



**Republic of The Gambia
Ministry of Environment, Climate Change,
Water Resources, Parks and Wildlife**

**Consultancy Services
for the
National Water Sector Reform Studies for
The Gambia**

**Financed by the African Water Facility
of the**

African Development Bank

Project ID number: 5600 15500 2201

Financing Agreement Ref: P-GM-EAZ-01

**The Gambia Water Bill
(post-validation workshop version)**

October 2014

prepared by

NIRAS

a

Bill

to

make provision for the water sector and its management and regulation.
Incorporating the vision of the National Water Policy, to provide the
enabling environment for Ministries and Government Agencies to
collaborate comprehensively in safeguarding the waters of The Gambia
within a common legal framework with guiding principles.

Be it enacted by.....

(1) Part I Preliminary

- | | |
|-------|--------------------|
| (2) 1 | (3) Short Title |
| (4) 2 | (5) Interpretation |

Part II Fundamental Principles

- | | |
|----|--|
| 3 | Purpose of This Act |
| 4 | Scope of the Act |
| 5 | Entitlement to Water |
| 6 | National Water Policy and Guidance |
| 7 | Sector Administration |
| 8 | Water Permits |
| 9 | Priority and Reserved Uses of Water |
| 10 | Measures to Protect Water Resources |
| 11 | Financial Provisions |
| 12 | Understanding of Legislation |
| 13 | Dispute Resolution Procedures |
| 14 | Powers |
| 15 | Water Resources Data and Information |
| 16 | Gender Equality |
| 17 | Public Participation |
| 18 | Guiding Principles for Water Resource Management |

Part III Sectoral Arrangements

- | | |
|----|--|
| 19 | Water Resources Management |
| 20 | Meteorological Services |
| 21 | Rural Water Supply and Sanitation |
| 22 | Sectoral Water Management and Regulation |
| 23 | Sector Coordination |

Part IV Miscellaneous

- | | |
|----|-------------------------|
| 24 | Making Regulations |
| 25 | Drought Orders |
| 26 | Offences |
| 27 | Fines and Penalties |
| 28 | Powers |
| 29 | Transitional Provisions |
| 30 | Repeals |
| 31 | Review of Act |

Part I Preliminary

A Bill make to provision for the water sector and its management and regulation. Incorporating the vision of the National Water Policy, to provide the enabling environment for Ministries and Government Agencies to collaborate comprehensively in safeguarding the waters of The Gambia within a common legal framework with guiding principles.

1 Short Title

This Act may be cited as **The Gambia Water Act [2014]**

2 Interpretation

In this Act

- (1) "Watercourse" means
 - (a) a river including its bed and banks,
 - (b) a natural channel in which water flows regularly or intermittently,
 - (c) a wetland, swamp, lake or dam into or from which water flows,
 - (d) any aquifer, spring or groundwater system.
- (2) "Reserved Flow" means any portion of a surface or groundwater flow required to protect and conserve a hydrological system and its associated ecosystem services.
- (3) "GIS" means Geographical Information System and consists of satellite and topographic mapping together with overlays of data which are rendered into a digital format.
- (4) "Basic Human Needs" means an adequate amount of safe water necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements. This definition is derived from the emerging concept of a Human Right to Water under the International Covenant on Economic, Social and Cultural Rights.
- (5) "Permit" An approval required for the development and use of the nation's water resources by the public.
- (6) Unless stated otherwise "Minister" shall mean the Minister responsible for water resources

Part II Fundamental Principles

3 Purpose of This Act

The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed through an integrated approach and controlled in ways which take into account amongst other factors

- (1) Meeting the basic human water needs of present and future generations;
- (2) Ensuring regulated equitable access to water for social and economic development;
- (3) Promoting the efficient, sustainable and beneficial use of water and its conservation in the public and national interest;
- (4) Providing for growing water use demands and future sustainability of the

