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**The National Water Resources  
Management Authority Bill  
(post-validation workshop version)**

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**prepared by**

**NIRAS**



a

# Bill

to

establish an independent public enterprise governed by a board to manage,  
regulate and safeguard water resources development and use in The  
Gambia.

Be it enacted by.....

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## **Part I Preliminary**

A Bill to establish an independent public enterprise governed by a board to manage, regulate and safeguard water resources development and use in The Gambia.

### **1 Short Title**

This Act may be cited as The National Water Resources Management Authority Act 2014

### **2 Interpretation**

(1) In this Act

(a) “Minister” means the Minister responsible for water resources, unless stated otherwise

(b)

## **Part II Establishment**

### **3 Establishment of an Authority**

(1) There is hereby established an Authority to be known as The National Water Resources Management Authority.

(2) The Authority shall be the lead Authority in water resources management, regulation and conservation and shall coordinate all activities of the Government in the field of water resources.

(3) The Authority shall be a body corporate with perpetual succession and a common seal.

(4) The Authority may,

(a) sue and be sued in its corporate name;

(b) enter into contracts and acquire, hold and dispose of property;

(c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(5) The application of the common seal of the Authority shall be authenticated by the signature of the Chairperson or any other person as authorised by the Authority to sign on its behalf, and every document bearing the imprint of the seal of the Authority is to be taken to be properly sealed unless the contrary is proved.

### **4 Establishment of a Board**

(1) There is hereby established a Board to be known as The National Water Resources Management Authority Board.

(2) The Board will be responsible for overseeing the implementation and delivery of the functions of the Authority in accordance with the provisions of this Act including *inter alia* management of the Authority, development of policy and legislation and providing due regard to The Gambia’s national, regional and international obligations with respect to water resources.

### **5 Financial Provisions**

(1) The funds of the Authority shall include ,

(a) funds appropriated to it by the National Assembly;

(b) loans granted to the Authority;

(c) monies accruing by way of Permit fees and charges and other fees and charges; and

- (d) any grants and gifts made to the Authority, provided that the terms and conditions attached to a grant or gift are not inconsistent with the functions of the Authority;
- (e) such programme and research funds as may be agreed by government.
- (2) The Authority shall,
  - (a) keep proper records and books of accounts of its income and expenditure;
  - (b) prepare a statement of accounts in respect of each financial year;
  - (c) within three months of the end of each financial year submit its statement of accounts to the National Assembly;
  - (d) not later than 31st July of each year, submit to the Minister responsible an estimate of the income and expenditure of the Authority for the next succeeding year.
- (3) The audited accounts of the Authority and the Auditor General's report on those accounts shall form part of the Auditor General's overall annual report to the National Assembly.

### **Part III The National Water Resources Management Authority Board**

#### **6 Composition and Tenure of the Board**

- (1) The National Water Resources Management Authority Board shall comprise of,
  - (a) a Chairperson;
  - (b) the Permanent Secretary of the Ministry responsible for water;
  - (c) the Permanent Secretary of the Ministry responsible for finance;
  - (d) the Director General of the Authority; and two other people;
  - (e) and three other people.
- (2) There shall be a Secretary to the Board who shall be appointed by the Board from the staff of the Authority.
- (3) In so far as practicable, members shall be chosen from persons who have knowledge or experience relevant to the Authority's functions and include at least one female member.
- (4) The President shall appoint the members specified in 6 (1) on the recommendation and advice of the Minister responsible for water, and shall determine the terms and conditions of those appointments.
- (5) Except as provided by 6 (7) a member shall hold office for a term of three years and may be re-appointed for one further term of three years.
- (6) A member may resign from office at any time by a letter addressed to the President.
- (7) Members shall not be removed from office unless,
  - (a) the Minister has advised the President that the member has, without good reason, been absent from at least three consecutive meetings of the Board without the permission of the Minister;
  - (b) a qualified medical practitioner has certified to the President that the member is incapacitated by physical or mental illness to such an extent as to render the member incapable of carrying out his or her functions as a member; or
  - (c) on the grounds of misconduct or incompetence.
- (8) If for any reason, a member cannot carry out his or her functions as a member for more than six months, the President with genuine reasons may appoint another person to carry out those functions until the member is again able to do so.
- (9) A member appointed to fill a vacancy shall hold office for the remainder of the term of the previous member and may be re-appointed for one further term of three years.

