

FEDERAL REPUBLIC OF NIGERIA



FEDERAL MINISTRY OF AGRICULTURE AND WATER
RESOURCES

NATIONAL WATER RESOURCES BILL

SECOND DRAFT-APRIL, 2007
NATIONAL WATER RESOURCES BILL

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NB the Federal Ministry of Water Resources (FMWR) changed its name to the Federal Ministry of Agriculture and Water Resources on 1.1.07

1 BACKGROUND

- 1.1 Recognizing the importance of water resources management for the economic development of Nigeria and the well-being of its citizens, the Government took a number of initiatives related to water resources policy, in the latter part of the 1990s, that ultimately led to today's discussions on revision of the water law. These included development of a set of key water resources principles that were circulated initially in 1998 for review by approximately 100 representatives of government agencies, academics and other water specialists;¹ a World Bank sponsored study, concluded in 2001, that included specialist reports on the legal and regulatory framework, institutions and transboundary waters;² various drafts of a water policy culminating in the 2004 National Water Policy;³ and the EU funded report on Water Resources Management and Policy.⁴
- 1.2 Progress was being made in other water-related areas during the same period. A National Water Supply and Sanitation Policy was drafted in 2000 (FMWR, 2000) which, although currently under review, incorporates a number of principles for which water resources policy and law needs to provide the framework. In 2006, a draft Irrigation Policy⁵ was prepared that draws on the principles of the National Water Policy. At State level, a model Water Supply Services Regulatory Law has been prepared in association with the World Bank-supported WIMAG initiative, (Water Investment Mobilization and Applications Guidelines). It provides a basis for water supply reform legislation including establishment of State Water Regulatory Commissions and licensing procedures for water service providers. It is anticipated that most States will adopt such legislation, adapted to their individual contexts as required. In relation to natural resources and the environment, a national policy on the Environment was formulated in 1999 that provided for sustainable development based on proper management of the environment and in 2006 a second reading of a Bill to establish the National Environment Standards Enforcement Agency (NESEA) went through the National Assembly.
- 1.3 Developing recommendations for updating Nigeria's water resources law is part of this longer-term process. It is also closely linked to a parallel EU-supported activity for developing a Water Resources Strategy for implementation of the National Water Policy that was discussed at a workshop in Abuja on 7th December 2006.
- 1.4 A Workshop was held in Abuja on 25th January 2007 to discuss the first draft of the National Water Resources Bill. Comments received at the workshop have been addressed in the second draft of the Bill presented in this report. Once enacted, the National Water Resources Act will replace Water Resources Decree 101 of 1993 and repeal and modify other related laws as defined in Part XIV of

¹ These consultations are recorded in Annex IV of a report on the Catchment Management Plan for the integrated natural resources management of the Komadugu-Yobe River Basin prepared for the Federal Ministry of Water Resources, IUCN-The World Conservation Union and the Nigerian Conservation Foundation by Afremedev Consulting services, May 2006, pps116-172.

² National Water Resources Management Strategy, May 2001. Specialist Reports.

³ Although this draft has yet to be approved by the Government, it is considered to be a definitive statement of Nigeria's current water policy.

⁴ Water Resources Strategy, December 2006. Prepared by Atkins International as support to the Federal Ministry of Water Resources under EU contract 2006/126409.

⁵ Draft National Irrigation Policy and Strategy for Nigeria, prepared by Enplan Consultants, 2006.

the draft Bill. Subsequent work will be required to draft regulations under the new law although this is outside the consultants' current terms of reference. It is proposed that such work should be expedited so that the approval process for the draft Bill and its regulations can be considered concurrently, thus avoiding any subsequent delay in implementation of the new law.⁶

1.5 The following section provides a summary of the second draft National Water Resources Bill.

⁶ Here it is noted that the 1997 Rules and Regulations under Water Resources Decree 101 have not been formally approved and therefore not implemented.

2 EXPLANATORY NOTES ON THE DRAFT NATIONAL WATER RESOURCES BILL

2.1 This second draft of the National Water Resources Bill comprises 15 parts and 107 sections. The table below summarises the structure of the draft Bill. It starts with a description of fundamental principles, followed by a definition of the powers and functions of water management institutions, the approach to water resource management and strategy development and definition of the mechanisms and procedures for implementation of this approach and for promoting good governance in the water sector. It concludes by defining sections of existing legislation that are to be amended or repealed and a definition of terms used.

Principles and Scope	Part I: Fundamental Principles and Entitlement to Use of Water
Institutional arrangements	Part II: National Council on Water Resources Part III: Powers and Functions of the Ministry responsible for Water Resources Part IV: Establishment, Powers and Functions of River Basin Management Commissions Part V: Establishment, Functions and Powers of Irrigation Management Authorities Part VI: Directive Principles for the Water Services Sector Part VII: Establishment, Functions and Powers of Inspectorate of Dam Safety
Procedural arrangements	Part VIII: Water Resources Planning and Management Part IX: Licensing Part X: Monitoring, Reporting and Information Systems
General provisions and Dispute Resolution	Part XI: Appeals and Dispute Resolution Part XII: General Part XIII: Offences Part XIV: Consequential and Transitional Provisions Part XV: Interpretation and Citation

PART I: FUNDAMENTAL PRINCIPLES AND ENTITLEMENT TO USE WATER

2.2 Part I lays out the purpose of the Bill, attributes of good governance for the water management institutions to be established and the fundamental principles of integrated water resources management that are derived predominately from the National Water Policy. It sets out the principles of public trusteeship of water resources, and the priority accorded to meeting basic human needs. The Constitutional provision for Federal management of waters is reflected in the scope of the Bill. Other principles adopted include efficiency, beneficial use, sustainability and accountability. Uses of water that may be undertaken without need for a licence are defined, including the recognition of customary rights.

PART II: NATIONAL COUNCIL ON WATER RESOURCES

2.3 Based on the proposal in the National Water Policy to review the governance arrangements of the existing National Council on Water Resources and build on its capacity for inter-agency coordination and co-operation, this Part formally establishes the Council as an advisory body for policy development. It follows the current trend for such apex bodies of appointing a Chairperson at a high level of Government, independent of line ministry responsibility and thus better able to ensure co-operation and co-ordination across the various agencies involved in water resources management. The proposal is to designate the Secretary of the Government as Chairperson of the Council. The Council will provide policy guidance and a forum for co-ordination across water sub-sectors. In addition it will offer an initial venue for mediating water-related issues arising between agencies or across river basin boundaries. Technical guidance and support would continue to be provided by the Federal Ministry of Agriculture and Water Resources while a small administrative Secretariat would be established within the Government Secretary's office for convening meetings and other administrative tasks.

PART III: POWERS AND FUNCTIONS OF THE FEDERAL MINISTRY RESPONSIBLE FOR WATER RESOURCES

2.4 One of the major changes in the draft Bill, as required by the National Water Policy, is the introduction of management of water resources within river basin boundaries. This change and its associated institutional reforms, including establishment of River Basin Management Commissions, necessitates a change in the powers and functions of the Federal Ministry of Agriculture and Water Resources. The role of the Ministry as a policy making body with responsibility to establish national strategies and set general standards for water resources management across the country will be strengthened and its capacity for maintaining information systems on various aspects of water resources management in the country enhanced. Improved data collection and analysis will support the formalized role of the Ministry in its dealing on international waters. By clearly identifying and delineating the powers of each of the institutions operating in the sector, the situation where multiple agencies have authority and power of control over the same functions will be removed. This Part covers the powers of the Minister generally as well as with respect to subjects of particular importance, and the functions of the Ministry. In drafting these provisions, guidance was taken from the existing mandate of the Ministry as contained in the Ministry's Annual Report, the Water Resources Decree 101 of 1993 (now termed the Water Resources Act), the 2004 National Water Policy and the Water Resources Management Implementation Strategy finalized in 2006.

PART IV: ESTABLISHMENT, POWERS AND FUNCTIONS OF RIVER BASIN COMMISSIONS

2.5 Following recommendations of the Water Resources Strategy, the move towards river basin management has led to the proposal for progressive establishment of River Basin Management Commissions, one for each of the eight hydrological areas of the country. The role of the Commissions is to manage, control, oversee the development and use, protect and conserve the water resources of the basin. They will act as a co-ordinating agency for water resources management in the basin and as a regulatory body with powers to licence water use and the disposal of waste water and other effluent into water bodies. This Part covers establishment of the Commission, its composition, powers, functions, and generally regulates its operations and points of interaction with other stakeholders in the Basin. Unlike the existing River Basin Development Authorities that are more focused on irrigation, the remit of the Commissions covers the broader range of principles of integrated water resources management. The Commissions will not be involved in service delivery. Provision is made for a Governing Board of the Commission to ensure effective implementation of policies formulated for the sector. As a transitional measure, the Minister will have responsibility for the functions of a Commission until such time as the Commission for a particular basin is established. The geographic coverage of the Commissions is detailed in Schedule 2. Co-ordination arrangements are included for those Commissions that form part of the larger Benue and Niger River Basins and further consideration may be given to possible merger of the proposed Commissions for the upper and middle sub-basins of the Benue river.

PART V: ESTABLISHMENT, POWERS AND FUNCTIONS OF IRRIGATION MANAGEMENT AUTHORITIES

- 2.6 This Part provides for the transfer of responsibility for public irrigation projects from the existing River Basin Development Authorities to newly established Irrigation Management Authorities. This Part sets out the composition, powers, functions and funding arrangements for the new Authorities.
- 2.7 Although the general principles for irrigation management contained in the draft Bill are consistent with those in the draft National Irrigation Policy and the National Water Resources Strategy, the institutional recommendations differ considerably. While this draft Bill has incorporated establishment of Irrigation Management Authorities, this approach may only be appropriate for the larger areas of public irrigation, such as in Hadejia-Jama'are and Sokoto-Rima. The alternative approach of establishing a National Irrigation Commission to oversee rehabilitation of projects prior to handover to farmer management or private sector management needs further discussion. This Part will then need to be revised to reflect the outcome of such discussions.

PART VI: DIRECTIVE PRINCIPLES FOR THE WATER SERVICES SECTOR

2.8 Under the Constitution of Nigeria, water supply services are not included in the Exclusive Legislative List in the Second Schedule (for powers reserved for the National Assembly) or the Concurrent List (for those matters that may be legislated upon by both National and State Assemblies but over which Federal laws take priority). By excluding such services from these lists, the Constitution accords jurisdiction over water supply services to the States. The provisions of this Part aim to uphold State responsibility for the provision of water supply and sanitation services while at the same time reflecting the important federal role of policy development, coordination,

setting of standards and monitoring and providing a common framework within which State legislation can be derived.

- 2.9 It covers general principles relating to the water services sector, the related role of the Federal Ministry including setting of the policy framework, funding and monitoring of performance, the responsibilities of the States and Local Governments, including the regulatory environment and obligations of water service agencies, and the formulation of water services development plans. More detailed guidance will be provided through regulations.

PART VII: ESTABLISHMENT, FUNCTIONS AND POWERS OF INSPECTORATE OF DAM SAFETY

- 2.10 Part VII contains measures aimed at improving the safety of new and existing dams so as to reduce the potential harm to people, property and water resources. The measures require owners of dams to follow certain control procedures during the construction and operation of dams including routine inspection. The responsibility of owners to implement recommendations emanating from the inspections is defined. These measures are in addition to an owners' common law responsibility to ensure the safety of their dams. A register of approved professional persons will be established to undertake certain activities in respect of dams and they will have a general duty of care to the public. Large and small dams, as defined under the Bill, are required to follow registration and inspection procedures whereas small dams 'not at risk' and those below the size category of small dams are exempt. Provisions are also made for actions to be taken in the case of an emergency. Transition arrangements are proposed and it is expected that a significant level of technical assistance support will be required to undertake initial inspections on the stock of existing dams that fall under these provisions.
- 2.11 Ultimately a system of certification and inspection of dams based on an assessment of the level of risk may be considered to replace the more traditional approach based on size thresholds that is proposed in the draft Bill. However, such an approach will require sophisticated risk assessment procedures and may be considered as a subsequent amendment once basic dam safety provisions have been established.

PART VIII: WATER RESOURCES PLANNING AND MANAGEMENT

- 2.12 This Part deals with the development of strategies to facilitate the proper management of water resources at national and basin levels. It includes periodic development of a National Water Resources Strategy by the Federal Ministry of Agriculture and Water Resources under guidance of the National Council on Water Resources. The National Strategy will provide the overall framework within which Basin Water Resources Management Strategies will be developed by the River Basin Commissions and that, in turn, will incorporate guidance on a range of thematic issues including water conservation and efficiency of water use, watershed management, flood and drought management and water quality improvement. The national and basin strategies will cover both surface and groundwater resources and provide the basis under which water allocation and licensing will be carried out. A fundamental mechanism for water resources management introduced in this Part is the concept of classifying water resources to provide a benchmark against which decisions affecting water quantity and quality can be taken and progressive improvements

promoted.⁷ The priority of providing for the basic human needs of water of current and future generations, and for ensuring that the water resource is of an environmental quality fit for purpose, will be achieved by introducing the concept of a Reserve, or quantity of water that must be guaranteed before allocation is made for other purposes. Provisions are also introduced to strengthen the co-ordination between water management institutions and environmental standards enforcement agencies in the prevention and control of pollution.

PART IX: LICENSING

2.13 This Part covers matters relating to issuing of licences related to water use, water related development activities and waste-water discharge and for general authorizations on the use of water. It sets out the categories of activities that require licences, the essential features of licenses and the nature of conditions that may be attached to them. The granting of a licence does not guarantee the availability of water. Recognition of the need for a continuation of an existing lawful use of water, including customary use, and transition provisions for licensing existing uses is included. Procedures for applying for licences, notification and public consultation, their determination and appeals are incorporated. Included in this Part is the principle of the user-pays for water through a system of water charges. For the water resource, these charges relate mainly to introducing payments for bulk water that will need to reflect the purpose for which the water is being used, the principles of conservation and efficient use and the social and economic context. Procedures are defined for dealing with emergency situations that require temporary changes to the terms of a licence and other factors including changes in hydrological or demographic conditions where licence terms and conditions may need to be varied. The procedures for review, renewal and cancellation of licences are specified. Special measures are introduced for controlling water usage from aquifers that are under stress.

PART X: MONITORING, REPORTING AND INFORMATION SYSTEMS

2.14 Under Part X, a number of information systems will be established to facilitate more effective and integrated water resources management. At national level, these include establishment by the Ministry of hydrological and meteorological monitoring networks, databases summarizing water resources management at basin level and information on international water resources to which Nigeria is a party. At basin level, systems will be established to collect and analyze information necessary to assess the quantity and quality of water resources in the basin, the state of the aquatic environment, the use of water resources, compliance with resource quality objectives and coverage of water supply and sanitation services. Greater public access to information is promoted and in particular, procedures are included for making available information to the public on flood and drought conditions and risks.

PART XI: APPEALS AND DISPUTE RESOLUTION

2.15 In furtherance of the principles of good governance, an independent National Water Resources Appeals Board will be established to hear appeals on decisions of the various institutions in the sector, as well as to determine disputes that may occur as a first step towards the resolution of any conflict or grievance. The Appeals Board, to be established under this Part, will comprise a combination of legal practitioners and professionals with extensive experience of engineering,

⁷ Technical assistance support will be required for the initial classification process.

environmental matters, business and finance as deemed appropriate. The cases where appeals can be heard by the Board are specified. On points of law, appeals on the decisions of the Board can be taken to the Federal High Court. The primary obligation of the Board is to promote mediation and amicable settlement of issues amongst stakeholders failing which more formal proceedings may be adopted. This approach is expected to be a more efficient procedure than recourse to the civil courts.

PART XII: GENERAL

2.16 Part XII provides the framework for public consultation that will implement the principle of more extensive stakeholder participation embodied in the National Water Policy. It provides for consultation and publication of comments of stakeholders to ensure their involvement and for transparency in key processes of water resources management and the decisions made. Provisions are included that define the powers of designated officers to enter land subject to listed conditions, to conduct investigations in furtherance of their duties while at the same time affording protection to the owners of property. Institutions established under the Bill are empowered to acquire land and landed property for the furtherance of their duties under the Bill pursuant to the provisions of the Land Use Act.

PART XIII: OFFENCES

2.17 This Part provides for actions to be taken where contravention of the provisions of the Bill and Regulations occur, listing what constitutes offences and penalties. The list of offences include making false statements whether oral or documentary, contravention of regulations with respect to listed activities, compensation for harm caused and the award of damages. The amount of fines is not included explicitly to avoid a situation where they rapidly become out of date. Instead they will be published in the Gazette and subject to review every three years.

PART XIV: CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

2.18 Review of the existing legal framework identified a number of overlaps and contradictory provisions in existing legislation. This Part will harmonize the legal framework by repeal and amendment of identified sections of such laws. These include some changes to the Minerals Act to remove duplication in issuance of licences for water use and wastewater discharge, the National Inland Waterways Act, and the Petroleum Act. The Water Resources Decree 101 of 1993 and the River Basin Development Authorities Act will be repealed and replaced by the provisions of the new Bill. In introducing the provisions of the new Bill, there will be a requirement for transitional arrangements to ensure a smooth transition and to build capacity for implementation of the principles of integrated water resources management. For this purpose, consequential and transitional provisions to protect all existing transactions, as well as rights already acquired prior to the Bill, are included.

PART XV: INTERPRETATION AND CITATION

2.19 This Part contains definitions explaining the meaning of certain words used in the Bill.

Appendix 1 Second Draft of the National Water Resources Bill

Federal Republic of Nigeria

Second Draft of the National Water Resources Bill
April 2007

ARRANGEMENT OF SECTIONS

PART I: FUNDAMENTAL PRINCIPLES AND ENTITLEMENT TO USE OF WATER

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2. Public trusteeship of water
3. Entitlement to use of water

PART II: NATIONAL COUNCIL ON WATER RESOURCES

4. Establishment of the Council
5. Functions of the Council
6. Membership of the Council
7. Secretariat to the Council
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PART III: POWERS AND FUNCTIONS OF THE FEDERAL MINISTRY RESPONSIBLE FOR WATER RESOURCES

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16. Establishment of River Basin Management Commissions
17. Powers of the Commission
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19. Commission not subject to Direction
20. Appointment tenure, qualification and removal of Commission members
21. Vacation of office of a Commission member
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PART V: ESTABLISHMENT, FUNCTIONS AND POWERS OF IRRIGATION MANAGEMENT AUTHORITIES

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89. Establishment of the National Water Resources Appeals Board
90. Proceedings of the Board
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PART XV: INTERPRETATION AND CITATION

106. Interpretation
107. Citation

SCHEDULE 1 - Water Bodies declared as affecting more than one State pursuant to item 64 of the Exclusive Legislative list in Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999.

SCHEDULE 2 – List of River Basin Management Commissions

SCHEDULE 3 – Proceedings of the Governing Board of a River Basin Management Commission

SCHEDULE 4 – List of Irrigation Management Authorities

National Water Resources Bill Second Draft

Draft Text	Notes / Sources
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An Act to provide for the equitable, beneficial, efficient and sustainable use and management of the Nation's surface water and groundwater resources; to establish a new institutional framework for the Nation's water resources, defining functions and powers of the institutions; to license water use, regulate construction and safety of dams, monitor compliance and provide dispute resolution procedures; and provide for the repeal or amendment of certain laws and other matters incidental to the foregoing.

[Commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria -

PART I: FUNDAMENTAL PRINCIPLES AND ENTITLEMENT TO USE OF WATER

1. Purpose of the Act

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

- (a) citizens' right of access to clean water and sanitation;
- (b) meeting the basic human needs of present and future generations;
- (c) promoting equitable and affordable access to water;
- (d) adopting natural river basin and aquifer boundaries as the basic units for management of surface water and groundwater resources respectively;
- (e) protecting the water environment for sustainability of the resource and protection of aquatic ecosystems, and recognizing the polluter pays principle;
- (f) providing for existing customary uses of water and avoidance of significant harm to other water users;
- (g) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (h) facilitating social development, poverty reduction, improved public health, economic development, and gender equity;
- (i) providing for growing demand for water use, promoting conservation of use and recognizing the economic value of water;
- (j) reducing and preventing pollution and degradation of water resources;
- (k) managing floods and droughts;
- (l) encouraging comprehensive and equitable coverage of supply and sanitation and promoting public- private sector partnerships in delivery of water services;
- (m) promoting dams safety; and
- (n) meeting international obligations.

- Following list drawn from National Water Policy principles s.2.1.3 and reference to South African National Water Act (SA NWA) s.2 - embodies the principle of a right of access to water. It assigns priority to basic human needs, includes a broad definition of environment, and promotes private sector participation

- (2) The institutions established in this Act are to achieve the purposes set out in sub-section (1) and will be guided by the following principles -
- (a) participation and consultation with States, local governments, communities, women and other stakeholders;
 - (b) management of resources at the lowest appropriate level;
 - (c) administrative efficiency;
 - (d) transparency;
 - (e) accountability; and.
 - (f) implementing national policies on gender and the environment.
- (3) In implementing the principles under subsections (1) and (2), the institutions established under this Act will promote integrated water resources management and the coordinated management of -
- (a) economic development, social welfare and environmental sustainability;
 - (b) land and water resources;
 - (c) surface water and groundwater resources;
 - (d) the river basin and its adjacent marine and coastal environment; and
 - (e) upstream and downstream interests.

- Introduces principles of good governance – from National Water Policy and informed by SA NWA s.2

- Ref; Catalyzing Change: a Handbook for developing integrated water resources management and water efficiency strategies, Global Water Partnership, 2005

2. Public trusteeship of water

- (1) All surface water and groundwater wherever it occurs is a resource common to all people, the use of which is subject to statutory control.
- (2) There shall be no private ownership of water but the right to use water in accordance with the provisions of this Act.
- (3) The right to the use, management and control of all surface water and ground water affecting more than one State pursuant to item 64 of the Exclusive Legislative list in Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 and as set out in Schedule 1 to this Act, together with the beds and banks thereof, is vested in the Government of the Federation to be exercised in accordance with the provisions of this Act.
- (4) As the public trustee of the nation's water resources the Federal Government, acting through the Minister and the River Basin Management Commissions, shall ensure that the water resources of the nation are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its Constitutional mandate.
- (5) States may make provisions for the management, use and control of water sources occurring solely within the boundaries of the State but shall be guided by the policy and principles of the Federal Government in relation to Integrated Water Resources Management, and this Act.

- National Water Policy s2.1.3 and 2001 Legal Thematic Review (principle 1a)
- National Water Policy s2.1.3 and 2001 Legal Thematic Review (principle 1b)
- 1999 Constitution – Exclusive List

- SA NWA s.3(1)

3. Entitlement to use of water

- (1) Notwithstanding the provisions set out in section 2 of this Act a person may, without a licence, -
- (a) take water from a watercourse to which the public has free access for the purpose of reasonable domestic use or for watering domestic livestock;
 - (b) use water for the purposes of subsistence fishing or for navigation to the extent that such use is not inconsistent with this Act or any other existing law;
 - (c) where a statutory or customary right of occupancy to any land

- WR Decree 101.
- WR Decree 101 s.2(a)(i)
- WR Decree 101 s.2(a)(ii)
- WR Decree 101 s.2(a)(iii)

- exists, take or use water without charge from the underground water source, or if abutting the bank of any watercourse, from that water course, for reasonable domestic use, watering livestock and for personal irrigation not for commercial purposes; or
- (d) store and use runoff water from a roof.
- (2) A person may continue with an existing lawful water use, including a customary use, in accordance with section 70.
- (3) A person may use water in terms of a general authorisation as defined in section under 79 or pursuant to a licence issued under this Act.
- (4) Any entitlement granted to a person by or under this Act replaces any right to use water which that person might otherwise have been able to enjoy or enforce under any other law to -
- (a) take or use water;
 - (b) obstruct or divert a flow of water;
 - (c) affect the quality of any water;
 - (d) receive any particular flow of water;
 - (e) receive a flow of water of any particular quality; or
 - (f) construct, operate or maintain any waterworks.
- Reasonable water use and personal irrigation to be defined in regulations. The 5ha upper limit on personal use proposed in the 1997 Rules to Decree 101 is too high and should be reviewed in relation to the minimum amount required for subsistence purposes. 0.5 ha is proposed based on the 2004 irrigation sector review.
 - SA NWA, Schedule 1, s.1(c)
 - SA NWA s.4(2)
 - SA NWA, s.4(4)

PART II: NATIONAL COUNCIL ON WATER RESOURCES

4. Establishment of the Council

- (1) There is established an advisory standing body to be known as the "National Council on Water Resources".

- Review and strengthening of the Council for cooperative governance and promoting inter-agency coordination at a high level is based on s.2.2.5 of the National Water Policy and 1995 Master Plan
- Examples of coordinating bodies include the National Board of Water Resources in Indonesia (Art.86 of Water Law 7/2004) - a coordinating body responsible for "*preparing and formulating water resources policies and strategies*": Vietnam Water Law 1998 Art.63 establishment of an inter-sectoral National Water Resources Council to "*provide consultancy to the Government on the important decisions on water resources that come under the tasks and powers of the Government*"

- (2) The purpose of the Council shall be to provide guidance to the Government on any proposed water-related legislation, national water resources policy and strategy, and issues of coordination in the water sector.
- (3) The Council shall meet at least once every year and at other times as directed by the Chairperson.
- (4) The Council shall establish committees and sub-committees as required to investigate and analyze issues tabled for discussion by the Council and to formulate recommendations.
- (5) As a transitional measure, the technical committee and sub-committees of the existing Council shall be retained for the first year of operation of the new Council and shall formulate a recommendation to reform the number and composition of committees and sub-committees required for implementation of the principles of integrated water resources management set out in section 1(1) .
- (6) The Council shall establish rules to govern its proceedings, the workings of its committees and its decision-making processes based on the provisions of this Act and its regulations.
- (7) Annual reports of the Council providing details of its discussions and recommendations will be made publicly available within one month of the end of the financial year.
- (8) All existing directives or procedures relating to the composition and functioning of the existing National Council on Water Resources shall be replaced by the provisions of this Act.

- The regulations will provide basic framework within which the Council will develop its more detailed procedures.

5. Functions of the Council

- (1) For furtherance of the fundamental principles of water resources management referred to in section 1(1) of this Act, the Council shall perform the following functions, to -
 - (a) provide guidance for and review of the formulation of national water-related legislation; water resources, water supply and sanitation polices and strategies; and master plans;
 - (b) provide a forum for coordination across water sub-sectors and discussion of issues of national importance raised by its membership;
 - (c) provide a forum for mediation of issues on the use or management of water resources arising between sub-sectors or across river-basin boundaries; and
 - (d) review performance of the water resources sector in Nigeria as well as the Nation's compliance with obligations of international agreements and commitments on water-related matters.

- National Water Policy s.2.2.5 states that the structure and functions of the present Council will be '*reviewed and assigned new roles of integrated, multi-sectoral water resources planning and management, in addition to resolution of national level conflicts among sectors.*'
- The NWRC should be a review body for all such reforms.
- e.g. transboundary rivers, MDGs, Ramsar convention, etc

6. Membership of the Council

- (1) The Council will be chaired by the Secretary to the Government of the Federation.
- (2) Subject to the general representation under subsection (3), members of the Council shall be determined by the Chairperson to ensure broad

- The intention here is to achieve the level of authority necessary to allow coordination across Federal line agencies and encourage independence
- Mechanism to involve NGOs (environment and social) and

representation of water stakeholders in Nigeria at Federal, State and local government level, civil society, and the private sector, and to ensure effective representation of both men and women.

academia also need to be considered and a nomination process established in the regulations.

- A further option is to provide a facility for groups to make representations to the Council and, for issues of national importance, for them to be invited to make a presentation. To consider in working arrangements of the Council (under regulations).

(3) Members of the Council shall include representatives of federal agencies responsible for water resources, environment, agriculture, health, inland waterways, minerals, forestry, electricity generation; State water and environment agencies; water consumers, irrigation management bodies, water user associations, industry, association of local governments, community-based organizations and bodies responsible for protected or conservation areas.

(4) Membership of the Council shall be published on the Council's website.

7. Secretariat to the Council

(1) A Secretariat shall be established for the Council to act as an administrative body for the purpose of convening meetings of the Council and its committees, administering activities of the Council and coordinating the working of its committees.

- The concept is to have an administrative Secretariat directly reporting to the Council Chairperson, but with technical inputs provided by the Ministry and others.

(2) The Secretariat shall be headed by the Secretary to the Council who shall report to the Chairperson of the Council.

(3) The staff of the Secretariat may be deployed from the Civil Service or employed from the private sector.

(4) The remuneration of the Secretary and the staff of the Secretariat shall be in accordance with the public service salary structure of the Federal Government.

8. Financial Provisions

(1) The funds of the Council shall comprise such amounts as shall be provided by the President or as approved by the National Assembly.

- It is proposed that the Secretariat to the Council would be established within the Office of the Secretariat to the Government and thereby the Council itself would not need to be a separate corporate body.

(2) The cost of participation of members of the Council shall be borne by the organization they represent.

(3) Notwithstanding the generality of subsection (2) the Council may, at its discretion, subsidize the participation of non-government members.

PART III: POWERS AND FUNCTIONS OF THE FEDERAL MINISTRY RESPONSIBLE FOR WATER RESOURCES

9. General Powers of the Minister

(1) It shall be the duty of the Minister to promote the protection, use, development, conservation, and management of water resources

- National responsibility for policy and setting the

throughout Nigeria and to ensure the effective exercise and performance by an authority or person under the control of the Minister of their powers and duties in relation to water.

- (2) The Minister shall have the power to make regulations, policy and strategy for the proper carrying out of the provisions of this Act and functioning of the Ministry in accordance with this Act as well as other directives he may receive from the President and guidance from the Council.
- (3) The Minister shall have and exercise all such powers as are necessary and required in furtherance of the duties and functions conferred pursuant to this Act, directives of the President, or any other law

10. Powers related to River Basin Management Commissions

- (1) The Minister shall establish and chair coordination committees for each of the Benue River and Niger River Basins and for any other situation where development or management of the water resources affects more than one Commission.
- (2) Each of the committees established under subsection (1) shall comprise the Chairperson and between two and four representatives of each of the constituent Commissions, as the Chairperson may deem necessary.
- (3) Where requested by the President, the Minister shall undertake an investigation of the performance of a Commission and make recommendations to the President for action to be taken.

11. Powers related to international agreements, negotiations and meetings

- (1) The Minister may, in consultation with the Federal Executive Council, by notice in the Gazette, establish a body to coordinate implementation of any international agreement entered into by the Federal Republic of Nigeria and a foreign government relating to:
 - (a) investigating, managing, monitoring, and protecting water resources;
 - (b) regional co-operation on water resources;
 - (c) acquiring, constructing, altering, operating or maintaining a waterworks; or
 - (d) the allocation, use and supply of water according to the principles of equitable and reasonable utilization and avoidance of significant transboundary harm.
- (2) The Minister shall consult with all affected States prior to entering into any international agreement on a river basin.

12. Powers related to water supply and sanitation

- (1) Pursuant to Federal Government policies on water supply and sanitation, the Minister may formulate guidelines for the development and funding of

framework within which water resources within a basin context are managed.

- Decentralization control to the 8 basin areas as National Water Policy s2.1.3
- Kenya Water Act s.4(2)
- Propose leaving the scope of regulations general rather than specifying in detail the matters on which regulations will be prepared.

The two committees shall comprise RBMCs for HA I, HA II, HA V (Niger River) and HAIII, HA IV and HA V (Benue River)

Representation of an upstream or downstream Commission on the membership of a riparian Commission is provided in s.20(1)(a)

- SA NWA s.102;
- The concept of reasonable and equitable utilization and avoiding significant transboundary injury are based on the 'Helsinki Rules on the Uses of Waters of International Rivers' adopted by the International Law Association in 1966 and endorsed in the National Water Policy, s.2.2.4.
- Ref: Article 6(7) of HJKYB draft Charter
- See also Part VI on Directive Principles for water services sector.

State water supply and sanitation sectors including entering into agreements with State Governments and the encouragement of public-private partnerships.

(2) The guidelines in sub-section (1) may include but not be limited to -

Drawn from SA Water Services Act 1997, s.2

- (a) setting of national standards for water services and standards for tariffs; and
- (b) establishing a regulatory framework and accountability procedures for water services institutions and intermediaries.

13. Functions of the Minister

(1) For the purpose of this Act, the functions of the Minister shall be -

• Adapted from Water Resources Strategy s13.7; Mandate of the Ministry in 2007-2009 Medium Term Strategy;

- (a) to formulate national policy and strategy to guide the integrated planning, management, development, use and conservation of the nation's water resources and provide guidance for formulation of basin water resources strategies under section 64 based on recommendations of the National Council on Water Resources;
- (b) to formulate national policy and standards for water supply and sanitation based on recommendations of the National Council on Water Resources;
- (c) to periodically review and update national water legislation to ensure consistency with national policy under sub-sections (a) and (b);
- (d) to undertake planning for implementation of the policy and strategy and provide guidance to River Basin Management Commissions, established under Part IV, on procedures for river classification, reserve determination and development of basin strategies including for water conservation, watershed management, water quality improvement, flood and drought management, anti-desertification and others under section 64;
- (e) based on the performance of existing irrigation systems and considerations of economic efficiency and social development, formulate criteria to govern decisions on investments for future development;
- (f) to provide assistance to River Basin Management Commissions and others in formulating development plans and projects;
- (g) to collate basin plans into a national plan and facilitating funding;
- (h) to establish and maintain a network for collection, analysis and reporting of hydro-meteorological, hydrological and hydrogeological data and for flood forecasting;
- (i) to collate watercourse and aquifer water quality data collected by the Ministry and others and report on the status of water quality;
- (j) to monitor the level of service provision for water supply and sanitation and disseminate regular reports to the National Council on Water Resources and the Government;
- (k) to provide technical support for the survey, investigation, planning and design of water resources projects;
- (l) to implement development projects of a multi-purpose nature, and for flood management, that are outside the mandate of individual service delivery agencies;

• the intention is for the Ministry to implement projects that go beyond the authority of a single irrigation or water supply agency (e.g. inter-basin transfer) or to avoid situations of vested interest in management of a hydraulic works.

(m) to support, monitor and evaluate programmes of the Commissions and the National Water Resources Institute (NWRI);

- (n) to provide technical guidance to the National Council on Water Resources and its committees;
 - (o) to liaise with donors and supervision of donor and government funded projects;
 - (p) to promote public-private partnerships in the delivery of water services;
 - (q) to prepare an annual report for the National Assembly within 90 days of the end of the financial year that monitors and evaluates the quantitative and qualitative status of the nation's water resources and reports on its commitments related to water service delivery;
 - (r) to represent the Federation in international conferences, meetings and , negotiations on matters related to water;
 - (s) in consultation with relevant public bodies and the respective Commission, to identify areas which, in accordance with the laws of the Federation and Nigeria's international obligations, should be designated as protected areas; • modified from Kenya Water Act s 11.4
 - (t) in consultation with the respective Commission, to identify areas, which in accordance with this Act, should be designated as groundwater conservation areas; • modified from Kenya Water Act s 11.4
 - (u) to undertake such activities and issue such directives as shall be expedient subject to due notification to appropriate responsible agencies to remediate emergency situations that that may threaten any water course within the country; and
 - (v) to receive the reports of the National Council on Water Resources and implement such decisions as they affect the duties of the Minister as identified in such reports.
- (2) The Minister shall also undertake such functions as are provided in this Act as well as any other functions as may be mandated by the President.

14. Delegation of powers

- (1) The Minister may, in writing and subject to conditions, delegate a power and duty vested in terms of this Act to - • SA NWA s.63
- (a) an official of the Ministry by name;
 - (b) the holder of an office in the Ministry;
 - (c) a River Basin Management Commission
 - (d) any other person or Authority as the Minister deems necessary in furtherance of the exercise of such powers.
- (2) The Minister may not delegate the power -
- (a) to make a regulation;
 - (b) to nominate a member of the River Basin Management Commission;
 - (c) to nominate a member of the Water Appeals Board.

15. Making of regulations

- (1) The Minister shall, before making any regulations under this Act -
- (a) Publish a notice in the Gazette -
 - (i) setting out the draft regulations
 - (ii) inviting written comments within 60 days in accordance with consultation procedures under section 94
 - (b) Consider what further steps are appropriate to bring the contents to the attention of interested persons;
 - (c) Consider all comments received on or before the date specified in sub-section (a)(ii) and report on the extent to which comments were incorporated or the reason for not taking a comment into account; and
 - (d) Submit the regulations to the Federal Executive Council for consideration.
- (2) The Minister must within 30 days after making any regulations under this Act, ensure that such regulations are published in the Gazette.

**PART IV: ESTABLISHMENT, FUNCTIONS AND POWERS OF
RIVER BASIN MANAGEMENT COMMISSIONS**

16. Establishment of River Basin Management Commissions

(1) There is hereby established for each of the River Basins listed in Schedule 2, (referred to in this Act as a "Basin"), a Commission to be known as the River Basin Management Commission, (referred to in this Act as a "Commission").

(2) The purpose of a Commission shall be to protect, manage, conserve and control water resources and their use within its Basin for equitable and sustainable social and economic development and to maintain environmental integrity.

(3) A Commission shall be a body corporate, with perpetual succession and a common seal, and can sue or be sued in its corporate name and, subject to this Act, perform all acts that bodies corporate may by law perform.

(4) Each of the Commissions shall have its headquarters at a place within the Basin as may be decided by the Commission and shall have area offices as it shall decide for its administrative convenience.

17. Powers of the Commission

(1) A Commission may exercise any of the following powers subject to the principles of integrated water resource management set out in section 1 and taking into account the National Water Policy and Strategy -

(a) exercise and authorize control over water resources within its area of jurisdiction in accordance with this Act in respect of protection, use, development, conservation, and management;

(b) implement basin management strategies;

(c) make rules to regulate water use and to implement the provisions of this Act;

(d) issue and revoke licences under Part VIX

(e) require establishment of effective management systems by water users;

- Recommendations for river basin organizations in National Water Policy s2.2.5 and Commissions in Water Resources Strategy. This Part also addresses some of the wider water resources management issues raised in the draft irrigation policy.

