently there are three sections: Old Kanyama, New Kanyama and Kanyama Site and Service. Old Kanyama is serviced by Kanyama Water Trust while in New Kanyama, water services are provided by LWSC. In both sections water is mostly delivered through communal tap stands under the care of a tap attendant. In the case of Kanyama Site and Service, there is completely no water supplied either from the trust or LWSC. People in this area rely on water from New Kanyama or the industrial area.

There is no allocation of households to a particular tap stand. It is however expected that household members would buy water from a nearest communal tap. In a normal day, a communal tap is opened around 07:00 hrs until 12:00 or 13:00 hrs when the tap attendant locks the tap for lunch. The tap is reopened after 14:00 hours until 18:00 hrs. There are times when there is no water for the whole day or longer, especially when there is a technical fault. During this time, most members of the community have no option but to get water from nearby wells.

The price of water varies depending on whether one gets water from a community-run public tap or a LWSC tap stand. In community-run schemes, community members can buy water by paying cash or through a card system (see Appendix I). Registration is required before one can use a card to buy water. And it is only after the payment of a registration fee that a “user card” is issued which has to be produced whenever the user wants to get water. This option is not available at LWSC tap stands where only cash sales are allowed. Interviews with the community leaders revealed that it is much cheaper to buy water by card system than to pay cash. But many households still buy water on cash basis mainly because they can not afford to pay the monthly lump sum of K3 000 (US\$0.75) at once.

Kanyama Site in this study includes Chibolya and John Laing Compounds. Though the site chosen was Kanyama, interviews and focus group discussions were extended to Chibolya because of unclear boundaries in these communities. Not only that, but also because Chibolya water is entirely provided by a community-run water scheme. As for John Laing, there is completely no water; people rely on water from the wells. Those who are near to Chibolya or Kanyama get water from the communal taps. However, these three compounds are referred to as Kanyama Site to avoid duplicating sites. There are some households with individual connections though they are very few (see Table 1.3 below).

1.9.6.2 Mtendere Compound

This is another peri-urban community on the eastern side of Lusaka City with a population of about 59 122. It is one of the upgraded peri-urban communities in Lusaka and consists of a mixture of old and new housing units. Most of the people (about 65%) are in informal employment while 28% are unemployed (World Bank, 2002). Unlike Kanyama, most of the households in Mtendere have individual connections, although a good number of these taps have been disconnected for failure to settle outstanding bills. Although most of the wells were buried when the compound was upgraded, there are still a few wells in some parts of Mtendere. Like other peri-urban areas, Mtendere has a high population density, high HIV/AIDS prevalence, erratic supply of water, frequent water pipe bursts and vandalized water infrastructure. Leakages from the main water lines are a common occurrence in the compound. Water services in Mtendere are entirely provided by LWSC; there are no community-run water schemes.

Because of the fixed monthly charge of K36 000 (US\$10), LWSC reported that there are many illegal connections in this compound. Observations during field work confirmed existence of suspicious connections many of which are probably illegal. Focus group discussions and interviews with community leaders revealed that there are a lot of problems related to access to water. Many respondents expressed dissatisfaction with the level of service pointing out that water supply is erratic and that interruptions of water supply are not announced.

Table 1. 3 Study Sites

<u>Site Name</u>		<u>Status</u>	<u>Population</u>	<u>Individual Connection</u>	<u>Communal tap/Kiosk</u>	<u>Shallow Well</u>	<u>Hand Pump</u>
Kanyama	Chibolya	Recognised 1999	31 498	14	26	191	0
	John Laing	Not Recognised	81 634	0	0	unknown	0
	Kanyama	Recognised 1996	198 696	320	136	235	2
Mtendere		Recognised 1967	59 121	800	0	Unknown	0
Race Course		Recognised 1992	16 504	0	35	Unknown	0

Source: Based on Data from *DTF Baseline Study 2006: DVD*.

1.9.6.3 Race Course

Race Course is another peri-urban community located on the northern outskirts of Kitwe City on the Copperbelt, with a population of about 16 504. As the name Race Course suggests, this community grew from a small community of farm workers who used to work on a horse farm owned by a white farmer. When the farm was abandoned, the community grew and it is still growing rapidly.

In Race Course, most of the households get water from water kiosks and hand-dug wells. Kiosks were installed and connected to the main water supply line of the city by Nkana Water and Sewerage Company (NWSC). Each kiosk is run by a kiosk vendor who is not an employee of the water utility company but is paid a commission on the total remitted sales. Like Mtendere, there are no community-run schemes in Race Course. However, there are a number of households with hand dug wells. Members of the community estimate that 50% of the households have their own shallow wells. At the time when interviews were conducted, Race Course was reported to have 36 kiosks installed though not all of them were functioning. The number of non-functional kiosks could not be ascertained, but it was clear that a number of them were not operating. A *DTF Baseline Study* concluded that only 22 kiosks were functioning (2006, DVD). Members of the community interviewed reported that only about 12 kiosks were functioning in 2006.

Of the three peri-urban communities, this is the only community which reported cases of people fetching water from rivers. Focus group discussions revealed that water supply is erratic and that the kiosk vendors have a bad attitude towards customers.

1.9.6.4 Justification for the Choice of Sites

There are a number of reasons why these sites were chosen. First, these three sites were chosen on the understanding that these are areas where the right to water is most at risk of not being fulfilled. As evident from the **Table 1.3** above, access to water is still a huge problem in all the three communities. For instance, Kanyama compound with a population of almost 200 000 people has only 136 communal taps and 320 individual connections. Roughly that translates to about 336 people per connection which is more than a 100 times the recommended number of persons per connection (33 persons per communal tap).³²

In the case of Mtendere for a total population of close to 60 000 people, there are only 800 connections and a good number of these are disconnected. Even if all the individual connections were working, the current coverage means that there are about 75 persons per connection which is 15 times the recommended number of people per connection. A similar picture emerges from Race Course where an

³² NWASCO has recommended 33 persons per communal tap, 5.5 persons per individual connection and 600 person per public connection (See "Guidelines on Minimum Service Levels", NWASCO, 2000).

average of 750 people share one kiosk³³. As the DTF (2006) argues, “[o]ne cannot, however, consider this to be an acceptable service level. Not surprisingly residents complain about long waiting hours and long walking distances” (DTF, 2006: DVD).

Second, given that the focus from a human rights-based approach is on those without access, then these sites are suitable since it is areas like these communities that contain a higher proportions of people without access to basic water (World Bank, 2002). As Phiri (1999) has observed, it is the same line dividing the poor from the rich, which divides those with access from those without access, those marginalized from those integrated, those with secure livelihoods from those with insecure livelihoods, the educated from the uneducated.

Third, these compounds were chosen because of the concentration of people in very small spaces, a situation which is likely to provide a rich source of information concerning how the right to water is collectively perceived or how the meanings of this right are contested or failed to be contested. Further these compounds, because of a high population density, constitute a battle ground for various political contestations. As the *Peri-Urban WSS Strategy* observes, “Peri-urban areas in the larger urban towns are politically sensitive because of the large numbers of people (they can influence political change)” (1999: 52). Most public office aspirants target some of these communities to secure their votes. Campaign programmes often make promises ranging from improving access to water to upgrading housing units. Thus power relations are prominently played out in these communities.

1.9.7 Data Collection

1.9.7.1 Community Leaders Interviews

A total of 47 community leader interviews were conducted—15 in Race Course, 16 in Mtendere and 16 in Kanyama. The initial targeted number of interviews was 15 in each community, but during the second round of fieldwork, one more key informant in both Kanyama and Mtendere was added. The term *community leader* was applied flexibly to include a wide range of leaders in the community. Among those interviewed in the category of community leaders were members of the Resident Development Committee (RDC), water committee members, managers of the community water schemes, councilors, leaders of opposition parties, tap and kiosk attendants, teachers, nurses, police

³³ This figure is based on the number of functional kiosks. DTF Baseline study puts that number of functional kiosks at 22, while most of the community leaders spoken to during interviews reported that the number is much lower. Some put the number at 12. Mtendere has a similar problem. Though the total number of functional connections is not known, interviews revealed that many connections have been disconnected leaving many households to rely on the neighbours for water.

officers, pastors and other religious leaders, chairpersons of the market committee and shallow-well owners. **Table 1. 4** below provides a summary of respondents in each of the three categories.

Table 1. 4 Categories of Interviews

<i>Community Leaders</i>	<i>Policy Makers</i>	<i>Service Provider</i>
RDC Members, Councilors, Opposition Party Leaders Teachers, Nurses, Police Officers, Market Committee Members, Community Water Board Members Religious Leaders, Tap/Kiosk Attendants, Well Owners, Former Kiosk Vendors	Government Department (Budget Office, Department of National Planning, Department of Water Development, Department of Infrastructure and Support Services, Department of Community Development, Statutory Bodies (Regulators: NWASCO & ECZ, DTF) Cooperating Partners (JICA, GTZ, UNICIEF). Local Government Authorities (Lusaka and Kitwe City Councils Peri-urban Unit of Water utility companies.	Water Utility Companies: Lusaka and Nkana Water and Sewerage Companies NGOs Community Run Schemes: Water Committee members Water Trust Managers Former Council Workers

Source: *Author*

In Race Course three interviews were conducted with people whose kiosks had been closed for failure to remit the full amount indicated on the water metre. Selection of these leaders was done with the help of a research assistant chosen from each of the three communities.

The set of questions for community leaders were the same except for a few that had to take into account the unique features of each community. For example, while it was appropriate to ask Mtendere community leaders if they have a problem with wrong billing, this question was not appropriate for most of Kanyama residents. The initial interview guide did not take this point into account, so this adjustment had to be made during interviews³⁴.

In all the three communities, interviews and focus group discussions were pre-arranged by the research assistants. One of the difficulties encountered during fieldwork was that interviews were being conducted at the time when general elections were about to take place. For this reason it was difficult to gather groups for focus group discussions, particularly. On several instances, focus group discussion participants demanded to be given ‘something’ for participating in the discussions arguing that the politicians who ask them to go for meetings were giving them *chitenges*, money, beer and t-shirts. The

³⁴ See a copy of the interview guide in appendix v

other problem encountered in the communities with regard to focus groups, and to a lesser extent, face to face interviews, was that people thought that the research was being conducted for the water utility company or government. So for some, this was a time to vent their anger and frustration with water utilities while for others it was an opportunity to passionately plea for services to be improved.

1.9.7.2 Service Providers Interviews

This category had only two water companies (LWSC and NWSC) which supply water to the three communities in which the information was gathered. But a number of NGOs involved in water projects and community-run scheme were included as well. In total seven interviews were conducted in this category. Interviewees included the senior water utility company personnel. Officials from two NGOs (JICA and Care International) were interviewed as well.

The same interview guide was prepared for all service providers, but adjustments had to be made to cater for the differences in the situations of the respondents. Unlike the community leader interviews, interviews with almost all the respondents in this category had to be secured through an application to the relevant authorities. In one case it took three months to secure interviews after submitting the application four times. On three occasions, the application was reported to have gone missing within the administrative structures. This in itself can be a pointer to the quality of services offered to customers. An application for interviews had to be accompanied with a copy of the interview guide. From experience, the researcher learnt that interviewees were reluctant to be interviewed mainly because the interview guide had so many questions such that the interviewee thought that it would take long time to go through. Stating in the application that not all the questions in the guide were going to be asked, did not help. Aware of this shortcoming, the researcher had to come up with a shorter version of the interview guide which he often submitted together with the application. This strategy helped. Generally, once the interview was secured, the respondents showed enthusiasm to respond to questions.

1.9.7.3 Policy Maker Interviews

Like the other two categories, this group was also defined broadly. It included government officials from the lead ministries, officials from the statutory bodies related to water resources and supply (NWASCO, ECZ, DTF), local authorities (planning departments of Lusaka and Kitwe City Councils), and the famous cooperating partners (international donor agencies). A total of 12 interviews were conducted in this category. The objective behind this set of interviews was to get an understanding of the environment in which water policies and legislations are constructed and the factors that are recognized and not recognized to be constraints in implementing water policies.

Interviews in this category were the most difficult to secure due to the heavy bureaucracy in most of the institutions. Efforts to interview Members of Parliament representing the communities where the study was conducted failed because most of the MPs were busy campaigning for the forth-coming general elections. On one occasion an interview with the area MP was arranged, but a day before the interview, the MP resigned and joined another political party.

The same problem of having to re-submit application letters several times was encountered in this category. Applications had to go through the permanent secretaries who were in-charge of the ministries at the time of interviews since cabinet had been dissolved. An initial interview guide which was prepared could not work due mainly to the uniqueness of the information that each of these institutions could provide. For example, Budget Office could only answer question related to allocation of resources to WSS sub-sector while the planning section of the same ministry could only deal with issues of strategies adopted in the funding process. Thus, it became necessary to draw up a different set of questions before the interviews with a particular government department official. Generally, it was difficult to arrange interviews with the assigned respondent even after getting permission from the permanent secretary. It was for this reason that some of the interviews were conducted in the second phase.

1.9.8 Data Analysis

All the interviews with community leaders, policy makers and service providers were translated and transcribed. Each interview was given a different file name, but all the interviews were grouped in three directories corresponding to the three categories of interviews. A computer programme for qualitative analysis called QSR Nvivo 7.0 was used to code the data. Relevant variables were identified and corresponding responses were coded at the appropriate variable. Coding of the transcribed text made it easier to analyse information and identify themes. In the case of community leader interviews, where almost the same questions were asked, the responses to a particular question were counted and the tally presented in table forms in Chapter Six. A comparative analysis of information is also presented in Chapter Six. From the comparative analysis, possible explanations for the similarities and differences between the communities are offered.

Information from the policy makers and service providers and focus groups discussions has been used for triangulation to validate or disprove a particular claim. Bearing in mind that this data set is

qualitative, much emphasis is not placed on the figures but on what lies behind the figures. For this reason, evidence from other sources such as reports, policy documents, and business plans, has been used together with the data from interviews to come up with explanations for observed issues.

1.9.8.1 Situational Map

To be able to identify constraints in the process of implementing the right to water, this study adopted both a descriptive as well as the analytical approach in processing information. And in order to establish the linkages between the different constraining factors, a situational map, which took into account human, non-human factors and discursive elements, has been constructed (see Figure 5.13). This map reflects the interaction of several factors that produce the situation in which the right to water is fulfilled or unfulfilled.

1.9.8.2 Application of the Normative Content

In analyzing data, the normative as well as the substantive contents of the rights to water as envisioned in *General Comment 15*, have been applied. For instance, when looking at the data, a question of whether there is evidence in the gathered data of measures taken to realise the right to water has been the focus of the analysis. The hypothesis that the right to water in Zambia is not fully realized, presumes that there is an acceptable norm or standard measure that has not been reached in the current way that access to water is addressed. So to be able to answer the main research questions, the objectives that policies are meant to achieve must be clearly identified so that these goals form the standard by which the implementation process can be assessed (Sengupta, 2004). One of the standards that is used to measure the extent of the success or failure of the implementation process are the international human rights norms, particularly the normative content adopted by *General Comment 15* referred to above.

1.9.8.3 Ethical Concerns

The nature of this study required that attention be paid to a number of ethical concerns. Issues of human rights are often politicized issues, and therefore care was taken in conducting the research. Since much of the focus has been on assessing the process of implementation of the right to water by both government and other non-state actors, the information obtained has been handled carefully, respecting the integrity of the those in-charge of the programmes and individual respondents. Government officials, like individuals in society, may react negatively to the assessment of their performance in any area, and this can be a source of tensions if ethical considerations are ignored. Although this research report may not be read by the wider public, care has been taken not to disclose the names of the respondents in the report, especially those in government positions. For this reason,

broad categories of Community Leader, Policy Maker and Service Provider have been used in quoting material from the interviews.

Other than that, the research has also ensured that ethical standards concerning the respondents, informants and other participants in the research are upheld. Respect for the participants' rights to consent, information, dignity and freedom of expression was the guiding principle. For this reason every participant in the research was given and asked to sign a consent form before the beginning of interviews.

1.9.9 Limitations of the Study

One of the major limitations of the study is that the normative approach is often seen as being idealistic, over optimistic and in some cases utopian. Similarly, the controversial nature of the issues under investigation makes it difficult to agree on the causes and the courses of action. As evident from the debate about rights in Chapter Three, the controversial nature of rights makes it difficult to adopt positions that would be amenable to the various interest groups. For instance, there are many people who still do not think that water should be a human right, and even if it is a human right, that the state is the first respondent. This argument in particular makes the arguments for this study weak especially in the case of Zambia where the right to water is not explicitly and categorically laid out in domestic law.

The other limitation of the study lies in the fact that the rights-based approach to development in itself has grey areas. For instance, given the global influence on how global resources are distributed, the question of how much responsibility a state should take and how much should be apportioned to the international community is not resolved.

The other obvious limitation inherent in this study regards the nature of case studies. Like many other case studies, this study is limited in scope. Related to this is the fact that policies and legislation are formulated at the national level, and drawing conclusions based on a case study or locally implemented projects raises questions of representativeness of the findings.

However, the above limitations do not make the outcome of the study less credible. The researcher has been aware of these limitations and has tried to minimize their impact on the quality and outcome of the research.

CHAPTER TWO

ZAMBIA'S DEVELOPMENT STRATEGIES AND CHALLENGES

In the mid-1960s everyone knew, Africa was “emerging.” And no place was emerging faster or more hopefully than Zambia, the newly independent national that was previously known as Northern *Rhodesia*.James Ferguson (1999)

Introduction

Zambia's journey towards improving the quality of life of her people has been a protracted one. At independence, there were high expectations of an accelerated improvement in living conditions (Fraser, 2007: 5). More than 40 years down the road, the dream of reaching the 'promised land' for majority of the people is still elusive and becoming far fetched every other day. For instance, the expectation of having basic clean water has remained a dodgy dream for millions of Zambians. In view of this, the question about what has been going on over the past 40 years is inescapable. This chapter outlines the context in which the current development challenges, specifically the provision of basic clean water to the people, are located. Understanding this context helps; firstly, to contextualize the study and the issues arising; secondly it provides an overview of the policy and regulatory framework within which development strategies have been implemented. As pointed out in the African Water Development Report, consideration of the economic context in a particular country is important when assessing challenges of access to water because the economic conditions affect the progress in access to safe sources of water (AWDR 2006: 7)

This chapter is divided into three parts. The first part deals with what I refer to as the “boom” period, a period characterized by the post-independence zeal, optimism and the liberation struggle sentiments of comradeship. Arguably, this is a critical period in that it presents both the opportunity to make right the wrongs of the colonial era as well as the danger of ruining even the little that was inherited at independence. Because of its importance, a great deal of the chapter is devoted to this period. The second part builds on the first in an attempt to understand the origins of the crisis, its nature and its consequences on the development prospects. The third part discusses the period in which much of the state's development activities were largely prescribed by international financial institutions (IFIs),

particularly the IMF and World Bank. Interestingly, it was during the later part of this period that most of the major reforms in the water sector began to be seriously designed and implemented.³⁵

Like many other African countries, after independence, Zambia's main vision was to improve the welfare of all citizens. Commitment to realizing this vision among the post-independence leaders in Zambia is widely acknowledged³⁶ although the strategies adopted to realize this dream are questionable. Immediately after independence in 1964, the country, especially its leaders, demonstrated what I would call the 'post-independence zeal'; the enthusiasm to improve the living conditions of the people especially in the rural areas which were neglected during colonial rule. And the dream of building a country with plenty of food, improved water supply, better housing, electricity, improved quality education for all, improved health facilities, a well-developed transport and communication network, growing employment opportunities, was kept alive. As Ferguson (1999) and many other commentators³⁷ have noted, Zambia was indeed seen as an emerging 'bread basket'—a promising young nation.

2.1 The Boom Period³⁸

From the establishment of colonial rule in 1891³⁹, analysis of Northern Rhodesia (as Zambia was called before independence), the Zambian economy has been for most part synonymous with the copper industry. Discussion of the political economy of Zambia inevitably leads to the copper industry as the

³⁵ For instance the National Water Policy (NWP) was launched in 1994, the National Water Supply and Sanitation Act was enacted in 1997, the National Water and Sanitation Council (NWASCO) was established in 1997 and started operating in 2000. A total of 6 commercial water utility companies were established in 2000 (see Chapter Five for details).

³⁶ Mulenga, nd; Mwimba (2002); Mukwena, nd; Bigsten & Kayizzi-Mugerwa (2000), do acknowledge the effort made immediately after independence to attend to welfare issues of the people.

³⁷ McCulloch, Baulch & Chereh-Robson (2001) note that, "At independence in 1964, Zambia was one of the most prosperous countries in sub-Saharan Africa. With substantial agricultural, mineral and natural resources the prospects for growth and human development seemed bright." Fraser (2007) also argues that at independence Zambia, with favourable prices for commodities, particularly high copper prices, had a bright prospect for a good post-independence era.

³⁸ Again here, the exact dates when the boom started and when it ended is a controversial issue. What is indisputable though is that the economy started growing due to high copper prices following the year leading to independence and that it started showing signs of stress and decline just before the end of 1970. For instance the terms of trade started to deteriorate in 1970. The price of copper fell from K1010 per tonne in 1970 to K765 by 1971/72 (see Meyns, 1984). In the same year the balance of payment on the current account was in a deficit and consequently the long standing positive foreign reserves began to disappear and the problem of foreign exchange was seen to be a major constraint on economic development. As a result of this, the budget surplus that was a common phenomenon since 1964 dwindled. With these indicators, it might be correct to suggest, at least that the sequence of events that leading to the crisis started as early as 1970.

³⁹ Cecil Rhodes tricked the British Government into granting him the Charter to rule the territories north of the Limpopo up to the Congo border in 1891. Though the British South African Company (BSACo) was granted the Royal Charter to rule Northern Rhodesia in 1891, the different parts of the country were only annexed as a unified territory in 1898 (see Mulenga, n.d). Zambia was only taken over as a British Protectorate and eventually a colony in 1924. Thus, for 33 years the country was ruled by a company (BSACo).

core of the analysis (Meyns, 1984). Thus, the story of economic development in Zambia, is regrettably a tale of copper and its impact on the rest of society, with agriculture, tourism, and manufacturing constituting tiny appendages.

2.1.1 Post-Independence Development Planning

Prior to independence, there certainly were activities that one can classify as 'developmental,' but this chapter will focus on the post independence period for two specific reasons. First, prior to independence, there was no single conscious development programme that contained an elaborate national development strategy or policy. In comparing development in the colonial and post colonial eras, Elliot (1971) argues that much of the planning prior to independence was "crude" and "conservative", only serving as precursors of the Transitional Development Plan (TDP) and the First National Development Plan (FNDP). Worth mentioning here is the Seers Report, a report jointly published by the United Nations Economic Committee for Africa, and the Food and Agricultural Organisation (FAO) headed by Dudley Seers, made available to the government in 1964. In Elliot's view,

This report established the basic strategy of development to be pursued in Zambia by both the Transitional Development Plan and the First National Development Plan, and therefore is of the first importance. Recognising the basic features of the economy ... the Seers Report developed a basic strategy of development based on the rapid establishment of import-substitutive manufacturing industries and the transformation of African agriculture by application of modern techniques (1971:10).

In this sense, national strategic development planning only started with the attainment of independence. Elliot emphasizes this point noting that, "[t]he Transitional Development Plan marked a new era of planning in the country in so far as there was an attempt in the plan to calculate the demand made by each project on the scarce resources of the economy" (ibid, 11).

Second, prior to independence, development planning for areas outside the copper enclave was only considered as far as it affected the settler or expatriate communities. In his review of the evolution of social development in Zambia, Mhone (2004) makes a similar observation that though the British Government insisted on paying attention to the interest of the "Natives," the resident colonial administrators interpreted this to mean pursuing the interest of natives separately from the interests of the white settlers. As a result, development planning was not only differentiated, but also distorted in favour of the minority white settlers within the urban setting. Commenting on the impact of colonialism on Africa's development, Kamarck argues that "[a]lthough by 1899 almost all of Africa had come under the rule of European nations, any contribution these governments made to the economic

development of Africans was almost purely by the way. The European powers constructed the railways primarily for their own strategic or administrative reasons..." (1966:11). Therefore, any developments in the native or indigenous communities were accidental and by the way, a mere externality of the copper enclave.

2.1.1.1 Rationale of the Copper Enclave

One of the reasons to explain the logic of an unbalanced development strategy lies in the dynamics of primitive accumulation. As in the rest of the continent, small holder farmers were, first forced out of the land they had occupied for centuries, leaving them with no option but to offer themselves as wage labourers to earn a living⁴⁰. Secondly, when the labour demand for the extraction of copper increased, a hut tax was introduced to force many people from subsistence farming into wage labour. Wage labour was the only possible means for indigenous people to pay the hut tax. The introduction of a hut tax ensured that there was a steady supply of cheap labour. As Samir Amin argues, in order to maintain a steady supply of cheap labour needed in the extractive industries, indigenous communities were displaced from their rural communities, "sometimes by violence" driving people into "poor regions, with no means of modernizing and intensifying their farming," leaving them with only the option of earning a living through wage labour (1972: 519). It was for this reason that,

[a]ny development of "native" agriculture would have been against mining interest, for it would have made it more difficult to extract sufficient low-wage labour. Moreover, the imposition of rural tax, which had generally to be paid in cash, increasingly forced out the able-bodied males of the peasant hinterland to seek wage-employment...(Evans, 1984: 89).

With this in mind, it can be argued that in the Zambian case, development at the national level only started after independence.

2.1.1.2 Zambia's Development Plans

Key among the post-independence development programmes, as noted above, are the Transitional Development Plan and the First National Development Plan. As indicated in **Table 2.1** below, from independence to date, Zambia has designed and implemented five⁴¹ national development plans and two transitional development plans. As **Table 2.1** below shows, there have been gaps between some of

⁴⁰ This strategy was ruthlessly implemented mainly in South Africa where a double strategy of dispossession and proletarianization was implemented simultaneously (see Wolpe, 1972; Legassk, 1972).

⁴¹ Four plans because the Fifth National Development Plan was just finalized in 2006 and it is currently being implemented. What is interesting to note is the fact that the country reverted back to the notion of national development planning after taking a holiday from serious national planning for more than 10 years. In fact both the TNDP and FrNDP were not implemented in any serious way as we shall see later. However, they were designed as national policy on development. Fraser points out that the re-introduction of the development planning system is was a reflection of the felt lack of order and structures to guide investments and public policy (2007:28).

the development plans. For instance, from 1970 when the FNNDP ended, there was a two-year period before the SNNDP was formulated. Similarly, there are gaps between 1981 and 1989 when the FrNDP was formulated, and also between 1993 and 2002 when the second transitional development plan was launched. Some of these gaps are indicators of turning points or paradigm shifts that have occurred in the development approach in the country.

Table 2. 1 National Development Plans 1965-2006

Plan Name	Start	End
Transitional Development Plan (TDP)	1965	1966
First National Development Plan (FNNDP)	1966	1970
Second National Development Plan (SNNDP)	1972	1976
Third National Development Plan (TNDP)	1977	1981
Fourth National Development Plan (FrNDP)	1989	1993
Transitional National Development Plan (TNNDP)	2002	2005
Fifth National Development Plan (FnNDP)	2006	2011

Source: *Compiled by Author*

Within the period that I am referring to as the boom period, two development plans were implemented: the Transitional Development Plan and the First National Development Plan.

2.1.2 Transitional Development Plan (TDP)

TDP, as the name suggest, was meant to provide guidance to the new government on how to deal with the development problems inherited from the colonial administration. TDP identified four main priorities namely, mobilizing government revenue, addressing shortage of skilled labour, capitalization of the mining and diversification of the economy. Based on these identified priorities, specific strategies were designed to address these challenges.

Education was one of the key priorities identified to address the problem of shortage of skilled labour. At independence local skilled labourers were so few that most (if not all) key technical positions in the country were held by expatriates (Mhone, 1982; Jolly, 1971). A Manpower Report published in 1966 explains this shortage of African skilled labour:

Most African countries were, in terms of education, poorly prepared for Independence, but in Zambia educational facilities for Africans were even more deficient than elsewhere. During the colonial era African education was not given high priority.... From 1954-1963, European education had been a Federal Responsibility financed from taxation, which tapped the main sources of revenues in Zambia, Malawi and Rhodesia. In Contrast, African education was a territorial responsibility relying entirely on local funds. [Further] [u]ntil 1959, no African was permitted by law to be apprenticed in Zambia (cited in Elliot, 197: 7)

Agriculture was another priority sector. Focus on agriculture was justified on the urgent need to diversify the economy. One of the reasons why agriculture was prioritized is that it offered the opportunity to reduce over dependence of the economy on copper. The importance of agriculture to economic development also arose from the fact that majority of the population (80% in 1964) resided in the rural areas. Dr. Kaunda (Zambia's first president) passionately appealed for serious efforts to be directed towards improving the lives of people in rural areas which had been ignored by the colonial government. In his 1969 speech entitled *Towards Complete Independence*, he says,

In the period ahead we must concentrate and direct our efforts to those projects and areas which are likely to bring maximum benefit to the greatest number of people in rural areas. In other words, comrades, from now on our priority is rural development. Our emphasis must rest with those thousands of farm units which we must help to emerge from strict subsistence level into a living relationship with the rest of our cash economy (20, 21).

Thus, focus on agriculture during this period was not simply seen as a way of diversifying the economy to reduce over dependence on mining, but it was also a way of improving the lives of the poor people in the rural areas.

Table 2.2 Transitional Development Plan Sector Expenditure

SECTOR	EXPENDITURE (K m.)	% OF TOTAL⁴²
Administration, Defence & Internal Security	14	15.2
Education & Training	14.6	15.9
Agriculture and Natural Resources	19	20.7
Services to Industry & Mines	1.8	2
Transport, Communication & Power	19.2	20.9
Health & Social Welfare	7	7.6
Housing & Local Government Services	16.2	17.6
Total	91.8	

Source: Adapted from *Transitional Development Plan (1965)* (in Elliot, 1971)

Transport and Communication, and administration were the other two key areas. To develop the agricultural sector, improvement in transport and communication networks was imperative. Another reason why transport was identified as one of the key sectors in the development strategy is that Zambia's economic growth depended heavily on external trade (both export and import). Given the export oriented nature of the copper economy at that time, transportation played a major role in the development of the country (Bostock, 1984). The critical importance of transport at the time of TDP may be inferred from the amount of resources allocated to the sector as shown in **Table 2.2** above.

⁴² Total may not add up to 100% because of rounding off.

Apart from these four sectors there were other sectors as shown in **Table 2.2** above which were included as part of the development strategy. Overall, it is not easy to evaluate the level of commitment given to these sectors other than what is contained in policy documents. What seems to be clear is that the leadership, in principle, demonstrated genuine commitment to improving the lives of the people though this dedication was short-lived.

2.1. 3.The First National Development Plan (FNDP)

As indicated earlier, the FNDP was launched shortly after the TDP (July 1966). In a sense both the TDP and the FNDP were essentially development strategies on how to handle the transition from colonial rule to self-administration. Since the FNDP was the first planning strategy with a full four-year implementation plan and budget; it forms an important watershed in Zambia's development history. Much of what was to be achieved in later years depended on what was done during this period, particularly laying the "foundation of a diversified economy" (FNDP, 1966:4).

2.1 .3.1 Components of the FNDP

To understand the focus of the development strategy outlined in the FNDP, the way resources were allocated to different sectors can provide some guidance. **Table 2.3**, below provides a summary of how resources were allocated. A quick look at **Table 2.3** below highlights the importance attached to sectors such as transport, education, manufacturing attracting 20.6% , 13.9% and 10.5% of total capital expenditure respectively. To a large extent, most of the priorities of the FNDP were similar to those of the TDP. However, one noticeable line of discontinuity is the change in resources allocated to agriculture. While allocation to education and transport remained almost unchanged, the share of agriculture fell by almost 60%! This should be a matter of concern given the important role agriculture was expected to play in achieving the objective of diversification as well as improving the lives of the people. In light of this, even at this early stage, discrepancies between the policy contents and what the actual programmes implemented begin to emerge.

For instance, statements such as "...the future of the country is on the land..." (Kaunda, 1968); "...from now on, our priority is rural development..." (Kaunda, 1969) seem not to be in tandem with the actual allocation of resources displayed in **Table 2.3** below. The *ILO Report* has highlighted the apparent discrepancy between political utterances and actual policy programmes, pointing out that despite various government declarations and acknowledgements about the importance of the agricultural sector and all the potentials it offered at that time, "one is struck by the neglect of agriculture, by the low

priority given to rural activities in the allocation of economic resources and skilled manpower, ..." (in Woldring, 1984b:99)

Table 2. 3 FNDP Capital Expenditure by Sector

SECTOR	(K, 000)	% OF TOTAL Exp.
Agriculture	47,214	8.3
Mining	5,750	1.02
Manufacturing	59,248	10.5
Construction	614	0.11
Electricity & Water	61,926	10.9
Commerce & Finance	5,632	0.9
Transport & Communication	115,992	20.6
Government Services		
Agriculture	18,624	3.3
Health	19,666	3.5
Education	78,732	13.9
General	141,280	25
General Services	8,942	1.5
Total	563,620	

Source: Adapted from *The First National Development Plan* (1966)

In view of this, it can be argued that the post-independence government's approach to agriculture amounted to mere rhetoric. After reviewing the performance of the industrial reform since independence, Meyns notes that "[a]griculture is highlighted in all major speeches, but in fact continued to be neglected" (1984:18).

2.1.3.2 FNDP Objectives

Following the statement that the main aim of the FNDP is to "mobilize available resources and favourable factors, in order to eliminate the obstacles to economic and social development in Zambia, and thus establish the conditions for dynamic and sustained growth of the economy" (FNDP, 1966:1), the FNDP lists the following as its objectives.

- i) To diversify the economy so that the copper industry is not the only main employer
- ii) To increase employment by at least 100 000 jobs during the course of the Plan
- iii) To maintain reasonable price stability
- iv) To minimise the inherited economic imbalance between the urban and rural
- v) To raise rapidly the general levels of education, and develop specific technical, administrative, executive, professional and management skills in the population
- vi) To provide more and better living accommodation as a requisite ingredient of a better standard of living and to raise the general level of social welfare.
- vii) To develop communications, sources of energy, transport and other economic infrastructure for new economic order (FNDP, 1966:5).⁴³

Of particular importance to this study is the reference made to improving living conditions of people by providing accommodation. At this stage, access to water was tied to provision of housing. In as far as access to water was tied to the provision of housing, it can be argued that attention, at least in principle, was given to access to clean water in the earlier development plans.

2.1. 3.3 FNDP Context

The time when the FNDP was formulated coincided with a number of political and economic developments in the country and the world at large. First, the FNDP was implemented during Ian Smith's Unilateral Declaration of Independence (UDI) in 1965. Prior to the UDI, Zambia acquired 40% of its imports from Southern Rhodesia (Kamarck, 1966:22; Burdette, 1977), and almost all exports had to go through present day Zimbabwe en route to Beira, Benguela or the South African seaports because of the already existing means of transport by road, but mostly by rail. This situation, however, was drastically changed by Ian Smith's UDI in November 1965. Planners of the FNDP were aware of the consequences of this as indicated by citing the UDI not only as a major obstacle to development in Zambia but also as a situation that created an economic crisis for Zambia (FNDP, 1966:1).

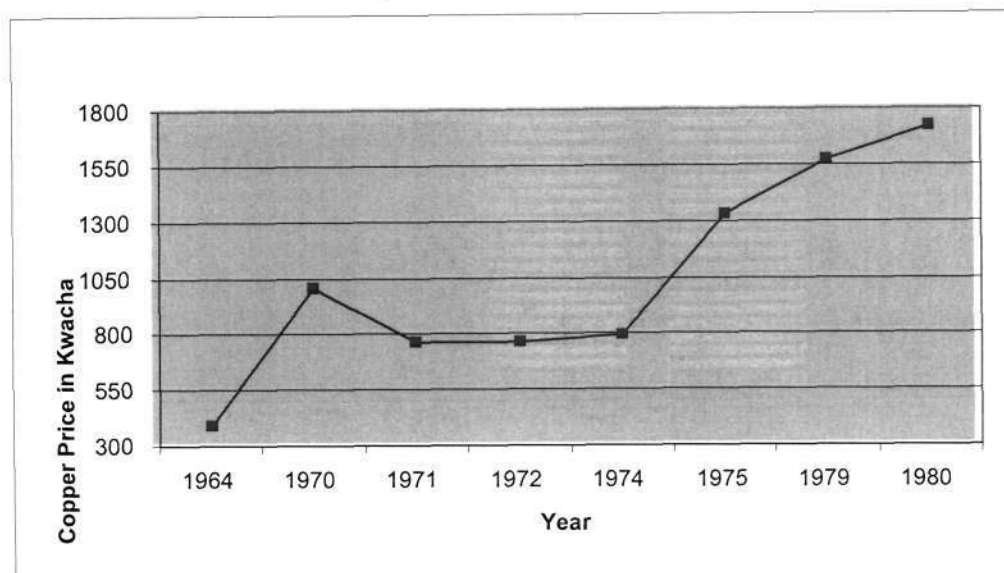
Second, during the time of the FNDP, copper price on the London Metal Exchange was steadily rising. As can be seen from **Figure 2.1** below, the price of copper increased steadily from about K400 per tonne in 1964 to slightly over K1, 000 per ton in 1970, before declining to K750 per tonne in 1971. Consequently, there were signs of unprecedented economy growth⁴⁴, a phenomenon that has led to some observers referring to this period as the boom period.⁴⁵

Despite this steady increase in the price of copper starting from 1964, the production and export of copper during this period declined sharply after 1965 as indicated in the **Table 2.4** and **Figure 2. 2** below. This can probably be attributed to the impact of the UDI on importation of input goods which in turn affected production and export volumes.

⁴⁴ This steady increase in the price of copper during the early 1960s has been largely attributed to the increasing demand resulting from the American military excursions in Vietnam between the 1963-1969 (See Fortman, 1971: 238). Other commentators attribute the sustained high copper price to the prolonged American Strike in 1967 which reduced the supply of copper on the world market (see Elliot, 1971:14) as well as the increasing tension in the Middle East (See Goodman, 1971).

⁴⁵ A number of authors have often referred to this period as the boom period in Zambia's economic history. See Mwanza (1992); Turok (1979); Meyns (1984); Jolly (1971) and Bostock (1971).

Figure 2. 1 Copper Price (1964 – 1980)



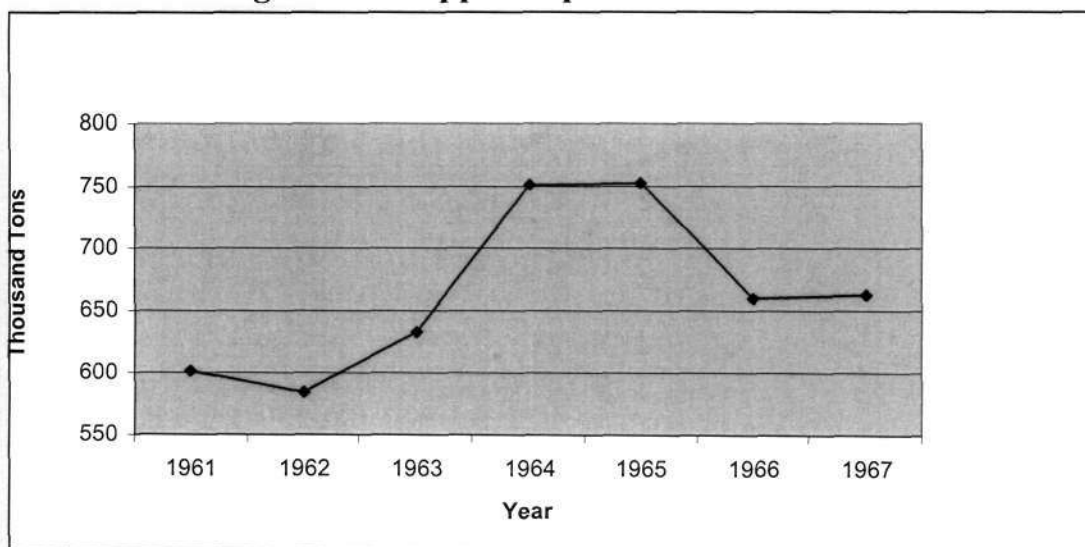
Source: Based on figures from *Zambia Mining Year Book*, 1969-1980 (Cited in Elliot, 1984: 8)

Table 2. 4 Copper Export Volume

Year	1961	1962	1963	1964	1965	1966	1967
000' Tons	601	585	633	751	753	660	663

If **Figure 2. 2** below is read together with **Figure 2. 1** above, it becomes clear that copper export volume declined at the time when prices were sharply rising. Although different factors can be advanced to explain this phenomenon, the impact of the UDI could be one of these factors.

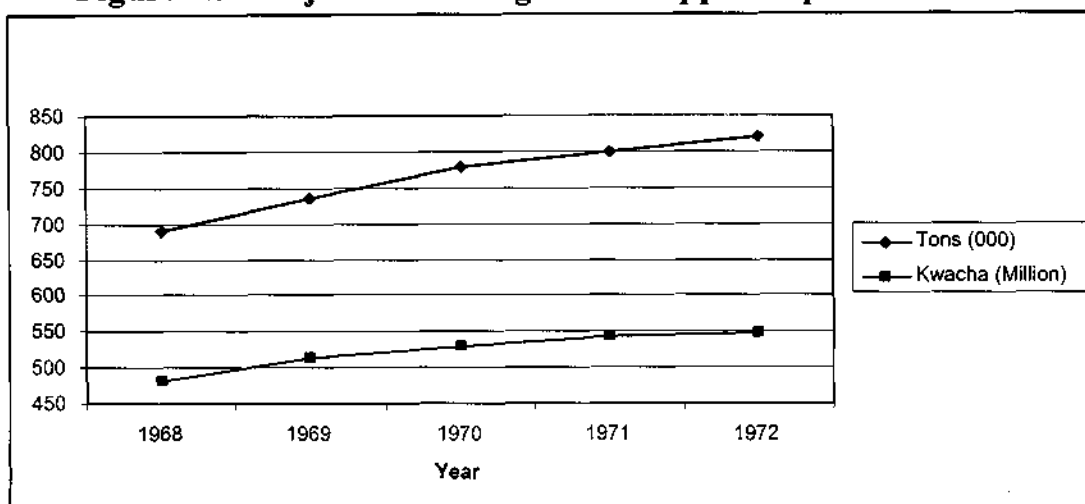
Figure 2. 2 Copper Export Volume



Source: Based on figures from *Monthly Digest of Statistics*, Central Statistics Office (Quoted from Goodman, 1971: 239)

Overall, because of the projected increase in both the price of copper and increased export earnings, the economic prospect for Zambia was a bright one (Turok, 1979). This is evident in **Figure 2.3** below. Planners of the FNDP formulated this development strategy on the assumption that copper prices would keep rising steadily, resulting in favourable terms of trade and positive foreign account balance.

Figure 2.3 Projected Earning From Copper Export 1968-1972



Source: Based on figures from *Monthly Digest of Statistics*, Central Statistics Office (in Goodman, 1971: 239)

At a deeper level, this scenario reveals that the **Zambian** economy at this time demonstrates a high sensitivity to the movement of copper prices (Goodman, 1971), a situation that highlights the vulnerability of the economy.

Thirdly, at the time of the FNDP, most of Zambia's southern neighbours were still under colonial rule. Thus, it was difficult to forge bilateral relations in terms of joint development projects or trade which would have strengthened the economic standing of the country. Kaunda's 1969 speech alludes to this:

We as a family of nations have to live with countries with different social systems—some at war with another, some tolerating each other and others torn by racism. South of us we have minority regimes where colour is a passport to power—economic power, political power, military power—any power to control other racial groups (1969: 4).

Fourthly, the FNDP was influenced by the dominant development thinking of the time. Among these were:

i) Keynesianism: Probably the most influential economic development paradigm at this time was the Keynesian approach which recommended state intervention in the economy. Keynes (1964) argued that leaving the economy entirely to the market whims often results into the economy equilibrating below

the full employment level, a situation that indicates under utilisation or inefficient use of available resources. Thus, because of this weakness of the classical development theory, Keynes argued that the market must be complemented by state intervention to ensure that the economy is at full employment. In Keynes' view, full employment or close to full employment is a rare or short-lived occurrence in classical economic theory since classical economics does not address determinants of employment. For Keynes the "propensity to consume" is the key determinant of the level of employment (Keynes, 1964:250). In his most influential work, *The General Theory of Employment*, Keynes argues that what determines the long-term equilibrium of an economy is the complex interaction between consumption, investment and "money-wages" which in turn influence the propensity to consume, "interest rates and the marginal efficiency of capital" (ibid, 251). Thus, if the propensity to consume and the resultant rate of investment are deficient, effective demand falls and the "actual level of employment falls short of the supply of labour" (ibid, 30). Therefore, in Keynes' view, the only way to cure this deficiency is to increase government spending to stimulate and increase effective demand and move the economy to a higher equilibrium at or close to full employment. Concerned mainly with what he calls "involuntary unemployment", Keynes (1964) believed that unemployment is an indication of inefficiencies in the economy which the state need to address by increasing either government spending on public works projects or by cutting tax to stimulate effective demand (ibid).

ii) Neo-Classical Development Theory: The second theory of economic growth that influenced approaches to development at the time of the FNDP was the neo-classical school, the monetarist to be specific, championed by Milton Friedman and Frederick Hayek. In neo-classical theory, economic growth and development were mainly tied to the growth of free enterprise or the private sector through the development of markets. In one of his most popular books, *Capitalism and Freedom* (1962), Friedman argues that state interventions in the operations of the market often results in distortion of the market, giving rise to inefficiencies, on the one hand, and the loss of freedom of the individual on the other. Thus, to achieve economy growth, full reliance on price mechanism, incentives, the private enterprise and the market in general were recommended. The state was often viewed as an "agency that is widely regards as having a monopoly on the legitimate use of force or threat of force" to curtail people's freedom, innovativeness and incentive to work hard (Friedman, 1982: 48). Generally, the classical economic approach limits the role of government to "facilitating voluntary exchange by adopting general rules –the rules of the economic and social game that the citizens of a free society play" (ibid, 50). For Friedman, the proper role of government is to "preserve and protect freedom",

preserve law and order, enforce the law of contracts and to foster competitive markets (Friedman, 1962: 11).

This was in line with the traditional orthodox development theory of modernization, which dominated international debates on development problems (Martinussen, 1997). Focusing on increasing per capita income as the precursor of economic growth and therefore development, Lewis (one of the key proponents of this theory) conceived of economic development as a process of modernization. Lewis argues that what militates against economic growth are those cultural practices that reduce reward for hard work, the spirit of adventure, attitudes towards work, competition, taboos, mythical religious beliefs, and prejudices and conventions (1955: 43). In Lewis' view, if these traditional aspects hamper economic growth and development, the only way to develop is to supplant traditional values and ways of doing things by the "*modern way*." Similarly, Rostow (1960) in his categorisation⁴⁶ of the stages of economic growth argues that the transition from 'traditional society' which is often characterized by "pre-Newtonian" means of production with low productivity ceiling, to modern techniques of production is key to development. Using an example of Europe, Rostow argues that "break-up of the Middle Ages [was] relevant to the creation of the pre-condition for take-off in Western Europe"(1971: 6). According to Rostow, the momentum to economic development occurs when "forces of modernization" overcome "habits and institutions, values and vested interest of traditional society" (1960:36).

In Lewis' view these traditional values, institutions and interests work against the innovative spirit, dull the incentive to hard work and risk-taking, which eventually prevent economic growth and development. Consequently, Lewis argues,

Both in Asia and in Africa there are some farming communities which take a non-commercial attitude to livestock, fail to exploit their cattle to best advantage in terms of work, meat and milk, carry excessive number of useless beasts, and ruin themselves in the process. This is a great nuisance to economic development because such development is tied up to a considerable extent with progress in agriculture which in turn depends largely upon a better irrigation of animal and arable husbandry (1955: 43).

Accordingly, for countries that were still locked up in the traditional way, it was strongly recommended that they broke-away from the *old ways* and adopt the *new ways* if they were to develop. Lewis and

⁴⁶ Rostow (1960), classifies stages of economic development into five categories: traditional stage, pre-condition for take-off, take-off, drive to maturity and mass consumption phase. The argument underlying this model is that energies for development are set loose when society break from traditional way of producing and adopt modern production techniques. According to Rostow, a certain dynamism is set in motion when society breaks-up traditional ties to create pre-conditions for take-off which are manifested by the appearance of compound interest, increased overhead social capital investments, increased savings and investment rates of about 10% of national income.

other proponents of the modernization theory, particularly Rostow, believed that under-developed countries, such as Zambia, had to go through the process of modernization that developed countries in Western Europe went through in the Seventeenth Century. In general, the classical modernization theory proposed to focus on the growth of the export industries which would serve as the engine for growth by creating forward and backward linkages (Siedman, 1979a; Martinussen, 1997). Consequently, the advice given to developing nations was to adopt an outward oriented industrial policy as opposed to inward looking industrial strategies such as the import-substitution industrialization which were common in Africa during this time.

iii) Dependence/Neo-Marxist Theory of Development

The third strand of development theory was a Marxist or neo-Marxist theories. Influential among them is the dependency theory. Authors such as Andre Gunder Frank, Samir Amin and Arghiri Emmanuel have argued that the relationship between the developed and underdeveloped nations is one that leads to the exploitation of the latter. From colonial times, the colonial masters created *peripherals* which were used as *satellite* or *enclave* economies to supply raw materials to the mother nations—the *metropoles* or the *centres*. According to the dependence paradigm, the economic surplus generated by the colonial regimes or foreign companies, called profit was expatriated to the countries of origin draining the colonies or the *peripherals* of the essential capital for development (Ibid, 89). In a study of African colonial administration, Amin concludes that no benefit accrued to the economies of the colonies:

...the colonial system organized the African societies so that they produced exports—on the best possible terms, from the point of view of the mother country—which only provided very low and stagnant return to local labour (1972: 524).

Thus, according to the proponents of the dependency theory, if countries in the peripheral wanted to develop they had to de-link from the world markets that kept draining the resources that could be used to develop local economies. Despite the advice from the former colonial masters, most independent African countries at this time actually adopted development strategies that were opposed to their former colonizers (Leys, 1996).

Certainly some of the prominent thinking at that time must have slipped into the plans and strategies for development that we are concerned with here. Influence of socialist thinking is evident not so much in the official development policy, but mostly in the speeches made by politicians.

To the above factors should be added rapid urbanization which took place during the period of the FNNDP. Planners of the FNNDP were well aware of the social and economic impact of this urban drift especially on social services including access to water (FNNDP, 1966). Increased migration to the urban centres was mainly propelled by the attraction of rising wages in urban employment relative to rural incomes, prospect of a better life (Elliot, 1971) occasioned by the “social wage,” and the post-independence removal of restrictions on movements of people⁴⁷. It was during this period that most of the peri-urban areas which have persisted to this day sprouted up.

2.1.3.4 FNNDP Priorities

As can be seen from the list of objectives above, key priorities of the FNNDP include diversification of the economy, overcoming the rural-urban imbalances, promoting the growth of import-substitution industries, and generating employment opportunities by creating small scale industries outside the line of rail.

The economic reason behind the diversification drive lies in the fact that monoculture economies, such as the Zambian economy at independence, are vulnerable to commodity price fluctuations on the global market. Writing before independence, Thompson outlines well the dangers posed by the structure of the Zambian economy.

A country which is dependent on only one or two raw materials is clearly vulnerable not only to general falling in the demand for raw materials but also to adverse developments, such as substitution, affecting those particular products. Diversification is sort in order to mitigate the effects of those sharp fluctuations in demand to which raw materials are notoriously subject (1953: 32).

In view of this, the fact that Zambia’s economy at independence received more than 92% of its export earning from copper, rising to 97% in 1969 (Meyns, 1984) is a clear indication of the vulnerability of the economy. Although the need to urgently diversify the economy was recognized way back before independence, very little was done to that effect for the obvious reasons that a copper enclave was a profitable venture for the makeshift colonial arrangement. After independence, to a large extent, the leadership was preoccupied with bringing the economy under the control of the state. For instance, while the FNNDP clearly indicates the need of diversify the economy, speeches and policy statements from the leadership seemed to have only paid lip service to the to objective if diversifying the

⁴⁷ Mwanza argues that the lack of a well developed subsistence agricultural sector in the midst of a flourishing copper enclave provided a magnetic force for rural to urban migration, asserting that the massive growth in urban population cannot be attributed to “natural growth” (1979: 26-27).

economy. Apparently there seem to be a divergence between politicians and bureaucrats. Burdette highlights this:

Trained mainly in the Western schools and often sympathetic to precepts of 'Western Capitalism', these technocrats found themselves often in conflict with the national politicians who act [sic.] more in accordance with their own political survival and do not appear so bound by the legalistic traditions of Western Capitalism (1984: 52)⁴⁸.

This probably is one reason that can help explain the apparent discrepancy between policy and political speeches, on the one hand, and the actual programme implemented on the other. It seems that politicians' goals differed from those of the state bureaucrats who were expected to implement the programmes.

The other main priority area identified under the FNDP was the need for an import-substitution industrialization (ISI) strategy. Essentially the strategy to locally or domestically produce certain goods, consumer as well as capital goods which were previously imported, was premised on the understanding that such a move would lessen pressure on the current accounts and shift resources to cover the rising demand for capital goods which could not be produced locally. In the Zambian context, the ISI strategy was perhaps relevant given the enclave nature of the copper economy and all the risks this implied.

The major instrument for the government's industrial policy was Industrial Development Corporation (INDECO)⁴⁹ which was created in 1965. According to Dr. Kaunda,

INDECO had a major task in the Economic Reforms and I am pleased to report that it has discharged it well. I am pleased to report that the overall performance of INDECO has been excellent since 1965 when Government allocated to it the task of developing the industrial sector and looking after the interest of the Nation in business(1969: 16).

The main industrial strategy adopted during the 1960s was largely protectionist in nature mainly in the form of targeted loans as well as rationalized licensing for wholesale and retail enterprises (Faber, 1971).

⁴⁸ The marketing and pricing of farm products is one of the examples. In effect the fixed producer price paid to poor rural small scale farmer went to subsidize the urban population including the high income households. See Evans, 1984; Woldring, (984c)and more especially Siedman (1979a) who argues that the "political figures" who were the owners of the estates ensured that they paid farmers low prices to keep their operations more profitable (43).

⁴⁹ In fact INDECO existed before independence but only as a development finance company operating like a development bank providing loans and other forms of financing to business enterprise (See Tangri, 1984). It only became a parastatal company in 1965 as indicated by the quote from the President Kaunda above.

Creation of “real” jobs was another priority identified by FNDP. Job creation was critical not only for reasons of widening the tax base to increase government revenue, but also to improve the quality of life of the people. With an average of about 15.7% growth in GDP between 1965-67, the expanding economy created a huge demand for skilled, but also unskilled labour (Jolly, 1971). There was also the thinking that providing people with employment was the surest way of redistributing the country’s wealth fairly to achieve objectives of equity and economic justice.

The FNDP also identified bringing development to areas other than the line of rail as one of its priorities with the overall aim of reducing the rural-urban disparities. Justification for this was based on the fact that development in Zambia during colonial times occurred along the narrow strip—the line of rail.

At independence in 1964 Zambia inherited a highly dualistic economy. Along the central line of rail running from the then Rhodesian border to the Copperbelt were all the visible signs of “development”; towns, mines, factories and large scale settler farmers. Away from the line of rail the situation was in sharp contrast: a large hinterland of poor smallholder agriculture, remote from markets and starved of services and infrastructural investments (Jolly, 1984: 89).

However, even a quick glance at the industries established during the post independence era reveals that only a few were actually located away from the line of rail. Out of the five⁵⁰ new industries created during the period of the FNDP, only one—Mansa Batteries—was located away from the line of rail!

2.1. 3.5 Mulungushi/Matero Reforms

Within this period of the FNDP, the most significant reforms as far as development policy is concerned were the Mulungushi and Matero Reforms. The major components of the Mulungushi reforms was the government’s decision to ask 25 major foreign owned companies other than the mining companies to offer 51% of their shares to the government parastatal company. The aim of these reforms⁵¹ has been stated as opening the “gates to economic independence” and increasing the participation of Zambians in the economy (Kaunda, 1969). However, both the Mulungushi and Matero Reforms did not amount to

⁵⁰The five are Livingstone Motor Assemblies, Kapiri Glass Products, Mansa Batteries, Nakambala Sugar (all subsidiaries of INDECO), were all created with the view of bringing development and creating job opportunities to areas other than the line of rail, but they are all located along the line of rail.

⁵¹ It is important here to note that the Mulungushi Reforms did not affect the mining companies—purchase of 51% shares were demanded from non-mining companies. The purchase of 51% shares of the mining companies—Nchanga Consolidated Coper Mines (NCCM) and Roan Consolidated Copper Mines (RCM) came as a result of the Matero Reforms. After the the 51% government takeover, the South African mining giant Anglo-American held 49% shares in NCCM and 12.5% in RCM while the US mining giant American Metal Climax (AMAX held 20% shares in RCM with the remaining 16.75% held by smallholder companies (see Meyns, 1984 and Kaunda, 1968, 1969).

nationalization⁵². Background comments on the Mulungushi reforms make this clear: “The measures announced in His Excellency’s speech, although they involve in many cases assuming controlling interest in some enterprise, fall far short of nationalization as conventionally known” (ibid., 104). Kaunda in his Matero Reforms Speech makes it clear that government was not taking over entirely from private capital:

We decided to allow for 100 per cent ownership of certain industries by private entrepreneurs. In future therefore, we shall welcome foreign capital as in the past. We remain committed to this policy for we need foreign capital in considerable amount. All we ask of our investors is the understanding that we welcome them as participants, and not controllers, of our economic development process (1969: 43).

Rationale for acquiring controlling interest in these companies seems to be *inter alia* that the country attained political independence in 1964, but that independence meant little until the local people took control of the economic affairs. Kaunda repeatedly refers to the fact that the country could not be fully independent unless it took control of the economic power (Kaunda, 1969:6, 36).

It should be further noted that all these reforms were preceded by the declaration of the philosophy of Humanism⁵³ in 1967. Humanism was an eclectic philosophy with emphasis on the central position of “man/woman” in society. In a sense it was not a philosophy as such, but rather an ideological that sought to exalt human abilities without religious mediation. In its original form in Europe, Latin America and Cuba, humanism was an anti-religious movement. Surprisingly, Dr. Kaunda baptized it and used it as a Christian value. I do not intend to deal with this matter here, but interested readers can refer the abounding literature on the topic mainly by Dr. Kaunda himself, particularly his book *Humanism in Zambia Part I and Part II*. And also Patrick E. Idoye’s (1988) article, “Ideology and the Theatre: The Case of Zambia.”

There are a number of things to note about these reforms. For our purpose here, it is vital to note that these reforms appear to have been designed outside of the FNDP. It is reasonably justifiable to argue

⁵²Burdette defines nationalisation as simply the government takeover from private enterprise of physical or financial asset both foreign or domestically owned within its geographical territory (Burdette, 1977; 1984:25). In this sense, the Mulungushi and Matero Reforms did not amount to nationalization as they are often quoted to be in the sense that they did not constitute a complete state takeover. The turning over of 51% shares or controlling vote to the state that took place after the Mulungushi and Matero Reforms did not amount to nationalism. Nationalisation understood as the complete take over of assets previously under private (domestic and international) ownership by the state through force or a massive buyout did not happen in Zambia. In fact 11 of the 30 companies in which the state parastatal INDECO bought shares by 1968, INDECO had less than 50% share; for example, in companies such as Zambia Sugar, INDECO had only 12% (Fortman, 1969)

that the FNDP did not envision the Mulungushi/Matero reforms. Political imperatives may have occasioned this move with the objective of concentrating economic power in the state. Meyns is confident that “[t]he timing of the economic nationalistic measures was not unrelated to the power struggle that was going on within the national elite” (1984:17). Similarly, Burdette (1984) argues that the emerging ruling class sought to exert its influence by capturing control over economic power using the state. Bearing in mind that these reforms are introduced at the time when there was an insurgency and possible splinter groups within the ruling party (Chikulo, 1979), one would agree that the reforms seem to constitute a timely move to deal with possible threats to the authority of the “party and its government” rather than a genuine development strategy. At the time of the Mulungushi Reforms, it was apparent that the popularity and legitimacy of UNIP (the ruling party) was waning as can be deduced from voter turn out shown **Table 2.5** below.

Table 2.5 **1964-1978 Voter Turn-out**

<i>Year of Election</i>	<i>Voter Turnout (%)</i>
1964	94.9
1968	82.47
1969 (Referendum)	69.63
1971 (Parliamentary By-Elections)	35.35
1973	39.8
1978	68

Source: *Election Office, Lusaka* (in Chikulo (1979))

In view of the president’s declaration in the preface to the FNDP that “[n]o investment or development will take place outside the Plan itself,” adding further that “each one of us, wherever we may be, must realise that all our activities must now be taken within the structures of the National Development Plan, for it is to be our pattern and programme of development”(vi), the apparent diversion from the strategies of the Plan that the Mulungushi and Matero Reforms represent is not easy to explain outside the move to consolidate both political and economic power.

Attempts to explain this apparent riddle are few, and one of the cogent explanations advanced so far has been that the political expedience had an overriding effect over the development imperatives, such that the focus was on consolidating economic power to take control of the political situation (Meyns, 1984; Burnell, 2005). Beveridge (1974) in an assessment of the take-over measures argues that the purported control of business was only symbolic for many ordinary Zambians who did not benefit from

the measures. Whatever the reason⁵⁴, failure to stick to plans often results in implementing programmes haphazardly⁵⁵. Now this may be a major challenge in achieving economic growth and development which requires long term planning and discipline in implementing plans.

The other reason advanced in support of the state acquisition of controlling shares in private companies is that if government acquired control over a number of manufacturing industries it was going to quicken the process of providing basic services to the people as well as protecting the interests of the consumers by reducing profit margins on the sale of essential goods (Fortman, 1969). Further, it was assumed that if government participated in the private enterprise, which at this time were said to have been making profits, the dividends were going to be ploughed back into the economy or used to provide social services such as education, health cares, roads, housing etc.

2.1.3.6 Outcome of FNDP

During the period of the FNDP, a number of positive outcomes are evident. From 1966 to 1970, manufacturing output value increased from K48 million to K128 million in constant 1965 prices (Turok, 1979:75). Siedman also acknowledges that the contribution of manufacturing to GDP in money terms quadrupled by 1972 (1979b: 101). In terms of contribution to GDP, the manufacturing sector increased from 6.1% in 1964 to 10.6% in 1967 (Elliot, 1971:17). Further, between 1965 and 1970, the annual growth rate of the manufacturing industry averaged 11.2%, while the wage employment in the sector was growing at an annual rate of 5.6% over the same period (Mwanza, 1979:30,32). GDP grew at more than 15% between 1965 to 1970 (Mwanza, 1979:30). In terms of out put volumes, most of the sub-sectors in the manufacturing sector recorded steady growth between 1964 and 1968 as illustrated in Table 2.6 below. Growth of wage employment over the period 1965 to 1970 was 5.6% for manufacturing industry, 5.6% for construction, 6.8% for transport and 7.6% for services.

Table 2. 6 Manufacturing Production Index

	<i>Food Stuff</i>	<i>Beverage +Tobacco</i>	<i>Textiles +Clothing</i>	<i>Non-Metal Products</i>	<i>Metal & Metal Prod</i>	<i>Others</i>	<i>Total</i>
Weights:	15	18	3	11	14	17	78
1963	100	100	100	100	100	100	100
1964	109	120	154	151	99	112	117
1965	121	145	207	219	148	148	152
1966	136	190	201	246	165	99	162
1967	159	229	212	298	164	209	208
1968	180	227	229	357	158	254	226

Source: *Monthly Digest of Statistics*, Central Statistics Office, Lusaka (1969) (in Faber, 1971)

⁵⁴ The state justified its acquisition of controlling interest in major industries on the fact that the private companies were not committed to the diversification of the economy (Kaunda, 1969).

⁵⁵ This point is not meant to condemn the Mulungushi and Matero Reforms, but simply to point out the inconsistency between what was on plan and what was implemented.

The overall growth of wage employment over this period was 5.1% as indicated in the **Table 2.7** below.

Table 2. 7 Wage Employment Growth

<i>Sector</i>	<i>1965-1970</i>	<i>1970-1974</i>	<i>1965-1974</i>
Commercial Agric	1.4	-4.4	-1.1
Mining	1.7	2.6	2.1
Manufacturing	5.6	1.0	4.1
Construction	5.6	0.7	2.9
Transport	6.8	2.7	3.9
Services	7.6	2.6	6.0
Total	5.1	1.4	3.6

Source: *Monthly Digest of Statistics October 1977; Employment Earning, 1969-1970; Economic Report & FNDP* (in Mwanza, 1979:32).

In addition, significant efforts were made in the provision of social services such as education, health, clean water, electricity and other recreational facilities. This was confirmed by the elderly informants who were interviewed in this study. Most of the older men and women interviewed acknowledged that during the Kaunda reign, especially immediately after independence, great efforts were made to improve the lives of the people even in peri-urban areas. Efforts to improve access to water at this time are evident from the fact that it was during this time that the larger part of the infrastructure was laid down. All the service provider officials interviewed acknowledge this.

Furthermore, a number of low cost housing units were built particularly in Lusaka during this period (Mwimba, 2002). Construction of these housing units often included the provision of water either through individual connection or by a public source (FNDP, 1966; Mwimba, 2002; Mulenga, n.d). The “site and service” initiative mentioned in the FNDP was a great vehicle through which services such as water and sanitation were delivered.

Despite the progress made, the challenges still remained in this area given the continued influx of people from the rural to urban areas. Most critical, the economy remained largely undiversified. As evidence presented below shows, the structure of the Zambian economy remained a copper dependent economy. This is obvious from the high contribution of copper to GDP, export earning and government revenues as **Table 2.8** below illustrates.

From the perspective of addressing the imbalances between rural and urban areas, not much was achieved. As shown by **Table 2.7** above, employment in the agricultural sector only grew by 1.4%

during the period of the FNDP and then declined by -4.4% between 1970 and 1974. What is interesting to note here is that while wage employment in manufacturing and other sectors grew at rates more than five per cent, thus more than the growth of employment in the mining sector, this growth was short lived. As **Table 2.7** above shows, during the period 1970 to 1974, employment in the manufacturing sector only grew at 1%, while in construction the growth rate was less than 1%, and -4.4% for agriculture. In addition to this, though agriculture was repeatedly recognized as having great potential for growth, it largely remained a neglected area even during the period of the boom such that “by 1975 Zambia had to import 99% of its wheat, 95% of its rice, over 80% of its dairy products and vegetables oils, two-thirds of its cotton and around half of its potato and beef requirements”(Woldring, 1984a:99).

ILO Report (1980) notes that the failure to develop the agricultural industry has resulted in many people finding it difficult to access basic needs arguing that the rural-urban imbalances still remained the same as in colonial times and in some cases reversed.

Table 2. 8 Contribution of Copper to GDP, Government Revenue, Export & Employment

Year	Amount (K, million)	GDP %	Government Revenue (%)	Copper + Cobalt as % Export	Employment (000)	Employment %
1965	290	40	71	93	47.9	15.9
1966	379	44	64	95	48.9	15.7
1967	379	39	53	94	48	15.1
1968	411	38	60	96	48.2	14.7
1969	637	48	59	97	49.7	14.1
1970	457	36	52	97	49.7	13.6
1971	286	23	36	95	50.8	13.8
1972	317	23	19	93	52.8	14.1
1973	506	32	29	95	56.1	14.6
1974	607	32	53	94	57.5	14.6
1975	204	13	13	93	57.1	15.5
1976	330	18	3	94	59.1	15.9
1977	223	11	-	94	56.7	15.4
1978	272	12	-	92	55.5	14.9
1979	470	18	-2	86	57.7	15
1980	520	17	6	96	-	-

Source: *Mining Year Book, 1969-1980* (in Meyns , 1984:8)

The Report notes that,

[t]he basic structure of the economy remains heavily biased towards the production and export of minerals as it was in the colonial period. The nation imports large quantities of foodstuffs and relies heavily on a relatively small number of commercial and emergent farmers for its domestic agricultural output” (in Woldrin, 1984a: 97).

In terms of development opportunities, this indicates the failure to take full advantage of the chances agriculture presented.

2.1.2.7 The State of Import Substitution During and After FNDP

With regard to the import-substitution strategy, though much was achieved through INDECO in the years just after the reforms, the achievement did not manage to bring structural changes to the economy to such an extent as to reduce the dependence on foreign supplied goods as the ILO report above indicates. The ISI strategy ended up creating industries that were producing goods “primarily to meet the demands of a small high income group associated with the narrow export enclave” (Siedman, 1979b:106). Tangri also makes the same observation arguing that the,

...policy of import substitution merely shifted a range of manufactured goods to Zambia from overseas while maintaining Zambian dependence on imports required for previous stages of production such as machinery and maintenance. Import substitution has particularly catered for the consumption habits of Zambian middle class ... and more importantly, has resulted in dependence on foreign technology (1984:117).

