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A REVIEW OF THE BILL FOR AN ACT TO ESTABLISH A REGULATORY FRAMEWORK FOR THE WATER RESOURCES SECTOR IN NIGERIA.

(NATIONAL WATER BILL), 2020 AS REVISED & REPRESENTED



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Long Title (Remains the same)

A Bill for An Act to establish a Regulatory Framework for the Water Resources Sector in Nigeria, provide for the equitable and sustainable development management, use and conservation of Nigeria's surface Water and Ground Water Resources and for related matters.

BACKGROUND

Re-submission of the controversial National Water Resources Bill of Nigeria

On 30th June 2022, information filtered into the public space that the Federal government of Nigeria once again re-submitted the National Water Resources Bill which was widely criticised and rejected by the Nigerian People in 2019 and 2020 respectively. The Bill which has continuously been a subject matter of controversy and unease was widely rejected and eventually jettisoned by the National Assembly earlier on September 29, 2021.

On Wednesday June 29, 2022 however, the House of Representatives has once again carried out a first reading of the same Bill which was re-presented to the legislature by Executive, and sponsored by the Chairman, House Committee on Water Resources, Sada Soli of Katsina State, with claims that the document has been reviewed and revised based on feedback and reservations drawn out by the public.

The Corporate Accountability & Public Participation Africa (CAPPA), with partner, AUPCTRE and other well-meaning water justice allies under the auspices of "Our Water Our Right" Coalition have taken effort to study and review this supposedly revised Bill once again, and below is our clause-by-clause analysis of this anti-people document.

ITEM (1)

Cover letter of the Honourable Minister of Water Resources

Paragraph 4:

"The documents presented to the Ministry, marked as Annexes 'C'-'F' have been carefully perused and found to have reflected the observations raised by the Nigeria Governors Forum contained in Annex 'A' and the Legal Opinion of the Honourable Attorney General of the Federation in Annex 'B'."

Paragraph 5:

"In the light of the above, may I respectfully forward herewith, Annexes 'A' – 'F', as earlier indicated, for the distinguished members' consideration and guidance to facilitate quick passage of the Bill".

Observation

It is unfortunate and concerning that of all voices, outcry, petitions, and harmonised recommendations from Nigerians which were also duly submitted to the Honourable minister, only inputs from the Nigeria Governors' Forum were deemed viable or important enough for attention and consideration in the purported review of this widely controversial and unpopular Bill.

The National Water Resources Bill 2020 was so controversial that upon its almost secret initial presentation to the Federal House of Representatives, it was met with resistance and pushback

from a wide range of quarters in Nigeria, ranging from the Civil Society to Labour Unions, Nigerian Bar Association, Religious bodies, regional forums, Artisans associations and numerous professional bodies.

On September 15, 2020, Corporate Accountability & Public Participation Africa (CAPPA) and the Amalgamated Union of Public Corporation Civil Service, Technical & Recreational Employees (AUPCTRE) led a delegation of civil society and labour allies to a meeting with the hon. minister, to whom a harmonised and well laid-out highlights of clause-by-clause analysis of the Bill was submitted with specific recommendations encapsulating the voices and concerns of the public. Considering the content of the cover letter from the Honourable Minister to the legislature however, it is clear that the only reservations considered are those of the Governors forum, based on which the Bill is now claimed to have been "revised".

CLAUSE BY CLAUSE ANALYSIS

1.

PART I - Objectives & Entitlements to use of water

Observation

Sec 1 (1) Par (i) was struck out.

Although "promoting public private partnerships in delivery of water services" has been expunged from the Objectives of the Bill under Part 1- Sec 1 (1)(i), same provision is still retained in 13(1)(n) of the Bill.

2.

Sec 13

Functions of the minister

(1) (n) "to promote all aspects of public-private partnerships in the development of water services infrastructure"

Observation

No Action taken! Provision retained

- **Despite public outcry against the promotion of privatisation of the Nigeria water sector, and the unanimous call of Nigerians on the government to jettison the idea, it is unfortunate to see that the people's call was largely ignored by the Attorney General, and the provision is still prominently featured in this Bill.**
- **Provision for privatisation of water resources in this Bill is disguised under "Public Private Partnership with the colouration of a positive mens reas (intention). In reality, the private sector is profit-driven, therefore, it is naïve to take this at face value, knowing that there will be a measure of ownership and control as return on investment. This, in turn, will not favour the public (citizens), who may now have to pay through their noses to afford water. This is against the spirit of human rights.**
- **It is impossible for corporations to commit resources to the development of water without a measure of control and ownership. Private corporations, by their goal are primarily concerned about profits as opposed to human rights, and they will always act in their own interests to maximize such profits.**

3.

