

---

## PROMOTING WATER QUALITY LAWS ENFORCEMENT AND IMPLEMENTATION IN ZIMBABWE'S URBAN AREAS

MTISIS, SHAMISO<sup>1</sup>

<sup>1</sup> Zimbabwe Environmental Law Association- Zimbabwe, No. 6 London Derry Road, Eastlea, Harare, Zimbabwe, [www.zela.org](http://www.zela.org), [mtisik@yahoo.com](mailto:mtisik@yahoo.com).

### SUMMARY

The governing of how water is distributed, how it is used, and how clean it is, are the substance of a substantial body of law at the local, national and international levels.<sup>2</sup> However, the rights of urban residents to access clean, safe, and adequate water in Zimbabwe are being infringed as the implementation and enforcement of water quality laws and policies are inadequate and ineffective. This paper unravels the mix of factors inhibiting the provision of clean water to residents and access to justice. These include economic decline, poor local governance structures, political interference, corruption, population growth, the decaying water supply infrastructure, and sheer disregard of water quality standards and laws.

This paper is a synthesis of theory and practice. Theoretically, it highlights the key legislative, policy, and institutional gaps and weaknesses in the implementation and enforcement of water quality laws, such as the low penalties for water quality related crimes, promotion of the "polluter pays" principle by the effluent disposal permit system, and the absence of a constitutionally guaranteed environmental right in Zimbabwe. From a practical perspective, the paper mixes theory and practice by analysing civil and criminal court cases handled by the Zimbabwe Environmental Law Association, a public interest environmental law group, based on water pollution in Harare, Gweru, and Mutare. Notably, the major hindrance to enforcing water quality standards through litigation are identified as the lack of an environmental ethic within the judiciary and law enforcement agencies, the long court process, and the current economic problems. Therefore, the thrust of this paper is to create the foundation for political and economic reforms that enhance compliance with environmental laws and access to justice. Additionally, this paper promotes the development of an environmental ethic in the water management and supply institutions, the judiciary, law enforcement agencies, local authorities, the industrial sector, and households. Thematically, this paper falls under the creation of a culture of compliance section, with an emphasis on public access to justice and communicating a compliance message based on practical examples.

### 1 OVERVIEW OF THE WATER QUALITY SITUATION IN URBAN AREAS

The discharge of untreated industrial, municipal, domestic waste, and washing of agricultural chemicals into water bodies are the major sources of pollution in urban areas of Harare, Mutare, and Gweru. The net effect includes water supply

problems, unpleasant odors and taste in tap water, death of fish, and increased growth of weeds, as well as the escalation of water borne diseases, such as diarrhoea, cholera, and dysentery.<sup>3</sup> Consequently, compliance with water quality standards is of paramount importance as water for human consumption must be of high quality and access to safe water should be understood as a basic human right.<sup>4</sup>

Over the years, Harare's sources of water, like Lake Chivero, have become heavily polluted<sup>5</sup> leading the Zimbabwe National Water Authority and the municipality to use eight chemicals to treat the water for drinking. The chemicals are often unavailable which has led to water rationing and people fetching water from unclean sources or boiling tap water. As a result, a number of deaths due to intermittent cholera outbreaks and poor sanitation in high-density suburbs have been reported.<sup>6</sup> On the other hand, the City of Gweru has also faced water quality problems over the years. In 2003, the municipality negligently discharged sewage into drinking water pipes and this contamination caused an outbreak of cholera and diarrhoea in Mkoba suburb.<sup>7</sup> In 1997, the Gweru municipality discharged untreated sewage effluent into Gweru River, which caused the growth of algae and blockage of irrigation pipes belonging to a group of farmers in Mambanjeni communal lands. The farmers were greatly affected as their crops dried and the water could not be used for bathing and washing as it caused itching of the skin.<sup>8</sup> The same situation played out in Mutare where the municipality has been continuously discharging untreated sewage effluent into Sakubva River, negatively impacting the livelihoods of a community living downstream.<sup>9</sup>

It should therefore be pointed out that the protection of rivers and dams that supply water to urban areas is of utmost importance. This can only be achieved if water quality standards are set out in national legislation, regulations, and by-laws. Further, water policies must be effectively implemented and enforced to ensure compliance by the industries, local authorities, and individuals. The following sections will highlight the key administrative, legislative, economic, and political factors inhibiting compliance and enforcement of water quality laws in the country.