**7 Allowances for Board Members**

- (1) The members shall be paid such allowances as are determined by the Minister.
- (2) The Minister shall ensure that all such allowances shall be properly reported in the annual accounts of the Authority

**8 Board Meetings**

- (1) The Board shall meet at least once during any period of three months in such place and at such times as the Chairperson may determine.
- (2) The Chairperson may, at any time, and shall, if three other members request in writing convene a special meeting of the Board to be held within seven days of the request.
- (3) At a meeting of the Board,
  - (a) the Chairperson shall preside but in the absence of the Chairperson, the other members present shall elect one of their number to preside at the meeting;
  - (b) four members, including the Director General, shall form a quorum;
  - (c) subject to paragraph 8(3)(d) each member has one vote on a matter for deliberation; and
  - (d) a decision of the Board shall be by a simple majority vote, and if there is an equality of votes, the Chairperson or member presiding shall have a casting vote.
- (4) The Board may co-opt any person to act as an adviser at a meeting of the Board but the person shall not vote at the meeting.
- (5) The validity of a proceeding of the Board shall not be affected by a vacancy in the membership of the Board or by any defect in the appointment of a member.
- (6) Minutes of each meeting of the Board shall be kept by the Secretary.
- (7) Except as otherwise provided by this Act, the Board and any of its committees may regulate their own procedures.
- (8) If the office of Director General is vacant or the Director General is for any reason unable to attend a meeting of the Board, the person for the time being carrying out the duties of the Director General shall attend the meeting and may participate in its deliberations.
- (9) If a member has a direct or indirect personal interest in the outcome of the deliberations of the Board in relation to any matter,
  - (a) the member shall disclose the nature of the interest at a meeting of the Board;
  - (b) the disclosure shall be recorded in the minutes of the meeting; and
  - (c) the member shall withdraw from any deliberations of the Board in respect of that matter and not vote on it;
  - (d) a Board member who fails to comply with 8(9) (a) (b) (c) and participates in the deliberations of the Board, or in any way attempts to influence the Board and its Members with respect to that interest shall be removed from the Board and subject to a fine of
- (10) A Board resolution is a valid if,
  - (a) it is signed or assented to by a majority of the members; and
  - (b) reasonable notice of the proposed resolution was given to each member and to the Director General, notwithstanding that it was not passed at a meeting of the Board.

**9 Functions and Powers of the Board**

- (1) The Board shall fulfil the following functions,
  - (a) to be the principal body for water resources management, development, conservation and protection in The Gambia;
  - (b) to ensure that the Authority operates within its mandate and water resources management principles are adhered to including international obligations of The

Gambia;

- (c) approve national water development plans and strategies developed by the Authority or any other relevant body;
- (d) ensure water resources management activities in the country including projects at all levels from village, municipal, regional to national and transboundary are properly integrated and coordinated;
- (e) approve policies, standards, objectives and guidelines which are necessary to ensure the efficient delivery and performance of the functions of the Authority and its staff, including annual work plans and budgets;
- (f) ensure that the Director General of the Authority implements approved policies, standards, objectives and guidelines;
- (g) approve plans and guidelines relating to expansion programmes of the Authority and its activities;
- (h) to determine the job description, functions and terms of employment of the Director General in accordance with the business plan for the Authority;
- (i) to advise on any question put to it by the Authority;
- (j) to participate in dispute resolution procedures as required under The Gambia Water Act;
- (k) to appoint lawyers and other qualified staff to provide legal services to support the work of the Authority

- (2) The Board shall not delegate any of its functions or powers provided in this Act.

## **Part IV The National Water Resources Management Authority**

### **10 Objective of the Authority**

- (1) The Authority will be the lead Authority within The Gambia for managing the assessment, coordination; planning, development, regulation, conservation, and allocation of the nation's water resources, and will also coordinate the protection of those water resources and be responsible for water resources data management.

