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| **National Water Laws in South Africa** |      |

Over the last fifteen years, South Africa has completely reworked its legislative and policy framework (Kranz *et al.* 2005).

Documents related to water laws in [South Africa](http://www.orangesenqurak.org/doccentre/national.aspx) can be viewed in the Document Centre.

**Legislative Framework**

Change in the water-related laws and institutions in the last decade has been guided by the National Water Policy White Paper of 1997. This document also stipulates a benefits-sharing approach for international water resources, in accordance with the Helsinki rules. It favours work at the regional level for water management, to enable all affected parties to participate and to address the requirements of IWRM. Nonetheless the national government is assigned “central responsibility” for the water resources, implying precedence of the national level over the regional one. Transboundary issues can take priority as well: the National Water Policy says that the government “will have the right to allocate water to downstream countries in preference to local water allocations”, and for transboundary basins, “the whole shared catchment will be the basis for decision making, particularly where more than two countries are involved”.

South Africa’s waters are governed by the Water Services Act of 1997 and the National Water Act of 1998. The Acts are complementary and provide a framework for sustainable water resource management while enabling improved and broadened service delivery. The National Water Act is founded on the principle that all water forms part of a unitary, interdependent water cycle, and should thus be governed under consistent rules. It contains comprehensive provisions for the protection, use, development, conservation, management and control of South African water resources. The strategic objectives are stipulated in the National Water Resource Strategy (NWRS; DWAF 2004).

Recent transformations in the water resource sector include a shift from central management to a de-centralised system. Water Management Areas have been established, defined largely by hydrological catchment borders, and Catchment Management Agencies will be the main administrative bodies.

The National Water Act also facilitates the implementation of international water management. Management of this kind will be executed by bodies created to implement international agreements; Chapter 10 of the Act set the rules by which these bodies may be established and operated. Existing bodies (the Trans-Caledon Tunnel Authority, the Komati Basin Water Authority and the Vioolsdrift Noordoewer Joint Irrigation Authority) are covered Chapter 10.

**Institutional Responsibilities**

The Minister of Water Affairs is responsible for managing and administering water resources as the public trustee, ensuring that the country’s water resources are managed for the benefit of all, that water is allocated equitably, and that environmental values are promoted.

The Minister of Water Affairs retains the functions of specification of international water obligations, contingency planning for future needs, and authorising inter-basin transfers or water uses of strategic importance (ORASECOM 2007j). Other functions are delegated to officials in the Department of Water (DWA). The DWA is responsible for implementing the two major legal instruments relating to water, the Water Services Act No. 108 of 1997, and the National Water Act No. 36 of 1998 (NWA). The NWA is to be implemented through the National Water Resource Strategy (NWRS).

These Acts dramatically altered South Africa’s institutional structure for the management of water resources. The move to integrated management, with the catchment as the basic unit of management (regional level management), delineated 19 water management areas (WMAs) in South Africa. The Orange-Senqu Basin in South Africa spans five: the Upper and Lower Orange, and the Upper, Middle and Lower Vaal WMAs. Each of these water management areas will eventually become the responsibility of its own Catchment Management Agency (CMA), a function that is currently undertaken by the DWA South Africa.

Furthermore, the NWA provides for Water User Associations (WUAs) to be set up as localised bodies (within a particular WMA); they may or may not have water management activities devolved to them.

There are also advisory bodies to advise the Minister on the particular issues, such as the Board of a CMA, or the Advisory Committee on the Safety of Dams. Institutions may be established to manage infrastructure or development projects that traverse regional or national boundaries.

The NWRS also mentions institutions established for international water management. This does not refer to bodies such as ORASECOM, which is an international organisation, but rather to national institutions that are implementing organisations for the provisions of an international treaty. Examples of such institutions are the Trans-Caledon Tunnel Authority (TCTA) and the Vioolsdrift Noordoewer Joint Irrigation Authority, which now falls under the PWC.

The Water Tribunal is an independent body, established by the Minister under the NWA, and deals with appeals against any administrative decisions made by the water management institutions described above.