- Given the progressive nature of Commission establishment, there will need to be a process in which President formally establishes a Commission and notification is published in the Gazette. See Powers vested in the Minister as a transition measure (section 104(9)).

- The Review Committee may wish to consider possible merging of HA-III and HA-IV into a single Commission

- Ref: Section 5 of Water Resources Strategy

- A similar set up –at national level- was established under the Ghana Water Resources Commission Act, 1996

- (f) require alterations or removal of hydraulic works for fulfilment of its functions under section 18;
 - (g) temporarily control, limit or prohibit use of water during periods of water shortage;
 - (h) make regulations and coordinate with State and Local Government agencies to prohibit restricted activities in the watershed area as defined in the Basin Water Resources Management Strategy;
 - (i) request for and obtain from State and Local Governments as well as any major water users, plans and water use projections for such period as shall be stated in such request in furtherance of its functions under section 18 of this Act.
- (2) A Commission shall exercise the powers in subsection (1) together with all other powers as may be delegated or assigned either by the President or pursuant to any other law as shall be necessary and expedient to carry into force and effect the functions of the Commission.
- (3) A Commission shall make regulations for the purpose of protecting the water resources in its Basin, regulating discharge into water bodies, enhancing the quality of water to serve the purpose of this Act, and for such other matters as may be covered by this Act as relates to such Basin subject to the approval of the Federal Executive Council
- (4) A Commission may restrict the amount of water abstracted from a water body in cases of emergency under section 74.

18. Functions of the Commission

- (1) For the purpose of this Act, the functions of a Commission shall be to -
- (a) formulate and implement a water resources management strategy for its water management area as defined in section 64 including thematic strategies relevant to the situation in its area;
 - (b) protect, conserve, manage and control water resources and their use within its Basin for equitable and sustainable social and economic development and to maintain environmental integrity, including management and protection of water catchments;
 - (c) prepare an indicative basin strategy and plan for its water management area under section 64;
 - (d) promote the supply of safe drinking water including that required for basic human needs and the provision of adequate sanitation to all people in the Basin;
 - (e) investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its Basin;
 - (f) license water allocation, wastewater discharge, construction of hydraulic works and other related activities in accordance with Part VIX, implement the charging policy for bulk water abstractions and monitor water abstraction;
 - (g) regulate and monitor operational rules of dams, barrages weirs, diversion works and other hydraulic works that affect the flow of water in a river taking into account principles of any national policy or strategy on reservoir operations;
 - (h) as notified in the regulations, manage, operate and maintain dams, barrages or other water resources infrastructure of a multi-purpose nature or strategic importance other than single-purpose infrastructure for water supply or irrigation managed by the responsible water service provider or Irrigation Management Authority.
 - (i) promote improved river quality and control of pollution through a cooperative working arrangement with Federal and State environment agencies;
 - (j) promote community participation in the protection, use, development, conservation, management and control of the water
- Process for determining licence fees will be defined in the regulations.
 - RBMC responsibility for management of barrages or other water resources infrastructure beyond the control of a single utility or IMA

- resources in its Basin.
- (k) co-ordinate the related activities of water users and of the other water management institutions within its Basin;
 - (l) as delegated by the Ministry, manage hydro-meteorological, hydrological, hydro-geological and water quality monitoring networks in its Basin;
 - (m) monitor water use and water quality within its Basin and take action for remediation where water quality is adversely affected under section 67;
 - (n) facilitate resolution of water-related conflicts relating to its Basin;
 - (o) participate in and coordinate with the Commissions in upstream or downstream basins as provide by section 20(1)(iv)
- This particularly applies to sub-basins that form part of a broader basin, such as the Benue River –(HA III, IV, V) and Niger River (HA I, II, V) basins and also for areas where the groundwater aquifer is common to two or more Commissions.
 - S.9(z) of NIWA Act
 - Wastewater discharge will be licensed under item (f). The activities here do not need licenses, but notification and prior approval.
- (p) regulate other activities that may affect water quantity or quality including dredging and programs for weed prevention, clearing and containment activities;
 - (q) prepare an annual report describing the status of the Basin's water resources, major issues, activities and future plans of the Commission and its financial report.
 - (r) promote co-ordination with the implementation of any applicable development plan established pursuant to any other law or policy in the water resources sector; and
 - (s) review the decisions of the Board in events where parties affected have lodged complaints against such decisions.
- (2) Without derogating from subsection (1) the Commission shall perform its functions and exercise its powers in such a manner as it considers best in achieving any of its objectives under this Act.
- (3) The Commission may carry out any of its functions in association with any person or authority as it may consider expedient for the efficient performance of functions under this Act, including delegation of management and administrative functions to the private sector under a contractual arrangement.

19. Commission not subject to Direction

- (1) Except as expressly provided by or under this Act, the Commission is not subject to the direction or control of the Minister or any other person in respect of its exercise of Its functions, or the issuance of any report, or conduct of any inquiry, but shall be guided by policy approved by the Federal Executive Council, the provisions of this Act, as well as the National Water Resources Policy and any other applicable policy.

20. Appointment tenure, qualification and removal of Commission members

- (1) Composition of the Commission
- (a) The Commission shall consist of the following
 - (i) An independent Chairperson
 - (ii) A representative from each of the States within its Basin with qualifications set out in sub-section (3)(d)
 - (iii) Representatives of the following agencies where they are active in the Basin:
 - Irrigation Management Authorities
- The proposal to form Irrigation Management Authorities is subject to

- Federal Ministry responsible for Water Resources
 - Federal Ministry responsible for Environment
 - Federal Ministry responsible for Mines and Solid Minerals
 - National Inland Waterways Agency
 - Power Holding Company of Nigeria
 - Rural Water Supply and Sanitation Agencies
 - Association of Local Government of Nigeria
 - Traditional Authorities
 - State Water Utilities
 - water user associations or farmers' organisations
 - Industry and commerce
 - Academia
 - NGOs
- (iv) Where the boundaries of a Basin form part of a wider river basin over which other upstream or downstream Commission(s) also have jurisdiction, or actions of a Commission may materially affect an aquifer common to another Commission, representatives from such other riparian Commissions shall be appointed as non-voting members of the Commission in question and have the status of observers.
- (v) And others that may be deemed necessary by the President subject to obtaining a reasonable balance of government and non-government representatives and of men and women.
- (2) The Chairperson shall be -
- (a) nominated by the President based on recommendations of the Interim Committee established under section 104(7) and confirmed by the Senate; and
 - (b) a person with a bachelors degree or equivalent with a minimum of fifteen years experience at a senior management level in a water related institution in the public or private sector.
- (3) The representative of each State shall be nominated by the Governors of each of the States in accordance with subsection (1)(a)(ii) subject to the following -
- (a) qualifications defined by the Interim Committee established under section 104(7) ;
 - (b) shall not be from a State Water Utility or other service delivery organisation
- (c) the President shall also appoint the nominees based upon an overall consideration of the requirements of the Commission to ensure balanced representation in terms of qualification and experience required for the proper exercise of the Commission's functions; and
- (d) the nominees of each of the States under sub-section (a) shall be a person with a degree in any of the following disciplines and shall have a minimum of ten years experience in a relevant field of
- further consideration – see Part V . In the event other institutional arrangements are adopted, the membership of the Commission would be adjusted accordingly.
- Provides a mechanism of coordination among the Commissions along the Benue and Niger rivers, and in cases where groundwater management in one basin is affected by actions of another Commission.
 - The proportion of government to non-government representatives may be defined in the regulations. It is proposed that a minimum of 30% of non-government representatives be adopted. Based on a Commission covering 5 States, this would result in approximately 25 government representatives and 10 non- government.
 - State Water Utilities are service delivery organizations and should not be members of the Board of the Commission which is a regulatory body

endeavour in the public or private sector;

- (i) Water Resources Management
 - (ii) Irrigation Engineering or Management
 - (iii) Environment
 - (iv) Accounting and Finance
 - (v) Utility operation or regulation
 - (vi) Law
 - (vii) Community development
- (4) The members from other Federal and State government organizations listed in sub-section (1)(a) shall be nominated by the bodies that they represent and confirmed by the Chairperson of the Commission.
- (5) The members of non-government organizations listed in sub-section (1)(a) will be nominated and selected according to procedures defined in the regulations.
- (6) The Chairperson of the Commission shall serve for a period of five years while the other members shall serve for a period of four years, renewable for one further term .

21. Vacation of office of a Commission member

- (1) A Commission member shall vacate their office which shall become vacant:
- (a) three months after the date upon which the member gives notice in writing to the President of the intention to resign;
 - (b) on the date the member is convicted:
 - (i) in Nigeria in respect of an offence ; or
 - (ii) outside Nigeria, in respect of an offence involving financial impropriety or any conduct which if committed in Nigeria, would constitute an offence;
 - (c) if he is no longer a member of the body that he represents or is recalled or suspended by such body or agency or Government whereupon he shall be promptly replaced in accordance with the procedure under this section;
 - (d) if he has financial interest in any business connected, either directly or indirectly with any of the activities which the Commission is by this Act required to regulate, or is a relative of a person with any such interest, unless -
 - (i) he has disclosed such interest to the Commission prior to any deliberation on issues which might affect such interest; or
 - (ii) the President is satisfied that such is in effect passive and will not affect the Person's impartial discharge of their duties; or
 - (iii) such interest is terminated effectively by the member prior to taking up the appointment.
 - (e) if the member fails to attend three consecutive meetings of the Commission;
 - (f) when the member attains the age of 65 years;
 - (g) if he becomes of unsound mind or is incapable of carrying out his duties;
 - (h) if he becomes bankrupt or makes arrangement with his creditors; or.
 - (i) If he is adjudged guilty of serious misconduct relating to his duties by an administrative panel of inquiry set up by the Commission or a High Court of record.
- (2) No member of the Commission may be dismissed or removed from office except in accordance with the following procedure:

- Based on Section 37 of the Power Sector Act and Section 61 of the Lagos Water Sector Law No 14 of 2004

- (a) where any person becomes aware of grounds pursuant to this section why any member should be dismissed, that person shall present to the Commission enough facts to constitute such grounds;
- (b) if the Chairperson, after investigating the facts presented, is of the view that the affected member should be called upon to defend the allegations, he shall place such allegations before the Commission
- (c) the affected member shall be invited to defend the allegations against him and, if two thirds of the members present and voting are of the view that the member should be dismissed, the Chairman shall present the proceedings to the President who may subsequently dismiss the member.

22. Proceedings of the Commission

- (1) A Commission shall be entitled to conduct its proceedings, consultations and hearings at its headquarters or at any place within the Basin area as it may deem appropriate.
- (2) A Commission shall make regulations for the discharge of its functions and for the conduct of its proceedings, consultations and hearings, including procedures for the participation of licensees, consumers, other stakeholders and the general public as it may deem necessary
- (3) A Commission shall make public the minutes of its meetings and plans of action within two weeks of its meetings.

23. The Governing Board of a Commission

- (1) The Chairperson, at the inaugural meeting of a Commission, shall appoint members of the Commission representing each of the States in the Basin to be members of the Board of the Commission for the administration of the affairs of the Commission.
- (2) The Chairperson of the Commission shall be the Chairperson of the Board.
- (3) The Board of a Commission shall exercise all the functions of the Commission in accordance with this Act and shall meet when and as required to perform the duties of the Commission.
- (4) The Board of a Commission shall refer to the Commission all issues upon which it is unable to reach a decision with respect to the exercise of any of the functions of the Board or the administration of the Commission
- (5) The Board of a Commission shall present to the Commission report every two months, or more frequently if needed, on the activities of the Commission with specific reference to issues of importance as well as the Board's plan of action for the following two months.
- (6) The tenure of the Board of a Commission shall be commensurate with the tenure of the Commission and a person who is removed as a member of the Board may nonetheless continue to be a member of the Commission.
- (7) The duties of the Board of a Commission shall be implementation of the policies of the Commission while the Commission shall formulate relevant policies for the Basin in accordance with this Act as well as such other relevant policies of the Federal Government as it affects the water resources of the nation taking into account any international obligations.
- (8) With the exception of the Executive Secretary, members of the Board of a Commission shall serve on a part time basis.
- (9) Members of the Board of a Commission shall be paid such allowance as the Commission may determine.
- (10) The Provisions of Schedule 3 shall have effect with respect to the proceedings of the Board of a Commission and other matters mentioned

therein.

24. State offices

- (1) The Commission may establish offices in each of its member States to facilitate the implementation of its functions.

25. Funds of the Commission

- (1) The Funds of a Commission shall consist of -
 - (a) fees, charges and other income accruing to the Commission from the Licenses and other activities undertaken by it in terms of this Act, excluding fines and penalties recovered pursuant to this Act;
 - (b) funds allocated to the Commission by the National Assembly annually pursuant to a budget approved by the President to meet its reasonable expenditure pending such a time as the Commission's revenue shall be adequate for its expenditure; and
 - (c) such other monies that may vest in or accrue to the Commission whether as loans, grants or otherwise in the course of its operations.

26. Financial year of a Commission

- (1) The financial year of the Commission shall be the period of twelve months ending on the 31st of December of each year.

27. Accounts of a Commission

- (1) A Commission shall ensure proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the President may require.
- (2) A Commission shall, not later than three months after the end of the financial year, prepare and submit to the Auditor General of the Federation a statement of accounts in respect of that financial year.
- (3) The Commission shall present half yearly report of all its activities to the President and the National Assembly.

28. Appointment of Auditors by a Commission

- (1) The provisions of section 97 shall apply to the appointment of Auditors by the Commission.

29. Powers of the Auditors of a Commission

- (1) The provisions of section 98 shall apply to the powers of Auditors appointed by a Commission.

30. Staff of a Commission

- (1) There shall be a Chief Executive Officer of a Commission responsible for the management of the affairs of the Commission nominated by and responsible to the Board and appointed by the Chairperson.
- (2) The Chief Executive Officer shall be the Executive Secretary of the Commission.
- (3) A Commission may appoint such officers and other staff as may be necessary for the exercise and performance of its powers and functions, upon such terms and conditions as it may determine in consultation with the Federal Civil Service Commission.
- (4) Subject to subsection (6), a Commission may assign to its staff such functions as the Commission shall deem fit.
- (5) Any assignment of functions under subsection (4) may be general or

• Drawn from Kenya Water Act s.9

specific and subject to any reservations, restrictions and exceptions as a Commission may determine and may be revoked by the Commission at any time.

- (6) Anything authorized or required by or under this Act to be done by a Commission, other than the making of final orders or formulation of policies or regulations, may be done by any member of staff of the Commission who has been authorized either generally or specifically by the Commission to do so.

- Generic liability exemption for all institutions incorporated under Part XII

PART V: ESTABLISHMENT, FUNCTIONS AND POWERS OF IRRIGATION MANAGEMENT AUTHORITIES

Note: The concept of establishing Irrigation Management Authorities (IMAs) under this Part of the draft Bill is based on recommendations of the National Water Resources Strategy dated December 2006. Further discussions are required to consider whether this is the most appropriate institutional arrangement and whether IMAs should be established across the country or only for areas with a significant extent of public irrigation. An alternative institutional arrangement proposed in the draft National Irrigation Policy is the establishment of a National Irrigation Commission and gradual transfer of public irrigation to farmer management and private-public management.

The next draft of this Bill needs to incorporate the necessary changes to reflect the outcome of such discussions.

31. Establishment of an Irrigation Management Authority

- (1) There shall be established for the areas listed in Schedule 4, an Irrigation Management Authority (referred to in this Act as “an Authority”)
- It is assumed that the areas of Irrigation Management Authorities would coincide with the current RBDAs and take over the Government irrigation areas run by the RBDAs. The RBDA Act will be repealed, see section 105(2)(f). As indicated in the Note above, it may be more appropriate to establish IMAs only for large irrigation areas such as Hadejia- Jamaáre and Sokoto-Rima.
- (2) The object of an Authority is the sustainable development and management of public irrigation and drainage systems for the benefit of its member farmers and the national economy and consistent with the overall Basin Water Resources Management Strategy under section 64.
- (3) An Authority shall be a body corporate, with perpetual succession and a common seal, and may sue or be sued in its corporate name and may, subject to this Act, perform all acts that bodies corporate may by law perform.
- (4) Each of the Authorities shall have a headquarters and area offices as it shall decide for its administrative convenience.
- (5) Authorities shall be established within twelve months of this Act coming into effect.
- (6) As a transitional arrangement in areas where an Authority is not

established all powers and functions of an Authority under section 32 vest in the existing River Basin Development Authority with jurisdiction in that area.

32. Functions of an Irrigation Management Authority

- (1) An Authority shall have the following major objects and functions in relation to irrigation, drainage and flood management projects and for others as may be developed by the Federal Government, to -
- (a) maintain an asset inventory of the irrigation, drainage and flood management infrastructure within its jurisdiction and formulate an asset management plan for sustainability of the asset base;
 - (b) operate and maintain designated dams, boreholes, irrigation and drainage systems, and flood management infrastructure within its jurisdiction according to prevailing procedures and standards;
 - (c) obtain licenses for abstraction of water for irrigation and for discharge of drainage flows from the regulatory authority for projects within its jurisdiction;
 - (d) supply water from the licensed abstractions in sub-section (c), or other general authorizations under this Act, to users for a fee to be determined by the Authority concerned according to general guidance provided by the Ministry and with the approval of fee rates by the Council;
 - (e) receive funds for irrigation services delivered, make payments for water abstractions and manage the Fund of the Authority;
 - (f) construct, operate and maintain associated infrastructure such as roads, bridges and building that form an integral part of the approved projects;
 - (g) undertake social, technical and environmental surveys and investigations for improving the performance of existing systems and identifying the potential for raising benefits to farmers, improving efficiency and increasing the productivity of water;
 - (h) evaluate the performance of existing irrigation, drainage and flood management systems within its jurisdiction and prepare short, medium and long term plans for improving performance consistent with the principles of water resources management outlined in Part VIII;
 - (i) promote water conservation and develop efficiency plans to be incorporated into the basin water resources strategy under section 64;
 - (j) where criteria for poverty reduction, social equity and economic development in proposals and plans prepared by a Commission under section 64 support the development of new irrigation, drainage or flood management infrastructure, carry out the necessary planning, design and funding proposals;
 - (k) on the basis of the assessments made in sub-sections (g) to (j), develop short and long term plans for the management and development of irrigation, drainage and flood management systems within its jurisdiction;
 - (l) provide guidance and support to Water User Associations operating within project command areas in the implementation of their functions;
 - (m) maintain a register of Water User Associations and private irrigation entities in areas of its jurisdiction;
 - (n) engage as deemed necessary private sector involvement in the provision, management and utilization of water services; and
 - (o) where delegated by the Ministry, install components of the hydro-
- Consider whether proceedings of the Authorities should be defined in a Schedule or under Rules.
 - Assess the comments of a recent questionnaire survey of RBDAs

meteorological, hydrological and hydro-geological information systems, collect data and report to the Commission and Ministry.

33. Power to make regulations

- (1) Each Authority may make regulations for the management of irrigation, drainage and flood management systems and regulating the use of water with respect to the functions in section 32 of this Act for areas within its jurisdiction, but no regulation made under this section shall come into force unless approved by the Commission and the Ministry.