- resource;
- (5) Ensuring and coordinating the reduction and prevention of pollution and degradation of water resources;
 - (6) Reducing flood risk and supporting national efforts during droughts;
 - (7) Establishing suitable representative institutions to manage water resources;
 - (8) Meeting international obligations.
-
- 4 **Scope of the Act**
- (1) This Act shall concern the management of all watercourses, surface waters, springs, groundwater and such other waters that pertain to The Gambia which may be used to meet the purposes of this Act.
-
- 5 **Entitlement to Water**
- (1) The entire property in and control of all watercourses, surface freshwaters, springs and groundwater shall be vested in the State.
 - (2) Any person has the right to use water to meet their basic human needs.
 - (3) Any person may enjoy an equal opportunity to use water to pursue a livelihood subject to regulation by the government.
-
- 6 **National Water Policy and Guidance**
- (1) The Minister responsible will ensure that a National Water Resources Policy and a National Water Resources Management Strategy are developed, published, implemented, monitored and updated.
-
- 7 **Sector Administration**
- (1) The Minister responsible will ensure that such administrative agencies, departments and measures are established to achieve the objectives of this Act and these shall include a National Water Resources Management Authority.
 - (2) Any agency, institution or company established with the objective of regulating water resources shall not be a supplier of water or sanitation services.
 - (3) The Minister responsible may establish bodies or delegate responsibilities to meet the obligations of international agreements entered into by the Government of The Gambia concerning transboundary water resources.
-
- 8 **Water Permits**
- (1) The National Water Resources Management Authority shall establish, update and enforce such permit regulations as are necessary to give legal effect to this Act and may include *inter alia* a permit to prospect for water, to drill a borehole or well, to construct any structure to capture, divert or impound water, to abstract water for whatever purpose, to discharge waste waters or materials into any watercourse, or for any other special purpose.
 - (2)
 - (a) The National Water Resources Management Authority shall be responsible for the approval of permits required by this Act and shall maintain such records as are necessary for the regulation and management of the nation's water resources;
 - (b) The Director General of the National Water Management Authority may appoint inspectors as necessary to investigate and enforce the water resource

- regulatory requirements of this Act.
- (3) The Government may,
- (a) Require any person intending to undertake the abstraction, impoundment, diversion or discharge of water to obtain a permit;
 - (b) Require any person intending to drill a borehole, for the purpose of exploring, testing or abstracting groundwater to obtain a permit;
 - (c) Exempt members of the public from requiring a permit to use water to meet their basic human needs if their use is less than 10m³ per day or if they impound less than 1000 m³;
 - (d) Require all abstractions, impoundments and diversions – regardless of any exemption from permit requirements- to be registered for the purposes of quantifying, regulating and protecting the nation’s water resources;
 - (e) As necessary, require water quality and or quantities to be determined by an approved mechanism as part of the approval process to obtain a permit;
 - (f) Subject to the approval of the Board of the Authority a permit may be suspended, modified or withdrawn.
- (4) The Government may attach to any permit such specific conditions as are necessary to meet the objectives of this Act;
- (5) (a) The National Water Resources Management Authority shall maintain regulations and schedules under this act for the purpose of managing a permit system;
- (b) The National Water Resources Management Authority shall maintain a register of all permit applications and approvals.
- (6) Factors to be considered by the Authority in approving permits shall be contained within regulations developed under this Act.
- (7) The Minister responsible will establish an appeals procedure under a regulation to this act for members of the public to appeal against permit decisions of the National Water Resources Management Authority.
- (8) A permit to abstract water or the registration of a water supply shall be a means to recognise the ownership of the hardware and infrastructure used to access and abstract water.
- (9) It is an offence under this act to prospect, develop, use or discharge water without the prescribed permit or to breach the conditions set by such a permit.

9 Priority and Reserved Uses of Water

- (1) The use of water resources to meet basic human needs shall have priority over all other uses of water in The Gambia,
- (2) The allocation and approval of water uses shall pay due regard to the need for secure water supplies for health facilities for the public and any other uses in the national and public interests,
- (3) As deemed necessary by the National Water Resources Management Authority and with the approval of the Board, “Reserved Flows” may be determined, established and protected under this Act. A Reserved Flow may be established in order to protect and conserve any watercourse of hydrological importance and the ecosystem services it provides,
- (a) A Reserved Flow established under this Act may not be allocated to any other use than meeting the basic human need during times of drought or emergency or for firefighting,
 - (b) A Reserved Flow provision will define the volume of water, its flow, duration and location.

10 Measures to Protect Water Resources

- (1) The Minister responsible shall ensure,
 - (a) The coordination, development, monitoring and enforcement of all necessary water standards for The Gambia including drinking water quality, the quality of natural and receiving waters and effluent discharge standards;
 - (b) All necessary measures to protect recharge areas;
 - (c) Measures to ensure demand management, water conservation, loss reduction, water reuse and recycling;
 - (d) All necessary provisions and procedures to render assistance during emergencies and cases of accidental pollution;
 - (e) The Minister shall require the establishment and maintaining of a system to measure and monitor saline intrusion in aquifers as well as movements and dimensions of the freshwater – saline interface of The Gambia River.
 - (f) The Director General shall instruct the analysis and publication of data produced under 10 (1) (e) and instruct such departments and agencies as are responsible to design and implement control measures to safeguard the availability and sustainability of the fresh water resource.
 - (g) The Director General shall require the establishment and effective operation of a water quality laboratory which operates at a recognised international standard for the purposes of sampling, analysing, certifying and safeguarding the nation's water resources.