In addition, the Department of Environmental Affairs and Tourism (DEAT) has links to water resources, since the provisions of the NWA must accord with environmental policy under the National Environmental Management Act (NEMA) of 1998. Furthermore, the Municipal Structures Act of 1998 gave responsibility for delivery of water services (water supply and sanitation) to District Municipalities through Water Services Authorities (WSAs).

With regard to the Orange-Senqu Basin, South Africa’s institutional structure is highly complex (ORASECOM 2007j). Five WMAs and at least 20 WSAs have jurisdiction, including the powerful Gauteng municipalities governing the cities of Johannesburg and Pretoria. The complexity of this institutional structure could extend the time needed to implement an adequate integrated management strategy internationally.

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| **National Water Laws in Namibia** |      |

Namibia gained independence from South Africa in 1990; its policy and legislation naturally reflects their origin, though since independence it has adopted a number of important water reforms. Namibia’s institutions and laws are in transition to a new and comprehensive Water Act (ORASECOM 2007j).

Documents related to the national water laws in [Namibia](http://www.orangesenqurak.org/doccentre/national.aspx) can be viewed in the Document Centre.

**Legislative and Policy Framework**

Namibia has enacted several important water reforms since independence in 1990 including the [Water Supply and Sanitation Sector Policy](http://www.orangesenqurak.org/doccentre/national.aspx) (1993) and the [National Water Policy White Paper](http://www.orangesenqurak.org/doccentre/national.aspx) in August 2000, which formed the basis for new Water Act (Kranz *et al.* 2005b).

Namibia’s legislative framework for water management is established by the Water Act No 54 of 1956.  The purpose of the Water Act is to control the use and conservation of water for domestic, agricultural, urban and industrial purposes. Other relevant Acts include:

* The Namibia Water Corporation Act (Act 12 of 1997), which stipulates that the Corporation is to supply water to customers
* The Mountain Catchment Areas Act, 63 of 1970
* [The Water Resources Management Act](http://www.orangesenqurak.org/doccentre/national.aspx), promulgated in December 2004.  The 2004 Act is in the final stages of review and has been enacted but not commenced.

The Water Resources Management Act of 2004 classifies water resources as national assets, and provided a modern legal framework for managing water resources based on the principles of integrated water resources management. The 2004 Act states that Namibia shall start to “promote the equitable and beneficial use of international watercourses, based on general accepted principles and practices of international law”. Once this act commences, it will replace the 1956 Water Act. Namibia was begun implementing a number of requirements of the new Act, such as, the establishment of Basin Management Committees.

**Institutional Responsibilities**

Several new institutions are to be established under the new Water Act. They include a Water Advisory Council, Basin Management Committees, Water Regulatory Board and a Water Tribunal (ORASECOM 2007j).

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| National Water Laws in Lesotho |      |

The entire country of Lesotho falls within the borders of the Orange-Senqu River basin. As it operates major infrastructure projects jointly with South Africa, Lesotho’s policy framework is closely tied to South Africa’s—strongly influenced by the Lesotho Highlands Water Project (Kranz et al. 2005). Policy and legislation in Lesotho are in transition to a more integrated framework (ORASECOM 2007j).

Documents related to the national water laws in [Lesotho](http://www.orangesenqurak.org/doccentre/national.aspx) can be viewed in the Document Centre.

## ****Policy Framework – National Environmental Policy****

The 1998 [National Environmental Policy](http://www.ecs.co.sz/env_leg_lesothoenvpolicy.htm) provides the framework for water policy development in the country. The policy stems from the Constitution of Lesotho of 1993, Section 36:

“Lesotho shall adopt policies designed to protect and enhance the natural and cultural environment of Lesotho for the benefit of both present and future generations and shall endeavor to assure all citizens a sound and safe environment adequate for their health and well being.”

The policy acknowledges the “periodic prolonged drought and scarcity of water for agriculture” and “pollution of land and water courses” in its preamble. It references commitment to international environmental treaties and advocates providing access to portable water for all people (Government of Lesotho 2001). The policy also introduces the notion of the polluter-pays principle.

The specific references to water resources management are presented below.