2.2 The Crisis Period⁵⁶

While the period from 1964 to the early 1970s can be referred to as the boom period, the 1970s are largely seen to be characterized by conditions of economic decline. In particular the 1973 First Oil Crisis and the initial fall of copper prices which created a shortage of foreign exchange marked the beginning of economic contraction. For the most part of the decade, “[I]ack of foreign exchange became the most frequently cited reason for Zambia’s economic problems in the 1970s” (Meyns, 1984:9). It was in this context that the SNDP was formulated and implemented.

2.2.1 The Second National Development Plan 1972-1976

The SNDP focused on consolidating the Mulungushi and Matero Reforms. Implementation of the 1968-69 reforms continued during the period of the SNDP culminating in the creation of the holding companies mainly the Zambia Industrial and Mining Corporation (ZIMCO) and the Mining Development Corporation (MINDECO) to oversee the expansion of the mining and manufacturing sectors.

⁵⁶ Peter Meyns (1984) though he argues that the events leading towards the crisis began with the 1968 reforms, identifies 1975 as the beginning of the crisis. Other authors have picked 1972 when there was a slump or recession in world trade (See Arne & Kayizzi-Mugerwa) while others pick 1973 with the onset of the first Oil Crisis as the turning point (Gulhati, World Bank, 1989).

However, the SNDP was formulated and implemented in a context that was very different from the FNDP. On the social services side, in particular the housing approach shifted from the FNDP's approach of building new housing units to upgrading the existing ones, especially in the informal settlement (Mwinda, 2002). This shift in approach is probably due to the overwhelming backlog. But also the SNDP acknowledged that informal settlements were a source of social and economic value and should not be demolished:

...although squatter areas are unplanned, they nevertheless, represent assets both in social and financial terms. The areas require planning and services and wholesale demolition of good and bad houses alike is not a practical solution" (SNDP, 1972:1485)⁵⁷.

2.2.1.1 SNDP Context

Strategies in the SNDP were mainly based on three suppositions:

- i) Stable copper price averaging about K740 over the period of the plan,
- ii) Growing copper production and earnings from the copper industry and
- iii) Modest import price index increases of about 2-3% (Mwanza, 1992:4).

The general context in which the SNDP was designed and implemented was one of political tension within the party, between parties and within the region.

2.2.1.2 Domestic Politics

At independence, Zambia followed a multi-party system with two major political parties: the ruling party--United Independence Party (UNIP) and the veteran African National Congress Party (ANC). From 1964 to about 1968, the opposition ANC was ripped apart by internal conflicts which weakened the party, a situation that led the ruling party to assume that entropy within the ANC would increase and eventually result in the implosion of the party (Chikulo, 1979). As for UNIP, the party remained strong after independence until 1967 when factionalism surfaced within the party structures and leadership. However, persistent factionalism within UNIP and the growing threat from the opposition party, forced the government to revert to a one-party system in 1972. On December 13, 1972, UNIP president, Dr. Kenneth Kaunda officially declared Zambia a one party state. This move did not only outlaw the ANC, but all opposition parties, present and future. Apparently, the ruling party alleged that multi-partism promoted indiscipline, tribalism and dissension. In the words of the then Prime Minister Mr. Mainza Chona,

Zambia had found from bitter experience that the multi-party system encouraged indiscipline as crooks jumped from one party to another spreading dissension by false rumour. They also

⁵⁷ Cited in Mulenga (n.d)

encouraged tribalism and now scoundrels have no refuge in one-party participatory democracy We have fixed them, they are now like monkeys having only one tree (in Chikulo, 1979).

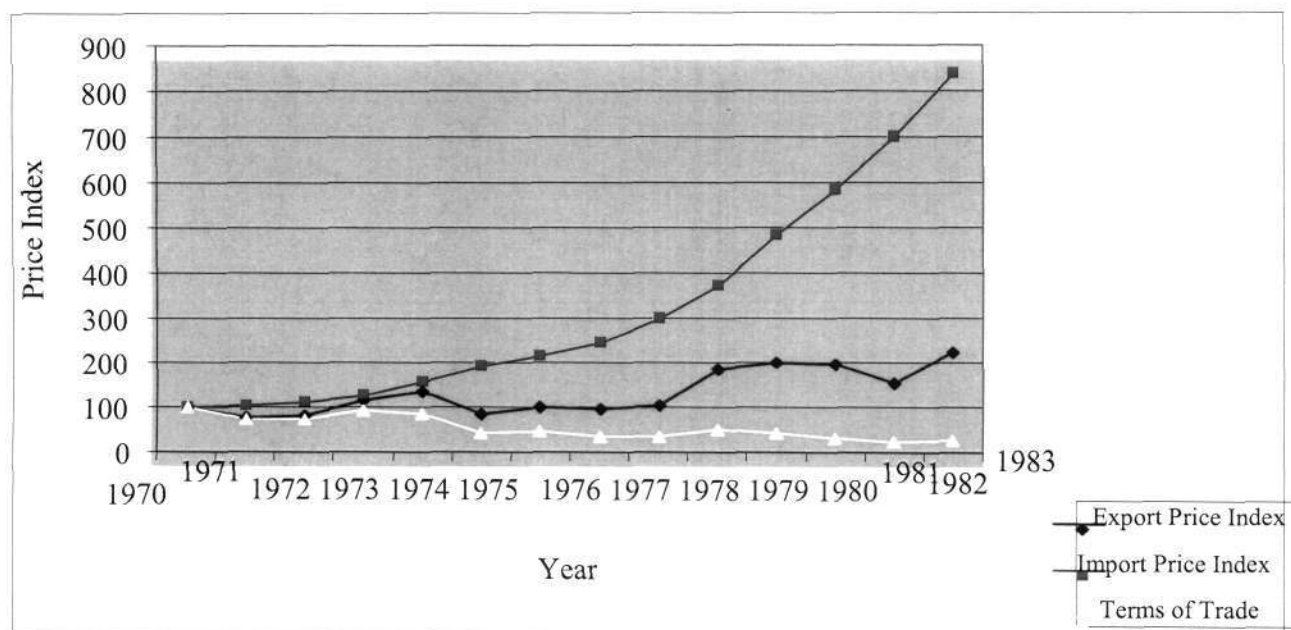
From 1972, Zambia remained a one-party state until 1991 when a multi-party system was re-introduced. In a sense, the introduction of the one-party state was a culmination of the move to centralize power and control which started in 1968.

2.2.1.3 Economic Context of SNDP

As for the economic context in which the SNDP was implemented, most of the key economic indicators point to a general trend of declining economic activities. Copper prices on which the economy depended for more than 95% of its export earnings, and over 50% of government revenue, contributing about 40% of GDP, generally declined starting from 1971 before rising again in 1974 and 1975 as **Figure 2.1** above shows. More serious damage to the economic was inflicted by the sharp rise in the price of oil following the 1973 Oil Crisis.

Sharp increases in oil prices coupled with the declining demand for copper on world market undermined Zambia's ability to import inputs for manufacturing, mining machinery, as well as agricultural supplies. Consequently, in real terms, the terms of trade for Zambia deteriorated continuously from 1970 onwards. From the index value of 100 in 1970 the terms of trade declined to about 35 in 1980 as shown in **Figure 2.4** below.

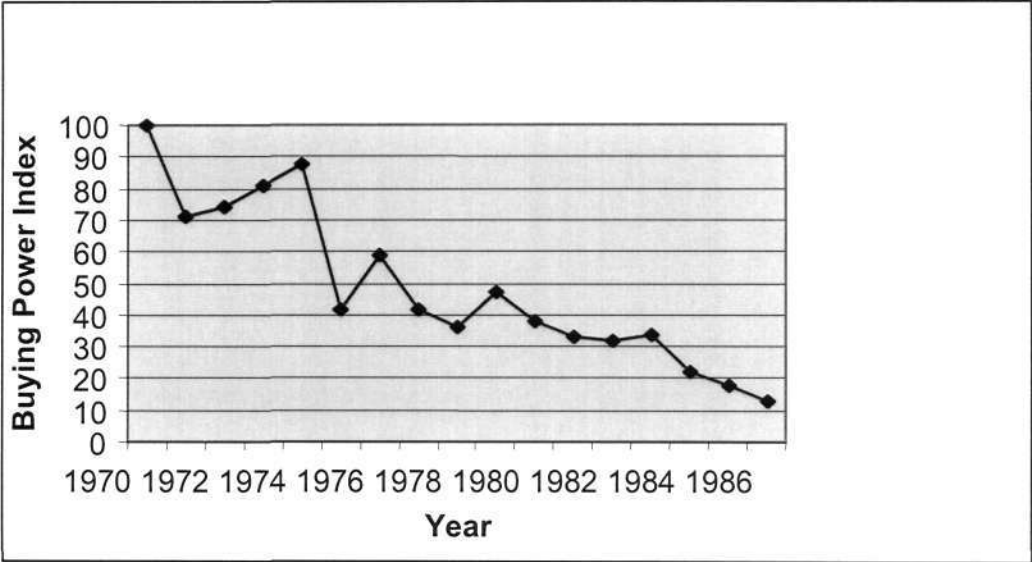
Figure 2. 4 Terms of Trade (1970-1988)



Source: Based on data from *Economic Reports 1976-1983*; *Bank of Zambia Report, 1976-1982*

In real terms, the value of Zambian goods that used to buy 100 units of import goods in 1970 were only able to buy 13 units of imported goods in 1986. In other words, if the value of 100 tonnes of copper used to buy 100 tractors in 1970, in 1986, 100 tonnes of copper could only buy 13 tractors! What this means is that Zambia had to spend an increasing large amount of export value to obtain import goods of even lesser value. The seriousness of the situation is clear when one considers the long term trend of the purchasing power between 1970 and 1986 shown in **Figure 2. 5** below. In the long run, this made it difficult for Zambia to import inputs it needed for productive activities. Implicitly, if all things remain the same, the economic activities in these circumstances are bound to decline. More seriously, such a situation creates pressure on the balance of payments account resulting in a critical shortage of foreign currency.

Figure 2.5 Buying Power of Export (1970-1986)



Source: Based on figures from Jamal & Weeks, (1993: 84) in Ferguson (1999:43).

As can be see from the **Table 2.9** below, starting from 1970, the balance of payments account experienced a deficit except in 1974 and 1979. Consequently, the foreign reserves in a situation of a persistent balance of payments deficit tend to be used to finance the deficit on both the current and capital accounts. While a negative balance on the foreign account is not always a bad thing, but if it persists for a long time, it often has severe negative economic consequences. What highlights the negative effects of the deficit on the foreign accounts in the case of Zambia is that the large part of the deficit during this period was mostly incurred on the current account and not the capital account indicating that the deficit was incurred to finance consumption.

The overall economic impact of the situation depicted in **Table 2.9** below is the pronounced slump in economic activities that is manifested in the decline in all aspects of the GDP as shown in **Table 2.10** below.

Table 2. 9 1965-1980 Balance of Payment Profile

Year	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980
Overall Balance	9.4	-24	6.4	126.3	113.8	-208.6	-107.7	-8.1	18.6	-250	-136	-224	-258.8	158.4	-219.7
Reserves	-9.4	24	-6.4	-126.3	-113.8	208.6	107.7	8.1	-18.6	250	136.2	224	258.8	-158.4	219.7

Source: Bank of Zambia (in Meyn,1984:10)

From 1970 to 1985, the GDP recorded an average growth rate of zero. In terms of GDP per capita, over this period, per capita's growth on average was negative. Although the sharp decline in GDP per capita income over this period may be attributed to the increase in population in the context of a declining economy, such a situation impacts negatively on social development and the welfare of the people.

In terms of GDP growth, three of the four years recorded a negative growth. And this downward trend in the economy continued such that by 1985, the per capita income was only 43% of what it was in 1970 and only 37% of the 1969 per capita income (Mwanwina, 1993: 70, See Table 2.10 below). For the purpose of this study, this poor economic performance implies that few resources were available for social development purposes especially improvements in water services, which as we shall see later in Chapter Five has weak political sway.

Table 2. 10 GDP & GDP Per Capita Growth Rates (Constant 1980 Prices)

Year	GDP(K, m)	GDP Growth Rate	GDP Per Cap (Kwacha)	GDP Per Cap. Growth Rate
1970	2766	-11	681	-15
1971	2769	0	535	-21
1972	3040	10	559	4
1973	3011	-1	624	12
1974	3211	7	668	7
1975	3135	-2	498	-25
1976	3271	4	497	0
1977	3114	-5	435	-12
1978	3172	2	414	-5
1979	2898	-9	429	4
1980	2986	3	438	2
1981	3253	9	455	4
1982	3161	-3	370	-19
1983	3099	-2	377	2
1984	3058	-1	339	-10
1985	3161	3	299	-12
Average		0		-5

Source: (in Mwanawina, 1993)

Other economic indicators such as employment levels also show a steady decline over the period of the SNDP. Table 2.11 below shows that while formal employment declined by close to 10% between 1974 and 1985, the labour force grew by over 44% during the same period highlighting the pressure on the labour market. Employment during this time was actually cushioned by the parastatal's effort to maintain high employment levels because their operational losses were offset by state subsidies. For instance, Mwanawina(1993) argues that much of the labour force during this time was actually being

absorbed by the “community, social and personal service” sectors where government was the dominant employer (76).

Table 2. 11 Formal Sector Employment 1974-1985

Year	Total Labour Force '000	No. Employee '000	% of Labour Force
1974	1430	386	27
1975	1479	393	26.6
1976	1527	370	24.2
1977	1586	370	23.4
1978	1641	367	22.4
1979	1698	374	22.1
1980	1761	391	21.6
1981	1824	374	20.5
1982	1880	364	19.5
1983	1938	365	18.5
1984	1998	364	18.2
1985	2060	362	17.6

Source: Republic of Zambia, CSO, *Monthly Digest of Statistics, October/November 1985*, Vol. 21, p.5 (in Mwanza, 1993)

In short, the context in which the SNDP was implemented was characterized by a contracting economy strangled by the shortage of foreign exchange, rising costs of import goods, declining government revenue, inflationary pressures unleashed by the soaring price of oil, poor performance of the parastals, and a growing deficit on the balance of payments account. The ripple effects of all these forces constrained production of Zambia’s main export earner—copper, a situation that further deepened the crisis.

2.2.1.4 Outcome of the SNDP

Targets set for the SNDP were based on the general assumptions of stable earning from copper and that the terms of trade would remain modestly favourable, but none of these conditions materialized. Contrary to the SNDP assumption, earnings from copper dropped and the terms of trade deteriorated sharply as indicated above worsening the foreign exchange crisis, which in turn hampered domestic production and export performance. Because of these factors most of the targets for SNDP were not realized. In fact the crisis in some sense even eroded what was gained from the FNDP as Mwanza observes:

In general, most of the gains of the FNDP were eroded during the SNDP period. For example the price of copper fell so much that by 1982, it had reached the lowest level since the end of World War II. Copper production also declined from 712 000 tonnes in 1976 to 525 000 tonnes in 1984 (1992: 4).

By the end of the SNDP provision of housing and other services such as electricity, water and sanitation, were left to the initiative of the individuals (Mwimba, 2002). Generally, during this period access to water was not given any significant attention other than being tied to the delivery of housing. In some cases, especially in peri-urban areas, housing units were erected before the units were serviced with water.

A tenable conclusion that can be offered here is that the development strategy adopted by government of using a “developmental state” to speedily deliver development failed to achieve its major objectives. And as the crisis deepened, attention was diverted from development *per se*, to survival techniques such as price controls, exchange controls, wage freeze and import quotas.

2.2.2 Third and Fourth National Development Plans

The TNDP was formulated in 1977 at the end of the SNDP and was supposed to run until 1981, but it only had a life span of less than a year since in 1978, the IFIs decided to “salvage” the situation given the deepening economic crisis. Thus, TNDP gave way to the IMF designed solutions to the economic and social problems in the country. The IFIs programme was designed to cover the period from 1978-1983, and it was hoped that by this time the economy would have been restructured and pulled back on the path to growth. At this time, the IFIs had not yet imposed a full measure of the infamous Structural Adjustment Programme (SAP)—the conditions under which Zambia could borrow the money were relatively relaxed (Mwanawina, 1993).

On the social development side the situation, over the long run, was negatively affected by the overall declining economy. A study done by the World Bank on the conditions in urban settlements in Zambia during the 1970s and 80s concludes that:

The situation of the urban poor in Zambia has deteriorated, particularly since the advent of the economic crisis during the past decade. Almost half of the urban population reside in squatter settlements with sub-standard housing and limited access to basic services such as water and sanitation. The health infrastructure is dilapidated which, compounded with inadequate water and sanitation infrastructure, has made water-borne diseases and periodic epidemics commonplace within urban areas. Deficiencies in and lack of access to these services have made the urban poor vulnerable to diseases and threaten the nutrition and health status of urban households in Zambia. Further, the education infrastructure within urban areas has also deteriorated and characterized with overcrowding and under-equipped classrooms (1993: 12).

2.3 Hijacked Development

2.3.1 First Structural Adjustment Programme (1983-1987)

Because of the deepening economic problems, the government agreed to go on the IMF programme for four years. Policy measures proposed in the first generation SAP were entirely based on neoliberal⁵⁸ economic logic of limiting the role of the state in the economy as well as liberalizing everything to let the market operate unencumbered. Policy reforms recommended included:

- Removal of price controls
- Liberalisation of interest rates
- Removal of import quota or any other restrictions
- Liberalisation of the foreign exchange (implementing the Dutch Auction System)
- Diversification of export earnings
- Reducing government expenditure to reduce budget deficit.

Despite implementing these measures, the average growth rate between 1983 and 1986 was negative, inflation was still rising as the Kwacha continued to depreciate against major currencies, and the budget deficit continued to grow (Situmbeko & Zulu, 2004). At this point, little attention was paid to social development— focus was on getting the economy back on course, assuming that the growing economy was going to take care of social development. This was largely the view adopted by the IMF and World Bank, though experience from many countries overwhelmingly proved the ineffectiveness of such approaches to development.

2.3.1.2 New Economic Recovery Programme

However, before the FrNDP, the government tried to implement a new programme called the New Economic Recovery Programme (NERP) which was designed in 1987 after the government decided to suspend the IMF/World Bank sponsored programmes. In a sense, this was a political survival strategy rather than an economic development strategy.

During the period that the IMF programmes were implemented, social upheaval emerged especially in major urban centres, mainly the Copperbelt Towns. This was fuelled by the removal of subsidies on essential food stuffs, and the sky-rocketing of prices for other basic commodities (Mwnawina,1993). Frequent demonstrations and looting of public properties and shops on the Copperbelt towns in 1986

⁵⁸ Using their financial leverage, the Bank and the Fund formulated a number of hurdles as conditions which had to be satisfied to be eligible for balance of payment support and other credit arrangements. Amongst the important conditions that governments were required to implement under SAP include, reducing national budget deficits by cutting down on government expenditure, public sector reform programmes, removal of subsidies, promoting free trade, privatization of parastatals, lowering interest rates, a free foreign exchange regime, reducing inflation and the devaluation of the currency (See Chitonge, 2005).

made it difficult for the government to continue with the IMF/World Bank programmes mainly because of the threat to social and political stability posed by the dissatisfied masses. Thus, when the government suspended the IMF programme in May 1987, it re-introduced food subsidies in form of maize meal coupons to target poor families, and reintroduced price controls on all essential food stuff including transport and fuel, reintroduced a fixed exchange rate regime, foreign exchange controls, and the ceiling of debt service to 10% of total export earnings (Beinstein & Kayizzi-Mugerwa, 2000).

After this unceremonious “divorce” with the IMF amid allegation of neo-colonialism, Dr. Kaunda focused on growing the economy from within. This is evident from the theme given to NERP: “Growing from Our Own Resources.” The main objectives of the NERP policy was more like SAP that went before it except the re-introduction of subsidies on basic food, price and exchange controls.

Although it has been argued that NERP achieved a lot of positive goals (Mwnaza, 1992), it is difficult to defend this assertion given that NERP had only been implemented for a few months before the reported positive growth was recorded. It is highly improbable that these positive results could be attributed to NERP. Much of it could be due to the good farming season that eased the pressure on the foreign account due to the drop in the importation of maize and other agricultural goods.

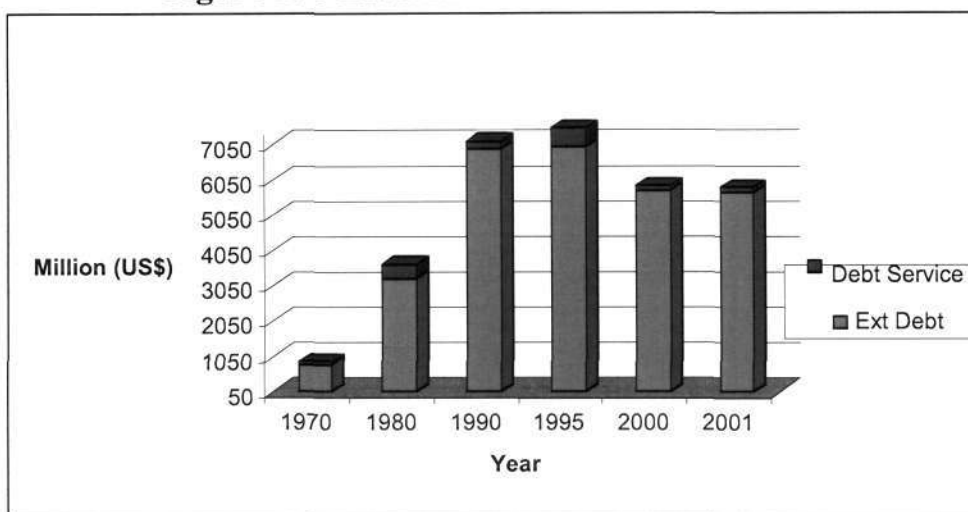
2.3.1. 3 Return of the Mutinous Son

As predicted by many observers, the government could not ‘go it alone’ for a long time. In 1989, the critical shortage of foreign currency forced the leadership back on its knees to the IMF/World Bank despite having accused them of being agents of neo-colonialism. At this time, the government was much weakened and had little power even to negotiate with the Fund and the Bank (Fraser, 2007). It was in this context that the Fourth National Development Plan was supposed to be implemented from 1989 to 1993. But events overtook it, and its implementation was derailed by the mounting political pressure leading to the 1991 general elections and the re-introduction of multi-party politics.

2.3.1.4 The Debt Crisis

Over this period of hijacked development, from 1978 when the IMF started to get directly involved in Zambia’s economy, external debt sky-rocketed as shown in **Figure 2.6** below. From a debt stock of about US\$ 800 million during the 1970s, external debt sharply rose to more than US\$3 billion in 1980 before climbing and stabilizing at the staggering figure of about US\$ 7 billion in 1990.

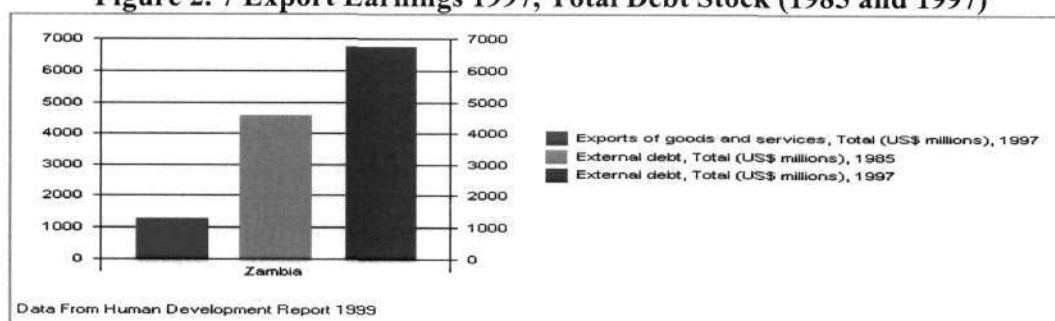
Figure 2.6 External Debt and Debt Service



Source: *World Bank*(2002)

Servicing of debt also increased with the increasing outstanding amount. As evident in **Figure 2.6** above, the servicing of debt seemed only to provoke more debt. Evidence of a “debt trap” is clear in **Figure 2.7** below showing the export earning to debt ratio of about 1:7.

Figure 2.7 Export Earnings 1997, Total Debt Stock (1985 and 1997)



The deteriorating economic situation in Zambia during the 1980s and 1990s makes it clear that the country was in no position to pay the debts, and yet Zambia had to borrow more money just to service the debt. The problem of debt becomes more acute when viewed as a ratio of other aggregates such as GDP and export earnings. As **Figure 2.7** above shows, Zambia’s export earnings in 1997 was only 16% of its total debt stock! Worse still, total debt rose from about US\$ 4.5 billion in 1985 to close to US\$7 billion in 1997. In terms of total debt to export earnings and GDP, the ratios were 525: 52 and 201:03 respectively in 1989 (Mwanza, 1992). What this means is that Zambia’s total external debt was more than 500% of its annual export earnings and more than 200% of its GDP! Another important point to note here is that after more than a decade of IMF and World Bank promised “magic bullet”

solution to the country's economic crisis, the country's economy did not show any signs of improving as illustrated by the various indicators above.

2.3.1.5 Change of Government and New Economic Reforms

At the end of 1991, the opposition party Movement for Multi-Party Democracy (MMD) defeated UNIP in multi-party elections held towards the end of that year. Reasons given in the literature for the MMD victory differ but one that is widely accepted is the MMD's promise to reform the economy and reverse the general economic decline experienced over the past decades⁵⁹.

Immediately after taking office, the MMD "embarked on what has been described as 'one of the most ambitious economic reform programmes on the African continent.' In the first phase, from 1991-1994, with the backing and approval of World Bank and IMF, two major types of programmes concerned with structural adjustment and macroeconomic stabilisation were implemented" (*Afronet*, 2000: 1).

Broadly, the reforms implemented were a continuation of the neo-liberal programme started in the early 1980s during the first generation SAP. Among the major elements included in the reform package were:

- Implementing a free exchange rate regime
- Lifting of import restriction by tariff rationalization
- Reduction of the public sector and state participation in the economy
- Cutting of public expenditure to reduce budget deficit
- Promotion of private enterprise
- Privatisation of parastatal companies
- Introduction of user fees for social services such as education and health

These reforms were contained in a policy framework called Economic Recovery Programme (ERP, 1992). Contents of this reform programme were to a large extent a child of the IMF and the World Bank in as far these reforms were conditions imposed on Zambia to be eligible for balance of payments support as well as project assistance funds.

Commenting on the reforms, the United Nations Development Programme Deputy Country Representative, Lebogang Motlana, noted that "Zambia probably has the most liberalized economy in the world" (in Situmbeko, & Zulu 2004). Further, the pace of the reforms can be seen from the fact that

⁵⁹ Though different factors accounting for the MMD victory in 1991 have been put forward, the most convincing explanation of the 1991 MMD landslide-victory is that the MMD won not on policy and economic reform grounds, but mainly because they preyed on people's need for change of leadership stemming from people's dissatisfaction with the 27 years rule by Dr. Kaunda. Akin to this was the public dissatisfaction with the declining social and economic situation as measured by the critical shortage of basic commodities such as sugar, cooking oil, bread, maize meal.

by 1997, 224 parastatal companies out of a total of 275 had already been privatized (Bienstein & Kayizzi-Mugerwa, 2000; Situmbeko & Zulu, 2004; *Afronet*, 2001).

2.3.2 Outcome of the Reforms

Generally, the outcome of the reforms up to 2002 have often been described as disappointing and chaotic (McCulloch, Baulch & Robson, 2001; Beinstein & Kayizzi-Mugerwa, 2000). Various economic and social indicators all point to a worsening situation, especially in the case of social development. For instance if we look at the GDP growth rates over this period, GDP recorded negative growth averaging -5.35 between 1990 and 1998. A similar downward trend was recorded in terms of the growth of non-agriculture as well as non-mining sectors. Although there was a slight improvement in 1996, the huge decline in other years makes these improvements insignificant in the medium to long-term performance of the economy as **Table 2.12** below indicates.

Table 2. 12 Key Macroeconomic Indicator 1990-1998

	1990	1991	1992	1993	1994	1995	1996	1997	1998
Total GDP Growth %	-3.4	-0.6	2.1	-0.6	-8.6	-2.3	6.6	3.3	-2
Non-Agriculture GDP Growth %	-2.5	-1.4	7.4	-6.6	-12.3	-7.8	8.2	5.1	-1.2
Non-mining GDP Growth %	-2.4	1.4	-0.1	1.8	-12.5	2.8	7.2	3.5	-0.8
Real GDP Per Capita index	100	94.4	95.6	92.6	81.6	73.6	76.5	77.5	73.2
Terms of Trade (1990=100)	100	105.9	94.5	82.4	89.1	99.5	76.8	93.4	83.8
Trade Balance	-0.7	-2.6	12.6	-3.8	-1	-5.8	-6.2	-5.5	-9
Current Account Balance % GNP	-19.7	-10.2						-4.1	18.9

Source: Central Statistics Office, *Quarterly Statistics & IMF 2002*,

The situation is worse when one considers the balance of payments account which consistently recorded a growing deficit as proportion of GNP. Much of this deficit can be attributed to the huge debt service payments which did not help to release pressure on the foreign account portfolio. As economic performance indicators, these figures highlight the fact that the reforms carried out from 1992 made little contribution, if any, to development efforts in general and improving the social welfare of the people in particular.

2.3.2.1 Employment Trends

In terms of employment, it is also clear that the privatization of companies over this period negatively affected formal employment profile which has a strong correlation with people's standard of living. As **Table 2. 13** below illustrates, a 50% decline in the mining and manufacturing sectors employment was recorded between 1990 and 2000. Agriculture also recorded a fall in paid employment of more than

35% over the same period. In terms of overall employment, there was a decline of more than 12%. This should be seen against the background of the registered increase in the labour force (McCulloch, Baulch & Robson, 2001). Putting these facts together, the situation highlights a general growth in unemployment with decreasing chances of being employed for new entrants to the labour market⁶⁰.

Table 2. 13 Paid Employment 1990-2000 ('000)

Year	Mining &				Total
	Public	Manufact	Agriculture	Other	
1990	159	142	80	162	543
1991	162	140	78	164	544
1992	171	136	82	158	546
1993	168	126	83	143	520
1994	174	108	79	136	497
1995	173	108	69	135	484
1996	176	95	68	140	479
1997	170	92	59	155	475
1998	174	86	59	157	467
1999	184	85	60	148	477
2000	185	83	50	158	476

Source: Based on *Figures from Central Statistics Office, C SO, 2002*

2.3.2.2 Failed Reforms

Overall, the reforms of the 1990s failed to translate into any significant economic turn around as anticipated. Although the poor performance during this period has been attributed to what the World Bank has described as “uneven implementation and limited commitment to policy reform” (Situmbeko & Zulu, 2004:37) on the part of government, the appropriateness of the policies can be questioned. Even the Bank itself admitted this fact. In one of its reports, the Bank acknowledged that the apparent waning of commitment to policy reform from the government may be attributed to the fact that reforms over this period have not achieved much in terms of reversing the downward trend in the economy (ibid). In a report reviewing the outcome of SAP in Sub-Saharan countries during the 1990s, the World Bank itself came close to admitting that the reforms have actually not worked.

No African country has achieved a sound macroeconomic policy stance – which in broad terms means inflation under 10 per cent, a very low budget deficit, and a competitive exchange rate.... Social spending, while not showing an overall decline during the adjustment period, is misallocated within the health and education sectors. And the politically difficult reform of the public sector enterprise and financial sectors lags well behind (in Hass and Ross, 1997: 578).

⁶⁰ As noted earlier, huge decline in employment was actually prevented by the slight improvement of employment levels in the public sector over this period. Employment from the public sector increased from 159 000 in 1990 to 185 000 in 2000.

2.3.2.3 Domestic Political Context

Implementation of reform programmes should be seen in the context of domestic politics. In the earlier days of the MMD government, the reforms were implemented without much opposition. But as the negative impact of these reforms surfaced amidst the declining of formal employment, rising inflation (in fact hyper inflation of more than 300% in 1994 onwards), introduction of user fees on all public services, further implementation of reforms attracted a lot of public criticism. However, the opposition from other political parties and civil society organizations including the labour unions was weak, with the MMD constituting almost a de facto one party. Furthermore, the trade unions at this time seemed to have partnered with the labour union-based government (Bartlett, 2000).

Looking at the time that the reforms were implemented, little was done by the IMF and the World Bank to strengthen the institutional capacity to ensure that reforms produced the intended results. Instead, focus was on getting the macroeconomic fundamentals right. A key deficit in the reform was the failure to take into account the policy trade-offs. It was assumed that implementation of these policies had no opportunity costs.

2.3.2.4 Impact on Social Development

The Afronet Report sums the general social welfare trend of the period between 1992 and 2000.

The economic reform program has been less than successful in stimulating expansion while it has created untold hardship for the majority Zambians. Between 1992 and 1998, and in real terms, the average percentage change in Zambia's gross domestic product has been negative at -0.2 percent. Government figures attest to a net loss of some 81 000 paid jobs in the formal sector over the period 1992-1998. The ZPA [Zambia Privatization Agency] records eleven state owned enterprise as liquidated between 1994 and 1997 in preparation for privatization and lists a further 28 companies, as of December 1997, as under liquidation or in the process of being wound up Rationalisation of the civil service, if implemented to plan, will see 57 000 redundancies (2001: *Introduction*)

2.3.2.5 The Water Situation

Regarding the situation of water in general, it is interesting to note that it was during this period of hijacked reforms that water issues were given considerable attention. For instance, the first ever National Water Policy (NWP) was formulated in 1994. Among the policy strategies outlined in the document which are relevant to this study are the seven Water Sector Principles (see Appendix iv). What is interesting to note here with regard to access to water is that the policies were formulated during the time when the overall policy framework was largely steered by neoliberal conceptions of society and economic development. Given the dominance of the neoliberal paradigm at this time, the focus of the water reforms has not been so much on increasing access to water for those who have no

access, but on reforming the sector assuming that reforms such as the introduction of “full cost recovery” and the commercialisation of water services would make the sector viable and sustainable (NWP, 1994). Emphasis in the policy statements has been on treating water as an “economic good” and realizing its value through the market (see NWP, 1994: #2.2.7). Apparently, the policy mood in the country was largely following the growing emphasis of the economic value of water that dominated the global water debate during the early 1990s following on the Dublin and Rio summits (see Sections 4.1.2.3) Therefore, so far, not much has been achieved in terms of increasing access to water over this period especially for the poor sections of society. However, the reforms initiated during this period form the basis on which current efforts to increase access to water can be built. Both the Transitional National Development Plan of 2003 -2005 and the Fifth National Development Plan (2006-2011) are building on this policy framework.

Conclusion

This chapter has sketched out the long history of Zambia’s journey to economic and social development. The country’s development history has been divided into three periods: “boom”, “crisis” and “hijacked development.” While this division is not a systematic sorting of the various trends in the country’s development history, focus has been on the overall impact on social and economic development.

In the earlier periods immediately after independence, significant progress was made towards bringing development to the people, but this time of hope was shortened by both external as well as internal factors. Consequently, the subsequent period contributed little to the development agenda set in the earlier times.

During the early 1970s when the economic crisis started, the focus of government, to a large extent, shifted from addressing directly development issues such as the provision of social services like water, roads, electricity and sanitation to negotiating programmes for economic and political survival. The two oil crises during the 1970s accompanied by the general fall in the demand for copper, created more challenges in terms of development. Seen at the beginning by the government as a temporary condition, this situation however continued and worsened throughout the 1980s.

The deteriorating economic performance as indicated by the shortage of foreign currency, the growing balance of payments deficit and the decline in investments, particularly low fixed capital formation, presented further challenges to the development agenda. The cumulative effect of all these challenges has been that, in the long run, even the small gains made during the boom time have been eroded by the poor performance of the economy in later periods.

From the above development strategies outlined, a number of major development challenges seem to surface. These include:

- Lack of continuity between development plans
- Implementation of programmes outside the development plans (failure to stick to plans)
- Divergence of between policy and programmes implemented
- Unintegration of strategies
- Absence of programmes that flesh-out the implementation of outlined policies

These challenges became even more pronounced during the hijacked period when the state was actually supposed to reduce its participation in the economy as one of the major reform recommendations of the 1980s and 1990s. The direct consequence of this has been the reduction of the capacity of the state to even implement the programme that the reforms themselves entailed. In what has come to be known as the 'paradox of orthodox development policy' (Gyimah-Boadi and de Walle Nicolas, 1996), the discrepancy inherent in asking the state to implement reform programmes when it is being asked to scale down from commanding heights is evident.

In relation to access to water, there are a number of observations to note from these development challenges:

First, it is interesting to note that from the time of independence, access to water has not been treated as a basic human right. This is in spite of the socialist/humanist political philosophy (humanism for instance) adopted by the Kaunda government, and also the fact that socioeconomic rights received backing from the then 'second' and 'third' world governments (Bedjaoui, 1991b). Access to water was first mentioned as a human right (though not a justiciable one) in the 1996 amended Constitution, at the time when the emphasis was on treating water as an economic, rather than a public good. Chapter Four discusses these issues in more detail.

Second, the restructuring programme embarked on since the early 1980s seem to have further undermined the state's capacity to plan and implement development programmes. This has had serious consequences for the water supply and sanitation (WSS) sub-sector mainly because maintenance and

development of WSS requires long term planning and the ability to implement policy consistently. As noted in Chapters Five and Six, even cases where the policy is clear, there are no concrete programmes to implement the policy—brilliant policy statements exist only on paper. For instance, the *Peri-urban Water Supply and Sanitation Strategy* approved in 2000 has not been implemented in any significant way after six years. The apparent disarray of systems seems to arise from the incapacity to plan and implement plans. This has serious consequences for RBA which relies much on the ability to formulate strategy and implement them over time as illustrated in Chapter Three.

Third, the persistent economic contraction that is evident since the mid 1970s has had negative impact on the situation of access to water. Because of its weak political clout, provision of water services has been one of the ‘first victims’ of the shrinking development resources during the time of economic decline. This is evident from the resource allocations to the sector, and Chapter Five discusses this challenge in more detail.

Fourth, the growing emphasis on water as an economic good as opposed to being a public good during the 1990s has had serious consequences especially on the levels of access to water among the poor sections of the Zambia society. The policy of commercialization, in particular, through which efforts to realize the economic value of water have, and are being advanced, has resulted in unbalanced improvements which have left poorer strata of society, like peri-urban areas, largely ignored. Chapters Five and Six present some of the evidence of the skewed impact of commercialisation.

CHAPTER THREE

NEW WINE IN OLD WINE-SKIN? THE RIGHTS-BASED APPROACH TO DEVELOPMENT

Man being born, as has been proved, with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man, or number of men in the world, hath by nature a power not only to preserve his property- that is, his life, liberty, and estate.... (John Locke, *Two Treatises of Government*, 1690).

Right, the substantive right, is a child of law: from real laws come real rights; but from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poison, come imaginary rights, a bastard brood of monsters, gorgons and chimera dire (Jeremy Bentham—*Anarchical Fallacies* 1843).

Human rights activists are often quite impatient with such critiques. The invoking of human rights tends to come mostly from those who are concerned with changing the world rather than interpreting it [Paraphrasing Karl Marx]. It is not hard to understand their unwillingness to spend time trying to provide conceptual justification, given the great urgency to respond to terrible deprivations around the world [Amartya Sen, 2004]

Introduction

The concept and practice of human rights are contested domains of our socio-political life. Despite being essential values of any society,⁶¹ human rights as something which is due to human beings by virtue of being *human* have been differently conceptualized and practiced. Although every society has a way of assigning certain entitlements, such as life, reason, justice, citizenship or belonging, to human beings as categorical attributes, the question of what these human rights are has been a controversial one. While there has been strong assertions⁶² that human beings have certain basic entitlements *qua* human beings, the meaning and practical implications of these assertions have been fiercely contested.

As can be seen from the above quotations, there are different views of what rights are and how they should be applied. In our present day, however, the contestation is more about the suitability of human rights as instruments of social change; as tools for improving the lives of people especially the poor, and not so much about the concept of rights. This chapter explores these debates focusing on the link between human rights and development.

⁶¹ Ife (2002) has argued that though the same vocabulary of rights may not be used, but the principle that human beings are endowed with fundamental “valuables” which should be protected and cherished, is common in all societies or cultures.

⁶² For instance, the *American Declaration of Independence*, *French Declaration of the Rights of Man and Citizen*, and more recent times the United Nations *Universal Declaration of Human Rights* in 1948 affirm that human beings are endowed with “inalienable rights” which are declared to be a ‘self-evident.’

What emerges from this discussion is that although RBA is a relatively new approach in development theory and practice, its implementation is hindered by the deeply entrenched notions of human rights. A key point to note when discussing RBA is that while governments enthusiastically sign international human rights treaties, documents and plans of action, there is little enthusiasm in translating the obligations generated by these instruments into programmes, and later on, concrete actions which make a difference in the lives of the poor. In this sense, it can be argued that while RBA is strong on rhetoric, it is weak when it comes to matters of real-politik. Consequently, the greatest challenge facing RBA is ensuring that governments move beyond rhetorical commitment to actions which translate human rights into tangible entitlements. In spite of these daunting challenges, RBA still offers one possible way of ensuring that states, as duty bearers, take reasonable measures towards fulfilling these obligations. In this context, civil society has a critical role to play in ensuring that the duty bearers take appropriate actions to fulfil their duties while making sure that the right-holders have the capacity to assert and claim their rights.

The preceding chapter identified the various development challenges encountered in the development history of Zambia. What emerged from the review of Zambia's development strategy is that issues of access to water in the post independence era were not given attention in isolation but as an essential component of the housing package. Progress made in improving water supply during the years following independence was reversed by deteriorating economic situation that worsened the situation of access to water. Surprisingly, access to water was referred to as a human right during the mid 1990s at the time when the dominant discourse was to treat water as an economic good. Challenges of implementing RBA must, therefore, be viewed in the context characterised by the economic crisis and failed development.

This chapter has two parts. The first part briefly reviews the debate around the concept of human rights. But since the approach adopted in this study does not just have a human rights dimension but also the development dimension to it, the second part addresses the *hybridization* of human rights and development. Focus in the second part is more on understanding the meaning and practical challenges involved in implementing RBA. Often development agents have concentrated more on popularizing the approach with little attention given to what exactly this approach entails. The last section of the second part proposes a model for an assessing implementation of human rights which can be applied in evaluating and monitoring RBA development projects and programmes.

3.1 Human Rights Debate

3.1.1 The Business of Rights

Clearly, any discussion or adoption of an approach that is perceived to have a human rights base, must first attend to the “business” of rights. In ordinary usage, the concept of human rights seems to be quite obvious that it rarely calls for elaboration of what one means when he or she claims that X or Y is his or her fundamental human right. A notion of rights at this level seems to carry a force that is so compelling to the listeners that the value of such statements are taken to be self-evident. As Sen has noted, “[f]ew concepts are as frequently invoked in contemporary political discussions as human rights”(2004:1).

But on the theoretical level, foundations of human rights are questioned and their practical implications widely contested. Regardless of the strong assertions of human rights in declarations such as the *French Declaration of the Rights of Man and the Citizen* (1789), the *American Declaration of Independence*(1791), and the *Universal Declaration of Human Rights* (1948) which take these rights as self-evident, the debate about human rights still rages especially when it comes to application.

3.1.2 The Semantics of Rights

Questions of what exactly are human rights have often attracted heated debates. This should not be surprising, however, given the concept’s wide application and the diverse functions it serves. Exploratory the usage of the concept of right, Corbin (2005) discovers that the word *right* can take up to 20 different meanings in different circumstances⁶³. Though that in itself does not necessarily imply that the term *right* is vague, the multiple ways and the fluidity in which the word is used tend to lead to problems of equivocation and ambiguity. Of course there is no confusion between someone using the term *right* in a phrase like, when you come to the T-junction turn “*right*”, and someone who says the *right* thing to do is to pay your TV license. In this instance, even though both expressions use the same word to mean different things, the two expressions do not give rise to any trace of ambiguities. But when someone uses the word *right* in an expression like, “it is my *right* to vote” and “I have a *right* to be paid at the end of the month for the work done,” the meaning that the word *right* acquires in the two expressions can lead to ambiguities. Though they both encapsulate the same principle that there is something due to the right-holder; in the first instance, the right imposes a duty on others not to do

⁶³ For instance, in Continental legal system the word *right* can also be translated to mean law as in *droit, jus, Recht* and *dirrito*. See Kent (1970) and Feinburg (1973). H.L.A. Hart, although he is talking about a legal right, acknowledges that “[t]he notion of a legal right has proved in the history of jurisprudence to be very elusive...” (1982, 162).

anything that may prevent the right-holder to accomplish the objective of the rights (negative right); while in the second instance it imposes a duty on another person(s) to perform certain functions towards the right-bearer, thereby engendering a positive right. In this case, clarifying the meaning assigned to the word *right* is essential to avoid a clouded meaning which often leads to a clouded concept, and “[o]ne whose own mind is cloudy and confounded is certain to convey only cloudy and confused thoughts to others...” (Corbin, 2005: viii).

While it is not easy⁶⁴ to formally define the word *right*, it is perhaps helpful to attempt to categorise the different usages that the word can acquire in different contexts. Wesley Hohfeld (1919) attempted this. Although Hohfeld’s categories are mainly concerned with ‘jural relationships’ with the view of bringing some clarity to analytical jurisprudence, his scheme is an important one to bear in mind in the course of the discussion on human rights. Instead of formal definitions, Hohfeld proposed to categorize “the various relations in a scheme of ‘opposites’ and ‘correlatives,’” and apply these relations to individual concrete cases.

3.1.3 Hohfeldian Categories

Accordingly, Hohfeld comes up with a scheme containing four pairs of opposites and correlatives signifying the different relationships that might emerge from the use of the term *right* as illustrated in **Table 3.1** below. In daily usage, the word *right* can be used in place of relationships that in actual fact are cases that fail to convey the meaning of a *right* in the ‘strictest sense.’ For Hohfeld, the only situation that merits to be denoted by the term *right* is when a said right is correlated with a duty—in other words, a *claim-right*. In this case, *privileges, powers* or *immunity* are not supposed to be confused with a right in the strictest sense of the term. In the example above, the person saying “I have a right to vote” is using that term *right* to refer to a liberty rights (Chitonge, 2005), which implies that others have no right to obstruct his execution of the elements of the right. But the person who says “I have the right to be paid for work done” has a *claim-right*, meaning that the other person has the corresponding duty to fulfil the demands of a right.

⁶⁴A number of authors have noted the dangers of attempting to provide a formal definition of words such as right. Issuing this caution, Feinburg (1973) argues that efforts of trying to define words such as *rights*, often lead us to more confusion that requires further definitions. “Here as elsewhere in philosophy” he argues “this will have the effect of making the commonplace seem necessarily mysterious. We would be better advised not to attempt a formal definition of either ‘*right*’ or ‘*claim*’ ... (Feinburg, 1973: 64). Dworkin, [whom MacIntyre (1985) describes as the “latest defender” of human rights (69)], also highlights the inherent problem of trying to formally define the term *right*, arguing that the term cannot be defined without begging the question (1977: 90). Hohfeld also issues a word of caution against undue obsession with formal definition of such ‘*sui generis*,’ terms as *right*. In many instances, “attempts at formal definition are always unsatisfactory, if not altogether useless” (1919: 36).

Table 3. 1 Hohfeldian Categories

	Rel.1	Rel.2	Rel.3	Rel.4
Opposites	Right	Privilege	Power	Immunity
	No-right	Duty	Disability	Liability
Correlatives	Right	Privilege	Power	Immunity
	Duty	No-right	Liability	Disability

Source: Compiled by author

Though the above scheme does not define the term *right*, what is clear from the scheme is that the term *right* can acquire different meaning depending on the circumstances. A right can be used to mean a claim-right, privilege, power or immunity. Given this ambiguous nature of the term, it becomes essential to classify the different meanings assigned to the term in different situations.

Although Hohfeld narrowed the categorization to a legal application of the term *right*, his four categories cater for the different meanings assigned to the word *right* under different contexts and, to a large extent, reflects the “generous interpretation of the term right corresponding with its use in ordinary language” (Jones, 1994: 13).

3.1.4 Application of the Categories

Certainly, these different uses of the term *right* highlight the important fact that the way the term is understood influences the assertions made about rights, which in turn have practical sway on how rights (such as the right to water) are practiced. Following from this, it can be argued that the controversial nature of the concept of a *right* itself may be one of the factors that constrain the implementation of human rights. It is for this reason that it becomes important to pay attention to the political and social meaning given to the term *right* at all levels⁶⁵ of society. In this study, particular attention is paid to the meaning given to the concept of rights at various levels of society. Though the meaning shared by a community may not be explicitly stated, it is often mediated or embodied in the verbal as well as non-verbal responses and actions taken and not taken by individuals or groups.

3.1 .5 Practical Questions

What emerges from Hohfeld’s scheme is that although the Hohfeldian classification of the different meanings of the term *right* helps to show that there are different ways in which the term can be used, it however does not clarify the question of what meaning to adopt in a given situation. In fact, the

⁶⁵ Attention will be paid to the meaning of the term *right* at the policy/regulation, project/programme as well as community levels.

clarification to some extent is even more confusing as Hohfeld himself demonstrated by arguing that a *right*, “in the strict sense” is only a *claim-right* (Hohfeld, 2005 [1919]:38; Jones, 1994: 13). Further, the Hohfeldian classification’s strict confinement of rights to legal relationships leaves out other important meanings allotted to the term. Other than that, the Hohfeldian analysis does not provide us with much help on the practical question of what having a right like the right to water constitutes. Does the right to water mean that the person whose water is disconnected or a person who draws dirty water from a shallow well has a “claim-right” against the government minister or any other official responsible for water affairs? What category of right should we use to make sense of the right to water, in such instance?

3.1.6 Critique of Rights

3.1.6.1 Human Rights Discourse: the Contours of the Debate

The human rights debate is not just about what meaning should be given to the term *right* or what should qualify as human rights, but also about the ontological and epistemological foundations of rights. Different aspects of human rights have been challenged and defended as evident in the critiques and counter critiques below. Though there are numerous critiques on human rights, below five general categories of critiques are explored briefly.⁶⁶

3.1.6.2 Ontological Critique

The ontological critique of human rights questions the actual existence of human rights. Ardent critics of human rights such as Jeremy Bentham, have long dismissed human rights as nonsensical and natural rights as ‘rhetorical nonsense’. Bentham claims that “*Natural right* is a round square, an incorporeal body; a son that never had a father”(1987[1816]: 53). Reacting to the *French Declaration of the Rights of Man and the Citizen*, Bentham dismisses any metaphysical or theological foundation of human rights stressing that, “there are no such things as *natural rights*—no such things as rights anterior to the establishment of government...” (ibid, 52).

In more recent times, McIntyre (1985), following on Bentham, argues that, “there are no such rights, and belief in them is one with belief in witches and unicorns”(69). McIntyre dismisses the notion of human rights on two grounds. One, he argues that the idea of human rights only came into fashion

⁶⁶ Of course some of the authors have elements of more than one category. For example, McIntyre seems to have both ethical relativist as well as positivist threads in his argument. Brown’s critique has both ontological and well as relativist elements. Other critiques point to the fact that there are contradictions in asserting one right in that one’s right stand in conflict with another’s rights. But that is a grave misunderstanding of rights as entitlements that draw attention to basic human needs.

during the Eighteenth Century founded on the concept of 'natural rights.' His other argument is that human rights are not universal because if they were universal, then they should have been recognized in the centuries before the emergence of natural rights. To this effect, McIntyre argues that,

the concept [of human rights] lacks any expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century. From this it does not of course follow that there are no natural or human rights; it only follows that no one could have known that there were (ibid).

As evident from the foregoing, the ontological critique of human rights challenges the foundations of the concept of human rights. In its simplified form the ontological critique claims that human rights conceived universally have no independent existence. Here the age-long problem of the ontological status of '*natural rights/law*' is at the centre of the argument. Critics such as McIntyre and Bentham challenge the foundations of the concept of human rights on the basis that there is no such thing as *natural law* upon which we can establish *natural rights* and consequently *human rights*. Similarly, Brown (1999) argues that human rights as such "have no separate ontological status; they are a by-product of a particular kind of society" (120).

Brown develops his argument on the premise that there is no universal *human nature* or *natural law* which could be proposed as the foundation for universal human rights (ibid, 119). Simply put, the ontological critics deny notions of *natural law*, *human nature*, *equality*, *inherent dignity*, on the basis that these concepts are merely metaphysical abstractions.

3.1.6.3 The Relativist Critique

The other major critique of human rights which I shall refer to as the 'relativist critique' is based on cultural relativism. This critique is opposed to the principle of universal human rights on the basis of cultural diversity. In general, relativists argue that given the diversity of cultures, customs, traditions, ethical and moral values, and that human rights essentially encodes moral values, asserting a universal human rights system amounts to a disregard of certain values in different cultures. The basic argument of the relativists is that moral values, ethical principles, cultural practices differ from one culture to another, and therefore, one has no ground on which to build a universal system of values called human rights (in Booth, 1999:32).

Based on this premise, proponents of the relativist critique argue that even "such documents as the *Universal Declaration of Human Rights*, passed by the United Nations in 1948, are futile

proclamations, derived from moral principles valid in one culture and thrown out into the moral void between cultures” (in Vincent, 1986: 38).

3.1.6.4 Positivist Critique

The third major human rights critique is similar to the ontological critique except that its main points of contention are *codification* and *enforcement*. I will call this strand of critique *legal positivism*⁶⁷. According to this school, rights are only those that can be enforced in a court of law (Sieghart, 1983:12). Again here Bentham argues that there are no such things as laws without being first of all prescribed and secondly without an enforcer. Similarly, Austin, one of the ardent sponsors of legal positivism, argues that it is very important to distinguish “*law as it is*” from “*law as it ought to be*” (in Hart, 1983: 50). Bentham and Austin’s efforts at making this distinction seem to arise from the need to separate law from morality so as to promote clarity in legal analysis and decisions; something that could only be achieved by delivering “law from the dead body of morality” which burdened law and makes it cumbersome (ibid, 55). For example, Brown has difficulties with international human rights regimes on the grounds that their implementation or enforcement is problematic (1999:114-15).⁶⁸

And the idea here is that laws, and therefore rights, are only those that are clearly prescribed and enforceable by a court of law. Authors with a positivist persuasion disparage natural or moral law foundation of human rights arguing that natural and moral law foundation is “intuitive, non-determinable and metaphysical, hence unhelpful” (Freedon, 1991: 5). Principally, as a reaction to rationalism, positivists contend that belief in natural or moral law is not “objectively verifiable” and therefore would not be of much help in establishing the truth and settling disputes in society (Sieghart, 1983: 12; Smith, 1996: 19). As such, legal positivism recognizes a certain group of human rights; it does not deny that there are no human rights.

3.1. 6.5 Cranstonian Critique

The Fourth major human rights critique is what I will refer to as the Cranstonian critique, with Cranston Maurice the main proponent of this critique. Although the argument is a partial critique of human

⁶⁷ Legal Positivism is defined by Hart --one of the later proponent --to “mean the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact it has often done so” (1994/1961:186). Sometimes, positivism is interchangeably used with empiricism, but it is essential to distinguish the two to avoid confusion. What seems to be clear is that positivism uses empiricist epistemology, but as a methodology, positivism is different from empiricism (see Smith, 1996: 17).

⁶⁸ In fact strong versions of legal positivism deny the existence of international law in general on the basis that there are no enforcement mechanisms at the international level (see Sieghart, 1983).

rights, it can have far reaching implications as we shall see later when looking at the *Zambian case*. Essentially, Cranston's (1973) main argument is that only civil and political rights such as the "right to life, liberty, and a fair trial" are the *genuine* human rights. In Cranston's view, economic, social and cultural rights such as the right to old-age pension, the right to water are politically as well as philosophically bankrupt. According to Cranston, recognizing economic, social and cultural rights does not only endanger the respected concept of human rights, but that such a move does not make sense; "such a confused notion of human rights hinders the effective protection of what are correctly seen as human rights" (65).

To defend what he calls "traditional human rights," Cranston uses a 'three tests' criterion which an alleged 'right' should meet if it is to graduate into a *genuine right*. The three tests are *universality*, *paramount importance*, and *practicability tests* (Cranston, 1973:66).

i. Universality Test: What Cranston means by the universality test is that a genuine human right should be a right *of all*, and that it should impose a duty *on all*. In this sense, the universality test poses no major problem to the traditional conception of rights since universality is an attribute of human rights in the sense of human rights being attributed to *every human being*. However, Cranston argues that rights such as a right to rest, leisure, reasonable working hours and periodic holidays recognized in the ICESCR in *Article 7 (d)* do not pass this test because such rights are only claimed by a group of human beings (employees) and not by *all* the people. On the basis of this argument, Cranston disqualifies such rights from being *genuine* human rights, arguing that a right to a paid holiday or leisure or rest, for instance, is "a right that is necessarily limited to those persons who are *paid* in any case, that is to say, to the *employee* class. Since not everyone," Cranston contends, "belongs to this class, the right cannot be a universal right, a right which in the terminology of the Universal Declaration, 'everyone' has" (1973: 67).

ii. The Practicability Test: This test in essence is based on the "generational" notion of human rights which classifies human rights into three generations: first *generations* (civil and political rights), *second generation* (socioeconomic rights) and *third generation* (solidarity rights, e.g. the right to development). The underlying principle behind this test is the notion of negative and positive rights, with the latter group of rights seen as those rights that require the State to *do* something in order to fulfil the rights, while the former set of rights as those rights that require the state not to interfere with the rights of citizens (De Waal, 2001:432; Dworkin, 1982).

Using this classification, Cranston argues that since all economic, social and cultural rights require *positive action* by the state or at least someone with a corresponding duty. Thus, in Cranston's view, in situations where there are no clearly identified duty-bearers, it is practically impossible to claim these rights. And "[i]f it is impossible for something to be done, it is absurd to claim it as a right." (Cranston, 1973: 68). According to Cranston, this is not the case with civil and political rights⁶⁹; all that is needed is to simply secure their legislation since these "rights are for the most part rights against government interference with man's [sic.] activities...", which require no more than government to restrain itself from infringing individuals rights" (ibid).

iii. The Paramount Importance Test: With regard to this test, although there is some ambiguity over what *paramount importance* means, Cranston seems to refer to the contribution to human well-being that an alleged right makes. For example, a claim to leisure weighs comparably less than a claim to health care or access to water. It is in this sense that a claim should only be accorded a right status if it proves to be of *superlative* importance. For instance, while it is a "paramount duty to relieve great distress," it is not a "paramount duty to give pleasure" (ibid, 67). In this sense, a claim qualifies as a genuine human right only when its contribution to human well-being is not of fictitious or frivolous nature. The rationale behind this test is that a claim of paramount importance is backed by a moral duty while a claim without paramount importance such as leisure does not have a compulsive *moral obligation*; it is only a matter of *virtue* (ibid).

Thus, in the Cranstonian critique, while the *universality test* may not pose a great difficulty for many economic, social and cultural rights (such as the right to health, access to clean water and sanitation, and the right to food) in that these entitlements can be said to belong to 'everyone'; most of these rights, however, fail to pass the *practicality* tests. In effect, the Cranstonian catalogue of rights systematically excludes most (if not all) economic, social and cultural rights on the basis of the *practicability* test, which ties the existence of a right to the availability of resources.

Cranston in his quest to 'sanctify' the list of human rights argues that affirming the so-called economic, social and cultural rights as human rights is to "push *all* talk of human rights out of the clear realm of the morally compelling into the twilight world of utopian aspiration" (ibid, 68).

⁶⁹ Paradoxically, economic, social and cultural rights have been very popular in the Third World Countries that have limited resources though Cranston argues that this was a move by the developing countries to "squeeze economic aid out of rich ones" (76). As noted in Chapter Two, although Zambia showed some inclination towards socialist ideology, the language of rights, particularly socioeconomic rights, did not enter into the development discourse.

3.1.6.6 Social Change Critique

To the above critiques of human rights should be added the view that human rights are ineffective tools for effecting desirable change in society. One of the major proponents of this view is Karl Marx. Marx's main critique of rights is that rights promote individualism which leads to alienation or separation of individuals from the community, and therefore makes it difficult to realize social change. Thus, for Marx, rights were created to be the "servant of egoistic man, [and] the sphere in which man behaves as a communal being is degraded below the sphere in which man behaves as a partial being" (Marx, 1987[1843:146]). However, as Waldron (1987) has noted, Marx's views on rights are not formulated with clarity that would merit to be analysed as a systematic critique. The main question that is addressed in "*On the Jewish Question*" is not really human rights, but the relationship between state and religion and how this constrains the former to the point that the state needs to be freed from religion for it to be able to grant true freedom to the people.

On the practical front, Duncan Kennedy, though focusing mainly on the legal discourse of rights in the United States, laments the dwindling power of rights to bring about change in society. In an effort to defend his "loss of faith" in the legal reasoning as a route for reaching definitive socio-political goals, Duncan (2001) sees legal reasoning including the 'rights talk' as 'mere rhetoric':

Once I believed that the materials and the procedure produce the outcome, but now I experience the procedure as something I *do to* the material to produce the outcome I want. Sometimes it works and sometimes it doesn't, meaning that sometimes I get the outcome I want and sometimes I don't" (10-11).

In other words, according to Duncan, while rights may be an effective tool for reaching some desired social ends, they have lost the ability to produce predictable and definitive outcomes or what he calls "closure".⁷⁰

3.1.7 Counter-Critiques

3.1.7.1 Relativist Concerns

In view of the relativist contention against human rights, the arguments are based on a number of assumptions, which when carefully scrutinized render the arguments vulnerable. The first assumption upon which cultural relativism is built is the supposition that culture is static and impervious like a billiard-ball. In addition, relativists assume that cultures are mutually exclusive. But an empiricist

⁷⁰ Kennedy writes in the context of the American rights discourse articulating his skepticism about the efficacy of legal reasoning in bring about change especially the empowerment of the disadvantaged groups such as women, racially discriminated groups, gays and lesbians, disabled and minorities.

approach to culture, which the cultural relativists appeal to, reveals that cultures are neither static nor impervious, but dynamic creations modelled and shaped by people's experience.

If culture is seen as an evolving phenomenon it is possible to create space through which cultures can influence each other in the course of human interaction, thereby establishing an intersection which can be common to all interacting cultures. Such an inter-play of cultures need not essentially entail disregard, disrespect, domination and disappearance of other cultures. To the contrary, these unique social units can enrich each other consciously and naturally in the process of interacting with one another (Harvey, 2000:88).

Needless to mention is an almost truism that an authentic evaluation of the relativist position on the universality of human rights begs the question of whose interest such a position defends. Is it the interest of the ordinary poor peasant or some political or ideological 'views'? As Booth rightly observes, often defending culture serves "power interest" and has very little to do with the interests of the poor peasants or serfs, the weak children, the oppressed women and the marginalized minorities (1999: 39). For example, whose interest does denying that access to water is a human right serve?

Often the relativist's displeasure with the principle of universal human rights lies in the claim that much of what we have today as human rights is a codification of Western cultural values and therefore pronouncing these values as universal amounts to cultural imperialism (Donnelly, 2003: 41; Jones, 1994:214; Booth, 1999: 54). This argument, in purely logical sense, seems to be fallacious in that it discharges an argument on the basis of geography and not the cogence or soundness of the argument. Surely, an idea should not be dubbed morally repugnant because of its geographical genesis. As Booth points out, "[t]he most trivial point anybody can make about human rights is that they come from 'somewhere'" implying that geography is destiny (1999: 52). True the values may have been articulated or originated in the "West" but that is not the main issue; rather the main question is, Do these values enhance human well-being in non-Western societies?

Similarly, the relativists' claim that universal human rights have no foundation, since there is no such thing as universal culture upon which the universality of human rights can be anchored, is hard to sustain because it underplays, if not, excludes empirical evidence from the analysis. While it is undeniably true that there is not a universal culture in the sense of all cultures having a convergence of values, customs and moral beliefs, common aspirations among these different cultures exist. To

mention only a few, love, charity, care for the weak, the sick, the young, hospitality, compassion are elements that cut across cultures though their specific expressions in different cultures may take various forms. As HDR 2000 argues, all regions and cultures strive and celebrate the respect for human dignity: all regions and cultures struggle against oppression, injustice, discrimination, inequalities and other “human wrongs” (12).

3.1.7.2 Legal Positivism: A Mismatch Between Theory and Reality

From the start it must be admitted that the legal positivist critique raises a fundamental question about what constitutes a *right*. However, because of its preoccupation with the punitive functions or aspects of law, legal positivism leaves out other functions and aspects of a legal system. In a critical way, taking such a narrow view of law or rights undermines the social purpose of law, and amounts to a grave mismatch with social realities. First, limiting “rights” to only claims that can be legally enforced or institutionalized, overlooks the complexity of social order which laws are meant to serve. Thus, the simplistic view taken by the mainstream legal positivism suffers from both inadequacy and incongruency with reality. Recently, even authors with a strong positivist inclination such as L.A. Hart have acknowledge the practical limitations of legal positivism in its campaign to distinguishing law from morality:

Contemporary voices tell us we must recognize something obscured by the legal ‘positivists’ whose day is now over: that there is a point of intersection between law and morals’, or that what *is* and what *ought* to be are somehow indissolubly fused or inseparable, though the positivists denied it (1983: 49-50).

As illustrated in this study, while codification and explicit statement of rights is an important step towards the realisation of a given right, realisation of rights is not just about institutionalizing such claims. Unfortunately, as Baxi observes, many policy makers and government officials “still insist, in silly, or at times even wicked ways, that rights which do not prescribe ‘a legal sanctions for non-performance’ are not rights properly so-called” (2006:9).

3.1.7.3 Ontological Critique Re-examined

Central to the ontological argument against human rights is the denial of the existence of the very foundation of the human rights; namely a *universal* human nature or *natural law*, *human dignity*. Undoubtedly, denying the existence of human nature, human dignity as such poses a big threat to the rights project. However, it is one thing to deny the existence of such general characteristics of human beings, and another to prove that actually there are no such features.

Other than that, the major premise of this argument should be questioned. At the centre of this critique is the empiricist ontological argument that everything that is inaccessible by empirical means is ontologically void because it is intuitive, mythical and unascertainable, and therefore a “figment of human fiction” (Freeden, 1991:5). Simply stated, the argument essentially postulates that since we cannot prove nor disprove the existence of human nature, we cannot assert that such things as human nature exist. But a quick look at this line of reasoning reveals the lopsidedness of the argument considering its claim that simply because we cannot prove something, that the thing does not exist. The only logical conclusion that is tenable here is that the argument is inconclusive.

More importantly, social values such as human rights, do not have the same existence as physical objects in the universe; human rights do not have an existence like that of a table or a mango tree. Traditionally, social values have been given a *derived existence*. Consequently, it is absurd to try to prove the existence of human rights in the same way as one would prove the existence of ‘black holes’ or ‘dark matter’ or neutrons. Human rights exist, because “they are recognized by a community of people, flowing from their own conception of human dignity, in which these rights are supposed to be inherent. Once they are accepted through a process of consensus building”, they become *real*, at least, for those who are party of that process (Sengupta, 2000: 555). Dworkin makes the same point when he argues that rights are creatures of history and morality (1977: 87).

3.1.7.4 Cranstonian Critique: Mending the Cracks

In practical terms the Cranstonian critique seems to be very attractive and influential within political and policy circles. Although some enthusiastic defenders of economic, social and cultural rights are quick to dismiss the Cranstonian Critique, arguing that this argument “has lost its critical, and as some will say, ideological edge” (Baxi, 2006:8), the critique continues to provide a strong refuge for many politicians who want to escape the responsibility of promoting the general welfare of their citizens. Giving the excuse of non-availability of resources continues to be a very appealing and convincing rhetorical manoeuvre as the Zambian case illustrates.

However, at the theoretical level, the force of this critique is slowly being neutralized by the recent international community’s pronouncements which have repeatedly re-affirmed that human rights are indivisible, interdependent, inalienable and mutually re-enforcing. Among others, the *Vienna Declaration and Programme of Action* has unequivocally dismissed the notion of ‘classes’ or ‘generations’ of rights when it states that “[a]ll human rights are universal, indivisible and

interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis” (1993: # 5).

Further, as Harvey(2000) has highlighted, the current stage of globalization makes the split between civil and political rights and economic, social and cultural rights impossible to sustain. In recent years, it has been observed that even countries that are opposed to the adoption of these rights have begun to give support these rights. Nonetheless, at the practical level, the arguments of the Crantonian critique have a strong grip on many policy makers and politicians.

On the question that realising economic, social and cultural rights requires a lot of resources, it has been pointed out that even civil and political rights do demand resources for them to be realised (Sengupta, 2000: 559). In practice, it is not true that civil and political rights only require state forbearance or the state restraining itself. For instance, the right to vote requires huge amounts of resources in organizing elections which make it possible for the individual to realize his or her right. In addition, it has been observed that there is no automatic link between resource availability and the realization of socioeconomic rights (*HDR*, (2000: 9). While the *HDR* 2000 acknowledges that the availability of resources creates an enabling environment for realizing these rights, it is not always the case that countries with more resources realise these rights more than those with less resources. The fundamental question, though, is that if one adheres to the resource scarcity argument, at what level of resources should socioeconomic rights become human rights?