PART IV, S.15. 1(1) - (4)

Establishment of Water Resources Regulatory Commission

- (1) There is established an independent regulatory body to be known as the Nigerian Water Resources Commission (in this Bill referred to as "Commission") charged with the responsibility for the regulation of national water resources of Nigeria as defined in S. 2(1) and listed in the First Schedule to this Bill...

Observation

- **With the creation of this regulatory body, what then becomes the relevance of the Ministry of Water Resources?**
- **Provisions such as this give room for overlapping of duties and unnecessary interbody conflicts.**
- **This would often ultimately lead to redundancy of one of the agencies and a non-prudent utility of taxpayers' resources.**

4.

Functions of the Commission.

S.29 (1), previously S.22

(d)- issue licences for water resources use in accordance with the provisions of this Bill

(e) monitor the conduct of holders of the licences and to enforce the conditions included in the licences.

Observation

A federal Commission is being positioned to issue water licences to water bodies within states and communities! This defeats the spirit of true federalism. As long as water resources management and conservation is not an item on the exclusive legislative list of government, it becomes arbitrary to attempt to entrust a federal commission with issuance of licences and enforcement of "conditions" on citizens within states and local communities. Especially when those conditions are also faulty and contestable. This is alien to a supposed democratic federal system.

5.

Exemption from liability

Sec. 42 (Previously Sec.129)

"no personal liability shall attach to any employee of the Commission or to a Commissioner for any loss or damage sustained by any person as a result of the bona fide exercise or discharge by such employee or Commissioner of any duty arising from or imposed pursuant to this Bill".

Observation

This Section, regardless of the rearrangement, is still an arbitrary provision, which at best will promote the arbitrary use of power on the part of the commission and its agents against ordinary citizens without repercussions or accountability

From the couching and placement, the Commission is obviously being positioned in a manner that will exempt it from accountability to the Nigerian people! A provision that tilts the balance of care away from the Commission, its commissioner and employees is tactically positioning the citizens to be at the mercy of the Commission, making arbitrariness very easy, and accountability insignificant, if not impossible.

Tyranny can be very easily expected as the code of conduct of this Federal Commission.

6.

Limitations of suits

Same provision in separate sections!

Sec. 58(1)-(3) and Sec. 111(1)-(3)- Distinctively different parts but exactly the same arbitrary provision

(1) A suit shall not lie or be instituted in any court against the Agency or its employees unless it is commenced:

(a) within 3 months after the act, neglect, or default complained of; and

(b) in the case of a continuation of damage or injury, within 3 months after the ceasing thereof.

(2) A suit shall not be commenced against a Commissioner or any other officer or employee of the Commission before the expiration of a period of one month after service of a written notice of the intention to commence the suit on the Commission by the intending plaintiff or his agent'.

Observation

- This Bill is erroneously creating a statute of limitation. It is unjust to attempt to deny citizens of their right to institute valid actions against the Commission and its employee on the basis that the action is being brought after a period of 3 month of the wrongdoing of the commission/employee. Lawsuits should ordinarily follow their due filling process and timeline as stipulated in relevant legislation and civil procedure. Otherwise, that amounts to violation of citizens' rights.
- On (2), Insisting on citizens submitting a written notice to the commission before filing an action against it or its representatives is a ridiculous provision. Once an originating motion is filed in a court of Law, the defendant (in this case, the Commission) will be served before a trial can even commence. Placing an additional burden on citizens to serve a written notice of intention to file an action against the commission to the Commission before even approaching the court of law is not only a laughable provision but a malicious one as well, which creates additional task unknown to court procedures in the Bill to further frustrates citizens who have cause to take up actions against the Commission or its agents through the law courts.
- This replication of an outrageous provision perhaps also shows that the focus of the Nigerian government is concentrated on the wrong things. Here is a proposed provision to shield the Commission from accountability by placing a statute of limitation within this Bill, and in the desperation to impose that on the Nigerian people, the provision is broadly and possibly mischievously replicated in Sec. 58 and Sec. 111.

7.