34. Appointment, tenure and qualification of Authority members

- (1) The membership of an Authority shall comprise a Chairperson and the following other persons with detailed knowledge of the area of operation of the Authority consisting of -
 - (a) one representative from each of the States within the Basin;
 - (b) two representatives from water user or farmer organizations ;
 - (c) the Managing Director of the Authority
 - (d) one representative each of the Ministry and the Commission for the Basin who shall be non-voting members.

- Non-voting status is included here to maintain the separation of roles of the Ministry of Water Resources and the Commission as policy and regulatory bodies from that of an Authority which is service delivery

- (2) The Chairperson shall be -
 - (a) appointed by the President based on recommendations of the Interim Committee established under section 104(7); and
 - (b) a person with a degree in a relevant engineering, resource management or social science subject area, and a minimum of ten years experience at senior management level in a water related institution in the public or private sector.
- (3) The representatives of States shall be nominated by the Governors of each of the States in the area of jurisdiction of the Authority and confirmed by the President subject to their having relevant experience in irrigation and drainage management or equally relevant field.
- (4) The Chairperson and members of an Authority shall serve for a period of four years and shall be eligible for re-appointment for one further term of four years and thereafter shall not be eligible for re-appointment.

35. Vacation of office of a member of an Authority

- (1) A member of an Authority may resign his appointment by letter addressed to the President. The resignation shall be effective three months from the date of such letter.
- (2) A member shall only be removed from office if he;
 - (a) becomes of unsound mind or is incapable of discharging the duties of his office;
 - (b) is convicted of a crime involving financial impropriety either in Nigeria or in a foreign jurisdiction if such act also constitutes a crime in Nigeria;
 - (c) is proved to have a conflict of interest in the discharge of his duties;
 - (d) becomes bankrupt or makes arrangement with creditors;
 - (e) is found guilty of serious misconduct relating to the duties of his office;
 - (f) fails to attend three consecutive meetings of the Authority; or
 - (g) is suspended or dismissed by the body which he represents on the Board of the Authority.

36. Staff of an Irrigation Management Authority

- (1) For each Authority, there shall be a Managing Director who shall be the Chief Executive and who shall be nominated by agreement among the Authority members and appointed by the Chairperson of the Authority.
- (2) An Authority shall have power to -
 - (a) appoint such other staff as it may determine;
 - (b) to pay its staff such remuneration and allowances as it may determine in consultation with the Federal Civil Service Commission.
- (3) Subject to (5) of this section, an Authority may assign to its staff such functions as the Authority shall deem fit.
- (4) Any assignment of functions under subsection (3) may be general or specific and subject to any reservations, restrictions and exceptions as an Authority may determine and may be revoked by an Authority at any time.
- (5) Anything authorized or required by or under this Act to be done by an Authority, other than the making of final orders or formulation of policies or regulations may be done by any member of staff of an Authority who has been authorized either general or specifically by the Authority to do so.

- Flexibility is required in the staffing setup to accommodate differences in command area between the different authorities

37. Water Users Associations

- (1) Water Users Associations established under the Cooperative Society laws of relevant States or other laws may be registered by the Authority having jurisdiction in their areas of operation in accordance with regulations prepared under this Act for the purpose of operating and maintaining irrigation and drainage systems or sub-systems.
- (2) A Water User Association shall provide information on its registration and details of its officers and membership to the relevant Authority.
- (3) The objects and functions of a Water Users Association may include:
 - (a) operation and maintenance of an irrigation and drainage system or sub-system as determined by an Authority
 - (b) involvement in the Authority's decision-making processes for the larger irrigation system;
 - (c) purchasing of bulk water from a watercourse or extracting groundwater from an aquifer and distribution of the water to its members according to an approved irrigation plan;
 - (d) ensuring efficient and economical use of water;
 - (e) collection or irrigation service fees from its members and management of its fund;
 - (f) optimizing agricultural production;
 - (g) encouraging participatory approaches to irrigation management;
 - (h) protecting the environment;
 - (i) Facilitating the resolution of conflicts related to irrigation

- This section enables WUAs to undertake specific O&M duties and collect fees to reinforce provisions of Cooperative laws that may not be sufficiently comprehensive. Subsequently States may enact specific and more detailed WUA legislation.
- Sourced from FAO Study 79: Legislation on Water Users Associations

management.

- (4) A Water User Association shall provide periodic reports on water distribution, asset management and performance to an Authority as may be requested by an Authority;
- (5) In the event of mis-management of a Water User Association, an Authority shall undertake an investigation and recommend actions to be taken by the State's regulatory authority, including, in extreme cases, invoking disestablishment procedures.

- IMAs can only make a recommendation to a State for action to be taken under the prevailing law establishing it.

38. Funds of an Authority

- (1) The Funds of an Authority shall consist of -
 - (a) fees, charges and other income accruing to an Authority from its operations and other things done by it in terms of this Act,
 - (b) funds allocated to an Authority by the National Assembly annually pursuant to a budget approved by the President to meet its reasonable expenditure pending such a time as the Authority's revenue shall be adequate for its expenditure
 - (c) such other moneys that may vest in or accrue to an Authority whether as loans, grants or otherwise in the course of its operations.

39. Financial year of an Authority

- (1) The financial year of the Authority shall be the period of twelve months ending on the 31st of December of each year.

40. Accounts of an Authority

- (1) An Authority shall ensure proper accounts and other records relating to such accounts are kept in respect of all the Authority's activities, funds and properties, including such particular accounts and records as the Auditor general may require.
- (2) An Authority shall, not later than three months after the end of the financial year, prepare and submit to the Auditor General of the Federation, a statement of accounts in respect of that financial year.
- (3) An Authority shall present half yearly reports of all its activities to the President and the National Assembly.

41. Appointment of Auditors

- (1) The provision of Section 97 shall apply with respect to the appointment of Auditors by the Authority.

42. Powers of the Auditors

- (1) The Provisions of section 98 shall apply with respect to the powers of the Auditors appointed by the Authority.

- Generic liability exemption for all institutions incorporated under Part XII

PART VI: DIRECTIVE PRINCIPLES FOR THE WATER SERVICES SECTOR

Under the Constitution of Nigeria, water supply services are not included either in the Exclusive Legislative List in the Second Schedule (for powers reserved for the National Assembly) or the Concurrent List (for those matters that may be legislated upon by both National and State Assemblies but over which Federal laws

take priority). By excluding it from these lists, the Constitution accords jurisdiction over water supply services to the States.

The provisions in this Part were drafted by the Consultants after the January 2007 workshop in response to comments from the Ministry. They aim to uphold State responsibility for the provision of water supply and sanitation services while at the same time reflecting the important federal role of policy development, coordination, setting of standards and monitoring.

43. General principles for the water services sector

- (1) The object of this Part is the provision of sufficient safe drinking water and adequate sanitation to all citizens of Nigeria in an affordable and sustainable way through participatory investment by governments at Federal, State and Local levels, the private sector and the beneficiaries as set out in national policies on water supply and sanitation.
 - (2) The principles and implementation responsibilities set out in this Part shall be regarded by Governments of the States and State Houses of Assembly as being fundamental to the determination of policies and promulgation of State laws with respect to the water services sector.
 - (3) It shall be the duty of all organs of a State as well as State Houses of Assembly to apply the principles and reflect the implementation responsibilities referred to in sub-section (2) in the formulation of policies and the regulation and operation of the water services sector of the State.
 - (4) General principles referred to in sub-section (2) incorporate those set out in the prevailing national water supply and sanitation policy including but not limited to -
 - (a) increasing service coverage for water supply and sanitation to meet the level of socio-economic demand;
 - (b) ensuring the right of access to clean water and basic sanitation for Nigerian citizens and meeting the basic human needs of present and future generations as required under section 1(1);
 - (c) ensuring the affordability of water supply and sanitation services for Nigerian citizens;
 - (d) establishing accountable, independent, effective and financially viable water service providers operating under a regulated policy framework;
 - (e) separating organizational responsibility for regulation and service provision;
 - (f) ensuring national water quality standards are maintained and monitoring systems established;
- NWSSP, s17
 - Note that the National Water Supply and Sanitation Policy (NWSSP), 2000 is currently under review.
 - see NWSSP, sections 19 - 20
 - Currently Nigeria follows WHO standards. National Drinking Water Quality Standards are under preparation with support from UNICEF, (as noted in Water Resources Management Strategy, para

6.9)

- (g) promoting the involvement of the private sector in provision of water services in accordance with national policies and guidance and consistent with State regulation of the water services sector;
- (h) recognizing and promoting traditional sources of community water supply;
- (i) promoting measures for water conservation and efficiency.

(5) States will adopt a pricing policy for water services that -

- (a) recognizes guidance on tariffs on raw water provided by the National Council on Water Resources;
- (b) protects the poor and enables water service agencies to operate in a financially sustainable manner;
- (c) reflects policy principles set out in sub-section (4) and relevant national policies;
- (d) is determined through a transparent process and approved by the independent regulator established by the State; and
- (e) is independent of any costs associated with inefficiencies of a water service agency.

(6) Tariffs set through the pricing policy under sub-section (5) may -

- (a) differentiate on an equitable basis between -
 - (i) different users of water services;
 - (ii) different types of water services; and
 - (iii) different geographic areas, taking into account, among other factors, the socio-economic and physical attributes of each area.
- (b) be used to promote or achieve water conservation.

- Water Investment Mobilisation and Application Guidelines (WIMAG) require an equitable approach to water pricing

- For example section 35 of NWSSP

- SA, NWSA, s10(1)

44. Role of the Federal Ministry Responsible for Water Resources

(1) Pursuant to sections 12 and 13, the Ministry shall -

- (a) establish water quality laboratories and a water quality monitoring network and coordinate with related programs of other federal agencies;
- (b) maintain information systems on water supply and sanitation facilities and their coverage and performance;
- (c) formulate policy recommendations to the National Council on Water Resources on tariff structures for water supply and sanitation and cost-sharing formula for capital and recurrent costs;
- (d) provide policy advice and guidance to the States on -
 - (i) levels of service including quantity and quality;
 - (ii) standards for equipment, materials and services;
 - (iii) loan sourcing;
 - (iv) other technical aspects necessary for planning and effective operation.
- (e) mobilize international and national funding and technical support and make regulations under this Act in relation to financial support to the States and Local Government;
- (f) promote and coordinate other collaborative activities by other government and non-government entities;
- (g) provide technical support to State and Local Government water service agencies and community water supply and sanitation

- The powers and functions of the Ministry in relation to water supply and sanitation are defined in Part III, sections 12 and 13(b). This Part deals with more detailed aspects related to the Directive Principles.
- See NWSSP s26 and s43
- E.g. the Ministry of Health

- NWSSP, s43

committees;

- (h) assist in the development of an enabling regulatory framework for private sector participation in water supply and sanitation services.

45. State responsibility for water services

- (1) The State Governments are responsible for the regulation and provision of water supply and sanitation services in accordance with the principles set out in this Act and the establishment of organizations for such purposes.
- (2) The State Governments are responsible for State policy and coordinating State-wide planning for water services in accordance with relevant national laws and policies.
- (3) In furtherance of Agreements with the Federal Government for the provision of technical and financial support pursuant to the National Water and Sanitation Policy, States shall establish a regulatory commission empowered to -
- (a) issue licenses for the provision of water supply services by both government and private sector entities;
 - (b) define minimum service requirements;
 - (c) set tariffs;
 - (d) define rights and obligations of the water service providers; and
 - (e) define performance standards.
- (4) States shall establish an appeals mechanism for decisions taken by water service providers under their jurisdiction.
- (5) States shall ensure that -
- (a) water service providers are autonomous bodies subject to regulation by the State regulatory commission;
 - (b) the regulatory commission is not subject to the direction or control of the State Governor or any other person in respect of any determination, report or inquiry; and
 - (c) the sector is structured to prevent misuse of monopoly power.
- (6) States shall incorporate principles of good governance into the structure and operational procedures of State water agencies including -
- (a) equity;
 - (b) accountability;
 - (c) efficiency;
 - (d) transparency; and
 - (e) public participation.
- (7) State water agencies shall -
- (a) be responsible for the development, management, operation, quality control and maintenance of urban and semi-urban water supply systems and sewerage systems;
 - (b) encourage stakeholder participation in development and implementation of its plans;
 - (c) monitor and protect sources of raw water in conjunction with environmental protection agencies at Federal and State levels;
 - (d) provide data and information to the Ministry in accordance with the regulations under this Act for the purposes of -
- (i) monitoring the extent and performance of water services provision;
- See WSSRL, s.5(1)
 - In particular, the Model State Water Supply Services Regulatory Law (WSSRL)
 - Some options for the appeals mechanism are provided in the Introduction and Guidance Notes to the WSSRL p.(iv).
 - See s.68 of Lagos State Water Sector Law
 - See 51(2) of Lagos State Water Sector Law
 - NWSSP, s.29
 - More detailed requirements on monitoring are to be defined in the regulations and expand on the national and basin information systems established under sections 82 and 83
 - SA NWSA, s62(1)

- (ii) compliance with national policies and standards;
 - (iii) compliance with principles for setting tariffs; and
 - (iv) compliance with water service development plans.
 - (e) provide technical assistance to Local Government in relation to planning, design and operation of their water supply systems. • NWSSP, s.46
- (8) State Houses of Assembly shall amend State legislation to reflect the principles of this Act.

46. Responsibilities of Local Government

- (1) Local Governments are responsible for the establishment, operation and maintenance of rural water supply schemes in conjunction with benefiting communities. • NWSSP, s30
- (2) Local Government water supply agencies shall maintain records of the extent and quality of rural water supply services and submit such information to the State water regulatory commissions or other State Government agency notified by the State for this purpose in accordance with regulations under this Act. • NWSSP, s47

47. Formulation of water services development plans

- (1) State water agencies shall prepare, publish and update water services development and operational plans in accordance with regulations under this Act and guidance prepared by the Ministry. • See Part X of Model WSSRL. Details will be included in regulations under this Act.
- (2) Particular emphasis in the water services plans required under subsection (1) shall be given to implementation measures to expand system coverage, improve the reliability of supply, improve water quality and increase the coverage of sanitation provision. • WRM, para 8.22

**PART VII: ESTABLISHMENT, FUNCTIONS AND POWERS OF
INSPECTORATE OF DAM SAFETY**

- National Water Policy s2.4.2
- 2006 draft Strategy
- Zimbabwe Act, ss. 96-111
- SA NWA ss.117-123

48. Establishment of an Inspectorate of Dams Safety

- (1) There shall be established an Inspectorate of Dams Safety (referred to in this Act as “the Inspectorate”). • Independent Inspectorate as recommended in s.4.27 of the Water Resources Strategy, 2006.
- (2) The purpose of the Inspectorate is to regulate the safety of construction, operation and maintenance of dams in Nigeria and all matters incidental thereto.
- (3) The Inspectorate shall be a body corporate, with perpetual succession and a common seal, and can sued or be sued in its corporate name and, subject to this Act, perform all acts that bodies corporate may by law perform.

49. Powers and Functions of the Inspectorate of Dams Safety

- (1) For the purpose of this Act, the powers and functions of the Inspectorate shall be to -
 - (a) maintain and publish a register of dams and pertinent information as defined in the regulations;
 - (b) maintain and publish a register of approved professional persons providing services with relation to dam design, construction, maintenance, inspection and other services related to dams safety including the basis for such certification;
- The approved professional persons on the register who undertake inspections may be public servants or outsourced private sector entities

- (c) formulate standards and design guidance for dams;
- (d) provide technical support and advice to existing and future dam owners in respect of dam safety;
- (e) review plans and designs for new dams and undertake periodic safety inspections of existing dams and dams under construction;
- (f) review operating rules of dams and emergency plans for downstream areas in the event of a breach or extreme flood event;
- (g) undertake periodic safety inspections of dams in accordance with the provisions of this Part;
- (h) report to the Commissions and Minister on the inspections undertaken and recommendations made;
- (i) require dam owners to take remedial measures within a fixed period consistent with the findings of a dam inspection;
- (j) make an order for the drawdown of a reservoir or other safety measures in the event of non-compliance with the Inspectorates recommendations or an emergency event;
- (k) in the event that the owner of a dam fails within the prescribed timeframe to implement an order under sub-section (j) in relation to a threat to public safety or to property, the Inspectorate shall have the power to assume control of the dam and associated infrastructure to give effect to that order;
- (l) prescribe regulations for dams safety and prescribe fines for infringement;
- (m) prosecute owners of dams for failure to comply with the Inspectorate's directives after the issuance of warnings and the imposition of fines;
- (n) take action to recover fines imposed pursuant to this section.

50. Power to make regulations

- (1) The Inspectorate shall have the power to make regulations for the proper carrying out of the provisions of this Part of the Act including for -
 - (a) establishing and maintaining the register of approved professional persons and maintaining a register of dam inspectors who shall be approved professional persons;
 - (b) regulating the approval of a person as an approved professional person for a specific task;
 - (c) procedures for inspection of existing dams and review of the planning and design of future dams;
 - (d) specifying time periods that must be complied with;
 - (e) establishing rates for inspection fees;
 - (f) formulating technical guidance on monitoring of dam safety;
- (2) The regulations under sub-section (1) shall enter into force after approval by the Minister.

51. Financial provisions

- (1) The funds of the Inspectorate shall comprise -
 - (a) a take off grant from the Federal Government;
 - (b) fees levied on the owners and operators of dams for the inspection of dams and related services provided by the Inspectorate;
 - (c) annual subventions and budgetary allocations from the Federal Government;
 - (d) loans and grants in aid from national, bilateral and multilateral agencies; and
 - (e) all sums accruing to the Inspectorate by way of gifts, endowments, bequests or other voluntary contributions by persons and organizations other than owners and operators of dams.
- (2) The financial year of the Inspectorate shall be the period of twelve months ending on the 31st of December of each year.
- (3) Accounts of the Inspectorate

- (a) The Inspectorate shall ensure proper accounts and other records relating to such accounts are kept in respect of all the Inspectorate's activities, funds and properties, including such particular accounts and records as the Auditor General may require.
- (b) The Inspectorate shall, not later than three months after the end of the financial year, prepare and submit to the Auditor General of the Federation, a statement of accounts in respect of that financial year.
- (c) The Inspectorate shall present half yearly reports of all its activities to the President and the National Assembly.

52. Staff of the Inspectorate

- (1) The President shall appoint for the Inspectorate a General Manager based on recommendations of the Interim Committee established under section 104(7), who shall -
 - (a) be the Chief Executive and Accounting Officer of the Agency;
 - (b) be responsible for the day-to-day administration of the Agency;
 - (c) be a person with a degree in engineering and have a minimum of 15 years postgraduate experience in the design of dams or relevant related discipline;
 - (d) hold office for a period of 4 years on such terms and conditions as may be specified in his letter of appointment and be eligible for re-appointment for another period of 4 years and no more.
- (2) The Inspectorate may appoint such staff as it shall deem necessary for the efficient performance of the duties of the Inspectorate pursuant to this Act.
- (3) The terms and conditions of service including remuneration, gratuities allowances and other retiring benefits of the employees of the Inspectorate shall be as determined by the Inspectorate.
- (4) The Inspectorate may engage such staff by direct appointment from the public sector or by transfer or secondment of staff from other Departments of the Public Service.
- (5) The Inspectorate may assign such functions to any staff of the Inspectorate as it shall deem fit.
- (6) The Inspectorate may enter into Agreement with such bodies or persons for the better performance of any of its duties as may be approved by the Minister.

