



September 3, 2020

Muhammadu Buhari
President,
Federal Republic of Nigeria,
Aso Villa,
Abuja.

Your Excellency,

REASONS YOU MUST TAKE ACTION TO JETTISON THE NATIONAL WATER RESOURCES BILL

On August 21, 2020, the Amalgamated Union of Public Corporations Civil Service Technical and Recreational Services Employees (AUPCTRE) and Corporate Accountability and Public Participation Africa (CAPPA) addressed a press conference in Lagos focusing on the National Water Resources Bill 2020 which has passed Second Reading at the House of Representatives and referred to a "committee of the whole" for Third Reading and passage.

At the briefing, both Organizations expressed dismay that two years after the same Bill generated a lot of controversies and the National Assembly was forced to discard it, it found its way back to the hallowed chambers in an unwholesome manner and without recourse to public opinion and protocols.

Our consternation was further aggravated by the fact that the same Bill had scaled Second Reading, still with neither public inputs nor wide consultations. The secrecy with which this supposed public interest Bill is being handled fuels suspicion that its promoters have hidden agenda in mind.

We are particularly worried about the privatization agenda being imposed on Nigerians with accompanying draconian provisions that remind Nigerians of the Military era.

Your Excellency, having catalogued the sections of the Bill, we hereby bring to your attention in the highlights below the problematic clauses, and our recommendations on the way forward.

Clause by Clause Analysis

SECTION 1- OBJECTIVES OF THIS ACT

- (1) (l) *"encouraging comprehensive and equitable coverage of water supply and sanitation, including promoting public-private partnerships in delivery of water services"*

(m) *“Promoting public-private partnerships in the development and management of water resources infrastructure”*

Observation

Though on the surface of the Bill, it appears that Public-private partnership is beneficial and will only apply to infrastructural development of water resource, however, with deeper insight, it is impossible for private corporations to commit resources to the development of water without a measure of control and ownership. Private corporations, by their goal gun for profits, and will always act in their own interests to maximize such profits.

Public-private partnership on the issue of water resources, control and distribution therefore will at best be inimical and counterproductive to the free access of private citizens to water as clearly admitted as a matter of right in previous sections of the Bill’s objective.

SECTION 2(2) – PUBLIC TRUSTEESHIP OF WATER

“There shall be no private ownership of water but the right to use water in accordance with the provisions of this Act”.

Observation

This provision contradicts the objective of free access and reduction of poverty as envisaged by Section 1 (1) (a). It is therefore counterproductive.

SECTION 3 – ENTITLEMENT TO USE OF WATER

Notwithstanding the provisions set out in Section 2 of this Act, a person may, without a licence:

(a) Take water from a water source to which the public has free access for the use of his household 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 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 household use, watering livestock and for personal irrigation not for commercial purposes;
or*

(d) Store and use runoff water from a roof.

Observation

This section seems to take care of the trip of Section 2(2), which then must not be interpreted in isolation.

SECTION 13 – FUNCTIONS OF THE MINISTER

- (1) (n) “to promote all aspects of public-private partnerships in the development of water resources infrastructure”

Observation

Provision for public-private partnership in this provision bears the appearance of a positive *mens reas* (intention) as it is specific towards the “development of water resources infrastructure”. However, the reality is that the private sector is profit-driven, therefore, it is naïve to take this at face value, knowing that there will be a measure of ownership and control as return on investment. This, in turn, will not favour the public (citizens), who may now have to pay through their noses to afford water. This is against the spirit of human rights.

SECTION 22 – FUNCTIONS OF THE COMMISSION

- (1) (m) “Protect the interest of the public by ensuring that the provisions of this Act are carried out with due regard to public interest”

Observations

1. This provision is evasive as to the monitoring mechanism for strict compliance by the agencies of government saddled with functions requiring protection of public interest.
2. Too many agencies and bodies in this Act! Bearing in mind that there is already in existence, a Ministry of water resources, water corporation, as well as the Nigeria Hydrological Services Agency:

PART II, Sec.4 - National Council on Water Resources

PART III, Sec. 10 – Ministry of Water Resources

Part IV, Sec. 15 - Nigeria Water Resources Regulatory Commission

Part IV, Sec. 17 - Governing Board of the Commission

PART V, Sec. 48 - River Basin Development Authorities (RBDA)

PART VI, Sec. 61 - Nigeria Hydrological Services Agency

PART VII, Sec.81 - National Water Resources Institute

PART VII, Sec 82 - Governing Board of the Institute

3. Their existence may begin to conflict with overlapping duties and confusion of citizens as to the extent of powers those agencies, Bodies and Authorities.
4. Additional yet avoidable government expenditure which is often a burden on taxpayers.