PART V

Licensing

Nothing has changed; former Part IX has only been rearranged to become PART V

Previously Sec. 98, now Sec.61 (1)

(1) *Subject to the provisions of sections 3 and 72 of this Bill, the use of water shall be subject to licensing provisions under this Part and relevant regulations issued by the Commission.*

Observation

In consideration of UN Res. 64/292, to which Nigeria is signatory, the use of or access to public water should not be subjected to licensing for citizens but should be entrenched as a human right, which availability, accessibility, and affordability is paramount. To do otherwise would jeopardize the right of citizens to water.

8.

Application for a licence

Sec. 64(1)

“No person shall undertake any of the prescribed activities defined in Sec. 62(licencing categories) of this Bill except in accordance with a licence issued *by the Commission*” or a general authorization pursuant to this Bill”.

Observation

Not only is licensing for private use of water against the spirit of human right of citizens to water, but it is also absurd for the licensing of a subject matter under the concurrent legislative list in a federation to be solely conducted by a “Commission” of the federal government.

9.

Determination of Application

Sec. 66

(1) The Commission may grant or refuse to grant an application for the issue of a license for any reason the Commission considers appropriate having regard to the Objectives specified in S.1 of this Bill

Observation

It is awful enough that citizens’ access to water is proposed to be subjected to licensing by a Commission of the federal government, but this provision further gives arbitrary powers to the federal government commission to accept or reject applications for such license. If this scales, it will not be unusual to see a skewed regime of licencing which will be largely subjected to the whims and caprices of the federal government and its commission.

Emergency powers in case of shortage of water

Previously Sec. 104. This Section was not reviewed but rather rearranged into Sec. 67 of the Bill

Sec. 67(1)

"With respect to National Water resources as described in Sec. 2(1)"... "the Commission may by Order-

(a). declare that an emergency exists; and

(b). direct a person who has a supply of water in excess of his needs for domestic purposes to reduce the amount he is permitted to abstract under the terms of any licence or general authorization.

(2) Any person who fails to comply with the directive/Order of the Commission issued pursuant to the provision commits an offence

Observation

It is ridiculous for a Commission to assume the water needs and what constitutes an excess in the domestic use of water.

Sec. 67

(3) ...an order under this Section may require or authorize-

(b) the entry on to any land by officers or agents of the Commission and such other measures at the Commission may consider necessary to overcome the shortage of water or effects of any accident.

(4) If a person to whom an Order under this section is directed fails to comply with the Order, the Commission or any person to whom it delegates such power-

(a) may take possession of the water supply and operate any works of the person concerned for the drawing, diversion, or use of water; and shall have and may exercise the person's rights in connection with them during the period of the order.

(5) It shall be the duty of any person exercising any powers under this section to do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.

Observation

- **The provision of this proposed section amounts to a breach of peaceful enjoyment of private property/privacy of private citizen.**
- **Giving officers of a commission unrestricted access to a private citizen's compound is overreaching! This easily leads to arbitrary exercise of duty and sometimes unauthorised intrusion and property invasion. More worrisome is the rate of insecurity, including breaking and entering and kidnapping in the country and how this provision can jeopardise safety of persons in their private properties. This Bill seems not to take cognizance of that.**

- **The expression “reasonable care” in this context is at best ambiguous and subjective. This increases the chances of abuse and arbitrary use of powers.**

12.

Emergency powers in case of shortage of water- Penalty

Previously 104 (7), Now S.67 1(7)

(7) Any person who contravenes any provision of this section commit an offence and liable, on first conviction to a minimum fine of 50,000 Naira or imprisonment for a period not exceeding 2 years, or to both such fine and imprisonment and in the case of a second or subsequent conviction to a minimum fine of 100,000 Naira or imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

Observation

Subjecting citizens to imprisonment by civil legislation is arbitrary and against the spirit of Human Rights.

13.

Conditions of licenses

Sec. 68

- (1). The Commission may attach conditions to every general authorization or licence.
- (iv) requiring the payment of water charges as provided for in Sec. 69 of this Bill;
- (v) requiring the licensee to provide or make water available to a person specified in the licence;
- (vi) in the case of a general authorization, requiring the registration of the water use with the responsible Authority and the payment of a registration fee as a pre-condition of that use

Observation

- **This provision and incidental ones to it are certain to breed inequities in a system such as Nigeria where there are varying divisional lines militating against fairness and equity which have also continued to fester. Tribe favouritism, personal vendetta, vindictive gestures, discrimination on the basis of tribe, ethnicity, religion or political affiliation.**
- **Water is a right and should not be charged, nor its use restricted for users. It is against the spirit of public interest to impose Water charges on private citizens**

14.