53. Structure of the Inspectorate

- (1) The Inspectorate shall have a -
 - (a) Directorate of Inspection and Enforcement;
 - (b) Directorate of Administration; and
 - (c) Legal Advisor.
- (2) Each Directorate shall be headed by a Director.
- (3) The Inspectorate and its Directorates shall have adequate numbers of units and divisions as may be required in the discharge of its functions of the Inspectorate.
- (4) The Inspectorate shall be headquartered in Abuja may establish Zonal Offices in areas where in the opinion of the Inspectorate, the numbers of dams warrants its presence within a river basin.

The composition of the staff of the Inspectorate proposed here is provisional and may need to be determined through an institutional assessment .

- Dams are not evenly distributed across the country and so some flexibility may be needed to determine local representation.

54. Responsibilities and Functions of approved professional persons

- (1) When carrying out a task in terms of this Part, an approved professional person also has a duty of care towards the State and the general public.
- (2) An approved professional person appointed to carry out a task on a dam must -
 - (a) ensure that the task is carried out according to acceptable dam engineering practices;
 - (b) keep the prescribed records;
 - (c) compile the prescribed reports; and
 - (d) where the task include constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task in that dam has been carried out according to the applicable design, drawings and specifications.
- (3) An approved professional person appointed to carry out a dam safety evaluation must -
 - (a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance, and maintenance of the dam satisfy acceptable dam engineering practices;
 - (b) compile a report on the matters contemplated in sub-section (a) according to the prescribed requirements and submit a report to the owner of the dam within the prescribed period.

- Regulations will be needed to formulate criteria for qualifications of approved professional persons and procedures for selection (see for example Zimbabwe Water Act s.98)
- Following sections adapted from SA NWA s.117 to s.123

55. General duties of owners of dams

- (1) The owner of a small or large dam shall -
 - (a) register an existing dam with the Inspectorate and the Commission within 3 months of this Act entering into force and a future dam within 30 days of first impoundment of the reservoir;
 - (b) ensure that the dam is inspected periodically by the Inspectorate according to the requirements of this Part and pay for the cost of inspections;
 - (c) implement the recommendations of the Inspectorate within the timeframe stipulated and report such actions to the Inspectorate;
 - (d) ensure the operating rule complies with any national or basin-level policy on reservoir operations and licensing conditions under Part XIX.
 - (e) ensure that emergency plans are formulated and adequately disseminated covering -
 - (i) drawdown and flood control aspects of reservoir operation;
 - (ii) emergency drawdown of reservoirs;

- Both small and large dams may be a potential risk. The approach in this draft is to introduce safety measures for both categories, but with a subsequent provision that small dams that pose no potential risk are exempt from supervision measures (section 57(1)) and inspections (section 59). Dams below the size definition of small dams (e.g. some farm dams) are exempt.

- (iii) inundation risk maps for flows up to the design flood and for dam breach;
 - (iv) evacuation strategy for flood affected areas including emergency warning, communication and transportation;
 - (v) equipment, material and support available for flood relief;
 - (vi) coordination of emergency relief efforts;
 - (vii) emergency operations of power plant, water supply or irrigation schemes associated with the dam; and
 - (viii) emergency decision-making process and procedures.
- (2) A successor in title to an owner of a large or small dam shall promptly inform the Inspectorate of the succession, for the substitution of the name of the owner.

56. Design and commencement of works on dams

- Adapted from Zimbabwe Water Act .

- (1) No person shall commence any works in respect of a large dam or small dam until -
- (a) a design and specification has been prepared and the safety of the future dam certified by an approved professional person;
 - (b) the owner of the future dam has submitted to the Inspectorate in the prescribed manner, together with such fee as may be prescribed, such details of the design, specification and operation with the certificate of safety under sub-section (a) and the Inspectorate has approved the details in writing;
 - (c) the expiry of a period to be prescribed after the owner has given notice in writing to the Inspectorate of the proposed commencement of works.
- (2) The Inspectorate before giving approval for commencement of works may require the owner to -
- (a) cause such further investigations to be made;
 - (b) provide such additional information;
 - (c) modify the design, plans and specifications concerned in such manner; and
 - (d) provide such additional certificates of adequacy and safety as, and within such period as, the Inspectorate may specify.

57. Supervision of dam works

- (1) The Inspectorate shall, on the basis of the level of risk to persons or property, determine whether, on a case by case basis, the construction of small dams shall be exempted from the provisions of this section, and in such cases, shall inform the owner of such exemption.
- (2) In the absence of any exemption under sub-section (1), small dams shall be subject to the provisions of this section.
- (3) The owner of a large dam, or small dam considered at risk, being constructed, or on which works are being carried out which may potentially affect or influence its safety, shall cause an approved professional person -
- (a) to arrange for the adequate supervision of the progress of the dam works concerned for the purpose of securing compliance with the design, plans and specifications approved in respect of the dam works;
 - (b) to maintain up-to-date drawings of the dam works concerned; and
 - (c) if so required by the Inspectorate, to submit to such bodies such progress reports on the dam works concerned within such periods as may be specified in the request.
- (4) The owner referred to in subsection (3) shall, if the approved professional person concerned considers that modifications to the details approved in respect of the dam works concerned are necessary, and

before causing such modifications -

- (a) notify the Inspectorate in writing; and
 - (b) obtain approval of the requesting authority in writing.
- (5) The Inspectorate or any person authorized thereto in writing by them may, at any time during the progress of any dam works in respect of a dam subject to the provisions of this section, have access to the dam works for the purpose of inspection.
- (6) The Inspectorate may, as a result of information received during the progress of dam works in respect of a dam subject to the provisions of this section, require the owner of the dam to cause the approved professional person concerned to modify any design, plans or specifications relating to the dam works.
- (7) The owner of a large dam who contravenes subsection (3) or (4) or fails to comply with a requirement made in terms of subsection (6) shall be guilty of an offence and liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

58. Periodic inspection of large dams

- (1) The owner of a large dam shall -
- (a) cause an approved professional person to prepare instructions relating to the maintenance and operation of the large dam;
 - (b) cause the large dam to be maintained and operated in accordance with instructions prepared in terms of paragraph (a) and with such additional instructions as the Inspectorate may from time to time issue;
 - (c) cause detailed measurements and observations of the large dam to be made by such person, in such manner and at such intervals as the Inspectorate may require;
 - (d) whenever requested to do so by the Inspectorate, cause a detailed engineering inspection of the large dam to be carried out by an approved professional person immediately following -
 - (i) the first season during which water was diverted or stored by the large dam;
 - (ii) the first season during which water spilled from the large dam;
 - (iii) each successive period of five years reckoned from the date of completion of construction of the large dam; and
 - (e) within a period of thirty days from the date of completion of-
 - (i) any measurements and observations made in terms of paragraph (c), submit to the Inspectorate such report thereon as it may specify; and
 - (ii) any detailed engineering inspection carried out in terms of subsection (d), submit to the Inspectorate such report thereon as it may specify, together with a summary of the maintenance measures carried out since the date of completion of the large dam or of the previous such detailed engineering inspection, as the case may be.
- (2) The Inspectorate or any person authorized by them in writing may at any time carry out a detailed engineering inspection of a large dam.
- (3) The owner of a large dam shall provide the Inspectorate or any person authorized in terms of subsection (2), with such assistance and facilities in the carrying out of the inspection referred to in that subsection as the Inspectorate or such person may reasonably require.
- (4) If, as a result of any measurements and observations made or of a detailed engineering inspection carried out or of a report submitted, the Inspectorate considers that the large dam concerned is inadequate or unsafe, it may require the owner of the large dam to remedy, within such period as the Inspectorate may specify, the inadequacy or lack of safety

concerned.

- (5) If the owner of a large dam fails to comply with a requirement made in terms of subsection (4) -
 - (a) without reasonable excuse the onus of proof of which lies on him, he shall be guilty of an offence and liable to a fine or to imprisonment for a period not exceeding six months or both such fine and such imprisonment;
 - (b) the Inspectorate may remedy the inadequacy or lack of safety concerned and recover the cost of so doing, together with interest on such cost, from the owner by means to be defined in regulations.
- (6) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

59. Inspection and reporting on small dams

- (1) The Inspectorate shall, on the basis of the level of risk to persons or property, determine whether, on a case by case basis, the inspection of small dams shall be exempted from the provisions of sub section (3), and in such cases, shall inform the owner of such exemption.
- (2) In the absence of any exemption under sub-section (1), small dams shall be subject to the inspection provisions of sub- section (3).
- (3) For small dams considered at risk, the Inspectorate shall require the owner to comply within such period as the Inspectorate may specify, with the inspection, reporting and remediation provisions for large dams under section 58 modified as deemed necessary by the Inspectorate based on the level of risk to persons and property.
- (4) Any person who contravenes subsection (3) shall be guilty of an offence and liable to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

- The onus is placed on the owner of a small dam as defined under this Act to prove that is not considered 'at risk'

60. Procedures in emergencies

- (1) In the event of a sudden or unprecedented flood or alarming or unusual circumstance or occurrence, whether anticipated or existing, which may adversely affect the safety of a dam, whether completed or under construction, the owner of the dam shall, in addition to discharging any duty, liability or obligation under any other law -
 - (a) forthwith take all such steps as may be reasonable and practicable for dealing with the flood, circumstance or occurrence; and
 - (b) as soon as practicable, notify the Inspectorate, Commission and Ministry as fully as possible of the action taken or proposed to be taken to minimize risk to person or property.
- (2) If the Inspectorate, whether or not it has been notified in terms of subsection (1), considers that a dam is in any way endangered, the owner may be required to take such action as the Inspectorate may specify to deal with the situation either forthwith or within a specified period.
- (3) An owner who has been required by the Inspectorate to take any such action shall -
 - (a) notify the Inspectorate immediately after commencing to take the action; or
 - (b) report to the Inspectorate within a period of forty-eight hours after commencing to take the action on the progress and results of the action; and
 - (c) comply with such other instructions as the Inspectorate may from time to time give to him.
- (4) If the owner of a dam fails to comply with a requirement made in terms of

this section, the owner shall be guilty of an offence and be liable to a fine and to imprisonment determined by the courts in relation to the impact thus caused.

- (5) In the event an owner fails to comply with the provisions of this section to deal with the emergency, the Inspectorate may take such action to protect persons and property as it deems necessary and to recover the costs of such action from the owner.

61. Transition arrangements

- (1) Nothing in this section removes the liability of a dam owner for the safety of their dam or of an obligation to protect persons or property that may be affected by a dam failure.
- (2) Owners of large and small dams shall arrange for an initial inspection of their dam under sections 58 or 59 within one year of this Act taking effect and ensure any remedial works are carried out within the time period specified by the Inspectorate.

62. Exemptions from liability

- (1) Without prejudice to any defence or limitation which maybe available in terms of any law, no liability shall attach to the State, the Minister, the Inspectorate or a Commission or any agent or employee there in respect of any loss, damage or injury sustained by any person as a result of the exercise or performance or purported exercise or performance of or the omission to exercise or perform any power or duty conferred or imposed on such bodies or persons or persons authorized by them by or in terms of this Part unless the act or omission to act concerned was in bad faith or negligent.
- (2) Nothing done in terms of this Part shall be construed as relieving the owner or person in charge of a small dam or large dam of any duty, liability or obligation imposed on him by or under any other law in respect of such a dam.

PART VIII: WATER RESOURCES PLANNING AND MANAGEMENT

63. National Water Resources Strategy

- (1) Following public consultation and discussion by the National Council on Water Resources, the Minister shall formulate, and publish in the Gazette, a national water resources strategy in accordance with which the water resources of Nigeria shall be protected, used, conserved, managed, developed, and controlled.

- Adapted from Master Plan of WR Decree 101 s.6 and based on Kenya Water Act s.11 adapted to suit the different nature of the Nigerian Strategy.
- TA support will be required for RBMCs to carry out initial classifications.
- Strategy may require the approval of the Federal Executive Council after concurrence of National Council on Water Resources
- Procedures through which Council provides guidance will be provide in the regulations .

- (2) The National Water Resources Strategy set out in sub-section (1) shall prescribe the principles, objectives, procedures and institutional arrangements for the protection, development, conservation, management and control of the nation's water resources and provide the framework within which basin water resources strategies will be

formulated under section 64.

- (3) The Minister and all public bodies shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the national water resources management strategy.

64. Basin Water Resources Strategy and Plans

- (1) A Commission established in accordance with Part IV shall formulate a comprehensive cross-sectoral basin water resources strategy for the protection, development, use, conservation, management, control and administration of all surface water and groundwater resources in the Basin by reference to -

- (a) national water resources policy and strategy;
- (b) prevailing social, economic, financial, technological and environmental conditions;
- (c) the activities, plans and proposals of State, local government, community and private sector bodies in respect of water resources.

- (2) A basin water resources strategy shall provide guidance on the priority of water use within a water management area for consideration in the licensing of water use under Part VIX.

- (3) A basin water resources strategy shall be approved by the Federal Executive Council and published in the Gazette.

- (4) A basin water resources strategy may be prepared in a phased and progressive manner over time and shall be reviewed every ten years or earlier as the Minister shall deem expedient but in any event not later than a ten year period.

- (5) A basin water resources strategy referred to in sub-section (1) shall prescribe principles, objectives, procedures and institutional arrangements for management, protection, use, development, conservation, control and administration of the water resources in the basin and, in particular, for -

- (a) classifying water resources and determining resource quality objectives in accordance with section 65;
- (b) setting out principles for allocating water;
- (c) defining mechanisms and facilities for stakeholder participation in development of the basin strategy and activities related to management of the water resources of the Basin;

- (6) A basin water resources strategy shall be consistent with the provisions of this Act and the national water resources strategy, comprise an inventory and assessment of water resources projects in the basin, present an assessment of water resources availability and use in the Basin, and, as required by the type of water resources issues experienced in the Basin, incorporate thematic strategies among which may include -

- (a) water conservation, efficiency of use, and demand-side management;
- (b) watershed management and protection;
- (c) upgrading of existing assets;
- (d) flood management;
- (e) drought management;
- (f) groundwater management; and
- (g) water quality improvement.

- (7) All public bodies, private sector bodies and community organizations within the Basin are required to submit their water-related development

- Builds on National Water Policy - water sector assessments s.2.2.1 and integrated approach to basin management s.2.2.5
- Draws on Kenya Water Act s.15 and SA NWA

and management plans to the Commission for consideration in respect of the Basin's water resources and consolidation into a basin development and management plan.

- (8) Based on the basin water resources strategy, a Commission shall formulate and publish short to medium term management and development plans as a basis for its financial plan.
- (9) The Minister, Commission, and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to any basin water resources strategy in force under this section.

65. Classification of water resources and resource quality objectives

- (1) The Minister shall introduce a system of classifying all significant watercourses and aquifers which shall be used by a Commission as the basis for determining license applications and for developing plans for the progressive improvement of water quality in watercourses and aquifers.
- (2) The Minister shall prescribe a system for classifying water resources for the purpose of determining resource quality objectives for each class of water resources and guiding decisions on water allocation, which includes procedures for -
 - (a) determining an interim classification; ;
 - (b) preparing a classification recommendation;
 - (c) public consultation; and
 - (d) approval and publication in the Gazette.
- (3) A Commission shall implement the procedures of the prescribed classification system and prepare a recommendation for the approval of the Minister for -
 - (a) the classification of each water resource within its jurisdiction
 - (b) resource quality objectives for a water resource;
 - (c) specifying the requirements for achieving the objectives and the dates from which the objectives will apply.
- (4) The Minister, a Commission, and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the resource quality objectives determined under this section in respect of a water resource.

- To meet the overall environmental and sustainability objectives of the National Water Policy, (beyond EIA requirements), a system of river classification is proposed that will provide a sound basis for considering allocation and licensing decisions and for monitoring water quality.
- See for example, Kenya Water Act s.12; SA NWA s.12-15; and EU Water Framework Directive
- TA will be required for initial classification
- Need to define 'significant' in the regulations and add a list of criteria for which a classification is necessary.
- Kenya Water Act s.12(1) – modified to provide link to licensing of water abstraction.

66. Determination of reserve

- (1) As soon as reasonably practicable after classifying a water resource under section 65, a Commission shall after consultation with the Minister, and by notice in the Gazette, determine the reserve for the whole or part

- See Kenya Water Act s.13(1); SA NWA s.16

of each of that water resource.

- (2) The reserve set out in sub-section (1) shall comprise the quantity and quality of water required -
- (a) to satisfy basic human needs by securing a basic water supply, as prescribed in regulations to this Act, for people who are now or will, in the reasonably near future, be relying upon, taking water from, or being supplied from the relevant water resource; and
- (b) to maintain significant environmental services of the water resource including protection of aquatic ecosystems in order to ensure ecologically sustainable development and use of the water resource.
- (3) The Minister, a Commission, and any public authority shall, when exercising any statutory power or performing any statutory function, take into account and give effect to the requirements of the reserve.
- (4) Until a system for classifying water resources has been prescribed or a class of a water resource has been determined, a Commission -
- (a) may for all or part of a water resource; and
- (b) must, before licensing or authorizing the use of water under Part VIX, make a preliminary determination of the reserve.
- (5) A determination in terms of sub-section (1) supersedes a preliminary determination.

- It is proposed that the current amount of 30 litres per capita per day is maintained as the basic human need – this should be specified in regulations together with a definition of what it includes – (water for drinking, cooking, washing, personal hygiene,)
- The 'ecological reserve' definition used in the Kenyan and South African Acts relate only to aquatic ecosystems. Here it is broadened to consider other water-related environmental issues, such as salinity control and the dilution effect related to water resources

67. Pollution prevention

- (1) It shall be a duty of every person or institution established under this Act to promote and observe the policy of the Federal Government on point and non-point sources of pollution of the water resources of the Federation.
- (2) Any such person or institution shall promptly notify both the relevant environmental standards enforcement agency in charge of pollution control in the area and the relevant Commission of any actual or threatened infringement whereupon such environment agency shall take appropriate steps pursuant to the law establishing it.
- (3) States shall take all appropriate legal, economic and social measures to control non – point source pollution including promoting -
- (a) sustainable forestry practices, agro- forestry, reforestation and good pasture husbandry;
- (b) appropriate agricultural land use methods, soil conservation, control and minimization of the use of agricultural chemical inputs;
- (c) general land use planning and enforcement of urban planning laws; and
- (d) hygiene and sanitation.
- (4) In cases of emergencies or threat of imminent serious pollution, the Minister or a Commission may take appropriate steps to rectify the problem and as soon as practicable thereafter to inform such relevant

- Pollution standards are defined in environmental legislation.
- Based on draft HJKYB Charter article 16

enforcement agency.

- (5) Upon a notification of a point or non-point source of pollution to the enforcement agency by any person, the Commission shall continue to monitor and ensure actual abatement of such pollution occurring within the Basin.
- (6) In the event that such pollution continues for a period of two days after notification to the enforcement agency, the Commission in consultation with the enforcement agency may take appropriate steps to abate such pollution, including prosecution of such polluters and suspension of a licence for wastewater discharge or related water supply.
- (7) Where the Minister or a Commission takes such steps as are contemplated in this section, such costs as are incurred shall be recovered from the party(s) directly or indirectly responsible as under section 91(1)(c).

