

**CONSTITUTION OF  
THE EASTERN AND SOUTHERN AFRICA  
WATER AND SANITATION  
(ESAWAS)  
REGULATORS ASSOCIATION**

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## **PREAMBLE**

**WE, THE UNDERSIGNED WATER AND SANITATION UTILITY REGULATORS OF KENYA, LESOTHO, MOZAMBIQUE, RWANDA, TANZANIA AND ZAMBIA** being the representatives duly authorised to sign this Constitution on behalf of our respective organizations;

**IN PURSUANCE** of the Memorandum of Understanding signed by the Water and Sanitation Utility Regulators in Maputo, Mozambique (May 2009);

### **RECOGNISING –**

- a) The need for the cooperation and promotion of the effective development of water regulation in Eastern and Southern Africa;
- b) That a close cooperation between the regulatory bodies with respect to the close integration of the water market is the common goal for all the parties hereto taking into account the different legal and regulatory responsibilities and environment in which each regulator operates.
- c) That regulation impacts society, and that a strong regulatory environment is one that balances social, environmental and economic interests, and increases public confidence and trust in government institutions, regulators and their decision-making process.

**TAKING** into account the resolution made by the Eastern and Southern Africa Water and Sanitation Regulators from Zambia, Kenya, Tanzania, Rwanda and Mozambique namely, National Water Supply and Sanitation Council (NWASCO) of Zambia; the Water Services Regulatory Board (WASREB) of Kenya; the Energy and Water Utilities Regulatory Authority (EWURA) of Tanzania; the Rwanda Utilities Regulatory Agency (RURA) of Rwanda, and the Water Regulatory Council (CRA) of Mozambique at a meeting held in Lusaka, Zambia from 29<sup>th</sup> January to 2<sup>nd</sup> February 2007 to establish a network of Eastern and Southern Africa Water and Sanitation Regulators.

**And NOTING** the potential for further regional cooperation on issues of mutual concern and interest to water regulators and policy makers in the areas of water regulation;

**SEEKING TO** establish this association to enhance water regulatory cooperation and to address new challenges and opportunities by enhancing water regulatory cooperation ensuring better quality and effective regulations to achieve public policy objectives;

**SEEKING TO** embrace regulation of the sanitation sector;

**HEREBY ADOPT** the following Constitution;

## **CHAPTER 1 – GENERAL PROVISIONS**

### **ARTICLE 1 – DEFINITIONS**

In this Constitution unless the context requires otherwise .

#### **Annual General Meeting**

- means the AGM as described in Article 7.2.

#### **Committee**

- means a committee established by the AGM of the ESAWAS Regulators Association

#### **Chairperson**

- means the person elected in terms of Article 7.3.

#### **Cooperating Partner**

- means an entity which is not a member but provides financial or other resources to promote the objectives of this constitution.

#### **ESAWAS Regulators Association**

- means the Eastern and Southern Africa Water and Sanitation Regulators Association established in terms of this Constitution.

#### **Executive Secretary**

- means the person recruited in terms of Article 7.5

**Host Member**

- means the regulatory body hosting the AGM in terms of Article 7.8

**Member**

- means the regulatory body which is a signatory to this document.

**Regulator**

- means a body or person, appointed by the respective country to regulate the water supply and sanitation sector of that Member country.

**Secretariat**

- means the body described in Article 7.5

**WSS**

- means Water Supply and Sanitation.

**ARTICLE 2 – GUIDING PRINCIPLES**

For the purpose of implementing this Constitution the ESAWAS Regulators Association Members agree that they shall be guided by the following principles:

- a) Independence;
- b) Good governance;
- c) Professionalism.

**ARTICLE 3 – ESTABLISHMENT**

- 3.1 The ESAWAS Regulators Association is hereby established in accordance with the terms of this Constitution.
- 3.2 The ESAWAS Regulators Association shall have legal personality with the capacity and power to enter into contracts, acquire, own or dispose of movable or immovable property and sue and be sued.