### **11 Functions of the Authority**

- (1) The Authority shall perform the following general functions,
  - (a) to actively take the lead in organising collaboration with sector stakeholders to ensure the objectives of this Act can be met;
  - (b) to develop, update, implement and monitor a National Water Policy and a National Water Strategy;
  - (c) to develop sectoral water plans and strategies including strategies to prevent water loss and improve water conservation, reuse and recycling as well as to promote appropriate technology;
  - (d) to take the lead role in coordinating water resource development projects in The Gambia;
  - (e) to develop such documents as are necessary to support Gambia's national, regional



- and international interests concerning water resources;
  - (f) to establish and maintain a network of hydrological measuring stations, to measure, collect analyse and store a national hydrological record and to provide such forecasts and warnings as are in the national and public interests. This will include recording the flow of The Gambia River at Fatoto;
  - (g) to establish and ensure that a water quality laboratory is operated to an internationally recognised standard for the purposes of sampling, analysing, certifying and safeguarding the nation's water resources;
  - (h) to gather data on water resources and its quality and utilisation and publish forecasts, projections and information on water resources;
  - (i) to undertake scientific investigations, research and analytical studies into water resources and to engage the services of such experts and consultants as necessary to fulfil the functions of the Authority;
  - (j) to maintain and make available a national database of water resource information including such GIS and electronic data as are relevant;
  - (k) to provide an information and advocacy service to the public;
  - (l) to coordinate, harmonise and periodically update water resource quality standards;
  - (m) to protect water resources quality from adverse impacts, to manage and protect water catchments and to advise pollution control agencies on matters concerning the management and control of pollution of water resources;
  - (n) to advise government on interpretation, harmonisation, development and updating of legislation and propose to the Minister such regulations as are deemed necessary for the implementation of this Act;
  - (o) to propose to the Minister such offences as may become necessary to ensure effective regulation under this Act and to safeguard the work and property of the National Water Resources Management Authority;
  - (p) to have the lead responsibility to ensure that the training needs of the water sector are addressed through the preparation of plans and arrangements with relevant agencies and training institutions;
  - (q) to establish such committees and working- groups as are required to fulfil the purposes of this Act;
  - (r) to advise the Minister concerning any matter in connection with water resources;
  - (s) to develop and disseminate practical guidelines on the development and use of groundwater and to inform the public of their responsibilities and legal obligations in protecting developing and using this resource;
  - (t) any other function assigned to it under The Gambia Water Act.
- (2) The Authority shall perform the following specific functions regarding regulation,
- (a) to develop guidelines and procedures for the allocation and permitting of water resources in accordance with The Gambia Water Act;
  - (b) to approve water permits, to keep a register of permits and to administer a water permitting system in accordance with the Water Act;
  - (c) to monitor and enforce conditions attached to water permits, including the cancellation of a permit and suspension of activities where conditions are violated;
  - (d) to determine charges to be imposed for the abstraction, use and discharge of water from any water resource or use; in accordance with guidelines in the National Water Policy, the Gambia Water Act and the Laws of The Gambia;
  - (e) To maintain a national register of all water supplies in The Gambia;
  - (f) To qualify and certify and maintain a register of borehole drilling and well construction companies

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**Powers of the Authority**

- (1) The Authority shall have the following powers
  - (a) to act as the principal authority to approve, cancel or modify any water permit in The Gambia;
  - (b) to appoint, consult and seek the advice of any person or body (including a Ministry or other agency of Government) whether inside or outside The Gambia;
  - (c) to impose administrative fines in accordance with the offences and provisions set in this Act and its regulations;
  - (d) the Authority shall not be subject to the direction or control of any person or authority in the performance of its functions or exercise of its powers under this Act and shall act in all matters and at all times impartially;
  - (e) to require all holders of water permits to provide the Authority upon being given adequate notice such information concerning the use and quality of water as may be required under The Water Act and the Laws of The Gambia;
- (2) Where a person or organisation fails to obtain a permit or fails to provide information necessary to obtain a permit as required under this Act and its regulations the Authority can after providing seven days' written notice,
  - (a) enter the property of the water user or developer in order to inspect any civil or mechanical structures, equipment and records and to make such determinations of water use, impoundments or, discharges and measurements of water quality as are necessary for the purposes of water resource regulation;
  - (b) after having being given notice in accordance with this Act any person or organisation, who hinders, obstructs or confounds the Authorities determination of water quantity or quality shall commit an offence under this Act and shall be served a compliance notice and an administrative fine;
  - (c) where a person or organisation undertakes an activity or water use without a permit or in breach of conditions specified by their permit, the Authority shall investigate the matter and if not satisfied that the breach was accidental, the Authority may serve a compliance notice and administrative fine upon that person or organisation;
- (3)
  - (a) The Authority may cause the closure of a water supply in accordance with the Gambia Water Act section 14(2) by serving a compliance notice and appointing an inspector to undertake the closure; or by taking immediate measures where the Minister, the Director General of the Authority or a Member of the Board determines the situation represents an imminent threat to human life or wellbeing;
  - (c) Upon closing a water supply the Authority shall in writing, instruct the owner or operators of that supply regarding the measures to be taken to reinstate the supply. The owners or operators may reinstate the supply upon the written approval of the Director General of the Authority
  - (d) The Authority may cause the cessation of an activity which is in contravention of permitting requirements or conditions by serving a compliance notice and as necessary appointing an Inspector to determine compliance;
  - (e) The Authority may require any person, persons or a representative of a body, organisation or corporation that is subject to the water permit requirements of this Act and who have persistently failed to apply for a permit, or who have persistently breached permit conditions, and who have failed to respond to a compliance notice, to appear before the Authority on a date specified by the Authority in order that the permit requirements can be fully completed, explained and put in proper order;
  - (f) the Authority can appoint an Inspector- to undertake an investigation in respect of any aspect where a user or users of water are required to have a permit if the Authority is satisfied that it is necessary to do so for the purpose of carrying