- Coordination required with the proposed National Environment Standards Enforcement Agency and alternative courses of action devised dependent on the severity of the pollutant.

PART VIX: LICENSING

68. Considerations for issue of licences and general authorizations

- (1) Subject to section 3 on entitlement to use water and section 79 on general authorizations, the use of water shall be subject to licensing provisions under this Part and associated regulations.
- (2) In considering an application for water use or discharge licence or a general authorisation, and in fixing any conditions to be imposed on thereon, a Commission shall take into account such factors as it considers relevant, including -
 - (a) national water policy and strategy;
 - (b) existing lawful uses of the water; including customary use to the extent that such use does not conflict with the provisions of the Act, or water resources policy of the Government or Basin Water Resources Strategy.
 - (c) efficient and beneficial use of water in the public interest;
 - (d) any basin management strategy applicable to the relevant water resource including consideration of water conservation measures;
 - (e) the likely effect of the water use to be authorised on the water resource and on other water users, including avoidance of significant harm to customary users;
 - (f) the class and resource quality objectives of the water resource;
 - (g) the investments already made and to be made by the water user in respect of the water use;
 - (h) the strategic importance of the water use to be authorized;
 - (i) the quality of the water in the water resources which may be required for the reserve and for meeting international obligations; and
 - (j) the probable duration if any undertaking for which a water use is to be authorized.

- Based on capacity constraints, a progressive system of introducing licensing may be required and could be determined under the basin water resources management strategy.

- Kenya Water Act s.32(1)
- SA NWA s.29(1)
- A general authorisation under section 79 may be used as a temporary transitional measure until such time as the licensing regime is fully established.

69. Licensing categories

- (1) The activities listed in this section by any person, referred to as

“prescribed activities”, affecting the water courses listed in Schedule 1, shall be licensed by a Commission:

- | | |
|---|---|
| <ul style="list-style-type: none"> (a) abstraction of surface water and groundwater; (b) diversion, pumping, storage or use on a commercial scale of any water; (c) the construction of boreholes; | <ul style="list-style-type: none"> • Water Resources Decree s.9 • Procedures and approvals for abandonment of boreholes and decommissioning of hydraulic works to be included in regulations. |
| <ul style="list-style-type: none"> (d) construction and operation of hydraulic structures for rivers, dams, water intake barrages, groynes, bed and bank stabilisation, dykes, polders, wells; (e) irrigation and drainage systems; | <ul style="list-style-type: none"> • s.9(o) NIWA Act • s.4(1)(b) RBDA Act • s.4(1)(b) RBDA Act |
| <ul style="list-style-type: none"> (f) diversion or impoundment of water for the purposes of mining and discharge of waste water from mining into any water course; (g) discharging waste or water containing waste into a water body through a pipe, canal, sewer, sea outfall or other conduit; (h) disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process; (i) undertaking drainage and land reclamation; (j) removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; (k) leachate containment activities; (l) capital dredging; (m) sand dredging, rock blasting and rock removal in rivers; (n) construction of infrastructure, roads/bridges across rivers and streams; (o) any works affecting the banks and beds of water courses; (p) carrying out inland fisheries; (q) transportation of “Specified Substances” over the watercourse; | <ul style="list-style-type: none"> • s.3(2) Minerals Act • s.48 Minerals Act • covers dewatering activities • WR Decree Regulations • s.9(a) NIWA Act • s.9(i) NIWA Act • s.4(1)(d) RBDA Act • • s.52 Minerals Act • • sections 1- 2 of the Oil in Navigable Waters Act, and Section 9 (2) (a) of the Petroleum Act • streamflow reduction activity is a defined term to mean any activity that reduces the runoff from a catchment to a river system – e.g. commercial forestry. |
| <ul style="list-style-type: none"> (r) activities which reduce streamflow; | <ul style="list-style-type: none"> • WR Decree Regulations |
| <ul style="list-style-type: none"> (s) using reservoirs for recreational purposes; and (t) trading as water resources consultants and contractors which, where effective systems exist, may be delegated to the appropriate regulatory body of a State. | <ul style="list-style-type: none"> • WR Decree Regulations |
| <p>(2) The power of a Commission to license abstraction through wells or boreholes by suppliers of potable water to households, where such abstraction is below 300 cubic meters per day, is hereby delegated to the department in the State Government responsible for water regulation</p> | <ul style="list-style-type: none"> • To provide for companies and estate managers who supply water to residents of housing estates with less than 500 dwellings - calculated using an average of 5 people per household and a usage of 120 lcd. |

70. Existing lawful use

- | | |
|--|---|
| <ul style="list-style-type: none"> (1) An existing lawful water use means a water use which - | <ul style="list-style-type: none"> • A simplified version of provisions in the SA NWA ss.32-35 has been proposed |
|--|---|

here.

- (a) has taken place at any time during a period of two years immediately before the date of commencement of this Act; and
 - (b) was authorized by or under any law which was in force immediately before the date of commencement of his Act.
- (2) A person or that person's successor-in-title, may continue with an existing lawful use, subject to -
- (a) any existing conditions or obligations attaching to that use;
 - (b) its replacement by a licence within the specified period in terms of this Act; and
 - (c) any other limitation or prohibition by or under this Act.
- (3) A Commission may, subject to any regulation made under this Act, require the regulation of an existing lawful water use.

- Regulations can elaborate on procedures for verifying existing water uses.
- See NWA procedures S.40-42

71. Application for a licence

- (1) No person shall undertake any of the prescribed activities defined in section 69 except in accordance with a license issued by the Commission or a general authorization pursuant to this Act.
- (2) Where a person has made an application for an authorization to use water under another law, and that application has not been finalized when this Act takes effect, the application shall be regarded as being an application for a water use under this Act.
- (3) An application shall be in a form approved by the Commission and shall be accompanied by such documents as shall be prescribed by the Commission.
- (4) An application shall be accompanied by the required application fee fixed by the Commission.
- (5) A Commission -
 - (a) may, to the extent that is reasonable to do so, require the applicant, at the applicant's expense, to obtain and provide it by a given date with -
 - (i) other information, in addition to the information contained in the application;
 - (ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quality;
 - (iii) an independent review of the assessment furnished in terms of subsection (ii), by a person acceptable to the Commission;
 - (b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water;
 - (c) may invite written comments from any organ of state which or person who has an interest in the matter; and
 - (d) must afford the applicant an opportunity to make representations on any aspect of the licence application.
- (6) An applicant is responsible for demonstrating compliance and consistency with the respective basin water resources strategy, resource quality objectives or reserve determination as appropriate to the type of licence being applied for.
- (7) An applicant is responsible for complying with the requirements of other Acts including for environmental assessment and management.
- (8) A Commission may, at any stage of the application process, require the applicant -
 - (a) to give suitable notice in newspapers and other media in a form and with content prescribed by the Commission;

- The form of applications will be given in the regulations.

- notification requirements will be detailed in the regulations

- (i) describing the licence applied for;
 - (ii) stating that written objections may be lodged against the application before a specified date, which must not be less than 60 days after the last publication of the notice;
 - (iii) giving an address where written objections must be lodged; and
 - (iv) containing such other particulars as the Commission may require;
- (b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and
- (c) to satisfy the Commission that the interests of any other person having an interest in the land will not be affected.
- SA NWA s.41(4)

72. Essential requirements of licenses

- SA NWA s.28

- (1) A licence contemplated in this Part shall specify -
- (a) the water use or uses or activity for which it is issued;
 - (b) the property or area in respect of which it is issued;
 - (c) the person to whom it is issued;
 - (d) the conditions subject to which it is issued;
 - (e) the licence period, which may not exceed twenty-five years; and
 - (f) the review periods during which the licence may be reviewed
- (2) Subject to subsection (3), and notwithstanding section 77, a Commission may extend the licence period of a licence if this is done as part of a general review of licences.
- (3) An extension of a licence period contemplated under subsection (2) may only be made after the Commission has considered the factors specified in section 77, and all other relevant factors, including new applications for water use, and has concluded that there are no substantial grounds not to grant an extension.
- (4) If the licence period of a licence is extended in terms of subsection (3), the licence may in respect of the period for which it is extended, be issued subject to different conditions which may include a lesser permitted water use.
- see section 77(8)

73. Determination of application

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 section 1.

- See WRD s. 4 for provisions

- (1) In determining whether to grant an application or not the Commission shall follow the procedure for notification and consultation as stipulated in regulations issued by the Commission from time to time pursuant to section 71
- (2) The Commission shall notify the applicant for a license and any person who has objected to the application in writing of its decision to grant or refuse to grant the application and in the case of a decision to refuse to grant the application, of the reasons for its decision.
- (3) The Commission shall keep a register of licences issued with respect to water sources within its area of authority which register shall be available for the inspection of the public in accordance with the rules of the Commission in respect thereof.
- (4) The issue of a licence to use water does not imply a guarantee relating to -
- (a) the statistical probability of supply;
 - (b) the availability of water; or
 - (c) the quality of water.

- SA NWA s.31

74. Emergency powers in case of shortage of water

- See WRD s. 4 for provisions

- See s.108 of Kenya Water Act and SA NWA

- (1) If the Commission is satisfied that, by reason of an actual or anticipated exceptional shortage of water in the Basin, or by reason of accident or other unforeseen circumstance, a serious deficiency of water for essential domestic purposes or damage to the environment exists, or is threatened in any area, the Commission may -
 - (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 so directed by an order under this section who fails to comply with the provisions of the order shall be guilty of an offence.
- (3) An order under this section may require or authorize -
 - (a) the laying of pipes and the construction of works on any land;
 - (b) the entry on to any land by servants of the Commission; and
 - (c) such other measures as the Commission may consider necessary to overcome the shortage of water or effects of any accident.
- (4) If a person to whom such an order under this section is directed fails to comply with the order, the Commission or any person deputed by him -
 - (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
 - (b) 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.
- (6) A person who, without lawful authority, hinders or obstructs any person acting in pursuance of an order under his section, or interferes with any works constructed or under construction in pursuance of such an order, shall be guilty of an offence.

75. Conditions of licences

- (1) A Commission may attach conditions to every general authorization or licence -
 - (a) relating to the protection of -
 - (i) the water resource in question
 - (ii) the stream flow regime
 - (iii) other existing and potential users
 - (b) relating to water management by -
 - (i) specifying practices and general requirements for any water use, including water conservation
 - (ii) requiring the monitoring, analysis and reporting on water use or water quality;
 - (iii) requiring the preparation, approval and adherence of a water management plan;
 - (iv) requiring the payment of water charges as provided for in section 76;
 - (v) requiring the licensee to provide or make water available to a person specified in the licence; and
 - (vi) in the case of a general authorization, requiring the registration of the water use with the responsible authority and

- SA NWA s.29

- SA NWA s.29

- includes the case where an Authority supplies water through its canal network to a third party for domestic use, irrigation (private sector) or industrial use.

- the payment of of a registration fee as a pre-condition of that use.
- (c) relating to a return flow and discharge or disposal of waste -
 - (i) specifying a water resource to which it must be returned or disposed of;
 - (ii) specifying permissible levels for some or all of its chemical and physical properties in accordance with standards and guidelines issued by the Federal Ministry responsible for the Environment;
 - specifying treatment to which it must be subjected before it is discharged; and
 - (iv) specifying the volume which may be returned
 - (d) in the case of taking or storing of water -
 - (i) setting out the specific quantity or percentage of water which may be taken;
 - (ii) setting out the rate of abstraction;
 - (iii) setting out the method of construction of a borehole
 - (iv) specifying the place from where water may be taken;
 - (v) specifying the times when water may be taken;
 - (vi) identifying or limiting the area of land on which any water taken from a resource may be used;
 - (vii) limiting the quantity of water that may be stored; and
 - (viii) specifying locations where water may be stored;
 - (e) which are necessary or desirable to achieve the purpose for which the licence was issued;
 - (f) which are necessary or desirable to achieve compliance with the provisions of this Act; and
 - (g) in the case of a licence -
 - (i) specifying times when water may or may not be used;
 - (ii) containing provisions for its termination if an authorized use of water is not implemented or not fully implemented;
 - (iii) designating water for future or contingent use; or
 - (iv) which have been agreed to by the licensee.

76. Charges for water use

- (1) The use of prescribed water abstracted from a water resource shall be subject to a water charge that reflects -
 - (a) the available water and resource quality objectives;
 - (b) the costs of water resources development and management;
 - (c) the affordability of water among water users;
 - (d) the equitable, efficient and sustainable allocation of water; and
 - (e) protection and conservation of the water resource and water related environment.
- (2) The water charge shall form a source of income for a Commission under section 25.
- (3) The Minister shall, with the approval of the National Council on Water Resources establish a set of principles to guide Commissions in determining their pricing structure for any use of water resources, discharge of waste or other activities subject to licensing provisions under this Part.
- (4) The pricing structure for water use adopted by a Commission shall be approved by the National Council and may -
 - (a) differentiate on an equitable basis between
 - (i) different types of geographic areas;

- Drawn from Kenya Water Act s.31
- SA NWA 56-62
- Nigeria National Water Resource Policy s.2.3.1 and National Water Resources Strategy s. 8

- The guidelines on pricing may be drafted in parallel with the regulations under the Act

- (ii) different categories of water use; and
 - (iii) different water users.
 - (b) include subsidies to promote equitable allocation;
 - (c) provide a transparent mechanism for establishing charges; and
 - (d) define any circumstances under which water charges may be subject to waiver.
- (5) The pricing structure for waste water discharges shall be approved by the National Council and may provide a differential rate taking into account the -
- (a) context in the area concerned;
 - (b) characteristics of the waste discharged;
 - (c) amount and quality of the waste discharged;
 - (d) nature and extent of an impact on a water resource caused by the waste discharged;
 - (e) extent of permitted deviation from prescribed waste standards or management practices; and
 - (f) required extent and nature of monitoring the water discharge.
- (6) The pricing structure shall prescribe procedures for recovery of water charges.
- (7) In preparing the guiding principles on pricing and a pricing structure, the Minister and a Commission shall follow procedures for public consultation set out in section 94.

77. Renewal, review, variation and cancellation

- (1) A licensee may, before the expiry date of a licence, apply to the Commission for the renewal or amendment of the licence in a form and containing such information as required by the Commission.
 - (2) A licence may, at the request of the licensee, be varied by the Commission if the Commission is satisfied that the variation is not contrary to the public interest or the rights of others, so as to -
 - (a) vary the point of abstraction or diversion;
 - (b) vary the use of water authorized by the licence;
 - (c) to remedy any defect whereby the licence is incomplete or indefinite in its terms and conditions; or
 - (d) to reflect one or more successors-in-title as new licensees
 - (3) A variation relating to the use of water or terms and conditions of a licence shall not be made without public consultation.
 - (4) A Commission may vary a licence or its conditions where, it is shown to the satisfaction of the Commission, that owing to changes in hydrological conditions, prolonged drought, increased demand or other cause, the use of water under a licence, or the method or point of abstraction or other manner in which the water is so used, causes -
 - (a) inequity;
 - (b) a deterioration in the quality of water;
 - (c) a shortage of water for domestic purposes; or
 - (d) a shortage of water for any other purpose which in the opinion of the Commission should have priority.
 - (5) A variation contemplated in sub-section (4) may only be made if the conditions of other licences for similar water use from the same water resource in the same vicinity, all as determined by the Commission, are also being amended in an equitable manner through a general review process.
 - (6) Notwithstanding sub-section (4), a Commission may review a the terms of a licence, other than the time period, only at the periods stipulated in a licence for that purpose
 - (7) A licensee whose license is varied under subsections (4) or (5) and, as a result of which the economic viability of any undertaking is severely
- - SA NWA, s. 52
 - Kenya Water Act s.40
 - Kenya Water Act s.35
 - SA NWA s.49(3)
 - SA NWA s.49(1) and (2)
 - Kenya Water Act s. 37(3)
 - Ghana Water Resources

prejudiced, shall be paid compensation in such an amount as shall be agreed between the permit holder and the Commission, or in default of agreement, as may be determined by mediation or appeals procedures under this Act.

Commission Act, s.21

- (8) A licensee may, before the expiry date of a licence, apply to the Commission for the renewal or amendment of a licence which shall be dealt with according to the same procedures and considerations as application for a new licence.
- (9) A licence may be cancelled, suspended or varied by the Commission if the licensee -
- (a) contravenes any conditions of the licence; or
 - (b) fails to make beneficial use of the water or any part thereof.
- (10) No licence shall be varied, suspended or cancelled under this section unless notice of the proposed variation has been served on the licensee and the licensee has been afforded a reasonable opportunity to show cause to the Commission why the licence should not be varied or cancelled.

- SA NWA s.52. Time limitations on the application for early review and renewal or extension of a licence will be defined in the regulations. South Africa has adopted a rolling 5-year license renewal. The inclusion of this provision is intended to reduce levels of uncertainty regarding future entitlements to use water and any associated investment decisions to improve economic activity.
- Kenya Water Act s.38

78. Groundwater conservation areas

- Kenya Water Act s.44

- (1) A Commission may, following public consultation, by order published in the Gazette, declare an area to be a groundwater conservation area in cases where the Commission is satisfied that, in the public interest in such area, special measures for the conservation of groundwater are necessary -
- (a) for the protection of public water supplies;
 - (b) for the protection of the environment; or
 - (c) for the protection for water supplies used for agriculture, industry or other private purposes.
- (2) A Commission may impose such requirements, and regulate or prohibit such conduct or activities, in or in relation to groundwater conservation areas such as the Commission may deem necessary to protect the area and its groundwater.

79. General authorizations

- (1) A 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 must state the geographical area in respect of which the general authorization will apply, and the date upon which the general authorization will come into force, and may state the date on which the general authorisation will lapse.
- (3) A water use may be authorized under subsection (1) on condition that the user obtains any permission or authority required by any other

- Drawn from s.39 of SA NWA
- Commissions may consider making a particular authorization for domestic wells up to a certain size threshold.
- Conditions will be detailed in regulations.

specified law.

- (4) Before issuing a general authorization, the Commission must –
 - (a) publish a notice in the Gazette setting out the proposed general authorisation and an address to which and date before which comments are to be submitted;
 - (b) consider what further steps, if any, are appropriate to bring the contents to the attention of interested persons and, takes those steps which the Commission considers appropriate; and
 - (c) consider all comments received on or before the date specified.
- (5) Any authorization to use water under this section does not replace or limit any entitlement to use water which a person may otherwise have under this Act.

80. Contravention of or failure to comply with licence provisions

- (1) A Commission shall have the power to determine whether a person is engaging in or is about to engage in any activity that is a prescribed activity in accordance with the provisions of this Part.
- (2) A person who contravenes the provisions of subsection 71(1) commits an offence and is liable on conviction to a fine or to imprisonment for a period of two years or to both such fine and imprisonment.
- (3) A Commission shall have the authority to order any person who contravenes subsection 71(1) to cease such activities and to make such other orders as may be deemed necessary to prevent continuation or reoccurrence of the contravention
- (4) A 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.

PART X: MONITORING, REPORTING AND INFORMATION SYSTEMS

81. Monitoring Systems

• Ch. 14 of SA NWA.