11

Financial Provisions

- (1) Whereas the water resources of The Gambia exist in their natural state, the action of prospecting, analysing, supplying and regulating those waters in the public and national interests necessarily incur a cost. Consequently the Government shall determine and approve the basis for the charges, tariffs, fees and fines to be borne as a result of protecting and fulfilling a person's right to use water as well as costs related to discharging effluents. Such charges shall include *inter alia* the cost of regulating and administering the water resources sector, the recovery of costs related to the supply of water and sanitation services and the costs of protecting the environment as a consequence of using water resources. The Government shall have the responsibility to establish, publish and update the basis for these charges as a regulation under this Act. The cost of using water shall include the following components,
 - (a) the cost of service provision by a public utility;
 - (b) the cost of service provision by bodies other than public utilities for the purpose of defraying the costs of supply, maintenance and management;
 - (c) a component to support the work of the NWRMA in regulating the sector and protecting the use of water;
 - (d) a component to support the long term sustainability of the nation's water resources through catchment improvement;
 - (e) a component to cover the environmental costs of discharging effluents in addition to the National Environmental Management Act provisions of 1994.
- (2) The Minister responsible shall require a joint technical committee to be established that will coordinate the setting of fees and charges in the water sector. The joint technical committee shall,
 - (a) clarify and describe what charges and permit fees for water resources management, water supply and sanitation services are to be levied in accordance with the Laws of The Gambia;
 - (b) clarify and describe what the purpose of the charges and permit fees are;
 - (c) clarify and describe how the charges and fees are to be used, including any procedures for the transfers of monies between responsible departments and

agencies;

- (d) the Minister shall maintain a schedule of fees and publish fee rates in such a manner as will best bring them to the timely attention of the public;
- (e) the Board shall advise the Minister upon the regulations necessary under this Act to clarify, describe and ensure that water charges and permit fees are levied and used in accordance with the Laws of The Gambia;
- (f) the joint technical committee shall report to the Board on their deliberations at such times as are necessary to meet the continuing obligation to implement this Act.

12

Understanding of Legislation

- (1) The Minister shall appoint a Joint Technical Committee that shall advise the National Water Resources Authority on measures to,
 - (a) Develop good practice guidelines, inform the revision and preparation of regulations, advise as appropriate on the need for legislation and Water Policy revision; and
 - (b) Advise on measures to coordinate, sensitise and disseminate the understanding of water sector legislation and policy across government and amongst the public.

13

Dispute Resolution Procedures

- (1) Given the increasing stress upon the nation's water resources and the increasing likelihood of conflicts of use arising, the Government shall provide a range of dispute resolution mechanisms as are best suited to the equitable, swift and economic resolution of any water dispute. The range of mechanisms shall be available as local remedies, negotiation, mediation and alternative dispute resolution mechanisms and ultimately in the event of failure to resolve a dispute in good faith may seek a decision through the courts.
- (2) In the first instance parties to any dispute will be required to negotiate in good faith in order to seek an amicable resolution, this can include cooling off periods and renegotiation in the presence of a mediator appointed by the Director General of the National Water Resources Management Authority as the Minister may decide.
- (3) In the event of failure to reach an acceptable conclusion under 13(2) within a six month period, the Parties may be required by the Minister where appropriate, to submit their dispute to the Gambia Alternative Dispute Resolution Secretariat.
- (4) Parties to an Alternative Dispute Resolution Secretariat finding may seek an appeal to a decision through the Minister, whose decision shall then be final.
- (5) Final recourse may then be available through the courts.

14

Powers

- (1) The Minister may – in writing - delegate a power or duty vested in the Minister in this Act to the holder of an office established under this Act, with the exception of the power to make regulations.
- (2) The Minister or the Director General or a member of the National Water Resources Management Board may cause the immediate closure of a water supply, impoundment, diversion or discharge works which is operated in contravention of this Act, as well as water supplies which present a direct and immediate threat to human wellbeing.
- (3) The National Water Resources Management Authority may serve a compliance notice on the owners and operators of any water use in accordance with

provision in this Act and the National Water Resources Management Authority Act.