Not with standing the Cold War tensions under which the debate on this divisions of human rights flourished, it has come to be widely acknowledged that if civil and political rights have to acquire any appreciable meaning, they have to be accompanied by economic, social and cultural rights. Jones for instance points out that for people to enjoy civil and political rights, a corresponding level of material well-being, level of education, health and nutrition is indispensable (1994:163). In more compelling terms, Vincent argues that the right to basic human essentials such as the right to education, food, health care, clean water and sanitation are a prerequisite for enjoying civil and political rights: “A person deprived of subsistence, it has been often said, is insulted rather than dignified by a right to vote” (1986:78). To some extent, the motto of “one man one vote” should be preceded by “one man one bread” as a way of drawing attention to socioeconomic rights (Shjivi, 1981).

3.2 The Rights-Based Approach To Development

3.2.1 Rights Based Approach: Context

Since the publication of the United Nations Development Programme's (UNDP) first *Human Development Report* (HDR) in 1990, there has been an "unofficial" shift in the thinking about development. Starting from the early 1980s, the extensive suffering occasioned by the wide spread failure of the Structural Adjustment Programme (SAP) in the developing world⁷¹, triggered the search for new ways of revamping the battered image of development. Linking development with human rights presented one of the ways of giving some vigour to the mechanics of development. United National Children Emergency Fund's (UNICEF) "adjustment with a human face" is just one example of the attempts to refocus the objectives of development from rigid preoccupation with macroeconomic aggregates to taking stock of the consequences of development strategies. At the UN level, the adoption of the *Declaration on the Right to Development*⁷² (DRD) in 1986 by UN General Assembly *Resolution 41/128* represents a recasting of development with focus on human development as the ultimate objective of economic policy and socio-political reforms in society.

3.2.2 Emerging Trends

Having presented the main debates on the rights discourse, it might be appropriate now to discuss the meaning of RBA. As an emerging approach, RBA does not have a particular date when it started or was officially proclaimed. Some authors point to the reliance on human rights by the liberation movements during the 1950s and 1960s as forms of RBA. Others refer to the use of human rights by people who were trying to change international economic structures, evident in such documents as the New International Economic Order (NIEO) of the early 1960s and 1970s (Nyamu-Musembi & Andrea Cornwall, 2004), as examples of RBA. Other analysts trace the origins of RBA back to the 1948 *Universal Declaration of Human Rights* (UDHR). However, a widely accepted view is that RBA became dominant as an alternative development paradigm during the 1990s. Hunt, Novak & Osman(2002) observe that the UN Secretary General's announcement in 1997 that all United Nations agencies and organizations should integrate human rights in their work, marks the beginning of official

⁷¹ For instance the World Bank's campaign against poverty as evident from the McNamara's crusade to meet basic needs of the poor during the 1970s and early 1980s stand in stark contrast to the results of SAP in Africa and Latin America during the late 1980s and 1990s. This seemingly "hypocritical war" against poverty has led many development scholars and practitioners to question the genuineness of the Bank's commitment to eradicate poverty. Even catch phrases such as "Make Poverty History" have not abated the radical critics' skepticism. Hoo Chang (2003) for instance points out that the "most important reason behind the spreading revolt against neo-liberalism is its miserable economic record, especially in developing countries" (see Hoo Chang, *Rethinking Development Economics*, "Introduction").

⁷² Arjun Sengupta (2003), the UN independent expert on the Right to Development (RtD) sees RBA as one component of the RtD framework.

efforts to link human rights with development. Nyamu-Musembi & Cornwall, (2004) also speak of the rights-based approach emerging in the 1990s and gathering momentum on the eve of the World Summit on Social Development in 1995. Belinda Calaguas(1999) also sees RBA “gaining ground” among donor countries and development NGOs during the 1990s.

Recently, an increasing number of development practitioners and researchers tend to link RBA to the 1986 UN *Declaration on the Right to Development* (Sengupta, 2003). Particularly *Article 1* of the *DRD* clearly indicates the link between human rights and development when it asserts that:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Prior to the 1990s, human rights and development were seen as unrelated fields, as the *Human Development Report 2000* notes:

Until the last decade human development and human rights followed parallel paths in both concept and action - the one largely dominated by economists, social scientists and policy-makers, the other by political activists, lawyers and philosophers. They promoted divergent strategies of analysis and action -economic and social progress on the one hand, political pressure, law reform and ethical questioning on the other(14).

3.2.3 Unofficial Beginnings

Important to note at this point are two things. The first is that this approach did not start as a deliberate, official, planned strategy, but as a result of work experiences from international development agencies, multilateral development institutions and NGOs. Second, the initiative to link human rights and development was not initiated by the “mainstream international human rights organisations” but by a caucus consisting mainly of ‘development’ and ‘humanitarian’ NGOs (Nyamu-Musembi & Cornwell, 2004:10). To a large extent, the RBA still remains a predominantly NGO development strategy. Very few governments and bilateral development agencies in both the developed and developing world actually even talk about RBA⁷³.

3.2.4 Rationale for Hybridization

Looking at development literature prior to the 1990s, it is evident that human rights and development were regarded as separate and distinct areas. Although it is not very clear what occasioned the

⁷³ For instance at a DFID meeting in 2003, out of a staff of 25 development practitioners only two had heard of the Right to Development and RBA (Nyamu-Musembi & Cornwall, 2004:9).

integration of human rights in development planning and implementation the HDR 2000 summarizes the underlying justification for linking human rights and development:

...the ideas of human development and those of human rights are linked in a compatible and complementary way. If human development focuses on the enhancement of the capabilities and freedoms that the members of a community enjoy, human rights represent the claims that individuals have on the conduct of individual and collective agents and on the design of social arrangements to facilitate or secure these capabilities and freedoms(2).

Throughout the 1990s there has been a growing realization that human rights are an indispensable ingredient of the development process. Impoverishment, indigence and deprivation lead to denial of people's freedom and dignity, just as human rights abuse often lead to deprivation, impoverishment and indigence. Again, the HDR 2000 makes the synergy created by linking the two clearly by observing that human rights, human rights and development are complementary arms. While human rights seek to secure the protection of human dignity and basic freedoms, development seeks to advance people's freedom by improving their capabilities and well-being. In this sense, "[w]hen human development and human rights advance together, they reinforce one another—expanding people's capabilities and protecting their rights and fundamental freedoms" (ibid). When viewed from this complementary perspective, RBA suggests that, "human development is essential for realizing human rights, and human rights are essential for full human development" (ibid).

3.2.5 But What is a Rights-Based Approach?

From the available body of literature on RBA, there does not seem to be a single definition of RBA. In fact this approach seems to mean different things to different theorists and practitioners. Some authors see RBA as a component feature of the *Right to Development* to the point that it is listed as one of the "four basic operational elements of the DRD" which include Poverty Reduction Strategies (PRS), Development Compacts (DC) and Monitoring Strategies (Sengupta, 2003:235). For donor countries and agencies, RBA is taken to mean that aid recipient countries should show serious commitment to human rights, while for the recipient countries or communities, RBA entails that they have a right to be helped to meet the challenges they face (Thiss, 1996; Art, 1996).

Not only are there such differences in the way RBA is perceived, but the approach is loosely used to encompass a lot of other things. For example, Nyamu-Musembi & Cornwell compiled a list of what ten different international development agencies say RBA is, and all of them came up with a different notions of what RBA is (2004:13). Johnson also observes that when it comes to what constitute RBA,

there is a plethora of concepts that are very seldom explained, including human rights approach to development, rights-based approach to development, programming in human rights perspectives...and programming through a human rights lens (2005: 52).

This ambiguity⁷⁴ of the term can be a challenge when it comes to isolating the main components of a rights-based approach.

3.2.5.1 Finding the Common Thread

However, the fact that there is no agreement on what constitutes RBA does not mean that all is grey; there are common elements that are widely acknowledged to be the core of RBA. Looking across the spectrum of definitions of RBA, what seems to be common to all is the use of human rights norms as the standard on which development programmes, projects and policies should be conceptualized and implemented.

Mary Robinson (2001), former UN High Commissioner for Human Rights captures the general focus when she says that, “[t]he rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development”(www.worldbank.org). Emphasis here should be on integrating human rights norms in development planning, process and programmes. As to the norms that constitute RBA, they differ from organization to organization, though five human rights principles can be identified to cut across the board. They include accountability, empowerment, equality and non-discrimination, participation and progressive realization.

3.2.5.2 Accountability

Accountability is not specifically new in development discourse and practice. Earlier approaches to development such as the basic needs, livelihood approach, the redistribution and growth strategies all mentioned accountability as an important ingredient of development programmes. Particularly in developing countries, accountability of states and other actors including NGOs (local and international) has been occupying centre stage.

⁷⁴For Care International, the “RBA means that we support poor and marginalized people’s effort to take control of their own lives and fulfill their rights, responsibilities and aspirations....”(Jones, 2005:81). In fact some development practitioners use the *rights based approach* interchangeably with the *human rights approach*. Eyben(2003) argues that the two are actually not the same in the sense that the human rights approach is more focused on international rigid legal pronouncements while the rights based approach is more flexible, encompassing general and broad human rights norms and is more practice oriented (see Nyamu-Musembi & Cornwell, 2004:13 ff).

Robinson(2001) refers to accountability as the “defining attribute of human rights in development” (www.worldbank.org). Similarly, the OHCHR notes that “the most important source of added value in the human rights approach is the emphasis it places on the *accountability* of policy-makers and other actors whose actions have an impact on the rights of people” (# 23). The basic reasoning behind the principle of accountability rests on the notion of government as a trustee which citizens have entrusted with public resources. Essentially, the state administers public resources gathered through various taxes and other means. In this case, it is only right that the “public” knows how this money is spent (Diokno, 1999:28). But that is one level at which accountability is required.

At a more fundamental level accountability entails transparent public conduct or procedures. In this sense, accountability is a pillar of democracy and good governance. Mark Brown for instance asserts that “accountability in the use of funds and accountability to people’s needs are also integral dimension to pro-poor governance” (in Hunt, Novak & Osmani, 2002:12).

Accountability as a human right principle or norm emphasizes not only accountability in the use of public resources, but also the duty to account for public conduct including decision making processes which may not necessarily involve use of resources. What the norm of accountability presupposes is a set of adequate institutions and mechanisms which make it possible for the public to hold the state actors accountable. Otherwise the duty to account becomes no less than “window-dressing” (OHCHR, 2002:#8). Institutions essential for effective accountability include active civil society which can often be the vehicle for giving meaning to the process of accountability itself.

In this sense, RBA essentially requires active participation of civil society in its broadest sense (Chitonge, 2006). Civil society’s role in building a development process that ensures that people’s human rights are not sacrificed for narrow social and political interest is indispensable (Offenheiser & Holcombe, 2003). Here, it must also be stressed that accountability in RBA should be distinguished from its rhetorical forms embellished in the slippery good governance propaganda, which often implies state accountability to donors, creditors or the international financial institutions in a top-down style.

Essentially, genuine accountability involves a reconfiguration of power relations (Gready & Ensor, 2004) with the view to creating shared power through decision making, information sharing and active participation. Now, this is probably one of the reasons why RBA is often not adopted by the corridors of power because it is difficult to live up to the demands of sharing power and decision making. Most

importantly, this is the reason why most governments, although having committed themselves to human right norms, often are unwilling to come to the 'braii'.

3.2.5.3 Participation

Like accountability, participation has been part of the 'realpolitik' of development discourse since 1970s. In conventional politics, participation has been pushed unto the people as a way of appearing politically correct. From the early 1970s with the advent of Participatory Rural Appraisal (PRAs) and the Participatory Poverty Assessment (Chambers, 1983), participation has been used as a currency for performing many functions. For instance, the Basic Needs Approach⁷⁵ during the late 1970s, the drawing up of PRSPs in the developing world during the 1990s, and many development policy documents have ridden on the wings of participation. A sister word used to dress up participation in some discourse is community ownership—which often mean different things to different people. For example, World Bank in its 'new' approach to PRSP, emphasizes participation and local ownership of PRSP (Greg & Porter, 2003), while the programmes themselves are literally drawn up by Washington DC development 'experts' (Jubilee South, 2000).

Participation as a human right principle goes beyond mere *formalism* that is often exhibited in the various official processes where people are asked to participate in discussing something that is already decided. As a human right principle, participation requires "active and informed participation" of the poor especially "in the formulation, implementation and monitoring" of public decisions that affect their lives(OHCHR, 2002:#10). So the right to participate generates a duty on policymakers to ensure that people are not just consulted, but that people's contributions form the pillars on which policy and programme decisions are made.

Of course, this is a challenge for any government that take this norm seriously because it will certainly involve going back and forth to the people, the community, at every level of decision making. Further, for people to be able to participate effectively, information, discussion forum, knowledge of the policy or programme being discussed, and other enablers should be made accessible. In other words, the realization of the right to participate is contingent on and influenced by the realization of other rights⁷⁶ such as the right to information, the right to education, freedom of speech, assembly, and conscience.

⁷⁵ Ghai, et al (1977) has described participation as one of the "basic elements" of the basic needs approach(9). People were asked to participate in choosing what constitutes basic needs though the process of identifying the needs was not integrated into the strategy .

⁷⁶ It is in this sense that human rights are interdependent, indivisible and complementary (See *Vienna Declaration and Programme of Action* 1993)

Otherwise participation without these conditions secured, often turns out to be a talk-show where bureaucrats seize the opportunity to fulfil their job descriptions. Thus implementing the principle of participation, in RBA requires that people, especially the poor, be treated not as “objects of charity” or passive participants or recipients of development programmes, but as “active participants” and beneficiaries of the process of development (RtD, #1; Offenheiser & Holcombe, 2003:4).

3.3.5.4 Progressive Realisation

A rights based approach to development does not create an obligation that requires an immediate realization of all human rights. Realistically, it is impossible to realize certain rights within a short period. However, the principle of progressive realization does not mean that the rights in question should be left to the time when resources are ‘abundant.’ Progressive realization requires the state to take *immediate* measures towards the realization of the concerned rights. *General Comment 3* which outlines and explains “the nature of the duty of states party” to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) clearly explains the meaning of this principle:

The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources (#9).

Contrary to the argument common among radical human rights activists that progressive realization can be an escape tunnel for the state to delay serious commitment to economic, social and cultural rights, the state has a clearly defined duty not to delay formulation, adoption and implementation of relevant measures and programmes. In this instance, lack of a programme, say on realizing the right to water, cannot be justified on the principle of progressive realization.

Regarding measures that a state party to the Covenant should take, *General Comment 3* stipulates that the measures taken to realize the rights under this Covenant “should be *deliberate, concrete* and *targeted* as clearly as possible towards meeting the obligations recognized in the Covenant” (#2). Thus,

in implementing RBA, the question that should be asked about any right is whether there is a programme that aims at realizing a particular right such as the right to water and whether that programme is concrete, targeted and reasonable.

As noted above, the obligation to realize social and economic rights is often side-tracked by the Cranstonian type of argument that there are no resources available to realize economic, social and cultural rights. In terms of the progressive realization principle inadequacy of resources should not be an excuse for failing to comply with the obligation of progressive realization, at least the obligation to take measures. *Limburg Principles* clearly refutes the ploy by many states parties to the Covenant especially in developing countries to hide behind the curtain of scarce resources when it points out that “the obligations of progressive realization of rights exists independently of the increase in resources; it requires effective use of resources available”(1993: #23). Therefore, progressive realization does not mean that you do it when you have got enough resources, but rather that you start with what you have got. Taking steps can be done with \$100 just as it can be done with \$750 trillion.

What should be stressed in RBA is that the steps taken should be reasonable, concrete, and pertinent to a given right considering the resources available. In this case, absence of measures, steps or programme, for instance, on the right to water constitutes a *prima facie* case of non-compliance with the norm of progressive realization. In addition, progressive realization demands effective monitoring of selected indicators and national benchmarks (Hunt, Novak & Osmani, 2002:17), such that the principle does not just create an obligation of a *process* or *measure*, but also an obligation of *outcome*⁷⁷ (Osmani, 2003). Monitoring of progress made on agreed indicators and benchmarks creates a background upon which the principle of accountability can be applied.

3.2.5.5 Equality and Non-Discrimination

The principle of equality is very central to international human rights law (Hunt, Novak & Osmani, 2002). Equality as a human right principle is presumed by all major international human rights documents including the *Universal Declaration of Human Rights* (UDHR) and the *Right to Development* such that little explanation is offered as to what the equality principle means in the real

⁷⁷ An independent expert on the Right to Development argues that the right to development does not generate the obligation to a particular outcome; it only creates an obligation of a process of development, that is, an obligation to adopt and set in motion a particular development process (See Sengupta, Second Report 2003). But as a number of writers have highlighted, a right to a process is almost meaningless unless it is coupled with the right to an outcome of some sort (see Osmani, 2003; Salomon, 2003).

world were people are actually very different and unequal in many respects (Sen, 1992). Arising from the principle of equality is the norm of non-discrimination.

Justification for equality and non-discrimination are based on the natural law-natural rights notion of human rights mentioned above. The argument is that though people are different in size, height, wealth, intellectual capacities, social status, they all have some *inherent* dignity and worth by virtue of being humans. Consequently, the equality referred to is not that of equality in external or physical qualities; it is based on a moral value attributed to every human person regardless of their external disparities.

Now, as a human right principle, equality refers to equality of opportunity in the distribution of resources as well as means of livelihood (Rawls, 1971). However, the principle adopts a bias towards the poor and the vulnerable without prejudicing other groups. OHCHR points out that the “international human rights normative framework has a particular preoccupation with individuals and groups who are vulnerable, marginal, disadvantaged or socially excluded” (2002: #9). The justification for this bias is that often it is the poor whose rights are not likely to be realised; often it is the vulnerable groups that are discriminated against (OHCHR, 2002; Hunt, Novak & Osmani, 2002). Diaz (2002) makes the same point arguing that RBA focuses on the marginalized, poor and powerless because these are the groups or individuals whose rights are most at risk. Theoretical justification for taking a bias towards the poor can be provided by the “*deprivation focus*” principle discussed in Chapter One. Similarly, the Rawlsian “*difference principle*” also supports the approach of focusing on the poor while not disadvantaging the non-poor (Rawls, 1971: 68).

Thus taking RBA entails that attention be given to the poor and vulnerable groups such that policies and programmes focus on those sections of the population whose rights are more likely to remain unrealised. Strategies therefore should focus on programmes that are more likely to benefit the poor such as primary health care and education, low cost housing, and water services to low income areas. In cases where a particular programme results in the poor being disadvantaged or discriminated or ignored (which is often the case when it comes to low income areas, as it shall become clear in the Zambian case), then that programme fails to incorporate the norm of equality and non-discrimination. In general, the right to equality “lends moral legitimacy and the principle of social justice to development objectives, and helps shift the focus of analysis to the most deprived and excluded, especially to deprivations caused by discrimination” (Robinson, 2001). In view of this, RBA focuses on preventing

discrimination on such grounds as race, gender, social status, religion, cultural, ethnicity and many other superficial distinctions⁷⁸.

3.2.5.6 Empowerment

Related to participation and accountability is the principle of empowerment. For human beings to effectively participate in the public affairs that affect their lives, they need the capacity to participate. According to the OHCHR (2002), the most effective way of empowering people is through the introduction of the concept of rights which then translates the entitlements guaranteed in international human rights norms into matters of moral and legal obligations. Empowerment in RBA is a way of enabling people to take control of their own development, as well as a way of securing their livelihoods (Thiis, 1996:11).

However, it is important to note that how far people are empowered depends on how effectively people articulate their claims. It is in ensuring that people have the capacity to effectively claim their rights that civil society has a vital role to play in RBA. Effectively, empowerment in RBA is twofold: on the one hand, it seeks to enable the right-holder to claim their rights, and on the other, it seeks to build the awareness and the capacity of the duty-bearers to fulfil their obligations and responsibilities (Eyben, 2003 in Nyamu-Musembi & Cornwall, 2004).

In a sense, empowerment is realised when all the above principles are implemented. People become empowered when their rights are progressively realised, when they can hold the office bearers accountable, when they are not discriminated against, when they are able to have a voice in policies or programmes and their suggestions are taken seriously. Civil society can play an important role in empowering communities and building local capacities.

In brief, these five principles are widely regarded as the core principles of RBA. There are other principles which are included as essential components of RBA, such as the principle of explicit recognition of international human rights law, international cooperation, international minimum threshold and transparency (Hunt, Novak & Osmani). Other analysts include the principles of the

⁷⁸ Interestingly, many national constitutions have actually decreed against discrimination on these grounds to the point that equality and non-discrimination does not appeal only to international human rights instruments, but is grounded in domestic legislation.

“indivisibility and universality” of human rights as components of RBA (Gready & Ensor, 2005:21). But the five principles outlined above seem to subsume all these other components.

3.2.6 Value-Added of the Rights Based Approach

At this point, the obvious question that one may ask is, if this is what constitutes RBA, then how is it different from other development approaches adopted and implemented in the past, for instance, the basic needs approach? And what is the value-added of RBA to development discourse and practice?

These are indeed important questions that require answers. To start with, there are several ways in which the basic needs approach is similar to RBA. For instance the basic needs approach has also a bias towards the poor, what we have referred to here as the *deprivation focus*. Paul Streeten makes this clear when he argues that the “basic needs strategy is concerned with removing mass deprivation, a concern that has always been at the heart of development” (1981:9). Like RBA, the basic needs approach also deploys the language of rights by noting that the “satisfaction of basic needs is a human right: freedom from want is like the right not to be tortured” (ibid, 26). In this way, basic needs are often formulated in terms of human rights. For example literature on basic needs approach produced during the late 1970s state that the “satisfaction of an absolute level of basic needs as so defined should be placed within the broader framework—namely the fulfilment of basic human rights (in Ghai, et al,1977:9).

Basic needs literature suggests that the principle of participation is also recognised as fundamental constituent of this approach. This was mainly emphasised in regard to the identification of what constitute basic needs(ibid, 25). Further the equality principle has also been acknowledged as one of the pillars of the basic needs approach (ibid,12). Nevertheless, the basic needs approach differs from the RBA in four fundamental ways.

3.2.6.1 Meeting Basic Needs as an Obligation

While the basic needs approach recognises the satisfaction of basic needs as a human right, it does not expand the concept of human rights beyond the mere satisfaction of these needs. Once the basic needs are satisfied, no matter how, the basic need approach would have achieved its objective. Thus one would argue that under the basic needs approach, accountability, empowerment, and participation are not demanded as matters of right. In contrast, RBA has extended the notion of obligations beyond meeting of the ‘vegetative’ functions to include obligation of accountability, participation and

empowerment as discussed above. Here there is a *real* difference between extending obligation to the way or process of satisfying the needs and the obligation that has satisfaction of basic needs as its objective.

3.2.6.2 Ignored Structures of Injustice

Second, the basic needs approach, especially in its earlier forms, was not concerned with structural changes—the main focus was on keeping the poors’ souls together with their bodies. Structures at the national as well as international level that made people unable to meet their basic needs were not a concern of the basic needs approach. For this reason the basic needs approach has been criticised especially during the 1970s as a ploy to distract developing countries from focusing on real structural issues at the international level where poverty and deprivation seem to emanate. Thuo Gathii (1999), criticizes both the *weak* as well as the *strong* versions of basic needs models arguing that focusing on basic needs of the poor prevented radical changes such as those suggested by the NIEO aimed at changing the world economic order. In a way, one would be justified to argue that the basic needs approach was the strategy to forestall radical changes to the structure of the unevenly constructed global economic order. On this view, Gathii argues that the basic needs approach “cushioned popular challenges to both the capitalist states and also to capitalist development” (1999:129).

On the other hand, RBA requires paying attention to structures and processes that lead to some people’s rights being denied in many senses including the denial of rights through poverty and deprivation. In a sense, a serious commitment to the principle of equality and accountability at both national and international level that RBA embraces cannot afford to be silent on structures that produce and perpetuate inequality, deprivation and denial of human rights.

Critics of the basic needs approach note that due to its overemphasis on meeting basic needs, the basic needs approach is paternalistic and narrowly focused (in Streeten, 1981). Oxfam for instance rejects the basic needs approach on the grounds that it often focuses on meeting basic needs of people “as passive recipients of charity” (Brouwer et al, 2005:64). Further, the narrow focus on meeting basic needs adopted by basic needs approach left little or no attention on the institutional capacity building to ensure that objectives set out are achieved.

3.2.6.3 Holistic Approach

Third, the basic needs approach focuses on meeting ‘basic needs-mainly’ for survival without paying attention to people’s sense of worth, freedom and capabilities. To the contrary RBA seeks to address

the non-physiological needs of people as well by paying attention to notions of capabilities, freedoms and a sense of self-worth (Hunt, Novak & Osmani, 2003), striving to enable people become active participants and controllers of their own struggles for life. Related to this is that RBA clearly deploys the language of rights when it comes, especially, to the duty that the state has. Of course this may largely be mere rhetoric, but a clear stipulation of duties is a prerequisite for realizing rights, for empowering the people and also for creating political and social space upon which the proclaimed rights can be articulated and contested. Creating this space is essential in making human rights become part of the processes which produce the social spaces in which some people are able to realise their rights while others are not.

3.2. 6.4 Dependency and Paternalism

Lastly, a fundamental way in which RBA differs from the basic needs approach is the orientation of the strategies. Basic needs approach depended a lot on external aid to meet the basic needs. During the 1970s basic needs approach was almost synonymous with international aid. Commenting on the question of where the resources to meet basic needs would come from, Streeten asserts that the approach, due to its political appeal, is capable of mobilizing international resources with the emphasis that more “international resources” and not less has to be committed (1981:174). While the reliance on international aid is implied in RBA with its emphasis on bilateral and multi-lateral corporation, the primary duty rests on the individual state to ensure that, first of all, it effectively allocates available resources within its boundaries (Sengupta, 2000). As indicated above, RBA emphasizes that even the poorest of nations should take concrete and reasonable measures towards the realization of particular human rights. Thus, the responsibility is at two levels: the international community should commit resources, but the individual states should take measures to realize the rights (Piron, 2003).

3.2.7 Repackaging Old Wine in New Wine Skins? Critique of RBA

Like the basic needs approach⁷⁹ and indeed any development strategy, RBA has been criticized on many grounds including the fact that international law upon which the human rights instruments and treaties are based is a toothless dog. Rieff, particularly, argues that the human rights approaches championed by NGOs lack focus. The multi-faceted work of human rights approaches has a feature of over-reach which in the end amounts to everything, yet nothing in particular (in Gready & Ensor, 2005:29). Chandler also makes a similar point arguing that the all-encompassing approach associated

⁷⁹ Paul Streeten mentions eight criticisms against the basic needs approach which include that the approach tempers with market fundamental, that it is a communist Trojan horse, that it leads to welfarism and state intervention, that there was nothing new about but the same old development wine (1978:180).

with humanitarianism shoots in all directions from relief, to advocacy, to long-term development issues, and in the process fails to address one particular target (ibid).

More radical critiques of RBA include the argument that this approach gives a false hope in a world where legal enforcement of human rights have produced very disappointing results especially at the international level. Reiff, again argues that realization of human rights requires the existence of an “international community” which according to him does not exist at present (ibid). Chandler echoes similar concerns arguing that RBA is “rhetoric without responsibility,” that the nice pronouncements made on paper are rarely applied in the real world (ibid).

Admittedly, RBA has an inherent weakness stemming from the fact that international human rights norms on which RBA is based, are often given a rhetorical commitment at the domestic level⁸⁰. However, it must be noted that most of these critiques are directed at the way of implementing RBA and not at the substance of the approach.

3.2.7.1 Competing Interest Among Rights

A more substantive critique that Reiff raises is that rights often conflict and compete with each other (ibid). This is particularly relevant to socioeconomic rights which often require the state to allocate resources to different welfare demands. For instance, realizing the right to water may be competing with the need to realise other rights such as the right to food, education, health care, freedom of speech, a right to a fair trial and so on. However, not all the rights require the same attention and resources at the same time—prioritisation can help balance the conflicting interest (Sengupta, 2000).

RBA has also been criticized for making superficial political engagement, with the result that it often fails to make radical political claims. Duffield (2001) for instance points out that RBA approach often adopts an *apolitical* discourse in development (inGready & Ensor, 2005:33).

3.2.7.2 Repackaging of Old Wine

Other critics of this approach have noted that RBA is not different from other earlier strategies arguing that it is just the change of names and inventions of acronyms but the same old wine (in Nyamu-Musembi & Cornwall, 2004). Univ(2002) in particular persuasively argues that the incorporation of human rights norms in development is “little more than thinly disguised repackaging of old wine in

⁸⁰ This point is discussed in detail in chapter 4.

new bottles” (in Gready & Ensor, 2005:39). With particular reference to the right to water, Bakker argues that deployment of rights is not effective when it comes to access to water because such a strategy fails to separate human rights from property rights; fails to distinguish the difference between property rights and service provision; and as a consequence of these two failures, the right to water campaign fails to “foreclose the possibility of increasing private sector involvement in water supply” (2007: 439).

While most of the criticisms are valid and should be taken into account, it is important to note that an approach only presents a framework of doing something. Therefore, the outcome of implementing an approach is not entirely dependent on the soundness of its precepts but also the manner in which it is implemented. If little or no commitment is given to RBA norms, no matter how perfect or strong its appeal, it is not likely that any desired results will be obtained. For example, the right to water should not be expected to prevent privatization of water services by mere declaration of the right. How effective the use of the right is in achieving this objective depends on how it is utilized. It is in this sense that the role of adequate and responsive institutions becomes indispensable to the success of RBA.

3.2.7.3 Challenges of Implementing RBA

Certainly, most of the critiques against RBA can be attributed to implementational challenges which include commitment. And it is here that one has to ask, what are the challenges that arise from implementing RBA? And a possible response to this is that we face the dilemma of the *Allegory of the Braai party* explained below (see next Section)

To a large extent, implementing RBA is haunted by the Cranstonian paradigm of rights. This is mainly because RBA is largely seen to be advocating socioeconomic rights (Offenheiser & Holcombe, 2003), which are often seen to be rights only when there are ‘enough’ resources. Like Maurice Cranston, many policymakers believe that these are actually not rights, but moral aspiration which only rich nations have the luxury to fulfil.

Unfortunately, governments of the developing world also tend to fall prey to this thinking. For instance, when one of the government officials was asked about whether access to water is a human right in Zambia, his response was immediately directed to the issue of resource scarcity.

.... I think government seems to be reluctant to pronounce thatagain it all comes to the limited resources. I think the bottom line is that the cake is small. I think that is basically the economic situation of our country (*Policy Maker Interviews*, 2006).

3.2.7.4 The Braai Analogy

As noted earlier, while RBA has been adopted widely by some NGOs and UN development agencies, very few governments have adopted this approach. The biggest challenge is to get states to move from the manifesto level commitment to concrete implementation of the principles to which they have so enthusiastically subscribe. Effective implementation of RBA, especially in developing countries where investment in key areas that benefit the poor will have to come from public resources, requires serious commitment from the state. Although most states affirm the importance of these principles, the commitment to these principles is highly questionable in many countries including Zambia. The actual scenario can be compared to a situation where different parties agree to have a braai party and assign themselves different duties. At the time of making the decision to have a braai, the parties are so enthusiastic and promise to perform their assigned duties expeditiously. But when it comes to the actual performance of the assigned duties, some of the parties fail not only to perform their duties, they do not even show up for the braai.

3.2.8 Assessing Levels of Commitment

The challenge is, how do we get the government to come to the braai party and fulfil its promises? The RBA matrix suggested below provides one of the ways in which implementation of RBA can be evaluated and on the basis of an assessment explore ways of political engagement.

This simple RBA assessment matrix is based on experience from fieldwork and issues emerging from some of the key RBA literature. During the time of conducting interviews for this study, it became apparent that RBA should have two sides to it. On one side, there are principles or norms recognized in international human rights documents.⁸¹ But for RBA to be implemented effectively, it takes more than just an assent to these norms. Commitment at four levels (acknowledgement, recognition, taking measure and effectuation) is essential.

⁸¹ Some authors add indivisibility, universality and responsibility (Jonsson, 2005; Gready & Ensor, 2005) and monitoring (Jones, 2005), but it can be argued that these principles are covered by the five principles mentioned above. The principle of equality and non-discrimination, for instance incorporates notions of indivisibility and universality, while accountability and transparency is understood to include monitoring.

Table 3. 2 RBA Assessment Matrix⁸²

Human Rights Norms	Accountability	Empowerment	Equality	Participation	Progressive Realisation	Total
Commitment Indicators						
Acknowledgement	1	1	1	1	1	5
Recognition	2	2	2	2	2	10
Measures	3	3	3	3	3	15
Effectuation	4	4	4	4	4	20
Grand Total	10	10	10	10	10	50

3.2.8.1 Acknowledgement

For RBA to be implemented effectively, a state must acknowledge that there are basic human rights to which a particular state subscribes. For instance a state must acknowledge that there is a right to water prior to any attempt to implement the right. This level of commitment is often expressed by either signing or ratifying a relevant international treaty or declaration or inclusion in national legal documents. While there can be other forms⁸³ of acknowledgment other than signing or ratifying international instruments, traditionally signing or ratifying an instrument has been seen as the official way of making a commitment or expressing consent to be part of the agreement. Accordingly, acknowledgment is the first level indicator of commitment to a particular right or value encapsulated in a ratified treaty. But that is not enough to realise a particular right.

3.2.8.2 Recognition or Proclamation

The right concerned has to be given content relevant to the local circumstances by various means including incorporating core values of the treaty in the domestic legal system. This level can be called the recognition or proclamation level. It indicates a deeper commitment on the part of the state to take the rights recognized more seriously. But recognizing a right by incorporating it into domestic statutes or policy is only a necessary step towards realizing a given right.

⁸² There are a number of evaluation tools that have been devised. In particular reference to RBA, Jonsson (2005) has devised a tool for evaluating RBA programmes or projects. The measuring indicators however are in terms of Bad or Good outcome or process (see Jonsson 2005:49). IDEA (2000) has also devised a tool for assessing human rights performance in general. The rating are formulated in terms of Very High, High, Middle or ambiguous, low and very low. It does not use the human rights principles to assess the process of democratization (see IDEA).

⁸³ For instance, the *Vienna Convention on the Law of Treaties*, states that consent to be bound by a treaty can be by signing, ratifying, acceptance or approval, accession or by exchange of instruments. However, the most common way of expressing consent to be bound by an international or bilateral treaty is by signing or ratification.

3.2.8.3 Measures or Steps Taken

To be given effect, there must be programmes or measures that outline how the recognised right is to be implemented or realized. It is one thing to acknowledge and recognize or proclaim that water is a human right; it is another to elaborate on what this entails with regard to the content of that right, entitlements that people can claim, and duties that the state embraces etc. Thus, taking measures by designing a programme or strategy to give effect to a right indicates a deeper commitment to that right. And this level can be called the measures or steps level.

3.2.8.4 Effectuation

But again, having a program may not be enough to ensure that a particular right is given effect. A programme, must be concrete, specific, and reasonable with measurable time-bound targets. Such a programme should find concrete expression where its contents are translated into appropriate actions directed towards the realization of a given right. This stage of commitment can be called the effectuation level. The attention at this stage should be on the outcomes or measurable impact of the measures or steps taken. It is at this level that rights that have been acknowledged, recognized and acted on can become a reality in the lives of the people. A programme that does not have measurable targets, one that is not reasonable, not concrete and not targeted may not realize the rights of many people.

So in determining whether a project is RBA, one has to ask not only if the project or policy has incorporated the basic principles of human rights, but also if the level of commitment has gone beyond mere acknowledgement.

3.2.9 RBA Matrix Features

Based on this, there are a number of things which should be noted. First the assessment matrix suggested above can be used to assess any human right whether civil and political or economic, social and cultural rights. Secondly, many states are quick to commit themselves to level one and hardly go beyond commitment level two. Often most states' commitment to human rights is highly questionable judging from their actions and steps taken. Thirdly, this framework presents a graded level of commitment so that a project or programme's commitment can be assessed based on the level of commitment it indicates. Fourthly, scores can be used to determine the state's level of commitment.

The advantage of including the commitment indicators is that it enables projects to be assessed not just on one level, that is, on norms, but at all levels of commitment. Although this is more amenable to evaluating state programmes, the matrix can be adjusted to suit non-state programmes.

In the above matrix, levels of commitment are key in determining the score for a particular project or programme. To determine what score a project gets, the norms and commitment indicators can be assigned nominal values. Since the principles are not graduated values, they are assigned the same numerical value say 1. As for the commitment indicators, due to the fact that different levels reflect different degrees of commitments, each level is assigned a number that reflects the degree of seriousness in the commitment. For instance, acknowledgment represents a lower level of commitment than recognition or measures levels. As shown in **Table 3.2** above, acknowledgement is assigned the value of 1, recognition the value of 2, measures level the value of 3 and effectuation the value of 4 proportional to the increasing degree of commitment. Different numerical values can be used as long as they reflect the degree of commitment. A particular project, for example, can be rated out of 50. A project which scores 25 out of 50, can be described as satisfactory, while one that scores below 25 can be rated unsatisfactory and therefore not in compliance with RBA requirements. In this way, the RBA matrix can be a helpful tool of taking stock of government commitment to a particular right and also a reflection of areas that need to be improved on.

Conclusion

This chapter has discussed the human rights debates and their link to RBA. What surfaces from this discussion is that human rights have been controversial over the centuries, and the understanding of what exactly human rights are remains highly contested. But the controversies about rights should be expected given that human rights express moral and ethical norms, and as such, people are bound to have different opinions. Further, the debate should actually be encouraged so that the substantive issues can be clarified in the course of the debate (Sen, 2004).

Although with the proclamation of the *Universal Declaration of Human Rights*, a considerable degree of consensus has been secured, there are still differences as regards what should be recognized as human rights. This divergence of views was evident in the two *1966 International Covenants*: one on civil and political rights and the other on economic, social and cultural rights with certain countries ratifying only the first ignoring the other.

Unfortunately, such differences also surface at the practical level where in some countries much attention is given to the realization of civil and political rights giving the impression that others are not actually *genuine* human rights (Donnelly, 1989). Due to this tendency to split human rights, various international agreements and documents such as the 1993 *Vienna Declaration and Programme of Action* have reiterated that rights are indivisible, interdependent and complementary, but that has done little to abate the practical tension between civil and political rights on the one hand, and economic, social and cultural rights on the other. Thus, the consensus expressed in these international documents are really put to test especially in countries that keep insisting on separating civil and political rights from economic, social and cultural rights.

Effects of these differences can be seen when it comes to socio-economic rights. Although as many as 142 states (see HDR 2000) have at least signed the Covenant on Economic Social and Cultural Rights, very few have given the same status to economic, social and cultural rights as the civil and political rights in domestic legal documents such as constitutions and statutory laws. In most countries, there is almost an instinctive fear that once these socioeconomic rights are included in the bill of rights, government will be required to spend a lot of money to fulfil these rights.

These debates about human rights spill over into the strategies of incorporating human rights into development programme, policy and implementation. Although RBA is a relatively new approach in development theory and practice, it suffers from the deeply entrenched notions of human rights. While governments enthusiastically sign to international treaties, documents and plans of action, not much gets translated from documents to concrete plans. Part of the challenge of implementing RBA is to find ways of ensuring that governments that have committed themselves to covenant values take their commitment seriously by adopting appropriate measures towards meeting the obligations that they freely undertake.

In spite of all the weaknesses, RBA has the potential to enable the state as a duty bearer to fulfil its obligation while providing the opportunity for the right-holder to not just hold the rights in vain. For this approach to have a significant influence, there is need for adequate and responsive institutions through which the rights can be claimed and the duties effectively fulfilled. However, it must be noted that the ambiguities surrounding RBA do militate against its wide adoption, implementation and impact on the lives of the poor. As Veneklasen, et al have noted, while there is a growing trend towards RBA

as an effective way of addressing “structural, systemic causes of poverty and exclusion... many organizations are struggling to make sense of the significance of RBA in *practice*” (2004: iii).

RBA challenges are even more pronounced in the case of access to water which suffers from inadequate explicit recognition as a human right. In both international human rights instruments and Zambia’s domestic law, water is not sufficiently recognized as a human right. This in itself poses a great challenge in using RBA to address issues related to water deprivation and inadequate access, as the next chapter highlights. In the Zambian case, the situation is aggravated by the absence of the political will and the lack of adequate and responsive institutions through which the right can be asserted, contested and claimed. While explicit recognition of water as a human right does not amount to a magic bullet for the current problems related to access to water, a clear recognition of water as a human right does open up other possibilities of effectuating the right.

CHAPTER FOUR

NEW AWAKENINGS: THE RIGHT TO WATER

The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have little
(Franklin Delano Roosevelt, 1941).

Introduction

The preceding chapter has discussed key debates around human rights and the rights-based approach. One of the major points that emerged from that discussion is that implementation of human rights, especially socioeconomic rights, such as the right to water, remains a big challenge, mainly due to lack of commitment from governments. This chapter explores the debates around water as a natural resource and as a human right, situating the discussion in the context of the identified challenges of making the right to water a reality. The main arguments made in this chapter is that, although there are many international human rights instruments that have implicitly recognized water as a human right; in order to safeguard the right to water more effectively, to focus policy on access to water, to address the environmental concerns related to access to water, and to raise awareness on the deplorable state of access to water for many people, there is need for explicit recognition⁸⁴ or proclamation of access to water as a human right, especially at the domestic level.

This chapter contains three sections. Section one provides an overview of current global issues in water resource management. The second part discusses the right to water in the context of international human rights law. The last section links global water discourse to the current Zambian context. In this part focus is on the politics of the right to water in Zambia considering both the official and the unofficial views. Human rights norms discussed in Chapter Three are applied to the Zambian case.

⁸⁴ Up to date there are only two international human rights instruments that explicitly recognizes access to clean water as a basic human right: The Conventions on the Rights of the Child(CRC, 1989), and the Conventions on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979).

4.1 Water in Global Perspectives

4.1.1 Growing Interest in Water

Currently, water seems to be attracting immense political as well as economic attention globally⁸⁵. This upsurge of interest in water may have many explanations, but the emerging awareness of the 'looming' water crisis is one of the many reasons (*World Water Development Report*, 2006; Mollinga, Meinzen-Dick & Merry, 2007). While the magnitude of the crisis is only dimly understood, there seems to be an insuppressible awareness that the current rate of water resources consumption at the global level is clearly unsustainable. Although much of the water crisis campaign literature has focused on issues of sustainable use of the resources, in this chapter it is noted that much of the crisis, especially with domestic water supply, is related to management and allocation of water rather than a scarcity problem. In reality, as Global Water Partnership notes "the water crisis is mainly a crisis of governance"(in Mollinga, Meinzen-Dick & Merry, 2007: 700). The world has enough water resources, just like many other resources. The Second *United Nation World Water Development Report* also confirms this when it states that, "[t]here is enough water for everyone. The problem we face today is largely one of governance: equitably sharing this water while ensuring the sustainability of natural ecosystems. At this point in time, we have not yet achieved this balance" (2006:3). The apparent water crisis arise from the way water resources are shared (HDR, 2007). The Zambian situation is a case in point.

On another level, interest in water from the corporate sector began to grow during the 1990s especially after the Dublin Statement and the Rio Earth Summit in 1992. Now, the growth of interest in water post Rio Summit is not a mere coincidence. One of the key statements in both the Dublin and Rio summits is the prominent recognition of water as an economic *as well as* a public good. In a sense, the recognition of economic value in water opened up the possibility of trading water just like any other commodity. There are two sides to the apparently growing interest in water that directly arise from the Rio Summit in particular. On one side is the interest of those who seek to make economic profit from the 'water business.' Prospects for profits from the water business have been high for large multinational water corporations such as Suez and Vivendi, Thames Water, given that water has low elasticity, and also because the supply of water services is often a a natural monopoly with the potential of creating monopoly profits. Furthermore water guarantees returns to investments since water is without a perfect substitute (McDonald & Ruiter, 2005:31, Bakker, 2007). Private investments in water service provision in particular have offered new breathers for over-accumulated capital that

⁸⁵ This is clearly evident from the number of international conferences on water in the last decade and half, but also the deepening controversy over how water management, delivery, pricing and conservation.

has been seeking profitable investment ventures (Swyngedouw, 2005; *ibid*). From this arises the growth of interest in water as an investment avenue globally.

It should be noted that private sector involvement in water did not start during the 1990s. Involvement of private sector in water supply has been part of the water delivery arrangement for a long time, especially in Europe and America. Swyngedouw(2005) identifies four major phases in the configuration of water service delivery system. Evident from these phases is that private sector has been part of the water services provision from the inception of reticulated water systems. Over the years, there have been some partnerships between the public and private service providers of one kind or another⁸⁶. However, it was during the vigorous privatisation policy adopted by the Thatcher era that the notion that the private sector will address the growing problems of water service delivery emerged (Prasad, 2006). This notion became widespread during the 1990s, strengthened by the declaration that water is an economic good.

On the other side, the possible dangers arising from the commodification of water triggered a counter-force that sought to block the expansion of the market into water (Bond, 2005; Hall, Lobina & de la Motte, 2005). On this side, apart from raising the negative implications of treating water as a commodity, the risks of exploiting and depleting water resources have been ably voiced. The anti-privatisation movements all over the world, in a bid to protect society from the negative impact of commodification, have mobilised against the move to treat water just like any other commodity (Hall & Lobina, 2006; Bond, 2004b). A 2005 publication by the Transnational Institute and Corporate Europe Observatory entitled “Reclaiming Public Water” documents the anti-water privatisation struggles from all over the world (Balaya, et al, 2005)⁸⁷. Through these struggles we witness what Polanyi calls a “double movement”: the expansion of the market evokes a counter force that opposes its further expansion (1944:130).

⁸⁶ The four phases identified by Swyngedouw are the period from the first inception of piped water up to the second half of 19th Century when water was provided by small private companies which supplied only parts of the city. The second phase was the municipalisation of the water services which occurred between the second half of the 19th Century and the First World War prompted by sanitary and environmental concerns in the cities. The third phase was the management of water services by national bodies or public utilities which occurred after the First World War. The Fourth phase started during the 1980s when the third wave of privatization initiated by the Thatcher government took central stage (see Swyngedouw, 2005: 83-84).

⁸⁷ The Cochabamba “Water Wars” in Bolivia since 2001 is an excellent example of strong resistance to privatization of water services.

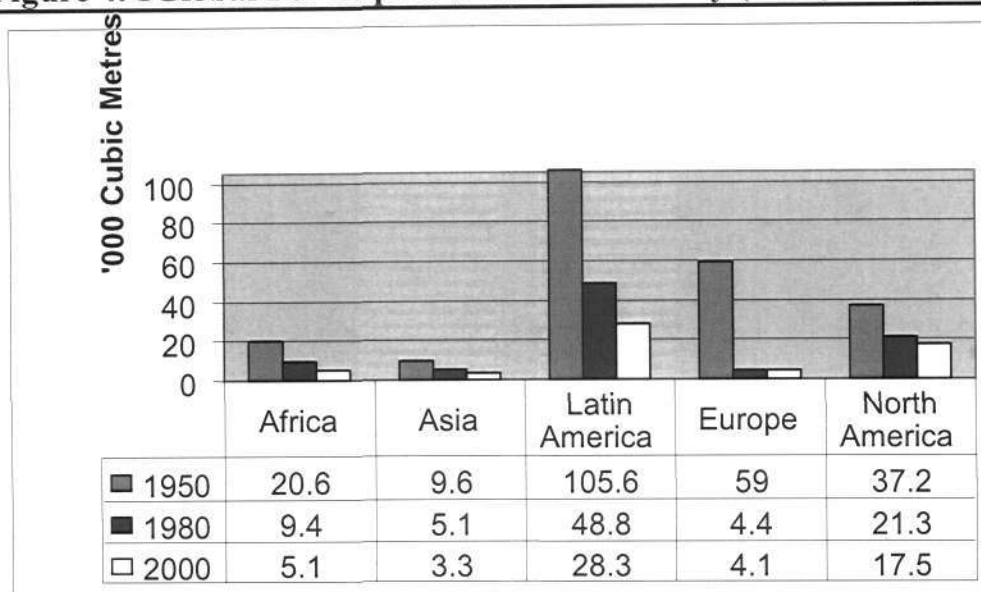
As the struggles over water from these two fronts ensues, interest in water becomes phenomenal. At the global level, there are fears that commodification of water may trigger unscrupulous exploitation of water resources with obvious environmental consequences. The basic argument on this side is that water is one of the *commons* and therefore it is not right to embark on “enclosing the commons”(see Section 5.2.3). It is on the basis of this that privatisation and commercialisation have been seriously challenged. But on the other side, it is argued that putting an economic value on water results in efficient use of water resources, which in turn promotes conservation and sustainability as it avoids waste via the economic cost imposed. These issues are addressed in detail in sections below (see Sections 4.2.9 and 4.2.10).

4.1.2 Global Water Resources

Arguably, at the international level, attention to issues of fresh water resource management and development only began to feature prominently during the last two decades. In a sense, the concern to address issues of water resources has only surfaced in the midst of the imminent water crisis (Rogers, 1997). Essentially, the looming water crisis can be seen as an outcome of the growing world population together with the expanding global industrial activities in the post World War II period (Webb & Iskandarani, 1998).

In terms of demographic pressure, global population has more than doubled between 1950 and 1990. A *United Nations Population Division Report* reveals that the population increased from 2.52 billion in 1950 to 5.27 billion in 1990, representing more than a 100% increase within 40 years. This increase in population, as it would be expected, implies increased demand for fresh water—a situation that has led to what is now being referred to as ‘water crisis’ (Saleth, 2002). The impact of this rapid increase in world population on water resources is reflected by the change in the availability of water per capita over the 50 year period (1950-2000). In most cases, water availability per capita has dropped with the highest drop recorded in Europe, Sub-Saharan Africa and Latin America where the availability of water per capita in 2000 is less than 25% of its 1950 levels as shown in **Figure 4.1** below.

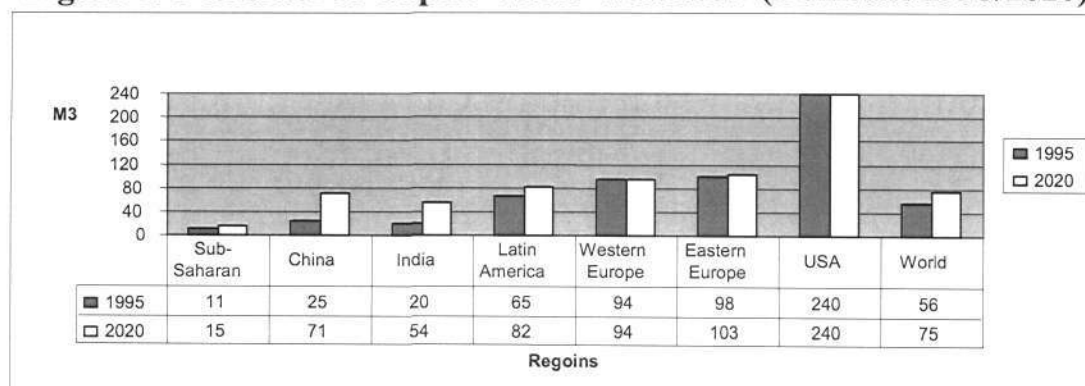
Figure 4. 1 Global Per Capita Water Availability (1950, 1980, 2000)



Source: Base on Data from Ayibotele (in Webb & Iskandarani, 1998:16)

Strangely enough, though there is a significant drop in the water availability per capita, withdraw of water for domestic purposes per capita has dramatically increased in all the regions of the world as indicated in **Figure 4.2** below, and this trend is likely to continue. Sharp increases in water withdraw are expected in India and China. Evident in **Figure 4.2** is the fact that the way water resources are shared is scandalously uneven when different regions are compared. While on average a person in Africa was withdrawing only 11M³ per year in 1995, an average American was consuming 240M³ per year, 21 times more water. Differences of this magnitude in the use of resources highlight the point that the nature of the water crisis is not so much that of absolute scarcity but that of uneven geographical distribution and consumption, a matter that relates to governance rather than availability.

Figure 4. 2 Global Per Capita Water Withdraw (Domestic 1995/2020)



Source: Base on Data from Rosegrant (in Webb & Iskandarani, 1998:17)

Citing (Rosegrant, 1997), Webb & Iskandarani observes that,

As with food, the world still has sufficient water at an aggregate level to meet everyone's minimum needs. Against estimated annual renewable freshwater supplies of between 9 and 14 trillion cubic meters, current global usage stands at less than 4 trillion cubic meters. As is the case with food, however, the global availability of water is *not* matched by adequate local access. Freshwater is unevenly distributed geographically and temporally, resulting in surpluses for some people and a threat of severe water insecurity for others (1998: 16).

Unevenness in the distribution and share of water is not only limited to the regional level, but huge disparities exist within countries and cities such that people in the same city can have very different levels of access to water, as the Zambian case in Chapters Five and Six below illustrates.

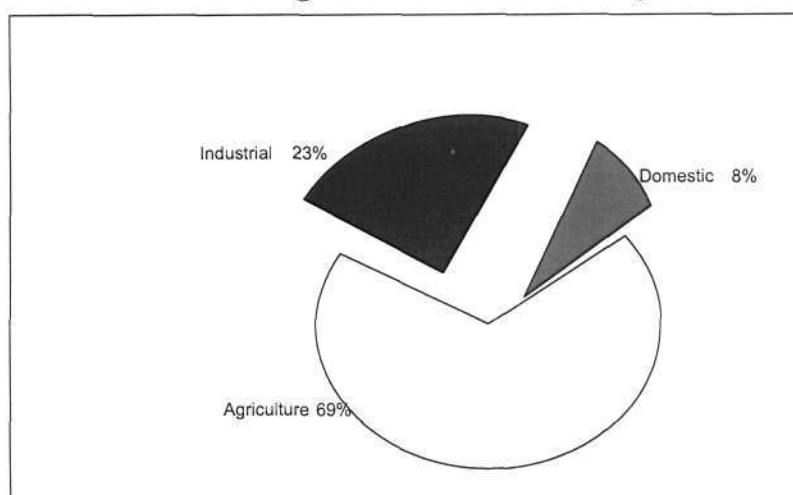
In terms of expanded industrial activities, the growth in global GDP can be used as a proxy indicator of the growing pressure on natural resources including water. In this regard, while the 'global' economy in 1950 was producing goods and services worth slightly above US\$17 billion a day, in 2000, this figure rose to US\$107.5 billion per day (*Institute for International Economics*, 2004: 5)⁸⁸. Thus, the crisis that is increasingly receiving attention pertains to the mismatch between demand⁸⁹ for and the supply of water (Saleth, 2002), with the latter remaining constant (almost) while the former growing exponentially. Paradoxically, it is this seeming imbalance between demand for water and its supply that has helped to draw attention to issues of water including access to water (Webb & Iskandarani, 1998)

Figure 4. 3 below also gives a rough idea of how water consumption is shared by the major water consuming sectors. At the global level, agriculture in all its different forms (irrigation, fish farming, animal watering, etc) uses more than two-thirds of the world's fresh water. Agriculture is often cited as the most inefficient user of the water at the global level (Mollinga, Meinzen-Dick & Merrey, 2007).

⁸⁸ The figures are converted to the 1993 dollar Purchasing Power Parity price.

⁸⁹ Although it has been argued that increases in technology has meant that resources are now used more efficiently than before (see Saleth, 2002; Roger, 1997), the efficiency resulting from technological advances would not deflect the huge net growth in demand for water resources by a very big margin especially in industries such as agriculture and mining where water is consumed in bulk.

Figure 4.3 Water Use by Sector



Source: Based on Data from the Centre for Economic and Social Rights (2004:2).

4.1.3 Wealth of Conferences, Poverty of Programmes and Political Will

At the international level, the increasing attention directed towards issues of water can be inferred from the number of international water conferences that have been dedicated to water, especially during the 1990s. Beginning from the *Mar del Plata Conference* in 1977, which was the first international conference dedicated to water, there has been an increasing focus on water issues, as indicated in the **Table 4.1** below. However, while many of these conferences have focused on water and have made several solemn declarations, since the early 1970s, progress in realizing a world where everyone has access to at least basic clean water has been limited (Biswas, 1997; Falkenmark, 1997). Assessing the impact of *Mar del Plata*, Biswas makes the observation that,

[w]hile the *Mar del Plata Action Plan* provided an excellent road map, it would be true to say that we have not succeeded to follow this map to any significant extent. There have been many global meetings and discussions on water issues, ranging from Dublin and Rio in 1992, to New York in 1997. All of these have contributed marginally so far in terms of:

- putting water firmly in the international political agenda
- making governments aware of the real urgency of the water crisis facing mankind, so that they are forced to take immediate and concrete actions; and
- where do we now want to go, and how do we get there (1997: 114).

Evidence of the failure to follow up on the principles of *Mar del Plata Conference* include the fact that 30 years after the 1977 conference, there are still more than 1 billion people living without clean water, and more than 2.6 billion people living without adequate sanitation (HDR, 2007. 5). Despite most governments having committed themselves to the responsibility to ensure that “all people” have access to basic clean water, this commitment has meant little for many people world over.

Table 4. 01 International Water Conferences 1972-2003

Conference	Year	Statement
UN Conference on the Human Environment, Stockholm	1972	'...we must shape our actions throughout the world with a more prudent care for their environmental consequences.'
UN Conference on Water, Mar del Plata	1977	'...all peoples, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.'
International Drinking Water and Sanitation Decade	1981-1990	
International Conference on Water and the Environment, Dublin	1992	'Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment'
UN Conference on environment and Development (UNCED Earth Summit), Rio de Janeiro	1992	'The holistic management of freshwater ... and the integration of sectoral water plans and programmes within the framework of national economic and social policy, are of paramount importance for action in the 1990s and beyond
Ministerial Conference on Drinking Water Supply and Environmental Sanitation, Noordwijk	1994	'To assign high priority to programmes designed to provide basic sanitation and excreta disposal systems to urban and rural areas.
World Summit for Social Development, Copenhagen	1995	These efforts should include the provision of ... safe drinking water and sanitation
UN Fourth World Conference on Women, Beijing	1995	'Ensure the availability of and universal access to safe drinking water and sanitation and put in place effective public distribution systems as soon as possible.'
World Food Summit, Rome	1996	'To combat environmental threats to food security
1st World Water Forum, Marrakech	1997	to recognize the basic human needs to have access to clean water and sanitation
2nd World Water Forum, the Hague	1997	Massively increase investments in water'
Millennium Declaration	2000	'We resolve ... to halve, by the year 2015 ... the proportion of people who are unable to reach or to afford safe drinking water.'
International Conference on Freshwater, Bonn	2001	'...water plays a vital role in relation to human health, livelihood, economic growth as well as sustaining ecosystems.'
World Summit on Sustainable Development, Rio+10, Johannesburg	2002	Integrate sanitation into water resources management strategies.'
3rd World Water Forum, Japan	2003	

Source: Adapted from UNESCO 's *World Water Assessment Programme: "From Stockholm to Kyoto"* (available at www.unesco.org/water)

The situation where more than 1 billion people lack access to adequate clean water leads to the question of whether international declarations are taken seriously by those who commit themselves to these agreements. Insignificant levels of commitment to issues of access to water bring out the water paradox, particularly that although water is universally recognized to be very vital to human life, it receives less attention than it deserves.

4. 2 The Right to Water⁹⁰ in International Human Rights Law

Although water is recognized to be very central to the existence and sustenance of the life on the biosphere, including human life, its only recently that it has began to receive sizable attention both at the national and international levels, especially in terms of explicitly recognising water as a human right. Below are various instruments in public international law that have implicitly or explicitly proclaimed access to water as a human right are discussed.

4.,2.1 Implicit Provision

4. 2.1.1 UN Charter Article 55

Article 55 of the United Nations Charter which provides for “a higher standards of living, full employment, and conditions of economic and social progress and development” as a necessary conditions for global peace and security, is often cited to be the foundation for most social economic rights including the right to development (Bedjaou, 1994b). Although water is not explicitly mentioned here, the argument has been that a purposive interpretation of the phrases, “higher standards of living” and “social progressive” is likely to include water as an essential constituent. Similarly, it has been observed that respect for human rights and fundamental freedoms would be impossible to contemplate without access to adequate clean water.

4.2.1.2 Article 25 of the Universal Declaration of Human Rights (UDHR)

Like the *UN Charter*, *Article 25 of the Universal Declaration of Human Rights (UDHR)* also provides for everyone to have the,

right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood old age or other lack of livelihood in circumstances beyond his control (#1).

The argument here, again, is that a standard of living adequate for one’s health and well-being cannot be realized in circumstances where people have no access to basic clean water. Gleick for instance argues that,

⁹⁰ As elaborated in footnote two, there is a significant difference between the “right to water” and “water rights.” The right to water is often used to signify the entitlement to access and the use of water for domestic purposes, while water rights encompass a wider range of entitlements which include the right to divert a natural water course and the use of water for industrial, agriculture and other commercial purposes. Water rights are often linked to the removal of water and its subsequent use out of its natural environment. For an elaboration on the distinction between the right to water and water right, see Hodgson (2004:10) “Land and Water—The Rights Interface”.

Satisfying the standards of *Article 25* cannot be done without water of a sufficient quantity and quality to maintain human health and well-being. Meeting a standard of living adequate for the health and well-being of individuals requires the availability of a minimum amount of clean water(1998: 5).

4.2.1.3 Articles 11 and 12 of International Covenant on Economic, Social and Cultural Rights

Article 11 of ICESCR has the same wording as *Article 25 of UDHR* except the addition of the phrase “and to the continuous improvement of living conditions” (1). Like *Article 25* of UDHR, *Article 11* of ICESCR does explicitly mention food, housing and clothing without candidly mentioning water. Health is provided for separately in *Article 12*, which stipulates that the “States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (1).

Here again, though water is not explicitly mentioned, it is assumed that realizing the highest standard of physical and mental health is both conceptually and practically unachievable without access to basic clean water. A reasonable interpretation of this provision is one that creates a duty to ensure that people, especially those who can not provide for themselves, have access to facilities and other elements such as clean water and sanitation and medical care which make the attainment of physical and mental health possible. The OHCHR *Guidelines on Human Rights and Poverty Reduction Strategies* (2002) adopts a similar interpretation arguing that,

The right to health is not to be understood as the right to be healthy: the state cannot provide protection against every possible cause of ill health. It is the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health. The right includes both health care and the underlying determinants of health, including access to potable water, adequate and safe food, adequate sanitation and housing, healthy occupational and environmental conditions, and access to health-related information and education (#116).

General Comment 14, offers a similar interpretation arguing that the right to health is not to be interpreted as the *right to be healthy*, but rather as a right to a “system of protection and opportunities that enable people to enjoy the highest attainable level of health” (# 14). Interestingly, this interpretation, which seems to be a comment on *Article 12* of ICESCR, does explicitly extend the right to health to include access to water. *General Comment 14* which elaborates on the scope of the rights provided for in this article, states that the right to health should be understood not in a narrow sense, but in a wider and comprehensive sense. The Committee defines the right to health “as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of

health, such as access to safe and potable water and adequate sanitation...” (*General Comment 14*, #11). In this sense, access to clean basic water is implicitly secured by *Article 12*.

Article 11 also provides for the right to adequate housing, which if broadly interpreted would also include access to water as a constitutive element of the right. This is the position taken by *General Comment 4* which argues that the right to housing should not be interpreted in a narrow sense to mean a roof between four walls, but the right should be “interpreted so as to take account of a variety of other considerations...” (#7).

The UN Committee on Economic, Social and Cultural Rights, which is the official jurisprudential body⁹¹ for the Covenant on Economic, Social and Cultural Rights adopts a definition of housing that includes access to clean basic water as a fundamental component. This follows the meaning given to “adequate housing” which includes “. . . adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at a reasonable cost” (*General Comment 4*, #7).

4. 2.1.4 Article 6 of the International Covenant on Civil and Political Rights (ICCPR)

Article 6 of ICCPR provides for the right to life. In the words of ICCPR,

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (1).

Although this provision does not mention explicitly the right to water, it has been argued that the interpretation of the principle of an inherent right to life would include the value of preserving life in every possible way (Scanlon, Cassar & Nemes, 2004; Gleick 1998). A generous or broader interpretation of the right to life is most likely to, at least, embrace access to water as one of its key components that fall within the ambit of this right. Unfortunately, as *General Comment 6* explains,

...the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner...(# 5).

As Gleick has noted, though water is “not explicitly mentioned in the final document of the Covenant, the right to life implies the right to the fundamental conditions necessary to support life” (1998:6) of which water is one of the most definite candidates. And in this sense, denial of access to clean water in as far as it leads to many people losing their lives, does impinge on the right to life under this article.

⁹¹ The Committee does not have the adjudicating rights; its major tasks include elaborating on and interpreting various articles of the covenant (like the general comments), receiving States parties’ reports and commenting on the progress that countries make towards realizing the covenant rights.

However, the third sentence in this clause implies that the focus here is on *arbitrary* deprivation of one's life⁹². In view of this, the main question here is whether death resulting from lack of access to clean water can be defined as an arbitrary deprivation of one's life. In recent times, it has been suggested that denying people access to water does deprive people of their lives:

'Not having access' to water and sanitation is a polite euphemism for a form of deprivation that threatens life, destroys opportunity and undermines human dignity. Being without access to water means that people resort to ditches, rivers and lakes polluted with human or animal excrement or used by animals (HDR, 2007:5, See also WHO, 2003).

4. 2.1.5 Article 8(1) of Declaration on the Right to Development

The Declaration on the Right to Development, like many other international human rights documents, does not explicitly mention access to water as a human right. Arguments for water as a human right are inferred from the broader context in which the declaration was made based on a generous interpretation of its provisions. *Article 8(1)*, particularly, does provide for states to take "all necessary measures for the realization of the right to development" ensuring "equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment...." Although water is not particularly listed, it can be argued that a complete list of "basic resources", that the article alludes to, is likely to include water given its fundamental role in sustaining human life, well-being and development.

4. 2.1.6 Articles 16 and 24 of the African Charter on Human and People's Rights

Article 16 of ACHPR, like *Article 25 of UDHR* and *Article 12 of ICESCR*, provides that every individual shall have the right to the "best attainable state of physical and mental health" and that the States parties to the Charter "shall take the necessary measures to protect the health of their people...." While this does not explicitly mention access to water as a human right, a right to the "best attainable physical and mental state" is inconceivable in a situation where access to water is denied to many people. Similarly, while *Article 24* does not provide overtly for access to water, it can be argued that the "right to a general satisfactory environment" which the article provides for cannot be realized in conditions where there is no access to clean water and adequate sanitation.

Another argument often advanced in support of the right to water is that it is absurd to talk about a person having a right to food without basic water for drinking, cooking and washing. The Committee on Economic, Social and Cultural Rights argues convincingly that the right to food should not be

⁹² This is probably true given the anti-capital punishment campaign during the 1960s when the covenant on civil and political rights was drafted.

interpreted in a narrow sense: “the *right to adequate food* shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients” (*General Comment 12*, # 6). Instead, the right to food serves to “underline a number of factors which must be taken into account...” (ibid, #7). Therefore, the conclusion reached is that even if water is not explicitly mentioned among the list of basic human rights protected in most international human rights instruments, it is implied as a human right through the explicit protection given to other rights such as food, housing, environment and health.

At this point, one may ask why water was not explicitly mentioned like food, health and social security in these human rights instruments? One of the answers given to such questions is that the list in *Articles 25* of UDHR or *12* of ICESCR is “not meant to be all-inclusive, but representative or indicative of the “component elements of an adequate standard of living” (Gleick, 1998:5).

Recently, the UN Committee on Economic, Social and Cultural Rights, has adopted the same line of reasoning arguing that the,

“use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival” (*General Comment No.15*, #3).

Scanlon, Nemes and Cassar, makes the same argument adding that the list in *Article 25* was only meant to serve an *indicative purpose* highlighting some of the factors essential to meeting an ‘adequate standard of living’ (2004:12).

Without subtracting any of the merits of these arguments, it should be submitted that an explicit recognition of water would have generated a more convincing argument for the right to water.

4. 2.2 Explicit Provisions

Other than the above instruments which have implicitly provided for the right to water, in recent years, there have been a few human rights instruments that have explicitly mentioned clean water for drinking, bathing washing and cleaning as a basic human entitlement. The major human rights instruments that have explicitly provided for water are discussed below.

4. 2.2.1 The Geneva Conventions and Protocols

One of the earliest human rights instruments to refer to water as a right are the Geneva Conventions (II, III and IV) and Additional Protocols I and II. But these were provisions for people in special circumstances like the prisoners of war. For instance, the Geneva Convention III of 1949, provides that,

...apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose (#29).

Similarly, the Additional Protocol II to the Geneva Conventions adopted in 1977 provides that “[s]ufficient drinking water shall be supplied to prisoners of war” (26). But still the question of whether the provisions protecting people in specific circumstances can be extended to cover everyone remains to be answered. At this time, the probable understanding may have been that people who are not prisoners of war would have guaranteed access to clean basic water, and therefore not contemplated as beneficiaries of this right. Probably, this may have been the thinking that influenced the earlier human rights instruments including the UDHR which took it for granted that access to water was so basic that it would be absurd to assume that someone would be denied access. Following this line of argument, it can be claimed that providing for the right to water explicitly would be as absurd as providing for the right to air separate from the right to a clean environment. But as it emerged later, the circumstances have changed such that it has become essential to clearly protect the right to water explicitly (Scanlon, Cassar, Nemes, 2004).

