REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON ENERGY, WATER DEVELOPMENT AND TOURISM

ON THE

INTERNATIONAL CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

Published by the National Assembly of Zambia

LIST OF ACRONYMS

SADC – Southern African Development Community
SDGs – Sustainable Development Goals
UNECE – United Nations Economic Commission for Europe

FOREWORD

Honourable Madam Speaker, the Committee on Energy, Water Development and Tourism has the honour to present its Report on the consideration of the International Convention on the Protection and Use of Transboundary Watercourses and International Lakes for the Third Session of the Thirteenth National Assembly. The functions of the Committee are set out under Standing Orders 209(d) and 210(f) of the National Assembly of Zambia Standing Orders, 2024. Specifically, Standing Order 210(f) provides that a Portfolio Committee shall consider International Agreements, Conventions and Treaties referred to it by the Speaker or a resolution of the House.

The Committee held ten meetings to consider submissions from stakeholders in order to acquaint itself with the ramifications of the International Convention on the Protection and Use of Transboundary Watercourses and International Lakes. The Committee sought both written and oral submissions from various stakeholders. The list of stakeholders is at Appendix II of the Report. The Report is organised in three parts. Part I provides a background and summary of the provisions of the Agreement, Part II presents the summary of submissions from stakeholders, while Part III constitutes the Committee's observations and recommendations.

The Committee is grateful to the stakeholders who tendered both written and oral submissions. It further wishes to thank you, Madam Speaker, for affording it the opportunity to scrutinise the International Convention on the Protection and Use of Transboundary Watercourses and International Lakes. The Committee's appreciation is further extended to the Clerk of the National Assembly for the support and guidance rendered throughout its deliberations.

Mr Romeo Kangombe, MP
CHAIRPERSON

July, 2024
LUSAKA

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1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Mr Romeo Kangombe, MP (Chairperson); Mr Chanda A B Katotobwe, MP (Vice-Chairperson); Ms Mirriam C Chonya, MP; Mr Davis Chisopa, MP; Ms Kampamba Mulenga, MP; Eng Raphael S Mabenga, MP; Mr Michael J Z Katambo, MP; Mr Lameck Hamwaata, MP; Dr Chitalu Chilufya, MP; and Mr Stanley K Kakubo, MP.

PART I

2.0 BACKGROUND TO THE UNITED NATIONS WATER CONVENTION

The United Nations (UN) Water Convention (Convention on the Protection and Use of Transboundary Watercourses and International Lakes) was adopted in Helsinki, Finland in 1992 and entered into force in 1996. Initially exclusive to United Nations Economic Commission for Europe (UNECE) Member States, the Convention was amended in 2003 to permit accession by all UN Member States, with the amendment becoming effective in February 2013. The UN Water Convention focused on strengthening transboundary water cooperation and measures for the ecologically sound management and protection of transboundary surface waters and groundwaters. The Convention's implementation initially contributed to the achievement of the Millennium Development Goals. It similarly supported the reaching of the Sustainable Development Goals (SDGs) and contributed to other international commitments on water, environment and sustainable development.

Domestically, Section 3(2) of the *Ratification of International Agreements Act, No. 34 of 2016,* stated that the Minister shall, in determining whether it was in the best interests of the State to ratify an international agreement, consider:

(a) the object of the international agreement;
(b) whether existing legislation adequately addressed the object of the international agreement;
(c) the impact of implementing any measure specified in the international agreement; and
(d) any legislative measures that may be required to give effect to the international agreement.

With this background, the Government of the Republic of Zambia proposed to accede to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

3.0 OBJECTIVES OF THE UNITED NATIONS WATER CONVENTION

The Committee was informed that the broad objectives of the UN Water Convention, amongst others, were to:

(a) provide a global legal framework for strengthening and intensifying control, protection and use of transboundary watercourses and international lakes;
(b) create a global platform that will help member states, to conduct and monitor activities that were to be implemented on transboundary waters; and
(c) facilitate cooperation through bilateral or multilateral agreements regarding the prevention, control and reduction of transboundary impact.

4.0 SALIENT PROVISIONS OF THE UNITED NATIONS WATER CONVENTION

The salient provisions of the Convention are as set out hereunder.