## **2 ANALYSIS OF LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL MECHANISMS TO PROMOTE COMPLIANCE**

There is a plethora of legal frameworks that regulate water quality, such as the Water Act (Chapter 20:22), the Water (Waste and Effluent Disposal) Regulations (S.I 274/2000), the Public Health Act (Chapter 15:09), and the Environmental Management Act (Chapter 20:27) as well as by-laws passed by local authorities. These laws stipulate and prescribe administrative measures for ensuring compliance with water quality standards such as effluent discharge permits, investigation and monitoring of pollution. In legal parlance, judicial remedies such as criminal sanctions and civil action are also used as functions of a legal compliance and enforcement structure. Imperatively, the strengths and weaknesses

of administrative and judicial measures in ensuring compliance with water quality standards should be assessed.

## 2.1 Pollution Permit

The issuance of effluent discharge permits is being used as a tool to ensure compliance with water quality legislation. Essentially, the Water Act in Section 68 (1)(a) and the Water (Waste and Effluent Disposal) Regulations criminalize the disposal of waste effluent without a permit issued by the Pollution Control Unit.<sup>10</sup> Color codes, green, blue, yellow and red are used to indicate the threat level of effluent disposals. A blue permit indicates environmentally safe effluent disposals while a red permit indicates environmentally harmful disposals. Conceptually, the permit system denotes the application of the polluter pays principle in the sense that permit holders pay for registration, an environmental monitoring fee, and municipal fees.<sup>11</sup> Polluters in the red category pay more fees for the permit and this was aimed at forcing them to strive to reduce pollution and attain better categories. Nevertheless, the permit system has been rendered ineffective in combating water pollution and promoting compliance with legal requirements due to the low permit fees paid by major polluters, such as local authorities and industries, who find it cheaper to pollute than to invest in costly pollution control technology when they are trying to cut production and operational costs due to the adverse economic and political situation. Zimbabwe National Water Authority water quality technicians confessed that some industries and local authorities in Harare, Mutare, and Gweru that started in the red permit category when the permit system was introduced are still in that category as the red permit fees do not act as an effective disincentive to polluters.<sup>12</sup> Additionally, the fees are not constantly reviewed while inflation is rising.

## 2.2 Monitoring and Investigating Pollution Cases

Through an effective, accurate, and well resourced monitoring and investigation system, unauthorized disposal of waste water and effluent can be easily detected through biological, chemical, and physical analysis. Monitoring and investigation of non-compliance with water quality standards is the duty of officers and inspectors in the Pollution Control Unit in terms of the Water (Waste and Effluent Disposal) Regulations and the Environmental Management Act.

However, monitoring and inspection of pollution cases has been hampered by the economic problems. As a result, the Pollution Control Unit and local authorities in Harare, Mutare, and Gweru are facing critical financial and human resources problems. Many water quality experts and technicians have left Zimbabwe, and most water quality monitoring stations do not have modern laboratory equipment and continuously struggle with transport and fuel shortages.<sup>13</sup> A combination of these factors have emasculated and adversely affected the ability of the Pollution Control Unit to conduct quarterly water quality compliance inspections. Further, inspectors may find it difficult to monitor compliance at night as the Water Act

and the Water (Waste and Effluent Disposal) Regulations only allow them to access disposal sites during normal working hours for purposes of inspection and collection of water samples.

### **2.3 Use of Criminal Sanctions**

Criminal law is the most widely used method of enforcing environmental law although its effectiveness is a subject of debate in many jurisdictions.<sup>14</sup> Accordingly, the Water Act in Section 68 and the Environmental Management Act in Section 57 prohibits water pollution and makes it an offense punishable by a fine or imprisonment. A spot fine can also be levied on a polluter in terms of Statutory Instrument 30 of 2005. For example, Mutare City Council was criminally charged and convicted of polluting Sakubva River and for failing to apply for an effluent discharge permit. Nonetheless, the major criticism against the use of criminal sanctions in promoting compliance with environmental law is the low penalties or monetary fines paid by those convicted of polluting water.<sup>15</sup> For example, in the Mutare Municipality case the criminal court ordered the municipality to pay a paltry fine of Z\$1,500,000 in 2005.