- 3.3 The ESAWAS Regulators Association shall, pursuant to Article 3.2 above, have such legal capacity in Zambia as is necessary for the proper exercise of its administrative functions.
- 3.4 This Constitution shall not override the sovereignty of each member and the statutory duties and powers of each member.

#### **ARTICLE 4 – OBJECTIVES**

The objectives of the ESAWAS Regulators Association are to foster and enhance regional cooperation and coordination on regulatory issues by:

a) **Capacity Building and Information Sharing**

Facilitate information sharing and skills training at national, regional and international level to enhance the capacity of members in WSS regulation;

b) **Regional Regulatory Co-Operation**

Identify and encourage the adoption of best practices to improve the effectiveness of WSS regulation in the region.

#### **ARTICLE 5 - FUNCTIONS**

In order to achieve its objectives outlined in Article 4, the functions of the ESAWAS Regulators Association shall be to .

- i. Promote quality regulation and monitor and evaluate regulatory practices.
- ii. Strengthen the operational capacity of the water regulators for the effective, efficient and sustainable provision of water services
- iii. Achieve a better understanding of each member's regulatory system and share the benefits of expertise to enhance the efficacy of regulation and to share best practices on implementation and compliance with regulations.
- iv. Enhance the understanding by members of good regulatory

governance and working toward the promotion of best practices in the development of regulatory proposals, legislation, directives and guidelines for sector development.

- v. Facilitate information sharing and promote networking among members, through study and exchange visits.
- vi. Provide a framework for the discussion of regulatory issues and exchange experiences in order to facilitate conveyance of views and common positions where appropriate.
- vii. Provide the necessary elements for the development of regulation and promote increased harmonization and efficiency in the regulatory framework and processes and where necessary, the establishment of common norms and standards.
- viii. Promote and support the enhancement of independence among the regulators.
- ix. Promote research on various aspects of regulation.
- x. Establish working relationships with other agencies that promote regulatory development.
- xi. Promote a peer-review mechanism amongst the members

## **ARTICLE 6 – MEMBERSHIP**

- 6.1 Participation in the ESAWAS Regulators Association shall be open to all water regulatory bodies in East and Southern Africa that subscribe and ratify this Constitution.
- 6.2 Each member shall be represented by an official mandated by the Member to make decisions on their behalf at an ESAWAS Regulators Association meeting.
- 6.3 Other regulatory partners may be allowed to participate in this ESAWAS Regulators Association on such terms as may be determined by the members.
- 6.4 Each Member that subscribes and ratifies the Constitution shall pay a one-off membership fee as approved by the Annual General Meeting.



- 6.5 Each Member shall pay an annual subscription fee approved by the Annual General Meeting. The criteria used to determine the annual subscription shall be approved by the Annual General Meeting.
- 6.6 Members shall complete on an annual basis, a form, indicating an updated survey of the WSS sector in their country and the mode of regulation which is being undertaken.
- 6.7 New membership will be permitted at any time by application to the Coordinator, with notification thereof being circulated to all Members. Membership will be approved by the Annual General Meeting at its meeting following the receipt of the application. Confirmation of membership status shall be forwarded to the applicant within two (2) months of approval by the Annual General Meeting and upon payment of membership fee and annual subscription.
- 6.8 An Applicant whose application is pending or any other person approved by the Annual General Meeting may be entitled to an Observer status of the ESAWAS Regulators Association meeting.
- 6.9 Members may resign from the ESAWAS Regulators Association by giving notice to the Secretariat, who shall notify the Members and forward the notice of resignation to the Annual General Meeting for a resolution. Members who resign but have paid the full subscription fee shall have forfeited the fees paid.