4. 2.2.2 Article 14 2(h) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Among the international human rights instruments, CEDAW explicitly provides for access to water as a basic right. *Article 14 (2) (h)* provides for the right “to enjoy adequate living conditions, particularly in relations to housing, sanitation, electricity and water supply....” Although this provision is made with reference to women in particular, given the strong emphasis on equality⁹³ that human rights principles have adopted, it is most probably correct to interpret this provision in a non-discriminatory way, and give it a universal application. If this Convention’s objective is to address the discrimination that women have been subjected to, these provisions should be understood to stand against any form of discrimination, not just against women, but against all people, such that the provision may not be restricted to women alone. An important point to note here is that this article creates a legally binding

⁹³ Even CEDAW itself in the *Preamble* acknowledges that discrimination of any sort violates the principle of equality which is one of the fundamental values of the international human rights system.

obligation on all States parties to this Convention to ensure that the rights protected therein are realized for all people and not just for women.

4.2.2.3 Article 24 2(c) Convention on the Rights of the Child (CRC)

One of the clearest provision on the right to water can be found in *Article 24(2) (c)* of the CRC, which provides, *inter alia*, for the right of every child to “the provision of adequate nutritious foods and clean drinking water....” Again here, this right may not be interpreted to be restricted to children only. In the case of children, many rights often becomes a reality in the context where adults play a key role. Children have been brought in the centre stage to emphasise the vulnerability of their rights. Thus, it might be appropriate to give this article a universal application as well.

4.2.2.4 Article 14 2(c) African Charter on the Rights and Welfare of the Child (ACRWC)

At the regional level, the African Charter on the Rights and Welfare of the Child (ACRWC), *Article 14* explicitly provides for the right to water. It stipulates that States parties to this Charter shall take measures “to ensure the provision of adequate nutrition and safe drinking water.” Unlike CRC where the right to have access to clean water is provided for independently, the protection under ACRWC is made under the health clause. *Article 14* under which water is mentioned actually has the heading “Health and Health Services.” However, though water is provided for under the umbrella of health, it is explicitly mentioned as an entitlement for the beneficiaries envisioned in this clause.

4.2.3 Discussion

Looking at both the explicit and implicit instruments on the right to water, there are three major points that arise.

4.2.3.1 Interdependence of Human Rights

First, it is clear that the right to water is intricately linked to other human rights. In many documents where water is mentioned, it is not mentioned in isolation. This is not only a feature associated with the right to water, but other human rights as well. In both the explicit and implicit provisions, water is inextricably linked to other human rights such that to realize the right to food or adequate housing or health, access to water is indispensable. This interrelationship between human rights is captured in *General Comment 14* when it argues that,

The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against

torture, privacy, access to information, and the freedoms of association, assembly and movement (#3).

A similar position is expressed in the *Vienna Declaration and Programme of Action*, when it states that, “[a]ll human rights are universal, indivisible and interdependent and interrelated” (#5).

Arguably, if human rights are a set of values that a community gives to itself (Sengupta, 2000), based on its commitment to the fundamental values of human dignity and well-being as noted in Chapter Three above, all elements that enhance and sustain human dignity must be considered in unison. If one element is considered in isolation or separate from others, human dignity may be compromised given that a human person is an integrated being.

Often the principles of the indivisibility, interdependence and interrelatedness of human rights are invoked against the popular approach of fragmenting human rights into first, second and third generations as suggested by Karel Vasak (1975) and Maurice Cranston (1972). But in fact, the principle of the indivisibility of human rights also applies to the different rights within the same category such as the civil and political rights, and economic, social and cultural rights. The important implication of this principle is that all human rights should be given the same recognition, attention and consideration (Limburg Principles, 1993: #3). This does not, however, imply that all human rights should be given the same weighting in every circumstance. Surely, not all human rights have the same risk of being violated all the time. At certain times, it is appropriate to focus on or prioritise those rights that are most at risk of being violated.

Relying on the principles of interdependency and interrelatedness of human rights, it has been argued in some quarters that emphasizing one human right, such as the right to water, militates against these principles. In some cases the problem of competing demands on scarce resources, has been used as a pretext for not coming up with programmes towards the realization of a particular right such as the right to water (in Sengupta, 2000.560).

Obviously, the real world where human rights are realized or violated is often constrained by resources such that it is not possible to give the same attention to all human rights at all times. At times it is practically appropriate to focus on certain rights while not ignoring the other rights (Sengupta, 2000; 2004). Further, as alluded to earlier, not all human rights are exposed to the same risks of being violated. In principle, all violations of human rights constitute an affront to human dignity and

fundamental freedoms, but not all violations have the same impact on human dignity and freedom. Given these two factors, it is not only logical, but practically expedient to focus attention on those rights that have the greatest risk, without undermining or ignoring the others.

4. 2.3.2 Taken for Granted

The second observation that can be made from the various international human rights instruments discussed above is that access to water in the past has been taken for granted such that it was always a given that people will have access to water⁹⁴. In the past, probably because of its centrality to life, there might not have been any need for an explicit protection as was the case with other rights such as food, housing, health, employment and so on. Currently, these assumptions are being over-taken by events such as the privatization and commercialisation of water services, unequal share, increasing competition between the various sectors that use water, which have led to the wide spread denial of access to water for many people. This in turn has undermined the realization of other human rights such as the right to health, food, equality of opportunity, and clean environment. Further, the water crisis that may arise from commercial exploitation of water resources calls for clear protection of access to basic water.

4. 2.3.3 Moral and Political Pressure

Thirdly, on the basis of various international human rights instruments reviewed above, it is clear that there is an underlying assumption that taking a rights-based approach to water is one of the effective ways of addressing the problems surrounding access to water. In these documents, it seems almost beyond doubt that by expressing access to water in terms of human rights, a certain moral and political pressure is created. It is as though couching access to water in the language of rights makes the appeal more forceful than in any other way. For instance, *General Comment 15*, accords the right to water equal legal status with “other rights enshrined in the International Bill of Human Rights...”(#3).

In addition, even individuals when they speak, find it very appealing to use the language of rights. For instance, former Secretary General of the UN Kofi Annan argues that water is an essential human need and therefore a human right (in HDR, 2007). This highlights the assumption that when expressed in

⁹⁴ The former UN Secretary General Kofi Annan in his special contribution to the *Human Development Report 2006*, points out one way in which water is taken for granted; “people open taps and sometimes leave the taps running; people go to supermarkets and just pick from the many brands of water” (2007: 78). We could add other ways in which water has been treated like an inexhaustible resource that should be exploited with little concern—policy makers have had this attitude for years, people in agriculture and industry have also used water as though it is something that did not matter much. Yet, for more than a billion people on the planet struggle to get even a gallon of water each day.

terms of rights there is some stronger emphasis added. Brazilian President Lula da Silva in a special contribution to the *HDR 2006*, also asserts that “Clean, accessible and affordable water is a human right” (2007: 79). Mexican President Vicente Fox, during the 4th *World Water Forum (2006)* declared that “water is above all a human right which no one can renounce” and that “it is our moral and political obligation to ensure that nobody is denied his right to this vital liquid” (Dubreuil, 2006:4). Likewise, the Bolivian Minister of Water, Abel Mamani, affirms that “water must be treated as a human right not another tradable commodity for profit”; and the Mayor of Mexico City declares that “[w]ater is a public good and a public right” (ibid). Dubreuil also argues that the advantage of formulating access to water using the language of rights is that, “[t]he law has a critical role to play to ensure access to water for all, and a rights-based approach would lead to acceleration in achieving basic and improved levels of access to safe water” (2006: 6). Other authors deploy the language of rights because rights “generate reasons for action” which induce both perfect and imperfect obligations⁹⁵ (Sen, 2004: 8). But it is worthwhile asking if clothing human needs in human rights language makes a difference in reality.

4. 2.3.4 Human Rights: a Smokescreen?

While the language of rights is commonly acknowledged to carry at least a certain moral force, we are reminded that in practice, the language of rights is often used to disempower the poor whose rights are violated daily. With particular reference to access to water, it has been noted in this study that while there have been numerous proclamations of access to water as a basic human right, access to water for many people is far from being a basic entitlement that they can claim. In this way, often “the language of human rights serves as a smokescreen behind which the rights of poor people are violated” (HDR, 2007: 78).

4. 2.3. 5 Why Access to Water as a Human Right?

Given the fact that most fundamental human needs that have been clearly declared as human rights remain far from being ‘real’ rights for most people especially the poor, is there any need to fight for water to be recognized as a human right? There are several grounds on which the argument for recognizing water as a human right can be made.

⁹⁵ Sen borrows the notion of perfect and imperfect obligation from Emmanuel Kant. Perfect obligation as used by Sen signify situations where a duty is coupled or correlated with the legal responsibility to perform or not to perform a certain action, while imperfect obligations may not necessarily be ones correlated with the legally binding duty. However, Sen, argues that the imperfect obligations goes beyond mere charity and voluntarism. It generates some moral responsibility that requires the underlying duty or action to be performed (See Sen, *Elements of Theory*, 2004).

First, declaring water as a human right helps to identify the right bearers as well as the duty bearers thereby providing space on which the right to water can be contested. What a declaration of a right does is to emphasise the point that states in their action have to pay attention to the obligations that they have committed themselves to. As Jolly argues, recognizing water as a human right helps to,

... ground the priority on the bedrock of social and economic rights, it emphasizes the obligations of states parties to ensure access, and it identifies the obligations of states parties to provide support internationally as well as nationally (in Gleick, 1998:3).

Thus, a human right is a statement about a human value that deserves the attention of society. Actual realization of a particular right while it should be an essential consideration should not be the only condition to determine whether a particular value should be a right or not.

Second, it is important to explicitly proclaim access to water as a human right because that moves access to water from being an entirely local or national issue to the global domain. As a human right, access to water becomes part of the international human rights system and this can be an avenue through which international pressure can be generated to ensure that appropriate attention is paid to issues of access to water particularly for those who have no access.

Third, as Scanlon, Nemes & Cassar (2004) have noted, a formal recognition of the right to water would make its implementation more practical and possible, and would also lead to the development of guidelines and jurisprudence that would provide assistance to the practical questions of policy and implementation.

Fourth, an explicit acknowledgement of water as a human right can help focus national and international water policy on issues of environment, water resource management, while attending to the need to improve the coverage of water for domestic consumption. When formulated as a human right, access to basic water should take precedence over other concerns (Gleick, 1998). When water is explicitly recognized as a human right, it also includes the respect for the environment in which the water is found.

Fifth, recognizing access to water as a human right provides tools for analysis and grounds for demanding accountability and transparency. Proclaiming water as a human right enables civil society organisation to anchor their claims for the need to improve services in cases where a large number of people have no access to basic water. Simply put, once water is recognized as a basic human right it makes it possible for members of civil society to begin to demand that states fulfil the minimum

requirements of the right. As Gleick has observed, “explicit recognition of water as a human right could ... present a tool for civil society to hold government accountable to ensuring access to sufficient, good-quality water” (1998: 29).

However, it has been contested that declaration of the right to water makes very little difference in reality especially for the poor. For instance, Bond (2002; 2004a) cites the example of South Africa where the right to water is clearly recognised and yet this has not translated into any significant impact given the rampant disconnections and inequalities in accessing water that exist. Similarly, Bakker argues that the declaration of the right to water has not managed to ‘foreclose’ the privatisation of water services which evidently result in the denial of the right to water (2007: 439). While these are valid concerns to be raised about the right to water, it is argued here that these problems arise when the assertion of the right to water is seen to be the panacea or ‘magic bullet’ for all problems related to access to water. As noted earlier, recognising access to water as a human right is only the first step towards the realisation of the right. Realisation of a right to water requires more than just an explicit statement of the right, though that is essential.

4. 2.5 Nature, Scope and Content of the Right to Water

While the arguments to have water proclaimed a human right are clear, widely acknowledged and generally convincing, the question as to what exactly is the nature, scope and content of the this right, has not been adequately addressed. As alluded to above, since the right to water is mainly derived from other rights, its content and scope has not yet been clearly defined. Questions as to what obligations does the right generate on the duty bearers, who the beneficiaries of the right are, what the beneficiaries are entitled to and the nature of remedies or redress they can seek in situations where their right is not fulfilled are yet to be settled.

4. 2.5.1 Nature of the Right to Water

Regarding the nature of the right to water, it has been affirmed that the right to water like other human rights⁹⁶ is a fundamental human right. The *Limburg Principle* for instance, asserts that,

⁹⁶ Here the arguments in the *Limburg Principles*, *The Vienna Declaration* and the *Maastricht Guidelines on the Violation of Economic, Social and Cultural Rights* are meant to dispel the Cold War mentality that only civil and political rights should be accorded the full status of human rights while the second and third generation rights are meant to be mere aspirational statements. A clear affirmation of this position is stated in all these three documents but most strongly in the *Maastricht Guidelines* which declares that, “It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, states are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights” (#4).

Economic, social and cultural rights [to which the right to water belongs] are an integral part of international human rights law. They are the subject of specific treaty obligations in various international instruments, notably the International Covenant on Economic, Social and Cultural Rights” (#1).

General Comment 3 which has elaborated on the “Nature of States parties’ Obligations” stipulates that the nature of the obligation includes both the obligation of conduct as well as the obligation of result (1990, #1). In other words, the states parties to the ICESCR have both an obligation to conduct themselves in compliance with the requirements of this Covenant as well as to produce the outcomes that do not conflict with the Covenant values and spirit.

4. 2.5.2 Violation: Commission and Omission

The other feature common to human rights within the Covenant is that they are supposed to be realized progressively. As noted in Chapter Three, this does not mean that no immediate attention to the rights is required. On the contrary, the duty bearers are expected to take immediate, concrete and reasonable steps towards the realization of the rights. In terms of access to water, this requirement is met when the targeted measures, programme and steps are devised and implemented. Another indication of compliance with the obligation of progressive realisation is when the number of people accessing basic water is increasing over time. Instances where access to water is static or retrogressing amounts to a clear case of failure to comply with Covenant obligations. Violation can result from action of the state (commission) as well as from the state’s failure to act (omission). Examples of violation by commission include policies or strategies that are discriminatory, programmes or policies that result in the violation of rights, adoption of measures, diversion of public funds which lead to rights not being fulfilled, drastic reduction of public expenditure causing retrogression in the fulfilment of a basic right (*Maastricht Guidelines*, 1997: #14).

Examples of violation of Covenant rights by omission include the inability or failure to adopt appropriate, immediate and concrete measures; failure to sufficiently regulate third parties; failure by the state to take into account international obligations in its policies; failure to enforce laws and regulations that secure the rights under the Covenant; failure to utilize the available resources towards the realization of the Covenant rights (*ibid*, #15).

The *Maastricht Guidelines* summarizes the nature and scope of the obligations that the rights under the Covenant generates;

...economic, social and cultural rights impose three different types of obligations on States: the obligations to *respect*, *protect* and *fulfil*. Failure to perform any one of these three obligations

constitutes a violation of such rights. The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights. Thus, the right to housing is violated if the State engages in arbitrary forced evictions. The obligation to protect requires States to prevent violations of such rights by third parties. Thus, the failure to ensure that private employers comply with basic labour standards may amount to a violation of the right to work or the right to just and favourable conditions of work. The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights. Thus, the failure of States to provide essential primary health care to those in need may amount to a violation (#6).

4. 2.6 Scope of the Right to Water

In relation to the scope of the right to water, it has a universal reach—meaning that the right envisages ‘everyone’ as a beneficiary without discrimination on any prohibited grounds such as race, gender, social status, country of origin and so on. The principle of universal application of human rights instruments flows from the UN Charter *Article 55* (c) which prohibits discrimination on the basis of “race, sex, language, or religion.” This position is re-asserted and extended in the UDHR *Article 2* which includes among the prohibited grounds for discrimination, political opinion, national or social origin, property ownership, birth; indeed any other status.

With particular reference to the right to water, *General Comment 15*, has recognized the principle of universal application when it states that “water and water facilities must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds” (#12 (c) iii). Thus, there is overwhelming evidence and adequate clarity on the scope of the right to water; the right applies to *everyone* whether they can afford to pay for water or not.

Contrary to the commonly held opinion that rights such as the right to water applies only to those who cannot afford to pay, the right should be understood to protect *everyone*. What is often confused with having a right to water is the eligibility for free basic water for those who cannot afford to meet their basic water requirements in countries that have such policies. But providing free basic water to people who are not able to provide for themselves does not imply that those who have not been put on the list of free basic water recipients do not have a right to water or that their right to water is suspended. Having a right to water is not synonymous with getting free basic water.

What the right to water (as explained in *General Comment 15*) provides for is that everyone should have access to water including those who are unable to pay for water services. Now to translate the

right to water into tangible entitlements for those who cannot meet the basic water needs for one reason or another, there must be a way to make sure that these people are given access. Often, it is the state that should ensure this through a deliberate policy or strategy. Such a policy, however, is far from implying that those who can afford to pay for water do not have the right to water.

Similarly, providing free basic water to those who cannot afford to pay for water does not amount to discrimination on the basis of income or social status; it only fulfils the principle of fairness and equity in ensuring that everyone has access. *General Comment 15*, permits this bias towards the vulnerable groups when it acknowledges that while “the right to water applies to everyone, States parties should give *special attention* to those individuals and groups who have traditionally faced difficulties in exercising this right....” (#16, emphasis added).

This approach is in line with the famous Rawlsian “Difference Principle” as well as Gewirth’s *Principle of Deprivation Focus*. John Rawls (1972) in his *Theory of Justice* argues that inequality in the “basic structure” dealing with the distribution of society’s resources⁹⁷ is justifiable “only if the difference in expectation is to the advantage of the representative man who is worse off...” (68). Arguing in defence of the equity principle in human rights, Gewirth (1996) also is ready to let the scale tilt in favour of those who are unable to acquire the basic minimum of goods as a way of enhancing their ‘purposive agency’ so as to increase their potential for free actions. Responding to the objection that a deliberate focus on the poor is incompatible with the principle of universality of rights, Gewirth(1996) argues that,

The most direct reply to this objection is that because human rights impose requirements that equally protect the fundamental agency-related interests of all persons, those deprived persons whose interests are protected inadequately or not at all must become the focus of the rights so far as concerns their effectuation. I shall call this the *deprivation focus* (110, emphasis in original).

In the case of the right to water, the moral strength of focusing on providing free basic water services lies in the fact that failure to draw attention to those without access leads to various social and health problems that can affect the entire society (WHO, 2003). And the state bears the primary responsibility to ensure that those who fail to meet basic conditions for human well-being are catered for.

⁹⁷ Although Rawls is, in principle, prepared to let the scale tilt in favour of the poor rather than keep it at balance, it is difficult to see how that could be effected in practice when he shows strong reliance on playing the “Zero-Sum Game” arguing that in as much as we want to improve the lot of the poor, we should not make the wealth and highly motivated entrepreneurs worse off because that would dampen their spirit to be innovative (See Rawls, *Theory of Justice*, P. 68-71).

4. 2.7 Content of the Right to Water

For the right to water to be meaningful and applicable to practical situations, its content must be clearly stated. While the scope of the right addresses the two main question of who the beneficiaries are and who the duty bearers are, content of the right outlines the substantive elements of a right (deWall, 2001). When addressing the question of content one is concerned with what exactly the beneficiaries of the right are entitled to under various circumstances. Elements of content elaborate the constituent aspects of the rights.

Given the different situations in which people, even in the same country, find themselves, it becomes difficult to formulate a universal standard or measure for all situations. However, it is possible to formulate general guidelines which act as the “minimum standard of achievement.” While a practical problem with regard to a uniform content of the right to water must be acknowledged due to the diversity of circumstances between countries, there are basic requirements that could be identified to constitute a basic normative content⁹⁸ of the right to water. And the *General Comment 15* has provided the scaffolds on which local specifics can be anchored. According to *General Comment 15*, the normative content of the right to water has two aspects: freedoms and entitlements.

The freedom aspect of the right generates the negative obligation not to interfere with anyone’s access to water either by public, private entities or individuals. Thus, to fulfil this duty, an individual should not be subjected to arbitrary obstructions in accessing water. Any arbitrary move including disconnections, cutting of water supply, contamination of water sources, inadequate service hours, restriction of access; indeed any unaccounted for obstruction of access infringe on the people’s freedom to have access to water (*General Comment 15*, #10). Freedom to access water constitutes both

⁹⁸ The use of the term “normative content” is adopted by the *Committee on Economic, Social and Cultural Rights* to emphasize the point that the covenant rights need not be legal rights. This positions seems to be a direct reaction to the prolonged argument that economic, social and cultural rights are not justiciable because they are not provided for in domestic statutes, and in many cases in national constitutions. Often it is argued that though most of the countries have ratified ICESCR (142 countries by 2000), most of these countries have not incorporated these provisions in their national legal system such that they cannot be effectively enforced given that these norms are not self-executing norms (*General Comment 9*, #11). O’Neill in *Towards Justice and Virtue* (2000) for instance argues that the international treaties and declarations only make lofty proclamations and promises but fail to ensure that the promises made become part of the institutional structure of society. Because of this, socioeconomic rights often lack the essential feature of rights in general, namely the correlation of the right holder with a duty bearer. But as Sen (2004) has pointed out, legal enforcement must not be the only way of enforcing these rights nor should it be conceived to be the most effective means of enforcement. In fact other means such as wide recognition, agitation and advocacy, public discussion and appraisal have proved to be more effective ways of giving effect to human rights. This realization is specifically pertinent to economic, social and cultural rights that formulating these public demands in *moral* rather than *legal* terms (though the difference between the two terms often dissolves when subjected to rigorous critical analysis), carries an equally compelling force, and sometimes more than the legal formulations.

the substantive freedom of opportunity to access water as well as the procedural freedom in the process of accessing water. The Substantive freedom of opportunity to access water implies that no one should be obstructed from the opportunity to access water. For instance people staying in an area that is not serviced with water have their freedom of opportunity to access water largely impaired in as far as the chances of getting water becomes less. Similarly, people's freedom of process of accessing water is undermined if in the process of accessing water they are exposed to various dangers such as rape, violence, intimidation, abuse, physical and mental stress and other risks.

While freedom of access requires that the opportunity and process of accessing water not to be interfered with, the entitlement component requires that sufficient *quantities* of water be available continuously and in *quality* appropriate for upholding human dignity. The entitlement component also requires that water be *physically* and *economically* accessible to all. Here emphasis is placed on economic accessibility which includes people's ability to pay for water, pricing and distribution. More concretely, an entitlement to economic accessibility generates a duty to ensure that the pricing of and charges for water do not "compromise or threaten the realization of other Covenant Rights" (*General Comment 15, #12 (c) (ii)*)⁹⁹.

4. 2.8 Necessary Conditions for Realizing the Right to Water

4. 2.8.1 Specifying Constitutive Elements

Clearly outlining the elements of the right is crucial to the realization of the right. Without an elaborate content of the right, it would be difficult, first, for the duty bearers to know what their obligations are, and second, for the intended beneficiaries to know what they are entitled to. For instance one of the key prerequisites to improving access to water for those who are not able to access water because they cannot afford is stating clearly what constitutes basic water and who qualifies to receive free basic water. Even if what constitutes basic water varies from place to place (Gleick, 1996)¹⁰⁰, it is helpful to establish the minimum standard to which every state party should be striving. When setting such basic minimum care must be taken not to set the minimum too close to the survival lines.

⁹⁹ *General Comment 15* has for one reason or another avoided using the term basic water; it instead uses the terms sufficient which turns out to be more vague and difficult to quantify in real terms. Sufficiency or adequacy carries with it a high degree of subjectiveness that may make it difficult to provide general guideline standards. The concept of basic water, on the other hand, makes it easier to provide a conceptual basis for defining a minimum standard that could guide the quantity needed (See Gleick, 1996).

¹⁰⁰ Gleick has provided estimates of water needs per capita on average. Of course real circumstances vary widely, but such minimum measures can help in estimating how much resources are needed to meet the basic water needs for the poor communities (see Gleick, 1996: 88 and Appendix 1v).

4. 2.8.2 Identifying Duty Bearers

In terms of obligations that the right to water generates in the light of the Covenant rights, it is clear that the state has the primary responsibility to ensure that the covenant obligations are fulfilled. Like many other rights, the Covenant rights in general, generate the obligation to *promote, respect* and *protect* rights. With particular reference to water, even in situations where the violation is not directly resulting from state action, the state is held responsible for the action of a third party. The obligation to protect is envisioned to create a duty on the state to ensure that third parties do not interfere with the individual's enjoyment of the right to water: "[t]hird parties include individuals, groups, corporations and other entities as well as agents' acting under the state's authority" (ibid, #23). And in cases where,

water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water (ibid, #24).

Of particular and practical importance to this study is the obligation to fulfil. The obligation to fulfil, requires that the state takes positive measures not only to facilitate and assist individuals access basic water, but also states parties are expected to *actually* provide water to individuals or groups "when they are unable to provide for themselves for reasons beyond their control," (ibid, #25). Focus here is on those who cannot provide for themselves for reasons mentioned above. The obligation does not oblige the state to provide for *everyone*, but it does require the state to make sure, by various means, that even those who cannot provide for themselves like the aged, orphans, terminally ill, disabled and widows, have access to water also.

4. 2.8.3 Targeted Programme

Realising the right to water often requires devising a programme to identify vulnerable groups in society as a first step. Cases where such groups of people go without water, and no programme is designed to address their difficulties with accessing water, are *prima facie* examples of non-compliance with Covenant obligations. Even in cases where services are not provided by the state (national or local), the state has "a special obligation to provide those who do not have sufficient means with necessary water and water facilities and to prevent any discrimination on internationally prohibited ground in the provision of water services" (ibid, #15).

4. 2.9. The Right to Water in the Water Debate

4. 2.9.1. The Challenge

While there are clear guidelines and pronouncements on the nature and content of the right to water, implementation of these norms face many challenges as we shall see in the case of Zambia. One of the

major sources of the challenges pertains to the nature of international law from which human rights are derived. As it shall be shown later, while human rights instruments and other international treaties are quickly ratified by many nations, very few nations have translated these instruments into domestic legal or policy systems. Related to this is the controversial relationship between international and municipal law. And this is particularly the problem in countries with common law traditions¹⁰¹. Unfortunately, even countries where international human rights instruments are made part of the domestic law, there is no guarantee that these rights will be implemented in a way that will give effect to the rights. Case studies done by the *Overseas Development Institute* (Conway, et al, 2002) reveal that even rights that are provided for in national constitutions have problems being implemented. And the question that arises here is whether it is the nature of human rights that makes their implementation difficult. Very few answers have been provided to this question other than the claim that the world is still cultivating the culture of human rights (Vincent, 1986).

In the case of the right to water, lessons from the challenges of realizing the right to water for the poor in South Africa are very instructive. Despite a clear constitutional protection of the right to water, plus a comprehensive free basic water policy, many people still have not been able to access clean water (Mehta & Ntshona, 2004; Booysen, 2004; Bond, 2006). While the free basic water policy has been lauded by many commentators including the UNDP *Human Development Report 2006*¹⁰², “[s]till, its implementation has been difficult. In part, many of its highly laudable aims [have] been negated either due to lack of financing and institutional capacity” (Mehta & Ntshona, 2004: 3). In a study conducted by the Children’s Rights Institute, Mosdell & Leatt also concluded that, the many civil protests over water “are an indication that all is not well at local government and service delivery levels....” (2005: CD-Rom). Further, the 6th Economic and Social Rights Report by the South African Human Rights Commission has reported cases where the implementation of the free basic water has encountered a number of problems. For example, in the Ilembe District Municipality, it was discovered that instead of

¹⁰¹ Most countries that were once colonies or territories of England or British Empire are said to have adopted a common law tradition with the exception of Malta, Scotland and Quebec which are using the civil law tradition. The principle difference between the two systems is the weight given to precedents. In common law tradition, precedents are binding just like statutes and jurisprudence play a critical role in the function of the legal system while in civil law traditions, it is legislation or statutes and ministerial regulations that are seen as the important sources of the law and therefore legally binding (See Fletcher, 1982). Judicial precedents are not widely recognized as legally binding laws, and where they do, there are given low weight compared with common law countries. Civil law developed mainly on continental Europe from the Roman Law that influenced the Napoleonic and Germanic Codes (see Wikipedia encyclopedia for details).

¹⁰² According to the HDR 2006, “South Africa has demonstrated how the human right to water can serve as a mechanism for empowerment and a guide to policy. Rights based water reform has enabled it to expand access and overcome the legacy of racial inequality inherited from apartheid, partly through rights-based entitlements” (2007: 63)

the 6 kilolitre stipulated by the free basic water policy, all the 5 municipalities in the district provide only 3 kilo litres (see 6th ESR 2003-2006: 111).

Thus, the issue with realizing rights for the poor is not just about having rights encoded in constitutions and statutes, but it is more about finding amenable ways in which these rights can become a reality in the lives of the poor, especially. And that is a major challenge though there are several ways in which this can be done. As Sen(2004) has observed, the legal route is just one way among many, which if pursued in isolation often leads to frustration and extension of the rhetoric game. Translating the various claims and rights provided for in legal documents into concrete rights requires an integrated strategy that relies on group solidarity, advocacy at community level, information and skill about rights, building of adequate and responsive institutions (ODI, 2002:4).

What the South African case seems to highlight is not that having these rights enshrined in the constitution is a waste of time, but that encoding rights in the constitution is a *necessary* but not *sufficient* condition for realizing the rights. As Mehta & Ntshona have observed in the case of the right to water in South Africa, “criticisms ... should not detract from the fact that the constitutional endorsement of the right to water is in itself an amazing achievement which is unparalleled elsewhere. The Challenge lies however in the long road to making the right real for poor people” (2004:3).

4. 2.9.2 Impeding Factors

There are of course many other factors which make it difficult to realize the rights. While there has been overwhelming support, at least in principle, for water to be treated as a human right in the last decade and half (Bakker, 2007), there have been strong currents towards privatization or commercialization¹⁰³ of water services (Bayliss, 2003; McDonald & Ruiters, 2005; Prasad, 2006). Privatisation or commercialization of water and sanitation services raise a number of concern *vis a vis* the notion of water as a human right. A major concern has been whether operating of water services on a commercial basis would lead to many people realizing the right to water or not. In other words, would a

¹⁰³ Privatisation is often used interchangeably with commercialisation. In theory, the later differs from the former in that the later does not involve a transfer of core assets from public ownership into private ownership which is the case with privatisation. In the case of commercialisation, the involvement of the private actors is limited to management of a particular section of the water service provision such as billing or even the management of the entire service provision system mostly on behalf of or in partnership with the local authority (See Bayliss, 2003). This form of joint venture is often referred to as *Private Sector Participation (PSP)* or *Public-Private Partnership (PPP)*. But in actual fact the difference between the two is merely a difference of style.

commercially operated water service system promote the realization of the right to water for all people especially the poor? Here, as one would expect, the jury is divided.

There are some sections of the international community, especially those in favour of privatization mainly the financial institutions like the World Bank and IMF, regional banks (e.g., Development Bank of Southern Africa), multinational water corporations, bilateral and multilateral donor agencies, such as USAID, and in some cases international NGOs like Water Aid, who push for privatization as the only way to ensure improved and sustained access to water. The other side dominated by international civil society organizations such as the World Development Movement (WMD), academic research institutions like the Public Services Institutional Research Unit (PSIRU) and faith based groups who see privatization of water services as being fundamentally inconsistent with the principles and demands of the right to water (AEFJN, 2003). McDonald & Ruiters (2005) in an edited book on the status of water privatization in Southern Africa summarise well the arguments in favour and against privatization/commercialization (see Chapter 1). Below the arguments are briefly discussed in the context of the right to water.

4. 2.9.3 Pro-Privatisation Argument

The pro-privatisation literature often relies on the neoclassical economic theory particularly the principle of efficiency (both *allocative* and *productive* efficiency), to make the case for privatization. A number of authors, such as Finger and Allouche (2002), Black (1994) and Winpenny (1994) argue that due to the growing scarcity, water is becoming an economically valuable commodity which should be exchanged through the market mechanism. In view of this, it is argued that “[o]nly the market ... can establish the ‘right’ price that will ensure that [water] is not recklessly wasted” (in Mehta & Ntshona, 2004:1). Pro-privatisation proponents argue that efficiency, improved capacity to raise capital investments, improved management, improved services and improved coverage are some of the benefits of privatization/commercialisation (in Bayliss, 2003; Njiru, 2004; Prasad, 2006). The ADWR 2006 also argues that,

...treating water as an economic good or ensuring proper valuation of it will provide powerful decision and management tools. At a macro level it will ensure efficient use of water at both the user and project levels, thereby allowing for sustainable water resources management (280)

The argument in brief is that the operations of private enterprises in public services such as water and sanitation are more efficient than the publicly operated schemes; that the private sector has the capacity to raise more resources from the financial markets through various means which are not open to public operators. For example, former British Secretary of State for International Development argued that

“Privatisation is the only way to get the investment that [poor] countries need in things like banking, tourism, telecommunications and services such as water under good regulatory arrangements” (in Hall & Lobina, 2006:8).

With the envisioned increase in capital inflows and improved efficiency under private management, it is believed, beyond any grain of doubt, that services would improve and coverage will be extended to everyone thereby realizing the right to water for all. Njiru (2004) for instance argues that bringing the private sector in the wobbling public run water services sector can be a catalyst not only for improving performance, services and financial viability, but also for the much needed change in the sector. In the case of water services, Njiru argues that,

[i]ndeed, experience has shown that the main catalyst for the increasing interest in PSP is the proven record of poor performance and mismanagement that characterises most publicly owned and operated water utilities (2004: 2).

In others words, proponents of privatization have often relied on the notion that water services should be treated like any other commodity to realise its economic value (McDonald & Ruiters, 2005). Declarations mainly from the *Dublin Statement* and the *Rio Summit* that water is an “economic good”¹⁰⁴ have been cited as support for the need to deliver water services through markets.

4. 2.9.4 Fictitious Water Markets and Marginal Cost Pricing

To a large extent, there seem to be a deliberate confusion when it comes to the debate about water. A serious reading of the official documents produced at the UN level refer to water as an economic good as it applies to the industrial and agricultural context where water is used for the creation of economic value. When talking about “water markets,” where these exist, it is only with reference to water used in agriculture and industry where bulk water can be purchased to produce economic value. But in most of the literature, the notion of water as an “economic good” as well as water markets has been unscrupulously extended to include water for domestic consumption. In fact, it is highly doubtful that *real* markets exist for domestic water services given the monopolistic nature of domestic water supply and also the fact that water is not “a pure private good” (McDonald & Ruiters, 2005:20). It has been further noted that in most cases, it is the non-market value of water that is at play (AWDR 2006:279)

¹⁰⁴ The AWDR 2006, pronouncements of water as a social good were added as disclaimers to the 4th Dublin Principle, reflecting the controversy that surrounded the adoption of the principle of water as an economic good (see AWDR 2006. 278).

Largely to realise the economic objectives, the pro-privatisation proponents argue for the marginal cost pricing¹⁰⁵ mechanism (Dinar, Rosegrant & Mienzen-Dick, n.d). Other measures often employed in line with this approach include “cost-recovery” and “user-charges” techniques where the user is required to pay for the cost of providing the services. But often a mark-up price for profit is also incorporated (Bond, McDonalds & Ruiters, 2003). Cost recovery and user fees in the water services sector have been often premised on the proposition that people are willing to pay for water including the very poor (Nigam & Rasheed, 1998). It is sometimes argued that making people pay often prevents excessive use of water, a result that is in line with the sustainable development philosophy (ibid, 10). Calaguas notes that,

The thinking behind treating water as an economic good was to reduce the wasteful and inefficient use of water by all sectors: industrial, agricultural, domestic. Pricing water to reflect true costs of supply, conservation, sewage and treatment of wastewater would force the different sectors to reduce their consumption of the product, and encourage efficient use (especially in agriculture, where it is estimated that 40 percent of water used does not go into crop production) (1999:12).

4. 2.9.5 Demand-responsive Argument

Often an implicit argument for a demand-driven approach is taken as an accompanying policy component to realise the economic value of water. The argument again is that supply-driven approaches are insensitive to issues of water scarcity and are often wasteful, while the demand-driven approaches take into account both scarcity and environmental concerns, and are therefore efficient (Dinar, Rosegrant & Mienzen-Dick, nd: 14). Overall the push to adopt the demand-driven approaches services rests on the assumed impact of water pricing on people’s behaviour and attitudes with regard to the demand and consumption of water. At the political economy level the pro-privatisation arguments can be summed up as follows:

There are two arguments for privatization; the fiscal argument that privatization will relieve government of the burden of investment financing and the efficiency argument that performance will improve under private ownership. Economic theory attributes the efficiency gains to a variety of factors ... Much of the economic reasoning in favour of privatization rests on new public choice theories of government behaviour ... State-owned enterprises are also insulated from capital markets – they face ‘soft’ rather than hard budget constraints ... Markets are seen to exert a disciplining force on the managers of private firms. Capital markets punish

¹⁰⁵ Marginal cost pricing is a system where by the total cost of providing the last unit of water should always equal the charge for water. In most cases there is also a mark-up for profit on top of the marginal cost. This is seen as the most efficient way of using water resources, since the value of the cost of providing water is equal to the service charge. In other words, the price of water is set to reflect its “market value.” The argument has been that such a price will induce people to use water wisely rather than when the price of water is lower than its marginal cost (see Dinar, Rosegrant & Mienzen-Dick, n.d for more details).

under-performing firms by denying them loans or devaluating the value of their shares (in Hall & Lobina, 2006: 10).

It is important to note that within the pro-privatisation literature, there is little reference made to water as a human right.

4. 2.10 Anti-Privatisation Arguments

4. 2.10.1 Water is not Just Another Commodity

Literature on anti-privatisation, in which many who advocate the right to water fall, argue that an exaggerated concern with efficiency associated with private operators often overlook issues of equity which are at the heart of human rights. Central to the debate is the moral argument that water is not just like any other commodity; water is too “special or precious,” too essential to be treated like any other commodity (AEFJN, 2003; Jolly 1998; Petrella, 2001). It is also argued that the private operator’s pre-occupation with making profit often excludes the poor from the major decisions including pricing and investment decision, a move that is against the principle of non-discrimination and equality embraced in international human rights as noted above. It is further argued that privatisation of water services amounts to dispossession and often leads to unequal distribution of water (Bond, 2004a; Swyngedouw, 2005).

Anti-privatization arguments also point out that private companies, because of their primary concern with profit, the provision of water for the poor may not receive the attention it deserves. This is supported by the wide experience that private service providers are often not interested in servicing low income areas where most of the poor people are residing mainly because of the alleged low returns on investment (Njiru, 2004; HDR, 2007). This is seen to be contrary to the widely accepted notion that water is a human right that should be distributed equitably and without discrimination.

4. 2.10.2 Prices Rise Under Private Operations

Other concerns raised against the move to privatize or commercialise water services are that private enterprises that take over the supply of water services show little interest in improving sanitation services. Often sanitation services are left with the local authorities or are sub-contracted. In addition, it has been noted that experience has shown that the expensive technology that private operators adopt often result in high production and distribution costs, which are then passed on to the consumers in form of high tariffs, a trend that further limits the poor from accessing water services (Bond, 2004b). Other anti-privatisation analysts have argued that private enterprise in the water services reduces grass root initiatives, solidarity, community participation and democratic control over various processes

concerning water (AEFJN, 2003:4). It is further argued that water falls within what has traditionally been called the *commons*, and therefore its management should be based on “public trust doctrine” which states that the state holds the public resources in trust on behalf of the general public (Dinar, Ariel & Meinzen-Dick, nd: 12).

4. 2.10.3 Private Sector No Replacement for State

From the human rights perspective, experience and research from many countries highlight the point that the exaggerated emphasis placed on achieving efficiency and profit tend to sideline social concerns such as equity. Thus, in as far as privatization is a move towards a commercial management of water, it is unlikely that it would be able to meet the obligations of the human right to water. In such instances the state has to step in to ensure effective regulations which require the private actors to provide the services in line with the obligation that the state has committed itself to. The bottom line therefore is that private operators where they participate in the provision of water services should not be seen as a replacement for the state (Nigam & Rasheed, 1998). The state, even in situations where water is privatized, still bears the responsibility to ensure that the private operators’ conduct is in compliance with the state’s Covenant obligations (*General Comment 15, #24*). This includes private sector contracted by the state to provide water services.

4. 2.10.4 IFIs and Human Rights

Unfortunately most of the states, especially developing countries, are “weak” and therefore unable to make the big multi-national water companies comply with national regulations. In a number of developing countries, governments are pushed into privatizing water and other public services as conditions for accessing debt relief and aid packages from international lending institutions and bilateral donor agencies. To cite just one example among many,

...in Tanzania, ... privatisation of the poorly performing Dar es Salaam Water Supply and Sewerage Authority (DAWASA) was one of the preconditions given for Tanzania to qualify for the Highly Indebted Poor Countries (HIPC) initiative of the World Bank and the IMF (Bayliss, 2003:6).

A question that arises is whether these international financial institutions should be held responsible for denial of human rights resulting from their policies. In recent years, the general view has been that, it is time that the Bank, and the Fund especially, account for human rights violations in their operations (Ghazi, 2005). But just how this can be done is far from being clear.

Both the Bank and the Fund have been conveniently escaping from being held responsible for violations of human rights on the pretext that their mandate is not a political, but an economic one. For a long time, the Bank has relied on *Article IV*¹⁰⁶ of its articles of agreement to argue that issues of human rights are of a political nature and therefore fall outside the Bank's mandate (Gathii, 1999). But as Bleicher has observed, "political neutrality may have been essential for the Bank in its early years...", but in the current global structure, it is deceptive to maintain that the Bank and the Fund have no business in political issues such as human rights (cited in Dias, 1989: 60).

Apart from this, there are three justifications for the view that the Bank and the Fund need to take into account human rights obligations in their work. First, the Bank and the Fund are considered to have 'international legal personality' which makes the two institutions *subjects* of international law by virtue of which they can be held responsible for human rights violations (Skogly, 1999:243). Second, being specialized agencies of the UN, the two Bretonwoods institutions are under obligation, at least, to respect human rights by ensuring that their activities do not result in the violation of these rights (Dias, 1989). These obligations are created on the Bank and the Fund from their relationship with the *UN Charter* (ibid). Third, especially in the ICESCR, the Bank and the Fund have been given a special role in implementing the rights elucidated in the two covenants. *Article 16(2)(b)* of the ICESCR clearly envisions the participation of specialized agencies of the UN in the implementation of the rights. In recent years, there are indications that, the Bank is showing some signs of change of heart when it comes to taking human rights into account in its operations (Robins, 2001; Ghazi, 2005).

4. 2.10.5 An Inflated Case for Privatisation

As regards the other claims that private sector is capable of raising capital investments and consequently improve service delivery and management of the water sector, experience from a number of countries tend to show that this has been an exaggerated argument to make privatization appeal to policy makers. The performance of private enterprise in the water supply when compared to the public actors has not shown any superiority over publicly run schemes. Research done by the Public Sector International Research Unit show that private sector performance in the water supply sub-sector has not delivered on many of its promises. In a report on the impact of private sector participation in the water

¹⁰⁶ *Article IV(10)* of the Bank's Articles of Agreement stipulates that, "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I".

sector, Hall and Lobina(2006) observe that private finance has not played, and is unlikely to play, an important role in improving access to water and sanitation in general, but more especially for the poor. In the past decade, only 600 000 connections in Africa, East and South Asia (excluding China) are a result of private sector investments (Hall & Lobina, 2006:5-6;). A same position is articulated by the UNDP's *Human Development Report 2006*, which sees public finance and not private finance as the key to increasing access to water especially for the poor (2007: 23). This is certainly true in the Zambian case where the commercial utilities that have been created have not received any private capital finance; all the utility companies are solely owned and financed by local authorities (*Interviews*, 2006).

4. 2.10.6 No Silver Bullets

Regarding the claim that private sector is more efficient than the public sector, there seem to be overwhelming evidence that this is not always the case. Even staunch supporters of privatization like the IMF have now realize that,

It cannot be taken for granted that PPPs [Public-Private Partnerships] are more efficient than public investment and government supply of services ...Much of the case for PPPs rests on the relative efficiency of the private sector. While there is an extensive literature on this subject, the theory is ambiguous and the empirical evidence is mixed (in Hall & Lobina, 2006, 11).

When it comes to improving water services, it is probably true that there are no magic bullets.

Debate on the right to water in general is not so much about which system should be adopted but rather about making people's right to water concrete, especially the poor's. Interestingly, literature on both the pro-privatisation and pro-right to water agree, in principle, that water should be treated as a human right though the former only pay lip service to the demands of the right to water. What has been lacking in the debate is defining the concrete ways in which the private actors would move from paying rhetorical homage to the right to water to genuinely embarking on programmes that make the right to water real for many people. In summary, while it has been acknowledged by many analysts that the private sector has an important role to play in improving access to water and realizing the right to water for people, public actors should take charge and lead the way.

4. 3 The Right to Water in the Zambian Context

It could be said that, debate on the right to water in Zambia is a mute, but not necessarily a moot, case. At the official level, there has been little in the form of acknowledging or proclaiming the right to

water. Like many other economic, social and cultural rights, the right to water is one of those rights that politicians and bureaucrats alike are not at ease to talk about. Existing debates about the right to water only occur in a few academic papers and reports.¹⁰⁷

4. 3.1 Basis for the Right to Water in Zambia

Despite the depressing silence about the right to water in Zambia, there is a strong basis for engaging in the debate and strategies to give effect to the right to water. The two most obvious bases for asserting the right to water in Zambia are the Constitution, mainly the 1996 amended Constitution and the international human rights conventions and treaties that Zambia has ratified. Relevant to this discussion would be the ICESCR which is often cited among the major international human rights instruments which have protected the right to water as pointed out above. Others include the *Conventions on the Elimination of All forms of Discrimination Against Women*, *Convention on the Rights of the Child*, *African Charter on the Welfare of the Child*, *African Charter on Human and People's Rights*, and the SADC Social Charter¹⁰⁸. All these commitments that Zambia has entered into impose a duty to ensure that the obligations specified in these instruments are fulfilled. And this duty exists in regard to water to the extent that water is recognized as a basic human right in these instruments.

Consoling as that may sound at face value, the situation in practice is very different. Apparently very little attention is given to the international human rights instruments beyond the political rhetorical utterances. Dugard (2000) argues that among the reasons why states ratify international treaties include the need to move with the times, to be part of the club, to responding to public opinion, and the fear of being an odd man out.

As hinted earlier, one of the challenges that emerge when it comes to implementing human rights is about the role of international law in domestic law. Just how these international law instruments apply in Zambia is a complex puzzle to disentangle. In theory, it has been generally accepted that when interpreting and applying domestic law, judges should at least consider international law and strive to avoid interpretations of domestic law that are inconsistent with international law (Hansungule, 2004:10; Dugard, 2000). In a more optimistic tone, *General Comment 9* asserts that “[i]n general, legally binding international human rights standards should operate directly and immediately within the

¹⁰⁷ For instance, notable academic papers that have significantly engaged with the right to water include Phiri (1999) and Chilleshe, Trottier and Wilson (2005). Most of the academic work done on water is under the general theme of water supply and sanitation and not particularly addressing the right to water. It appears as if the use of the rights discourse in talking about water is wading in foreign waters.

¹⁰⁸ SADC *Social Charter* was adopted by SADC and is now open for signature. See www.queens.ca/sampmigdocs/protocol.htm

domestic legal system of each State party, thereby enabling individuals to seek enforcement of their rights before national courts and tribunals” (#4). Despite such clearly stated normative guidelines, the practical application of these norms is not as simple as assumed in many official documents.

4.3.2 Application of International Law in Municipal Law

There are three common approaches to question of the relationship between domestic and international law. One is the monist theory expounded mainly by Kelsen, Verdross and Scelle. The other is the dualist theory developed by Triepel H. and Anzilotti D (Cheng, 1991:25). The third is the harmonization theory mainly advanced by various UN bodies and conventions supported by progressive international relations scholars.

In essence, the monists postulate that public international law and municipal law are essentially manifestations of the same legal order and should not be regarded as two separate genre of law. In this view, international law should directly apply in municipal law “without any act of adoption by the courts or transformation by the legislature” (Dugard, 2000: 43). On the other hand the dualists argue that international law and municipal law are two separate legal realms and as such the latter should only be applied to a domestic legal system “only if adopted by such courts or transformed into local law by legislation” (ibid). Commenting on this view, Lauterpacht makes the observation that,

According to the dualist view, international law and municipal law differ so radically in the matter of subjects of the law, its sources and its substance, that a rule of international law can never per se becomes part of the law of the land; it must be made so by the express or implied authority of the state (in ibid).

The harmonisation theory advances a middle way between these two extreme ends, arguing that parts of international law are the same as most municipal laws, thus international law is partially applicable directly in domestic law. Harmonization theory proponents argue that the monist-dualist controversy is actually not necessary since, though international and municipal law may have different sources, content and subjects, they both regulate social, political and economic relations (Cheng, 1991).

4.3.3 The Debate in Context: Role of Treaties in Zambian Law

In the context of the current discussion, adopting a monist position would require that the Zambian courts enforce the Covenant rights, and in particular the contents of the right to water, just as they would enforce the Zambian constitutional rights. In this case, the Covenant rights can be relied on directly by individuals just as they rely on the various relevant provisions of domestic law. On the other hand, adopting the dualist position, implies that either the Zambian courts need to adopt and

configure the Covenant rights into their interpretation of the domestic law or the legislature need to incorporate Covenant-provisions into Zambian statutes and other legal structures. In this case then, the right to water as provided for in international human rights law, would remain inapplicable in Zambia in as far as the courts do not take the initiative to adopt an inclusive interpretive approach or if the legislature chooses not to incorporate the right to water in domestic law as is the case at the moment.

That is the theoretical part of the debate, but evidence from the practice of domestic law, everywhere, shows a hybrid of dualism and monism (Dugard, 2002; Cheng, 1991; Hansungule, 2004). In the case of human rights protection, it is apparent that the dualist position fails to take note of the fact that most of the human rights protected in international law are protected in domestic law, to the extent that in certain cases there is no need to even incorporate certain elements of international law into domestic law. Further, a close look at most of the national constitutions, particularly the bill of rights, provides evidence of the intersection between international law and municipal laws. This is especially true for civil and political rights which have similar wording and legal effect in both international and domestic law. For instance, the right to life, freedom of speech, assembly, association and movement, in the Zambian constitution have the same conceptual content and legal effect as in the *International Covenant on Civil and Political Rights*. In this case, then domestic legal systems are already protecting the rights in the Covenants and there is no need to shift the goal post to accommodate international law (Dugard, 2002; Bedjaoui, 1991a).

However, there are points of divergence between the two which often surface when dealing with real life situations especially with regard to economic, social and cultural rights which are adequately provided for in international human rights law, but often either implicitly acknowledged or not mentioned at all in municipal law. In such cases, a problem arises concerning how to apply these international principles in a given national situation where they are not explicitly recognized as human rights. For instance, in countries where the right to water is not even mentioned, how should the right be given effect? In situations like this, one has to acknowledge that international law is only of limited practical help, if any. One of the main reasons for this limitedness is the nature of international law itself.

4. 3.3.1 Nature of International Law

Traditionally, international law has been entirely concerned with the regulation of relationships between states. From the time of Groitius¹⁰⁹, international law has concerned itself purely with the regulation of conduct of states and not of individuals (Bedjaoui, 1991a; Gathii, 1999). Conducts between individuals or between individuals and the state fell outside of the concerns of traditional public international law. It is for this reason that up to date, individuals have no legal personality in most international law instruments and therefore are not subjects of international law (Cheng, 1991). Partly because of positivist insistence on the principle of sovereignty of the state, and also partly because of the concern with coordination of states to achieve peace, the way a state dealt with its citizen was not seen as a matter that international law needed to address.

Prior to the *Second World War*, a sovereign state was free to treat its citizens in any way it fittingly judged. But seeing the dangers of legal positivism as witnessed from the holocaust and human suffering that resulted from atrocities of autocratic rule manifested in fascist regimes in Europe before and during World War II, the way states interact with its citizen is increasingly becoming a concern of the international community (Dugard, 2000). Slowly, the character of international law is shifting to embrace social aspirations of individuals in particular states as Gathii (1999) observes:

This new social character of international law can be seen through the debates, during the post-World War II era, on the reformulation of international law from a state-centered agenda, focused on the classical doctrines of state sovereignty and territoriality, and the regulation of relations between states, to an individual-centered concept, that is more concerned with the identification and protection of the social, political, and economic rights of the individual (Gathii, 1999:113).

Nevertheless, “in spite of an interesting evolution, due, in particular, to the entry of human rights into the sphere of international law, the day when we shall see individuals accepted as *direct* subjects of the norms of international law is still a long way off”¹¹⁰(Cheng, 1991:13, emphasis in original).

¹⁰⁹ Groitius is widely acclaimed as the father of public international law.

¹¹⁰ Even today, there are few international human rights instruments that have a mandatory individual complaint mechanism (these include *Civil and Political Rights Covenant*, *Convention Against Torture*, *Convention Against Racial Discrimination* and the *Convention Against Discrimination of Women* (See HDR, 2000). But even this is only an option for the state. Even if the state ratifies the optional protocol there is no guarantee that this would lead to more effective protection of human rights given the weak commitment that states often make with regard to international agreements, on the one hand and the weak enforcement mechanism characteristic of international law on the other. As for socioeconomic rights, an optional protocol for individual complaint exists, but it has been ratified by only a handful of states (probably less than five). The importance of the individual complaint mechanism is that it enables the individual who has exhausted all the internal remedies to approach the international community to seek redress for his or her grievances. Although the absence of an individual complaint mechanism does not take away the substance of the rights (*Maastricht Guidelines*, 1997), such measures open different avenues that can be pursued by victims of human rights violation. Arguing for more explicit provision in both international and municipal law should not be interpreted as an indication of a strong reliance on the

4.3.3.2 Doctrine of Consent

The other problem regarding the nature of international law that makes it difficult to enforce human rights that are provided for in international instruments is that traditionally, international law has been applied using the doctrine of consent (Dugard, 2000). As such, enforcement of international law relies mainly on the *good will* of the state in question (Vincent, 1986). A state violating international law may decide, with impunity, to repudiate the decision of the international community or court. For example, in *Nicaragua v United States* case, the United States Government did not only refuse to appear before the *International Court of Justice*, but it also refused to accept and be bound by the findings and ruling of the court (Duggard, 2002: 5). In this case, even when human rights are being violated, it becomes difficult for international law to offer refuge to the victims. Use of political and economic sanctions is one of the ways in which compliance can be elicited, but that route has proved to be practically ineffective in correcting human rights wrongs especially if the offender is a super power.

4.3.3.3 Non-Self-Executing Norms

The other difficulty associated with enforcing international human rights law is that most of the human rights norms are not self-executing norms; they would need accompanying legislation and ministerial regulations in order to be practically implemented. This is mainly due to the broad and vague form that human rights take in international as well as constitutional law. For example, stating that everyone has the right of access to basic water, begs the questions: What is basic water? Who should be responsible for providing this water? Under what circumstances is someone entitled to basic water? And most importantly, what recourse does one have if this right is not fulfilled?

Put differently, the broad nature of Covenant or constitutional rights means that they inevitably require accompanying legislation and ministerial regulations before they can be relied on by people who face deprivations of various kinds. Addressing this problem, *General Comment 9*, leaves the matter open to the discretion of the implementing officer.

....[I]n most States, the determination of whether or not a treaty provision is self-executing will be a matter for the courts, not the executive or the legislature. In order to perform that function effectively, the relevant courts and tribunals must be made aware of the nature and implications of the Covenant and of the important role of judicial remedies in its implementation (#11)

Leaving the matter open does not remove the difficulty which arises in connection with implementing Covenant rights.

judicial process, but clear provision should be seen to help other ways of claiming and enforcing rights such as those mentioned above. Where there are no clear statements of principle, it becomes difficult to enforce rights either through the legal process or otherwise.

However, the widely accepted practice in most countries now is that the courts are required to give due regard to international law when interpreting municipal law where this is applicable (Dugard, 2000). For example, in South Africa, the National Constitution provides that when interpreting the law, the courts must consider relevant international law. *Section 39 (1)* stipulates that “[w]hen interpreting the Bill of Rights, a court, tribunal or forum” (c) “must consider international law.” The position of international law provisions in the South African judicial system is stated more strongly in *Section 233* of the Constitution which requires that,

[w]hen interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

These two constitutional norms create a procedural obligation on any branch of the judiciary, first to refer to relevant international law, and secondly, in the process of interpreting domestic law, judges are expected to ensure that they adopt an interpretation which is not in conflict with international law.

4. 3.3.4 Leaning on Settled Practice

As noted above, the *Zambian Constitution*, unlike the *South African Constitution*, does not provide any guidance as to how international law is to apply in municipal law. Apart from the settled practice of international law itself that the legally binding international law “operate directly and immediately within the domestic legal system of each State party,” there is no explicit statement on how international law would be applied in municipal law in general. However, with particular reference to access to water, the 1997 *Water Supply and Sanitation Act* expects the National Water Supply and Sanitation Council to “take such actions as may be necessary or expedient to enable the Government to comply with any international agreements to which the Government is a party” (# 5(a)). This, in theory, is close to a recognition of the fact that international law should play an important role in Zambia. Whether it actually plays the envisioned role in the enforcement of laws, is a question that would be very interesting to explore.

4. 3.4. The Right to Water in the *Zambian Constitution* (Article 112 (d))

Technically, the right to water in Zambia is not explicitly or fully recognized as a human right. Access to water is only mentioned in *Article 112* of the *1996 Constitution* which is a non-justiciable section—the “Directive Principles of State Policy and Duties of a Citizen”. *Article 112 (d)* of the *1996 Constitution of the Republic of Zambia*, states that “the State shall endeavour to provide clean and safe

water, adequate medical and health facilities, and decent shelter for all persons, and take measures to constantly improve such facilities and amenities.” *Article 111* which precedes this article, clearly states that the, “Directive Principles of State Policy set out in this part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.”

Article 110, apart from allocating the directive principles the role of guiding the executive, the legislature and the judiciary with regard to national development policies, further limits the observation of these norms to the extent that resources are available. *Subsection 2*, particularly states that the “application of the Directive Principles of State Policy may be observed *only* in so far as State resources are able to sustain their demands as may be determined by Cabinet.” (emphasis added).

4.3.4.1 The Purpose of Directive Principles

Now, there are a number of issues that arise from these clauses. First, the role of directive principles of state policy has to be seen in context. Traditionally, the Commonwealth Constitutional System avoided including directive principles on the basis that the constitution is a “prescriptive” rather than “programmatic” statement and if programmatic statements are included they are usually preambular statements (Kabudi, 1995:275). The main reason why programmatic principles are seen not to be appropriate in a constitution, so the argument goes, is mainly that the constitution is enacted,

...for the sole purpose of establishing structures of government and its institutions and prescribing judicially enforceable rules of law. Statement of national goals and directive principles are not part of the traditional Anglo-American view of constitutions because they are programmatic in nature, in the sense that they provide for a programme of a political, socioeconomical and cultural development and ethical principles to be pursued by the government and other organs and they are normally non-justiciable, that is, they cannot be enforced in a court of law (ibid).

This is the tradition that was adhered to by the British as they negotiated the drafting of the constitutions of the newly independent countries within the empire. However, this tradition has been gradually abandoned by a number of states who decided to include directive principles.

First introduced by the Irish Free State in 1922, directive principles were incorporated in the *Indian Constitution* in 1947, followed by Pakistan in 1962, Sri Lanka and Bangladesh in 1972, Nigeria in 1979 (ibid), and Zambia in 1996. Reasons for including the fundamental and directive principles in these constitutions include ideological commitments to a set of social and economic goals to which the nation aspires. For some time now, these principles are expected to play a transformative role. This view was affirmed by the Indian Supreme Court when it stated that,

[t]he purpose of the Directive principles is to fix certain social and economic goals for immediate attainment.... Through such [principles] the constitution seeks to fulfil the basic needs of the common man and change the structure of society. It aims at making the Indian masses free in the positive sense (in Kabudi, 1995: 277).

Indian Courts have played an active role in ensuring that the state pays attention to the ideals contemplated in these principles. Many Indian judges have progressively interpreted these parts of the constitution together with justiciable clauses such as the right to life to give meaning to the broader social economic objectives of the constitution.¹¹¹ A clear statement on the role of the Directive Principles is, however, found in the Nigerian Constitution Drafting Committee Report which states that,

A Constitution should not be simply a code of legally enforceable rules and regulations; it is a charter of government, and government involves relations and concepts that are not amenable to the test of justiciability or capable of enforcement only in courts of law. The objectives may be in the nature of immediate specific policy goals or of the long-term ideals.... Unless these goals and the fundamental attitudes and values that should inform the behaviour of its members and institutions are clearly stated and accepted, a new state is likely to find itself rudderless, with no sense of purpose and direction. By defining the goals of society prescribing the institutional forms and procedures for pursuing them, a statement of fundamental objectives and directive principles in our constitution seeks to direct and concert the efforts and actions of the people towards the achievement of these goals (*ibid*).

Often the argument against including programmatic statements or principles in the constitution is that it may lead to judicial activism, a situation that undermines the fundamental democratic principle of the separation of powers (Corder, 2002). At the heart of this debate is the concept that the judiciary has no mandate to meddle in matters pertaining to policy which is a province of elected members of the executive who have people's mandate to formulate and implement policy. In the case of the courts, judges are not elected (there are appointed) and therefore lack the legitimate mandate to interfere with matters of policy formulation.

The Courts however, have jurisdiction over matters related to how the policy is implemented (procedural mandate) to ensure that government policies are in line with constitutional values and objectives. In this view, the widely endorsed notion of the non-justiciability of directive principles which largely include most of the socioeconomic rights, is often vilified on the basis that making such principles justiciable would lead the courts astray into deciding on matters of policy formulation rather than matters of policy implementation which is their rightful constituency. In this regard, the South

¹¹¹ For an example of how the Indian Courts have made use of justiciable parts of the constitution to give effect to the non-justiciable social objective such as those contained in the Directive Principles see *Per Olga Tellis vs. Bombay Municipal Corporation* [1986] A.I.R (Sup.Ct.) 180.

African Courts have been at pains to decide whether an act by the executive amounts to policy formulation or implementation. If an act by the executive falls within the former category the courts are expected to be guided by the decorum principle of judicial deference; while if it falls within the latter, the courts are expected to intervene¹¹². But this task (of distinguishing policy formulation from policy implementation) is often a matter of pre-disposition of a particular judge, and the arguments are often not convincing.

So the relevance of directive principles in a constitution should not be premised on the understanding that they be justiciable or not, but that they constitute a set of goals to which various organs of the state should orient their efforts and actions.

More importantly, the “guiding role” that directive principles have been given in the *Zambian case*, provides a fertile ground for holding the state accountable to the people. According to the principles contained in *Article 111* of the *Zambian Constitution*, formulation and implementation of national development policy and laws should be in line with the norms contained in *Article 112*, which include among many other things, that the state *endeavours* to “provide clean and safe water” (emphasis added). Key to the interpretation of this section is the use of the word *endeavour*, which is not a *command*, but an *exhortation* to take the action mentioned. In this case, situations where state policies and activities seem not to pay attention or diverge from these norm, present the grounds for reminding the state of its duty towards these objectives. Most importantly, this directive creates a norm against which policy and legislation should be assessed by all the stakeholders especially NGOs and civil society at large.

Unfortunately, this provision has not been utilized mainly because of the belief that only a legally enforceable clause should be relied on. We can see here the influence of legal positivism that only what is codified in statutes and regulations, capable of being enforced is what should be regarded as human rights. Heavy reliance on this clause has dwarfed not only the state’s sense of expediency to realize the

¹¹² *Pharmaceutical Manufacturers Association of South Africa: in Re: Ex Parte President of the Republic of South Africa & Others* 2000 (2) SA 674 (CC). This a case in which the President of the Republic of South Africa appealed to the Constitutional Court against the Supreme Court of Appeal’s decision that Proclamation R49 of 1999 by the President of the Republic of South Africa was null and void, thus rendering the *South African Medicines and Medical Devices Regulatory Act*, 132 of 1998 that the Proclamation was supposed to bring into force, ineffective. The question raised in the Constitutional Court was to consider “whether a court has the power to review and set aside a decision by the President” of the RSA to bring an Act of Parliament into force (See *Pharmaceuticals*, para. 1).

right to water , but also the public debate that can create alternative routes¹¹³ of giving effect the rights protected in the constitution.

4.3.4.2 Availability of Resource Not an Excuse

Further, tying the observation of directive principles in this section to the availability of resources may be in sharp contrast with the ICESCR, the *Limburg Principles*, the *Vienna Declaration and Programme of Action* as well as the *Maastricht Guidelines* which have clearly rejected the notion that the realization of economic, social and cultural rights is contingent on the availability of resources. As pointed out in the preceding chapter, resource availability is only a necessary, but not a sufficient condition for fulfilling economic, social and cultural rights. Resources will be always scarce and unavailable to a certain degree such that if that is set as a condition for realizing rights, then no such rights can be realised. Therefore it can be asserted that though *Article 112* is not a justiciable¹¹⁴ part¹¹⁵ of the constitution, the directive to provide these basic services to all, create, an obligation (though an imperfect one) on the state to ensure that it fulfils this responsibility and shows serious commitment to these duties. One of the ways through which this commitment to provide ‘clean and safe water’ to all

¹¹³ Sen (2004) in *Elements of Theory* distinguishes the Legislative from the recognition and Agitation routes in the effectualization of human rights (26-28).

¹¹⁴ As noted above, justiciability is not the only criteria for determining what constitutes human rights. The fact that water has been recognized in a non-justiciable part of the constitution should not be the reason not to assert water as human right and consequently meet the obligations contained in the right. Human rights are not only translated into concrete claims by contestation in the courts of law; translation of human rights into tangible results requires the creation of a *political space* where rights can be asserted, claimed and given attention. And this function does not necessarily require that such right be justiciable in a court of law. As Phiri has noted, solutions to the problem of water, and indeed many social services should be sought from social institutional arrangements and not only legal institutions, See Phiri (1999). In other words, the codification of a value as a human right in official legislation does not automatically translate such a value into a concrete human right. Such a transformation requires social as well as legal actions.

¹¹⁵ Article 112 falls within the section called the *Directive Principles of State Policy and the Duties of a Citizen*, that is preceded by the limitation clause (Article 111) which states that “[t]he Directive Principles of State Policy set out in this part shall not be justiciable and shall not thereby, themselves, despite being referred to as rights in certain instances, be legally enforceable in any court of law, tribunal or administrative institution or entity. ” In fact some authors have taken this as the official recognition of the right to water. For example, Scanlona, Cassar & Nemes (2004) in their list of countries that have legal provision on the right to water have included Zambia. A quick look at the other constitutional provisions in other countries reveal that the way *Article 112* in the *Zambian Constitution* is worded provides a stronger domestic basis for asserting the right to water. In most constitutions, the right to water is a “derived right” (see Gleick, 1998), that is, indirectly provided for in articles that guarantees the right to health or safe and a clean environment: Article 127 of *Venezuela Constitution*; Art. 58 *Turkey Constitution*; Art. 41, *Togolese Constitution*; Art. 45, *Spanish Constitution*; Art. 35, *Korean Constitution* etc. There are very few constitutions that have explicitly mentioned the right to water, and in cases where this is the case, it is the right of “equal access” (Art. 216(4) *Gambia Constitution*) as compared to the actual provision of water that the *Zambian Constitution* provides for. Explicit protection of the right to water in the bill of rights at present can only be found in the *South African* and *Ugandan Constitutions*. Article 14 of the 1995 *Ugandan Constitution* provides that “The State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that... all Ugandans have the right to education, health services, clean and safe water, decent shelter, adequate clothing, food, security and pension and retirement benefits” (*Centre for Economic and Social Rights* 2004).

people can be fulfilled is by putting in place a policy and programme that reflects the dedication towards meeting this obligation.

4.3.4.3 Failure to Take Steps/Measures

While the *National Water Policy Section 2.6(c)* makes the provision that “a minimum level of service to persons who are unable to afford the full cost” be provided, the *National Water Supply and Sanitation Act*, which is supposed to provide guidance and elaboration on this policy statement, is also silent on this matter. Not only is water not referred to as a right, but the Act is silent about those people who for one reason or another are unable to pay for water. There seems to be a strong assumption that everyone is bale to afford to pay for water and therefore have access. But this is an absurd assumption to make in a country with high levels of poverty, unemployment and many people falling in low income categories (See 5.1.9). Clearly, this situation amounts to a failure to “take appropriate steps” and a failure to take “all appropriate means, including particularly the adoption of legislative measures” (ICESCR, 2 (1)). Absence of clear measures makes it difficult to realise the rights envisioned in ICESCR in general, and the right to water elaborated in *General Comment 15*, in particular. In this case, it might be rightly concluded that the obligation to take steps has not been fulfilled.