Charges for Water use

Sec. 69

“The use of water abstracted from a national water resource in accordance with S.2(1) shall be subject to a water charge that reflects...” (a)-(e)

(2) *The water charge shall form a source of income for the Commission*

Question

Does this then mean that citizens will start to pay water “charges” directly to the federal government or there will then be double charges since these citizens reside within a state.

15.

Renewal, Review, Variation and Cancellation (Not reviewed, only rearranged)

Sec.107, now S. 70

(6) *Notwithstanding the provisions of sub-section (4) of this section, a Commission may review the terms of a licence, other than the time period, only at the periods stipulated in a licence for that purpose.*

(9) *A licence may be cancelled, suspended, or varied by the Commission if the licensee-*

(b) fails to make beneficial use of the water or any part thereof.

Observation

- **This provision is alarming. It is inequitable for a licensee to get a licence revoked for 'lack of use'.**
- **Secondly, who determines “beneficial use of water”?**
- **Restricting the purpose of private water use is an overbearing provision. The Act cannot possibly successfully exhaust the list of usage of water.**

16.

General Authorizations

Previously Sec.109, now S. 72 (**Again, nothing has changed here, only a mere rearrangement**)

(1) *“The Commission may, subject to regulations made under this Act and conditions imposed, authorize all or any category of persons to use water by notice in the Gazette-*

(a) generally;

(b) in relation to a specific water resource; or

(c) within an area specified in the notice,

(2) *The notice referred to in subsection (1) of this section-*

(a) shall state the geographical area in respect of which the general authorization will apply and the date upon which the general authorization

Observation

- **Citizens do not need to notify the Federal government or any other government at any tier regarding water on private surface. Insisting that citizens are authorised, and the notice published in the Gazette before utilising water is arbitrary.**
- **A combined effect of this section and Sec. 66 will mean divisive and inequitable outcomes for some parts of the country and certain citizens and their customary rights to used water.**

17.

Contravention of licence provisions

Previously Sec. 110, now Sec. 73

(1) *“Any person who contravenes the provisions of section 108(1) commits an offence and is liable on conviction to a fine of not less than 100, 000 Naira or to imprisonment for a period of 2 years or to both such fine and imprisonment”.*

(2) *The Commission shall have the authority to order any person who contravenes section 108(1) of this Act to cease such activities and to make such other orders as may be deemed necessary to prevent continuation or reoccurrence of the contravention.*

(3) *The Commission shall have the authority to penalize a licensee for violation of the terms and conditions of his license or to cancel or suspend such license in accordance with the provisions of this Act.*

Observation

Prescription of imprisonment as punishment for a breach in this Bill is simply outrageous a cheap attempt to criminalise people for their use of water.

18.

Part IV

Establishment of River Basin Development Authority

S.80

(1)- *There are hereby established River Basin Development Authorities to be known by the names specified in column 1 of the Third Schedule to this Bill with a view to improving agriculture and providing raw water for multi-purpose uses*

(4) *Each Authority shall be a body corporate with perpetual succession and a common seal...*

81(1) *Each Authority shall have a part-time Board consisting of”*

(a)-(e), (e) being a full time Manging Director

19.

Remuneration

S. 83

“Members of the Board of the Authorities shall be paid such remuneration and allowances as may be determined by National Salaries, Income and Wages Commission”.

20.

Part VII

Sec. 94- Establishment of the Nigeria Hydrological Services Agency

Sec. 95- Establishment of the Governing Board, consisting of (a), (b)(1)-(8), (d)

Sec. 99- Allowance of members

Part VIII

Sec. 114- Establishment of National Water Resources Institute

Sec. 115- Establishment of Governing Board of the institute

Observations

- **Absolutely unnecessary multiplicity of institutions; burdensome provisions.**
- **The existence of these bodies and agencies will very easily begin to conflict with overlapping duties and confusion of citizens as to the extent of powers those agencies, Bodies and Authorities.**
- **Note that officers of these Agencies and institutes as well as their governing Boards will also be paid remuneration and allowances according to this Bill. This is not a judicious way to spend taxpayers' monies as opposed to strengthening and ensuring the effectiveness of already existing institutions in charge of water resources including the Ministry, Regional River Basins, agencies, and commissions.**
- **It is important to finally note that these part-time Board members requiring remuneration are also employed staff of the federal government (refer to s. 81(1)(b)-(d) who are already entitled to their salaries and allowances as applicable within the civil service commission**

21.