## **CHAPTER 2 – MANAGEMENT**

### **ARTICLE 7 – STRUCTURE/ADMINISTRATION OF THE ESAWAS REGULATORS ASSOCIATION**

- 7.1 There shall be established under the ESAWAS Regulators Association, the following organs:
- i. Annual General Meeting
  - ii. Chairmanship
  - iii. A Secretariat

- iv. Committees
- v. Other subsidiary organs that may from time to time be established

## **7.2 Annual General Meeting**

- i. There shall be an Annual General Meeting which shall be composed of all the Members of the ESAWAS Regulators Association.
- ii. The Annual General Meeting is the highest decision making authority of the ESAWAS Regulators Association.
- iii. The Annual General Meeting shall be responsible for the conduct of the affairs of the ESAWAS Regulators Association and ensuring that minutes are kept of such meetings by the Secretariat and circulated to members.
- iv. The Annual General Meetings shall be chaired by the Chairperson or, in his absence, by a member appointed by the Annual General Meeting.
- v. The ESAWAS Regulators Association shall establish a set of rules for its operation which rules shall be ratified by the Annual General Meeting and published within a month of ratification and circulated to all members by the Secretariat.
- vi. Any amendments to any rules shall be circulated to all Members one month prior to the rule taking effect.

## **7.3 The Chairperson**

- i. There shall be a Chairperson of the Eastern and Southern Africa Water Regulators Association selected by simple majority by all members voting at the AGM.
- ii. The Chairperson shall hold office for a period of two years.

## **7.4 Functions of the Chairperson**

The functions of the Chairperson shall include:

- i. Chair meetings of the Executive Committee and Annual General Meeting; and
- ii. Issue notices of invitation to the Executive Committee meetings and the Annual General Meeting two months prior to the meeting.

## **7.5 The Secretariat**

There shall be a Secretariat of the ESAWAS Regulators Association which shall be based in Zambia for the purpose of continuity.

- i. The Secretariat shall open and administer a Bank account for all the ESAWAS Regulators Association's funds.
- ii. The Secretariat shall consist of an Executive Secretary and other staff as may be determined by the AGM. The terms and conditions of the Executive Secretary and other staff shall be determined by the AGM.

## **7.6 Functions of the Secretariat**

The duties of the Secretariat shall be to:

- i. Liaise with the Chairperson in organizing and arranging all meetings of the ESAWAS Regulators Association and shall include preparation and circulation of agenda to members, preparation, receipt and distribution of papers and keeping of minutes of meetings;
- ii. Attend and provide logistical support to all meetings of the ESAWAS Regulators Association;
- iii. Prepare and co-ordinate position papers;
- iv. Obtain and circulate information that will facilitate the achievement of the objectives of the ESAWAS Regulators Association
- v. Collect and account for the funds of the ESAWAS Regulators Association, keep books of accounts and records and ensure the annual auditing of the accounts;
- vi. Perform any other duties as may be assigned by the Executive Committee or Annual General Meeting from time to time.
- vii. Prepare the annual budget of the ESAWAS Regulators Association
- viii. Some of the duties of the Secretariat may be outsourced in such a manner as shall be approved by the Executive Committee;
- ix. Prepare, keep and circulate minutes of all ESAWAS Regulators Association's meetings.

## **7.7 Committees**

There shall be established committees of the ESAWAS Regulators Association namely:

### **i. Executive Committee**

The Executive Committee shall be responsible for the conduct of the affairs of the ESAWAS Regulators Association and shall be composed of at least five Chief Executive Officers of the members. The Executive Committee shall be appointed by the Annual General Meeting for a tenure of two years. The Chairperson of the Executive Committee, who shall also be the Chairperson of the AGM shall be appointed at the AGM by a simple majority.

### **ii. Special Committees**

The Executive Committee may set up such other committees to carry out such duties on such terms and conditions as it may deem fit.

## **7.8 Host Member**

- i. There shall be a host member of the ESAWAS Regulators Association selected by simple majority by all members voting at an AGM following rotation basis.
- ii. The host member shall be responsible for organizing and hosting the AGM in liaison with Secretariat.