The practical impact of this failure to even state clearly what the rights of the people are and what the duties of the state are under the covenant are many. One of the most visible effects is that people have no guidance as to what they are entitled to. The other effect is that public discussion that is often seen as one way of clarifying national objectives (Sen, 2004) is often isolated and at the informal/individual level. Further, political space on which people can offer their views has completely disappeared. As the evidence from the interviews for this study with both service providers and community members show, there is a general sense that people are not offered space on which they can engage with this debate on the right to water. A number of focus group discussions highlight this point.

We have raised the issue that water should be recognized as a basic human right, but there is no one listening to what people are saying.

It is us the people who are feeling the pain of living without water who should be able to decide whether water should be a human right or not—those guys in government have water and they won't bother recognizing water as a human right; it doesn't affect them. People don't have the capacity to recognize water as a human right—unfortunately its people who have water and don't care, who can do this.

People should declare water as a human right because the government doesn't care about what people are going through—they don't even know how we are suffering (*Focus Group Discussions*, 2006).

4.3.4.5 Acknowledged but Not Recognised

Thus, the starting point on the road to making the right to water a reality might be through clear proclamation of the right in national legislation and policies which has not happened. In the Zambian case, the right may be acknowledged by ratification of various international human rights treaties but little beyond acknowledgement has been done. In a situation where a clear proclamation of a right has not been made, it is difficult even to canvas political will towards making this right real. In this sense, the larger part of the challenge of access to water in Zambia arises from a deficit in political leadership. As the *HDR 2006* observes,

The obvious starting point for a drive towards universal access to water and sanitation is political will, broadly defined as the resolve to put the issue at the centre of the national agenda. It is not difficult to identify the financial, technological and institutional obstacles to progress, but these obstacles are often symptoms of a deeper malaise—a deficit in political leadership (2007: 61).

One of the reasons for this deficient political will is the myth about human rights, that when water is recognized as a human right, it will put a lot of pressure on government resources to provide water to everyone for free. Much of this thinking has been promoted by international financial institutions and donor agencies who have adopted a hostile attitude towards socioeconomic rights¹¹⁶ such as water under the pretext that recognizing these rights will result in huge budget deficit and destabilization of the already weakened macroeconomic milieu. Given the role these institutions have played in formulation and implementation of policy in Zambia since the early years of SAP, it is no doubt that policies at the national level have kept away from the language of rights on important services such as water and health care.

4.3.4.6 Demystifying the Right to Water

There have been fears also on the part of government that proclaiming water as human right would activate the Kaunda regime belief that water should be provided free. These fears and misgivings about the right to water are evident in the responses given by some of the government officials when asked about making water a human right.

... if water as a human right means we have to provide water free, government has to increase taxes because that is the only way government can get money to provide water free of charge. And I am sure people will be displeased with such a move (*Policy Maker Interviews*, 2006).

¹¹⁶ In earlier debates both the World Bank and the IMF argued that their mandate does not allow them to engage in matters of political nature like human rights. The Bank particularly defended this position on the basis of Article iv of the Bank's Articles of Agreement. But as Ghazi has observed, both the Bank and the Fund have been involving themselves in activities that have direct connection with human rights (2005: 95). In recent years, the Bank at least has come to realise that this position is not practical and has been accommodating human rights values in its work (see Ghazi 2005.).

What seems to be implied in the above response is that when water is recognised as a human right it will be free for all. And of course that raises the questions of sustainability and resources. But the right to water is not only about giving people free water. As explained earlier, the content of the right to water has both the obligation to ensure people's freedom of access as well as entitlement to access water, which is not the same as free water. Similarly, the obligation to promote, protect, respect and fulfil cannot be reduced just to the obligation to provide free water to everyone.

While government officials have their own fears about making water a human right, people in the communities have their own fears. Some of the community leaders interviewed had this to say about making water a human right:

But if water is free, the services will be poor because no one will bother about providing a good service, and people will be wasteful since they know that they get the service free.

If water becomes a human right people will be wasteful. So it is good that people should contribute something so that they take care of the water (*Community Leader Interviews, 2006*).

If they make water free, the supply will be very erratic like it was during the time the council supplied water. We use to stay for days without water (*Community Leader Interviews, 2006*).

When water is recognized as a human right, people will vandalise and steal the public infrastructure thinking that government will replace them. If water is made free for everyone, the services will become poor because no one will be there to ensure that services improve.

The only disadvantage of declaring water as a basic need is that it will make people take advantage of the situation and become careless in the use of water—people become drunk with freedom (*Community Leader Interviews, 2006*).

As can be seen from these responses, the right to water is understood to mean different things. One common understanding about the right to water is that water should be provided free, and this can lead to misconceptions that can hinder progress in improving and expanding access to clean water. It is for this reason that an official proclamation that elaborates on what the right entails, its nature, content, beneficiaries, the responsibilities it engenders on people and the duties that government and service providers are expected to undertake is critical.

Conclusion

This chapter has outlined the major debates surrounding water as a natural resource and water as a human right. At the global level, there is an emerging awareness of the water crisis and all that this implies. While the magnitude of the crisis is only dimly understood, the growing demand for water

resources at the global level is clearly unsustainable. On the other hand, much of the crisis, especially with domestic water supply is one of management and allocation rather than a scarcity problem. This is shown in the next chapter where it is argued that problems of access to water in Zambia are of the second and third order scarcity in nature and therefore relate to governance and political will.

At the international level, although the right to water is not explicitly recognized, there are many international human rights instruments that have indirectly recognized the right to water. Nevertheless, in order to safeguard the right to water more effectively, to focus policy on access to water, to address the environmental issues related to water, and to raise awareness on the deplorable state of access to water for many people, there is need to clearly recognize water as a human right. Efforts to recognize water as a human right are often frustrated by counter debates and moves such as those that emphasise treating water as an economic good. Promoted by many international development agencies, the move to treat water as an economic good rather than a public good, has led to the rigid discourses on the delivery of water services. These and other neoclassical economic rationale pose major challenges to implementing a rights-based approach to water especially in developing countries. Unfortunately, these ideologies have influenced the conception, implementation and delivery of water services in countries like Zambia. For instance elements of marginal cost pricing, creation of water markets, commercialization of water services that are gaining momentum in the Zambian water policy bear evidence to the influence of these global water debates.

Though the constitution has provided for the state to ensure that clean and safe water is provided to people, this provision has been pre-empted and rendered inactive. Relying on the international human right instruments that have recognized the right to water to which Zambia is a signatory is a challenge in that the application of international law in the Zambian context raises a number of problems. This is compounded by lack of clear guidance on the Zambian policy as to how the right to water is to be implemented. Although, clear recognition of the right to water does not imply that the recognised rights become a reality, a clear recognition of the right to water makes it possible to begin to assert, contest and claim the rights. This is true given the assertion that human rights are not given on a *silver plata*, but are realized through contestation. A clear recognition of a right only makes this contestation a possibility.

Overall, if the right to water is to be given effect, there is need to clearly state what the position of the government is with regard to this right, and this should be followed by regulations and statutes that

elaborate on the content of the right. For the right to water to become a reality, there is need to move from the acknowledgement level, through recognition and measures to the effectuation levels(see Section 3. 2. 8).

CHAPTER FIVE

THE STATE OF ACCESS TO WATER IN ZAMBIA

States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population (*General Comment 15, #14*).

Introduction

Like many other countries in Sub-Saharan Africa, access to clean water and improved sanitation eludes millions of people in Zambia. According to the country's official statistical department, there were 43% of households without access to safe sources of water in 2004 (LCMS, 2005:131). Roughly, this implies that there are more than 4.9 million Zambians¹¹⁷ who get their water from unsafe sources. That is a large number given that Zambia has relatively sufficient water resources to meet the needs of all her citizens. So the question that arises here is, why are there so many people without access to safe sources of water? Often lack of financial resources is given as the main explanation for this situation. But as it is illustrated in this chapter, lack of financial resources, is not the only reason why many people have no access to clean and safe sources of water. As pointed out in Chapter Four, problems of access to water are largely related to the way water services delivery is managed.

In the case of Zambia, studies done so far show that simply improving financial resources does not result in improved access especially among the poor¹¹⁸. A working paper based on a study conducted by Water and Sanitation Programme (WSP) together with Development Cooperation Ireland on behalf of the Ministry of Local Government and Housing in 2004 noted that while low levels of funding is a challenge, the biggest challenge is with the current "funding strategies" which make it difficult to effectively utilise even the little resources allocated to the WSS sub-sector (WSP, 2004:7). Thus, the argument that people have no access to safe water mainly because of lack of financial resources deals

¹¹⁷ This figure is based on the LCMS 2004 (2005) population estimates. However, if one is to use the household to measure the number of people without access to safe sources of water, the actual number is likely to be higher given that the household size is larger in low income urban areas and rural areas than in urban high income areas (see LCMS 2004 (2005:14). Further, accuracy of these statistics is contested. For example, the Devolution Trust Fund (DTF) questions the definition of what was included as "sources of safe water", and on this basis argues that the number of people without access to safe sources is higher than what is reported. DTF's own research shows that people with access to safe sources of water is much lower (about 35% for peri-urban), because Central Statistics has included even people who access water from wells as having access to safe water (see DTF, 2006: DVD).

¹¹⁸ See Slaymaker & Newborne (2004) and WSP (2004).

with only a minor section of the problem. In this chapter and the next, other possible explanations for the current low levels of access to clean water especially among poor households are suggested.

It is argued in this chapter that the current state of access to safe sources of water in Zambia is a result of socio-politically forces rather than a condition of natural scarcity. This argument is supported by the fact that challenges of access to safe sources of water in Zambia are mainly of the *second and third order* in nature¹¹⁹. As noted in the preceding chapter, it is argued here (and in the next chapter) that the challenges of access to water are a result of interacting social, economic and political processes. The overriding factor is political will and commitment to meeting the social needs of the people such as access to clean water. Thus, the concern in this chapter is not so much about how many people have no access to safe sources of water (albeit a very important concern), but more on understanding the processes which have produced this situation.

This chapter has four parts. Part one provides an overview of hydrological and socioeconomic conditions. The second part looks at the efforts made to reorganise the water sector as an effort to respond to the challenges of access to water. Focus in this section is on the commercialisation strategy which has been implemented since the early 1990s. Major issues in the water supply sub-sector arising from commercialisation are discussed in section three. The fourth part looks at the dynamics within the water sector focusing on the processes surrounding funding to WSS sub-sector.

5.1 Water Resources in Zambia

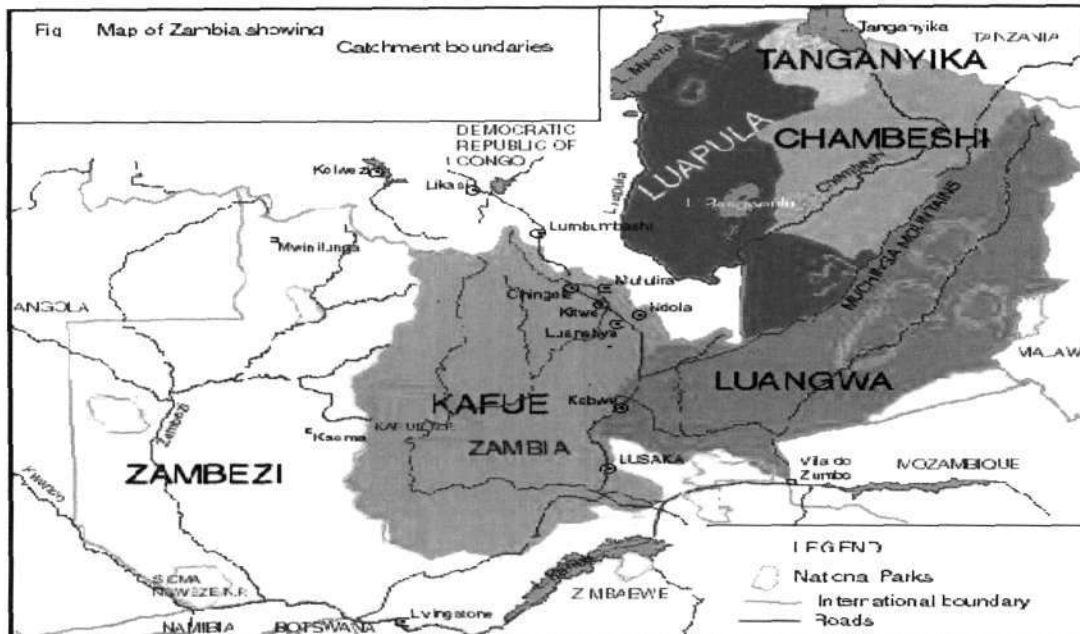
5.1.1 Zambia's Water Potential

Zambia is often described as a country endowed with abundant water resources. The *National Water Policy* (1994) acknowledges the fact that compared with other countries in Southern African, Zambia has relative higher endowment of fresh water. Similarly, the 1996 *Technical Workshop on Sub-Saharan Water Resource* held in Nairobi, made the observation that "Zambia is blessed with abundant water resources in comparison with other neighbouring countries in the Southern African Region. The country has a well distributed system of perennial rivers, streams, lakes, swamps throughout the territory"(World Bank, 1996: 201). There are five major river basins or catchments areas, namely,

¹¹⁹ First order scarcity is often defined as the natural or physical deficit of water resources resulting from natural features such as low annual rainfall, geological formation and uneven distribution, while second order scarcity is seen as a result of socio-political processes which arise as a macroeconomic, institutional and micro-political problem. See Chileshe, Trotter and Wilson (2005), Perret (2002) and Brooks (2006). See Section 5.1.3 for definition of second and third order scarcity.

Zambezi, Luangwa, Kafue, Chambeshi/Luapula and Tanganyika river basins. **Figure 5.1** below gives a hydrological map of Zambia's five major river basins.

Figure 5. 1 Zambia's Hydro-Resource Map



Source: *Zambia Water Resource Management Sector Report, 2004*

Apart from the five major rivers, Zambia has large natural fresh water bodies which include lakes: Tanganyika, Mweru Wantipa, Kariba, which are shared with neighbouring countries, and lake Bangweulu which lies entirely within Zambia's borders. Of these five river basins, the Zambezi is the largest with the annual run-off of about 1900 cumecs (cubic metres per second, M³/s) while the Kafue and the Chambeshi Rivers have the lowest annual run-off of 350 and 230 cumecs respectively as shown in **Table 5.1** below. Thus, Zambia has a widespread distribution of fresh water in rivers, lakes and other natural bodies.

In terms of water supply resources, it is the Kafue River that is vital because it provides most of the water supplied for industrial and domestic consumption to more than 50% of the Zambian population. One of the reasons why the Kafue River is so important in Zambia is its proximity to all the major cities and towns including all Copper-belt Province Towns, Central Province, Lusaka, and some towns in the Southern Province. It is along the Kafue river basin that the major industries and agricultural activities are also located. Although the Kafue River basin contributes only 14% of national water resources, 40% of Zambia's population lives within the Kafue Catchment area (World Bank, 1996).

In terms of rainfall, the country has an annual rainfall ranging from 600mm in the south to over 1400mm in the north (WRAP, 2005:2). On average, Zambia has an annual rainfall of about 1000mm which is well above the world annual average of 860mm (Ashton & Haasbroek, 2001:2). The country also has favourable conditions for ground water sources in terms of depth, storage and capacity yield (World Bank, 1996:202). This is one of the reasons why hand-dug wells are a common phenomenon in peri-urban, but mostly in rural areas.

Table 5. 1 River Basins & Average Annual Run-off

<i><u>River Basin</u></i>	<i><u>Average Annual Run-off (Cumeecs)</u></i>
Zambezi	1900
Kafue	350
Luangwa	500
Luapula	690
Chambeshi	230

Source: Chola (2003).

As **Table 5.2** below illustrates, Zambia's water demand is less than 5% of the country's mean annual rainfall (MAR), indicating that water resources are actually under utilised. This is a low figure when compared to other countries in the region

Table 5. 2 Water Resource Availability and Demand in SADC

<i><u>Country</u></i>	<i><u>Usable MAR (Km³)</u></i>	<i><u>Water Demand (Km³)</u></i>	<i><u>Water Demand (% of MAR¹²⁰)</u></i>
Angola	94.8	2.5	2.5
Botswana	5.4	0.2	3.7
D.R. Congo	756.0	3.9	0.5
Lesotho	3.0	0.2	6.7
Malawi	5.4	1.3	24.1
Mozambique	34.8	4.5	12.9
Namibia	4.3	0.3	7.0
South Africa	30.5	21.0	68.8
Swaziland	4.2	0.1	2.3
Tanzania	45.6	5.1	11.2
Zambia	57.6	2.1	3.6

Source: Based on Data From Chola (2003)

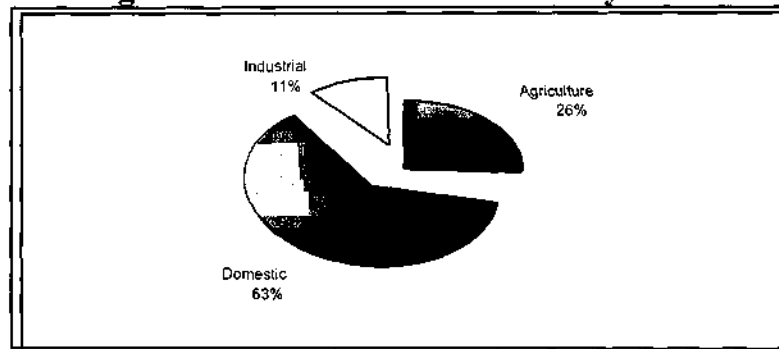
¹²⁰ MAR, Stands for mean annual rainfall.

5. 1. 2 First Order Scarcity

As regards water demand as a proportion of available water, it is apparent that Zambia is one of those countries in the SADC region that still has a lot of unutilized water resources. As the **Table 5.2** above indicates, the country uses only less than 4% of its mean annual rainfall. With an internal fresh water renewable rate of 96 Km³/year and a withdraw rate of 86 m³ per capita per year, Zambia is safely away from being a water stressed country¹²¹ (WHO, 2000:274; AWDR, 2006). In other words, the problems related to water supply in Zambia are of a secondary order scarcity and not first order scarcity. First order scarcity understood as a relative¹²² lack of natural endowment in water resources does not arise in the Zambian situation.

Water resources in Zambia are shared between three broad categories of users: Domestic, Industrial and Agricultural uses (WRAP, 2005). As at 2000, the domestic water demand was 63%, industrial demand was at 11% and agriculture used the remaining 26% (WHO, 2001:274) as shown in **Figure 5.2** below¹²³.

Figure 5. 2 Zambia's Water Use by Sector



Source: WHO, (2000: 274).

¹²¹ The Water Stress Index defines water stress in terms of the "Internal renewable fresh water resources." A country is classified as a water stressed country if its renewable fresh water is below the range of 1000- 1600 cubic metres per capita per annum. And a country is classified as "water scarce" if its internal renewable fresh water resources is less than 1000 cubic metres per capita per year (see Webb & Iskandarani, 1998:18; Gleick, 1996).

¹²² Scarcity is always a relative term representing the relationship between demand and supply of water. In the case of first order scarcity, it is the natural endowment of water that is not sufficient to meet the current demand, while for second order scarcity, the deficit in supply of water is not a result of a natural condition, but a consequence of economic, political and technological conditions which creates imbalances between water demanded and water supplied (See, Brook, 2006; Webb & Iskandarani, 1998).

¹²³ The Water Resource Action Programme (WRAP) has produced the daily estimates of water use as follows. Domestic 961 000m³ per day, Industrial 673 800m³ and Agriculture 8 343 000m³ per day (2005: 8). But the problem with these figures is that they are daily and not annual estimates, and this makes it difficult to estimate how much is used annually especially for agriculture where less water is used during the rain season. Given this difficulty, it is probably justifiable to use the WHO 2000 figures which are annual estimates.

5. 1.3 Second and Third Order Scarcities: Management Deficit

Given the available water resources, it may be argued that the problem of access to water in Zambia seems to be located mainly in the second order scarcity domain, where the economic, political, technological and governance factors constrain the utilization of the available water resources. In this way, the problem of access to water in Zambia is largely that of institutional and management in nature rather than a natural resource problem. Thus, the interventions need to focus on the management or institutional side of the equation.

During the mid-1990s, probably occasioned by the growing interest in water, global approaches to water resource management started to separate second order scarcity into two different realms. Pioneered by Homer-Dixon, research into problems of scarcity in the water sector have since separated technological and economic problems from what has been referred to as social “ingenuity” problems. This approach introduced the concept of third order scarcity (social ingenuity problems). Dixon’s main argument in adopting this approach is that the social arrangements in society which include people’s attitudes towards water, resources and institutional set ups have a greater influence on the ability to balance sustainably the supply of water and its demand. Dixon argues that how societies “arrange people, their social relations and institutions, are ultimately more important than ideas for technologies or natural resources” (in Brooks, 2006:2).

Expanding on Dixon’s idea of “social ingenuity,” Brooks (2006) argues that management of second order water scarcity enables a society to migrate to more efficient positions on the water production possibility frontier (or curve), while management of third order scarcity leads to the outward shifting or expansion of the water production possibility frontier. Brooks (2006) submits that,

[i]n many ways, second order scarcity can be overcome by capacity that allows one to do better what had been done in the past (“more crop per drop” in the irrigation jargon), and therefore to meet existing demands with fewer resources. Third order scarcity requires social adaptive capacity that develops through education, cultural change, and re-evaluation of lifestyles (ibid).

Accordingly, through the deployment of second and third order “adaptive capacity”, countries can negotiate through first order scarcity more effectively. Though policy options are limited with regard to first order scarcity, they are wider for second order, and much wider for third order scarcity. Since most low income countries like Zambia may not adequately address challenges arising from first order scarcity, they can however, take advantage of the policy options available at the second and third order levels.

Regrettably, most solutions proposed to deal with the three orders of scarcity lean much more on the efficiency argument, with a strong emphasis on treating water as an economic good whose economic value must be realized through appropriate pricing. As noted in the previous chapter, this approach often leads to neglecting the social objectives such as equity and provision of lifeline water for all. To a large extent, this is the approach that has been influencing water resource management and supply approaches in Zambia.

5.1.4 Current Levels of Access to Water

Despite the relatively abundance of fresh water resources, close to half the population of Zambians still do not have access to safe sources water. As indicated earlier, official figures of households without access to safe sources of water stand at 43%. For people living in rural areas, the figure is much higher reaching up to 60% as **Table 5.3** below shows.

Table 5.3 Distribution of Households by Water Source (Wet Season 2004)

Water Source	Rural	Urban
River/Lake* ¹²⁴	28.4	2.3
Unprotected Well*	33.2	11.2
Protected Well	10.9	3
Bole Hole	22.4	6
Public Tap	3	29.8
Own Tap	1.1	37.2
Other Tap	0.7	10
Other	0.4	0.4

Source: LCMS 2004 (2005:131)

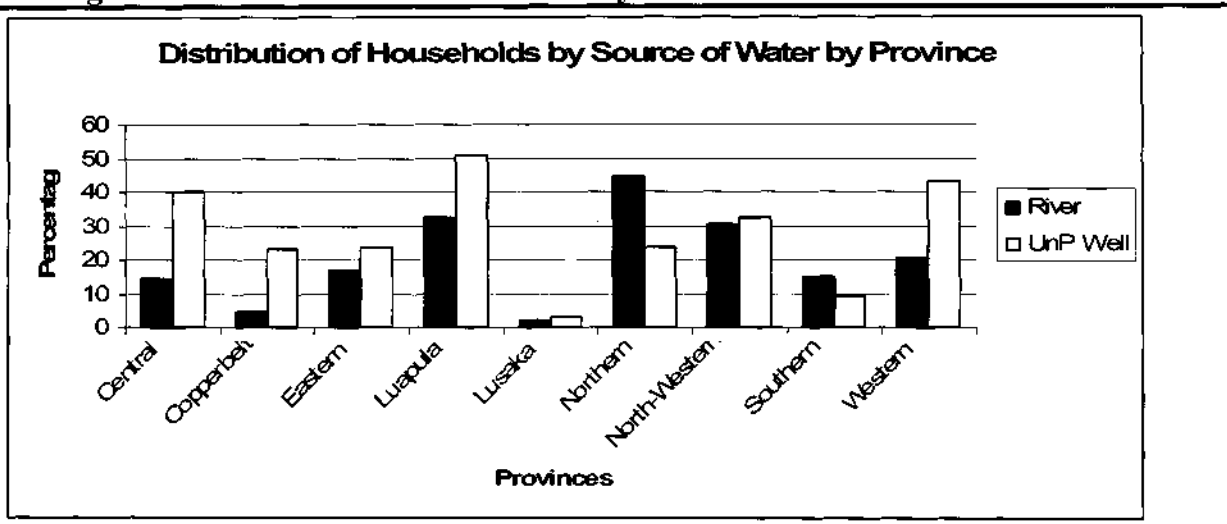
5.1.5 Rural-Urban Disparities in Access to Water

From **Table 5.3** above, the total number of households getting water from unsafe water sources is very high in rural areas when compared to urban areas. While more than 28% of households in rural areas get water from rivers, there are only 2.3% of households in urban areas that get water from rivers. Similarly while more than 33% of households get water from unprotected wells in rural areas, only 11% of households in urban areas get water from the same source. This brings out the urban bias in the supply of water services, which has its roots in the colonial social structure (discussed in Chapters One and Two). These disparities between rural and urban come out clearly when the distribution of households is disaggregated by province as shown in **Figure 5.3** below. While rural provinces such as Luapula, Northern and Western have more than 40% of households accessing water either from the

¹²⁴ * These two sources have been classified as unsafe sources of water. The total for these two sources is 61.6% for rural areas and 13.5% for urban areas.

river or unprotected well, only a total of less than 5% of households in Lusaka Province get water from these two sources. Although, less than 5% of households in Lusaka Province get their water from rivers, a disturbing 23% of households fetch water from unprotected wells in rural provinces. In most rural provinces, the proportion of households without access to safe sources of water (Unprotected well + River) is as high as 83% for Luapula Province, 67% for Northern Province, 63% for Western Province and 62% for North Western Province. This means that for Luapula Province only less than 17% of the households have access to safe water, 23% for Northern Province, 27% and 28 % for Western and North Western Provinces respectively.

Figure 5.3 Household Distribution by Source of Water and Stratum



Source: Based on data from LCMS 2004 (2005:131)

5.1.6 Intra-Urban Disparities

Whereas the above figure presents the disparity in rural-urban terms, it hides the disparities that exist within the urban areas, between conventional (urban per se) and peri-urban areas. The disparity in access levels between urban and peri-urban, which is often not captured in the official statistics reflects severe disparities in the supply of water services (WSP, 2004). While the official figures from the Central Statistics Office (CSO) put the level of access to water for urban areas at 85%, research conducted by the DTF puts access to safe sources of water for peri-urban areas at 35% (DTF, 2006: DVD). Disparities in access to water between people in the same city is not only in terms of sources of safe water, but also in terms of the quality of services as manifested by indicators such as the hours of services, time taken to respond to reported customer complaints, connection percentage, metering ratio and billing efficiency. But these intra-urban disparities, which are often hidden in official statistics, results in a situation where the peri-urban and low income areas' sources of water being assessed on the

basis of services provided to conventional areas. Interviews with residents from the peri-urban areas highlight this systematic strategy to underplay peri-urban water problems. Most of the respondents pointed out that there is a big difference in the quality of services provided and the prices charged between low income and high income areas. One of the peri-urban community leaders explained the nature of the disparity.

In most cases there is disparity: they supply more water and good quality water to people who have money, people who drive and segregate the low income groups.... You find that we are being over-charged in the communities than people in the ma yard (*Community Leaders Interviews, 2007*).

Unfortunately, it is areas with high incidence of poverty who are made to pay more for services of even of a poorer quality. When head count poverty for low cost areas (which include peri-urban areas) is compared to that of high and medium income areas, the disparities in the incidence of poverty become obvious. For instance while the proportion of extremely poor in high cost areas was only 4%, 39% of the population in the low cost areas were classified as extremely poor in 2003. In terms of the total poverty head count, 62% of the population in low cost areas were poor in 2003 compared to only 8% in high cost areas as **Table 5.4** below shows.

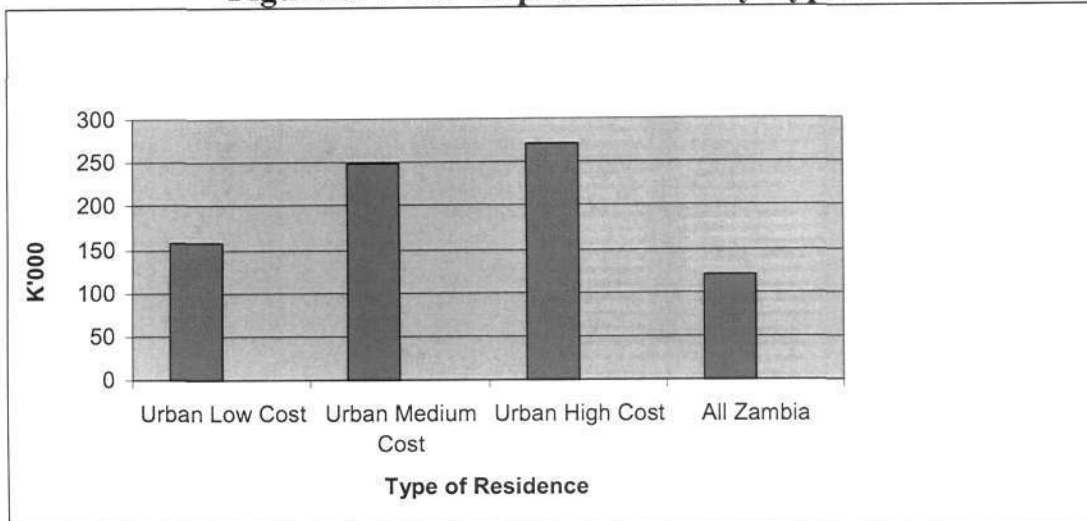
Table 5.4 Poverty Head-Count by Type of Residence

	<i>Extremely Poor</i>	<i>Moderately Poor</i>	<i>None Poor</i>
All Zambia	46	21	33
Low Cost	39	23	38
Medium Cost	17	13	70
High Cost	4	4	92

Source: Based on Data from *LCMS 2002/2003* (2005:116)

Similar inequalities emerge when income per capita is considered. As **Figure 5.4** below shows, income per capita in low cost areas was only slightly over half of per capita income for high cost areas.

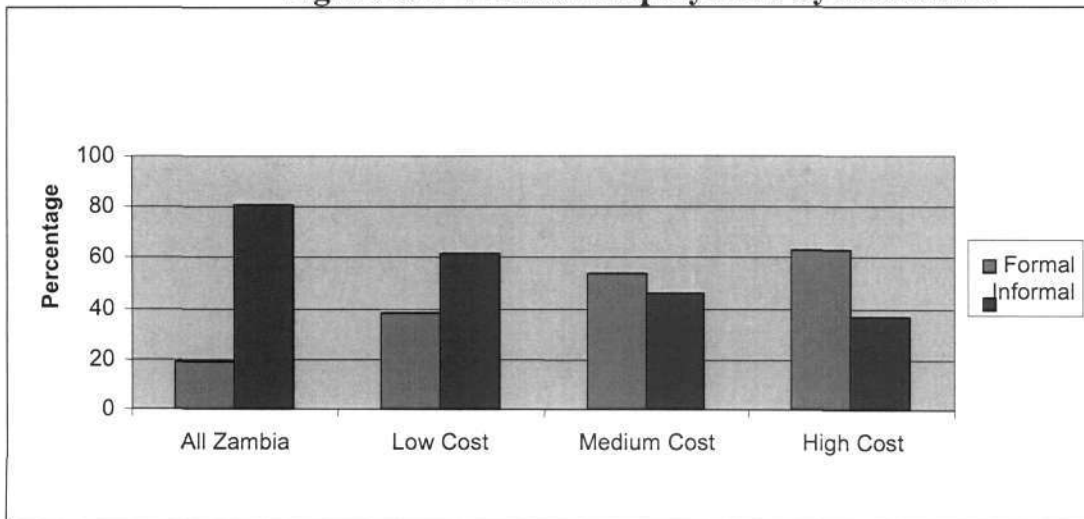
Figure 5.4 Per Capital Income by Type of Residence



Source: Based on Data from *LCMS 2004* (2005:88)

Employment trends also reveal a similar pattern. Most of the people in low cost areas (that is 62%) are in informal employment while majority of the people in high cost areas (60%) are in formal employment as **Figure 5.5** below shows. One of the implications of this is that these factors have a critical bearing on access to water.

Figure 5.5 Formal Employment by Residence

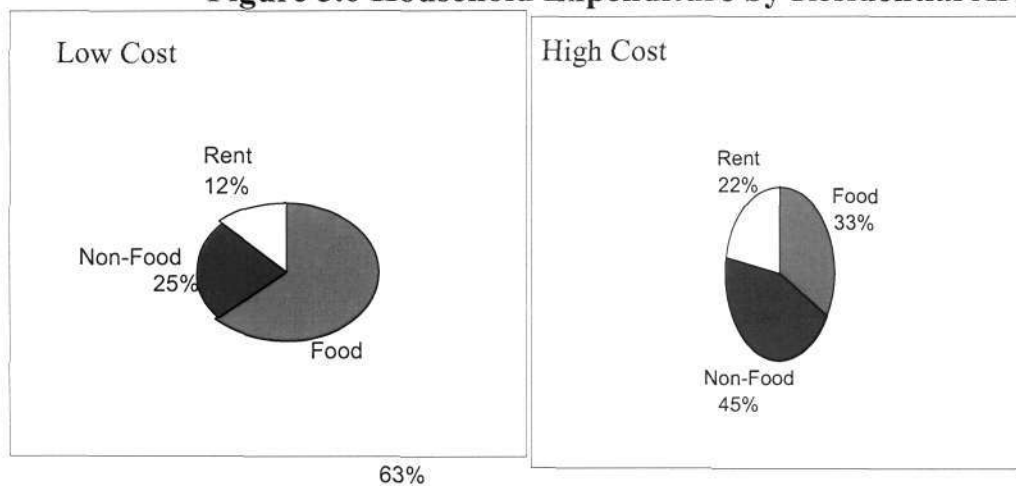


Source: Based on Data from *LCMS 2004* (2005:88)

The other important aspect that brings out the disparities between low cost and high cost areas is the composition of household expenditure. Looking at **Figure 5.6** below it is clear that most households in

the high cost areas spend a smaller proportion of their expenditure on food when compared to households in the low cost areas.

Figure 5.6 Household Expenditure by Residential Area



Source: LCMS 2002/2003 (2004:104).

While households in peri-urban, on average, spend 63% of their total household expenditure on food, households in high income areas spend only about 33% of their total household expenditure on food. Spending 63% of household expenditure on food implies that there is less flexibility in spending options for low cost households given the fact that expenditure on food often is given a higher priority because of the importance of food in a household. Because of this, low income households have less to spend on non-food elements of their household needs. The opposite, however, is the case for households in the high cost category—their expenditure shows a large margin of flexibility in the sense that the non-food component is relatively larger. This phenomenon seems to reflect the famous *Engle's Law* that as income increases the proportion of household income spent on food decreases while the percentage spent on non-food increases. In terms of access to water, this pattern could be an indication that households in the low cost category experience higher constraints in accessing water than households in the high cost areas. Surprisingly, it is households in the high cost areas that seem to be receiving the attention in both policy and investment decisions as we shall see later.

5. 1.7 Beyond the Logic of Intra-urban Inequalities

Now the importance of making these comparisons lies in the fact that this kind of information is critical for public policy formulation. If, for instance, policy makers know that majority of the people in low cost or peri-urban areas are in informal employment, that information can be helpful in designing and directing various forms of interventions. If the available data indicate that there are more people without access to safe sources of water in peri-urban areas, the most rational thing to do is to focus

interventions on these areas. In a society that is committed to treating water as a human right, then it is no longer a matter of mere logic, but a moral obligation to “provide those who do not have sufficient means, with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services” (*General Comment 15*, #15). Thus, clear information about the disparities in access to water, and indeed in many other aspects is essential in guiding the appropriate public interventions. Regrettably, policy is often guided by political and economic expediencies and not moral rationality.

5. 1.8 Aggregated Data

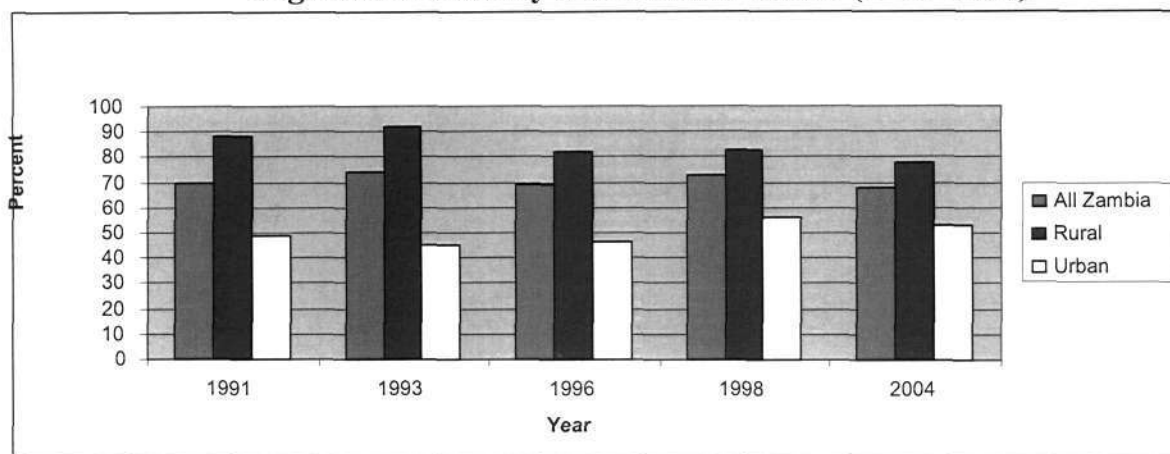
As evidence from Kenya (See HDR 2006 on Kibera Case) shows, it is not helpful to just give aggregate figures that hide the real conditions of people in low cost areas. Sadly this is always the case with most official statistics which strive to make a politically correct statement at the expense of poor people’s well-being. A clear example is that of the Kibera informal settlement in Nairobi where according to government statistics, 99% of the population in Nairobi has access to clean water while 93% has access to adequate sanitation. But within Nairobi there are between 500 000 to 1 million people who are using “flying toilets,”¹²⁵ living in plastic and mud structures where access to water is described as a nightmare (HRD, 2007:38). Now the story that 99% of Nairobi’s population has access to clean water masks problems of access to safe water experienced by Kibera residents. A grave consequence of this seemingly statistical oversight is that the problems of access to water in Kibera become invisible to policy forums.

5. 1.9 Access to Water in the Socioeconomic Context

Challenges of access to water should be seen in the broader socioeconomic context in the country, particularly within the current levels of poverty. As **Figure 5.7** below illustrates, Zambia has been grappling with high levels of poverty since the deepening of the economic crisis in the early 1980s, a situation which has continued through out the 1990s to the present as highlighted in Chapter Two.

¹²⁵ These are usually plastic bag or buckets used as toilets.

Figure 5.7 Poverty Head-count Trend (1991-2004)



Source: Based on Data from LCMS 2004 (2005:118).

From a staggering 70% of rural people being poor in 1991, the proportion of people who were classified as poor increased to over 90% in 1993, dropping slightly to just above 80% in 1996, and remaining the same up to 1998. Poverty headcount only dropped slightly below the 80% mark in 2004. Though the incidence of poverty in urban areas was lower than the rural areas over the same period of time, poverty head-count in urban areas only dropped slightly between 1991 and 1993, and remained almost the same between 1993 and 1996, increasing to about 60% in 1998 before dropping to just over 50% in 2004. In the case of the overall national poverty headcount, a similar trend was recorded over the same period of time. These levels of poverty reflect the hardship of the general population in meeting their daily basic needs including clean water. High incidence of poverty could be one of the major reasons why there is an increase in the number of people in peri-urban areas who are relying on unsafe sources of water.

5. 2 Water Reforms

5. 2.1 Water Reforms During the 1990s

Like in many other countries, the water sector in Zambia has been undergoing major restructuring since the early 1990s. Although there had been reforms of one kind or another in the water sector prior to the 1990s' reforms (Chola, 2003), it was only in the middle of the last decade that water supply and sanitation (WSS), and water resource management (WRM) received recognisable attention in Zambia. In spite of the earlier efforts to give shape to the sector, it can be safely argued that significant reforms in the water sector in Zambia began in 1993 when the government started formulating the national water sector reforms which culminated into the *National Water Policy* (NWP) in 1994 (WRAP, 2004;

NWASCO Sector Report, 2001.2). Prior to 1993, management of the water sector was of a parochial nature. This is clearly echoed in the *National Water Policy(1994)*, which states that,

Zambia has, until the advent of the Third Republic [1991], never had a coherent water policy for planning, management and development of water resources. What has been in place are various ad-hoc water user objectives which merely provided principles for the often crisis prone management and uncoordinated development purposes (1).

In an effort to address challenges in the water sector, the government embarked on a set of reforms aimed at coordinating the different water actors and users. Reasons for initiating these reforms are many, but the major ones include the following:

- Inadequate institutional and legal framework;
- Deterioration of water supply and sanitation services;
- Limited developed human resource capacity;
- Inadequate co-ordination among a multiplicity of actors in the water sector;
- Low coverage in water supply and sanitation services;
- Inadequate stakeholder and community participation;
- Limited and ever decreasing capital investments and budgetary allocation to the sector;
- Inadequate water resources, water supply and sanitation data and information systems;
- Need to adapt to emerging international trends in water management
- Need to mainstream gender issues (Chola, 2003; *NWSCO Sector Report, 2001/2*).

To address some of these challenges, a number of strategies and programmes were introduced. These include the *Seven Sector Principles* (see Appendix III), the formation of an inter-ministerial committee to coordinate water supply and sanitation reforms, creation of the Water Sector Reform Support Unit (RSU), enactment of relevant legislation, and sensitisation of the public (Chola, 2003).

5. 2.2 Programmes implemented

5. 2.2.1 Separation of WRM from WSS

Separation of water resource management from water supply and sanitation has been one of the major reforms implemented which has helped to clarify roles and functions between the various ministries involved in the water sector. Previously, all the ministries involved with water, were doing one kind of water management or the other individually (WRAP, 2003). The separation of functions has led to a clear allocation of roles between the key ministries; an issue which had been a source of conflict in the

past¹²⁶. Currently, the Ministry of Energy and Water Development (MEWD) is responsible for the management and development of the entire water resources. Similarly, allocation of water resources through issuance of *water rights* falls under the Water Board of Zambia which is administered under the MEWD. Water supply and sanitation is a responsibility of the Ministry of Local Government and Housing (MLGH).. Under these reforms all the responsibilities regarding the provision of water services in urban areas have, in principle, been transferred to the MLGH. The resulting institutional set up is summarized in the **Table 5. 5** below.

5.2.2.2 Separation of Regulatory, Policy Making From Water Services Provision

The other key reform in the water sector has been the move to separate regulation of WSS from policy making and service provision. Prior to the 1993 reforms, local authorities in most cases performed all three functions. Under the current arrangements, regulation of the water supply and sanitation sub-sector is performed by a statutory body, the *National Water and Sanitation Council* (NWASCO) which was created by the Water Supply and Sanitation Act of 1997. Provision of water services now is performed by commercial utilities (mainly in urban areas), local authorities, and private providers or community water schemes. Policy formulation is a responsibility of the MLGH. The regulator is charged with monitoring the activities of all service providers to ensure that they comply with the basic requirements for the provision of water and sanitation services as stipulated in the 1997 WSS Act.

With particular reference to the Water Supply and Sanitation sub-sector, the establishment of an independent regulator (NWASCO) was critical to the success or failure of reforms in this sub-sector. NWASCO describes its mandate as balancing, “social and commercial interests, protecting the consumers from exploitation and providers from undue political interference” (2002: 1).

In order to focus on social objectives, the Devolution Trust Fund (DTF) was created under NWASCO. DTF was established “as a financing tool (basket) in order to assist the providers to extend their provision of services to the urban poor” (DTF, 2005:6). And since its establishment in 2002, the DTF has focused its operations on peri-urban areas mainly in form of providing grants to commercial utilities (CUs) as incentives to extend services to low income urban areas which most CUs are reluctant to service.

¹²⁶ In-fighting between the key ministries is one of the main concerns raised by many respondents during the interviews conducted for this study. Although policy is clear, the practice leaves much to be desired: there are still issues that need to be sorted out especially between the MEWD and the MLGH.

Table 5. 5 New Water Sector Institutional Set Up

Institution	Roles
MEWD, Water Board	a) Responsible for the National Water Policy b) IWRM policy and international water c) Management, use and development of water resources d) Regulating Water Resources
MLGH, DISS	a) WSS sub-sector policy and strategy elaboration, oversee service provision to urban and rural areas by Local Authorities and the Commercial Water Utilities b) Resource mobilisation
MACO, MTENR, MoH,	Sub-sector policy elaboration (i.e. irrigation policy), sanitation and hygiene promotion,
Statutory Bodies: NWASCO Water Development Board ECZ, DTF, ERB	a) Advisory and regulatory roles b) Regulatory role c) Pollution Control (ECZ)
CUs	Service provision
Local Authorities	Service provision in rural and urban areas; in urban areas service provision delegated in most urban areas to CUs
Training and Research Institutions	a) Human Resource training b) Research
Co-operating Partners & NGOs	a) Provision of capital funds b) Execution WSS programmes & projects by NGOs
Private Sector	a) Low participation in financing and management of WSS, b) Consultancy and out-sourcing services c) Construction of WSS facilities
Community and CBOs	a) Beneficiary of WSS services b) Maintenance of sources

Source: Fifth National Development Plan (FfNDP) Final Draft, (2006)

5. 2.2.3 Decentralisation of Power

The other key programme that has been part of the water sector reforms is the move to devolve power and functions from the central to local government bodies. Before the 1994 water sector reforms, local authorities had very little say in decisions regarding water supply. MLGH and MEWD had the mandate to decide how water should be provided and who was to provide the services. But the post 1994 sector reforms have created an environment in which local authorities can make decisions on matters related to the provision of water and sanitation services in their areas. Devolution of power to local authorities

has been provided for in the Local Government Act of 1991 (amended in 1996) which has created a three tier government system¹²⁷.

The National Water Supply and Sanitation Act has also transferred some decision making power from the central to the local government bodies. With regard to water supply and sanitation, the WSS Act empowers a local authority to decide on how to provide water. Section 9 (1) (a-c) particularly gives the local authority power to “establish a water supply and sanitation utility as a company under the Companies Act..., as a public or private company; as a joint venture with an individual or with any private or public company; [or] as a joint venture with another local authority or several other local authorities.” It is from the provisions of this Act that commercial water utilities have been established. We will look more into the details of commercialization of water services in Zambia later in the next part of this chapter.

5. 2.2.4 Enactment of Relevant Legislation

A number of pieces of regulations have been enacted to provide guidance in the process of reforming the sector. With particular reference to the water sector, the WSS Act of 1997 has been seen as the major piece of legislation. In addition to this, the *Draft Water Bill 2005*¹²⁸, is in the process of being enacted into law to replace the *Water Act, Cap 198 of 1948* which has now become inadequate to provide guidance to the various water resources issues emerging in Zambia today (Chola, 2003:68, 72).

5. 2.2.5 Others Reforms

In addition to these reforms, there are policy strategies such as the creation of Sector Advisory Groups (SAG), Sector Wide Approach planning (SWAp), the on-going reforms to establish the Water Resource Board to replace the Water Board, establishment of Catchments and Sub-catchment bodies and water user committees, have been or are being undertaken.

Overall, there has been an acknowledgement of the importance of water as a national asset. From the 1990s, there has been a growing realization that water plays a critical role in the functioning of other sectors including human and social development. The *National Water Policy* has repeatedly recognized

¹²⁷ The system comprises of the central, provincial and local government authorities. As we shall show see latter in this and the next chapter, although the programme of decentralization has been in policy documents for more than 15 years, the practice of this system remains a big challenge as the central government still continues to make key decisions sometimes directly disregarding the views of lower government authorities.

¹²⁸ At the time of the research, June 2006, the draft bill was still going through the third reading stage in Parliament. Though it was planned that the whole process would be completed by the end of June 2006, the bill had not passed through the third reading stage by September when cabinet was dissolved since general elections were to be held at the end of September.

the important role water plays in the daily activities of the people, but also the role water resources play in national economic development. The role that water can play in national development and poverty reduction is highlighted by the AWDR 2006, when it states that “[g]iven clear policies and strategies and real commitments to implementation, we can use water to help eradicate poverty, reduce water-related diseases and achieve sustainable development” (16, 27). At the Water Resource Action Programme (WRAP) Consultative Forum the importance of water resource in national development together with the need to create effective policy and regulatory mechanisms were highlighted:

The water sector reforms have largely been driven by the knowledge that water resources are vital to socio-economic development and the realisation that the present framework cannot fully enhance the contribution of the water resources to other sectors and ultimately contribute fully to poverty reduction(2003: iv).

5.2.3 Public Trust Doctrine and the Commons

Control of water resources and other natural resources in many civil-law countries has been influenced by the public trust doctrine. According this principle, the state is assumed to hold all natural resources including water in trust, on behalf of the general public. Public Trust Doctrine concomitantly envisions that the state, as a trustee, has the responsibility to ensure that public resources are used to realise common goals including fair and equal distribution (Dinar, Rosegrant & Menzein-Dick, nd:12). In orthodox civil law tradition, resources such as water, land, minerals, air, roads and rivers were seen as public goods which should be held in common for all to enjoy, and the state was seem to possess the *dominus fluminis* (overall rights of control) over these goods including water (Tewari, 2001). It is in this sense that Karl Polanyi sees resources such as land and water as intricate parts of nature to which human beings and society are part and should not therefore be treated as commodities and subjected to the laws of the market (1944:73).

However, the common law tradition, influenced mainly by the *riparian law principle*¹²⁹, has converted some of these natural public goods into individual private properties. Often under this system, water rights have been considered as part of the land tenure rights (Hodgson, 2004). Nonetheless, even in common law traditions, there has been a recognition and distinction between private water and public water. For example, in South Africa under the Dutch Company Rule which relied on civil law, though there was a distinction between private and public water, it was made clear that “the Government was

¹²⁹ This is a doctrine which gives the right to exploit under-ground water to people with title deeds to land. For instance, a farmer who has a legal title to a piece of land is considered to have the right to extract underground water within the boundary of his or her farm.

dominus fluminis in regard to flowing water and that it had the absolute right to grant that water to whomsoever it chose” (Tewari, 2001:8). This situation was changed when the British took over and applied common law which favoured private or individual water rights (ibid, 5). Thompson, et al (2001) note that while private water took precedent over public, “[p]ublic water was a source of water that had a potential for communal use, while private water had limited applications” (11).¹³⁰

Related to the Public Trust Doctrine is the idea of the *commons*. The concept of *the commons* is an old principle which can be traced back to the Greek Philosophers Thucydides and Aristotle. In recent times, the concept has been popularized by Garret Hardin’s 1968 article entitled “The Tragedy of the Commons”¹³¹. Hardin’s essay tries to bring out the dilemma of granting unrestricted access to finite resources like water. In Hardin’s view, when individuals are left to make private decisions about the commons,

Each man is locked into a system that compels him to increase his herd¹³² without limit -- in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all(1968:4).

The dilemma arises from the fact that if access to common resources is unregulated, it may happen that some individuals might exploit the resource and eventually endanger other people’s access to these common resource. Often, this idea has been used to argue in favour of privatization. But in actual fact, the core message of the “tragedy of commons” is a call for the regulation of access to the commons so that social and environmental objectives can be achieved. And the state has a central role to play in ensuring the realization of these objectives. Lessons about the commons can be learnt from traditional African societies who managed resources such as water in common. Even now, there are communities that still manage water resources as a common good. In a comparative study between customary and statutory law in the regulation of water, Nkonya reports that though there are private water sources among the Sukumas,

...water is regarded as a common pool resource and should be free for everyone. No one can be denied access to a water source for domestic use regardless of the water source. It does not

¹³⁰ In the current integrated water resources management approach, the riparian principle has almost disappeared in many countries, and water rights are strictly assigned by the state. Even where the state has allocated these rights, they are not ownership rights, but the rights to use water or usufruct right (See Hudson, 2004).

¹³¹ The original idea of the “Tragedy of the Commons” first appeared in 1833 in a pamphlet written by William Forster Lloyd (Hardin, 1968).

¹³² Hardin used the hypothetical herdsmen to illustrate the point that if unregulated each herdsman will behave selfishly to increase his gain without paying attention to the condition of the commons.

matter whether the water is from natural or developed or whether the source is situated on private or public land (2006: 56).

On the other side of the dilemma raised by the “tragedy of the commons” is the argument that if something is owned in common there is little care given. This argument also dates back to Aristotle, who argues that,

For that which is common to the greatest number has the least care bestowed upon it. Every one thinks chiefly of his own, hardly at all of the common interest; and only when he is himself concerned as an individual. For besides other considerations, everybody is more inclined to neglect the duty which he expects another to fulfill.... (Wikipedia Encyclopedia, Online)

Over the years, such arguments have been used to provide theoretical justifications for privatization of public goods including water, arguing that unrestricted access leads to waste and is unsustainable. As indicated in Chapter Four, arguments for privatization have been advanced on the basis that privatisation of water services promotes efficient use of resources and avoids unnecessary waste. These arguments have become more articulated during the 1990s when the new wave of water privatization has been raging in many parts of the world (McDonald & Ruiters, 2005; Swyngedouw, 2005).

Commercialisation or privatization of water services has to be seen in this context. In Zambia, commercialization was proposed as one of the major reform programmes to address the challenges of access to water. In 1993, the government set up a commission to study the reorganisation of the water sector (WRM Report, 2003). Based on the findings of the commission assisted by the UK based consultancy company, Water International PLC, it was concluded that commercialization was to be an indispensable component of the water reforms in the country (Cocq, 2005). This recommendation was later reinforced by another British water consultancy company, Severn-Trent, in 2001. As noted earlier, there are various forms of privatisation, but in Zambia commercialization¹³³ was a preferred route.

¹³³ The difference between privatization and commercialization is often not clear. In most cases commercialization differs from privatization mainly on grounds of asset ownership. Often privatization implies a complete divestiture of assets from public to private ownership while commercialization takes different forms of contract arrangement which include lease, service, management and BOT contracts (See McDonalds & Ruiters, 2005; Bayliss, 2003 for a detailed discussion). In the Zambia case, the commercialization exercise has meant that the Local Authorities still remain the owners of the infrastructure. In the current arrangement the local authorities were envisioned to be shareholders who were expected to partner with the private investors in the commercial utilities. In particular, the Water Supply and Sanitation Act 28 of 1997, has provided for the local authorities to establish water and sanitation utilities as a company, public or private, or as a joint venture with an individual or private enterprise, or as a joint venture with other local authorities (see Section 9 (1)(a)- (c). However, in all the current 9 CUs the sole capital has come from the local authorities—no private investment has been so far reported. In the case of LWSC, the Lusaka City Council is the sole “shareholder”, whereas for NWSC, the shareholders are the constituting local authorities.

5.3 Commercialization of Water Services in Zambia

5.3.1 Commercialization Triggers

At the global level, the move to commercialize public services has been driven by many factors. In the case of water services, the main triggers of commercialisation include the attribution of economic value to water, the adoption of demand-driven approaches, sustainability concerns, but mainly fiscal concerns. Most of these factors have been driving commercialization in Zambia.

Water reforms in Zambia have been implemented in two phases. Phase one focused on the formulation of National Water Policy which was accomplished in 1994, and the creation of appropriate legal framework to regulate the sector (the *National Water Supply and Sanitation Act 28 of 1997*). Phase two concentrated on creating the sector's regulator (NWASCO) and the establishment of commercial utilities or water companies¹³⁴ (NWASCO, *Sector Report*, 2001/02; 3). Overall,

[t]he main idea of the commercialisation was that the LAs would outsource the management of the WSS services to institutions established on the principle of achieving *full cost recovery*, staffed with professionals, and ensuring economic viability. *External capital* for the rehabilitation and extension of the infrastructure was to be attracted by presenting the professional provider as guarantee for sustainability (NWASCO, 2004: 18, emphasis added).

Below are some of the main reasons put forward for embarking on the commercialization of water supply and sanitation services in Zambia.

5.3.1.1 Deterioration of Water Services

Prior to the creation of commercial water utilities the provision of water and sanitation services was a responsibility of local authorities or municipalities especially in urban areas. But by the late 1980s most of these municipalities were becoming insolvent. This made it difficult for them to cope with the growing demand for water and sanitation services among others things. Most councils' ability to provide quality and adequate water services was worsened by rapid increase in population especially in major urban cities. In some cases the infrastructure installed in the 1940s, meant to serve a population of 200 000 people, is still being used to serve a population of more than two million people¹³⁵ (*Fifth*

¹³⁴ Currently, there are 9 commercial utilities that have taken over the provision of water and sanitation services in all urban and peri-urban areas, except for Central and Eastern Provinces where plans are under way to establish commercial utilities.

¹³⁵ In the case of Lusaka, the Lusaka Water and Sewerage Company official interviewed repeatedly cited the problem of inadequate and ageing infrastructure as one of the major challenges that the company faces. Similar complaints were raised by Nkana Water and Sewerage Company. The main problem has been that the population in urban cities has increased up to a factor of 10, yet the infrastructure has not been upgraded to cope with the increased demand due to increased population. To cope with this pressure, the utility companies have resorted to rationing thereby reducing the services hours to as low as eight hours in some cases (See NWASCO Sector Report 2004/2005).

National Development Plan [FNDP] Draft, 2006; NWASCO Sector Report, 2004/05). This increase in population without a corresponding expansion or upgrading of water services infrastructure, together with dwindling funding to the sector, the inability to attract skilled personnel from the labour market, and low capacity, resulted in the deterioration of water and sanitation services (GTZ, 2004).

According to the NWASCO Sector Report (2001/02), “rapid deterioration in the quality of service delivery in both the urban and rural areas especially during the 1980s, forced the government to embark on a comprehensive reform of the sector in early 1990s” (4). German Technical Aid (GTZ) working paper on the Water Sector in Sub-Saharan Africa also highlights the deterioration of services as one of the triggers for water supply and water resource management reforms: “Reforms in the water sector (WSS and WRM) in our partner countries are often triggered by deteriorating WSS service provision for the consumer” (2004: 3). Therefore, the commercialization process was both a result of and a solution to the deteriorating water and sanitation services in the country.

There are still cases where local authorities have failed to provide water services to the communities. A national news paper, (*Zambia Daily Mail*), reported a case in which the Minister of Local Government revoked the license of one of the local authorities to provide water services, and the provision of water services in the meantime has been given to a water utility company.

Minister of Local Government and Housing Sylvia Masebo has revoked the Kafue District Council ‘s right to supply water to residents because the local authority had consistently failed to fulfil conditions required under the water service providers’ licence. Ms Masebo has since appointed Lusaka Water and Sewerage Company (LWSC) as the statutory manager to provide water and sanitation services in Kafue for a period of six months (*Zambia Daily Mail*, November, 2006).

5. 3.1.2 Low Investment Levels

In many developing countries the water sector has been seen as an unprofitable sector, and therefore it has been difficult to attract private capital investments to the sector (GTZ, 2004). Even in countries that have made progress in involving the private sector, investments in the water service sub-sector both from the public and private sectors have been comparatively low (ibid; Parasad, 2006). This is despite the fact that the water business has become a lucrative venture in many parts of the world (Bond, McDonald & Ruiters, 2003).

In the case of Zambia, it has been observed that overall, government funding to the sector has been dwindling (FNDP, 2006; WSP, 2004) making it difficult for the municipalities to cope with the

growing demand for water services. Insufficient capital investments to enable rehabilitation of the existing dilapidated water supply infrastructure is often cited as one of the major challenges facing the water supply and sanitation sub-sector prior and post 1994 reforms. This challenge was not only a growing feature of the pre-reform period, but it has also persisted in the post reform period. A WRAP Consultative Forum reported that many of the presenters at the forum identified “decreasing financial investment in the sector” as one of the major challenges (2003:4). Interviews with service providers and policy makers alike reveal that insufficient capital investment is still a major challenge. And government has not been able to do much as one of the service providers laments. “So as we know, budgetary allocation to water is quite low, sometimes, in some cases, it is 1% of what is required” (*Service Providers Interviews*, 2006). NWASCO Sector Reform Review also notes that the two key problems in the sub-sector are “Deteriorating infrastructure as a result of poor maintenance and lack of new investments [and] erratic and insufficient funding through Government” (2004: 5).

5. 3.1.3 Liberalizations Pressures

The Zambian Government, under pressure to reduce the escalating budget deficit, opted to shed off some of the social services responsibilities in the name of creating a stable macro-economic environment. With liberalisation sermons ravaging the globe during the 1990s, the pressure to move ‘along with everybody’ could not be pushed away from the water services. As NWASCO Sector Reform Report observes, the move to commercialise the water sector was situated in the larger government agenda of privatization: “The reforms were being implemented at the same time that Government had made a decision to privatise most of the industries including the mining areas where WSS services were provided by the previous operator” (2004:19).

With strong pressure from the International Financial Institutions, the government embarked on a commercialization exercise which was meant not only to attract the much needed private capital, but also to bring professionalism, efficiency and improved service levels (GTZ, 2004; NWASCO, 2002/03). However, as evidence in the next section suggests, the commercialization process has not brought the massive investments that the programme envisioned. Even today, up to 90% of the investment in the water sector comes from donors and cooperating partners, not private finance. To a large extent, this lack of capital investments, and in some instances operation and maintenance costs, triggered the move towards commercialization of water supply services.

5.3.1.4 Corporatisation

The other factor that prompted the commercialization process in Zambia, like in many parts of the world, was the emerging trends in global water management; the trend towards the “corporatisation” of water services (Bond, McDonald and Ruiters, 2003). Starting from the early 1980s, many governments began to look at the provision of water and other public services as a burden and the cause of the growing fiscal deficits. A leading example is the massive privatization of public service utilities such as water, electricity, gas, bus services, coal and oil in Britain during the Thatcher administration. Such measures were seen as a way of ridding government off the burden of a crippling public service . Privatisation of public services was seen as a way to enlarge personal responsibility and freedom, improve efficiency in the delivery system of social services, encourage innovation and creativity, and reduce politicization of public services¹³⁶ (Harvey, 2005).

In low income countries like Zambia, access to loans from the IFIs was conditioned on the implementation of such measures. Though the Zambian government did not embark on a full-fledged privatization of the water supply services, it was not spared from the pressure to adopt the policy of private sector participation. In a study that reviewed DFID’s role in the privatisation of water services, Joy & Peter (2005) have noted that donor agencies such as DFID have actually used their financial resource leverage to drive commercialization of water, electricity and gas services in low income countries.

5. 3.1.5 Global Management Tempo

Apart from the neoliberal wave sweeping through most developing countries, there were other emerging trends in global water management mainly the trend towards integrated water resource management (IWRM), which recognized the multiple values, uses and users of water with the complexity that this brings (Bindraban, vanKeulen & Warner, 2006). For instance, Phiri (2003) argues that by adopting the Integrated Water Resource Management principles, the National Water Policy is not only in tune with the management vogue of the time, but also at peace with the dominant paradigm.

5. 3.1.6 Role of Water in National Development

In the last decade and half, water has been increasingly seen as an important element in social, economic and cultural development. As noted earlier, the 1994 *National Water Policy* clearly

¹³⁶ It is important here to note here that these are reasons advanced in support of privatization at the global level and they do have influence at the local level such as a particular district in Zambia co-opted to privatize its water department believing that the services would improve, that there would be more capital investment, improved efficiency, sustainability and wider coverage.

recognizes the important role water plays in Zambia's development, hence the need to manage the resource in ways that would enable water resources to contribute to national development. With the increasing need to achieve the national developmental goals (defined on the Millennium Development Goals philosophy), it was realized that both policy and legislation had to be developed in order to harness water resource towards national development.

5.3.2 An Overview of Commercial Utilities (CUs)¹³⁷ in Zambia

As a result of commercialization, there are currently 9¹³⁸ CUs operating in different cities and towns as shown in **Table 5.6** below.

Table 5.6 Commercial Utilities in Zambia

Commercial Utility	Start of operation	No. of connections	No. of towns serviced	External Support*
AHC-MMS Ltd (management contract)	2000	50,142	5	Worldbank
Chambeshi (CHWSC)	2003	7,353	10	Ireland
Chipata (CWSC)	1992	5,279	1	Germany
Katubu (KWSC)	2000	36,844	3	
Lusaka (LWSC)	1989	37,252	1	ADB
Mulonga (MWSC)	2000	20,635	3	
Nkana (NWSC)	2000	31,191	3	ADB
North Western (NWWSC)	2000	3,992	7	Germany
Southern (SWSC)	2000	20,041	11	Germany
Western (WWSC)	2000	6,607	6	

*during the past five years to varying degrees

Source: *NWASCO Sector Report, 2003/04*

These 9 CUs serve 86% of the total urban population in their service areas. The remaining 13% is serviced by Local Authorities and 1% by private providers. There are also community run schemes especially in peri-urban areas, but they are not officially licensed, so they operate under a license given to a CU operating in the area. As evident from **Figure 5.8** below, commercial utilities have become a major actor in the water services sector, though this applies to urban and peri-urban areas only.

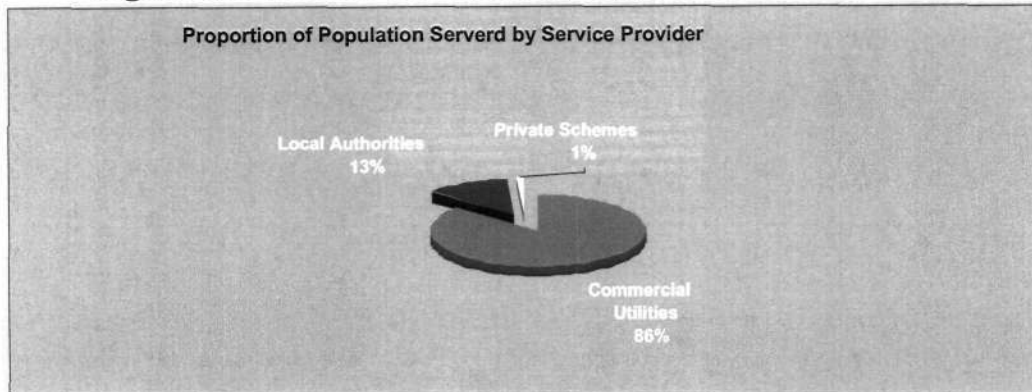
5.3.3 Impact of Commercialisation

Even if commercialization of water services in urban Zambia has been in progress for a short time, it is probably helpful to make a number of observations on what has been happening to the sub-sector since the commencement of commercial utilities. The first point to note when looking at the impact of

¹³⁸ There are currently 9 CUs since AHC-MMS was integrated into Nkana Water and Sewerage Company at the beginning of 2006. The tenth CUs is the Lukanga Water and Sewerage Company which will provided water to Kabwe and the Surrounding towns, but it is not yet operational (See NWASCO Sector Report 2005/2006)

commercialization is that there have been both positive outcomes as well as results that require serious attention and improvement. In terms of realizing the right to water for many people, the challenge still remains, especially in peri-urban areas.

Figure 5. 8 Service Provision by Type of Service Provider



Source: Based on Data from NWASCO Sector Report 2005/2006 (5).

5. 3.3.1 Reorganisation of the Water Supply Services

As a consequence of water sector reforms in general, and commercialization in particular, the water supply and sanitation sub-sector has been reorganized. This has mainly been in the form of putting order in the area of water services provision. As noted above, prior to the 1994 reforms, water services were provided by a number of institutions, a situation that resulted in the duplication of responsibilities and sometimes confusion and tension between the institutions involved. Often it was difficult even to allocate and track funds to the sector due to the fragmented way in which the different actors operated (WSP, 2004; Ministry of Finance, 2004)). Commercialisation has helped bring about coordination and clarification of roles.

5. 3.3.2 Improving Capacity and Service Levels

Compared to the time when water services were provided by local authorities, it is apparent that most of the commercial utilities are making some progress at increasing the capacity to provide water services sustainably as well as improving service levels. One area where most commercial utilities have made considerable progress is that of collection efficiency. Even if most of the CUs have not yet reached the set benchmark¹³⁹ of 85% collection efficiency, there has been noticeable progress in the recovery of cost through user fees. Other areas related to capacity and management that have recorded

¹³⁹ NWASCO has set 85% collection efficiency as the benchmark for all the CUs. The average collection efficiency is about 75% which is still below the benchmark, but records a commendable improvement on the the earlier performance and when compared to the areas still under Local Authorities.

positive results include service hours which have averaged at 16 hours per day, operation and maintenance coverage with an averaged of 65% of the operation cost as **Table 5.7** below indicates.

But as can be seen from **Table 5.7**, there are still many challenges despite the apparent improvements. Challenges still remain especially with UfW which is still very high. In most CUs UfW is up to over 50%. Effectively this means that only 50% of the water produced is billed. Apart from this being a sign of inefficiency in the system, it also raises concerns on the impact of this wastage of water on the environment and the need to conserve water resources. Most seriously, these inefficiencies are passed on to the customer in the form of high water tariffs to cover the production cost of the unbilled water. Metering ratio is also an area of concern in as far as this impacts on the levels of unaccounted for water.