out its functions under this Act;

- (g) The Authority can enforce the protection of water resources quality from adverse impacts in collaboration with NEA and any other government Authority so empowered;
  - (h) The Authority may require any activity or construction that is a hindrance to the collection or delivery of hydrological information to be removed or stopped under this Act;
  - (i) The Authority can enter, after giving seven days' written notice to the owner or occupier of any land or premises and perform functions required under this Act for the purpose of installing, repairing, maintaining, and recording data from any hydrological station or water supply installation;
  - (j) The Authority can enter into such project relationships with other agencies and development partners which are of benefit to The Gambia. Such relationships may also include research, development and the testing of equipment and methodologies;
  - (k) The Authority can determine, with the approval of the Board, such "reserved flows" as it may deem necessary to satisfy the provisions of The Gambia Water Act;
  - (l) The Authority can create easements and rights of way necessary for the purposes of this Act and in accordance with the Land Acquisition and Compensation Act and State (Lands) Act;
  - (m) Any person authorised by the Minister may at any time enter upon any land which is the object of an easement or right of way grant under this Act or under any ordinance repealed by this Act.
- (4) With regard to the employees of the Authority the Board shall,
- (a) appoint for the Authority such properly qualified employees as it may think necessary for the due discharge of the functions of the Authority, on such terms as it may determine and in accordance with the approved plans of the Authority;
  - (b) be responsible for the discipline and removal of employees of the Authority;
  - (c) make regulations establishing schemes for pensions, gratuities and other retirement benefits in respect of employees of the Authority.

### **13 Issuing Compliance Notices**

- (1) If the Authority is satisfied that a person or organisation has failed to comply with water permit requirements and regulations under this Act, the Authority may serve on that person a written notice requiring compliance. The notice shall specify -
  - (a) the failure by the person or organisation and the manner in which they failed;
  - (b) the rectifying action the Authority requires the person to take;
  - (c) the time in which the rectifying action is to be taken; and
  - (d) the action the Authority intends to take if the rectifying action is not taken within the specified time.
- (2) The Authority shall, before taking the action specified in the notice, give the person a reasonable opportunity to be heard and to make representation to the Authority.
- (3) The Authority shall, in considering whether to proceed and the manner in which it intends to proceed, take into account any representation made to within a reasonable period of time.
- (4) The Authority may serve an administrative fine upon the recipient of a compliance notice when a person or organisation, who without the approval of the Authority fails to comply with the requirements of the notice served on them within the time specified in the notice.

### **14 Responsibilities of the Director General**

- (1) The Director General shall

- (a) be the Chief Executive Officer and be responsible for day-to-day administration and performance of the Authority and shall ensure the implementation of the decisions of the Board;
- (b) provide the Board with annual plans and budgets for the work of the Authority;
- (c) ensure adequate systems are in place for the control of operational and financial functions such that the Authority provides a cost effective service of a high standard and ensure that proper records of the Agencies activities and finances are kept;
- (d) appoint such joint technical committees and working groups as are required to implement The Gambia Water Act;
- (e) appoint inspectors as required by the Board in meeting obligations provided for under this Act and The Gambia Water Act. The Director General shall appoint an inspector by a signed written instrument which shall include their terms of reference and conference of requisite powers for the investigation or action so required, including the power to make copies of documents and records;
- (f) draft, sign and serve compliance notices with the approval of the Board;
- (g) following appropriate procedures to engage and supervise the services of such staff members as are approved in work plans and budgets of the Authority;
- (h) engage by following appropriate procedures and with the approval of the Board, the services of such experts and consultants as are approved in work plans to fulfil the functions of the Authority;
- (i) fulfil any other responsibilities specifically assigned to them under this Act and the Gambia National Water Act.