## Water Resource Management

### ****Box 1: Basic Principles and Strategies in the Lesotho National Environmental Policy Related to Water Resources Management****

 **“Objective:** To develop integrated and coordinated, effective and efficient approaches to conservation and use of limited water resources, and to promote its conservation and availability in sufficient quantity on long term sustainable basis.

**Guiding principles:**

1. The involvement of stakeholders contributes to the efficiency, sustainability and success of water projects, as local stakeholders often have more detailed knowledge of the local areas which may not be available to the agencies implementing or financing the projects.
2. All people should have access to potable water in order to reduce the incidence of water-borne diseases and the time devoted by women and children to water collection.
3. The training of the public in water conservation habits and techniques has been shown to contribute to the judicious management of scarce water resources.
4. The sustainable development of small-scale irrigation schemes based on surface water resources via the construction of small dams and diversion of rivers is totally dependent on the improvement and stabilisation of soil conservation and afforestation measures in the catchment areas serving these schemes.

**Strategies:**

1. Promote the four guiding principles of rational utilisation, protection, conservation and management of water resources, based on community needs and priorities within the framework of economic development policy.
2. Encourage water harvesting strategies.
3. Implement the Water Master Plan and investment programmes based on interactive databases, forecasting models and environmental considerations.
4. Support drought and other risk preparedness programmes.
5. Promote research and conservation of shared water course systems and resources with neighbouring countries in the SADC region.
6. Develop and strengthen capacities of relevant agencies, especially WASA, in the use and re-use of water, and in quality and quantity management.
7. Promote research on, and the protection of, ground water resources.
8. Develop and enforce standards for water quality and pollution control.
9. Protect and rehabilitate fragile mountain ecosystems; and promote an integrated basin-wide planning approach.
10. Conduct nation-wide survey to develop riverine fisheries database.
11. Demonstrate the rehabilitation of a selection of silted reservoirs for fish production, and rehabilitate fish hatcheries for production of African catfish, common carp and rainbow trout and others, but be cautious about potential impact of introduced species on native fish and biodiversity.”

Source: Government of Lesotho 2001

## ****Policy Framework – National Water and Sanitation Strategy****

In 2007, the Ministry of Natural Resources released the [Lesotho Water and Sanitation Policy](http://www.orangesenqurak.org/doccentre/national.aspx). Its foreword aligns it with Agenda 21, the Dublin Principles, the Helsenki Rules, SADC Declaration, SADC Regional Water Policy and the SADC Protocol on Shared Watercourses (Government of Lesotho 2007).

Access to clean water was enshrined in Lesotho's National Water and Sanitation Policy. The national goal was to provide 30 litres of clean water per person per day, and to ensure that the travelling distance required to collect clean water did not exceed 150 metres (Reuters 2008).

Transboundary water resources are addressed in Policy Statement 4 of the Water and Sanitation Policy which states the intention to:

“Manage trans-boundary water resources on the basis of Lesotho’s sovereignty in a way that ensures maximum benefits while taking cognisance of her obligations to downstream users under international law.” (Government of Lesotho 2007)

The strategies to achieve this objective including promoting cooperation, adopting IWRM, and promoting a bilateral initiative for the development and implementation of an integrated planning framework for the Mohokare/Caledon River basin. Two of the five strategies promote knowledge management, including developing a monitoring system and a management information system for water resources.

## ****Legislative Framework****

The legislative framework for water resources management in Lesotho is the Water Resources Act of 1978, and the organisation responsible for implementing the Act is the Department of Water Affairs (DWA) within the Ministry of Natural Resources.

The Water Resources Act stipulates the requirements for obtaining a permit for any water use other than for domestic purposes, and specifies that domestic water use takes priority over other uses. Under the Water Resources Act, the Minister of Natural Resources can declare certain areas protected for the purpose of development. Further legislation relevant to water resources is dispersed in several orders and acts administered by different departments.

The Lesotho Environment Act of 2001, although not currently in force, acts as a principle document affecting environmental management of water and land resources (ORASECOM 2007j).