- (1) The Minister shall establish and maintain national monitoring systems on water resources as soon as reasonably practicable.
- (2) The systems shall provide for the collection of appropriate data and information necessary to assess, among other matters -
 - (a) the quantity of water in the various water resources;
 - (b) the quality of water resources;
 - (c) the use of water resources; and
 - (d) the state of the aquatic environment.

82. National information systems on water resources

- (1) The Minister shall as soon as reasonably practicable, establish national information systems regarding water resources which may include, among others -
 - (a) hydrological and hydro-geological monitoring networks;
 - (b) meteorological monitoring network;
 - (c) databases and information systems that summarize the information systems maintained at basin level under section 83; and
 - (d) information on water resources of international river basins of which Nigeria is a party.

83. Establishment of basin information systems

- (1) A Commission shall establish and maintain basin-level information systems on water resources as soon as reasonably practicable.
- (2) The systems shall provide for the collection of appropriate data and

information necessary to assess, among other matters -

- (a) the quantity of water in the various water resources;
 - (b) the status of groundwater aquifers;
 - (c) the quality of water resources and state of the aquatic environment;
 - (d) the use of water resources, including a register of water use authorizations for irrigation, municipal and industrial use and other uses;
 - (e) the extent and quality of coverage of water supply and sanitation services; and
 - (f) compliance with water resource quality objectives.
- (3) A Commission shall submit necessary information and reports to the Minister for the purposes of compiling into the summary national information systems.

84. Information on floods and droughts

- (1) The Ministry, a Commission, an Authority, the Independent Dams Safety Inspectorate or any other water management institution shall, at its own expense, make information at its disposal available to the public in an appropriate manner in respect of -
- (a) a flood which has occurred or is likely to occur;
 - (b) a drought which has occurred
 - (c) a waterworks that might fail or has failed, if the failure might endanger life or property
 - (d) any risk posed by a dam or other water resources infrastructure;
 - (e) levels likely to be reached by floodwaters from time to time;
 - (f) any risk posed by the quality of any water to life, health or property; and
 - (g) any matter connected with water or water resources which the public needs to know.
- (2) A Commission, where reasonably practicable, establish an early warning system in relation to the events contemplated in sub-section (1).
- (3) For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a housing development unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwater on average once in every 100 years.

• Based on SA NWA s.144

85. Objectives of national and basin information systems

- (1) The objectives of the national information systems are to -
- (a) store and provide data and information for the protection, sustainable use and management of water resources
 - (b) provide information for the development and implementation of the national water resources strategy; and
 - (c) provide information to government, water management institutions, water users and the public -
 - (iv) on the status of water resources;
 - (v) for research and development;
 - (vi) for planning and environmental management;
 - (vii) for determining licence applications;
 - (viii) for public safety and disaster management; and
 - (ix) for international cooperation.

86. Provision of information

- (1) The Minister and a Commission may require that any person shall, within a reasonable given time or on a regular basis, provide any data, information, documents, samples or materials reasonably required for -
- (a) the purposes of respective national or basin monitoring networks or information systems; and

(b) the management and protection of water resources.

87. Access to information

- (1) Information contained in any national or basin information system established under this Part shall be made available by the Minister or a Commission within a reasonable timeframe, subject to any limitations imposed by law and the payment of a reasonable charge determined by the Minister.

88. Regulations for monitoring, assessment and information

- (1) The Minister may make regulations prescribing -
- (a) guidelines, procedures, standards and methods for monitoring; and
 - (b) the nature, type, time period and format of data to be submitted in terms of this Part.

PART XI: APPEALS AND DISPUTE RESOLUTION

89. Establishment of the National Water Resources Appeals Board

- To improve the level of accountability. See for example: Kenya Water Act s.84-88 Water Appeal Board; SA NWA Water Tribunal s.146-150; Lagos State Water Sector Law, Water Court, Part V.

- (1) The National Water Resources Appeals Board ('the Board') is hereby established.
- (2) The Board is an independent body which -
- (a) has jurisdiction over all appeals and disputes arising from the decisions of any of the agencies created under this Act;
 - (b) may conduct hearings anywhere in the Federation.
- (3) The Board shall consist of -
- (a) a part time Chairperson, who shall be a lawyer with at least fifteen years post call experience;
 - (b) the Executive Secretary; and
 - (c) four other part time additional members as the President considers necessary.
- (4) Members of the Board must have knowledge in law, engineering, water resources management or related fields of knowledge and demonstrate a minimum of ten years active experience in any public or private establishment, a minimum of three of which must be at management level.
- (5) The Chairperson, the Executive Secretary and the additional members of the Board shall be appointed by the President on the nomination of the Interim Committee established under section 104(7) taking into account recommendations from the Judicial Service Commission for legal specialists and the relevant professional association for other disciplines.
- (6) The Executive Secretary shall be appointed in a full-time capacity while the additional members shall be appointed in a part-time capacity.
- (7) The conditions and terms of employment of the members of the Board shall be determined by the President in consultation with the Judicial Service Commission.
- (8) The President may, after consultation with the Judicial Service Commission or relevant professional association referred to in subsection (5), and after giving the member an opportunity to make representations and considering such representations, for good reason

terminate the appointment of any member of the Board.

- (9) Subject to subsection (8), the Chairperson of the Board shall serve for four years while other members of the Board shall be appointed to serve for three years each, after which they may serve for one further term based upon the recommendation of the Judicial Service Commission or relevant professional association.

90. Proceedings of the Board

- (1) Every petition or notice of appeal forwarded to the Board shall be duly investigated by the relevant department of the Board as may be determined by the Executive Secretary
- (2) Every investigation shall be conducted in accordance with the procedure contained in the regulations approved by the Board for the due process of investigations according to the rules of fair hearing.
- (3) The Executive Secretary shall be entitled to engage any person outside of the Board to undertake any investigation considered necessary in order to arrive at the justice of any appeal or petition before it.
- (4) Subject to section 89, after having considered the necessary field of knowledge and required experience for the purposes of hearing a particular matter, the Chairperson may nominate one or more members of the Board to hear a matter based upon the report of investigation into such matter and a decision by such member or members constitutes a decision by the Board.
- (5) Administrative support for the Board shall be provided by a Secretariat headed by the Executive Secretary with staff subject to the laws pertaining to the secondment of officers in the public service.
- (6) The Funds and Resources of the Board shall comprise;
- (a) an amount appropriated by the National Assembly for that purpose through the Judicial Service Commission; and
 - (b) funds from any other source as may be approved by the Judicial Service Commission.
- (7) Neither the Board, the Chairperson, the Executive Secretary nor any other member is liable for an act or omission committed in good faith while performing a function in terms of this Act.

91. Appeals to the Board

- (1) There is an Appeal to the Board -
- (a) against a claim by a Commission for the recovery of costs under section 60(5) by the person affected thereby;
 - (b) against the apportionment by a Commission of a liability for costs;
 - (c) against determination of a Reserve under section 66 by any adversely affected person;
 - (d) under section 67(7) by a person affected thereby;
 - (e) against a decision by a Commission to curtail an existing lawful use under section 70(3).
 - (f) against failure of the Commission to follow due process including relevant notification and public consultation procedures under sections 71(8) or 94.
 - (g) against a decision of a Commission on an application for a licence under section 0, or any other application, by the applicant or by any other person who has lodged a written objection against the application within the time limit allowed for doing so;
 - (h) against any unreasonable action taken by a Commission under its emergency powers under section 74(4)
 - (i) against conditions attached to a licence under section 75(1);
 - (j) against the amendment, cancellation or variation of a condition of a

- licence by a Commission on review under section 77(4) by any person affected thereby;
- (k) in relation to a claim for compensation under section 77(7)
 - (l) against a decision by the Commission on the suspension, withdrawal or reinstatement of a licence under sections 77(9) or 80(4);; and
 - (m) against a declaration made by, directive given by or costs claimed by the Inspectorate of Dams Safety in respect of a dam under section 57(6), 58(4) and 58(5)(b).
- (2) An Appeal under subsection (1) -
 - (a) does not suspend a directive given under the provisions referenced in sub-section (1); and
 - (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Chairperson of the Appeals Board directs otherwise.
 - (3) An Appeal must be commenced within 30 days after -
 - (a) publication of the decision in accordance with the rules on procedure pursuant to (4);
 - (b) notice of the decision is sent to the appellant; or reasons for the decision are given, whichever occurs last.
 - (4) The procedure for lodging, hearing, deciding and publishing the decisions of the Board on an appeal under subsection (1) is contained in regulations.
 - (5) The Chairperson may make rules which -
 - (a) govern the procedure of the Board, including the procedure for lodging and opposing an appeal or an application and the hearing thereof by the Board;
 - (b) may provide for application or appeal fees payable by a claimant or appellant; and
 - (c) must be approved and published in the Gazette by the President.

- Rules for procedures and admissible evidence to be included in regulations, including submission and presentation of additional evidence over and above that submitted to Commission in licence application.

92. Appeals from decisions of the Board

- (1) A party to a matter in which the Board -
 - (a) has given a decision on appeal under section 91, may, on a question of law, appeal to the Federal High Court against that decision; or
 - (b) has determined the liability for compensation or the amount of compensation under section 77(7), may, on a question of law, appeal to the Federal High Court against that determination.
- (2) The appeal must be noted in writing within 21 days of the date of the decision of the Board.
- (3) The notice of appeal must -
 - (a) set out every question of law in respect of which the appeal is lodged;
 - (b) set out the grounds for the appeal;
 - (c) be lodged with the Federal High Court and with the Board; and
 - (d) be served on every party to the matter.
- (4) The appeal shall be prosecuted as if it were an appeal from a Lower Court to a High Court.

- The Board's jurisdiction to determine compensation payable in instances where a person with water rights has his rights compromised for instance by the issue of competing licence.

93. Mediation

- (1) The Chairperson of the Board may at any time and in respect of any dispute between any persons relating to any matter contemplated in this

Act, at the request of a person involved or on the Chairperson's own initiative, direct that the persons concerned attempt to settle their dispute through a process of mediation and negotiation.

- (2) A directive under subsection (1) must specify the time when and the place where such process shall start.
- (3) Unless the persons concerned have informed the Chairperson at least seven days before the date specified in terms of subsection (2) that they have appointed a mediator, the Chairperson shall appoint a mediator.
- (4) Notwithstanding subsection (3), the parties may at any time during the course of mediation or negotiation proceedings, by agreement between them, appoint another person to act as mediator.
- (5) A person appointed by the Chairperson in terms of subsection (3) may either be an official of the Board or an independent mediator.
- (6) The Chairperson shall not appoint a person with any interests in either party to the appeals as a mediator.
- (7) The contents of all discussions which took place and of all submissions made as part of a mediation process under this section are privileged in law, and may not be received in evidence by any court of law, unless the parties agree otherwise.
- (8) The fees and expenses of a mediator shall be paid by the parties.

PART XII: GENERAL

94. Public Consultation

- (1) A requirement under this Act for a person, in this section called the designated person, to undertake public consultation in relation to any strategy developed, reserve determined, or other action to be taken, except licensing covered under section 71, that involves notification of the public or a restricted set of water stakeholders, or action proposed to be taken, under this Act shall be construed as a requirement to ensure that this section is complied with in relation to that action.
- (2) The designated person shall publish notice, in relation to the application or proposed action -
 - (a) in the Gazette
 - (b) in at least one national newspaper circulating in the locality to which the application or proposed action relates;
 - (c) at local government offices or other location(s) accessible to those affected by the proposed action; and
 - (d) if the designated person is an institution, on its website.
- (3) The notice shall in each case -
 - (a) set out a summary of the application or proposed action;
 - (b) state the premises at which details of the application or proposed may be inspected;
 - (c) invite written comments on or objections to the application or proposed action;
 - (d) specify the person or body to which any such comments are to be submitted; and
 - (e) specify a date by which any such comments are required be received not being a date earlier than 30 days after publication of the notice.
- (4) The designated person shall make arrangements for the public to obtain copies, at reasonable cost, of documents relating to the application or proposed action.

- Based on s.107 Kenya Water Act and procedures of the Lagos Urban and Regional Planning Board.

- (5) The designated person shall -
 - (a) consider any written comments received on or before the date specified under subsection (3)(e);
 - (b) consider any comments whether in writing or not, received at any public meeting held in relation to the application or proposed action or pursuant to any other invitation to comment; and
 - (c) acknowledge receipt of all written comments, prepare a summary of the comments received and publish a consolidated response indicating how the comments have been considered.
- (6) The designated person shall publish, through the same media employed in subsection (2), notice of the fact that a copy of the decision in writing of the designated person in relation to the application or proposed action, and of the reasons there for, is available for public inspection at the same premises as were notified under subsection (3)(b).
- (7) Where regulations made under this Act so require, the designated person shall cause a public meeting to be held in relation to the application or proposed action.

95. Entry onto land in furtherance of duties

- (1) The Minister, Chairperson of a Commission, Chairperson of an Authority and Chairperson of the Appeals Board may, in writing, appoint any suitable person as an authorized person to perform the functions of this section subject to the limitations of their powers and functions under this Act.
- (2) An authorized person may, at any reasonable time and on production of their identity card or other instrument or certificate of designation if so required, enter a property with the necessary persons, vehicles, equipment and material in order to carry out routine inspections of the use of water or disposal of waste water under any authorization.
- (3) An authorized person, may, at any reasonable time and on production of their identity card or other instrument or certificate of designation if so required, and after giving reasonable notice to the owner or occupier of the property, which notice must state the purpose of the proposed entry, enter a property with the necessary persons, vehicles, equipment and material in order to -
 - (a) clean, repair, maintain, remove or demolish any government waterworks operated by any water management institution;
 - (b) undertake any work necessary for cleaning, clearing, stabilizing and repairing the water resource and protecting the resource quality;
 - (c) establish the suitability of any water resource or site for constructing a waterworks;
 - (d) undertake any work necessary to comply with an obligation imposed on any person under this Act;
 - (e) erect any structure and to install and operate any equipment on a temporary basis for monitoring and gathering information on water resources; or
 - (f) bring heavy equipment on to a property or occupy a property for any length of time.
- (4) An authorized person may, at any reasonable time and without prior notice, enter a property that is not a dwelling under subsection (7) with the necessary persons, vehicles, equipment and material, and perform any action necessary to -
 - (a) investigate whether under this Act, or other law related to the quality of water, any condition attached to any authorized water use by or under this Act or any notice or directive is being contravened;

- Based on – Nigeria National Environmental Standards Enforcement Agency (NESEA) Bill 2006 and SA NWA ss. 124-125

- (b) investigate whether any information supplied in connection with the use of water is being contravened;
 - (c) inspect any works including hydraulic works, boreholes, dams dykes or any other apparatus which appears to the water management institution to be one to which this Act or the regulations thereunder apply and which may be capable of being used in contravention of the provisions of this Act or regulations made pursuant thereto;
 - (d) inspect any works or water body poses an imminent or potential threat of pollution of water bodies and take necessary samples for analysis;
 - (e) take a sample, specimen or other permanent evidence of any works or other article to which this Act or the regulations apply or which an authorized person has power to examine;
 - (f) examine any book, document or other record which he reasonably believes may, contain any information relevant to the enforcement of this Act or the Regulations and make copies thereof or extracts therefrom;
 - (g) revoke a licence issued under this Act,;
 - (h) support action taken by the environment enforcement agency in obtaining an order of the court to suspend activities that are in contravention of this Act.
- (5) The owner or person in-charge of any premises or other structure whatsoever, entered by an authorized person in pursuance of their duties under this section, shall give all reasonable assistance in their power to the authorised person and shall make available all such information as may be reasonably required for the purpose of this Act.
- (6) The results of any investigation carried out upon any premises shall be notified to the owners of the premises within a reasonable time.
- (7) Notwithstanding any provision of this section an authorized person may not, under any circumstances, enter a dwelling without the consent of the occupier or without a warrant authorizing entry.

96. Power to acquire land

- (1) Any of the institutions established pursuant to this Act may acquire for its use in furtherance of its duties under this Act and Regulations made pursuant thereto such land within its area of operation as it shall deem necessary subject to the provisions of the Land Use Act, Cap 202 LFN 1990.

97. Appointment of Auditors

- (1) An institution established pursuant to Parts IV, V and VI of this Act shall appoint an Auditor in accordance with the general guidelines for the appointment of auditors issued by the Auditor General of the Federation.
- (2) The accounts kept by the Institution referred to in subsection (1) hereof shall be examined by the Auditors.
- (3) The Auditor shall, within six months after the end of each financial year of each such institution, make a report to the relevant Institution and the President on the statement of account prepared by such Institution and such report shall state, whether or not in the opinion of the Auditor, the statement of account gives an accurate and fair view of the state of the Institution's financial affairs.
- (4) The Auditor General of the Federation may require that an Institution instruct its Auditors to prepare and submit such other reports as he may deem necessary.
- (5) Every institution shall publish its audited statement of accounts in a national daily newspaper or in any other manner as shall be approved by the President within one month of such audited accounts being approved

by the Auditor General as final.

98. Powers of the Auditors

- (1) The Auditor shall be entitled at reasonable hours to require to be produced to him all accounts and other records relating to such accounts kept by the Institution appointing such Auditor or its agents and to require from any member of the governing or apex body or employee or agent of such Institution, information and explanation as in the opinion of the Auditor are necessary for the purpose of their audit.
- (2) Any of the persons referred to in subsection (1) who fails to comply with any request by the Auditors pursuant to the same subsection shall be guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three months or to such fine and imprisonment.

99. Exemption from Liability

- (1) No liability shall attach to a River Basin Management Commission, Irrigation Management Authority or Appeals Board or to any member or employee of such organisations 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 Act is conferred or imposed upon the Commission, Authority or Board or the members or employees thereof.

- Liability of Inspectorate of Dams Safety covered under section 62.

PART XIII: OFFENCES

- Specific levels of fines are not defined in this primary legislation as they soon become out of date. The proposal is that they should be published in the Gazette and be subject to review every three years.

100. False declaration

- (1) Any person who, in any declaration required to be made under this Act, makes any statement which he knows to be false or does not have reasonable grounds to believe it to be true commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

- Source: Power Sector Act

101. Non-compliance

- (1) No person may -
 - (a) use water otherwise than as permitted under this Act;
 - (b) fail to provide access to any books, accounts, documents or assets when required to do so under this Act;
 - (c) fail to comply with any condition attached to a license issued or deemed issued under this Act;
 - (d) fail to comply with a directive issued by any Commission established pursuant to this Act;
 - (e) unlawfully and intentionally or negligently tamper or interfere with any waterworks or any seal or measuring device attached to a waterworks;
 - (f) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;
 - (g) fail to procure a licence or other approval required under this Act upon the expiration of an existing right to use water recognised upon the commencement of this Act;
 - (h) intentionally refuse to perform a duty, or obstruct any other person in the exercise of any power or performance of any of that person's duties in terms of this Act;
 - (i) unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource;

- (j) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect a water resource;
 - (k) fail to register a dam with the Inspectorate of Dams Safety or fail to comply with a directive issued by the Inspectorate;
 - (l) fail to comply with a temporary restriction on the use of water in terms of Section 74;
 - (m) undertake any prohibited activity in a watershed in terms of section 17(1)(h); or
 - (n) commit contempt of the Water Resources Appeals Board.
- (2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.
- (3) Any person who violates the provisions of the regulations made pursuant to this Act, commits an offence and shall on conviction, be liable to a fine or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and an additional fine for every day the offence subsists.
- (4) Where an offence under subsection (1) is committed by a body corporate, it shall on conviction, be liable to a fine and an additional fine for every day the offence subsists.