- (4) The National Water Resources Management Authority shall have the power to serve such administrative fines as are established under this Act and under the National Water Resources Management Authority Act and its regulations upon individuals and operators of water supplies who are in breach of this Act.

15 Water Resources Data and Information

- (1)
 - (a) all water resources data acquired and collected in the Gambia by government or any company or organisation whatsoever, shall be the property of the State. This includes data collected or stored in any format including reports, electronic records and GIS data,
 - (b) it is an offence to fail to provide Government with a complete set of correct data in an appropriate format when required to do so under this Act, under the National Water Resources Management Act, regulations made under these Acts or following a written request from the Minister responsible.
- (2) The Minister responsible shall ensure that all data are securely stored and backed up so as to provide an enduring legacy for the benefit of the people of the Gambia and future generations.
- (3) The Minister responsible shall require any Authority or agency given the responsibility to collect and store and make available water resources data and information to produce such reports, investigations and analyses as are necessary for the management and protection of the nation's water resources, for meeting water data needs in The Gambia and for meeting any related international obligations.

16 Gender Equality

- (1) Under this Act women shall have the right to equal treatment with men, including equal opportunities in the water resources sector. Where suitably qualified, at least one woman should be appointed to each administrative board or council established to manage the water sector.

17 Public Participation

- (1) The National Water Resources Management Authority shall ensure that for any major proposed water use or water sector development:
 - (a) Sufficient relevant information about the proposed use or development is made available at an appropriate time, in an accessible and understandable format in the public domain;
 - (b) The public are provided with an opportunity to present their views concerning proposed uses and developments specified in 17(1) for consideration by the National Water Resources Management Authority, either through a public meeting or else in written form;
- (2) Under this Act all governmental, non-governmental and private sector stakeholders seeking to develop, rehabilitate or manage community water schemes, including the use of water for irrigation or aquaculture must ensure that,
 - (a) sufficient relevant information about the use or development is available and made available at an appropriate time, in an accessible and understandable format in the public domain;
 - (b) The public are provided with an opportunity to present their views either through a public meeting or else in written form;
 - (c) The beneficiary community are given specific opportunities to participate in

decision making concerning the design and location of the project, their contribution to the project in cash or kind and the operation, management and maintenance of the project.

18

Guiding Principles for Water Resource Management

- (1) The Minister responsible together with those administrative agencies established under this Act may provide Guiding Principles to foster the effective management of water resources. Guiding Principles are seen as providing a fundamentally important orientation for all sector stakeholders in realising the objectives of this Act and shall include due consideration for:
 - (a) The Polluter Pays Principle as provided for under Section 38 and Part VIII of the National Environment Management Act 1994.
 - (b) Integrated Water Resources Management. All stakeholders involved in the water sector in Gambia are required to pay due consideration to the practice of Integrated Water Resources Management as currently defined by international best practice. Stakeholders should note that gender equality, public participation, meeting the basic human need for water and access to information are enshrined as legally binding principles under this Act.
- (2) Whereas the Government of The Gambia participates in the making of International Law related to water, the obligations created through such treaties, conventions and agreements shall be adhered to by water sector agencies in relation to transboundary waters. These include *inter alia*:
 - (a) International agreements concerning The Gambia River,
 - (b) The United Nations Convention on the non-navigational uses of International Watercourses.

Part III Sectoral Arrangements

19

Water Resources Management

- (1) A National Water Resources Management Authority shall be established and shall be the lead agency within The Gambia for managing the assessment, coordination; planning, development, conservation ,regulation 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.
- (2) A National Water Resources Management Board shall be established to guide and oversee the work of the Authority.
- (3) A National Water Laboratory shall be established in accordance with 10 (1) (g) of this Act.

20

Meteorological Services

- (1) The Gambia Meteorological Authority shall be established and be the lead body responsible for the collection, analysis, modelling and dissemination of meteorological data and forecasts in The Gambia as well as providing commercial services to the public and private sectors.
- (2) A Gambia Meteorological Authority Board shall be established to guide and oversee the work of the Authority.

21

Rural Water Supply and Sanitation

- (1) The Ministry responsible for water shall within the scope of this Act provide support for water supply and sanitation in rural areas of The Gambia through such means and bodies as approved by the Minister.