Table 5. 07 Service Provider Performance Indicators

Service Provider	UFW %	Water Quality Compliance %	Metering %	Hours of Supply	Collection Efficiency %	O + M Cost Coverage Collection %
NWSC	37	91	47	19	78	77
LWSC	55	81	37	11	81	78
KWSC	57	60	8	15	58	74
SWSC	55	80	75	17	90	83
MWSC	59	90	19	15	59	60
WWSC	40	49	15	11	90	70
NWWSC	40	95	100	15	87	55
CHWSC	60	60	0	8	72	38
CWSC	26	95	100	24	83	91
Average	46	78	39	15	77	77

Source: Based on data from NWASCO Sector Report, 2005/06 (7).

Though the reported hours of service are questionable even in high cost areas, they are still relatively low. An average of less than two-thirds a day is not satisfactory.

Most importantly, as noted earlier, these figures do not reflect the situation in peri-urban areas. Based on the data collected and fieldwork observations, peri-urban areas still have not been touched, in any significant way by these improvements. If anything, the current strong emphasis on cost recovery and commercial viability works against most of the peri-urban areas due to the belief that consumption levels in these areas are very low. Unfortunately, it is the people who have problems with accessing clean water that have not benefited from the current reforms. In this sense, commercialization has impacted negatively on poor people's right to water to the extent that the imperatives of operating on

commercial basis have resulted in most of the peri-urban areas left out or ignored as risky and unprofitable investment destinations.

5. 3.3.3 Increased Awareness

The other important achievement that has come with commercialization is the increase in a sense of awareness within the community that it costs money to bring water from the river to the homes, communal taps or kiosks. Most of the focus group participants in Lusaka and on the Copperbelt demonstrated a growing awareness of the fact that it costs money to bring water to their communities, and because of this, most of them indicated that those who can afford to pay should pay for water. Almost all the respondents do not have problems paying for water as long as the services are good and the price is not too high. “We need to pay because it costs money to bring water from Kafue River,” one of the participants said. Another one explained that, “if we don’t pay the services will be bad like they used to be during the time that the council provided free water.”

Now this realization is critical in making people become conscious that water as a resource needs to be used carefully. However, it can be argued that it is not making people pay the marginal cost of providing water that makes people avoid wasting water. While paying is one of the factors, an important factor for the poor who struggle to find the coins to pay for water daily, it is not the only factor as argued in the orthodox “demand-driven” approaches. It is rather people’s attitude towards water which makes the biggest difference. And this is why, Dixon’s idea of “social ingenuity,” to the extent that it focuses on changing people’s attitude towards water, offers a great deal of potential for changing water consumption patterns especially in affluent suburbs where people often take water for granted (HDR, 2007).

5. 3.3.4 Autonomy of the Regulator

For commercialization to be effective, an independent regulator is indispensable. Thus, from the beginning, embarking on a commercialization programme entailed that the regulator had to be different from the providers and the policy makers to ensure that the rules of the game are followed. For the regulator to effectively carry out this task, the regulator has to function with the highest possible degree of independence, free from political interference which had been rampant in the water supply and sanitation sub-sector during the time when water services were provided by the local authorities (GTZ, 2004). This effective regulation is critical in the water supply and sanitation sub-sector because of the monopolistic nature of water services provision.

Just how independent the regulator is depends on many factors. Among the most important factors is whether the regulator gets funding for its operation from government or not. Experience has shown that if operating finances for a regulator are sourced from government, the likelihood of political interference is higher than if the funds are sourced outside government circles (GTZ, 2004). From a study of a number of regulatory styles and situations in different countries, a GTZ working paper on Sub-Saharan Water Sector recommends that “in order to curb the risk of political influence, a regulatory body should not be funded through government institutions. An appropriate alternative is funding by fees collected from the providers through a tariff surcharge” or license fees (2004: 24).

The WSS sub-sector in Zambia has adopted the policy of funding the regulator outside government, mainly by license fees and donor funding. NWASCO gets its funding from license fees collected from all service providers. All service providers are required to remit 2% of their total annual tariff charges to the regulator (*NWASCO Sector Report, 2003/04*). In this way NWASCO manages to cover 75% of its annual operation cost complemented by a “small grant from government” and cooperating partners (*ibid*). And according to some observers, this has enabled NWASCO to maintain high levels of autonomy which was demonstrated in 2001, when NWASCO approved tariff increases a few months before general elections (GTZ, 2004: 25).

5. 3. 3.5 Political Interference

While commercialization has been hailed for reducing political interference in the provision of water services, evidence on the ground reveal that there is still some form of political interference. One of the most notable forms of political interference arises from non-payment of water bills by the government institutions. Interviews with service providers confirm that government institutions are the worst culprits when it comes to non-payments. And the problem is that whereas it is possible to disconnect households for non-payments, it is not easy to disconnect a government institution. As a senior official from one of the CUs put,

Yes, we are supposed to operate on a commercial basis: we produce, we sale and people should pay for that. And one of our biggest clients is the government. Out of what we deliver they [government] constitute the third of what we sale. But then there has been certain inconsistency in settling the bills. And these of course affect our already bad liquidity position. Therefore, when families or companies are not paying for service we disconnect the service, but disconnecting government institutions has been quite a problem. We could disconnect, but then we are told to connect. So that is the type of political interference; you feel your hands are tied, there’s not much you can do. That is political interference. The issue is that they consume a lot and they are not paying. But then you can’t just disconnect, that is the situation in which we are (*Service Provider Interviews, 2006*).

Other forms of political interference occur from the allocation of residential plots. Politicians are reported to allocate plots in areas that are not intended for residential purposes. Some of the community leaders interviewed reported that sometimes, especially during election years, politicians even allocate plots on borehole plots! Others pointed out that politicians use community water projects for campaigning, while others just overrule anything that does not enhance their chances of winning elections. One of the officials from the local government gives an example.

When we were putting up the George Water Project, I was seconded to that project and we talked to the people saying, since now we have clean water, why should we keep shallow wells? And some people agreed and they buried the shallow wells. We did about 20 shallow wells, then one person, I think he was related to former areas MP, [MP's name provided]. He was the man supporting the group. So when we went to bury this man's well, he said he was going to speak to 'Uncle Sam', and we were told to wait until the following day. But then, we were summoned to the MP's office. He asked us, "Who told you to bury the shallow wells, let my people use the shallow wells." And that is how we stopped. It was politics, political interference. While we have the mandate as at now, there are certain things that we can't do because it is election year. If you do that, it's like you are siding with some political parties. So those are the problems we struggle with. But as I have highlighted, we have the mandate, but sometimes our hands are tied (*Policy Maker Interviews, 2006*).

So in as much as commercialization has reduced certain forms of political interference in such areas as licensing, allocation and tariff adjustment, it has not eliminated the problem entirely. And most importantly, as noted earlier, no matter how autonomous the regulator (NWASCO) is, some of the issues raised above are beyond the regulator's mandate and would often go unregulated. It is for this reason that public scrutiny by civil society organizations is indispensable.

5. 3.4 The Right to Water on Commercialised Space: Emerging Issues

At this point, it is important to address the issue of how the process of commercialisation has impacted on the right to water. From the outset, it should be noted that there are two major different views on this matter. One side of the debate argues that commercialization in as far as it emphasizes accessing water through the market mechanisms such as full cost recovery and user fees is fundamentally opposed to the principles of human rights and therefore is unlikely to be a route through which the right to water can be realized especially for the poor. For Example the Centre for Economic and Social Rights in New York, argues that privatization (or commercialization in this case) essentially endangers the principle of equal access as it makes water less affordable for the low income households. And the main argument is that,

In the transfer of ownership of water services to private interests, water management priorities change from need to profit. The results of this change in priorities have already adversely

affected many communities that have had their water systems privatized (e.g. Philippines; the United Kingdom, Ghana, Pakistan) (2004: 2).

Similarly, the *Africa Europe Faith and Justice Network* (AEFJN) argues that processes like commercialization have many disadvantages with regard to the right to water among the poor. And the reason is that in a commercialized environment,

Marketing strategies turn water into a commodity more concerned with the profit of shareholders and the commercial interests of large companies, than with the requirements of local people and the preservation of natural resources. In practice, these companies are more interested in serving the needs of the wealthy in urban centres, in industry and intensive agriculture, where people can afford to pay commercial prices, than in supplying water to the poor of the communities, who live in the slums and rural areas (2003: 3).

On the other side of the debate, there are authors who argue that taking a market oriented stance in the provision of water is not incompatible with the principles of the right to water. Arguments mostly by the donor community, bilateral development agencies and some UN agencies (Bakker, 2007), point out that there is no incongruity between water having an economic value which should be realized on the market and water being a human right. A number of authors have argued that emphasis on economic efficiency on the one hand, and using a human rights-based approach do not conflict. Nigam & Rasheed, for instance, assert that “The rights based approach is not at odds with that based on economic efficiency” (1998:3).

As Mehta and Ntshona have noted,

The underlying assumption in most discourses – especially those originating in donor countries – is that there is a congruity between viewing water as a right and as an economic good. For example, the United Nations Children’s Fund (UNICEF) and the World Water Council mention economic efficiency arguments and rights-based arguments in the same breath. It is argued that even if something has a right, there is no denying the need to pay for it, as with food (2004: 2).

Now these are contours of the debate at the global level, but what is the situation in Zambia? To answer this question, we look at these debates in the light of the evidence gathered from the Zambian case study.

5.3. 4.1 Abrogation of State Responsibilities

One of the direct consequences of commercialization in Zambia is the *subtle* ‘disappearance’ of the state on the water supply and sanitation stage. In a sense, the state has cunningly withdrawn from being the guarantor and protector of people’s right of access to water to being a spectator at the most. Public services such as water and electricity which were previously a responsibility of the state through its various intermediate structures have, under the commercial arrangement, been offloaded to commercial

utilities or private actors¹⁴⁰. While there might not essentially be a problem with this arrangement, there is however a frightening vacuum left when the state disappears from the scene on the questionable assumption that the commercial utilities will take care of the situation. The creation of commercial utilities together with the regulator has given rise to a situation where notions of citizens holding government accountable for problems related to water access have been severely weakened (if not completely obliterated). On the government side, the presence of commercial water utilities has been taken to mean “all problems off my shoulders.” This mind-set is clearly evident in the number of responses obtained from both central and local government officials during the interviews. For instance, when asked what the role of government in the new water supply and sanitation set up is, one local government official reported that,

The Council now has nothing to do with water supply, that is now the responsibility of utility companies. You know very well that we have nothing to do with water services any more; we have created the commercial utilities and they have taken over the provision of water. One of us sits on the board, we appoint members of the board and we review the annual reports. That is all we do and we leave the rest to the water company (*Policy Makers Interviews, 2006*).

At the central government level, it has been stated that the role of government in the current set up is a facilitatory one:

... our role as a ministry is to plan and provide a facilitatory role by way of mobilizing resources both financial and other support. In general we provide guidance and technical support to the WSS (*Policy makers Interviews, 2006*).

Certainly a facilitator is often not an active participant in an event, and surely not one with a primary responsibility to carry out the core duties. Effectively the creation of water utility companies is being perceived to have absorbed the duties of the state especially at the local level. Consequently, this perception is likely to reduce the various organs of the state’s sense of responsibility towards the right to water.

In the case of Zambia, what has emerged from this study is that the Zambian government has apparently withdrawn behind the curtains of commercialization; acting as a spectator, watching and peeping once in a while to see how the CUs are managing the situation. As Ba (2006) has observed, the creation of commercial utilities with all the advantages it has, leads to a vacuum left by the retreating state. Impact of the retreating state is more pronounced in the early stages of

¹⁴⁰ ZESCO, which is the bulky supplier of electricity is under pressure by the IFIs to be commercialized. Despite the opposition and protests from the general public, the process seems to be gathering momentum especially now with the introduction of pre-paid electricity meters installed in Lusaka on pilot project basis.

commercialization like the current situation in Zambia. Unfortunately, in most instances where public services have been privatized or commercialized, design and implementation of social policy is often left at the mercy of what David Harvey calls “Wall Street bondholders”, with obvious results (2005: 51). Apart from the indirect presence of NWASCO which is a statutory body, the absence of government on the water supply scene is really conspicuous. Though NWASCO has been trying to ensure that service providers comply with the various rules and guidelines, its mandate is limited and therefore its activity should not substitute government responsibilities.

5.3.4.2 Re-configured Public Spaces

Unluckily, the commercial utilities that are assumed to take on this responsibility do not have accountability to the people, participation of the people they are serving, equality and empowerment as their key objectives. For instance, the nine corporate objectives listed by LWSC Company do not include any of these principles. Focus is on achieving financial viability, reducing operation costs, increasing revenue by expanding customer base, and improving the corporate image (*Lusaka Water and Sewerage Company Business Plan, 2006*).

Further, when a business plan is being drafted, it is the affair of the company. Participation of the community who will receive the services does not even arise. Ultimately, issues where the community had a say through the political mechanisms, are decided under a highly exclusive decision making process. Decisions about water services delivery and management are taken in highly exclusive board meetings resulting in “autocratic forms of water governance and regulation with limited or no democratic control” (Swyngedouw, 2005:91).¹⁴¹ In this sense, the spaces that were previously held as common spaces have become *commercialised*. Thus, privatization as a political process leads to a different configuration of rules and roles among the players including the state, market and civil society (Prasad, 2006). From this, it can be argued that processes like commercialization, consciously and unconsciously, usurp society’s ability to participate in critical processes that affect their lives. Issues that would normally be open to public scrutiny, are beyond public scrutiny under privatization —public spaces become ring-fenced private realms. Thus, it is not just finances and investments that are ring-

¹⁴¹ Swyngedouw further argues that the new regulatory institutions like NWASCO in the case of Zambia may offer “some space for ‘stakeholder’ participation”, but these spaces are only limited and tenuous (91). This is true in the case of NWASCO that requires the ‘participation’ of the public in the tariff adjustment process. According to NWASCO’s Regulation Tools, at the consultation stage in the process of tariff adjustment, “ten domestic consumers representing a cross section of consumers, [are picked] from a list of people who have indicated their willingness to attend the consultation meeting....(47). There are several issues one can raise with this form of participation.

fenced; processes are lifted from public to private domains. As Swyngedouw argues, commercialization,

...means taking away some control from the public sector and transferring this to the private sector. This not only changes decision-making procedures and strategic developments, but also affects less tangible elements such as access to information and data. Traditional channels of democratic accountability are hereby cut, curtailed, or redefined (2005:92).

5.3.4.3 Increased Vulnerability of the Vulnerable

Further, the introduction of commercial utilities has led to many poor people being exploited by unscrupulous tap owners. In all three peri-urban communities where interviews were conducted, majority of the respondents complained about the exploitation by neighbours who have individual house connections. This is a huge problem in Mtendere Compound where there are no communal taps and many of the household taps have been disconnected. Those who have individual connections charge those who do not have taps on the pretext that they get huge water bills from the water companies. One of the community leaders noted that many people get water from their neighbour given the case that many of the household taps have been disconnected.

So many people end up buying water from the neighbour. I buy water from my neighbour. If water is disconnected we get water from the neighbours (*Community Leaders Interviews, 2006*).

And the problem with buying water from the neighbour is that the neighbours end up charging more than one would pay if they were connected to the main supply line as noted below.

The other problem is that people in this community complain that they pay the neighbours to get water while the neighbours pocket the money, and they don't take this money to the water company. This is why we are saying that everyone should have a tap in the yard and those who can't afford, there should be communal taps for them (*Community Leaders Interviews, 2006*).

Even service providers are aware of this exploitation:

You will be surprised that what we charge is less than what a neighbour charges his or her neighbours. You find that they end up paying 10 or 20 times higher than the company tariff (*Service Provider Interviews, 2006*).

In the other two communities (Race Course and Kanyama) where they have water kiosks and communal taps respectively, this is not so much of a problem. However, even in communities with communal taps the problem does exist given that tap attendants only sell water up to 18:00 hours after which the taps are closed and those coming from work are forced to buy water from a neighbour. This is one of the major complaints that focus group discussions brought out in all the three communities noting that the operation of communal taps or kiosks forces them to pay high prices for water.

They should change communal tap operation times because the current time for opening and closing the tap is inconveniencing a lot of people especially those who are working because when they leave for work, the taps are not yet opened and when they come back from work, the taps are

closed. So they don't have a chance to get water—they are forced to pay high prices for water from the neighbours (*Focus Group Discussion, 2006*).

Now commercialization has contributed to this scenario in that most CUs have largely ignored provision of water in low income communities. This problem can be attributed to the CUs lack of interest to implement water supply rules that would improve the community's access to water. CUs' lack of interest in peri-urban areas is linked to the perception that collections and consumption of water from these areas are very low. This again seems to confirm the global trend of privatization/commercialization where,

[r]ecent experiences have ... shown that global private companies only ... go for the nice bits—those that have some meat on the bone. That means that only big city water works are considered.... And within those cities, areas with high-income residents with proven ability to pay are of course the valued customers of [commercialized] utilities (Swyngedouw, 2005: 95).

Now this situation does compromise “equal, affordable and effective access to sufficient, safe and acceptable water,” (*General Comment 15*) and it is therefore a primary responsibility of the state to ensure that the loopholes in the system are closed up.

5.3.4.4 Disappearance of Indigent Programme

On the community side, there are two sets of evidence to illustrate the negative impact of commercialisation. First, all respondents interviewed in the three communities reported that there is no programme in their communities that ensures that water is provided for the vulnerable groups such as the sick, elderly and disabled who may not have money to pay for water. One of the respondents clearly points out the gap in the current approach towards water services:

There is no such a programme in this community to help the vulnerable. Government has not done anything about water. What they say is that water is now managed by a company NWSC [Nkana Water and Sewerage Company] (*Community Leaders Interviews, 2006*).

Another community leader argues that that the deliberate omission of a programme to cater for the vulnerable is based on the dubious assumption that everyone is able to pay for water.

Unfortunately, there is no arrangement in this community to ensure that those who are failing to pay for water also have access. May be this is because it is assumed that everyone can afford to get a K100 every day. But that is not the case. Even if one gets that K100, there are other needs that they have to pay for (*Community Leaders Interviews, 2006*).

It was only in community-run water schemes that such programmes are in place. The community run schemes have come up with an initiative to identify those who can not afford to pay for water, and

provide them with free basic water. A member of a community-run water scheme explains how the programme works:

We have another group of aged people, those we don't charge. They just come to us and we give them free water—those are not charged. We have a list of them, then they just come and get water free because they can't afford to buy water; they have no money. We have got a water committee and there is another committee—the RDC. RDC have got zones. So those people in the zones address meetings on the tap stands. When they come there then we are able to identify. Now when they bring the list to us, it is up to us as Water Trust to make sure, to go and confirm that this is right—this one is fit to get water free, and this one is not (*Community Leaders Interviews, 2006*).

One of the RDC Chairmen also acknowledged having a free basic water policy for the vulnerable people in community: “We have identified people who cannot pay—the old, sick, disabled, orphans—and we give them 40 litres per day.” As for the service provider and the government, the respondents in the three communities reported that,

LWSC does not make a provision to provide free water to anybody including the vulnerable, but the community run water schemes make such provisions. Not even the government has any programme to cater for the vulnerable in the community” (*Community Leaders Interviews, 2006*).

Prior to commercialisation, such cases were taken care of by the social welfare programmes under the Ministry of Community Development and Social Services. But the creation of CUs has been seen to have subsumed these welfare functions of the ministry. Most of the community members interviewed about the existence of such a programme, reported that they have not heard of anything like that.

At the moment, there is no programme that can give water free to those who can't pay. Everyone has to find money to pay. If you can't pay you can't access water. Sometime back we used to have communal taps and people who could not afford to pay for an individual connection used to get water from a communal tap but now there are no such communal taps. So they should provide communal taps where those who can't afford can get their water (*Community Leader Interviews, 2006*).

Another community leader interviewed responded by saying that,

Government, NWSC [Nkana Water and Sewerage Company] or the community all have no arrangements to help those who are poor to get clean water. They think that everyone is able to find the money to pay for the water they need (*Community Leader Interviews, 2006*).

The assumption that everyone is able to find money to pay for water is highly questionable in the face of high levels of poverty, unemployment and low income levels characteristic of peri-urban areas as indicated above. An assessment report by the World Bank Team, for instance, reported that most households in peri-urban communities spend up to over 90% of their income on food alone (2002: 3). As one of the respondents observed, even if everyone is able to find money everyday, there are many

competing needs for the little money. Often, in such circumstances, clean water is easily replaced by *free*, but unsafe water. In households where they don't have enough money to buy water everyday, the only option is to obtain 'free' water from a shallow well and spare the K50 for other needs which cannot be obtained free. So for households that are struggling even to get a single meal in a day (LCMS, 2005), well water is the only option they have since it frees some money for food which cannot be obtained free.

The other set of evidence of how commercialization has had a negative impacted on the right to water is the fact that when residents were asked what the government is doing about water in their communities, the response again was almost unanimously: "Government does not play any role in the provision of water in this community." Seemingly, this confirms the view noted above by some state officials that the state now has nothing to do with water services provision—that is the constituency of the water utility companies.

It is often argued that the state's role in this new set up is to mobilize funds and provide technical support to the people on the ground (service providers). But that clearly falls short of the expected duty to respect, promote, protect and fulfil the right to water. Even in the situation where water services are commercialized or privatized, the state remains the primary duty-bearer with the responsibility to ensure that the new players do not interfere with access to basic services such as water, electricity and sanitation. In the case of water services, *General Comment 15*, clearly outlines the responsibilities of the state even in the event of water services being privatized. In cases where water services are privatized, the state parties are obliged to,

prevent third parties from interfering in any way with the enjoyment of the right to water. The obligation includes, *inter alia*, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water.... Where services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable and effective access to sufficient, safe and acceptable water(#23-24).

5. 3. 4. 5 Water Tariff: The Best Kept Secret

Related to this is the unfortunate fact that in many countries¹⁴² the poor people who often are not connected to the city network pay more per unit of water than the rest. In Zambia, people in peri-urban areas pay on average four times what people in high income areas pay per unit of water (GTZ, 2004:

¹⁴² In Uganda for instance, studies done there revealed that the poor pay 4 to 8 times higher than consumers with an individual connection, while in Kenya, the poor pay as high as 16 times more than what the connected consumer pay (see GTZ, 2004).

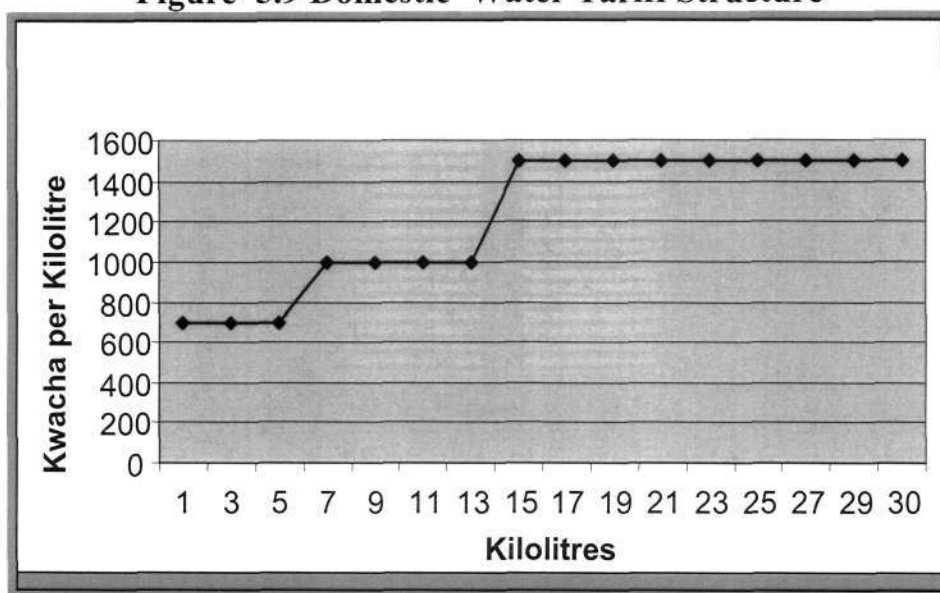
6)! Low capacity among peri-urban communities to mobilize against unjust practices and articulate such issues makes them victims of inefficient administrative and political institutions. Issues of cross-subsidisation and low-income areas paying higher tariff are known, but there is little being done by the community to bring these issues to the attention of the responsible authorities. As for the service providers and the state institutions, whereas they are aware of these anomalies, they continue to sweep the issues under the carpet making it 'the best kept secret'. Sometimes they even find reasons, inadequate though, to defend this practice. When one of the service providers was asked why the poor should cross-subsidize the rich, his answer was that,

..that is a mistake, and we are rectifying it. But you have to understand that the amount used in peri-urban is so small that is why they pay more compared to those who live in houses where more water is used (*Service Provider Interviews, 2006*)

But if people were to benefit from the economies of scale, as it seems to be the case here, why should not there be a deliberate policy to ensure that the poor are not disadvantaged in the process? In this sense, though in official programmes and documents, it is stipulated that the high income areas should cross-subsidise the low income communities (NWASCO, 2004), it is hard to see how this works from the current tariff structure. Some providers argue that the tariff for communal taps is a *social tariff* (which they do not call a tariff but a *contribution* from the community). But in actual fact, the cost of water at the communal tap or kiosk is 4-6 times higher than the cost of a unit of water in high income areas.

Even if one is to use the rising block tariff system which NWASCO has adopted, it is clear that people in peri-urban areas pay more per unit of water than those in the third tariff block as indicated in **Figure 5.9** below. Normally, the consumers in the second and third block tariffs are supposed to be charged at a higher rate than those in the first block so that the higher volume consumers can subsidise the low volume consumers. But that is not the case for peri-urban communities where people pay 4-6 times the official tariff.

Figure 5.9 Domestic Water Tariff Structure



Source: Based on data from NWASCO (Regulatory Tools, 2004:42)

There are different ways in which the block tariff can be employed to bill consumers. The two most common ways are the *simple block tariff* and the *rising block tariff*. The simple block tariff applies a single tariff rate corresponding to the block in which the amount of water consumed over a given period (usually over a month) falls. Using the above example, if a household consumes 11 kilolitres of water, a *simple block tariff* schedule would apply the charge per kilolitre of the block to which 11 kilolitre belongs. In the above example 11 Kilolitres fall within the second block, and the charge will be 11 x by K1000 which will be K11 000. And if someone uses 17 kilolitre, the charge will be 17 x by K1 500. The *rising block tariff* approach, on the other hand, bills the amount consumed by applying the different rates. For instance, a household that has used 11 kilolitres in a month will have two different block rates applied. The first 10 kilolitres¹⁴³ (0-10 kiloliters which NWASCO has referred to as the “lifeline consumption”) is billed at what is called the “social tariff,” which in 2001 was K700 per kilolitre (see NWASCO, Regulatory Tools, 2004:42; Cocq, 2005: 245). In this case, using 11 kilolitre will cost $(10 \times K700) + (1 \times K1000) = K8\ 000$ instead of K11 000 that the someone would pay if the simple block tariff approach is used.

¹⁴³ Even if NWASCO state that the life line consumption should be up to 10 kilolitres, figure 5.9 shows that the amount treated as a life line is 6 kilo litres. However, the focus here is on inequality between high income and peri-urban areas in terms of tariff charges. It is important also to point out that NWASCO has different tariff rates for different service providers. Each service provider applies for a tariff review independent of the other and is considered separately. Details of the application for tariff adjustment are provided in NWASCO’s Regulatory Tools (2004: 46-50). Difference between simple and rising block tariff is illustrated in appendix 3.

Thus, the simple block tariff system costs more for the same amount of water consumed. Sharp rises in charges are possible under the simple block tariff, due to the fact that a small difference of even half a kilolitre can change the tariff block that is applied.

NWASCO has adopted the rising block tariff system for domestic consumers. The reasons given for adopting this system is that it is a “fair way of billing for consumption and that it helps avoid conflict between the provider and its customers” (NWASCO, Regulatory Tools, 2004: 44). It is further noted that a rising block tariff is a means of implementing the cross-subsidization policy in that the consumers of higher water volumes are charged higher rates equal to or above the cost recovery rate. It is argued that in this system, the amount in excess of the full cost recovery is used to subsidize poor consumers (ibid, 42). But as argued above, the poor people in peri-urban areas pay 4 times the official tariff rate (see also Section 6.1.6.1). The tariff that people in peri-urban areas are paying is still higher than people in the third block (that is those consuming above 15 kilolitres per month). Thus, it is not clear how the cross-subsidy arrangement subsidizes the water consumption of poorer households. What is clear is that the poorer households in peri-urban and low income areas do not benefit from the cross-subsidy. Even households who have individual connections charged a fixed rate of K36 000 in the case of LWSC, it is clear that their consumption is not cross-subsidized. This is another clear example of the fact that even the few benefits of commercialisation have not reached the poorer sections of society.

5.3.4.6 Familiar Tales

Another critical challenge that has emerged with the commercialisation of water services is the unwillingness of CUs to extend services to peri-urban areas. A number of CUs have not been keen on servicing the peri-urban and low income areas giving the reason that these areas are unprofitable due to low consumption levels, low collection and poor infrastructure. So it has been difficult to convince service providers that it is their responsibility to ensure that these areas are supplied with clean water and adequate sanitation in accordance with WSS Act. Although the DTF has been making progress in attracting service providers to bring services to peri-urban areas, the challenge is still huge. When local authorities provided water services, they provided services to these areas not on the basis of the profitability of the venture, but as a social responsibility. For CUs, the profit aspect determines the decision to provide service to these low income areas. Because of this, Malama & Kazimbaya-Senkwe (2004) in the analysis of water and sanitation reforms in Kitwe, conclude that the current reforms in the water and sanitation sub-sector target the high income households as the water utilities pursue the cost

recovery objective. And in this race to recover costs, the low-income areas are often ignored completely or attended to as a matter of secondary importance.

This unwillingness to extend services to peri-urban areas has affected access to water for most of the people in these areas. Often the quality of services in low cost areas is lower than that provided in “conventional” urban areas as noted above. For instance, the response to customer complaints is quicker in conventional than in peri-urban areas. Hours of service are longer in high income areas than in low income and peri-urban areas. Further, most water companies usually announce the interruption of water supply to conventional areas, but they do not announce supply interruption in peri-urban communities. Most of the community leaders and focus group discussions noted the inequality of services:.

The major problem in this community is that when they are interrupting water supply, they don't inform us—we just wake up to find that there is no water at the kiosk and no one to explain to us what is going on (*Focus Group Discussion, 2006*).

Our main problem is that when water is cut off we are not informed—we just find that there is no water. We should be told that there will be no water on such and such a day so that we prepare ourselves (*Community Leaders Interviews, 2006*).

Unequal treatment between peri-urban and conventional areas was more forcefully raised in Focus group discussions. One of the focus group discussion brought out this point more strongly:

Water is provided according to the social status. Those who have money they get water when they need it and they have enough to waste. But those of us who are poor we don't even have enough for bathing. For example, Kabulonga residents are treated with more dignity than people in peri-urban areas like Knayama (*Focus Group Discussion, 2006*).

Even the attitude of water company workers is alleged to be different. When it comes to peri-urban areas, the workers often treat peri-urban areas as problems areas. While there are a number of factors that contribute to inadequate services supplied to peri-urban areas, including the fact that most of these areas are not planned and that the basic infrastructure is vandalized or run-down, a systematic unequal supply of services goes against the principle of equality and non-discrimination.

5.3.4.7 Two-Stage Measure to Realise the Right to Water

Water utility companies denied any responsibility for administering an indigence programme arguing that this is a responsibility of the Ministry of Community Development and Social Services. However, most community-run water schemes have a programme to help the vulnerable access water. The Chibolya Water Trust run by the Resident Development Committee (RDC) allows all the elderly

people above 65 years old to draw 6 x 20 litre containers per day free as one of the RDC members explains.

Yes, there are people who find it difficult to buy water everyday. But there is a programme in New Kanyama to identify such people. So far 42 people who include the elderly, those without income, the disabled, those looking after orphans, have been identified and they receive free water. They are given cards that enable them to get water from a communal tap nearest to where they stay. But there is no official programme by the government or the service provider to cater for the vulnerable people in the community. This programme is just an initiative from the community (*Community Leaders Interviews, 2006*).

In communities serviced by CUs, indigent members of the community rely on the mercy of the tap attendant to allow them to draw water. This is likely to come to an end when the communal taps are metered and tap attendants will be required to pay according to the reading on the meter as is the case with water kiosks in Race Course. Vendors at water kiosks on the Copper-belt where the kiosks are metered do not even give a single drop of water for drinking out of the fear that every drop of water is counted by the meter and the vendor has to pay for it. One of the kiosk vendors interviewed said,

...initially the water company used to leave us with an allowance to offer people drinking water in a cup, but now, when they come to take the meter readings they don't take that into account, and they want us to pay for every drop recorded on the meter. This has made it difficult for us to give even drinking water to people; they all have to pay for every drop of water whether they are old, lame or orphans (*Community Leaders Interviews, 2006*).

In terms of the obligations generated by the right to water, there is overwhelming evidence that the state has not fulfilled its obligation to ensure that everyone has access at least to basic water. One of the reasons for this is the muteness of the right to water in both public debate and policies, such that government itself does not seem to be aware of its responsibilities, and later on, worry about that.

A measure or programme to provide clean water to vulnerable groups would require first of all identifying who should be included in that group, second, how much water should each be entitled to, and third, who should provide or pay for the water. In most cases, the number of genuine vulnerable households in the community is not that big and the community can help to identify those most in need of help. For example in the case of New Kanyama, only 42 households out of a population of over 63,000 people (DTF, 2006, DVD) were recognized as eligible for free basic water. If government decided to cover this cost through the card system, it would cost K3000 per household per month which is equivalent to US\$0.75 per month (at 2006 exchange rate). And if a similar exercise is carried out in all the peri-urban communities, the total cost for ensuring that these people have access to safe water sources is not likely to be more than even 1% of the presidential contingency or discretionary fund (see

Economic Report, 2005:18). This money can be channelled straight to the providers to avoid administration cost and bureaucratic bottlenecks. So in terms of taking steps toward realizing the right to water that *General Comment 3* envisions, the current situation is an example of a state failure to comply with Covenant obligations, especially the obligation to take steps or appropriate measures.

5.3.4.8 Beyond Acknowledgement

In this case, not even the step to identify the vulnerable households has been taken. Although the Strategy for Peri-Urban Water Supply and Sanitation (Draft Report) does define free basic water as 30 litres per day per person (1999: 24), the strategy has not moved beyond a mere definition. Seven years after the strategy was adopted, there are no signs of this being implemented. It is here that the commitment indicators in the assessment matrix discussed in Chapter Three become relevant. In assessing the commitment and compliance to the obligations of a particular right, it is not only acknowledgment or recognition of a right that matters, but also the nature of the measures taken and the outcome of measures taken.

5.4 Systems in Disarray: WSS Sub-sector Funding

5.4.1 WSS Funding

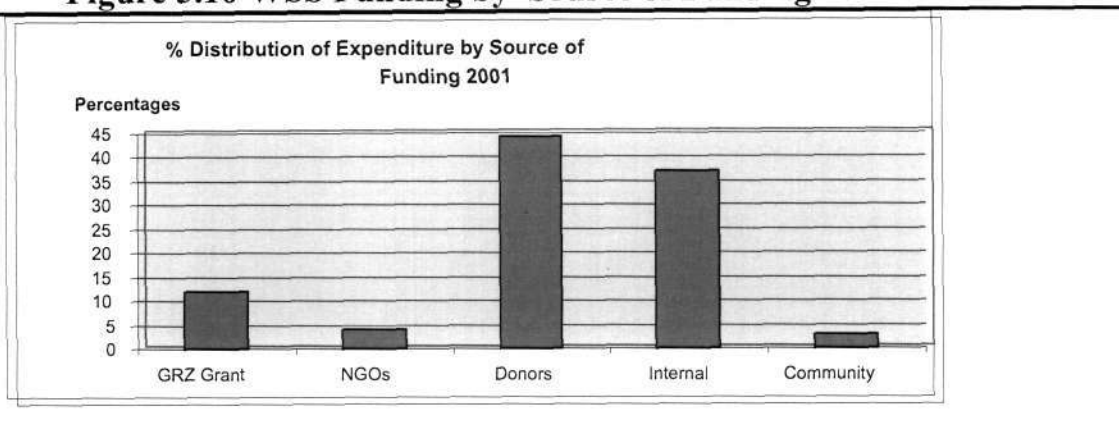
Funding to the water supply and sanitation sub-sector has been a persistent concern. Interviews with the regulator and the service providers revealed that the funding process is still a major challenge. In terms of government funding to the sector, there has not been much change since the early 1990s when 90% of the sector funding came from donors and cooperating partners (*National Water Policy*, 1994:2). As evident from the **Figure 5.10** below, government funding to the sub-sector only amounted to 12% of the total WSS funding in 2001. Close to half the funding to the sub-sector was from donor funding. About 40% of the expenditure in this year was internally generated, with the CUs and LAs tariff amounting to 37% while the community schemes generated 3%. Interesting to note is the fact that of the 37% spent by the service provider, there is no capital investment from the private sector.

The dominance of donor¹⁴⁴ funding in the sector is clear-cut when spending is viewed from the *Poverty Reduction Strategy Paper* (PRSP) budget shown in **Table 5.8** below. In 2003, of the total PRSP budget of about K340 000 million (US\$ 708 million), the government's contribution was less than 2%. A similar contribution was recorded in 2004 though there was a drastic drop in the donor funds released. As evident in **Table 5.8**, out of the total donor budget, less than 1% was released. While it is not clear

¹⁴⁴ It should also be noted that the actual figures may differ from these figures given the fact that there are four channels of funding open to the donors. And it has been reported that due to the fragmentation within the sector, it is difficult to capture the actual resource flow to the sector (see Slaymaker & Newborne, 2004).

why there was this drop in the donor funding, the situation highlights the unpredictability of donor funding which in turn raises the question of reliability of funding to the WSS sub-sector.

Figure 5.10 WSS Funding by Source of Funding 2001



Source: Based on Data from WSP(2004:18)

In the light of the low funding from the government, the unpredictability of donor funding reveals the vulnerability of the sector. For instance, in 2004, only 1% of the budgeted amount was actually spent. Such shifts in the funding level do affect the implementation of programmes meant to improve access to water.

Table 5.8 PRSP Budget 2003-2004 (K' Million)

Year	GRZ Budgeted	Donors Budgeted	GRZ Spent	Donors Spent	% budget
2003	6,871	437,535	6,934	357,084	82
2004	8,438	689,162	6,372	186	1
Total	15,310	1,126,697	13,306	357,270	32

Source: Based in figures from the *Second PRSP Implementation Progress Report*, Ministry of Finance (2004:46)

A review of the spending patterns in the sub-sector re-enforce the problem of unpredictability of resources flowing into the WSS sub-sector. As the **Table 5.9** below shows, there is a great discrepancy between the amount allocated to the sector and the actual amount spent.

Table 5.9 WSS Budget Allocation 1998-2002 (\$US)

Year	Budgeted	Released	Released % of Budgeted
1998	15,294,183	2,224,450	14.5
1999	10,539,359	1,396,668	13.3
2000	6,532,921	2,478,695	37.9
2001	16,603,295	8,713,185	52.4
2002	11,726,246	3,403,245	29
Total	60,696,006	18,216,059	30

Source: Data from *Government Republic of Zambia, Financial Reports for 1999 to 2001 and Estimates of Revenue and Expenditure for 2002 and 2003.* (in WSP, 2004:37)

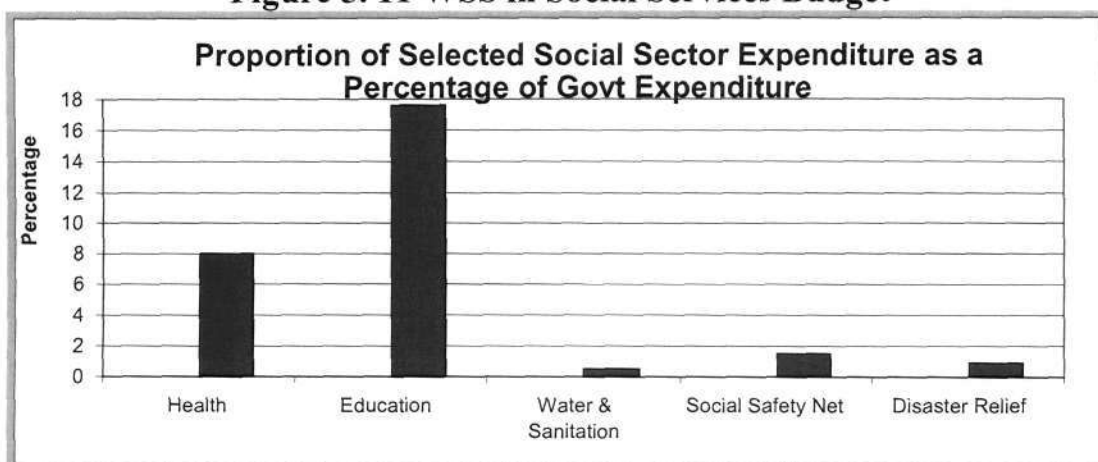
At first glance, it appears as though there is a problem with the capacity to spend the resources allocated to the sector, but the actual situation is that only a small percentage of the approved budgeted resources is made available. Expressed in percentage terms, less than 15% of the allocated amount was released in 1998 and 1999. While there was a reasonable improvement in 2000 and 2001 in the proportion of released resources compared to the budgeted amount, this improvement was reversed in the following year when the amount released dropped from more than 52% in 2001 to only 29% in 2002. Explanations for sharp rise in the amount released in 2001 are not clear, though it has been submitted that the sharp increase in 2001 can be explained by the fact that this was the year of elections and the government wanted to appear as though it was serious with water services since water is always one of the campaign issues (WSP, 2004: 39).

5.4.2 Unpredictable Funding: A Barrier to Programme Implementation

Overall, a situation where resource allocations are determined by exogenous factors such as elections makes it difficult to plan, and most importantly to implement planned programmes as noted in Chapter Two. With this unpredictability in the funding schedule, it is not surprising that most of the officially endorsed programmes and policies just appear on paper. At the heart of this is the priority given to the sub-sector. And the argument is that budgetary allocations reflect government priorities.

Generally, the funding to the WSS sector is very low when compared with other social sectors. As **Figure 5.11** below indicates, funding to the sector as a percentage of total government expenditure is only a negligible proportion.

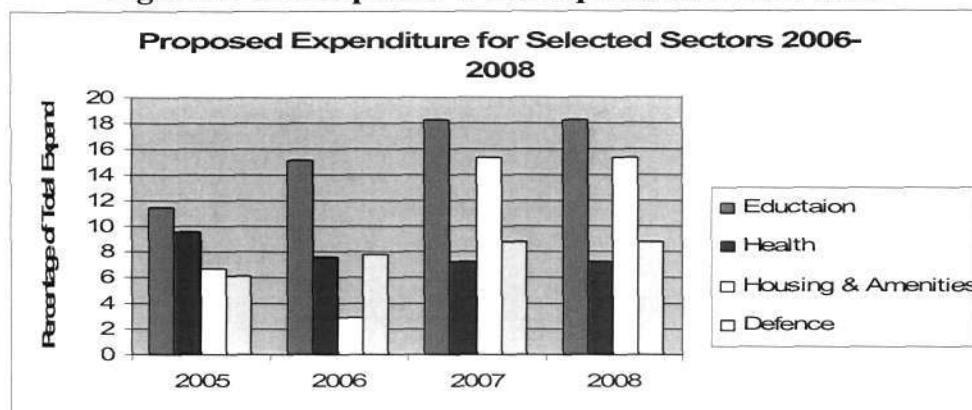
Figure 5. 11 WSS in Social Services Budget



Source: *Economic Report 2005*, Ministry of Finance and National Planning (2005:18)

For instance in 2005, while education received close to 18% and health 8% of the total government expenditure, the WSS sub-sector received only 0.5%. Even if cake is small, it might be argued that such levels of disparities do raise the question of priority and political weight allocated to the different sub-sectors. The question of the priority given to the water sector can still be raised when one looks at proposed funding for the various social sub-sectors. First of all, as evident in **Figure 5.12** below, the water supply and sanitation is collapsed into the housing and community amenities which in itself may simply overshadow the WSS aspects.

Figure 5. 12 Proposed WSS Expenditure 2006-2008



Source: *Medium Term Expenditure Framework 2006-2008* (Ministry of Finance and National Planning (2005:18))

Secondly, while there is almost stability in the percentage allocations to the other sectors such as education, health and defense, the housing and amenities (to which WSS sub-sector belongs) reflects a high level of funding volatility. Although the projected funding for 2007 and 2008 shows significant improvements, given the well known inability to stick to plan, it is highly unlikely that these proposed funding levels will be respected especially for WSS which is often the victim of government funding shocks.

5.4 .3 Why is WSS A Low Funding Priority Sector?

At this point one wonders, why the water sector, despite being so critical to both economic and social development, receives low funding. A number of explanations have been advanced. Prominent among them is that the water sector is only beginning to reorganize itself into a well coordinated sector that can exert political pressure. Slaymaker & Newborne (2004) concludes that the water sector has not been given a significant attention in most PRSP. The reason they give for this is that “water sector stakeholders have failed to mobilise and engage with PRSP processes as effectively as their

counterparts in other sectors” (7). In the Zambian case, this could be a valid explanation given the fragmentation of the sector.

Related to this is the fact that donor activities are often not aligned to the main PRSP process since a number of donors prefer “off-budget funding” (ibid, 48). Although Ministry of Finance and National Planning officials argue that this has been the case in the past before the signing of JAZ (Joint Assistant Funding), control of donor funding still remains a thorny issue. When asked about the reported lack of coordination of donor funding, one official acknowledged that this is a problem, but it is being addressed.

That was what was. Government realising that, we decided to do something about that. Currently within one of the departments in the ministry which is the external technical cooperation, we have formulated what we are calling JAF, which is the joint assistance funding. Basically it is joint assistance funding which is like a basket type of funding. If you have say five donors funding the water sector, they need to channel that fund to government through this basket or what we call the Sector Wide Approach (SWAp) funding. This is in a way trying to curtail the overlaps, because you find that maybe if you take say rural water in the Eastern Province, we have maybe GTZ there, Japan also comes in. A number of donors have actually signed to this; there is an agreement that has been signed between the government and donors, in this JAF process. We hope that if it runs well, all those concerns you have mentioned will be a thing of the past (*Policy Maker Interviews, 2006*).

Another Ministry of Finance official confirmed the problem of fragmented donor funding activities pointing out that there is need to coordinate all the donor funds going to a particular sector:

What we are saying is, if there is a donor who wants to assist us, let him or her come through budget office. That is what we are calling direct budget support from the donors. We want to discourage them from just coming into Zambia and start funding projects directly; they should go through the normal channels (*Policy Maker Interviews, 2006*).

While the Ministry of Finance would like donors to channel funds via the budget process, donors point out that the budget route is ineffective, slow, and that often the funds do not actually reach the intended beneficiaries. For instance, Slaymaker & Newborne observe that, “[i]n Zambia the highly centralised nature of resource allocation processes causes a number of ‘bottlenecks’ which have resulted in underutilisation and poor targeting of available resources” (2004: 5). Thus most of the donors would prefer direct funding of projects—off budget—, rather than through spending ministries¹⁴⁵.

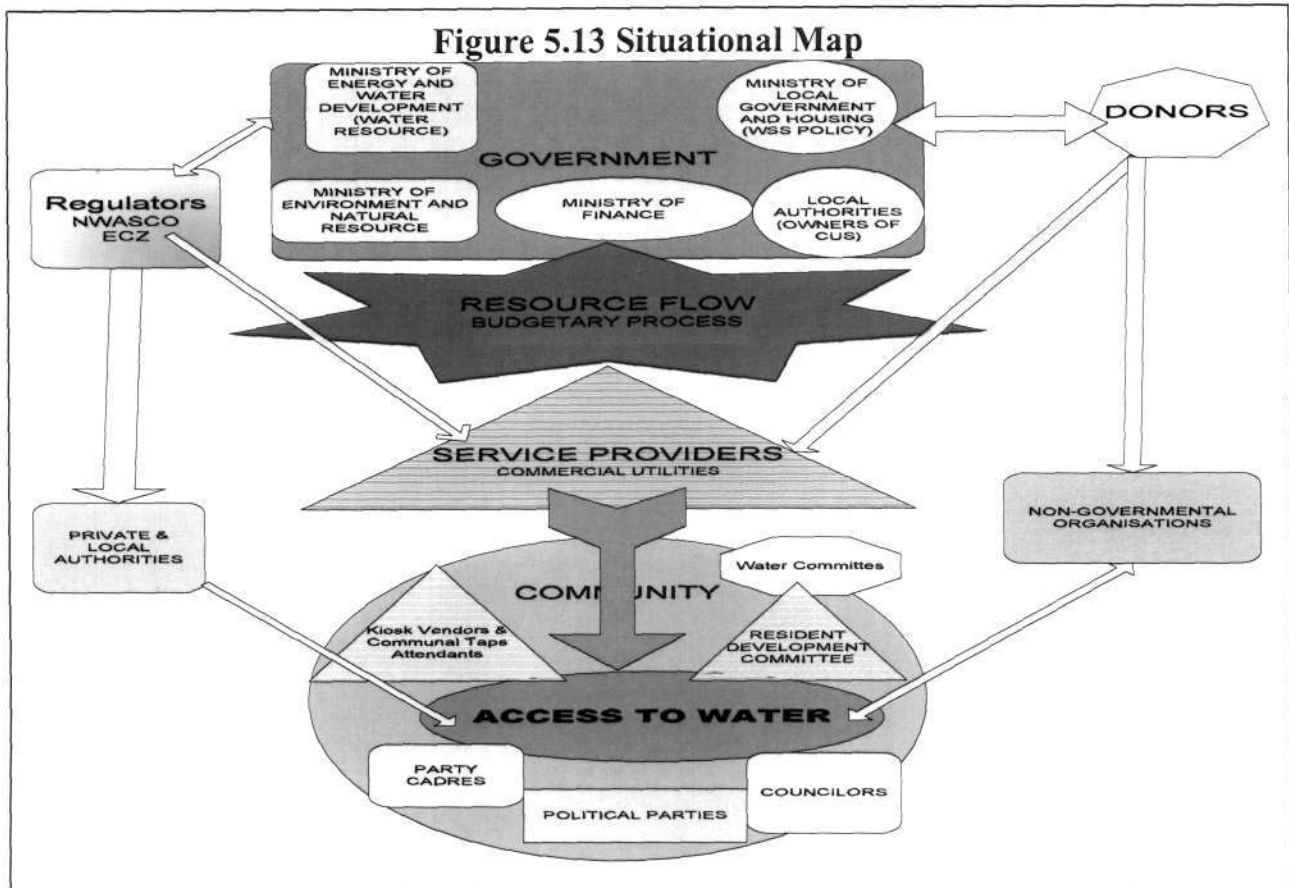
¹⁴⁵ However, a number of donors are taking the initiative to coordinate donor funding to the sector through a process called harmonization in Practice (HIP) similar to the joint assistant funding JAF) initiated by the Ministry of Finance and National Planning—“Some donors, calling themselves the Like-Minded Donors, (Finland, Sweden, Norway, Denmark, Netherlands, Ireland and Britain) have initiated what is termed as the Harmonization in Practice(HIP) which raises prospects for better co-ordination and sharing of experiences in bilateral aid to Zambia. Emphasis is placed on adopting similar financial disbursement, reporting and monitoring procedures” (WSP, 2004:51).

If this concern is seen in the light of the fact that usually what is budgeted for is not exactly what gets released, one might be justified to have less trust in the budgetary process. However, uncoordinated funding may lead to inefficiency and wastage of scarce resources. In a situation with high fragmentation of funding, resources often get directed to areas where they are not needed most. For instance, instead of more resources being directed to peri-urban or rural areas where large proportions of people are without access to clean water, resources flow into areas that have relatively high levels of access to clean water. As Slaymaker & Newborne (2004) observe:

... that the underserved areas ... lose out in allocations to areas that are already better served, including those areas which know how to assert or enjoy better political access in the scramble for resources. For example, the three biggest allocations authorised in the 2001 budget were for the three biggest cities of Zambia (14)¹⁴⁶.

In view of this, it is apparent that the challenges of access to water are embedded in a set of complex socioeconomic relations as **Figure 5.13** below shows. Problems related to access to water are outcomes of a maze of interconnected social, economic and political processes which are often hidden. As evident in **Figure 5.13** below, the problem of access to water is a small section in the community circle generated by a multitude of relations outside the community itself. And to appreciate the origin, nature and extent of the problem, it is necessary to shift the attention from the actual condition of inadequate access to safe sources of water (the small circle within the community) to the processes that produce the condition (all the relations represented by the arrows). When processes are considered, it becomes apparent that lack of resources alone cannot explain the situation. Issues of power relations between the different actors are visibly influential. Relations among lead ministries, between ministries and donors, ministries and the regulator, the regulator and the service provide, service provider and the community, the community and the donors, and donors and other players all contribute to the current challenges regarding access to water. In all this, the relationship between the state and other actors becomes a critical factor.

¹⁴⁶ For instance in 2001, the largest allocation to the sub-sector went to the three largest cities: Lusaka, Livingstone and Kitwe: "As noted above, K83.3 billion was authorized for three big urban water supply project in Kitwe, Lusak and Livingstone. These projects were not identified as priorities for expenditure under the PRSP, yet they received large chunks of resources (See Slaymaker & Newborne, 2004, 14).



Source: Author

Overall political will can influence the nature of these relations among actors and the resultant state of access to water in the communities. In view of the above situation, it is apparent that realizing the right to water involves a contestation of interests by different actors. Arising from this is the apparent fact that the challenges of access to safe water are essentially institutional in nature, which requires a strong political will to resolve. Other factors are mediated through the central channel of political will. Even the much sited factor of inadequate resources has a multiplier effect through political will. Priority given to the water sector reflected by the levels of funding is a function of a given political will since allocation of resources is a political decision that reflects government priorities. In this case, the “budget lies at the heart of public policy” and any budgetary process “provides a mechanism for reviewing government programmes” choices and priorities (DiNitto & Dye, 1983:15).

5.4.4 Budgetary Process Bottlenecks

Much of these problems associated with funding to WSS originate from the budgetary process itself. One of the major concerns with the budgetary process in Zambia is the mismatch between fiscal and the budgetary calendars. The budget cycle starts immediately when a new budget for the previous year

is approved by parliament, that is, usually around April 1st. So the budget calendar runs from 1st April to the 31st of March, while the fiscal calendar follows the normal year calendar, that is, from 1st January to 31st December. This means that between 1st January and 31st March, the country operates on a makeshift spending arrangement called the Presidential Warrant¹⁴⁷. During this period, funds are released outside the Appropriation Bill. Consequently, between 1st January and 31st March, the President authorizes the release of money to enable various government departments function. An official from the Ministry of Finance explains how this works:

... right now [January 2007] we are operating on provisional budget whereby the President allows us to spend 25% of the budget, just to enable government to function. So the provisional budget is 25% of the total budget (*Policy Makers Interviews, 2007*)

During this period, no capital expenditures are authorized; its only recurrent expenditure matters that are attended to. There are a number of problems which arise from this situation. First of all, in the case of capital investments, funding can only be released over a period of 9 months. Effectively, this means that all the capital investment plans and decisions are put on hold for three months prior to the approval of the national budget. The impact of this on water projects is obvious:

Delays of several months are common during which time project machinery and personnel often lie idle, increasing project costs and reducing overall efficiency. In the water sector timely release of funds is particularly important as borehole drilling activities are only possible in the dry season. If funds are released late and the window of opportunity (e.g. before the rainy season) is missed, projects may be delayed until the following year (Slaymaker & Newborne, 2004:15).

A senior official from the Ministry of Finance and National Planning acknowledges that this mismatch between the budget and fiscal circles is one of the challenges:

Like we are saying, this is January, the year has started, and we are only presenting the budget probably the last Friday of January and it will go to Parliament, and Parliament will debate over it probably up to March 31 and that's when the budget will be approved. And thus, implementing the budget starts on April 1, and already we are talking about three months lost. That leaves us with 9 months. Come 31 December, the budget comes to an end. So yeah there I agree with you, we are not doing well. So that is why we have been advocating for a change; something which can be done through the Constitution because that is a constitutional matter. So we are hopping that in the New Constitution that will be addressed, whereby we present the budget in September, come January, the budget is approved and funding will be released over a 12 month period (*Policy Makers Interviews, 2007*).

¹⁴⁷ Section 115, Subsection 2 of the Zambian Constitution (as amended in 1996) provides for the Presidential Warrant under the conditions that the spending is "necessary to carry on the services of government"; that the expenditure is proposed in a supplementary budget approved by parliament; when the president considers that there is an urgent need to spend the money in the interest of the public; and that no capital expenditure is allowed except the capital expenditure incurred in the previous fiscal year. But as things stand, the Presidential warrant has become a normal part of every year's budgetary process.

Secondly, delays resulting from the budgetary process often make planning and targeting very difficult. This is worsened by the fact that often the amount authorized is not what is actually released as observed earlier. Again, in the water sector where planning is very critical, it becomes very difficult to make progress in implementing programmes, projects and measures aimed at improving access when operating in an environment where there are high levels of unpredictability.

Thirdly, due to the arbitrary nature of the Presidential Warrant mechanism, it is common that by the time the budget is approved, there are dislocations within the budget such that the allocations for particular sectors need to be re-arranged. This is possibly one explanation for the huge disparities between the amount authorized and the actual amounts released, especially in politically low priority sectors like water and sanitation. Often times, the initial or consolidated allocations are cut. And this leads to frustration for most personnel in the lead ministries who often find it difficult to operate with 20% of what they had planned for. An official from one of the MEWD lead ministries registered this as one of the major challenges facing the water sector.

This sector has been under-funded for a long time. I wouldn't like to quote percentages, if you want that information you go to Finance Ministry, they can give you. Sometimes, in the economic report, water is not even reflected there. May be two, three four years back, then you get a financial report. And you find that the percentage of money is small. So generally speaking, water sector has not been properly funded. But now, we need at least the political will and ownership. Because you spend money on something that you really care about. If you don't care about something, you can't spend the money. That is what it translates to (*Policy Maker Interviews, 2006*).

Another senior government official from a different ministry put it this way: "The major challenge here has been that of insufficient funds. Often you ask for K50 million, you get K20 million" (*Policy Maker Interviews, 2006*). Most of the ministry officials spoken to complained that their departments do not get even the amount approved in the budget, and even what they get is often delayed. In the end, it is the project that suffers, and progress on expanding basic services are often stagnant or make insignificant progress. Over the years the cumulative result is that the country has almost 50% of the population without access to adequate, safe and reliable water as indicated above.

When asked about these issues, the Ministry of Finance officials were very reluctant to accept that there are capacity problems, but instead put the blame on the size of the cake arguing that the cake is too small and it is difficult to share it among the competing needs. Donors and other ministries take part of the blame. But in all this, one is able to see a problem of the commitment to plan and handle all

the different players in a coordinated manner. For instance, it does not take the equivalent of the US national budget to rectify the discrepancy between the fiscal and the budget cycles.

5. 4. 5 Decentralisation: An Offloading Exercise

In addition to the above challenges, there is a problem with the allocation and disbursement of resources. The national policy clearly states that government will pursue the principle of decentralisation and devolution of power to the local spheres of government. And that has been done for instance in the water sector where the local authorities have been given the power to plan on how they want to provide water services. While there is decentralization of duties, there is little or no involvement of local authorities in the planning for and allocation of resources. All the core planning and allocation processes take place in Lusaka with only a few officials from the lead ministries taking part. Majority of the local authorities only receive reports from the ministry headquarters. The study by Slaymaker and Newborne highlights this lack of genuine decentralization.

For example, according to officials interviewed in Kaoma, Mongu, and Kafue Districts, neither the district nor the provincial government have significant involvement in decision-making on financial allocations to water and sanitation projects. 'We don't even know the water projects approved for our district,' said the District Administrator of Kaoma. 'Sometimes, we learn about projects only when we hear the rigs starting to dig for boreholes. Officials in Kafue were similarly unable to answer questions on levels of investment in water and sanitation within their jurisdiction because they have no direct roles in decision-making and allocation (2004:18).

Problems with decentralization do not only affect rural local governments, but even the urban local authorities are not involvement in resource allocation for development projects such as water supply and sanitation. Interviews with Lusaka City Council officials indicate clearly that even local authorities in urban centres have little to do with the resource planning and allocation highlighting that the whole policy of devolution of power has not been implemented.

Anyway, that devolution of power maybe it is yet to come. But when it comes, I don't know, because everyone is saying that the policy is already there, what is remained is to implement it. But in my own opinion, I think, as long as we have the same people, the same mentality at the national level, it will not work (*Policy Maker Interviews*, 2006).

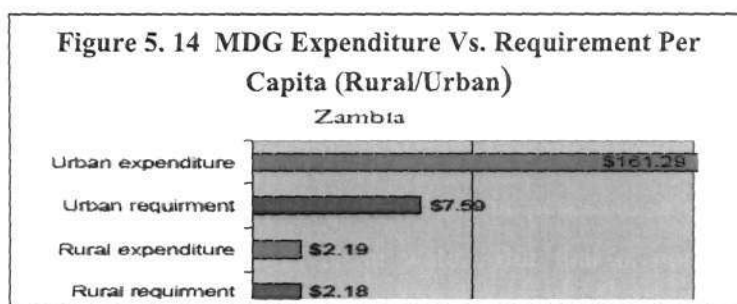
In a study of WSS reforms for Kitwe City, Malama & Kazimbaya-Senkwe found that the power relations between the central and the local government is a major issue in carrying out the reforms. Although the 1991 Local Government Act does envision devolution of powers to the local authorities,

...central government has sufficient muscle to push through reforms even when local government is not too keen on them. Thus despite the largely top-down approach used by the central government over the WATSAN[water and sanitation] reforms the local authorities did not have much choice but to go along with the reform process (2004:17).

The challenge here is that if the local government authorities are not part of the resource allocation process even for their areas, how will they implement projects that they have not been involved in from the start? More importantly is the fact that decentralization is one-sided in the sense that local authorities have certain responsibilities offloaded to them, and yet they have no real power over the resources needed to carry out these duties. Given all these problems around the government budget process, it is probably understandable why most donors have preferred other avenues of channelling resources into water supply and sanitation other than the budget route¹⁴⁸.

5.4. 6 The Resource Excuse

All the above factors put together do impact negatively on the effort to expand basic services like water to deserving peoples. Though financial resources may be a contributing factor, it is not solely lack of financial resources that impact on the levels of access to water. Often the assumption, in conventional political debates, has been that many people have no access to safe sources of water because there is no money to provide everyone with clean water. But that is not entirely correct. As Slaymaker & Newborne observe, “...research in Zambia showed that simply increasing funding is unlikely to benefit the poor unless problems and inefficiencies in resource allocation and targeting are first addressed” ((2004:15). In fact estimates for the MDGs show that in the case of Zambia the resource supply is much more than the required resources to reach MDGs for the urban population. The apparent resource inadequacy is a mirage created through inefficient resource management and lack of political will. A WSP MDG Report for sub-Saharan Africa notes that, “[i]t appears that the level of sector expenditures in Zambia may be adequate, and the question is more of efficiency and effectiveness in the use of resources” (2005: 8-9). This is clearly the case for urban MDGs as indicated in **Figure 5.14** below.



Source:WSP MDG Report(WSP, 2005).

¹⁴⁸ There are actually four funding avenues, and these are: i) through the budget (Ministry of Finance), ii) Direct funding to institutions (mainly international NGOs) working in the water sector, iii) Funding to contractors working on water projects, and iv) direct funding to district based institutions. Slaymaker and Newborne report that donors try to avoid the bureaucratic bottlenecks and other problems related to the budget process. Most of them prefer off-budget funding because they believe that it is efficient and often the resources reach or have a higher chance of reaching the intended target (2004: 21).

Conclusion

Zambia has adequate natural water resources such that it has the potential to meet the needs of all the people (WRAP, 2005). Hence the fact that almost half of the population has no access to clean water is not because of first order scarcity, but a matter of second and third order scarcities which relate to the socio-political processes and institutional arrangements in the provision of water services. A quick glance at the socioeconomic conditions of Zambia reveals that high levels of poverty, unemployment, low income make it difficult for many people, especially those in peri-urban areas, to access clean water. This situation calls for clear strategies to ensure that those who are unable to meet basic water needs on their own are provided with basic clean water.

Critical to translating policies or strategies into implementable programmes is the ability to estimate the cost of providing basic services to vulnerable groups. But as long as these strategies just exist on paper, even the much acclaimed reforms are not likely to result in improvements in the levels of access for the poor. One of the examples is the current situation where efforts to reform the water services sector so as to improve levels of access for everyone, have been directed at those who have better access (Malama & Kazimbaya-Senkwe, 2004; Slaymaker & Newborne, 2004). Related to this is the problem of lack of coordination, fragmentation and poor planning within the sector. Reported in-fighting between ministries and departments only weakens the capacity to coordinate and present a united front for improving water services and management. Because of poor coordination, the water sector has a weak political clout which is manifested in the resource allocation to the sector. Inadequate coordination, lack of political will and the capacity to implement plans constitute one of the major challenges in the water sector, such that even if resource allocated to the sector are increased, this may have little impact especially for the poor.

As a result most of the reforms carried out in the sub-sector, particularly commercialization, have not had any positive impact on access to water for the low-income and peri-urban communities. This dispels the assumption that private sector participation automatically results in efficiency, improved capacity to attract private investment capital, improved quality of service and wider coverage. From the evidence presented above, it is apparent that very few if any of these expectations have been realized. For instance, in terms of finance, the water sector is heavily dependent on donor funding. No private capital has been invested yet; all investments we have seen so far are either grants from the

government or cooperating partners. Therefore, the case for private sector involvement is yet to be substantiated.

Overall, the funding patterns to the WSS sub-sector points to the low priority that is accorded to WSS. This low priority has been attributed to the fragmentation and weak stakeholders in the sector such that they have failed to “bring water out of the political shadow” where it has been for a long time (HDR, 2007). Uncoordinated funding in the water sector reflects the lack of political will to manage resources and processes well. Uncoordinated funding has serious consequences on realizing the right to water especially for the poor. As for the concern that the rights-based approach to water assumes that the government has the capacity to provide everyone with clean water (Prasad, 2006), it is important to point out that RBA does not pretend that it is easy to meet the objectives of providing basic water to everyone. It however requires that adequate and responsive institutions be established and appropriate measures are taken and programmes implemented.

CHAPTER SIX

THE NATURE OF THE CHALLENGES OF ACCESS TO WATER IN PERI-URBAN ZAMBIA: EVIDENCE FROM THE COMMUNITIES

A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. [And] Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by measures aimed at achieving the realization of the right (Grootboom # 44)¹⁴⁹

Schematically speaking, each society offers up its own peculiar space, as it were, as an 'object' for analysis and overall theoretical explication (Henri Lefebvre, *The Production of Space*, 1991)

Introduction

This chapter continues to discuss the challenges of access to water on the basis of the information collected for this study. Evidence from the communities suggests that the nature of the challenges of access to water is varied ranging from inadequate institutions to manipulated social and political processes. For instance, problems of slow response to customer complaints, unannounced interruption of water supply, erratic supply, lack of consultation and the absence of a programme to help the vulnerable in society reflect entrenched social relations and processes. This is clearly evident when the responses given by the policymaker, the service providers, community leaders and ordinary community members are compared. It is argued in this chapter that understanding the processes that produce conditions of low levels of access to safe sources of water are key to appreciating the origin, nature and extent of the challenges. When these processes are analyzed in the context of RBA, it is apparent that the concepts of citizenship and human rights become appropriate tools for political engagement. What emerges from the discussion in this chapter is that meanings of citizenship and human rights can be used to serve very specific interests. Dominant social meanings reinforce processes and social relations used to condition and control social reality. For instance, while people in peri-urban areas pay up to four times the official water tariff rate, they are made to believe that what they pay is a mere *token* or a *contribution*, (see Section 5.3.6.5) which is below the social tariff.

This chapter has two parts. The first part provides an overview of the conditions of access to water in the three communities where the study was conducted. The communities' views on the problems of

¹⁴⁹ Government of Republic of South Africa v Grootboom 2000 (11) BCLR, 1169 (CC).

access to water are presented in the first part. The second part looks at the challenges in the framework of RBA highlighting the link between citizenship and human rights. Genuine participation emerges to be the avenue for active citizenship through which human rights can be asserted, contested and claimed. Here focus is on how the different players are shaping and reshaping the spaces through which water is delivered or failed to be delivered.