102. Enquiry in respect of compensation for harm, loss or damage suffered

- (1) Where any person is convicted of an offence under this Act and -
- (a) another person has suffered harm or loss as a result of the act or omission constituting the offence; or
 - (b) damage has been caused to a water resource, the Court may, in the same proceedings -
 - (i) at the written request of the person who suffered the harm or loss; or
 - (ii) at the written request of the Commission in respect of the damage caused to a water resource; and
 - (iii) in the presence of the convicted person,enquire without pleadings into the harm, loss or damage and determine the extent thereof and consider the award of damages under section 103.

103. Award of damages

- (1) After making a determination in terms of section 102, the Court may -
- (a) award damages for the loss or harm suffered by the person referred to against the accused;
 - (b) order the accused to pay for the cost of any remedial measures implemented or to be implemented; and
 - (c) order that the remedial measures to be implemented, be undertaken either by the accused or the relevant Commission.

PART XIV: CONSEQUENTIAL AND TRANSITIONAL PROVISIONS

104. Transitional Provisions

- (1) All licenses, permits, approvals, or certificates, issued in terms of the acts referred to in section 105 and, which had effect immediately prior to the commencement of this Act shall continue to have effect, *mutatis mutandis* for the remainder of its period of validity as if it had been issued under the appropriate provision of this Act.
- (2) Without prejudice to the generality of subsection (1), any licensed or

authorized use that is in conflict with a Basin Water Resources Strategy developed under section 64 shall be subject to notification by the Commission and shall be varied in accordance with procedures under section 77(4).

- (3) Any tariff, price, levy, or surcharge which, immediately before the commencement of this Act, was chargeable with respect to any activity for which provision is made under this Act shall, on and after the commencement of this Act and until further provision is made pursuant to this Act by the relevant authority, continue to be chargeable in respect of these activities and services provided by the relevant authorities.
- (4) Subject to this Act, any right, obligations, or duty accruing to any person or authority by virtue of any licences, permits, approvals or agreements with respect to any of the activities for which provision is made under this Act, together with any rights in or over any land or water vested in any person pursuant to the Water Resources Act, 1993, as well as the River Basin Development Authority Act, Cap 396 LFN 1990 or under any of the Acts mentioned in section 105, shall continue to vest in such person or authority as if it had accrued, vested or been acquired pursuant to this Act.
- (5) Subject to this Act, any permission granted, direction given or other thing whatsoever made, done or commenced which immediately before the commencement of this Act, had or was capable of acquiring force and effect pursuant to the Water Resources Act or the River Basin Development Act shall on and after the commencement of this Act continue to have, or as the case may be, be capable of acquiring force and effect as if it had been granted, given made or commenced as the case may be pursuant to the equivalent sections of this Act.
- (6) Any existing agreement(s) for the management of water resources in a basin existing at the time this Act enters into force, shall, provided it is generally consistent with the principles of this Act, continue to be effective until it is incorporated into a Basin Water Resources Strategy under section 64.
- (7) An Interim Committee will be formed by the Secretary to the Government in his role as Chairperson of the Council to facilitate establishment of the Commissions, Authorities, Inspectorate and Appeals Board under this Act.
 - Membership and procedures of the Committee will be defined in the regulations.
- (8) River Basin Management Commissions under Part IV shall be established within a period of two years of this Act coming into effect.
- (9) In the transition period under subsection (8) for those areas where a Commission is not established or, if established, is not functional, all powers and functions of a Commission under section 17 and 18 are vested in the Minister and the Ministry shall receive such funds from Government necessary to undertake such transitional responsibilities.
 - Makes allowance for pilot nature of the Commissions and progressive establishment across the country as proposed in the Water Resources Management Strategy 2006
- (10) The provisions of the Utilities Charges Commission Act 1992, as amended shall not apply with respect to any of the activities for which provision is made under this Act nor to any of the institutions and authorities created pursuant to this Act.
- (11) A River Basin Development Authority for a specific area established under the River Basin Development Authorities Act, Cap 396 LFN 1990, shall be dissolved on the same date as an Irrigation Management Authority for that area is established under section 31 of this Act and such action published in the Gazette.
 - This provision is subject to change based on the ongoing discussions regarding establishment of IMAs or a National Irrigation Commission – see Note in Part V.

105. Repeal and Amendment of Laws

- (1) To the extent that the provisions of the Acts establishing the Agencies provided in subsection (2) conflict with any provision herein contained, such provisions are hereby amended or repealed to bring them into conformity with the provisions of this Act.
 - (2) Without prejudice to the generality of subsection 1, the following provisions of the Acts listed in this subsection 2 are hereby amended or repealed as follows -
 - (a) The Minerals Act, Cap 226 LFN 1990 -
 - (i) sections 3, 64, of the Minerals Act are hereby amended to remove all reference to “water” and “water licence” in said sections; and
 - (ii) sections 48 to 63 of the Minerals Act are hereby repealed.
 - (b) National Inland Waterways Authority Act, 1997-
 - (i) section 9(i) is hereby amended to remove reference to “sand dredging”, “water intake”, and “rock blasting and removal”;
 - (ii) sections 11, 13 (2), 29 (b) are hereby repealed
 - (iii) s. 13 (1) is hereby amended by the addition of the words “subject to the approval of the Commission” at the end of the subsection; and
 - (iv) section 29 (h) is hereby repealed.
 - (c) Petroleum Act Cap 350 LFN 1990 -
 - (i) Section 9 (1) (b) (iii) is hereby amended to remove the words “water courses”
 - (ii) Section 9 (2) (a) is hereby amended by the insertion of the words “subject to the approval of the Commission” at the end thereof.
 - (d) Water Resources Act, 1993 is hereby repealed.
 - (e) Provisions under this Act for the management of water resources and designation of powers and functions to any institution under this Act take precedence over the River Basin Development Authority Act, Cap 396 LFN 1990
 - (f) The River Basin Development Authority Act, Cap 396 LFN 1990 , shall be repealed on the date that the last of the River Basin Development Authorities is dissolved under section 104(11).
 - (3) Any law, regulation, bye-law, or notice, of any State or Local Government Council in force immediately prior to the date of commencement of this Act, in relation to any subject matter or activity provided for under this Act is hereby repealed and of no force and effect to the extent that it is covered under this Act.
- Regulations under this Act should consider and incorporate any special requirements for mining use.
 - Sections 46 & 47 of the Minerals Act contain general obligations not to pollute water and are not contradictory to other environmental or water resources legislation and therefore do not need to be repealed.
 - Sections 11, 13(2) and 29(b) gave NIWA exclusive management, direction and control over all of Nigeria’s navigable waterway, inland waterways, river ports, and internal waters of Nigeria, and also power to make regulations with respect to the sale of sand

PART XV: INTERPRETATION AND CITATION

106. Interpretation

(1) In this Act -

- “Board” means the National Water Resources Appeals Board;
- “approved professional person” means a person registered as a professional engineer in Nigeria by the Nigerian Society of Engineers or of another country having at least similar standards for registration and who meets the requirements for inspection of dams as laid down by the Minister in regulations.
- “Authority” means Irrigation Management Authority established under this Act;
- “basic human needs” means the prescribed minimum quantity and quality of water to households to support life and personal hygiene as quantified in the regulations;
- “basic sanitation” means the prescribed minimum standards of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households, including informal households;
- “Basin” means the land area formed by drainage boundaries of the major river systems as delineated by natural topographical features and international borders, and which may be subdivided into a number of constituent parts, as defined in Schedule 2, and which includes both surface water and groundwater resources.
- “Basin Strategy” means a water resources strategy for a Basin under this Act;
- “catchment area” means the area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, through surface flow to a common point or common points;
- “Commission” means a River Basin Management Commission established under this Act;
- “Council” means the National Council on Water Resources established under this Act;
- “designated person” means a person nominated under this Act to undertake public consultations in accordance with this Act and its associated rules;
- “drinking water standards” mean standards for safe drinking water adopted by the Federal Republic of Nigeria.
- “Federation” means the Federal Republic of Nigeria;
- “groundwater” means water from aquifers or other underground sources;
- “hydraulic works” means all reservoirs, dams, barrages, weirs, canals, channels, tunnels, pipelines, aqueducts, sluices, structures, embankments constructed for the storage, conveyance, supply, measurement, regulation of water and protection from the effects of floods;
- “Integrated Water Resources Management” refers to the principles of integrated water resources management subscribed to in section 26 of the Plan of Implementation of the World Summit on Sustainable Development in 2002 and reflected in Section 1, namely ‘a process which promotes the co-ordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems’
- “large dam” means a structure, whether constructed or proposed to be constructed, which together with its abutments, appurtenant works and foundation, is capable of diverting or storing water and which –
 - (i) has a vertical height of fifteen metres or more measured from the non-overflow crest of the wall of the structure to the lowest point on the downstream face of the wall; or
 - (ii) is capable of storing one million or more cubic metres of water at full supply level; or
 - (iii) has foundations which, in the opinion of the Inspectorate as
- Definition of safe drinking water taken from WHO Guidelines for Drinking Water Quality, 3rd edition, Vol 1, Recommendations, 2004
- Definition of basic sanitation taken from South Africa’s National Water Services Act, 1997, s.1(ii).
- Definition of IWRM taken from Global Water Partnership, Technical Advisory Committee Background Papers No.4, March 2000.
- Regulations need to define the upper limit for personal irrigation for which a licence is not required – currently at 5ha., but propose that this should be reduced – the 2004 irrigation review (section 4.2) indicates that average farm size is 0.25ha and this or say 0.5 ha may be a more appropriate limit for defining ‘personal irrigation’.
- Under this draft Bill, safety inspection measures are proposed for large dams (>15m high) and small dams (>8m high) considered at risk. Guidance from the Nigerian Commission on Large Dams states that inspection is required for all dams greater than 3m high. This may place too large a burden on the inspection agency and include very small dams that do not pose a significant risk. Ultimately, a system that is based on an assessment of the degree of risk should be introduced, but this will require considerable capacity to be built. Further discussion on these thresholds is necessary prior to finalization of this draft Bill.

- (iv) notified to the owner of the structure, may or does cause special or unexpected difficulties; or
in the opinion of the Inspectorate as notified to the owner of such structure, is a small dam of unusual design.

- “licence” means a licence in force under this Act;
- “licensee” means the holder of a licence under this Act;
- “Minister” means the Federal Minister responsible for water resources;
- “Ministry” means the Federal Ministry responsible for water resources;
- “person” includes an individual, company, partnership or any other association of individuals, whether incorporated or not;
- “owner of a dam” means the person entitled to divert or store water by means of the large dam or small dam and includes the person in charge of that dam;
- “personal irrigation” means the use of water for subsistence agriculture and in no case exceeding 0.5 ha.
- “pollution” means man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water;
- “prescribed activity” means any activity requiring a licence under section 69 if this Act;
- “reasonable domestic use” means an amount needed by a household for drinking, cooking, washing, sanitation and domestic livestock that is set out in the regulations;
- “Reserve” in relation to a water resource means that quantity of water required under this Act –
 - (a) to satisfy basic human needs for all people who are or may be supplied from the water resource; and
 - (b) to maintain significant environmental services of the water resource including protection of aquatic ecosystems.
- “safe drinking water” means water that does not represent any significant risk to health over a lifetime of consumption including different sensitivities that may occur between life stages;
- “Secretariat” means the Secretariat to the National Council on Water Resources;
- “Secretary” means the Secretary to the Government of the Federation;
- “small dam” means a structure, whether constructed or proposed to be constructed, which, together with its abutments, appurtenant works and foundations, is capable of diverting or storing water and which –
 - (i) has a vertical height of more than eight metres but less than fifteen metres measured from the non-overflow crest of the wall of such structure to the lowest point on the downstream face of such wall; or
 - (ii) is capable of storing more than five hundred thousand but less than one million cubic metres of water at full supply level.
- “Specified Substances” means a Specified Substance under the Oil in Navigable Waters Act, Act No. 34 of 1968 .
- “State” means one of the 36 States of the Federal Republic of Nigeria;
- “State water” means water that comes under the jurisdiction of a State in terms of the Constitution of the Federal Republic of Nigeria.
- “State water agency” means an agency established by the Government of a State for the delivery of water supply and sanitation services or management of State Water;
- “State regulatory water commission” means a body established by a State for the regulation of the provision of water services in urban and semi-urban areas.
- “streamflow reduction activity” means any activity that reduces runoff from a catchment to a river system;

- “surface water” means any natural or man-made body of water, flowing or standing, on the surface of the land including rivers, streams, lakes, reservoirs, lagoons, wetlands, swamps, creeks, deltas and estuaries;
- “task” includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring, abandoning or decommissioning a dam;
- “this Act” include the regulations;
- “waste” means any material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into water resources in such volume, composition, or manner as to cause , or be reasonably likely to cause, the water resource to be polluted;
- “water bodies” means and groundwater or surface water;
- “water course” means any natural channel or depression in which water flows regularly or intermittently;
- “water management area” means an area over which a water management institution has jurisdiction under this Act;
- “water management institution” means the National Council on Water Resources, Federal Ministry of Water Resources, a River Basin Management Commission, a body established for an international basin, an Irrigation Management Authority, a Water User Association, a State Water Agency, or other person who fulfills the functions of a water management institution under this Act;
- “water services” means any service of or incidental to the supply of water, or the provision of sewerage, sanitation or irrigation.
- “water users association” means an association of water users with a common use of water and involved in the local management of irrigation systems either registered under State legislation or recognised as an effective community based organisation.

107. Citation

This Act may be cited as the National Water Resources Act, <date>.

SCHEDULE 1 - Water Bodies declared as affecting more than one State pursuant to item 64 of the Exclusive Legislative list in Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999.

All water, whether surface or underground, from time to time contained within or flowing or percolating through such sources, and the tributaries and catchment areas thereof:

- (1) Source 1 – The River Niger from the border between the Federal Republic of Nigeria and the Niger Republic to the outlet of the Kainji reservoir, including –
 - (a) the Sokoto Rima River from the border with the Federal Republic of Nigeria;
 - (b) all the tributaries of the River Niger crossing the border to the Benin Republic; and
 - (c) the Sokoto sedimentary (western) hydro-geological area.
 - (2) Source 2 - The River Niger from the outlet of the Kainji reservoir to the point of confluence of the River Niger and the Benue River, including -
 - (a) The Kaduna River with the tributaries;
 - (b) the Gurara River ;
 - (c) all the tributaries of the River Niger crossing the border to the Benin Republic; and
 - (d) the upper Niger sedimentary (Niger) hydro-geological area.
 - (3) Source 3 - The Benue River from the border between the Federal Republic of Nigeria and the Republic of Cameroon to the point of confluence of the Benue River and the River Niger, including;
 - (a) the Gongola River ;
 - (b) the Pai-yul River;
 - (c) the Wase River;
 - (d) the Shemankar River;
 - (e) the Dep River;
 - (f) the Mada River
 - (g) all the tributaries of the Benue crossing the international border to the Republic of Cameroon, and
 - (h) the Benue sedimentary (Benue) hydro-geological area.
 - (4) Source 4 - The River Niger from the confluence thereof and of the Benue River, including the Delta of the River Niger and all water tributaries or influent thereto or diffluent therefrom, including,
 - (a) the Anambra River ;
 - (b) the Imo River;
 - (c) the Akwa ibom River; and
 - (d) the Aboine River
 - (5) Source 5 - All water courses directly or indirectly influent to the Lagoon and other littoral Lagoons and water courses from the border with the Republic of Benin to the mouth of the Forcados River , including;
 - (a) the Oshun River
 - (b) the Ogun River
 - (c) the Shasha River;
 - (d) the Owena River; and
 - (e) the Ogun/Oshun sedimentary (south-western) hydrogeological area.
 - (6) Source 6 - All water rising or situated in the Federal Republic of Nigeria which are directly or indirectly influent into the Lake Chad, including the
- Inland surface waters extend to a baseline around the coast as defined by the United Nations Convention on the Law of the Sea and derived from the low tide water mark. They include estuaries, creeks and lagoons.
 - The Territorial Waters Act, Cap T5 LFN 2004 has jurisdiction over the open sea from the low water mark, or the seaward limit of inland waters, to a distance of twelve miles, (s.1(1)) .

Chad sedimentary (north-eastern) hydrogeological area.

- (7) Source 7 - The Cross River from the boundary between the Federal Republic of Nigeria and the Republic of Cameroon and all water tributaries or influent thereto or diffluent therefrom including the Cross River sedimentary (south-eastern) hydro-geological area.

SCHEDULE 2 – List of River Basin Management Commissions

Name of Commission	Member States
HA-I	Katsina, Zamfara, Sokoto, Kebbi, Niger, Kano
HA-II	Niger, Kaduna, Plateau, Kogi, FCT
HA-III	Adamawa , Bauchi, Gombe, Plateau, Taraba, Yobe.
HA-IV	Benue, Nasarawa, Plateau, Taraba
HA-V	Anambra, , Bayelsa, Delta, Imo, Kogi, Rivers
HA-VI	Edo, Ekiti, Lagos, Ogun, Ondo, Oyo.
HA-VII	Abia, Akwa-Ibom, Cross River, Ebonyi, Enugu, Imo.
HA-VIII	Bauchi, Gombe, Jigawa, Kano, Yobe.

- Basin names to be assigned
- Consideration may be given to merging HA III and HA IV.

SCHEDULE 3 – Proceedings of the Governing Board of a River Basin Management Commission

- (1) Subject to this Act, the Board may make standing orders to regulate its proceedings at meetings.
- (2) The Board shall meet at least once every month in each year and on such other occasions as it may consider necessary.
- (3) The quorum for the meeting shall be two thirds of the members of the Board as comprised under section 23(1).
- (4) At a meeting of the Board, the Chairperson shall preside, but if absent, the members present at the meeting shall appoint one of the members present to preside.
- (5) The Board may co-opt persons who are not members of the Board to any meeting of the board and such persons may take part in the deliberations of the Board but shall not be entitled to vote at the meeting of the Board.
- (6) The determination of any question before the Board shall be according to the opinion of the majority of the members present.
- (7) The Chairperson or any other person acting in that capacity presiding over a meeting shall have a casting vote.

SCHEDULE 4 – List of Irrigation Management Authorities

- This section is tentative and depends on the outcome of discussions on application of the draft National Irrigation Policy – see Note in Part V.

S/N	Name of Authority	Area of Operation
1	Anambra-Imo River Basin Irrigation Management Authority	Note: These areas are provisionally based on the current RBDA jurisdictions but will be reviewed prior to the next draft of the Bill.
2.	Benin-Owena River Basin Irrigation Management Authority	
3.	Chad Basin Irrigation Management Authority	
4.	Cross Irrigation Management Authority	
5.	Hadejia- Jama'are Irrigation Management Authority	
6.	Lower Benue Irrigation Management Authority	
7.	Niger-Delta Irrigation Management Authority	
8.	Upper Niger Irrigation Management Authority	
9.	Ogun-Oshun Irrigation Management Authority	
10.	Upper Benue Irrigation Management Authority	
11.	Sokoto – Rima Irrigation Management Authority	
12.	Lower Niger Irrigation Management Authority	