Article 3 – Prevention, Control and Reduction
This Article, among other things, aimed to prevent, control and reduce transboundary impact. It further mandated that the Parties should develop, adopt, implement and, as far as possible, render compatible relevant legal, administrative, economic, financial and technical measures, in order to reduce the emission of pollutants at source through the application of low and non-waste technology, among other things.

Article 5 – Research and Development
This Article related to research and development by providing that Parties cooperate in the conduct of research into and development of effective techniques for the prevention, control and reduction of transboundary impact.

Article 9 – Bilateral and Multilateral Cooperation
Article 9 provided that the Riparian Parties should, on the basis of equality and reciprocity, enter into bilateral or multilateral agreements or other arrangements, where these did not yet exist, or adapt existing ones, where necessary to eliminate the contradictions with the basic principles of the Convention, in order to define their mutual relations and conduct regarding the prevention, control and reduction of transboundary impact.

Article 12 – Common Research and Development
This Article provided for Riparian Parties to undertake specific research and development activities in support of achieving and maintaining the water-quality objectives and criteria which they had agreed to set and adopt.

Article 13 – Exchange of Information between Riparian Parties
Article 13 required that Riparian Parties to exchange reasonably available data on:

(a) Environmental conditions of transboundary waters;
(b) Experience gained in the application and operation of best available technology and results of research and development;
(c) Emission and monitoring data;
(d) Measures taken and planned to be taken to prevent, control and reduce transboundary impact; and
(e) Permits or regulations for waste-water discharges issued by the competent authority or appropriate body.

Article 14 – Warning and Alarm Systems
This Article provided that Riparian Parties should, without delay, inform each other about any critical situation that may have a transboundary impact. The Riparian Parties were to set up, where appropriate, and operate coordinated or joint communication, warning and alarm systems with the aim of obtaining and transmitting information.

Article 16 – Public Information
Article 16 required Riparian Parties to ensure that information was available to the public at all reasonable times for inspection free of charge and provide members of the public with reasonable facilities for obtaining from the Riparian Parties, on payment of reasonable charges, copies of such information.

Article 22 – Settlement of Disputes
Article 22 aimed to provide member states with a dispute settlement mechanism that would be able to resolve any dispute that arose. Further, it clarified which court would have the jurisdiction to hear and determine any dispute that may arise.

PART II

5.0 SUMMARY OF STAKEHOLDER SUBMISSIONS

The Committee learnt that the UN Water Convention required Parties to prevent, control and reduce transboundary impact. It also required Parties to use transboundary waters in a reasonable and equitable way and ensure their sustainable management. The Water Convention further expected Parties bordering the same transboundary waters to cooperate by entering into specific agreements and establishing joint bodies. The Committee was further informed that the Convention did not replace bilateral and multilateral agreements for specific basins or aquifers, but instead fostered their establishment and implementation, as well as further development. The Convention aspired for a balanced approach, based on equality and reciprocity that offered benefits to and placed similar demands on both upstream and downstream countries.

The work of the Convention had evolved over the past 20 years in response to the changing needs of Parties and often other countries, including those from outside the UNECE region. This included addressing emerging issues such as ecosystem valuation, adaptation to climate change and the water-food-energy-ecosystems nexus in the transboundary context, thereby becoming a key driver for continuous progress on transboundary water cooperation. It further contributed towards the attainment of SDG Indicator 6.5 which sought to track the implementation of integrated water resources management at all levels, including through transboundary cooperation as appropriate by 2030. More importantly, Indicator 6.5.2 tracked the percentage of transboundary basin area within a country that had an operational arrangement for water cooperation.

Most stakeholders who appeared before the Committee were of the view that Zambia should accede to the UN Water Convention, even though being party to the convention would come at a cost to the National Treasury. However, other stakeholders were of the view that Zambia was party to other conventions and agreements that adequately catered for transboundary waters and recommended that accession to the convention should be delayed pending more scrutiny.

The submissions from stakeholders are summarised hereunder.

5.1 Situational Analysis of Zambia's Shared Watercourses

The Committee learnt that Zambia was dominated by two major river systems, namely the Zambezi and Congo. The Zambezi River and its tributaries, including the Kafue and Luangwa, covered a significant portion of the country. In the north, the Congo River system encompassed rivers like the Chambeshi and Luapula, while Lake Tanganyika was shared with neighbouring countries. These catchments required formal demarcation through legal instruments.