## **ARTICLE 8 – FUNDING ARRANGEMENTS**

8.1 The Financial resources of the ESAWAS Regulators Association may consist of:

- i. Annual contributions by Members
- ii. Special contributions by Members
- iii. Grants or donations as shall be approved by the Annual forum

- 8.2 Each regulatory partner shall meet the cost of participating in the various activities.
- 8.3 Funds from cooperating partners or other sources may be sought as need arises.
- 8.4 Members shall share the costs of the operation of the ESAWAS Regulators Association equitably and as it shall be determined by the Annual General Meeting.
- 8.5 Each Member shall remit to the Secretariat its subscription for the current financial year in the manner prescribed by the Annual General Meeting.
- 8.6 The management of funds of the ESAWAS Regulators Association shall be in accordance with the rules set by the Annual General Meeting.
- 8.7 The Secretariat shall, before every Annual General Meeting, prepare a budget showing the recurrent costs of the ESAWAS Regulators Association together with any identified capital expenditure for the following financial year and the contribution contemplated to be raised from each member.

## **ARTICLE 9 – MEETINGS**

### **9.1 Annual General Meetings**

The ESAWAS Regulators Association shall hold an Annual General Meeting once every year.

The Annual General Meeting shall be held to review and approve the annual report of the activities of the ESAWAS Regulators Association, the effectiveness of the ESAWAS Regulators Association, the audited accounts and the forecasted operating budget, as well as, the business plan submitted by the Secretariat.

## **9.2 Special General Meetings**

The ESAWAS Regulators Association may hold a Special General Meeting at the instance of the Chairperson, Secretariat, or whenever requested by at least half of the Members. One month's notice shall be given for such a Meeting.

## **9.3 Venue of the Meetings**

The venue of the Meetings shall be determined by a simple majority of Members at a Meeting, taking into consideration the principle of rotating Meetings among Member countries. In the absence of agreement by the majority of Members, the decision on the venue of a particular Meeting shall be made by the Secretariat.

## **9.4 Expenses of Attending Meetings**

- (i) The expenses of attending Annual General Meetings shall be borne by individual Members.
- (ii) The expenses of the Secretariat shall be borne by the ESAWAS Regulators Association.

## **9.5 Assistance by Host Member**

The Member in whose country a meeting is held shall provide such logistical assistance as may be determined by the ESAWAS Regulators Association from time to time.

## **9.6 Quorum**

The quorum for any Meeting shall be two thirds of the Members.

## **9.7 Voting**

- i. Every decision of the ESAWAS Regulators Association shall be by consensus and where a meeting has failed to reach a decision by consensus the decision shall be by simple majority of Members present.

- ii. Unless specified otherwise in the Constitution:
  - Each Member shall have one vote at any meeting;
  - The Chairperson shall have a casting vote in all Meetings; and
  - Election of all office bearers shall be conducted by secret ballot.
  
- iii. Notwithstanding the above, the decisions of the ESAWAS Regulators Association may be made by round robin, circular or any other manner as may be prescribed by the Executive Committee.

#### **9.8 Observers**

- (i) Observers may, with the consent of the Secretariat be invited to any ESAWAS Regulators Association Meeting.
- (ii) Observers may be permitted to participate in discussions and/or deliberations but shall not have voting rights.

#### **9.9 Others**

Any other issues relating to this Constitution shall be determined by the members at the general meeting

### **ARTICLE 10 – RESIDUAL POWERS**

All powers not specifically provided for in this Constitution, shall be exercised by the Annual General Meeting.

### **ARTICLE 11 – SANCTIONS**

- 11.1 Sanctions may be imposed against any Member that is in arrears with payment of its contributions for more than one year for reasons other than exceptional circumstances that gravely affect its ability to fulfill its financial commitments: provided that such circumstances are communicated to, and accepted by the Annual General Meeting.
- 11.2 The nature and extent of sanctions to be applied shall be determined at an Annual General Meeting on a case-by-case basis.
- 11.3 Article 11.1 above must be read together with Article 6.5.