6.1 Status of Access to Water in Peri-Urban Areas

6.1.1 Sources of Water

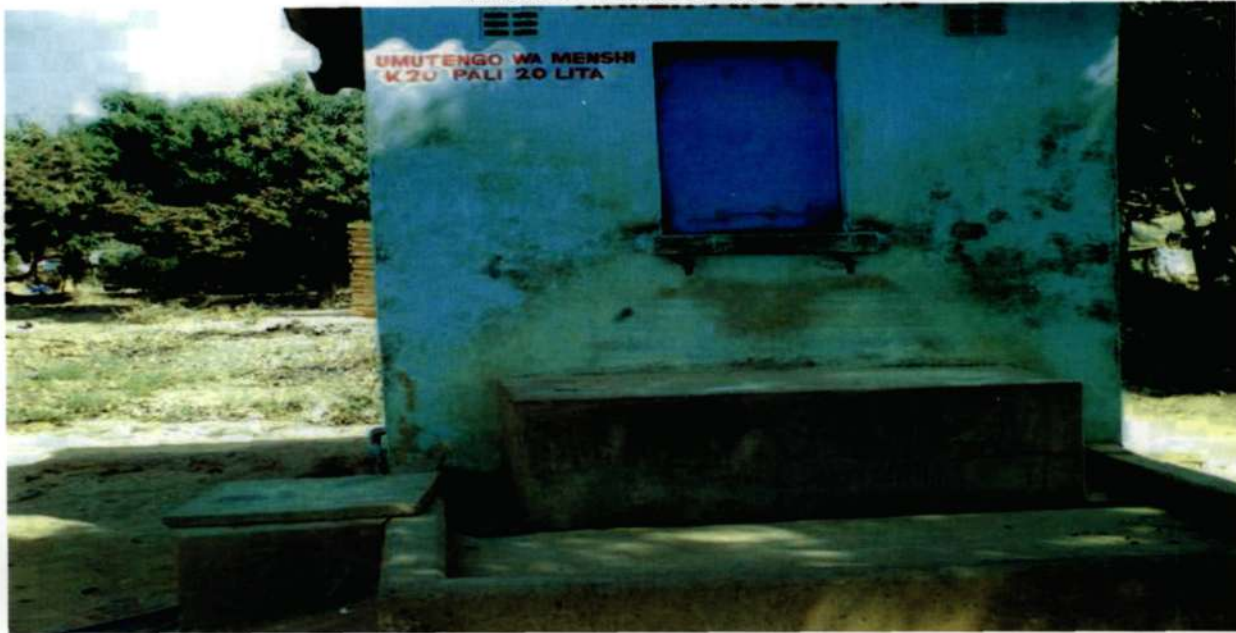
The sources of water available to a community largely depend on the geographical location of the community. In most medium and high income urban areas, people access water through in-yard taps connected to the city or town water network. But for most of the peri-urban and low income households, water is accessed through kiosks, public standpipes and hand-dug or shallow wells. With the creation of commercial utilities, water services are now provided by the commercial water utility companies even in peri-urban areas. In some peri-urban communities water is also provided through community run water schemes mainly in the form of water trusts, though these operate under the CU licensed in the area.

6.1.1.1 Water Kiosk

A water kiosk is a form of water outlet common in many peri-urban areas in Zambia. Ideally a kiosk is a formal single room, a concrete-built structure with two or three protruding taps from where people get water, as shown in the picture below. A typical water kiosk has a water meter installed and is managed by a water vendor on behalf of the water company or community. Ideally, the vendor in-charge of the kiosk ensures that people pay for the water they get before leaving the kiosk. In this case, the collection efficiency at kiosks is 100%. The initial plan was that the vendor would also sell his or her own goods while selling water (*NWASCO, Sector Report, 2004*), but that has not materialized in most cases.

A kiosk vendor is not an employee of the water company on whose behalf he or she sells water, but gets a commission of about 45% of the total sales (*Service Provider Interviews, 2006*). Normally, a kiosk is supposed to be opened at about 07:00hrs up to lunch hour (which could be 12:00 hrs or 13:00hrs), and then reopened after lunch (often 14:00hrs) up to 18:00hrs. However, the time for opening and closing a kiosk is largely left to the discretion of an individual vendor, such that there is no uniform time for opening or closing kiosks.

Photo 1 Water Kiosk



Source: Fieldwork Photos (Chitonge, 2006).

The vendor remits the money collected from customers to the water company once every week. The money that a vendor is supposed to remit to the water company is determined by the amount of water consumed as reflected by the meter reading. If a vendor has a shortfall, the water company requires the vendor to pay the shortfall from his or her own pocket. If a particular vendor is unable to remit the full amount, the water company often closes the kiosk until the shortfall is paid or another vendor is found. This often results in the community members walking longer distances to the nearest kiosk. Here is an example of inadequate management of systems which may interfere with access to water.

6. 1.1.2 Public Tap Stand

Water in peri-urban areas is also delivered through communal tap stands or standpipes. A public standpipe or community managed public tap operates in a slightly different way from a kiosk. In the first place, the public tap does not have the structure of a kiosk. It is often in the open, unprotected, with stagnant water around it as shown in the picture below.

The tap attendant sits by the side of the tap collecting the money from customers who come to buy water. The money collected is remitted to the water company or the manager of the community water scheme. Like the kiosk, opening and closing of the communal tap under CUs is largely left to the discretion of the individual tap attendant. Similarly, the tap attendant like the kiosk vendor is not an

employee of the water utility company (this is made clear in the contract they sign) and he or she is only paid a commission.

Photo 2 Public or Communal Tap Stand



Source: Source: Fieldwork Photos (Chitonge, 2006).

The situation is slightly different with community-run water schemes, in that the tap attendants are employees of the scheme paid out of the money collected from the buyers. Times for opening and closing of communal taps are also set by management. The other critical difference is that with the community-run schemes, there is a clear programme to help those who cannot afford to pay for water. The community water management often identifies those who cannot afford to pay for water and provides them with a basic amount of water every day. The amount given to the individual is decided by the community water scheme management board.

In terms of paying for water, the community water schemes have provided for an opportunity for people to pay cash as they get the water or buy a card which allows them to pay for the whole month (See Appendix I for a card sample). If a person chooses or can afford to pay for the whole month, he or she is given a card and every time that the card-holder comes to fetch water, the tap attendant marks the number of containers which the person has received in a day. A person is allowed to get up to 10 x 20

litre containers a day. But one is not allowed to carry-over the outstanding containers from the previous day.

6. 1.1.3 Hand-Dug Wells

The other important source of water in peri-urban areas is the hand-dug or shallow well. Usually, hand-dug wells are owned by individuals; and most well owners do not charge for water, but others charge especially during the dry season when water becomes scarce even on public taps. A number of well owners interviewed revealed that there are many people who fetch water from the wells. One of the respondents made this observation:

Here there are many people; they start coming early in the morning until late at night. Even when we are sleeping you hear people fetching water. People come from far to get water here because here water is free. I think there are very few wells. If there were many wells that do not charge, we wouldn't be getting many people here" (*Community Leader Interviews, 2006*).

A kiosk vendor also acknowledged that people do get water from shallow wells: "Yes, there are some people who can't buy water because they have wells, and others because they can't afford to pay for the water. Those who can't afford to buy water from kiosks beg for water from those with wells" (*Community Leader Interviews, 2006*). Most of the wells are unprotected and often poorly covered as shown in the picture below.

During the rainy season, the wells are often flooded with pools of run-off water. Not only that, most of the wells are very shallow and close to pit latrines, making it highly possible for the water in the well to mix with material from the latrine.

6. 1.1.4 Cross-Sourcing of Water

In most peri-urban areas, there is cross-sourcing of water for many households. Normally, majority of peri-urban residents get water from public standpipes or water kiosks. But these same people sometimes get water from wells or rivers when there is no water at the standpipe or kiosk, and often when they have no money to buy water at the kiosk. Interviews with community leaders revealed that a large number of people get water from all these different sources at different times. The major reason given for people moving between different sources is that some people cannot afford to buy water every day, and so when they don't have money to pay for water they get it from shallow wells or river where it is free. The other reason is that erratic supply of water forces people to get water from wells or rivers when there is no water at the kiosks. In addition, some people get water from unsafe sources because kiosks or communal taps are closed.

Photo 3 Shallow/Hand-dug/Unprotected Well



Source: *Fieldwork Photos* (Chitonge, 2006).

Those who don't have individual taps sometimes get water from neighbours or someone near by with an individual house tap. This is common especially among people who go to work early in the morning when the public tap stands or kiosks are not yet opened and come back late after they are closed.

Cross-sourcing of water presents a big problem when it comes to computing data on levels of access to safe sources of water. Official data ignore the fact that some members of these communities having more than one source of water. The critical question is; can a person who gets water from an unsafe source today and a safe source tomorrow be classified as having access to safe water? Further, aggregated data often underplays the lower levels of access to water among peri-urban communities (see section 5.1.9)

6. 1.2 WSS Features of the Study Sites

While the three study sites (Mtendere, Kanyama and Race Course Communities) are classified as peri-urban areas, they differ from one another with regard to the way water is provided. Nevertheless, these communities also share a number of common features. First of all, all these areas started as informal settlement without proper planning and infrastructure for basic services such as water and sanitation (see Sections 1.2.1).

Secondly, there is a high incidence of poverty in all three communities with majority of the people earning their living from informal economic activities such as street vending. As indicated in Chapter Five, one of the socioeconomic features of peri-urban areas is the high levels of unemployment and informal sector activities. Up to 62% of the economically active population in low-income/peri-urban is involved in the informal sector (LCMS 2004:64).

Thirdly, most of these prei-urban areas are densely populated resulting in overcrowding, with large household size. According to Central Statistics' LCMS 2002/2003, more than 78% of the total urban population live in peri-urban and low cost areas. In the case of the City of Lusaka, close to two-thirds of the city's population live in peri-urban communities covering only 20% of the city's residential land. Out of the total 300 000 housing units for Lusaka City, only 10% is formal housing, accommodating 30% of the population. Formal housing units are spread over 80% of the city's residential area, while the remaining 90% of housing units are informal housing units accommodating 70% of the population spread out on less than 20% of the city's residential land (*World Bank Report, 2002: 4*).

Fourthly, as a consequence of the unplanned nature of these communities, poor basic services are a common feature of all peri-urban areas in Zambia. It is not just water supply, but also sanitation, roads, drainage systems, and recreational facilities which are inadequate and of poor quality. In terms of water and sanitation, a situational analysis by the MLGH indicates that 59% of the population did not have access to a safe source of water while up to 90% did not have access to improved sanitation (*Strategy for Peri-Urban Water Supply and Sanitation, 1999:vii*). A baseline study conducted by DTF reveal that up to 65% of the population in peri-urban areas have no access to safe sources of water (2006:DVD). From RBA perspective, these are communities which should receive attention in terms of allocating resources and strategies to improve access. Certainly, it is people in these communities "whose [water] needs are the most urgent and whose ability to enjoy [the right to water] therefore is most in peril" (*Grootboom, 2000: # 44*). But as indicated in the preceding chapter, new investments in water often circumvent these communities.

6. 1.3 Nature and Extent of the Challenges

Data collected from the communities reveal that there are many problems with access to water in these areas. Some of the problems relate to a particular peri-urban area while others are common to all the communities. Generally the nature of the problem is largely dependent on the system of water supply

in place. However, at the root of these problems are the social, political and economic conditions which influence social processes.

6. 1.3.1 Major Water Problems

One of the issues topping the list of problems associated with access to water is that of erratic supply. Majority of the respondents in all three communities identified erratic supply of water as one of the biggest problems that they are facing. However, the problem of erratic supply was noted as the main problem mostly by respondents living in areas serviced by the water utility companies. Residents serviced by community run schemes mentioned that water is not available only when there is no electricity since the borehole pumps, use electricity to pump water from underground. The other time that water supply is not available for community-run schemes is when a tap attendant breaks for lunch and locks the tap. In this instance, all the residents know that there is no water at that particular time and they prepare themselves.

6. 1.3.2 Unannounced Interruption of Supply

For communities supplied by water utilities companies, supply is often erratic and interruption of supply unannounced such that most of the time residents are caught unaware. Sometimes water is available for only four hours in a day, while sometimes there is no water for a number of days. Most respondents expressed this (see **Table 6.1** below) as a major concern.

The major problem people are facing is that of erratic supply. There are certain days when there is no water for three days and people have no where to go (*Community Leader Interviews, 2006*).

A Race Course Community leader also complained of erratic supply:

Our major problem with water is that the supply is erratic. Sometimes water supply is interrupted for a long time and we are not told when the water is coming back (*Community Leader Interviews, 2006*).

The major problem is that the water supply is erratic. Sometimes there is no water in this community for three days and people don't even know when the supply will be restored. We are not even told that water will be cut; all we see is no water at the taps (*Community Leader Interviews, 2006*).

All the focus group discussions raised this as a major problem. Members of one of the focus groups conducted in Kanyama reported erratic supply as one of the challenges they face with regard to access to water:

We have a big problem with water in this community. The problem is that sometimes there is no water the whole day (*Focus Group Discussion, 2006*).

Table 6. 1 Major Water Problems

	Kanyama	Mtendere	Race Course
Erratic Supply	10	12	8
Distance to Water Source	10	1	6
Long Queues	3	0	1
Difficult With Paying	8	11	7
Low Pressure	3	7	1
Poor Leadership	3	3	3
No Notice Given	5	14	4
No FBW Programme	6	11	10
Wrong Billing	0	4	0
Operation of Kiosks/Taps	10	0	16

Another focus group in Race Course pointed out that erratic supply is affecting their lives in a critical way:

Water supply is erratic—sometimes we go for days without water. Our work now is to look for the water—that’s the only thing we do when we wake up in the morning. By the time we manage to find water, its time to prepare for lunch (*Focus Group Discussion, 2006*).

Similar comments came from Mtendere focus group discussions:

Even if water is privatized, it should be in constant supply. But now, what is happening is that the water is privatized, but the supply is interrupted abruptly without even informing the community (*Focus Group Discussion, 2006*).

Other problems reported by the respondents includ wrong billing, low pressure, problems with the operation of kiosks or communal taps, long queues, people failing to pay for water and distance to sources of water.

As shown in the **Table 6.1** above, the problem of wrong billing was only reported in Mtendere for the simple reason that there are very few individual connections in Kanyama, and none in Race Course. Most of the people in Kanyama and Race Course do not get water bills; they pay cash everyday as they buy water. Like the problem of erratic supply, wrong billing reflects badly on the quality of service and efficiency of the water companies. More importantly, it destroys the customer’s trust which in turn affects the CU’s revenue base in the community.

Low pressure is another problem that was reported in all three communities, though it was a more prominent problem in Mtendere than in the other two communities. One of the reasons for the prevalence of the problem of low pressure in Mtendere is that the extensive network of individual connections increases chances of leakages which may cause low pressure. Again here the community

does not understand why the pressure is low. Because no information is given to the community, most community members are of the view that the water utilities do not care about them, and this has often resulted in tension between the community and the service providers.

6. 1.3.3 Operation of Kiosks and Communal Taps

The problem regarding the operation of kiosks or communal taps was reported in the two communities (Kanyam and Race Course). This was not an issue in Mtendere simply because there are no communal taps in Mtendere. Among the core problems with kiosks or communal taps is the operation schedule. Opening and closing of kiosks is left to the discretion of an individual vendor or attendant. According to one of the community leaders interviewed in Kanyama,

Service hours are not adequate. There are people who go for work early in the morning before 06:00hrs, so they can't get water because the tap opens after 06:00hrs. And when they come back after work, they arrive after 18:00hrs, which means that they can't access the communal tap water. So they are forced to get water from those who have individual connections and they charge more than what is charged at the communal tap (*Community Leader Interviews, 2006*).

Related to this is the fact that kiosks are closed if the vendor does not remit the full amount reflected by the water meter to the utility company. From the community's perspective, water is too central to people's lives to be left entirely under the control of an individual. If the kiosk or tap is closed, it is the community that suffers in having to walk longer distances looking for water at a nearest kiosks or communal tap. With regard to the problem of how kiosks or communal taps are operated (a problem prevalent in Race Course than in Kanyama), respondents noted that the problem arises from the fact that the vendors are not monitored to ensure that they work according to plan.

Usually the time to open or close the kiosks depends on the individual vendor. If the vendor is busy, he or she won't open the kiosk, which means that people will have to walk longer distances to the next nearby kiosk. The vendors are not monitored or controlled. The fact that they pay K100 000¹⁵⁰ makes them think that they own the kiosks and they can do whatever they want (*Community Leader Interviews, 2006*).

Here again is the situation that indicates that the problem is one of management rather than scarcity of water. Essentially this reflects the CUs lack of interest in peri-urban areas. One of the reasons why the water utility companies have not adequately regulated the operations of kiosks and communal taps is that the collections are very low from these communities, mainly because the amount of water consumed is very low. It is not that people do not pay for the water they consume. Although both

¹⁵⁰ In the case of water kiosks in Race Course, one of the requirements for a person who wants to operate a kiosk is that he or she has to pay a deposit of K100 000 (US\$25) to NWSC before he can be given the go ahead to operate the kiosk. That is not the case with tap attendants in Kanyama; they do not pay anything to LWSC. While the kiosk vendor is interviewed by the water company, the tap attendant selection process is not formal; anyone can volunteer to become an attendant. Because the attendants are not paid, many people are not keen on becoming tap attendants.

LWSC and NWSC have a separate department that deals with peri-urban water issues, the operation of kiosks or communal taps is left more or less in the hands of local management which often means the vendor alone. It seems as though the water companies have no interest in regulating the kiosks.

6.1.3.4 Failing to Pay

The problem of people failing to pay was also reported in all three communities, though the problem seems to be more extensive in Mtendere. A possible explanation for this is that Mtendere residents are charged a fixed rate of K36 000 (US\$10) per month which is more difficult to pay than the K50 (2.5c) per 20 litre container in the other two communities. However, most residents in Kanyama and Race Course did point out that it is more difficult to buy water on cash everyday because it is not easy to find money everyday, even if it is just K50. They indicated that they would rather pay for the whole month and just draw water throughout the month. Although residents serviced by the community-run schemes have the alternative to pay for a month through the card system as explained earlier, residents in both Race Course and Kanyama served by NWSC and LWSC respectively do not have this option.

However, if the Mtendere experience is anything to learn from, the repeated call by many residents¹⁵¹ in Kanyama and Race Course for individual connections may not be a viable option given that it will be difficult for many people to set aside K36 000 for a month just for water. However, individual connections could be an open option for those who can afford while communal taps or kiosks should be maintained for those who many not afford to pay a monthly lump sum for the individual connection.

6.1.3.5 Distance to Water Source

The problem of distance to water sources was also raised in all the three communities. Again this problem was more prominent in Kanyama and Race Course only since Mtendere has individual connections. In most cases respondents complained about distance to water sources when their nearest kiosk or tap is closed or when supply is interrupted. Though it is difficult to estimate the average distance that people walk to fetch water in these communities, it is clear that the distances from water

¹⁵¹ This call was earnestly made by women especially in focus group discussions. Most of the male respondents called for increasing kiosks or communal taps while women passionately argued for individual connections pointing out that they are ready to pay as long as water comes nearer. This may be indicative of the fact that, women who often do the tasks of fetching water from wherever it is available, bear the burden arising from poor or inadequate access to water. Thus, women's recommendation is coming from their experience with having to walk and carry water on their heads several times in a day. As for men, especially those who are married, since they are mostly the sole income earner, they are concerned about issues of affordability and that is why they recommend communal taps or kiosks and not individual connections. A more modest suggestion or compromise between these two positions was that of 'group taps' where by five or four households share one tap and contribute towards the bill. But this also raises the practical question of how to share the cost in cases where one household has more people than others. And in cases where one household fails to pay, then the other households would be inconvenienced.

sources are beyond the recommended “within one Km” by the World Health Organisation (2003). In a normal day where all kiosks or communal taps are operating efficiently, most households, especially those found in between kiosks or taps walk for at least a kilometre to find water.

In the case of the time taken to fetch water, both Kanyama and Race Course residents complained about delays due to long queues during ‘peak hours’ such as early mornings and late evenings. Sometimes it takes two hours waiting in a queue as the picture below indicates.

So when discussing issues related to the right to water, one has to take into account all these factors; it is not just the availability of clean water anywhere in the community. But “physical access to water ... [implies] sufficient, safe and regular water; ...sufficient number of outlets to avoid prohibitive waiting times, and... reasonable distance from the household” (*General Comment 15, #37 (c)*). These conditions are rarely met for people in most peri-urban areas. Any assessment of steps taken and measures adopted in view of Covenant obligations require that all these factors be taken into account. Long queues at water points such as the one in the photo below is an indication of poor services which may result in constraining the right to water from many people.

Photo 4 Water Queues



Source: *DTF Baseline Study (2006, DVD)*

6.1. 3.6 No Programme to Help the Vulnerable

The other major problem raised by residents in the communities is that there is no programme to help those who can not afford to pay for water. Neither government nor the utility companies have a programme to ensure that those who can't afford to pay on their own also have access. From **Table 6.1** above, it is apparent that this is a widespread problem in Mtendere where almost all respondents indicated that this is a major problem. Fewer responses in Kanayama could be explained by the fact that the community-run schemes do have a programme to provide free water to the elderly, disabled and orphans. It is surprising that Race Course has even a lower tally than Kanyama in this regard given the strictness of the service provider in ensuring that every drop recorded by the metre is paid for. One of the reason for recorded low response on the absence of a programme to help vulnerable groups could be that the price of water in Race Course is only half that of Kanyama, and so it may be assumed that all can afford at least K25 (1.25c). But the problem is not that people cannot afford to find K25, it is finding K25 every day of the month which is a great burden for poor people especially the elderly, widows, orphans, disabled and terminally ill. And it is such people that a free basic water programme could target.

6.1. 3.7 They Don't Respect Us

The other problem with access to water raised by most of the respondents is that water supply is often abruptly interrupted without the community being informed about the interruption of supply. Again this was one of the most common complaints that came out of all the communities in focus groups discussions as well as in interviews with community leaders. The main concern with interruption of water supply is that the utility companies do not inform the community about the interruptions as they do in high income areas when water supply is interrupted.

Our major problem is that the water supply is erratic and every time they are cutting water, they don't inform us that they will interrupt supply. They don't treat us like people in urban areas—there they tell them that water will be cut.... But here, they just cut—I don't know may be because we are poor that is why they don't respect us (*Community Leader Interviews, 2006*).

In terms of the right to water, supplying information is one of the key substantive contents of the right. On this, *General Comment 15* clearly states that accessibility “includes the right to seek, receive and impart information concerning water issues” (#12 (iv)).

6. 1. 3. 8 Run-down Networks

Inadequate of infrastructure and poor maintenance are the key factors cited by the service providers for the problem of erratic supply and the failure to inform customers in advance. Even though the water utilities blame the problem of erratic supply on the lack of investments to replace the old infrastructure and upgrade the delivery systems, this in itself shows that the initial supposition that commercialization

would attract capital investment has not been realized. At the time of interviews, service providers were still lamenting the lack of investment, and there were little indication of this situation changing anytime soon. With this, the prospects of improving access to water in peri-urban areas where the systems are completely run-down will remain a dream. A senior official from one of the service providers highlighted this lack of investment to upgrade and expand infrastructure as one of the key challenges:

You know, just like I was saying, the service delivery systems are dilapidated, and then improving service requires investments; it requires money. That is the problem with service delivery to certain areas; it requires some investments. But internally, we don't have the capacity to attract the international funds to invest in service deliver system expansion (*Service Provider Interviews, 2006*).

In the end, this raises questions about the ability and willingness of the CUs to improve access to water in low cost and peri-urban areas. If nineteen years after the commercialization of LWSC we are still struggling to raise investment capital, then it can be submitted that commercialization has not delivered its promises so far in this regard. Although there are some indications that the CUs have improved water supply services when compared to the time that water services were provided by the local authorities (*NWASCO Sector Report, 2005*), widespread and frequent supply interruption may be an indication of the growing inability of CUs to cope with the pressure to even sustain the current service levels especially for peri-urban areas where these complaints are a common phenomenon¹⁵². This confirms the point made in Chapter Five that the few positive outcomes of commercialization have bypassed most peri-urban communities.

6. 1. 3. 9 Failure to Provide Information

In view of the right to water, a situation where certain sections of society are informed about supply interruption while others are not, borders on discrimination, especially in this case where the discrimination seems to be along social status lines. As mentioned earlier, a failure to inform the residents of low income areas about supply interruptions is likely to result into the right to water of these residents compromised in several ways. Hence, if the report that peri-urban water interruptions are not announced is true, this practice is in direct conflict with the non-discrimination and equality principle of the international human rights norms. Provision of information about water issues is one of

¹⁵² For instance NWASCO's sector reports since 2003 have been indicating that the average water service hours for LWSC and NWSC are 11 and 15 respectively. These figures might be true for high income areas, but they are highly questionable for peri-urban areas.

the four dimensions¹⁵³ of the concept of accessibility within *General Comment 15*'s understanding of the right to water.

The other problem reported in all the three communities is that the service providers' response to customer complaints is very slow, and often times there is no response at all. Again this problem affects residents serviced by commercial water utilities. Households serviced by community-run schemes did not report any incidence of failure to respond to reported water problems. Most of the community leaders interviewed indicated that they have reported various water problems to LWSC or NWSC, but they have not received any response, and when the companies respond it is often after a long time.

According to a Race Course Kiosk Vendor, "the provider's response is very slow if it comes at all." And a Mtendere Community leader observed that, "People have gone to different offices to try and seek help but the only thing they get are promises." Similarly, a Kanyama tap attendant had the same complaint: "Some people come to complain to me, and I take the complaints to LWSC, but nothing changes" (*Community Leader Interviews*, 2006).

6. 1. 3.10 Strategies to Improving Customer Service

From the service provider's point of view, efforts are being made to respond to customer complaints in the shortest possible time, though service providers acknowledged that it is not possible to respond immediately to all complaints. In the case of LWSC it was reported that to attend to customer complaints more effectively, they have tried to decentralise the administrative system so that people can report to their branch offices.

We've divided the city into 6 areas/branches. And each area has a branch manager and a full fledged team; its like a separate company operating independently: Kabwata, Kabulonga, Peri-urban, so that customers can be attended to without having them to travel to a central place. And this is making our services decentralised so that we can care for our customers more efficiently (*Service Provider Interviews*, 2006).

Although there are such moves by the service providers to ensure that customer services improve, the general feeling of people interviewed in peri-urban was that the response time is very slow if any at all. One of the reasons why response to customer complaints is very slow in peri-urban is due to the limited capacity of LWSC, in particular, to handle all the complaints. For instance informal discussions with

¹⁵³ Other dimensions include physical, economic accessibility and non-discrimination (see # 12 (c)). And discrimination on the basis of social status (which maybe the case for peri-urban water supply) is proscribed against in many international human rights instruments such the ICESCR, ICCPR, the UN Charter, as well as UDHR.

some of the engineers responsible for peri-urban water supply revealed that there is only one vehicle for all the peri-urban areas serviced by LWSC, and there are only three civil engineers to attend to these problems. Problems are reported on a daily basis and sometimes one peri-urban community has more than 20 complaints. But the engineer can only go to these places when the vehicle is available. So if the vehicle is being used by one team, then the other two have to wait until the vehicle is back. As a result when water utility company workers go to these communities, they only attend to “emergency” cases.

6.1.4 Community Participation

6.1. 4.1 A Dual Challenge

Interviews with community leaders as well as focus group discussions revealed that most members of the community believe that community involvement in water issues is key to solving the problem of access to water. However, involving the community in water issues remains a challenge in two different ways. In one way, communities members are not keen to participate in meetings. In another, efforts to involve and consult community members by the leaders, water companies and other actors are visibly missing.

Table 6. 2 Community Participation

	<i>Kanyama</i>	<i>Mtendere</i>	<i>Race Course</i>
Community Participates	9	7	4
Community Doesn't Participate	1	7	5
Community Express Views	9	6	4
Community Does not Express Views	1	6	7
Community is Consulted	0	0	2
Community is not Consulted	6	4	6

As **Table 6.2** above indicates, while more than half of the 16 Kanyama community leaders interviewed reported that the community participates in and expresses views about water issues affecting the community, the response from leaders of the other two communities tend to indicate that community participation is unsatisfactory. From the responses in **Table 6.2** it can be inferred that there is a low level of consultation and involvement of community members. Of the 16 community members interviewed in Mtendere and Kanyama, none of them reported an incident where community members were consulted by either the RDC leadership or the water company. Similarly, of the 15 community leaders interviewed in Race Course, including the RDC members, only two indicated that community members were consulted. This has been reaffirmed in the focus group discussions where many ordinary members of the community pointed out that they do not participate in community water issues

and that they have not been consulted on issues such as installation of kiosks, increasing water tariff, installation of water metres and many other issues.

6.1. 4.2 Community Meetings: Mere Talk Shows

There are a number of explanations for the problem of low community participation. One is that many community members have reported their problems to those responsible (RDC or water company), but nothing gets done, so they have actually given up. In other words, they do not see any reason for attending community meetings because nothing comes out of them; community meetings are seen as mere waste of time. Commenting on the low levels of participation in the community, one community leader observes that,

[o]n the question of participation, there are some members of the community who have given up saying that they have been participating in meetings and yet nothing has come out of such meetings (*Community Leader Interviews, 2006*)

Another Community leaders noted that,

....majority of the people in the community don't participate because their problems are not being attended to—they have given up (*Community Leader Interviews, 2006*).

In this case, the failure to address people's water problems has resulted in community members losing confidence in the system such that community meetings on water are perceived as a mere waste of time. This has been supported by the fact that although communities have made several suggestions on how water problems in the community can be addressed, none of their views go beyond the community. For instance, one community leader in Mtendere reported that,

The community has made suggestions on how these water problems should be dealt with like the appropriate size of the pipes to overcome the pressure problem. We have also suggested that the company should use residents to address problems of water in this community instead of bringing people from outside who don't even know the community. The community has also suggested that they put up 2 or 3 reservoirs instead of only one that they have at the moment. But all this has fallen on deaf ears (*Community Leader Interviews, 2006*).

6.1. 4.3 Re claiming Participation as a Human Right

Interviews with community leaders and informal discussions with people in the communities indicate that when it comes to water issues, people are willing to participate because of the sufferings they face when there is no water in the community. But that willingness is blunted by the fact that community members are not often consulted when the key actors are making decisions. As one of the community leader argues,

The communities have also emphasized that they be consulted whenever they are coming up with a project so that they can be involved in issues such as choosing the site for a communal tap, kiosk, borehole and tariff (*Community Leader Interviews, 2006*).

Most of the respondents indicated that they have not been called to attend a meeting to discuss water problems. For example, in Race Course,

...people were not called to discuss the kiosk programmes when they were being introduced. People didn't even discuss kiosk operations—they just announced that there will be kiosks (*Community Leader Interviews, 2006*)

Similarly in Kanyama, members of a focus group discussion reported that they were not consulted when the new programmes were being implemented:

These people just decided to change the rules of the game on their own without even telling the people what they were doing. They just told us that we should be paying for water. The notion of paying for water was rejected by the community, but they implemented it (*Focus Group Discussion, 2006*).

While it must be acknowledged that not all suggestions from the community can be implemented, genuine participation requires that community input be part of the decisions taken. To fulfil this condition requires time and patience, and that is what genuine and transparent processes which take participation as a serious right of the people entails. In a rights-based approach participation is not a matter of just collecting information or mere consultation; it calls for a genuine commitment to ensuring that people's views are transparently reflected not only in the minutes of the meetings, but in the plans and actions that come out of community discussions. In this sense participation in RBA should be distinguished from the traditional PRSP-type meetings where participation is done in the name of complying with conditionalities while decisions are taken before even the meetings take place (Porter & Craig, 2004). Genuine participation should result in the participants' view shaping the decisions reached and actions taken at the end (Filmer-Wilson, 2005). Being able to participate in decisions that affect one's life in this way is an effective way of exercising citizenship and human agency (Gaventa, 2002).

On the other hand, some community leaders have pointed out that the problem has been that many community members do not come to community meetings. There are various reasons for this. One major reason noted is that some community members are not interested in community meetings because they are tenants and feel that issues of water should be the concern of the landlords. Given that close to 50% of the households in peri-urban are occupied by tenants (LCMS, 2005:128), this can affect the levels of participation in the communities. Not only that, some leaders did point out that because of high levels of poverty in the communities, many of the residents are mainly concerned with what brings food on the table at the end of the day. As one of the community leaders argues,

people are too pre-occupied with finding money to buy food for the day, and so they have no time to come to the meetings. Most people spend the whole day at the market or on the streets selling something. They only come back late in the evening. So if you have a meeting they are not there (*Community Leader Interviews, 2006*).

6.1. 4. 4 Disillusioned With Participation

Observations during fieldwork in the communities revealed that the problem of participation is to a large extent one of leadership. First, many community members have expressed frustration at the lack of commitment by the community leaders evident in the unavailability of the area MP, councillor and sometimes the RDC¹⁵⁴. Secondly, according to community members, the leadership itself has this notion that since they are the representatives of the people, their views can replace the views of the community members. For instance in Race Course, it was clear that the RDC was involved in the discussions about water kiosks from the start of the project up to the management of finished kiosks, but little was done to involve the wider community. Unfortunately, NWSC was also made to believe that the participation of the RDC was all that was needed, and in most cases this participation mainly entailed consulting the leadership on what was already decided. It is such fraudulent deployment of the principle of participation that has led to the current “disillusionment”¹⁵⁵ among practitioners with the practice of participation (Warner, 2006:17).

6.1 .5 Quality of Service

6.1.5.1 Safety of Water Provided

In terms of the quality of services provided to the community, the general view is that water is safe. However, there were a number of respondents who argued that the water is not safe and this is the reason why they are asked to add chlorine or boil water for drinking. **Table 6.3** below gives a rough idea of the respondents’ views on issues related to the quality of water services provided to the community.

¹⁵⁴ In the three communities, only one Councillor was interviewed. As for MPs none was interviewed though this could be explained by the fact that the interviews were being conducted at the time when general elections were about to take place. As for the RDCs, the RDC chairpersons in the three communities were interviewed though the members of the community indicated that it was difficult to find the RDC in their offices, and extremely difficult to find the councillor and the area MP.

¹⁵⁵ Warner(2006) notes that after being the catch phrase in development praxis for the past 40 years, participation has lost its grip and appeal on many development practitioners and communities who see it as a manipulative and tyrannical exercise of power. This view is more strongly argued in Cooke & Kothari’s (2001) book, *Participation: The New Tyranny?*, and also Watson (2001).

Table 6. 3 Quality of Service

	<i>Kanyama</i>	<i>Mtendere</i>	<i>Race Course</i>
Water is Not Safe	3	1	5
Water is Safe	7	10	9
Service Improved	9	7	5
Service not Improved	5	8	9
People Fail to Pay	7	11	9
Water not Equally Dist.	5	9	7
Water is Equally Dist.	4	0	0

In terms of the water services in general, views of the respondents are almost equally divided between those who felt that the services have improved and those who felt that there has been no improvement. Going by individual communities, majority of the respondents in Kanyama were of the view that water services have improved while for Mtendere and Race Course, majority of the respondents were of the view that water services have either not improved or worsened. Explanations for this difference in opinion are many. One of the possible explanations for the difference in views between communities lies in the way water is delivered to the communities. High levels of dissatisfaction with water services apparent in Mtendere and Race Course could be attributed to reported higher incidents of erratic supply, unannounced supply interruption, widespread disconnections and wrong billing for Mtendere, and the multitude of problems¹⁵⁶ surrounding the operation of kiosks reported in Race Course. In the case of Kanyama, the high number of respondents indicating improvements in the quality of services could be attributed to the two community-run water schemes which do not have most of the problems associated with CU-serviced areas.

6.1.5.2 Affordability of Water

In the case of people failing to pay for water, it is not surprising that Mtendere has the highest number of respondents given that most of the households in Mtendere have individual connections and they are required to pay K36 000 per month whereas residents of Kanyama and Race Course buy water either at K50 (2.5c) (K25 in Race Course) per 20 litre container or pay K3 000 (\$.75) (for community run schemes using a card system) per month. However, the high number of respondents in Race Course indicating that people fail to pay for water is quite surprising given the fact that the price per 20 litre container in Race Course is only half that of Kanyama. One possible explanation for this could be that poverty is more severe in Race Course than in Kanyama. This could be particularly true given that Kanyama is located close to one of the biggest markets in the country (Soweto Market) where many

¹⁵⁶ Major problems identified by the communities include opening and closing hours, attitude of the kiosk vendors, closure of kiosks for non-remittance, the system of selecting kiosk vendors, and erratic supply.

people carry out some informal business activities and earn a living. Race Course on the other hand is situated away from the main markets where people can engage in informal trading.

6.1.5.3 Equal Access

Similarly, on the question of whether the current distribution of water services ensures equality of access, at least, it is not surprising that Kanyama has the highest number of respondents saying that water is not equally distributed. Probably this could be due to the fact that many of the respondents were of the view that majority of the people are unable to pay their water bills at the end of the month. It is surprising though to note that none of the respondents in Mtendere was of the view that the current distribution of water ensures equal access. Certainly, affordability can be a barrier to accessing clean water, especially in communities where poverty levels are high as is the case with most peri-urban communities in Zambia.

The main reason given to explain that the current system does not ensure equal access is that there are many people who can not afford to pay for water and resort to using shallow wells. Many of the respondents indicated that since there is no programme to ensure that those who can not afford to pay also have access, then the system leads to unequal access to water. Other factors believed to impact on equal access to water include the fact that some people have to walk long distances, wait in long queues to get water as one of the community leaders observes:

Water is not equally accessed because some have no money to access it. Then others even if they have money, they have to walk for long distances to look for water. Others have to wait in queues for a long time. So, all these factors influence the access to water (*Community Leader Interviews, 2006*).

A community leader in Race Course also expressed a similar concern:

For this reason, the kiosk system does not ensure equal access because people have to pay and those who can't pay go to get water from the wells (*Community Leader Interviews, 2006*).

Equality of access is also conceived in terms of differences in quality of services or attention provided to different residential areas. As indicated above, many residents in peri-urban areas are of the view that people in high income areas are provided with better services than them. Inequality in services provided does not only affect the quality of services, but also prices.

6.1.6 Origin of the Challenges

6.1.6 .1 Systematic Inequality

From the rights-based approach perspective, one expects that people in low income areas should be the focus of attention since the risk of their right to water being violated is higher. In this instance, it would

be expected that peri-urban people should pay, at least, the same price per unit of water as people in conventional or urban areas proper. But evidence shows exactly the opposite of this. According to the official tariff of LWSC approved by NWASCO in 2004, one cubic litre of water in the first block, referred to as a life line consumption (which is up to 10 kilolitres, see Section 5.3.4.5) costs K700/ kl or 20 cents /kl (NWASCO, Regulatory Tools, 2004: 42). Using the K50 per 20 litre, that people in peri-urban communities pay, a kilolitre costs K2 500 which is almost 4 times more than the official tariff per kilolitre. Normally, government is supposed to intervene and make sure that this form of discrimination is addressed, but government has not addressed this problem on the grounds that doing this will amount to interference in the operation of a private company. And the general public has no direct influence in this matter. Unfortunately, the regulator (who can intervene) has left the kiosk or communal tap matter with the service provider “to control the price at the kiosks” (ibid, 44). The public has little say on the fixing of the tariff. This is another example in which commercialisation has resulted in public domains being ring-fenced; it is not just finances that are fenced.

That is not the only line of inequality. Evidence gathered for this study point to the fact that attention in terms of investments, infrastructure development, levels and quality of service appear to be directed to those who are already better serviced. A clear indication of this is the new *Water Sector Performance Improvement Project* funded by the World Bank for LWSC, which has focused on improving LWSC performance in areas that are already serviced, and nothing is planned for peri-urban areas where many people have poor access (World Bank, 2006)¹⁵⁷. This is in spite of the feasibility study’s report acknowledging that “[w]hile the service provided in conventional areas is reasonable (most customers receive a 16 to 24 hour supply), the extent and quality of service provided to peri urban areas is limited” (ibid, 2). As the *Peri-urban Water Supply and Sanitation Strategy* observes, the current WSS “policy and legal framework does not adequately cover peri-urban areas” (1999:3). Even when it comes to the subsidy system, there is no clear strategy to ensure that the benefits of cross-subsidization accrue to the poorest sections of society. Instead as the World Bank Project reports “subsidies continue to be captured by consumers already receiving service” (2006: 2).

In the light of these facts, it is apparent that the principles of equality and non-discrimination are not being applied. As noted in Chapter Five, the primary responsibility here rests with the state to ensure

¹⁵⁷ Components earmarked under the project include financing capacity development (Development Finance Agreement, DFA), human resource training, restructuring of WSS at the MLGH and financing of capital works for LWSC. No specific mention of a component directly meant for low income areas is made.

that third parties' actions comply with this obligation. This could be done through legislation or other 'appropriate measures,' and in cases where these are not in place, it amounts to first degree failure to even adopt measures. Absence of such measures, as is the case for peri-urban water supply in Zambia, is evidence of non-compliance.

As regards the state's role in the provision of water services, most of the respondents were of the view that government should play an active role of either directly providing water to communities or directly subsidizing those who cannot afford to pay. This view comes out strongly in the recommendations made by the community leaders. As **Table 6.4** below illustrates, most respondents were of the view that even if the services are provided by a commercial entity, government should have a big role to play.

Table 6. 4 Recommendations From Communities

	Kanyama	Mtendere	Race Course
Increase Taps/Kiosks	8	5	9
Everyone Should Have Access	16	12	13
Cooperation of All Actors	6	1	3
People Should Pay for Water	9	15	12
Government Should Play a Role	11	10	9
CUs Should Listen	2	5	2
Government Should Subsidize	1	6	2
Community Should be Involved	9	11	6

6.1.6.2 Government Should Play an Important Role

From **Table 6.4** above, it is clear that respondents in all three communities support the view that government should have a role to play in the provision of water services. What role exactly government should play is a contested topic. Some respondents suggested that government should play a monitoring role; while others argued that government should itself provide water services. Others still were of the view that government should only subsidise those who can not afford to pay on their own. Other respondents suggested that government should provide funding to water companies so that they can provide water to the communities more effectively. However diverse these views are, they can all be summed up into one point, namely that government should have a role to play in the provision of water services. Some of the respondents do not subscribe to the view that government should be the monitor or facilitator. They instead suggest that government should actually be the sponsor of access to water.

Government's role has been that of a monitor when it should be the guarantor of access to clean water to everyone. For instance, if the service provider fails, the government should intervene (*Community Leader Interviews, 2006*).

Other respondents expressed the view that government should provide incentives to CUs so they can operate more effectively.

Ba government must focus on providing incentives to utility companies. They must waive some tax that they impose on the equipment that these utilities are using, because they are paying too much. For instance LWSC uses 40 or 50 bags of chlorine per day to purify water. The tax imposed on these goods which are not locally available, and are only sourced from South Africa and other countries must be waived. Equally on the gas, they use chlorine gas; it is a big tank that also comes from South Africa; it is not manufactured in Zambia. There is tax imposed there. If they can give them a leeway so that they can provide better services to the Zambian people, particularly in Lusaka Water, and other utility companies should also be given tax exemptions the way they are doing with these miners—50, 20 years tax free. And you find that these companies when they are about to finish their tax free period, they move out because they don't want to pay tax (*Community Leader Interviews, 2007*).

Here, the general point being made is that government should have a clear policy to support the operations of commercial water utilities as a form of commitment towards improving water supply services. This should not just be in the area of waiving import duty, but in many other ways that would enhance the operation of CUs, including government paying the water bills promptly and in full.

6.1.6.3 Water Subsidy

A view expressed by some respondents was that since the commercialization of water supply sub-sector, the government has not played any significant role in the sub-sector though it should.

Government has no role in the distribution of water to the communities because we have privatized water services. The time when water services were run by the council, then government had a role to play. Now everything is in the hands of the private companies and government has nothing at all.

Now, in a situation where access to water is determined by one's ability to pay, the view that all should have access to basic clean water implies that there should be a way of supporting those who are unable to pay for water. It is however surprising that very few respondents expressed the need for government to subsidize water services. As **Table 6.4** above indicates, only 1 in Kanyama, 2 in Race Course and 6 respondents in Mtendere indicated that government should subsidise water services. This is surprising when one considers the strong view the respondents have expressed that all should have access to water, and that government should actually provide water to communities if the water companies are unable or unwilling to do so.

The higher number of respondents recommending that government should subsidise water in Mtendere could be linked to the fact that most Mtendere residents have individual connections and are expected to pay the fixed bill of K36 000 every month, which many find difficult to pay. As for Kanyama and

Race Course residents who usually buy water at K50 or K25 per 20 litre, they may not see the essence and practicality of subsidizing water other than providing water free. Subsidising water at K25 or K50 might appear absurd to many people; and probably that is why residents in Kanyama and Race Course recommended free water rather than subsidy. This could be the reason that explains why the common responses in Kanyama and Race Course were:

Government should supply water to the community. LWSC as a baby of LCC should ensure that the interests of the people are taken care of and not just that of profit (*Community Leaders Interviews, 2006*)

and,

Government should provide basic water free so that even those who don't have money can get some clean water (*Community Leaders Interviews, 2006*).

6.1.6.4 Willing to Pay and the Ability to Pay

An equally astonishing point from **Table 6.4** above is the high number of respondents who indicated that people should pay for services. Mtendere recorded the highest number of respondents (15), followed by Race Course and Kanyama with 12 and 9 respectively. Often such responses have been used in conventional discourse on water services delivery as an indication that even poor people in low income communities are willing to pay for services and therefore should be charged at full market rate. For instance, the World Banks' Water Sector Performance Improvement Project with LWSC argues that residents in peri-urban areas are willing to pay even more for water services (World Bank, 2006:2). But that might be a premature conclusion which does not account for some facts on the matter. In some cases, the fact that people in peri-urban areas are already paying between 20-30% of their household expenditure on water services is taken to be a strong indication of their willingness to pay¹⁵⁸.

Common sense expectation would be that when people in low income areas are asked whether they should pay for water or not, most of them would say that they should not pay for water because they are poor. But in this case, the response in all the three communities is the opposite.. On the surface, it appears as though this is a pure case for people's willingness to pay. But consideration of other facts calls for caution before drawing this conclusion.

Firstly, most of the people interviewed in this study did indicate that they understand bringing water to their communities costs money which they should cover. For instance, a number of respondents rightly pointed out that it costs money to pay for the electricity used in pumping water, it costs money to buy

¹⁵⁸ For example Briscoe & Garn (1995) and Mcphail (1993), reached this conclusion based on a survey done in different communities (in Nigam and Rasheed, 1998).

chemicals used in purifying water, to pay people working for the water companies, and to replace pipes and other physical infrastructural logistics. One of the community leaders put it this way:

It is good for people to pay for water so that the water company can buy chemicals to purify the water, pay for electricity, and pay the workers and repair the damaged part of the machines or pipes (*Community Leader Interviews, 2006*).

Another community leader expressed the same view,

It is cardinal that people should pay for water—otherwise there will be no water if people don't pay (*Community Leader Interviews, 2006*).

The other reason why people recommended that they should pay for water services is that when water is provided free, most people tend to use water recklessly and often don't care for the infrastructure.

One community leader noted that,

If people pay for water, they will use it wisely because they paid for it; they then will be afraid of wasting because they know that if they waste they will need money to buy more water,

And

During the UNIP time we never used to pay. In Dr. Kaunda's regime we never used to pay, that is why facilities were destroyed because it was for free. Okay paying for water is not bad. Paying for something that is helping us is good so that that things can continue to help us. Even the borehole you are talking about, ... the borehole needs electricity to pump water from underground and someone has to pay for the electricity(*Community Leader Interviews, 2006*).

However, within this well understood need to pay for water, there are hidden drivers of the so called willing-to-pay argument. First of all, while most of the respondents did point out the importance of paying for water, the rationale behind this was the fear that if they do not pay, water services would be very poor as in the past. Thus, the apparent willingness to pay is not because these people are able to pay, but originates from the fact that they are forced to pay out of the fear that the water situation would deteriorate. In this case people express the enthusiasm to pay because that is the second best option. This came out clearly from the focus group discussions.

But if water is free, the services will be poor because no one will bother about providing a good service, and people will be wasteful since they know that they get the service free (*Focus Group Discussion, 2006*).

So while people would like to get free water, they realise that is not a viable alternative because when they do not pay there will be either poor services or no water at all. Therefore it is highly questionable to construe this as a genuine case of willingness to pay especially in poor areas with low income levels.

Secondly, the critical question often ignored by the willingness-to-pay argument is the ability to pay. The classical economic concept of effective demand can help to illustrate this point. Many people

would like to have many goods and services, and if asked, they would indicate that they need them. But it is only people who have expressed the desire for a particular commodity and at the same time have the capacity to translate that desire into an act of acquiring the desired goods who constitute effective demand. Thus, while people may express the view that it is good to pay for water, it does not follow that they are able to pay for water. More dubious is the argument that the current situation where poor people are paying four to six times higher than the official tariff is an indication of their willingness and capacity to pay. It is an illicit logical manoeuvre to infer capacity to pay from willingness to pay. As Nigam & Rasheed have observed, the “[w]illingness to pay analysis in water supply fails to pay adequate emphasis on the ability or capability of poor households to pay for basic levels of services when they have to pay for all the other basic needs such as health and education” (1998:15).

This view was expressed also by many respondents. A number of respondents did point out that due to low income in most peri-urban households, there is stiff competition on household expenditure.

Some community members can't access clean water because they can't pay. There is a lot of poverty around; people can't even find money for food—they can't find money for water (*Community Leaders Interviews, 2006*).

Because water can be obtained alternatively in wells or rivers, it is a weak competitor on household expenditure. When there is little money to cover the various needs in the house, poor people opt to get water from the well or river where it is free, and reserve the little money for salt or sugar which they cannot get free from any other source¹⁵⁹. While that might be a good thing, the problem is that substitute water is often not safe, posing a health risk to the individual and the society at large. This is confirmed by the number of water-borne disease outbreaks in these communities. A *Times of Zambia* (March 22, 2007) article reports that between November 1, 2006 and March 15, 2007, 1 375 cases of suspected cholera and 19 confirmed deaths were reported all from peri-urban areas. Ministry of Health, Director of Technical Services links the endemic cholera outbreaks in peri-urban areas to unsafe water:

We tend to have many cases of cholera in the rainy season because some people draw their water from shallow unprotected wells. In some settlements, people dig pit latrines anywhere, even near these same shallow water points and in the process they end up polluting their own water. Cholera mostly exists as a result of poor water and sanitation services ... everybody

¹⁵⁹ So the argument that people should pay for water even if it is a right just like they pay for food and other essential needs (in Mehta & Ntshona, 2004; Ismail Serageldin, 2000 at 2nd World Water Forum), may not be sustained in the case where water substitutes are available since the unavailability of substitutes for food and other basic needs makes water the first victim on the list of household allocation of resources. But that comes with a high opportunity cost if the replaced water is not safe which often imply a high cost on the household (and often on the stated) in cases of sickness resulting from consuming contaminated water.

needs good drinking water and our water points must be impeccable...” (*Times of Zambia*, March 22, 2007).

In the context where households spend more than 5% of their income on water, that is an indication of overburdened households (Prasad, 2006: 675). Calls for assisting such households often rest on the “public good” argument which contend that ensuring that everyone has clean basic water is a social good, since the health hazard posed by lack of access to clean water (which often occurs if water claims a high proportion of a household’s expenditure)¹⁶⁰, creates a public social cost (Nigam & Rasheed, 1998; Prasad, 2006).

So the willingness to pay argument must be considered with caution given the fact that much of the willingness expressed seem to be utterances made out of desperation and frustration.

6.1.6.5 The Right to Water vs. O& M Cost

While these are the responses from the communities, it is important to consider government’s response to some of these issues. While government is expected by many citizens to take the responsibility to ensure that everyone has access to basic water, government officials have a different view.

.... Lusaka Water [LWSC] gets drinking water from Kafue, which is 50km away. To pump water from the river to the treatment plant, there is need for a dam first that must be constructed before the treatment plant. And that treatment plant needs chemicals, it needs various kinds of machines; it needs a laboratory, it needs personnel to run it so that people can have a glass of water. It has to be transported 50km to Lusaka and from there into the houses. All these cost money. But Government says it has a human eye on water because the cost would be unaffordable. So let the people *contribute* towards the production of this water. So from people’s taxes we will pay, that is why water companies are subsidized, that is why councils are given grants to produce goods and services to the people. So that is how the social value comes in as a subsidy (*Policy Maker Interviews*, 2006).

But as far as the water companies are concerned, the two service providers interviewed indicated that they don’t receive any subsidy from government. Instead, government owes them huge amounts in unpaid water bills.

No, No, No. We don’t get any subsidy from government. The only thing that government can help us or does is to look for financiers to fund some capital projects. So these are some of the things that government does. After all, government is also paying bills to us (*Service Provider Interviews*, 2006).

¹⁶⁰ Efforts to estimate the proportion of household income spent on water for the three case studies did not go far because of poor data resulting from the fact that most of the household were unable even to estimate how much they earn or spend in a month. Going by the official average household income for low income urban areas compiled by Central Statistics, the percentage of household expenditure on water is roughly 12% if we use the fixed rate of K36 000 for a month (See LCMS, 2005: 88).

6.1.7 The Right to Water: Notions Form Below

6.1.7.1 Should Water be a Human Right?

With regard to the question of whether water should be a human right or not, there was an overwhelming response in all the three communities in favour of recognizing water as a human right. Of the 47 community leaders interviewed, 41 or 87% expressed the view that water should be recognised and treated as a human right as **Table 6.5** below indicates. A simple argument presented by majority of the respondents was that, *water is life, and therefore, it should be a human right*. Even if there is a weak logical inference in this argument, there seem to be an implied strong connection between human rights and preservation of life. And since water is critical to the preservation of life, it should be recognized as a human right. That is how the argument is framed.

The only serious objections expressed against recognising water as a human right are that human rights are usually not taken seriously and that such a move would make people waste water. The assumption here is that when water is a human right, it must be free for all.

Table 6.5 Notions of Rights from Below

	Kanyama	Mtendere	Race Course
Should Water be a Human Right	13	14	14
Water is a Human Right in Zambia	2	0	1
Water is not a Human Right in Zambia	8	2	3
Does it Make a Difference	12	8	8
Disadvantage of Water as a Human Right	3	2	4
No disadvantage of Water as a Human Right	4	3	0

When asked if recognizing water as a human right makes a difference in their lives, majority of the respondents indicated that recognising water as a human right makes a big difference. Some of the advantages mentioned include the following:

Recognising water as a human right will benefit us because this will help all people even the poor to have access to water;

Recognising water as a human will make much difference because people can demand it as a right from the provider—compel the provider to provide water to people;

If water is recognized as a basic right then it will become cheaper to have individual connections—we will be paying a reasonable price;

Recognising water as a human right would give power to the people and LWSC will make an effort to inform people when there is a disruption of water supply;

If water is recognized as a human right, it will be given government priority, it will be clean, in regular supply and near to the people;

If water is recognized as a human right, it will change people's mentality and empower people to demand improvements in the water supply;

But if water becomes a human right, then it means power will be in the hands of the people;

The benefits of making water a human right are that diseases will be reduced, the environment will be clean—flowers can be grown and homes will be neat, water will be nearby, people can be healthy (*Community Leaders Interviews, 2006*)

The general perception expressed in these responses is that making water a human right would result into an improved quality life for the people by improving water supply, and that recognising water as a human right gives people power over water.

6.1.7.2 But is Water a Human Right?

However, when asked if water is recognised as a human right in Zambia, most of the respondents gave a negative answer. Only 3 out of 47 were of the view that water is a human right in Zambia. Below are some of the reasons why people thought that water is not a human right in Zambia:

Water is not a human right in Zambia because many people have no water;

If water was a human right the poor should be able to access water freely. But now, many poor people can't access water because water is expensive;

But water is not a human right in Zambia because we pay for water;

In Zambia water is not a human right because we pay for water—we buy water everyday;

If water was a human right, it would be cheaper and more people would be accessing it. But it is expensive and that is why many people are getting water from the wells;

But in Zambia water is not recognised because if it was recognised as a human right people would have equal access (*Community Leaders Interviews, 2006*).

From these responses, it is apparent that the right to water is closely associated with free or cheap water. Deeply embedded in these responses is the view that if something is a human right, then it should be free or cheap for everyone. While these views are important in appreciating people's understanding of human rights, it is also important to look at whether these notions form the basis on which people act especially in communities.

6.1.7.3 Passive Awareness

One thing that is surprising here is that even if people in the communities are aware that the right to water is something that can improve their quality of life, there is little indication that this appreciation engenders actions. As Gaventa (2002) has observed, it is indeed important to understand how people perceive rights and how these perceptions are acted on in peoples' daily lives. If the right to water is seen as something that can make a positive contribution to their lives, then it would be expected that people would begin to articulate some actions around this perception. But evidence shows that this is not happening. Despite the generally higher level of appreciation of the fact that water is not effectively recognized as a human right in Zambia, there are no voices articulating this. Although much ink has been spilled on the justification and application of rights,

...little empirical work has been done that attempts to understand, in differing settings, how poor people themselves perceive their rights, how these meanings are acted upon through political or social mobilisation, and how they are bounded by issues of knowledge and representation,(Gaventa, 2002: 9).

Even if it has been argued that people in poor communities have low capacity to mobilize and act on issues of rights and citizenship (GTZ, 2004), there is still more work needed to understand the influence that perceptions of rights have in the daily lives of the people. In the *Zambian* case, lack of official pronouncements on the right to water has contributed immensely to the current inaction, although that does not explain why the people themselves should not push for official recognition of the right.

6.1. 8 The Right to Water: Notions From Above

6.1.8 .1 The Free Services Fallacy

Like the views of people in the communities, the most commonly held view about water as a human right among policy makers is that if water is declared a human right, it must be free for all. For politicians, this is the reason for sidelining the matter from mainstream policy discussions. The strong association of rights with free services leads to the argument that making water a human right would result in high taxes since government must find money to pay for services. For example one of the government officials in the lead ministry argued that,

...if we make water a human right, it will mean that government will have to increase the tax to provide free water to all—and taxes will have to be increased to pay for even wasted water due to carelessness (*Policy Maker Interviews*, 2006).

The assumption here is that a human right is something that everyone should get free. And the question that arises is whether that is a correct inference from the concept of a right. Whether one is using the Hofeldian four categories or the Lockean notion of a right as freedom to decide or the Hartian notion of

a right as the ability to choose or the Razian notion of a right as something that a person has sufficient interest in to hold another person responsible, the association of a right with free services needs careful analysis. So far, the notion that human rights should be free has not been proposed as one of the fundamental human rights principles. Although one could make a valid inference that the principle of equality entails that basic human needs such as clean water, improved sanitation, basic education, health, food and electricity be made available to all, which implies that these needs be provided for those who can't afford to get them on their own, that is different from the argument that services recognized as human rights should be free for all.

Over the years, associating human rights with free services has encouraged the argument which has led to some authors dismissing socioeconomic or social welfare rights¹⁶¹.

6.1.8.2 Right to Water Trumped by the Resource Sham

While it is clear for communities that recognizing water as a human right will improve the quality of their lives, policy makers have some reservations. The major concern among policy makers is who pays for people's rights? In most cases, the concern over the costs of providing free basic water even for the poorest trumps human right as indicated by another policy maker:

But we are also mindful of the fact that the cost that goes with the provision of water supply and sanitation services has to be met by somebody. And the government is not so much willing to subsidise consumption. So you find that even for the poorest, some how, they need to make a *contribution*. I think gone are the days when the councils used to provide these services and nobody used to pay for that; the government used to take responsibility for that (*Policy Maker Interviews*, 2006).

Service providers echo similar sentiments. For them, paying for the cost of providing water services is not negotiable, though they do agree that the tariff should have social considerations factored in.

When talking about tariffs, we have to bear in mind that there is a cost to providing water service regardless of who provides the services. The provider, whether, government or private company needs to pay for the electricity used in pumping water, the wages and salary for workers at the various levels, chemicals used in purifying water, and the cost for operating and maintaining the infrastructure. The provider has to assess how much it costs to provide these services and assign a tariff. Now, in the new set up there is what we are calling social tariff which implies that someone has to pay the difference between an economic tariff and a social tariff (*Service Provider Interviews*, 2006).

¹⁶¹ There are many indications of the fact that the water sector in Zambia has been neglected (WRAP, 2005). It is only in the *Fifth National Development Plan(2006)* that water has been recognized as a priority area in the national development strategy. But even that priority could be just on paper, in practice we are yet to see how that will be translated into action.

While very few people would dispute the fact that costs of providing water services must be met in one way or another if the provision of water services is to be sustained and improved, there has been little attention given to people who cannot afford to pay on their own.

6.1.8.3 Entangled in Rigid Dichotomies

On recognizing access to water as a human right, the case still remains to be made that such a move would impose huge burdens on the state which in turn will lead to increase in tax. What seems to be the emerging view is that there is not much government engagement with rights-based approaches. Reasons for this may vary, but one is the traditional preoccupation with civil and political rights leaving the social and economic rights as something that can be addressed once finances allow. Unfortunately, these rigid dichotomies which defy the simple truth that a human person is an integrated being, persist in guiding government policy, actions and responses. A policy response that strategically sidelines economic, social and cultural rights giving preference to civil and political rights is conceptually weak and practically inconsistent. As Isin & Wood(1998) have argued, social economic and cultural rights are more and more being perceived as enablers or ‘bedrock’ for the realization of other rights; “including the right to claim rights” (in Gaventa, 2002:7). For instance there will be no meaningful participation from people who are existing on the margins of life; preoccupied every minute with the instinct to survive as one the community leaders pointed out above.

6.1.8.4 No Estimates of Costs

Surprisingly, in the Zambian case, as already indicated, though there has not been any study done to estimate how much it would cost to provide basic water to the vulnerable groups in communities, the idea of providing free water to some people has been tactically decampaigned. As one of the officials from the national regulator observed, government avoids making any serious commitment on proclaiming water as a human right mainly because of the fact that it is not sure it can bear the consequences.

...people are not committed to proclaim that; I have not seen or heard anyone proclaim that water is a human right, but it has been acknowledged. But I think the aspect of implementing that right is actually the problem. If it becomes a human right what does that entail? (*Policymaker Interviews*, 2006).

Again at the centre of the debate is the notion that human rights necessarily entail free goods and services. In many instances, the politically correct response that government has no money to make such commitments strangles the debate. This is one of the major reasons why the government has remained aloof when it comes to the rights-based approach because it is understood to mean that if

adopted, government will be required to foot the bill or provide the famous “free lunch.” But this assumption is made in the situation where even the cost of a free basic water programme is not known.

Hence, while components of RBA are already being applied by some NGOs, there is no official commitment to incorporating rights-based principles in any project.

No rights-based approach has been adopted in any project. But the rights-based approach is a viable alternative because it addresses the issues of sustainability, community involvement, and creates a sense of ownership (*Policy Maker Interviews*, 2006).

6.1.8.5 Lack of Political Will

Shunning RBA is not just a problem for Zambia. Most governments have not officially incorporated a rights-based approach in their policies for national development projects or strategies. As noted by Gaventa, one of the reasons that explains this, apart from the resource phobia associated with socioeconomic rights in general, and the rights-based approach in particular, “there still is much to be understood about what it [RBA] means, both conceptually and empirically, as well as much to learn about how to put it into practice” (2002:4). Most governments are reluctant to move into areas that are not yet clear, although they acknowledge that RBA principles are important. Even bilateral development agencies like DFID, USAID, CIDA JICA and many more have not yet adopted RBA. For instance DFID in its policy strategies does not even refer to RBA (Nyamu-Musembi & Cornwall, 2004) while NGOs such as Oxfam and Action Aid have been guided by RBA in their work (Jonsson, 2005).

Further, the bureaucratic nature of state policy processes makes it difficult to venture into new and uncertain areas. Such issues have to be approved by heavily encumbered state machinery which often would prefer doing things the old way than learn to swim in unfamiliar waters. For instance, despite recognising the discrepancy between the fiscal and budgetary calendars in the Zambia’s fiscal process as discussed in Chapter Five, planning and budgeting have still continued in the same business-as-usual manner. Even if the policy is adopted to incorporate RBA principles in government planning and implementation processes, the implementation lag is likely to weigh heavily on most processes. This is why it is probably more pragmatic to push RBA agenda from below rather than to wait for it to be rolled out from above. Unfortunately, as noted earlier, there is actually little push from below, at least in Zambia. Communities wait for government to make rights a reality for them—government should provide water to everyone. But as Paulo Freire (1972) has pointed out, true freedom comes at a cost—not on a *silver platter*! For instance to enjoy both the substantive and procedural freedom of access to water requires that people struggle to build responsive institutions, public attention, and political will.

At the bottom of this is the problem of lack of political will. With particular reference to access to water, all the service providers interviewed raised the point that there is little commitment from government. One of the key indicators of government's lack of commitment to improving access to water for all people is its failure to pay water bills. Failing to pay water bills makes it difficult for service providers to even sustain the current service levels. Commenting on the financial viability of CUs, NWASCO Sector Report 2005/06 notes that performance of CUs is,

...adversely affected by the non-payment for services by government institutions. The arrangements that have been put in place for collecting the debt through the Ministry of Finance and National Planning are not working as the system is bureaucratic and to a large extent not implemented on merit (13).

6.2 RBA in the Context of Peri-Urban Water Challenges

6.2.1 Citizenship and Rights

Debate about human rights is often linked to the notion of citizenship. From the early Greek City States, the concept of citizenship was closely linked to the notion of entitlement or privilege.¹⁶² The critical link between the two is the principle of participation. For instance, Aristotle in *The Politics* defines citizenship in terms of being able to participate in the administrative deliberation of the state: "...he who has the *power* to take part in the deliberative or judicial administration of any state is said by us to be a citizen of that state...." (Aristotle, 2000:95).

Reference to power in this definition does not imply acquired abilities through social process, but refers to power by virtue of being a member of a society. Though Aristotle's notion of citizenship is limited to property-owning males, his basic idea of active participation, as the defining feature of citizenship, is still tenable in modern democratic societies. In fact even today, there is a subtle way in which the notion of citizenship as being able to actively participate in one's society is still largely dependent on one's control over resources. It could be argued for instance that, poor people's participation in social and political processes that affect their lives is seriously undermined by poverty and lack of opportunities. Reported low levels of participation in most peri-urban communities is just one example.

¹⁶² The concept of rights as we understand it today did not emerge during the time of Aristotle. Conceptual development of rights was a later phenomenon that started to take shape during the 13th Century with the enactment of the *Magna Carta* in England by King John and later King Henry III. However, elements of a rights were already present in the early Greek society in the form of privileges or powers.

6.2.1. 1 Power Resource and Participation

Responses from community members interviewed in this study point to the fact that community members' views have little impact on decisions and actions taken in the community. Because of this, genuine participation in the life of the society by community members is severely limited, which in turn undermines the most essential feature of citizenship. In this sense, control over *power resources*, broadly understood, does influence not only social relations in society but *shared meaning of citizenship* as well. Here Sederberg's notion of the interplay between *power resources* and *shared meaning* or *political control* is useful. In Sederberg's view, resources are not just material or physical, but they include non-physical ones such as status, authority, information, legitimacy, organization, capacity to mobilize and control support. Sederberg argues that "[t]hrough the manipulation of our available resources, we engage in the deliberate effort to control *shared meaning*, that is, politics" (1984: 69, emphasis added). Therefore, people with more control over *power resource*, would participate more effectively in the public life in society and are likely to have a heightened sense of belonging (citizenship) than people with less control over *power resources*.

6.2.1.2 State and Citizen

Other than participation, there is another way in which citizenship is linked to human rights. Citizenship is often an idea married to the concept of a state. Onuma, for example, argues that in the post World War II era, the notion of the state came to be defined largely in terms of citizenship or nationality. And the reason is that since the state as a "political entity cannot exist without people and territory, it follows that a people within the territory be presumed as a basic unit of the emerging state" (Onuma, 19981:26). A state exists because there are people who share the same culture, a territorial boundary called nation, same history, and a central authority. With this concept of a state comes the idea that any one who meets the prescribed conditions for becoming a member of this common body of a people is entitled to citizenship. In this way, the state is built on citizens just as the notion of citizenship has no independent existence or meaning outside the state.¹⁶³ Citizens relate to the state as a guarantor of their rights to be where they are, the 'rights to even claim rights' within the state, just as the state derives its *raison d'être* from citizens.

¹⁶³ Onuma sketches a brief evolution of concepts of nationality and citizenship during the pre and post World War II. And his main point is that the acquisition of independence by many states after World War II posed a challenge to the ascription of nationality status in a number of newly independent states. Decolonisation in some cases meant change of nationality, and the main focus within international law was to prevent people from becoming "stateless" in the emerging national order. However, while nationality or citizenship would be assigned to individuals in accordance with existing domestic laws dealing with nationality (mainly based on the domicile doctrine), in the later period more emphasis was put on the autonomy of an individual to choose his or her nationality in cases where this was in dispute (See Onuma, 1981)

Out of the hopelessness for the ordinary citizens arising from the failure to be citizens in the *true* sense of the word, various groups, especially civil society groups, have started to challenge the notion of representative or indirect democracy preferring more direct forms of governance (Gavena, 2002). One of the results of this has been the growing trend towards decentralization or devolution of 'power' to the local authorities as an effective way of giving meaning to true citizenship. This has been reinforced by the growing trends towards a more participatory approach to development and poverty issues (Chambers, 1983). Rampant failure of the top-down approaches to development inherent in the classical development theories led to the rethinking of development approaches emphasizing the notion of development *with* the people and not *for* the people. This has been reinforced by the *Declaration on the Right to Development* which states that people should be active participants and beneficiaries of development. Issues such as access to water are clearly vehicles through which citizenship can be enhanced.