The Committee was further informed that management of these water resources was becoming increasingly complex due to growing industrial and livelihood demands, the need for increased hydropower generation, and expanding agricultural activities. These challenges

were compounded by cross-border pressures on shared watercourses. To address these challenges, Zambia had initiated the implementation of Integrated Water Resources Management (IWRM). This approach aimed to promote rational, optimal, and sustainable management, protection, conservation, and control of water resources to meet current and future needs.

5.2 Existing Legislation and International Treaties

5.2.1 Legal Framework

The Committee was informed that the primary law overseeing water management in Zambia was the *Water Resources Management Act No. 21 of 2011*. The Act established the Water Resources Management Authority (WARMA) and outlined its functions and powers as well as aimed to manage, develop, conserve, protect, and preserve water resources and ecosystems. The Act further ensured the equitable, reasonable, and sustainable utilisation of water resources and guaranteed the right to access water for domestic and non-commercial purposes, with a special focus on providing free and sustainable water sources for the poor and vulnerable members of society.

5.2.2 International Treaties

The Committee was informed that Zambia actively participated in international efforts to manage water resources responsibly. The country had formally agreed to and adopted various international agreements focused on water management and use. These included:

(a) The Zambezi River Authority (ZRA): a bilateral instrument between the Republic of Zambia and Zimbabwe, responsible for managing the Zambezi River.
(b) The Revised Protocol on Shared Watercourses of 2000: a regional agreement within the Southern African Development Community (SADC).
(c) The Convention on the Sustainable Management of Lake Tanganyika: an international instrument which established the Lake Tanganyika Authority comprising of Zambia, Burundi, Tanzania and DR Congo which convention focused on protecting this shared resource.
(d) The Zambezi Watercourse Commission (ZAMCOM) Agreement: a regional agreement for managing the Zambezi River, with eight riparian states namely: Angola, Botswana, Malawi, Namibia, Mozambique, Tanzania, Zambia and Zimbabwe.
(e) International Commission of Congo-Oubangui- Sangha (CICOS): Zambia was an observer member of the Basin and was in the process of becoming a party to CICOS.

5.3 Merits of the United Nations Water Convention

The Committee was informed that there were a number of benefits that would accrue to Zambia if it were to accede to the UN Water Convention. Stakeholders highlighted the benefits as set out below.

(a) **Solid International Legal Framework** – Zambia would be joining an international legal regime of the Convention that had already proven its effectiveness over the past two decades and provided benefits for cooperation to both upstream and downstream countries.
(b) **Developed Institutional Platform** – Zambia would be able to participate in the UN Water Convention's institutional structure and decision-making, and help foster the implementation of the Convention and its further development. As a Party, Zambia

would take part in the decision-making process on the development of the Convention, sit in the Convention's governing bodies, and be able to lead activities under the Convention.

(c) **Recognition by the International Community** – By becoming a Party to the UN Water Convention, Zambia would signal to other countries, international organisations, financial institutions and other actors its willingness to cooperate on the basis of the norms and standards of the Convention. This would accord Zambia respect by other actors in the international community for adhering to certain rules and standards.

(d) **Developing the Convention's Regime** – Zambia, collectively with other parties, would be able to decide on the development of the Convention's regime at the meetings of the Convention's governing bodies. As such, the country would be able to initiate the negotiation of new legally binding instruments such as protocols or amendments to the Convention.

(e) **Advice and Sharing of Experiences** – Zambia would benefit from the existing experience under the Convention, such as its guidance documents, activities and projects on the ground. This would include benefiting from the Convention's activities on adaptation to climate change or on transboundary flood management to aid in managing frequent floods or droughts; the Convention's activities on dam safety for Parties interested in the joint management of water infrastructure on transboundary rivers; and the Convention's activities on the water-food-energy-ecosystems nexus to aid in managing the allocation of water for irrigation and energy production.

(f) **Support to Bilateral and Basin Cooperation** – Zambia would be able to receive support from the Convention in establishing bilateral and multilateral agreements for specific basins and joint bodies, or in strengthening existing ones. This would prove valuable in basins where there were difficulties in achieving agreements.

(g) **Improvement of Water Management at National Level** – Zambia would be expected to implement obligations under the Convention, especially aimed at prevention, control and reduction of significant transboundary impact, which would improve water resources management at the national level.