However, despite the low monetary penalty, the judgment is theoretically significant as the court in addition to the fine, ordered the municipality to repair its sewage treatment facilities and to construct a footbridge for the people to cross the polluted river without contracting diseases. Rather depressing is the fact that on the ground the municipality has not complied with the court order as it cites lack of financial resources to upgrade the sewage treatment facilities and to construct the footbridge. Another handicap for using criminal sanctions to enforce water quality standards through the judicial process is the lack of appreciation and awareness of the elements of environmental crimes by magistrates, prosecutors, police officers, and even water quality inspectors. Additionally, while water pollution cases require expert evidence, enforcement has also been hampered by the long delays in the judicial process in Zimbabwe.<sup>16</sup>

### **2.4 Use of Civil Remedies**

Civil law remedies are an equally important method of compelling compliance with water legislation in Zimbabwe for those who suffer personal or economic harm by claiming compensation and applying for court orders compelling polluters to stop polluting water sources or to take other measures. Until recently, not many people relied on civil law remedies to enforce water quality legislation or environmental legislation.<sup>17</sup> The major hindrance to access to justice for many communities is the aspect of legal standing (*locus standi*). However, the Class Actions Act (Chapter 8:17) provides scope for public interest litigation, but the limitation is that before instituting legal action on behalf of others a person is required to make an application to the High Court to have his/her legal standing tested and confirmed by the court before instituting the legal action. In the same vein, there are conceptual constitutional problems in enforcing water and

environmental rights in Zimbabwe. Unlike a number of other African countries, the Constitution of Zimbabwe does not recognize environmental rights, neither does it recognize economic, social or cultural rights.<sup>18</sup> Although the Environmental Management Act<sup>19</sup> espouses environmental rights, these rights are not enforceable as they are just statements of intent.

In spite of this gloomy situation, there has been a steady upsurge of civil law cases based on water pollution as well as nascent positive responses by the courts to enforce the law.<sup>20</sup> In the case of *Moses Mazhande and others v. Chitungwiza Municipality*, residents sued a municipality for negligently discharging raw sewage into homes and Manyame River.<sup>21</sup> The High Court ordered the municipality to take steps to close the sewage drain, to repair its sewage treatment works and to rehabilitate the contaminated land. Another pending case is that of *Dora Community v. Mutare City Council* which also highlights the use of civil law remedies in enforcing water quality standards. The community sought an order to compel the Mutare City Council to stop polluting Sakubva River and to construct a footbridge across the river.<sup>22</sup> Theoretically, the court decision in the *Mazhande* Case was testimony that civil litigation or the threat of it can be a potent tool to enforce and compel compliance with water quality standards. In that case, the municipality was jolted into action, appealing for funds from the government to upgrade the sewage system after receiving court summons. However, the current political and economic problems are impeding litigation efforts as the municipalities and polluters plead the lack of funds as a defense.

### 3 ECONOMIC AND POLITICAL FACTORS

The enforcement and implementation of water quality regime in Zimbabwe can not be isolated from the broader political, social, and political context; doing so hinders compliance. Ideally, a clean water supply system requires infrastructure development by replacing old water networks and improving technology, transparency, and accountability in local governance structures, as well as sustainable and equitable tariffs, effective revenue collection, and investment to improve efficiency. However, Zimbabwe has an ailing economy, characterised by the highest inflation rate in the world standing at over 15 000% and rising. As a result, there are acute shortages of foreign exchange, fuel, spare parts, laboratory equipment, and even experts to repair, refurbish, and expand the sewage treatment plants. Industries are no longer investing in pollution control while local authorities and the Zimbabwe National Water Authority are overwhelmed by the water supply situation.

Political interference and corruption have made matters worse as the Minister of Local Government and National Housing dismissed all local authority councils controlled by opposition political parties replacing them with Commissions and eventually giving the Zimbabwe National Water Authority the mandate to treat and supply water in many municipalities.<sup>23</sup> Political manipulation also affected the water pricing systems as government has consistently controlled the

water pricing structure under the guise of making water affordable to the poor, yet as a way of attracting urban voters during elections. The unsustainable and uneconomic rates being charged for water in urban areas in the face of huge costs for water purification and supply make compliance with water quality standards difficult.<sup>24</sup> In sum, the takeovers, uneconomic and low water charges, and political interference create a fertile ground for corruption in the water treatment and supply business and significantly inhibit the enforcement and implementation of water quality and supply standards.