The [Water Act (2008)](http://www.orangesenqurak.org/doccentre/national.aspx) was recently enacted by the Parliament of Lesotho to 'provide for the management, protection, conservation development and sustainable utilisation of water resources'.

## ****Institutional Responsibilities****

The Office of the Commissioner of Water, within the Ministry of Natural Resources, is mandated to promote coordination of programs and activities within the water sector (Government of Lesotho 2007). The Commissioner is responsible for the Department of Water Affairs and Rural Water Supply (DRWS). Additional, the Commissioner overseas two parastatals: the Lesotho Highlands Water Development Authority (LHDA) and the Water and Sewage Authority (WESA) (ORASECOM 2007j).

According to an institutional assessment of the technical capacity is limited within Lesotho to implement an more integrated framework (ORASECOM 2007j).

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| **National Water Laws in Botswana** |      |

Information on the legal and policy framework is difficult to access. However, it is apparent that the policy framework is over 15 years old and requires revision to reflect the principles of IWRM and international agreements (ORAESCOM 2007j). Institutional arrangements in Botswana are not aligned with the policy framework within the water sector.

Documents related to the national water laws in [Botswana](http://www.orangesenqurak.org/doccentre/national.aspx) can be viewed in the Document Centre.

**Policy Framework – National Water Master Plan**

Water policy in Botswana is guided by the Botswana National Water Master Plan (NWMP) developed in 1991. The National Water Master Plan emphasises the importance of groundwater.

The activities emphasised in the National Master Plan (Kranz *et al.* 2005b):

* Monitoring of groundwater wellfields to avoid depletion
* Promoting alternative technologies for water management and conservation
* Management and development of water supplies by local communities
* Ensuring greater co-ordination between Government institutions in water management decisions
* Mandate Environmental Impact Assessments (EIA) during project feasibility studies
* Building interconnected water supply schemes to address drought-related issues

**Legislative Framework**

The Water Act of 1968 provides the legislative framework for water management in Botswana, and established the Water Apportionment Board (WAB) as the licensing authority. The following principles are established within the Water Act (Kranz *et al.* 2005b):

* The status of public water
* The inherent rights of individuals to the use of water
* The recording, granting, variation, and termination of formal rights to use or impound water or to discharge effluents into it
* The obligations of those taking water to use it properly
* Conditions controlling pollution of public water.

The Borehole Act of 1956 stipulates the records and samples which have to be kept and furnished to the Director of the Department of Geological Survey (DGS) by anyone sinking a borehole more than 15 m below the surface, or deepening an existing borehole (Kranz *et al.* 2005b).

The Water Utilities Corporation Act (WUC) was enacted in 1970 and amended in 1978. It established the Water Utilities Corporation, a corporate body wholly owned by the Botswana government with a mandate of providing potable water to Botswana's urban centres and developing the nation’s water resources.

A draft [Water Bill](http://www.orangesenqurak.org/doccentre/national.aspx) is under review (Kranz *et al.* 2005b).

**Institutional Responsibilities**

The principal institution for the management of water resources in Botswana is the Ministry of Mineral Resources and Water Affairs (MMRWA) (ORASECOM 2007j). A number of departments and parastatal organisations that fall under the MMRWA (ORASECOM 2007j):

* The Department of Water Affairs (DWA) is mandated to collect data, develop water resources and provide water to major villages
* The Department of Geological Surveys (DGS) maintains responsibility for research of groundwater resources under the Boreholes Act
* The Groundwater Division of the DWA collaborates with the Hydrogeological Division of the DGS, and is responsible for drilling for and siting of small-scale water supply schemes
* The Water Apportionment Board (WAB) is a quasi-judicial body, which holds responsibility for the administration of water use licenses and rights, including mining projects
* The Water Utilities Corporation (WUC) supplies water to the urban centres and operates the major dams and the North-South carrier (from the Limpopo Basin)

Other relevant ministries include the Ministry of Local Government and Lands (MLGL), which is mandated to supply water to rural villages.

At the local level, formal community structures are centered around the *kgotla*, a community meeting forum (ORASECOM 2007j). Water-related disputes at the local level are resolved through the *kgotla*.