(h) **Access to Financial Assistance and Donor Cooperation** – Zambia may benefit from the use of the Convention's trust fund, which supported the effective implementation of the Convention. The trust fund could be used for technical support to Parties, particularly to promote and implement the Convention through the organisation of seminars and other training activities, studies and pilot projects, as well as for support to the participation of experts from eligible countries in workshops, seminars, symposia and other meetings organised within the framework of the Convention.

(i) **Support from the Community of Parties** – Given that the UN Water Convention was a collective forum, Zambia would be able to bring its needs and expectations to the attention of all other Parties. This means that the country would not be left alone in its dealings with Riparian states, thereby voicing its concerns at the Meeting of the Parties.

(j) **Contribution to International Peace and Security** – Zambia would be able to participate in and cooperate through the intergovernmental platform of the Water Convention, which would reduce uncertainty in relations between Riparian States and help prevent potential tensions, disagreements and differences, thereby contributing to the maintenance of international peace and security.

5.4 Weaknesses of the UN Water Convention

Stakeholders identified the weaknesses of the UN Water Convention as listed hereunder.

(a) **Implementation Challenges:** The Convention's effectiveness relied heavily on the willingness and capacity of countries to implement its provisions. In some cases, limited resources, political will, or technical expertise could hinder effective implementation.
(b) **Enforcement Mechanisms:** The Convention lacked strong enforcement mechanisms to ensure compliance. While it provided for dispute resolution through negotiation and mediation, there were no binding penalties for non-compliance.
(c) **Limited Scope for Groundwater:** While the Convention addressed transboundary watercourses and international lakes, it provided limited guidance on the management of transboundary groundwater resources, which were increasingly important in many regions.
(d) **Slow Ratification:** The process of ratification and accession to the Convention could be slow. Some countries had been hesitant to join due to concerns about potential limitations on their sovereignty over water resources.
(e) **Climate Change Considerations:** The Convention was adopted before the full extent of climate change impacts on water resources was understood. Its provisions may need to be updated or supplemented to address the increasing challenges posed by climate change, such as droughts, floods, and sea-level rise.

6.0 CONCERNS RAISED BY STAKEHOLDERS

In submitting on the UN Water Convention, stakeholders raised concerns as outlined below.

Stakeholders submitted that the UN Water Convention would only be beneficial to Zambia if the countries with which it shares surface and underground water also acceded to the convention. They noted that the Convention could restrict the abstraction of water from rivers entirely within the State, as well as from tributaries to transboundary waters like the Kafue, Kabompo, and Luangwa rivers. Understanding how the convention addresses the development of low-order rivers (headwaters) that contribute to main channels leading to shared water bodies would be crucial.

While some stakeholders indicated that there was no membership fee for joining the convention, others pointed out that certain articles, including Article 4, implied the need for financial resources as Parties established programs for monitoring the conditions of transboundary waters. Considering Zambia's fiscal position, stakeholders contended that it would be more prudent to accede to this convention when Zambia was in a better financial position and had the necessary human capital to fully implement it.

Additionally, stakeholders expressed concern that Zambia, being an upstream country, was considering acceding to the convention before downstream countries did. This could place Zambia at a strategic disadvantage, as it might have to adhere to stringent regulations without similar commitments from downstream countries, potentially affecting its bargaining power in regional water agreements.

PART III

7.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee makes observations and recommendations as set out hereunder.

i. Potential Limits on Water Use

The Committee observes the devastating effects of the El-Nino which has been characterised by reduced rainfall activities caused by unfavourable weather conditions that have impacted crop yields and crippled Zambia's power generation capacity. The Committee further notes that while Zambia's water use for electricity generation is not consumptive, certain clauses of the UN Water Convention may seek to limit Zambia's ability to use water within its boundaries. While this is done within the context of the perseveration of shared water courses, the Committee expresses concern at its potential to limit Zambia's autonomy on water use.

In this regard, the Committee recommends that the Government should fully study the implications of the convention in the context of power generation, agriculture, and other water-dependent activities to ensure that they do not inhibit Zambia's ability to effectively utilise its water resources. The Committee further recommends that the Government should seek clarity on potential upstream water use restrictions before acceding to the Convention.

ii. Reluctance of SADC Nations to Accede to the Convention

The Committee notes that only Namibia out of all SADC member states has acceded to the UN Water Convention. The Committee further notes that other African countries that have acceded to the Convention, like Senegal, Guinea-Bissau, Ghana, Togo, and Cameroon, have coastlines along the ocean, which could be an indication of why they acceded to the convention.