Power to accept gifts

Sec. 109

"The Agency may accept any gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift, provided that such terms and conditions are not in conflict with the objectives of the Agency and the provisions of this Bill".

Observation

- **This provision is already setting the Agency up for "soliciting" or in fact bribery in exchange of favours. The language of the section underlined above: "if any" would suggest that there may as well not be terms or conditions expressly stated for the exchange of gifts between citizens or bodies and the Agency.**
- **In Nigeria, where corruption is not only a menace but has also been used by the political class and upper-class elites to short-change and oppress ordinary citizens, lower class and general public, it is mischievous to have a provision in a Bill, which expressly allows and in fact encourages a public agency with delicate powers to "receive gifts of land, money or other properties"!**

Exemption from liability (Re-featured, this time covering all institutions established by this Bill)

Sec. 146

“No liability shall attach to the Commission an Authority or any member or employee of these institutions for any loss or damage sustained by any person as a result of the bona fide exercise or performance of any function which by or in terms of this Bill is conferred or imposed upon the Commission or Authority”.

Observation

- **Similar to the observation under S. 42 of this Bill, these federal institutions are obviously being positioned in a manner that will exempt them from accountability to the Nigerian people! Instead of duty of care on the part of supposed public officers, this provision shields the federal government and its agents away from minimum responsibility.**
- **Regardless of the intentions of the draftsman, this provision will amount to invasion on property and privacy under the guise of legislation or regulation. It is at best a licence to arbitrary encroachment.**
- **Tyranny can be very easily expected as the code of conduct of these Federal institutions.**

SUMMARY OF ANALYSIS.

A peripheral look at this Bill would suggest a good intention rooted in sheer eagerness of government for equity in the distribution of water resources. However, a further critical look beneath the sugar-coated disguise into each clause of the Bill would reveal a deeper intention, which is not positive:

1. This Bill is rooted in a privatisation agenda: privatisation of Nigeria’s water resources under the guise of Public Private Partnership will only worsen the availability, accessibility and affordability of water resources by common citizens. Treating water as an economic good as opposed to a human right would engender a “survival of the fittest” approach to water access and affordability- the fittest in that case being the richest or the most economically viable. This is against the spirit of human rights and equitable justice.
2. This Bill, if allowed to scale through, would result in dispossessing a section of Nigeria citizens of their inherited and cultural rights to water. This is by no means an equitable venture.
3. Another dysfunctional consequence of this Bill is the establishment of new Federal Government Commission, Institute and Boards to take over the responsibilities of the States on water resources within territorial jurisdiction which is their States. This once again runs contrary to the spirit if true federalism.
4. Close to 50 million Nigerians still rely, exclusively, on surface water sources to meet their domestic needs, it is therefore the primary responsibility of government to provide water and ensure effective distribution rather than abrogate such responsibilities while further creating obstacles for average private water users through the guise of stringent regulations.

5. It is quite interesting that the Objectives of the Bill, as contained in Part I include:

Sec 1(1) (c) *“promoting equitable and affordable access to water and reducing poverty”*

Sec. 1(1)(g) *“promoting the efficient sustainable and beneficial use of water in the public interest;*

However, from careful perusal, it is apparent that in spite of these flowery objectives, the provisions of the same Bill are not in tandem with the listed objectives.

CONCLUSION

On July 28, 2010, through Resolution 64/292, the United Nations General Assembly recognized in explicit terms, the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution demanded that Nation States, especially developing countries (Nigeria inclusive), provide safe, clean, accessible, and affordable drinking water and sanitation for all. The Committee on Economic, Social and Cultural Rights had, prior to that declaration adopted General Comment No.15 on the right to water, with Article I.1 specifically stating that "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights". Comment No. 15 also defined the right to water as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.

In the light of these collective declarations therefore, it is primarily obligatory for government to ensure equitable access to water by the populace, especially the most disadvantaged- regardless of economic status.

This Bill, regardless of the “re-packaging” and re-arrangement of sections and a few expungements, still fails woefully to meet up with the obligation of integrate the tenets of Human Right to water and sanitation.

There is a fundamental failure to prioritize the normative elements of accessibility, affordability, and availability of water as mutually exclusive components of the Human Rights to water by ordinary citizens of Nigeria whose water remains a natural resource which SHOULD NOT be commodified.

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