6.2.1.3 Channels of Citizenship

Although there could be several explanations why respondents in the communities feel that there is nothing being done to address the problem of access to water in their communities, one thing that is clear is that this diminishes the sense of belonging or solidarity which in turn makes people less interested in participating in community affairs. The diminishing sense of belonging or citizenship does not only affect the individual's relationship with society, but it also impacts on the individual's relationship with other people in the community. This could be one of the reasons to explain the apparent low levels of solidarity and low capacity to mobilize in the three communities covered by this study¹⁶⁴. For instance, even if water is not supplied to the community for three days, people just complain. And more seriously, "People complain as individuals, not as a group. They only go to LWSC as individuals to complain. If there is no water we do not do anything; just complain" (*Community Leader Interviews*, 2006). Evidently, solidarity and the capacity to mobilize around community issues such as access to water, drainage, roads, clinics, security and others have been eroded. Creation of CUs and the diminishing sense of solidarity which are both consequences commercialisation could be the reason to explain the low levels of solidarity and mobilisation in the communities.

¹⁶⁴ It has been argued in some quarters that the privatization process has promoted a sense of privateness in all sectors of life such that people don't feel that commonality which used to be there. Some have even added that the creation of private companies from what used to be state companies has ushered in a growing sense of respect for private property which people did not have during the time of parastatal companies. For instance, people used to protest when for poor water service delivery when water was provided by the council, but they don't now that water services are under a water company.

This is confirmed by the fact that although community members are aware of the problems surrounding the operation of kiosks or communal taps, they have not come together to find a way to address this. A problem about the time to open and close kiosks, for instance, can be sorted out by the community through a meeting called by the community itself. Why should the community wait for NWSC or LWSC workers who may not even experience this problem to call a meeting on this matter?

The other example that illustrates a dwindling sense of communal responsibility and solidarity is that most of the communal taps, especially those under the water companies, are surrounded by stagnant pools of water with all sorts of litter thrown in. In some cases, these pools have been there for years. To drain this pool of dirty water only requires a short soak-away trough, which can be created by a few community members. Unfortunately, though the community members complain about the filthy around the place where they get water for drinking, no one has decided to organize the people who get water from these taps to find a solution.

At most communal taps you find that the surrounding area has stagnant dirty water and the place looks very dirty. Community members don't care about this. They want Lusaka Water or the Council to come and clean the area around the tap. It doesn't take much time and energy. Even one person can create a drainage furrow for the water to drain (*Community Leader Interviews, 2006*).

Thus, diminished sense of citizenship can eventually pose a challenge to implementation of RBA in as far this affects participation and a sense of ownership.

6.2.1. 4 Conditioning of Social Space

In as much as this demobilized condition in which most communities may be regretted by some people, it may serve deep rooted interests of others. Demobilisation could be a deliberate strategy of controlling social relations designed to maintain and reproduce these relations. Henri Lefebvre's notion of the "production of space" is helpful here. In Lefebvre's view, *social space* in particular, is both a *product* as well as a *means* of producing more products (means of social production and reproduction). One has to emphasise here the word *product* for two salient reasons. One is that a product is something that is brought forth—produced, created, manufactured—for a purpose. It involves a deliberate action or activity. Secondly, a product is different from a naturally occurring object in the sense that a shoe is a product while a mountain is not. A product comes from purposeful activities while a naturally

occurring object surges *forth* without social strivings. Lefebvre makes this point clear when he argues that “Nature creates and does not produce”¹⁶⁵ (1984: 70).

The importance of these two points is that they help to bring home the point that social space is not a naturally occurring phenomenon, but a socially produced order—deliberately or by design. Using the concept of production, Lefebvre argues that space, like other products, is produced for a purpose. For instance the situation where a lot of people have no access to water is not a naturally occurring phenomenon, but one which is a result of social relations and activities. If they are thus produced, these conditions may serve particular purposes for which they are produced. That is the punch line.

6.2.1.5 Arena of Contestation

But what is this social space? Lefebvre looks at space not as a passive container to be filled in with things and activities, but as an active product of power relations. Thus, “social space is constituted neither by a collection of things or an aggregate of (sensory) data, nor by a void packed like a parcel with various contents,” but social space¹⁶⁶ “incorporates’ social actions” over which the state imposes itself, occupies and rules” (1991: 21 ff). But this social space over which the state occupies and rule, is rife with opposing forces mainly because, “the rationality of the state, of its techniques, plans and programmes, provokes opposition” (ibid, 23).

What is of interest in this view of society and state is that social relations are not a given but are a result of human interactions which the state seeks to normalize and control. In this sense, the socio-political and economic conditions in a given context are a product of certain processes—processes that produce the social space within which people seek to make sense of their lives: spaces in which some have access to water while others do not, spaces in which some voices are heard, while others are not; spaces where some can participate actively while others are technically excluded, some have *real* rights, while others have *abstract* rights; spaces where some are *power-full* while others are *power-less*.

¹⁶⁵ Of course Lefebvre’s concern here is to show that *production* is a socially conditioned phenomenon which has substituted nature’s *use value* with *exchange value*. Using the Marxian concepts, he seeks to expose the deceptive (or fetishness) nature of *exchange value*. This is very clear in the sentence: “A tree, a flower or a fruit is not a ‘product’—even if it is in the garden” (see Lefebvre’s *The Production of Space*, 1984: 70ff).

¹⁶⁶ Lefebvre tries to make his concept of social space clear by distinguishing *social* space from *physical* or *natural* space, and *mental* or *abstract* space. He blames the confusion surrounding the concept of space on the Cartesian dualism and the Kantian absolutism. When these two confusions are put together, the result is the “fetishization of space,” (21).

6.2.1.6 From “Things in Space” to The “Actual Production of Space”

Lefebvre’s insight is relevant to the current discussion in that in order to clearly comprehend the product (social space, e.g., lack of water for some members in communities), it is essential to understand the processes that lead to the production of the product itself--*social space*. For instance, instead of preoccupying ourselves with the fact that close to half the population of Zambia has no access to safe sources of water, it is helpful to, first of all, understand the processes that are producing this space. As one would imagine, there are myriad of processes that contribute to the production of spaces where some have access to safe and secure sources of water while others do not (see figure 5.13). Understanding such processes entails unlocking matrixes of social, economic and political relations between individuals, individuals and institutions, individuals and the states, state institutions, state and state, and state and supranational institutions.

The mainstream approach to issues of poverty and development, so far, has often been to focus on the “actual spaces produced” (e.g. the lack of access to water or the inability to realize the right to water, for instance), with little attention paid to the actual processes that produce these spaces. While understanding the spaces produced is essential, our understanding is incomplete without a clear comprehension of the bequeathing processes. To comprehend these complex situations, the object of our “interest must be expected to shift from *things in space* to the actual *production of space*” in which things are located (Lefebvre, 1984: 37).

When this is applied to the current study, it becomes helpful to “shift focus” from the fact that there is erratic supply of water or that the response to customer complaints is slow or that many people find it difficult to pay for water, or that RBA is not implemented, to processes or social relations that produce these phenomena given the understanding that these situations are *products* of particular processes. As evident in Figure 5.13 above, water services are a product of a maze of processes resulting from a multitude of social and political relations.

When such a shift is made, it becomes apparent, for example, that water is neither public nor private. Public-ness or private-ness is a socially assigned attribute for very particular purposes¹⁶⁷. With this in mind, reported cases of erratic supply or slow response to customer complaints is not a natural condition, but a result of process of social relations between a given community and the service

¹⁶⁷ McDonald and Ruiters have also made the argument that essentially, water is neither public nor private; privateness or publicness is a socially ascribed feature of water (2005).

provider, for instance. Understanding this leads to the appreciation of the fact that the phenomenon of low budgetary funding is not just a matter of the “size of the cake” or the “resource envelope”, but also an indication of the underlying socio-political relations between institutions, institutions and state machinery, and also between the state and other organizations including donor agencies. In this way, the fact that many people have no access to safe sources of water cannot only be explained in terms of lack of funds as is often the case.

6.2.2. Politics of Meaning

Now critical to understanding these processes is the state, given our premise that the state subsumes all these relations as it seeks to *impose* normalcy and homogeneity in this highly charged space. The most obvious way in which the state seeks to impose *normality* on social space is through the enactment of laws, rules, policies and programmes. For instance in the *Zambian case* the *National Water and Sanitation Act* was enacted to regulate the water supply and sanitation sub-sector. The *National Water Policy* was formulated to provide guidelines on the management and distribution of water resources.

But there is another subtle way in which the dominant views within society impose control, and hence normalcy on the social spaces in which we live. One way in which this is done is through what Sederberg(1984) calls “*shared meaning*.” Like the production of space, construction of *shared meaning* is also tailored towards and results in exercise of control of socio-political realities. However, this shared meaning is not exactly the imposition of the mighty over the feeble, but involves a contestation; a pulling back and forth¹⁶⁸. In this process, there is a dynamic “mutuality” which stabilizes shared meaning in the present, but also allows it to change in order to meet new emerging demands. Although the *power-full* often triumph, the characteristic feature of shared meaning is that it is in a constant dynamic state of instability.

This entails that meaning is context dependent or what Paul Ricoeur calls *locality*. Contestation of meaning, and therefore its vulnerability to manipulation, lies in the fundamental feature of language—*polysem*, “that is, the feature by which our words have more than one meaning when considered outside of their use in a determinate context” (Ricoeur, 1981: 44). Thus, the politics of hermeneutics is rooted in the struggle over meaning. A dominant interpretation directs and determines both response and action in a given context. For Sederberg, the competition over shared meaning is translated into the

¹⁶⁸ Sederberg rejects both the coercive and consent theories of shared meaning. He rejects the former on the grounds that it overlooks the existence of meaning independent of the interest of the power-full, and the latter on the grounds that it overlooks the influence of the power-full on shared meaning. “Coercion theories tend to underestimate the possibility of consensually-based meaning, and consent theories overestimate its likelihood” (1984: 59).

competition over scarce resources. Put in another way, conflict over shared meaning manifests itself through competition over power resources. The party that controls the power resources, imposes the shared meaning over the other. And in most cases the imposition is not apparent.

A typical example of this is the use of certain words used by members of the communities in which this study was conducted. Most people in the three communities have been made to interpret, understand and believe that what they pay for water is just a *token* or that they just make a *contribution*. The words *token* and *contribution* in this context have been used to signify that the people in peri-urban areas do not pay the full cost of providing water. For most of the people in many peri-urban communities, this as the true meaning of what they pay for water as indicated by some of their responses below.

It should be made clear that the K50 is a *contribution* and not a charge for water;

In fact *it is not buying* because K50 per 20 litre is not money, we do this to help everyone realise that they are part of this project;

Communal taps have tap attendants who collect a “*token*” fee from people coming to draw water;

Normally people pay because the price of water is very low—it is actually a *token*;

There about 50 households per communal tap. Each of these pay a fee which is a *token* (Community Leaders Interviews, 2006).

But in actual fact, even the K50 per 20 litre container is actually 4 times higher than the official tariff as indicated above. And most surprisingly, it is more than what people in conventional or high income areas pay for an equivalent unit of water (see Sections 6.1.6.1). So then how does paying K50 per 20 litre become a *token* or a mere *contribution*?

The contextual meaning packed in the words *token* or *contribution* has more than their innocent face value. This fact has often been used by both service providers and sometimes government officials to argue that they are actually doing peri-urban areas residents a favour by asking them to make a *contribution* or pay a *token* fee. With this meaning widely propagated, government is quick to claim the attributes of a ‘benevolent state.’ Other words such as *rights*, *citizenship*, *consumer* are also strategically deployed in particular contexts. Examination of these terms and the context in which they are used tend to reveal that meanings serve particular purposes—control of one form or another in as far as the assigned meanings direct and determine responses and condition actions.

Conclusion

This chapter has looked at the data collected from the three communities. The analysis of the data shows similarities and differences between the three communities. One of the key factors accounting for the observed differences or similarities between them is the way water is delivered to the communities. The difference in the way water is brought to the community explains the differences in the nature of issues raised by the respondents in these communities.

Data presented here indicate that the origin, nature and extent of the challenges of access to water are multifaceted ranging from inadequate institutional set up to manipulated social and political processes. This is clearly evident from the responses given by the policymakers, the service providers, community leaders and ordinary community members.

What has emerged from this discussion is that trying to understand the processes that produce the challenges identified here is essential. Process around funding, policy formulation, sector coordination, commercialisation, and political dynamics within communities all impact on access to water. For instance, if people believe that the right to water can result in improved quality of life for many people, why are not they acting on this? In trying to understand this situation, the notions of citizenship as practiced are useful analytical tools. It seems that community resignation is a direct consequence of processes that have underplayed the notion of citizenship and rights. If that is the case, the attention should be recast from the conventional approach of attending to social problems in the state-space to paying attention to processes which produce these challenges. For instance, attention should be shifted from merely focusing on the lack of access to safe sources of water to processes that generate this condition.

CHAPTER SEVEN

GENERAL FINDINGS, CONCLUSION AND RECOMMENDATIONS

Water is a basic need for every human being. It is clear that everybody must have access to a certain amount of safe water for drinking and cooking (NWASCO, 2004:38).

Issues related to water resources in general and water supply in particular, have become prominent topics in global development discourse. That water resources play an important role in many development processes is a widely recognised fact. In recent years “nearly all development organizations stress the importance of effective governance, institutions and policies for water and in general for poverty reduction and economic growth” (Mollinga, Meinze-Dick & Merrey, 2007: 2). The debate, however, revolves around issues of how water resources should be managed and delivered to the people in order to contribute to improving people’s quality of life. Within this debate, there is an assertion that access to water should be treated as a basic human right, and as such everyone (especially the poor) must have access to clean water. Nonetheless, despite the widespread strong conviction that water should be proclaimed and treated as a basic human right that should be accessible to all, there are still huge challenges when it comes to ensuring that everyone, particularly the poor, has access to clean water. While the idea to have access to water recognised and treated as a human right has a strong support base worldwide, water is increasingly being treated as a commodity that should be delivered through the market (Swyngedouw, 2005; Bakker, 2007). Whereas there may be an obvious conflict between treating water as a human right with treating water as a commodity, commodification of water can, and often hamper the realisation of the right to water, especially for the poor sections of society.

The critical question that needs to be addressed is whether the right to water is compatible with the market-based approach. While the debate is far from over, the situation on the ground is that access to water still remains a huge challenge for many people. This is evident from the proportion of people who do not have access to clean water in Zambia (See Chapters One and Five). Whereas recognising the right to water does not translate into everyone having access to clean water¹⁶⁹, an explicit

¹⁶⁹ Key lessons can be learnt from the South African situation. Though access to water is explicitly recognized as a fundamental human rights, yet there are still many challenges resulting in many people not having access to clean water. For instance Mosdell & Leatt (2005) identify inadequacy of the 6kilo litre, delays in extending services, inequality of access, and termination of service for failure to pay as some of the main challenges. However, an explicit recognition of water as a fundamental human right has provided a ground upon which civil society groups and communities can demand that people’s rights be fulfilled. This is also evident from the number of demonstrations over water and other service

recognition of and commitment to access to water as a human right, is an essential starting point. The Zambian case investigated in this study shows that although there are many factors that account for citizens' ability to assert and claim their rights, an explicit statement of the right provides the foundation upon which rights can be asserted, claimed and effectuated. This chapter brings together the key findings of the study, the conclusion drawn from these findings and recommendations for possible action.

7. 1 General Findings and Conclusion

This study has explored the challenges of implementing RBA using the right to water as an example. In order to contextualise the origin, nature and extent of the challenges involved, Zambia's development policies and strategies have been presented in Chapter Two. Chapter Three has discussed human rights in general and the rights-based approach in particular so as to understand the broader context to the right to water. Chapter Four has explored the global and domestic aspects of the right to water highlighting the influence of global forces in water resource management and service delivery. In Chapters Five and Six the data gathered during field work have been presented. This chapter sums up the main findings, which are organised in five major categories.

7.1.1 RBA Challenges

7.1.1.1 Generic Challenges

Regarding the challenges of implementing a rights-based approach, what emerges from this study is that the greatest challenge lies with the fact that there is little or no commitment to RBA by most development actors especially the state. Although many states may acknowledge the importance of RBA principles, the commitment to these principles in practice, is highly questionable in many countries including Zambia. This study has established that there are many explanations for this. One of the reasons that account for this situation is the ambiguity of RBA itself. Part of this ambiguity arises from the fact that RBA is a relatively new approach, and therefore there is still a lot to learn, both conceptually and empirically, before this approach can create a niche on the development market.

The second reason, related to the first, is that most governments are reluctant to adopt new approaches, especially ones that are not yet clear. State bureaucrats often prefer doing things the old way than learning to swim in unfamiliar waters. In the Zambian case, it is clear that government avoids making

delivery related issues in many municipalities over the past few years. Increase in the number of demonstration could be partly attributed to the fact that an explicitly recognized right gives ground for asserting a right.

any serious open commitment on proclaiming water as a human right mainly because of the fact that politicians are not sure of the consequences of making such a move. This lack of clarity, together with what can be referred to as, ‘adaptive viscosity,’ contributes to impeding adoption and implementation of RBA. The bureaucratic nature of state policy processes¹⁷⁰ makes it even more difficult for state institutions to venture into new approaches such as RBA. It is therefore not surprising that RBA has mostly been adopted by NGOs and other international development agencies that are versatile enough to migrate from one approach to another without much red tape.

Thirdly, what has emerged from this study is that RBA faces huge challenges from the traditionally entrenched notions that economic, social and cultural rights are problematic in as far as they require huge government expenditure to be realised. Cost-considerations and ideological orientation is one major obstacle towards the implementation of RBA. Implementation of RBA is affected by rigid dichotomies typical of cold war politics (Filmer-Wilson, 2005). Frequently, RBA is often associated with economic, social and cultural rights as opposed to civil and political rights (Offenheiser & Holcombe, 2003; Nyamu-Musembi, 2004). The challenge for RBA arising from this association is that economic, social and cultural rights are often dismissed as pseudo rights—as mere inspirational goals. And if they are mere *inspirational* goals, so the argument goes, they should not be clothed in the garments of rights reserved for genuine human rights. The Cranstonian critique¹⁷¹, on which this argument is based, has unfortunately proved to be very successful within public policy discussions. For example, it seems clear that the main reason why access to clean water is not recognised as a full fledged human right in the Zambia Constitution, has to do with the Cranstonian view point. On the basis of this, it has become an appealing tactic for government to sideline economic, social and cultural rights.

Fourthly, it has emerged from this study that, arising from what can be referred to as the “Cranstonian Hegemony,” is the notion that once something has been recognized as a human right, it should be free for all and that government has to find the money to pay for free services for everyone. In many instances, the politically correct response to this is that government has no money to make such commitments, and that strangles the debate on most socioeconomic rights including the right to water. This argument finds fertile ground in low income countries where governments can conveniently hide

¹⁷⁰ For instance, the current problem of mismatch between fiscal and budgetary cycles have not been attended to mainly due to red tape.

¹⁷¹ See Chapter 3 on the Cranstonian arguments against economic, social and cultural rights.

behind the resources curtain¹⁷². The Zambian case, again is a clear example of this. Although the right to water is acknowledged by ratifying the various international human rights instruments, as well as through the national Constitution (implicitly though), little has been done to implement the right. Even the debate on the right to water is conspicuously mute. Unfortunately, lack of strong commitment to the right to water as noted earlier, has blocked any effort to articulate and effectuate the right. Evidence from the study indicates that there is actually little push for the right to water in Zambia either from below or from above. In such a situation, implementation of RBA faces huge challenges.

Fifth, currently there is not much convincing empirical evidence of the value-added of RBA. Questions about what RBA can do differently from what other approaches implemented earlier are still not clarified yet. Like earlier approaches to development, RBA has been criticized for being just another way of repackaging old wine in new wine skins. Univ(2002) in particular persuasively argues that the incorporation of human rights norms in development is “little more than thinly disguised repackaging of old wine in new bottles” (in Gready & Ensor, 2005:39). While acknowledging that the campaign for the right to water has grown tremendously in the last decade and half, Bakker observes that that the rights approach to water is often dismissed on the grounds that it “resuscitates a public/private binary that recognizes only two unequally satisfactory options—state or market control: twinned corporatist models from which communities are equally excluded” (2007:440). Apart from this, RBA has also been challenged on the basis that it makes a superficial political engagement with the result that it often fails to make radical political claims. Duffield (2001) for instance points out that RBA approach often adopts an *apolitical* discourse in development (in Gready & Ensor, 2005:33). These and other concerns seem to pose a great challenge to the adoption and implementation of RBA as an alternative approach to development, especially to the problem of access to water.

7. 1.1.2 Failure to Take Measures

Based on the information gathered in this study, it has been established that there have been no measures taken towards the realization of the right to water in Zambia. If there are measures taken, they may not have the objective of realizing the right to water for citizens—measures taken may be aimed at increasing access levels, which is different from realizing the right to water.¹⁷³ Other than the *National Water Policy*, which has clearly identified increasing access to water for all Zambians as one of its

¹⁷² However, this is not a convincing excuse given that even those rights which are presumably said not to require resources for their realisation are violated.

¹⁷³ Access to water can be increased without necessarily leading to the realization of the right to water. For instance, access to water can be increased with little regard to the principles of equality, empowerment, accountability and human dignity.

major objective, and the *Peri-urban Water Supply and Sanitation Strategy*, which has focused on improving water services in peri-urban areas, this study could not find any other official document that outlines a clear strategy for implementing the right to water. In fact there is not even a single document, apart from section 112 (c) of the national constitution, that has refers to water as a human right.

At the policy level, access to water is conveniently avoided to be mentioned as a human right. Most of the policy makers interviewed seem to have difficulties with the notion of water as a human right. Although there is a general feeling among the people that water should be a human right, the question of whether water is actually a human right and what that would entail is tactically avoided by policy makers. Hence, while water is acknowledged as a human right, there is no clear recognition of what this entails, and certainly not much has been done beyond mere acknowledgement.

If one applies the requirements of Article 2 (1) of the ICESCR, that states should “take steps with a view to achieving *progressively* the *full realization* of the rights recognized in the present Covenant” (emphasis added), the question that remains to be answered is whether the creation of CUs is an effective way of giving effect to the right to water. *General Comment 3*, which has elaborated on the implications of *Article 2 of ICESCR*, states that steps taken “should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant” (#2).

Reported cases of CUs’ unwillingness to extend services to peri-urban areas do not amount to targeted, concrete and deliberate measures towards realizing the right to water¹⁷⁴. And a programme or strategy that fails to incorporate this principle in its planning, operation and evaluation cannot be said to have fulfilled the obligations of the right to water¹⁷⁵. Neither the state programmes dealing with water nor the water service providers amount to targeted, concrete and deliberate measures towards the realisation of the right to water. Non-existence of programmes or measures to assist those people who cannot afford to pay for water is just one example of the absence of measures taken to implement the right to water. Lack of a clear subsidy programme is another.

¹⁷⁴ General Comment 15, clearly requires that when designing a water supply strategy or programme, special attention be paid to “those who have no means” to access water so as to prevent discrimination (#15). In cases where water services are provided by the third parties, as is the case here, it is still the responsibility of the state to ensure that the strategies adopted by the third parties meet the obligations (*General Comment 15*, #23-24)

¹⁷⁵ The South African Constitutional Court has adopted a *reasonableness test* to determine whether a state programme or strategy fulfills the obligations under a particular right. The Court has argued that “a programme that excludes a significant segment of society” or one that fails to respond to those “whose needs are most urgent” cannot be said to be reasonable (See Grootboom, para 43-44). Flynn and Chirwa (2004) have applied the Court’s arguments to the right to water.

Application of human rights principles requires that those who cannot manage to acquire water on their own be provided with the means to access clean water. This would require identifying¹⁷⁶ those who cannot afford to pay for water, defining the quantity that they would be entitled to and identifying the bearer of the responsibility¹⁷⁷. The current policy framework and strategies in Zambia do not demonstrate any deliberate effort to target vulnerable groups or individuals. For example, it is not clear how the much publicized cross-subsidy policy for water services benefits the poor. Available evidence convincingly show that it is households in the high income category who capture the subsidy (World Bank, 2006). The failure to take measures that incorporates RBA principles into policy and programmes constitute a major challenge for RBA.

7.1.1.3 Rhetoric Versus Reality

In addition, the gap between rhetoric and reality also poses a great challenge to the implementation of a RBA. Despite the progress made during the 1990s in illustrating the connection between human rights and development, commitment to these issues has not moved beyond the rhetorical level. One example that illustrates this is the notion that adopting RBA leads to high taxes¹⁷⁸. Because of such rhetorical tactics, the right to water, and many other social economic rights have not been given any real attention.

Although it could be (and has been) argued that the importance of a right is not whether it is can be enforced, but that it be given effect in many other ways; it is also true that enforceability can create pressure to act in favour of the right. The pressure to act can be created through various avenues

¹⁷⁶ Various methods can be employed to identify eligible candidates (see Mosdell & Leatt, 2005). The most common one is the "means test." Others include geographical or regional, technological as well as self-selecting. Whatever the method chosen, the community should play an important role in identifying who should be eligible for free basic water as is the practice in some communities already.

¹⁷⁷ In some countries, a system of water stamp has been used. For instance in Santiago, Chile, the urban water utility (EMOS) has been using the stamp system which can be redeemed by the state from the water companies or local authority (see Briscoe, 1997:161). In Zambia the community run water schemes have already been using a card system which can be adapted to cover those who cannot afford to pay (see appendix for a sample of the card)

¹⁷⁸ Critics of the welfare economics have reacted by arguing that the assumption that the state will overcome and mend market failures has largely been based on the Keynesian euphoria rampant in the post World War era. Proponents of the Public Choice Theory mainly James Buchanan and Gordon Tullock (1962) have argued that the case of the state overcoming market failures has not been proven. In *The Calculus of Consent*, Buchanan and Tullock have argued that individual state bureaucrats' actions are motivated by self-interest just as individuals in the market are motivated by maximizing utility or gain from any exchange process. Thus, even if government purports to serve the public interest, in the end, the various government officials act in ways that enhance individual interest and not the interest of the public. Buchanan (1986) for instance argues that public welfare does not proportionally increase with increasing government expenditure or increased taxes. Other critics such as Friedman Milton (*Capitalism and Freedom*, 1962) and Frederick Hayek (*The Road to Serfdom*, 1944) have also castigated the notion that the growth of the state expenditure results in increased welfare among citizens.

including public debate, social mobilisation, awareness campaigns and more importantly publicisation of misconduct and failure to fulfil basic obligations. On the basis of the evidence from this study, it is clear that RBA has largely remained at the level of rhetoric with little being done in practical terms.

7. 1. 1.4 Steep Learning Curve

As a new approach to development RBA faces several challenges. One of the reasons for the many challenges faced by RBA is that as a new approach to development RBA requires a lot of clarification as to what it exactly entails, how to implement it and what advantages it brings when compared to other or earlier approaches to development. As Filmer-Wilson has pointed out, the learning curve from the implementation of RBA is still very steep:

Owing to the recent introduction of the RBA into the field of development, empirical evidence to demonstrate its impact at both organization and country level, is limited. Most of the development organizations that have adopted this approach are still at the experimental stage. Case studies of water related development project that are realized through the RBA are particularly scarce (2005:214).

From what has been discussed above, it is clear that most governments have not even attempted to implement RBA. This becomes a great challenge given that the state has control over a great deal of the resources meant for development and indeed much of the development processes. With particular reference to water, the case of Zambia shows that it is indeed difficult to implement RBA if the political commitment to human rights is absent or very low. Thus one of the biggest challenges facing the implementation of a rights-based approach is to convince states to move from the manifesto level commitment to concrete implementation of the RBA principles. This study shows that lack of commitment is a real challenge, particularly in the Zambian case where policy makers are even uncomfortable to refer publicly to water as a human right.

7. 1.2 Access to Clean Water in Peri-urban Zambia

7. 1.2.1 Aggregated Data and Cross-Sourcing of Water

One of the key findings of this study is that many people in peri-urban areas alternate between safe and unsafe sources of water. In all the three communities where interviews were conducted, it was established that there are four different sources of water, namely individuals house taps, communal taps or kiosks, wells and rivers or open dams¹⁷⁹. Through interviews and observation it became clear that the same people who get water from a kiosk or communal tap today, may resort to getting water from an unprotected well or river the next day. Although it is not easy to establish the exact number of

¹⁷⁹ During the rainy season, a good number of households harvest rain water via house roofs.

people who move between these sources of water, the prevalence of supply interruption and high levels of poverty that exist in most peri-urban areas justify the conclusion that a significant proportion of the peri-urban population is affected. This has been confirmed by the DTF Base Line Study which estimates the number of people with access to safe sources of water in peri-urban areas at only 35% (2006: DVD).

Cross-sourcing raises questions about the definitions of “having access to safe sources of water” and consequently about the official figures of people with or without access to safe water. While bore hole water, tap water and water from protected wells is regarded as safe sources (LCMS 2004:2005), the challenge is that there are people who get water from both safe sources and unsafe sources¹⁸⁰. Can a person who get water from a safe today, and from an unsafe source tomorrow be counted as having access to safe sources of water? Related to this is the issues of distance from water sources, safety of persons drawing water, time taken to draw water and the number of water points that a number of household or people share. Though this study did not specifically address issues of distance from water points, safety of water fetchers and so on, these factors must be considered when determining what constitutes access to safe water.

The *LCMS*, which collects the national data, does not specify whether the 53% of households reported to have access to clean and safe sources of water includes or excludes households which move between safe and unsafe sources. In view of *General Comment 15* and the World Health Organisation (2003) standards which stipulate that to realise the right to water, “water supply for each person must be *sufficient and continuous*,” (#12 (a)) people who access clean water intermittently are most likely to be classified as not having access to clean water. And if this conclusion is sustained, the challenge of access to water in Zambia is likely to be more acute than it seems, given that about 70% of the urban population (where access levels are said to be higher when compared to rural access levels) reside in peri-urban areas (World Bank, 2002). In these circumstances it is important to provide data that reflects the actual situation especially in poor communities for policy and strategy reasons. Unfortunately,

When it comes to national surveys, some people—notably the poor—are undercounted because they live in areas that are not officially recognized by governments. Millions of poor people are

¹⁸⁰ A survey with huge data sets like the Central Statistics often is unlikely to catch the practice of people moving between sources. Experience from this study has shown that a number of respondents did not want to disclose that they sometimes get water from the well, especially, out of the fear that their well may be closed if they reveal. So most of them usually reported that they get water either from the communal tap or kiosk or the neighbour. It is only when some members of the community mentioned during interviews that there are some people who sometimes get water from wells or rivers and other times from taps, that the problem was detected.

missing from national statistics. Living in informal settlements, they simply are not counted (HDR, 2007:53).

7. 1.2.2 Ranked High, But A Weak Contender

Interviews with community leaders together with focus group discussions conducted in the three peri-urban communities show that water is a weak contender on the household expenditure budget. This, however, should not be interpreted to mean that water is accorded low priority in relation to other household goods. Water is recognized to be very important as indicated by the fact that almost all of the respondents mentioned that water is life. Despite being ranked high, water competes feebly for the scarce household resources in most peri-urban households.

This seemingly paradoxical situation arises from the fact that although water is highly ranked in most households, because of existing alternative sources (e.g., rivers and wells), its claim on the household expenditure cake is rather weak. In other words because of the existing or available alternative sources of water, which are often free (though usually unsafe, and therefore not perfect substitutes), when there is not enough money in the house, most households decide to leave out water which they can get free from unsafe sources and spare the little resources for things like food which they can not obtain free. In the case of poor households the fact that people are substituting clean water with unsafe water could be a clear indication of the unproportional burden of securing water that most poor households bear. Attempts to estimate the average household spending on water failed due to scanty data at the household level. Based on the rough estimates of the existing water charges, it has been estimated that, on average, 11% or more of household income in peri-urban areas is spent on water.¹⁸¹

While the occurrence of substitutes for water may not be read as an indication of a serious challenge, the consequences of this situation can be very costly to both individual households and the state (Prasad, 2006). Often the opportunity cost of failing to provide such households with clean water is higher. Research conducted in different parts of the world has confirmed that lack of access to clean water for people is economically inefficient, unleashes anti-growth pressures and contributes to the increase in poverty (HDR, 2007). Other than monetary gains, improved water supply has been known to have fiscal benefits in terms of less expenditure on curative measures. Universal access to clean water also has welfare benefits such as increased school attendance, freed time for women and children to engage in other productive activities. Thus, fulfilling people's right to water does not only rest on a

¹⁸¹ Using the LCMS 2004 household expenditure data for low cost, those on fixed charge (K36 000 per month) bill spend more than 20% of their total household expenditure on water alone (see LCMS, 2004:99). Those paying by 20 litre containers pay more than 11% of the total household expenditure.

moral argument, but it is also based on both economic as well as political justifications given the benefits that accrue to individuals and society at large.

7. 1.3 Outcome of Commercialisation of Water Services

7.1.3.1 Uneven Distribution of Burdens and Benefits

Commercialisation of WSS has been underway in Zambia, at least, for the last seven years, and admittedly there have been positive outcomes from the commercialization process. This is in the area of service levels when compared to the level and quality of service prior to commercialization. Examples include improvement in billing system, increased number of pay points, hours of service, collection efficiency, prospect for sustainability, cost recovery profile and customer service in general as observed in Chapter Five.

However, based on evidence from this study, it is clear that these improvements have not accrued to poorer areas like peri-urban and low income communities. In fact, most peri-urban areas have been negatively affected by the commercialisation of water services. One of the negative impact of commercialization of water services is the unwillingness of CUs to extend services to peri-urban areas. Reasons for this reluctance include the alleged low returns, low consumption levels and the high commercial risks associated with peri-urban communities. Other reasons given for the unwillingness to service peri-urban areas include the fact that the areas are not planned and therefore it is difficult to extend the network, and also that most of the people are tenants and so the bill-default rates are high due to high tenancy turnover.

As a result of this, majority of the respondents indicated that people in peri-urban areas still experience erratic supply of water, unannounced supply interruptions, poor services, slow response to customer services, higher water prices, shorter service hours which has been estimated to be averaging only 4 hours a day compared to the average of 16 hours a day for conventional areas (NWASCO, Sector Report, 2005/2006: 7). Because of the CUs pre-occupation with commercial objectives, water services in peri-urban areas where profits are low are often neglected.

This reluctance to improve services in peri-urban communities has had serious consequences such as increased prevalence of diarrhoeal disease. For instance, all the cholera cases reported in Lusaka and other major cities were recorded in low income and peri-urban areas.¹⁸²

7. 1.3.2 Abrogation of State Responsibilities

The other outstanding outcome of the process of commercialisation in Zambia that this study has noted is the *subtle* 'disappearance' of the state on the water supply and sanitation platform. In a sense, the state has cunningly withdrawn from being the guarantor and protector of people's right of access to water to being a spectator at the most. Interviews with government officials, service providers, community leaders and NGOs indicate that since commercial water utilities were established there is a growing absence of the state on the water supply scene especially for urban water supply. Indicators of state withdraw include the fact that previously government, through the Ministry of Community Development and Social Welfare, used to have a programme to help vulnerable groups in communities access basic needs such as clean water, but that seems to have died with the coming of commercial utilities on the scene. All community leaders reported that such programmes do not exist in their communities (see Chapter Six). Similarly, the reported non-existence of a clear subsidy policy is an indication of state's withdraw from the delivery of urban water. Responses from local and central government authorities that government now has nothing to do with water services especially in urban areas because CUs have been created to take over this function, is just one indication of the dominant general view of the state towards urban water supply.

This situation poses a great challenge to realizing the right to water. Whereas the state need not be the service provider, it should play an active role in the processes related to realizing the right to water. As Nigam & Rasheed (1998:4) have argued, the involvement of private sector should not be interpreted to mean that these new actors have relieved the state from its roles and responsibilities. In view of RBA, the state still remains the primary duty holder even in cases where water services are under private management. The apparent failure to take appropriate measures towards the realization of the right to water is another indication of the state's abrogation of its responsibility under the understanding that the other actors (mainly CUs and donors) will fulfil its roles. Commercialisation has contributed to this in as far the appearance of the CUs prevents effective state control over water supply processes.

¹⁸² A Journal for *American Medical Association* (JAMA) study conducted in Lusaka between November 2003 and November 2004 reported that between November 28, 2003 and January 4, 2004, 2 529 cases of cholera resulting in 128 deaths were reported. A similar study covering the period January 5 to March 1, 2004, reported that 2 101 cases of cholera resulting in 28 deaths were reported at the major cholera testing centres (CTC) in Lusaka, and all these cases were from either peri-urban areas mainly Chawama and Kanyama or low income areas (JAMA, 2004).

Reported cases of CUs unwillingness to extend services to low income areas are overlooked on the grounds that this is a private matter to be addressed by commercial water utilities.

7.1.3.3 Reconfiguration of Power and Control over Water

The other important outcome of commercialisation that this study has established is the new configuration of power and control over decision making processes regarding water. Prior to the commercialisation of water services, decisions about water service delivery were matters open for public deliberations and scrutiny. But the formation of commercial water utilities, has resulted in the lifting of the decision-making processes from the public to a private domain. Decisions about water are made at boardroom meetings in an environment dominated by commercial interest, away from public scrutiny. Although the regulator has been created to ensure that public interest is factored into these decisions, the regulator's mandate is limited such that the operation of water services have effectively meant the transfer of control from the public into private hands. In a very significant way, commercialisation has resulted in the loss of democratic control of decisions over water services by the public. This has been a standard result of privatisation everywhere as Swyngedouw (2005) has observed. Apparently, even "[i]nformation that was once in the public domain becomes commodified, takes on commercial significance, and is often treated as confidential" (ibid, 90). Access to information which enables the public to critically examine issues have been ring-fenced and kept away from the public arena. The author's failure to access some information especially on the current water tariff and financial reports from the water companies is just one example.

7. 1.4 Governance and Political Will

7.1.4.1 WSS Sub-sector has Weak Political Clout

Interviews with various key role players in the sub-sector have revealed that WSS is accorded low priority. This is clearly reflected in the low budgetary allocation given to the sub-sector when compared to other social services sectors such as education and health as illustrated in Chapter Five. That water has a weak political punch is clear when one accepts the premise that a budget is a political statement and therefore the various budgetary votes, more or less, reflect political priorities (DiNitto & Dye, 1983). Various reports reviewed all indicate that the sector has not managed to create an influential niche on the budget, hence its ability to compete for scarce resources is weak. Some of the keys players indicated bluntly that WSS is neglected:

I think the sector is generally neglected when you compare it with other sectors administratively, and may be the allocations in the budget (*Policy Maker Interviews, 2006*)

A number of reasons have been advanced to explain this situation . Prominent among them is that the water sector is only beginning to reorganize itself into a well coordinated sector that can exert political pressure. The other reason given for WSS's weakness is the fact that water has multiple users and uses with very diverse interest leading to the fragmentation of the sector. Evidently, the in-fights between lead ministries involved in water confirm this point. If there are fights between the different ministerial departments involved in water resource management and service delivery, it is unlikely that they will speak with one strong voice that can command some political attention.

Evidence emerging from this study indicates that WSS's weakness as regards capturing public resources arises from the fact that problems of access to water services mostly affect the poor people who at the same time have no influence over political processes that determine the way national resources are allocated. As may be apparent from the discussions above, the crisis of water supply is a crisis of the poor—the poor face greater risks from all sorts of challenges related to water.

While it is true that some costs are transmitted to the whole of society, people living in urban slums and marginal rural areas bear the brunt. It is the children of the poor, not of the military high command and the top civil service, that face the greatest risk of premature death from diarrhoea. It is the young girls in poor households that are most likely to be kept home from school (HDR, 2007:61).

Given the fact that most of the poor communities who face the problems of access to water are unable to carve out space on the 'state spaces,' improving access to water, and later on realising the right to water for majority of the poor remains a big challenge. As long as the voices of the poor who suffer from lack of access to clean water most remain unarticulated, the right to water for most of the poor will remain a 'pipe dream.'

7.1.4.2 Donor-Driven, Donor-Dominated Sector

Apart from WSS receiving low political priority, this study has established that the water supply and sanitation sub-sector in Zambia is largely driven and dominated by donors. The role of donors in the sector comes out more prominently than when one looks at the funding to the sub sector. From the initiation of the reforms in the water sector to the running of the commercial utilities, the role of the donor community or cooperating partners has been a decisive one. As indicated in Chapter Five, donor funding to the sector in some years can amount to as high as 98% of total annual resource flow. Interviews with service providers have revealed that a number of the CUs depend, even for meeting their operations and maintenance costs, on donor funds. For both NWSC and LWSC there were strong

indications that sustaining and expanding of services will depend largely on how much help is received from donors.

This heavy reliance on donor finances points to a number of things. One is that the much anticipated and publicized argument that commercialisation of water services would result in increased capacity to attract private capital investment has not materialized in the Zambian case. Interviews with water company officials indicate that attracting private capital investment has not worked in Zambia's WSS sub-sector. The focus is on mobilizing funds from the famous 'cooperating partners.' Second, reliance on donor funding is unpredictable since donor funding always comes with conditionalities or 'strings'. Three, some donors may have their own interests to promote. As a result, heavy reliance on donors can lead to a situation where the state loses the ability to formulate its own development policy and programmes (Fraser, 2007). For instance, commercialisation of water services in Zambia, as in many other poorer nations, has been an agenda pushed by the donor community including bilateral development agencies like DfID (Joy & Hardstuff, 2005).

7. 1.4.3 Lack of Adequate and Responsive Institutions

The other challenge that has been identified in this study with regard to implementing RBA is that, there is a persistent problem in Zambia in most public institutions to plan adequately and implement plans. From the time of the First National Development Plan through the turbulent years of manipulated structural reforms, the capacity to plan and implement plans seems to be wanting. As Bhagwati argues, though one cannot plan for all eventualities to the minute detail, it is important to have what he calls "*perspective planning*" to synchronise the present and future development decisions (1966: 140). Not surprisingly, most of the development challenges recognized in the FNDP in 1966 still surface in the FfNDP in 2006.

Issues surrounding the budgetary process illustrate the challenge of failure to plan and implement plans effectively. A good example is the size and frequency of supplementary budget component which makes it difficult for the planning as well as the spending ministries to stick to plans as the FfNDP (2006) points out:

... persistently large and unbalanced supplemental budgets suggest that greater efforts are needed in this area. These supplementary budgets are in part due to inadequate prioritisation or rationalisation during budget preparation process, such that too many items appear in the budget and are under-budgeted as a result (37).

Another indication is the observed large differences between the amounts approved in the budget and the actual amount released. Reported huge disparities between authorised and disbursed national resources raise the question of the capacity to effectively plan for the contents of the resource envelop. In some projects only about 9% of the authorized budget provision is released (See section 5.4.1). Even the small percentage released is often delayed.

In this instance, the overall impact on development processes, including the ability to improve access to water for many citizens who do not have access to safe sources of water, is immense. Uncertainties in the flow of resources to various development projects do not only undermine the performance of other departments, but often lead to lack of confidence within the system. Thus, it is not surprising that most of the strategies and policies often remain on paper, not because they are ill conceived, but because the implementation process is stalled by lack of adequate planning. Consequences for the economic, social and cultural rights which require well planned, targeted interventions and continuous commitment are obvious. Progressive realization of rights, like the right to water, is likely to elude majority of the poor. Often this comes out as a sign of lack of capacity, but it is largely a problem of lack of political will. Most times, the failure to provide clean water has been blamed on lack of financial resources. But as this study has illustrated, the major constraint to access to water is not just the availability of resources, but lack of political will that often masks itself in popular notions such as lack of capacity.

7.1.4.4 From Product to Processes

From the discussion of various challenges associated with access to water in Zambia, it has emerged that the current condition is a product of multitude of processes representing a constellation of power relations. As illustrated in **Figure 5.13** above, access to water is embedded within a complex array of processes which generate the major factors affecting water supply in communities. From the information gathered, the study has established that the low levels of access to water is not a naturally occurring condition, but one that is a result of the interaction of various socio-political processes. Processes of resource flow to the sector, commercialisation of water services, and processes of regulation of the various actors all have impacted on the levels of access to safe sources of water.

In order to understand the challenges of access to water, it has been suggested in this study that there is need to shift focus from the actual conditions to the processes that produce these conditions. Through the analysis of various processes related to water service delivery, it has become apparent that erratic supply, slow response to customer complaints, low budgetary allocation, unwillingness to extend

services to peri-urban areas, are all outcomes of various socio-political processes. These processes have impacted on how water is delivered, who gets water, who participates in decision making, whose voice is heard, and what receives attention in the WSS. While the mainstream approach to issues of poverty and development, has often been to focus on the “actual spaces produced” (e.g. the lack of access to water or the inability to realize the right to water, for instance), with little attention paid to the actual processes that produce these spaces, this study has shown that while understanding the ‘spaces produced’ is essential, our understanding is incomplete without a clear grasp of the bequeathing processes. Our understanding of the challenges of access to water in Zambia is weak without disentangling the processes of commercialisation, resource flow, community relationship with service providers, the role of donors, notions of citizenship, and indeed the functions of various state institutions including local government.

7.1.5 Access to Water and the Community

7.1.5.1 Weak Community Participation

As noted above, genuine participation is one of the cornerstones of RBA. Thus, lack of genuine participation poses a challenge to the implementation of the right to water. Evidence from this study suggests that there is low level of participation for community members, especially in poor areas. Whatever the reason for the observed low levels of participation, the consequences have been far reaching. For example, the diluted sense of citizenship has contributed significantly to the challenges of access to water that people in peri-urban areas face. Instead of people being active shapers and developers of decisions that affect their lives, many have been reduced to being mere takers of decisions made by other people. Not only that, but people have lost the sense of solidarity and community spirit. Large pools of stagnant dirty water around the communal taps attests to this.

In the absence of social cohesion, it is not only difficult to build solidarity within the communities, but it becomes hard to get the people to engage in collective action. This could probably be the reason why though most members of the community believe that recognizing water as a human right will improve their quality of life, there has been no action stemming from this awareness. Human rights in most of these communities have remained abstract ideals rather than real entitlements. But, As Paulo Friere points out, “freedom is acquired by conquest, not by gift. It must be pursued constantly and responsibly”(1972: 31).

7. 1.5.2 Lack of Support for Community Initiatives

Part of the reason for the observed resignation of people in the communities is that water supply initiatives from the community do not seem to have found favour with policy makers. At one level there is no adequate support in terms of resources to increase the community's capacity to provide water services to its members. As one of the community water scheme officials explains, it is not just financial support, but other forms of support which are critical:

The other thing is the LCC being the mother, as the one that allocates land, they are supposed to be helping us. So when we go to them to say, look we want some help, or giving us land or sometimes we run short of money to paint the tap stands,... you know how people behave. So we were promised that they will help us, but those things are not coming. These are challenges to us. Right now if you go, you find that the tap stands are dirty. We haven't painted them up to now..... (*Community Leader Interviews, 2006*).

At another level, state officials see community water schemes as temporal arrangements. Since community water schemes are actually a new initiative in many peri-urban areas, and not much experience has been gathered on their viability and prospect as alternatives to CUs, there has been reluctance on the part of policy makers to even give them a try. For instance, suggestions to license some of the community water schemes so that they can operate as independent service providers, have been turned down several times on the basis that the sustainability and capacity of these schemes is not guaranteed. An official from one of the NGOs that has been working in peri-urban water supply expresses frustration at government's reluctance to support community water schemes:

...., from the response I got from [NWASCO], that was like an option, but now it is like a closed chapter. So we don't know whether that will be debated, but it is like CUs are the only licensed institutions to provide water and sanitation in the city (*Service Provider Interviews, 2006*).

One surprising thing is that, despite the overwhelming evidence that community run water schemes have served peri-urban communities more effectively than CUs, there is still general reluctance to pilot a few cases to gain some experience on how these schemes can perform as independent providers. This makes it difficult for communities to contribute to the efforts of improving access to water for the poor.

7. 1.5.3 Awareness-Action Gap

Overall, RBA faces the challenge of low levels of awareness among the general citizenry. Even in situations where people are aware of their rights, it is not always the case that these people will assert their rights—it is often easy to let the rights slip away. Understandably, claiming rights is not always easy; one has to fight for them. In most cases, many people have no resources or right information to carryout the claiming or effectuation processes. But even in cases where it is clear that asserting certain

rights would bring some benefits to the people, inaction is often opted for. For instance, while the people interviewed overwhelmingly pointed out that recognizing water as a human right would improve the quality of life, there has been no action in that direction.

Although one could question the profoundness of the conviction that people have about the benefit of the right to water, it can be submitted that the apparent lack of action does pose a challenge to RBA whose effectiveness relies on people's ability to know their rights, the ability to assert them and act towards their realization. A number of local and international NGOs have reported the problem of awareness as a big challenge to implementing a rights-based approach. Lack of awareness of the people's rights on the one hand, but also lack of awareness of the duty bearers on the other (Gready & Ensor, 2005). Now, awareness for both the right-holder and the duty bearer is critical for an effective implementation of RBA given that real human rights "originate from people who exercise them" (Offenheiser & Holcombe, 2003:19), and not just from legislative documents.

7. 2 Recommendations

On the basis of the above findings and conclusions several recommendations are in order.

7. 2.1 Clear Statement on the Right to Water

A stronger recognition of the right to water should be made with the view that such a move would guide efforts in the WSS sub-sector towards the identified objectives. Recognition of a right to water by its very nature would require that a strategy be put in place. A clear recognition of the right to water is advantageous to both right-holders and duty-bearers in as far as it seeks to build the capacity of right-holders to claim the rights as well as that of the duty-bearer to fulfil their obligations (UNHCHR, 2002). Apart from that, it has been widely acknowledged that recognizing water explicitly as a human right would encourage the efforts to meet basic water needs, clearly assign duties and responsibilities, keep the spotlight on water, and also make access to water a policy and budgetary priority (Gleick, 1998). In addition to these merits, it is argued that an explicit recognition of the right to water is likely to result in more effective protection of people's basic needs especially those of the poor (Scanlon, Cassar & Nemes, 2004). While these advantages are acknowledged it must be stressed that the case for explicit or clear recognition should not be overstated. Explicit recognition is only a starting point on the complex road towards the realization of the right to water. Realising the right to water requires well-planned and constant monitored programmes. Such programmes can provide the much needed structures for coordinating various efforts.

7. 2.2 Develop a Well Targeted Strategy

Current evidence that benefits from the reforms aimed at improving access to water are accruing to people who are relatively well served, calls for a well thought out and targeted strategy to ensure that efforts at improving access to safe sources of water are directed primarily at people who are without access. A subsidy policy is one example among many. Reported cases of households that are well-off capturing benefits of the current subsidy arrangement go against the intended purpose of the cross-subsidization policy. The objective of the cross-subsidization is to ensure that those in high-income or high-volume consumers subsidise the cost of water for low-income or low-volume consumers.

At the moment, there is no clear indication that this objective is being realized through such arrangements. Available evidence does not indicate that the intended beneficiaries are benefiting from this arrangement. A well targeted strategy at the levels of investment, subsidy and free basic water is indispensable if the current proportion of people without access to safe sources of water is to be significantly reduced.

7. 2.3 Disaggregate Official Data on the Status of Access to Water

The current system of aggregated reporting on water and sanitation coverage levels is highly misleading and unfair to low-income and peri-urban areas. Reports that present aggregate figures tend to understate the problem of access to water in peri-urban areas. A report saying that access to water in urban areas (when 'urban area' includes low-cost and peri-urban areas) is 86%, when in actual fact access to safe water in these peri-urban areas is just 35%, puts peri-urban areas at a disadvantage. A clear recognition of the disparities between the two areas is critical for policy and the politics of water. If people in peri-urban areas with 35% coverage are swallowed up into the 86% which is for conventional or high income areas, the danger is that people with low coverage may not get the attention they deserve. Therefore, a clear statement of the disparities is an important step towards bringing peri-urban water supply and sanitation in the spotlight. In other words, to reflect the actual levels of access in low income areas, it is important to disaggregate the data.

7. 2.4 Create a Supportive Environment for Community Initiatives

Recent experience from development agents on the ground does support the hypothesis that an effective solution to development problems must build on the ideas from the community. In a multi-dimensional issue such as access to water, it is important not only to work with the community, but also to ensure that solutions are generated from within the communities. Care International's approach in a

number of community schemes in Zambia is one example of an effective way of engaging and supporting community initiatives¹⁸³.

In situations where communities have already come up with a workable solution, it is imperative that such initiatives are provided with reasonable support. An example of this is the community-run water schemes. Though this initiative is not yet proven to be a 'magic bullet,' it deserves to be tested and the results carefully monitored to determine its ability to contribute towards improving access to safe water in a sustainable way. For instance, a community-run water scheme can be supported by providing the technical support such as training the managers in management of small projects. Support could also be provided in the form of facilitating the acquisition of basic infrastructure like a bore hole, pump, land for sinking a borehole, etc. Community run water schemes can also be supported by licensing the scheme on a pilot basis to learn from the challenges and opportunities such a move presents. So far, all these forms of support have either been missing or far from being adequate. One of the rationale for supporting community initiatives is that such programmes are likely to be more inclusive, more responsive, more targeted. Other than that, there is "also some evidence that community-based projects are comparatively cost effective (productive efficiency) because of lower levels of bureaucracy and better knowledge of local costs"¹⁸⁴ (Slaymaker, Christiansen & Hemming, 2005:12).

7. 2.5 Promote Genuine Participatory Systems

Reported weak participation is detrimental to both development as well as the realization of human rights. Not only are the contributions from the communities limited, but the support for the programmes is weak when the communities are not fully involved. Further, weak community participation often implies low sense of ownership and community responsibility which are key in ensuring that a project or programme succeeds. This study has established that the problem of weak community participation exists at three levels namely institutional, information and leadership.

¹⁸³ "The approach we have used for example from what I have been sharing here, is where you go with an open mind and gather information, historical information. For example if you find that there is garbage all over, you don't want just to go to work and remove. You will find it full again next time. So if you want to come up with an intervention that is sustainable you must gather the people and say, when did this problem start? They will tell you a long time, we didn't have this problem. But why do you have this? Because the council used to come and collect and so on. How did that happen? So you need to gather that information. Then you bring them to a level where they have to understand their situation, and see themselves in that situation" (*Service Provider Interviews*, 2007).

¹⁸⁴ Filmer-Wilson has also argued that there are several examples world wide where community run schemes have more advantages over utility water services especially in the area of cost-effective, appropriate technology and empowerment through the use of local knowledge(2005: 233). But other authors have cautioned that community run projects can be used as a way of pushing low service levels, high burden through community supported projects unto poor communities (in Slaymaker, Christiansen & Hemming, 2005)

7. 2.6 Estimate Cost

In order to respond to the current challenge where almost half of the population have no access to safe sources of water, it is essential that rough estimates of how much it would cost to provide those people without access to safe sources of water with sustainable and safe water are produced. Making such estimates enables the planners to see clearly the extent of the challenge. As things stand, there are no clear estimates on how much it will cost to increase access to clean water for people who don't have access to safe water. As the report by the Water and Sanitation Programme indicates, "...it is not clear what the investments requirements are to raise coverage to acceptable levels. This is made even more difficult by the fact that there is no clear information on the available facilities and their state of repair"(2004: 3).

Information about the estimated cost of improving access is key to effective planning and efficient utilization of resources. It is virtually impossible to plan properly and utilize resources effectively, especially in the long term, without estimated costs of the intended plans. Similarly, it does not help to keep on arguing that there is no money to improve access to water without even knowing the resources required. Often, the easy way out has been to use inadequacy of financial resources as the scapegoat.

In terms of implementing the right to water, there is need for considerable effort at identifying those whose right is at risk, then estimating how much it would cost to ensure that at least their right to basic water is safeguarded. Once the cost is know, then it will be possible to begin to suggest funding alternatives in terms of source and funding mechanisms. But as at now, there are no estimates outside of the cost needed to reach the Millennium Development Goals¹⁸⁵.

7. 2.7 Coordinate WSS Effectively

Although much has been, and is being done to reorganize the WSS sub-sector, there is still need for more effective coordination at various levels to increase the capacity of the sub-sector to respond to the challenges it faces. One clear area that this study has noted is the funding area. Current funding mechanisms need to be revisited to create synergies among various actors. Coordination is also needed at the inter-ministerial level so that the various government departments can act in unison and present a strong voice for the development of the entire water sector. Reported in-fighting between different ministerial departments weakens the sector's integrity and reduces the capacity to utilize the resources

Source: WSP(2005:9)

more productively. Coordination should also be done at the NGO-level to ensure that their activities are synchronized.

7. 2.8 Overcome the Apparent Creativity Deficit

There is need to find new ways of implementing and realising the right to water. This calls for more active civil society presence at the community level as voices of the voiceless and not just participants in the water conferences. Evidence from this study indicates that though civil society organisations are present at round table water meetings, their absence on the ground is conspicuous. While it is important to engage at policy level, the tools and information for engaging should be informed by the real situation on the ground. In the same manner, while it is important to attend to the water needs of those who are most in need, involvement should not be limited to just taking care of the needs of the poor. Experience from working with the poor should be the basis for policy advocacy and mobilisation. At the moment, there is very little issue-based advocacy as far as the right to water in Zambia is concerned.

7. 3 Questions and Recommendations for Further Research

This study has raised a number of questions which require further investigation. One such area is the estimation of the cost of providing basic water to vulnerable or indigent households.

Just how much would it require to ensure that people who are failing to pay for water have access to clean water?

What is the impact of paying for water on poor household budgets?

The other area that needs further research is on how rights are perceived by people in poor communities and why that perception leads to action or inaction.

If people perceive rights are something valuable; something that can improve their quality of life, why then do we see little or no action based on that belief?

What are some of the ways in which rights can be deployed to make the right to water a concrete one?

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APPENDIX

APPENDIX I

PRE-PAID MONTHLY USER CARD

CHIBOLYA COMMUNITY WATER SUPPLY SCHEME MONTHLY USER CARD

Yearly membership Amount Paid K RECEIPT NO DATE:

1	✓	✓	✓	✓	✓	8	15	22	29
2	✓	✓	✓	✓	✓	9	16	23	30
3	✓	✓	✓	✓	✓	10	17	24	31
4	✓	✓	✓	✓	✓	11	18	25	
5	✓	✓	✓	✓	✓	12	19	26	
6						13	20	27	
7						14	21	28	

1						8	15	22	29
2						9	16	23	30
3						10	17	24	31
4						11	18	25	
5						12	19	26	
6						13	20	27	
7						14	21	28	

1						8	15	22	29
2						9	16	23	30
3						10	17	24	31
4						11	18	25	
5						12	19	26	
6						13	20	27	
7						14	21	28	

APPENDIX II

Recommended Basic Water Requirement¹⁸⁶

Purpose	Litres per capita/day (lpcd)
Food Preparation	10
Sanitation	20
Drinking	5
Bathing	15
Total	50

Source: Figures from Gleick (1996)

¹⁸⁶ This is what has been suggested by as the basic minimum necessary to sustain life. Of course the requirement of water can be determined by various factor such as climate, cultural practices, health conditions, occupation and social functions. If these factors are taken into account, water basic requirements would be more than what is suggested above. However, WHO, USAID, World Bank, UN International Drinking Water Supply and Sanitation Decade, Agenda 21 have recommended 40lpcd (see Gleick, 1998)

APPENDIX III
Seven Water Sector Principles

1) Separation of WRM from WSS.
2) Separation of regulatory and executive functions within the water supply and sanitation sector.
3) Devolution of authority to Local Authorities and private enterprises
4) Full cost recovery on the long run
5) Human resource development leading to more effective institutions.
6) Technologies appropriate to local conditions
7) Increased funding by the Government of the Republic of Zambia (GRZ)

Source: (National Water Policy, 1994)

APPENDIX IV
ZAMBIA'S Water Sector Reform Objectives

1) Water management is recognised as an important part of economic development
2) All stakeholders work jointly towards achieving the sector objectives including adequate community consultation and participation
3) Lean and efficient institutional structures (ministries, other government institutions and service providers) attract substantial external investments
4) Improving efficiency for urban WSS by promoting commercialisation, Private Sector participation (PSP) and introducing regulation
5) The WSS services are sustainable through cost covering tariffs (payment according to consumption) for urban and cost sharing for rural WSS
6) Clean water and sound sanitation for all in the long run, by introducing tariff structure with social rates for the poor and promoting appropriate technology in peri-urban and rural areas
7) Raising the emphasis on the provision of sanitation services
8) Promoting community management and integration of hygiene education in rural WSS
9) Development of human resource capacity by promoting training in all institutions and Water, Sanitation and Health Education (WASHE) training in rural areas
10) Secure Zambia's interests on shared water courses by efficient integrated WRM
11) Increased knowledge about the sector performance by building up an improved database and adequate information systems

Source: (National Water Policy, 1994)

APPENDIX V

IMPLEMENTING RIGHTS-BASED DEVELOPMENT: THE CASE OF ACCESS TO WATER

COMMUNITY LEADERS' INTERVIEW GUIDE

Name of Interviewee _____

Name/Code of Communal Tap/Water Kiosk _____

Role of Interviewee in Community _____

Date _____

This study is being conducted as part of the requirement for the completion of PHD degree at the University of KwaZulu-Natal, Durban, South Africa. The study focuses on the challenges faced by both public/private institutions and individual families in ensuring that every person has access to basic water.¹⁸⁷ Therefore, the researcher will ask questions about issues related to access to basic water. Focus here will be on the community members' experience of access to basic water. Thus, it will be helpful if the interviewee can answer the questions from the community's perspective.

It is hoped that the information that will be gathered from this study will contribute to the current efforts being made to ensure access to basic clean water for all. Although there are no direct benefits to individual interviewees, the researcher will make sure that the information gathered in this study benefit the Zambian people by making more information available about the water situation in the country. Not only that, but it is our hope that the information to be gathered in this study will contribute to the on-going water sector reforms and policy implementation processes.

All the information that will be gathered in this study will be treated as confidential and no names of informants will be disclosed in the report.

All interviews, will be conducted in a language that the respondent is able to clearly understand and express him/herself. Interviews will be conducted at the time and place convenient to the respondent. Interviewees are under no obligation to answer any or part of the questions asked, nor to participate in these interviews. This study is conducted with the knowledge that your participation in this study is on a voluntary basis. Thank you for accepting to participate in this study.

Section 1: Community Information

- i) Do you know the number of people who get water from this tap/well/kiosk?
- ii) How are people allocated to this tap/well/kiosk?
- iii) Can you briefly describe how the communal tap/well/kiosk functions?
- iv) Who is eligible to get water from this tap/well/kiosk and who is not?
- v) How do you pay for this water since there are many people using the tap/well?
- vi) Has there been a situation when the tap is closed due to non-payment? Briefly Explain.

¹⁸⁷ See annex II for an elaboration on the concept of basic water.

vii) Are there members of this community who refuse to pay for water? Should such people be allowed to get water?

viii) Is there any official programme/policy that deals with such cases? If any, elaborate.

ix) Do you have a **Residence Development Committee (RDC)**. If yes, what does it do especially about the water situation in this community?

Section 2:1 Water Services

i) Would you describe the water services in this community as bad, good or average/improving or getting worse? Explain.

ii) How many hours in a day is the water from the tap or kiosk available?

iii) When water is disconnected, where do you get water? (for communal tap users only)

iv) Have you ever bought water from a neighbour? If so, why did you decide to buy from your neighbour?

v) Which water source (e.g., kiosk, communal tap, well or neighbour, illegal disconnection) do you prefer? Why?

vi) Are there people in this community who have no access to water services? If so what are some of the reasons why these people have no access to the services?

vii) Who provides these services in the community (specify: commercial utility, local government, private, kiosk dealer, own well etc)

2.2 Availability/Accessibility

i) What source of water is available to most members of this community?

ii) Do members of this community have alternative sources of water available? If so, elaborate?

iii) Which source do most community members prefer and why?

vi) Are there members of this community who cannot afford to pay for the water they use? Are such members allowed to get water? If not, how and where do they get the water they need?

v) Are there arrangements to ensure that those who cannot afford to pay (especially the elderly, disabled, orphans, refugees, child headed household, etc) have access to water?

vi) Does the current water service provision system ensure that all members of this community have equal access to water? If so, how?

vii) Is there anything done for those who have no access to water? If so what is being done? (by community, NGO, *especially government* or commercial utilities etc).

2.3 Quality and Quantity

i) Is the water supplied to this community safe for drinking? Explain.

ii) Does the water you receive have a bad smell, colour or suspensions?

iii) Are there people who monitor the safety of the water supplied to this community?

iii) How much water do you *need* per day in your house?

iv) What determines the amount of water you use in a day?

v) If you had more water available, would you still use the same amount? Explain.

vi) How much water do you think an average family of six needs to meet basic requirement? (refer to annex II).

vii) Does making people pay for water make them use water more responsibly? Give an example.

viii) Has the amount of water member of the community are able to access been increasing or decreasing?

2.4 Major Challenges Identified

i) What are the major problems that the community face with regard to access to water?

ii) What do member of the community say is the source or cause of these problems?

- iii) Have you tried to find solutions to these problems? If yes elaborate on solutions. If not why?
- vi) Has the community reported some of these problems to the people responsible for supplying water? If yes, what was the response?
- v) From your experience, are the community's concerns about water supply being addressed? Explain.
- vi) What do you think should be done to address these concerns and who should address these problems?

2.5 Water Service Assessment

- i) Do you think there have been improvements in the number of people accessing water within this community? If so, what are the contributing factors? If not, what causes stagnation or reversal?
- ii) Have you accessed water through the kiosk system? If so what do members of this community think about this system?
- iii) Has the quality (smell, taste, colour, suspended objects, etc) of water supplied to your community improved? Provide examples.
- iv) Has the supply of water to your community changed? If so, in what ways? What do you think has contributed to this change?
- v) What would you say has been the role of the community in bringing about this change in water services?

Section 3:1 Community Participation

- i) How would you describe the community's relationship with water service providers and regulators (outsiders, involved or in between)?
- ii) Have you served on the **Water Watch Group**? If so, what was/has been your experience?
- iii) Do members of the community participate actively in the water issues affecting the community? Give examples.
- iv) In which ways is your community involved in the formulation, implementation and monitoring of the water policy programs or projects in your community?
- v) Was any members of the community involved when the new water policy was being formulated? If so, could you describe how the community was involved?
- vi) Has the community made any suggestions (input) on how the current community concerns about access to water may be addressed? If yes give some examples.
- vii) Are these suggestions reflected in the current water programs or project in your community?
- viii) Do you think that the current water projects/programmes address the community's water concerns?
- ix) Does the community express its concerns about water? How? To Whom?
- x) What are some of these concerns? Have they been addressed? If not why?

3.2 Notions of Rights from Below

- i) Do you think that water should be recognized as a basic human right? Why?
- ii) What would recognizing water as a human right change in the current water situation in this community?
- iii) Do you think water has been recognized as a human right in Zambia? (refer to annex ix)
- iv) Who do you think should decide if water should be a human right or not?
- v) Do you think recognizing water as a human right can improve access to water for people in your community?
- vi) Has the community expressed the need to treat water as a basic human right?
- vii) What are the advantages and disadvantages of recognizing water as a human right?

viii) Do you think that water should be made available to all even those who cannot pay? Explain your answer. Who should take this responsibility?

3.3 Community Awareness

- i) Do community members express their water concerns? If so, how (as a group or individuals)?
- ii) What channels are available for communities to express their concerns (meetings, customer desk, councilors office, MP)?
- iii) Do you think people should pay for water services? Explain.
- iv) What do you do when water is disconnected, supply is disrupted for days, burst pipe, when the water from a tap is dirty, etc?
- v) Have you ever been provided with information about the water you use (how it is produced, the cost of producing it, where it is produced etc)?
- vi) Have you ever called your community leaders, politicians as well as service providers to explain to you when there is no water, when water tariff is increased etc? If so, give examples.
- vii) What are some of the things you expect your leaders to do for the community?
- viii) Are there members of this community who are responsible for ensuring that community needs are addressed? Provide some examples. If not, give reasons why.
- ix) What do you think you should do to ensure that community problems such as shortage or lack of water are addressed effectively?

Section 4: Power Relations

- i) Do you think the problem of access to water in this community has received enough attention? Explain your answer.
- ii) Who is supposed to listen to the water concerns raised by members of this community?
- iv) Where do you go to present your concerns about water; to the service provider or government? Why?
- iv) What role does government play or should play in addressing water concerns from communities?
- v) Are there some members of the community (for example women, youth, people with disability, etc) who do not participate in community meetings/decisions? If so why?
- vi) Whose views in the community get attention?

Section 5: Recommendations

- i) What do you think should be done to ensure that all people in this community have access to water?
- ii) What should be changed about the current water condition in order to improve the situation?
- iii) What role should the community play in ensuring that community problems are addressed?
- iv) How can the participation of community members in community activities be improved?
- v) What role should the government play?
- vi) What role should the non-state actors play?