In this regard, the Committee urges the Government to carry out further consultative engagements through regional bodies like SADC or the African Union (AU) to gain an appreciation of why riparian states have not acceded to the Convention. The Committee further recommends that the Government should fully interrogate any potential geopolitical considerations causing other SADC countries not to accede to the Convention before deciding on whether to accede to the Convention.

iii. Existing Conventions of Transboundary Water Management

The Committee notes that Zambia actively participates in international efforts to manage water resources responsibly through conventions and agreements such as the SADC Revised Protocol on Shared Watercourses, the Zambezi Watercourse Commission, the Zambezi River Authority and International Commission of Congo-Oubangui- Sangha, to which Zambia is an observer member.

The Committee, therefore, recommends that the Government works towards enhancing the enforcement of existing agreements and conventions before acceding to new ones, specifically in such situations where existing conventions and agreements have overarching mandates. Particularly, the Committee recommends that the Government work on fully enforcing the SADC Revised Protocol on Shared Watercourses of 2002 before acceding to the UN Water Convention.

iv. Non-payment of Membership Fees

The Committee observed that some treaties to which Zambia was a party have lapsed due to non-payment of membership fees. The Committee further observes that continued non-payment of fees and dues has weakened Zambia's position in these agreements.

In this regard, the Committee urges the Government to urgently take stock of current agreements and conventions before acceding to any new ones. The Committee further recommends that the Government delay acceding to the UN Water Convention until it is in a position to fulfil all the financial obligations of the Convention.

v. Article 9 of the Convention

The Committee observes that Article 9 of the UN Water Convention provides that, "*The Riparian Parties shall on the basis of equality and reciprocity enter into bilateral or multilateral agreements or other arrangements, where these do not yet exist, or adapt existing ones*". The Committee expresses concern, however, that this provision is stringent in relation to existing agreements by obliging Riparian parties to adapt existing bilateral or multilateral agreements. As a result, Zambia would be obligated to enter into agreements or adapt existing ones which may result in duplications or other legal complications considering that Zambia already has other existing agreements with Riparian States.

In this regard, the Committee recommends that the Government study this provision to establish its implications on existing conventions and agreements before acceding to the Convention.

8.0 CONCLUSION

The Committee is of the considered view that while the UN Water Convention would offer several benefits as highlighted in the report, there is need for the Government to fully appreciate the implications of Zambia potentially acceding to the UN Water Convention, Certain clauses of the Convention may restrict Zambia's ability to fully utilise its water resources, which is crucial given the impact of El-Nino on rainfall and power generation. The Committee therefore recommends a comprehensive study of the Convention's implications to ensure it does not hinder Zambia's water use autonomy or power generation expansion. Additionally, noting that only Namibia among SADC states has acceded to the Convention, the Committee urges the Government to consult further with regional bodies like SADC and the African Union to understand why other riparian states have not joined.

In view of the foregoing, the Committee contends that there is no immediate need to accede to the UN Water Convention and recommends that the Government delay accession to this convention until the concerns that have been raised are addressed.

We have the honour to be, Madam, the Committee on Energy, Water Development and Tourism mandated to consider the International Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

Mr Romeo Kangombe, MP
CHAIRPERSON

July 2024
LUSAKA

APPENDIX I-National Assembly Officials

Mr Stephen Chiwota, Director – Financial Committees
Mrs Angela Banda, Deputy Director – Financial Committees
Ms Chitalu Mulenga, Senior Committee Clerk
Mr Leon J N Haangala, Committee Clerk
Mr Bright Mulenga, Intern
Ms Inutu Mwiya, Administrative Assistant
Ms Eneless Njobvu, Administrative Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II-LIST OF WITNESSES

Centre for Trade and Policy Development
Copperbelt University
Energy Regulation Board
Ministry of Agriculture
Ministry of Defence
Ministry of Fisheries and Livestock
Ministry of Foreign Affairs and International Cooperation
Ministry of Green Economy and Environment
Ministry of Home Affairs
Ministry of Justice
Ministry of Tourism
Ministry of Water Development and Sanitation
Mpulungu Harbour Corporation Limited
National Water Supply and Sanitation Council
University of Zambia
Water Resources Management Authority
Zambia Institute for Policy Analysis and Research
ZESCO Ltd