## **Part V Miscellaneous Provisions**

### **15 Making Regulations**

- (1) The Minister with the advice of the Board may make regulations and enforceable guidelines to give effect to the provisions of this Act.

### **16 Offences**

- (1) *Note that Offences created in this Bill are*  
*8(9) (d): Board member failing to declare interest etc.*  
*12(2) offences relating to absence of or breach of a permit, failing to provide data and hindrance*  
*13(4) Failure to satisfy a compliance notice*  
*16(2) Vandalism*
- (2) **Vandalism:** Any person who deliberately damages, vandalises or impairs the functioning of hydrological stations, water regulation equipment or any physical structure necessary under this Act shall commit an offence under this Act and be subject to XYZ

### **17 Fines**

- (1) Where an offence under this Act is committed by a partnership, body corporate or association is proved to have been committed with the consent or connivance of, or to be attributable to any neglect or default on the part of a person who is a partner, director, manager, secretary or other similar officer of the partnership, company or association that person commits an offence and is liable in the same manner as the partnership, company or association to the penalty provided for the offence.
- (2) *Fines established under this Act are found at*  
*8(9)(d)*

12(2) (b)

12(2) (d)

13(2)(4)

*The intention is that the value of fines appear under regulations to this act for ease of updating*

## **18 Confidentiality**

- (1) A member of the Board, the Director General or any other officer or employee of the Authority shall,
  - (a) subject to any existing law, treat as confidential any information obtained in the exercise of powers or the performance of duties under this Act;
  - (b) not disclose any information except when required to do so by a court, under any enactment, or other circumstances determined by the Board.
- (2) Any person who acts contrary to 18 (1) (a) (b) shall, in the case of an officer or employee of the Authority be subject to disciplinary action, and in the case of a member of the Board be liable to be removed from the Board.

## **19 Indemnity**

- (1) *[Note examples from PURA ACT] No action, suit, prosecution or other proceedings shall be brought or instituted against a member of the Board or staff of the Authority personally in respect of anything done in pursuance, execution or intended execution of any of the provisions of this Act.*  
*A member of the Board, the Director General or any officer or employee of the Authority shall be indemnified out of the funds of the Authority against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director General, officer or employee of the Authority.*

## **20 Repeals and Transitional Provisions**

- (1) *Note under the Gambia Water Bill section 29 here that the body known and referred to as "the Water Resources Department" established by the National Water Resources Council Act 1979 [Act 22 of 1979 Cap.66:02] is dissolved and hereby succeeded by the National Water Resources Management Authority.*
- (2) *Note here that transitional provisions [succession, entitlements, dissolution etc] in the Gambia Water Bill provisions are hopefully comprehensive and no addition would be necessary here.*
- (3) *Note here that the NWRCA 1979 is repealed under the Gambia Water Act – no repeals are envisaged under this Bill.*
- (4) *Note for MoJ: Re PURA 53 (2) "Accordingly, if the licensing provisions of any law relating to a public utility providing a regulated public service to which this Act applies conflicts with the provisions of this Act, the provisions of this Act shall prevail."*  
*[MW it is argued that the PURA Act and this Act would not be in conflict since the object and purpose of both Acts are of a very similar nature...hence PURA and NWRMA should act in tandem under such circumstances and determine the appropriate procedure]*
- (5) *Note here that a rolling programme of work will be developed by the Authority to survey and initiate permitting. Permits will not be an instant requirement following enactment of this Bill. It is suggested that "The Authority shall publish in the Gazette the timings and schedules for entry into force of the water permit requirements" See transitional provisions of The Gambia Water Bill section 29.*

**21**

**Review of this Act**

(1)

The Minister shall instruct a review of this Act five years after its assent. The review shall examine progress in meeting the purposes of the Act, examine human resource and financial issues associated with its implementation and shall, identify any unintended outcomes. The review will make recommendations concerning the strategy for continued implementation of the Act, recommend any modifications to the Act and recommend any additions to the Act