#### **4 CONCLUSIONS AND RECOMMENDATIONS**

From the above analysis a number of institutional, policy, and legal conclusions and recommendations can be made to promote compliance with water quality laws and standards.

First, the overarching issue in Zimbabwe is that as environmental management is linked to the broader political and economic issues in the country, and there is a need for concrete political and economic reforms. This will trigger investment and the availability of resources required to improve the clean water supply infrastructure and technologies and systematic governance structures. These resources include foreign currency, fuel, spare parts and laboratory equipment, retaining technical experts, and more.

Second, there is need for a new Constitutional dispensation that will protect economic, social, and cultural rights, including a person's right to live in a clean and healthy environment. This will in turn help in the creation and promotion of a culture of compliance and enforcement of environmental laws.

Third, there is need to ensure that criminal monetary penalties and effluent disposal permits are regularly reviewed in line with the hyperinflation trends in the country to make them deterrent and discourage local authorities, individuals, and industries from polluting.

Fourth, there is need to establish an Environmental Court that can deal with all environmental cases, including water quality cases. This should be supported by judicial training on environmental law.

Fifth, public interest law organisations should be capacitated and strengthened to take up cases on behalf of poor communities affected by water pollution and environmental harm.

Sixth point is that training workshops on monitoring and investigation of water quality crimes and environmental crimes for the police, municipal police and the local authorities should also be prioritized, while awareness campaigns must also be conducted among the citizenry on water quality legislation to ensure that they

know their duties and obligations in relation to water quality management thereby creating an environmental ethic and values for compliance.

Last, public policy dialogues for decision makers should be held targeting the national budget and policy making processes to ensure the promulgation of laws and policies that can be implemented with the available financial resources.

## 5 REFERENCES

- <sup>1</sup> The Author is currently on a Research Fellowship Programme with the Advocates Coalition for Development and Environment (ACODE)in Uganda.
- <sup>2</sup> Kochtcheeva L.V, (March 2002) "Enforcing Environmental Policies: A Comparative Analysis of Water Enforcement Strategies in the State of Washington and the Moscow Region of the Russian Federation", Paper delivered at the International Studies Association Annual Meeting, New Orleans , United States of America, at Page 4.
- <sup>3</sup> Zimbabwe National Water Authority (2000), Operational Guidelines for the Control of Water Pollution in Zimbabwe.
- <sup>4</sup> One, The Campaign to Make Poverty History, Clean Water and Sanitation, online accessed 8 October 2007, <http://www.one.org/node/275.html>.
- <sup>5</sup> Gumbo, B. (1997) Water and Sanitation for all: Partnerships and Innovations. Integrated water quality management in Harare. Paper presented at the 23<sup>rd</sup> WED Conference, Durban, South Africa (*Date of presentation unknown*).
- <sup>6</sup> The Daily Mirror, 30 January 2007, Cholera outbreak in Harare, Patience Nyangove online accessed 5 November 2007 <http://groups.google.com/group/Living-in-Zimbabwe/msg/9956cef087de81a5>.
- <sup>7</sup> The Zimbabwe Environmental Law Association was consulted by the Gweru Residents Association in October 2003 to initiate dialogue and consider suing the Gweru City Council over the alleged discharge of contaminated water into drinking water. This case is still pending.
- <sup>8</sup> Zimbabwe National Water Authority (1997) Water Quality Test Report of Gwayi Cathchment.
- <sup>9</sup> Dora Community –vs- Mutare City Council, HC 1312/2005.
- <sup>10</sup> Section 5(1) of Water (Waste and Effluent Disposal) Regulations and Section 68 of the Water Act.
- <sup>11</sup> This principle means that any person who causes environmental pollution or environmental damage is expected to remedy or pay for the damage caused. It is found in Section 4 (2).
- <sup>12</sup> Interview with Water Quality technicians in Harare, May 2005.
- <sup>13</sup> Interview with Water Technicians in Gweru, August 2005.
- <sup>14</sup> Rabie, MA, Loot C, Lyster R and Erasmus R, (1993) "Implementation of Environmental Law" in Fuggle R.F, and Rabie, MA, Environmental Law in South Africa at 128, Juta & Co.
- <sup>15</sup> Glazewski J, (2000) Environmental Law in South Africa, Butterworth, Durban.
- <sup>16</sup> Interview with Water Quality Technician in Mutare, August 2005.
- <sup>17</sup> A Litigation Project initiated by the Zimbabwe Environmental Law Association strengthened the use of civil action in water pollution.