- 11.4 Any breaches of the Constitution or rules shall be communicated to Secretariat which shall forward it to the Executive Committee. The Executive Committee shall forward its recommendations to the Annual General Meeting for a decision.
- 11.5 In the event the Annual General Meeting finds a member to be in breach of the Constitution or rules, it shall impose a penalty as provided in the second schedule. Provided that no penalty shall be imposed without according the member an opportunity to be heard in writing or otherwise.

#### **ARTICLE 12 – SEAT OF THE SECRETARIAT**

The Seat of the Secretariat shall be NWASCO of Zambia.

#### **ARTICLE 13 – ENTRY INTO FORCE**

- 13.1 This Constitution shall enter into force on the date when it is signed by at least three Members.
- 13.2 In the case of a Member admitted to membership under Article 6.7 of this Constitution, such membership shall come into force on the date of the approval of its application by a General Meeting, or by a resolution of Annual General Meeting.

#### **ARTICLE 14 – DEPOSITORY**

This Constitution shall be deposited with the Executive Secretary, who shall transmit certified signed copies to all Members.

#### **ARTICLE 15 – DISSOLUTION OF THE ESAWAS REGULATORS ASSOCIATION**

- 15.1 The ESAWAS Regulators Association may be dissolved by a resolution taken at an Annual General Meeting by at least Two thirds of the Members.



- 15.2 Two months before the Annual General Meeting a member shall give written notice to all members, of its intention to dissolve the Association.
- 15.3 The notice shall contain reasonable grounds of the reasons for dissolving the Association.
- 15.4 The resolution of the Annual General Meeting shall determine the terms and conditions of dealing with the liabilities and the disposal of the assets of the ESAWAS Regulators Association.

#### **ARTICLE 16 – INDEMNITY**

Every officer, employee or agent of the ESAWAS Regulators Association shall be indemnified by the ESAWAS Regulators Association against any liability incurred in the *bona fide* exercise of their functions.

#### **ARTICLE 17 – AMENDMENTS TO THE CONSTITUTION**

- 17.1 This Constitution may be amended at the Annual General Meeting, provided that a notice for such amendment shall have been delivered to each Member one (1) month prior to the date of the Meeting.
- 17.2 An amendment shall be implemented if it is so resolved at the Annual General Meeting by a two-thirds majority of the Members.

#### **ARTICLE 18 – INTERPRETATION**

The decision of an Annual General Meeting shall be final in the interpretation of this Constitution.

#### **ARTICLE 19 – SETTLEMENT OF DISPUTES**

Any dispute arising from the application of this Constitution, which cannot be settled amicably, shall be referred to the Executive Committee for mediation. On failing, the Executive Committee shall forward the matter to the Annual General Meeting, whose decision shall be final.

**AGREED AND SIGNED BY THE SAID:**

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**FOR AND ON BEHALF OF )**

The Water Services Regulatory Board (WASREB) of Kenya

On this \_\_\_ day of \_\_\_\_\_ 2012

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**FOR AND ON BEHALF OF )**

Water Regulatory Council (CRA) of Mozambique

On this \_\_\_ day of \_\_\_\_\_ 2012

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**FOR AND ON BEHALF OF )**

Rwanda Utilities Regulatory Agency (RURA) of Rwanda

On this \_\_\_ day of \_\_\_\_\_ 2012

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**FOR AND ON BEHALF OF )**

Energy and Water Utilities Regulatory Authority (EWURA) of Tanzania

On this \_\_\_ day of \_\_\_\_\_ 2012

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**FOR AND ON BEHALF OF )**

National Water Supply and Sanitation Council (NWASCO) of Zambia

On this \_\_\_ day of \_\_\_\_\_ 2012

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**FOR AND ON BEHALF OF )**

Lesotho Electricity and Water Authority (LEWA) of Lesotho

On this \_\_\_ day of \_\_\_\_\_ 2012