22 Sectoral Water Management and Regulation

- (1) As stress upon the nation's watercourses increases it is possible that tensions between water users will increase. In order to make adequate provision against such tensions and possible disputes the National Water Resources Management Authority will establish programmes of work with other Ministries to address sectoral water management and regulation. This will include *inter alia*:
- (2) A programme of work with the Ministry responsible for Agriculture to develop a "code of practice for water use in agriculture and livestock". The code of practice should be based upon a sound understanding of the practical difficulties facing people who use water for agriculture and livestock, including irrigation and aquaculture. In due course this code of practice will be transposed into law. The code of practice will:
 - (a) identify and explain what provisions presently exist in Law concerning these uses of water;
 - (b) set down such guidance as is necessary to ensure water use does not cause conflict;
 - (c) detail current and emerging poor water use practices that should be prevented;
 - (d) present the argument for water permits in agriculture, aquaculture and livestock sectors;

23 Sector Coordination

The National Water Resources Management Authority shall establish and convene a regular forum where sector stakeholders can network, share information and discuss developments in the Water Sector in the Gambia. Attendance is to be open, but should include all major development partners.

Part IV Miscellaneous

24 Making Regulations

- (1) Without prejudice to the other provisions of this Act, the Minister may make regulations and enforceable guidelines for all or any of the following purposes,
 - (a) prescribing the different permits which may be required under this Act,
 - (b) prescribing the various fees which may be charged for water resources purposes,
 - (c) prescribing guidelines for operation for the technical committee,
 - (d) for any matter in respect of which it is provided that the Minister may make regulations and
 - (e) generally for the better carrying out of the purposes of this Act

25 Drought Orders

- (1) The Minister responsible may issue a drought order to regulate the use of water during times of exceptional water shortage. A drought order will prescribe which uses of water are modified or suspended, their location and area where the order will apply and for what period of time and will establish penalties applicable in the event of the order being breached. A drought order may also prescribe additional measures to ensure that water is available to meet basic human needs and specified priorities.
- (2) A drought order may require *inter alia*,

- (a) curtailment or cessation of abstraction or discharge approved by an existing permit;
- (b) restriction on the use of water supplied by public utilities or any other supplier for the purposes and period specified in the Order;
- (c) require public utilities and any other supplier to cease provision of supplies by pipe and instead require provision of water supplies by standpipe or tanker;
- (d) the Ministry and its agents shall not be liable for any loss or damage which may occur pursuant to a Drought Order;
- (e) a person who abstracts, discharges, or uses water in contravention of a Drought Order commits an offence under this Act.

26

Offences

Offences created elsewhere in this Act are

8(9) – Acting without a Permit

15(1)(b)- Failure to provide government with data

25 (2) (e) Breach of Drought Order

27

Fines and Penalties

Note that additional fines are specified in the NWRMA Bill

28

Powers

10(1) – protection of recharge areas

14(2)- powers to close a water supply

Note it may not be necessary to specify powers here, given that they apply to the Authorities being set up

Also General Powers of the Minister....might include, coordination and

29

Transitional Provisions

- (1) Previous entitlements
Example of wording *“any contracts, orders or decisions or anything made or done by a body which until the coming into force of this Act, was charged with the performance of any of the functions under this Act shall, be valid and continue in force as if it was made or done under this Act”.*
- (2) Moving to a system of Permits.
Example of wording *“The Minister may, by order published in the Gazette, prescribe a period of time and a location within which all water users shall be required to register or apply for a water use permit”. Since it is envisaged 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.*
- (3) Dissolution and Creation of Departments
 - (a) 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.
 - (b) The body known and referred to as "the Meteorological Services Division" established by the National Water Resources Council Act 1979 [Act 22 of 1979 Cap.66:02] is dissolved and hereby succeeded by The Gambia Meteorological

Authority.

- (c) A body to be known as the “Rural Water Supply and Sanitation Department” is hereby created and replaces the Rural Water Supply and Sanitation Division.

- (4) Succession rights, assets, contracts, obligations and liabilities.

Suggest wording that “The rights, assets, obligation and liabilities of the dissolved Meteorological Services shall be transferred to the Gambia Meteorological Authority”

Suggest wording that “The rights, assets, obligation and liabilities of the dissolved Department of Water Resources shall be transferred to the National Water Resources Management Authority under the Ministry of Environment, Climate Change, Water Resources, Parks and Wildlife”

- (5) Employee provisions
For example the continuation of pension and other payments

30

Repeals

- (1) The National Water Resources Council Act CAP 66:02 Act 22 of 1979 is repealed
Note there are no savings envisaged

31

Review of Act

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.