<sup>18</sup> Economic, Social and Cultural Rights are recognised in the South African Constitution and Article XIV of the Constitution of Uganda, which sets the *National Objectives and Directives Principles of State Policy*. The Article states that the state shall endeavor to fulfill the fundamental rights to all Ugandans to social justice and economic development.

<sup>19</sup> Section 4(1) (a) and (c) i).

<sup>20</sup> Information about the cases was obtained from ZELA Litigation Project File, 2003-2007.

<sup>21</sup> Moses Mazhande and others -vs- Chitungwiza Municipality HC No. 111552/03.

<sup>22</sup> Dora Community -vs- Mutare City Council, HC 1312/2005.

<sup>23</sup> The Financial Gazette, 23 April 2004 Mudzuri Sues Mugabe, , accessed 20 October 2007, <http://www.fingaz.co.zw/fingaz/2004/April/April23/5227.shtml>.

<sup>24</sup> The Financial Gazette, 15 July 2004 Cabinet Files, , accessed 20 October 2007, <http://www.fingaz.co.zw/fingaz/2004/July/July15/4685.shtml>.

## 6 BIBLIOGRAPHY

Bruns R. B and Dick R. S, (2000) *Negotiating Water Rights*, International Food Policy Research, New Delhi.

Chenje, M. and Johnson, P. (eds). (1996) *Water in Southern Africa*, SADC/IUCN/SARDC.

Maya, S. R. (1999) *Handbook on consumer water quality and conservation in Zimbabwe*. Southern Centre for Energy and Environment Zimbabwe. Harare

Takawira M, (2001) *Review of Policy and Legislation on Water Pollution: Mambanjeni Case Study*”, unpublished Research paper for the IUCN ROSA Environmental Law Project.

Ncube W, J. Katerere and Chenje M (2002), *“Environmental Rights and Justice”*, in Katerere J and Chenje M (eds), *Environmental Law and Policy in Zimbabwe*, SARDC, Harare.

Zimbabwe National Water Authority, (2000) *Operational Guidelines for the Control of Water Pollution in Zimbabwe*.

Kochtcheeva L.V, (March 2002) *“Enforcing Environmental Policies: A Comparative Analysis of Water Enforcement Strategies in the State of Washington and the Moscow Region of the Russian Federation”*, Paper delivered at the International Studies Association Annual Meeting, New Orleans , United States of America.

Rabie, MA, Loot C, Lyster R and Erasmus R, (1993) *“Implementation of Environmental Law”* in Fuggle R.F, and Rabie, MA, *Environmental Law in South Africa* at 128, Juta & Co.

Gumbo, B. (1997) Water and Sanitation for all: Partnerships and Innovations. Integrated water quality management in Harare. Paper presented at the 23<sup>rd</sup> WED Conference, Durban, South Africa (*Date of presentation unknown*).

Glazewski J, (2000) Environmental Law in South Africa, , Butterworth, Durban.

Financial Gazette, 17 September 2004.

The Herald, Monday 27 September 2004.

*Excerpt from the Proceedings of the International Network for Environmental Compliance and Enforcement's (INECE) Eighth International Conference, Linking Concepts to Actions: Successful Strategies for Environmental Compliance and Enforcement, held 5-11 April 2008, in Cape Town, South Africa.*

Reproduction of this document in whole or in part and in any form for educational or non-profit purposes may be made without special permission from the INECE Secretariat, provided acknowledgement of the source is included.

The INECE Secretariat would appreciate receiving copies of any materials that use this publication as a source.

Opinions expressed are those of the authors and do not represent the views of their governments or organizations, the INECE Secretariat, or Cameron May.

Please access <http://www.inece.org/conference/8/> for the full Proceedings.

INECE Secretariat  
2300 Wisconsin Ave, NW Suite 300B  
Washington, DC 20007  
[inece@inece.org](mailto:inece@inece.org)  
<http://www.inece.org>