SECTION 24 – COMMISSION NOT SUBJECT TO DIRECTION

“The Commission shall not be subject to the direction or control of any person in respect of the 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 and the provisions of this Act”.

Observation

This is an outrageous provision that vests too much power in the Commission and therefore subjects activities on water management and control to arbitrariness and possible political whims and caprices of FEC, depending on the composition per time, without an opportunity for checks.

SECTION 89 – PROCEDURE IN RESPECT OF SUIT AGAINST THE INSTITUTE

- (1) *“No suit shall be commenced against the Institute before the expiration of a period of 1 month after the service of a written notice of intention to commence on the Institute by the intending plaintiff or his agent.*

Observation

Lawsuits should ordinarily follow their due filling process and timeline as stipulated in relevant legislation and civil procedure. Otherwise, that amounts to violation of citizens' rights.

Part IX- Licensing

SECTION 98 – CONSIDERATIONS FOR ISSUE OF LICENCES AND GENERAL AUTHORIZATION

- (1) *Subject to the provisions of Sections 3 and 110 of this Act, the use of water shall be subject to licensing provisions under this Part and relevant regulations.*

Observation

The use of water cannot be subject to licensing. That would amount to a breach of citizens' right to water.

SECTION 104 – EMERGENCY POWERS IN CASE OF SHORTAGE OF WATER

- (1) (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.*

Observation

The provision of this proposed section amounts to a breach of peaceful enjoyment of private property/privacy of private citizen.

SECTION 104 - EMERGENCY POWERS IN CASE OF SHORTAGE OF WATER

- (3) *An order under this Section may require or authorize-*

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

- (4) (a) *may take possession of the water supply and operate any works of the person*

concerned for the drawing, diversion, or use of water; and shall have and may exercise the person's rights in connection with them during the period of the order.

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

Observation

The expression "Reasonable care" in this context is at best ambiguous and subjective. This increases the chances of abuse and arbitrary use of powers.

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

Observation

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

SECTION 105 – CONDITIONS OF LICENCES

(1) *The Commission may attach conditions to every general authorization or licence- (iv) requiring the payment of water charges as provided for in Section 107 of this Act;*

(v) requiring the licensee to provide or make water available to a person specified in the licence

(vi) in the case of a general authorization, requiring the registration of the water use with the responsible authority and the pay merit of a registration fee as a pre-condition of that use.

Observation

Water is a right and should not be charged, nor its use restricted for users. It is against the spirit of public interest to impose Water charges on private citizens.

SECTION 107 – RENEWAL, REVIEW, VARIATION AND CANCELLATION

(8) *A licensee may, before the expiration 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-*

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

Observation

This provision is alarming. It is inequitable for a licensee to get a licence revoked for 'lack of use'.

SECTION 109 – GENERAL AUTHORIZATIONS

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

(a) generally;

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

(c) within an area specified in the notice,

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

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

Observation

Citizens do not need to notify the Federal government or any other government at any tier about water on private surface.

SECTION 110 – CONTRAVENTION OF LICENCE PROVISIONS

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

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

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

Observation

The Act lacks no such authority to order imprisonment on any citizen. That is a prerogative of a properly constituted court of law with requisite jurisdiction.

Part XI – Borehole Drilling

SECTION 120 – ISSUANCE OF DRILLERS' LICENCE

Subject to the provisions of this Act, no borehole driller, whether corporate or Individual shall commence borehole drilling business in Nigeria unless such driller has been issued a Water Well Driller's Licence issued by the Commission.

Observation

Private Citizens should not require a driller's licence before the can drill for private use.

SECTION 121 – COMMERCIAL BOREHOLE

(1) The owner of a borehole constructed for commercial purpose shall obtain a Permit for such Borehole from the commission, the permit shall prescribe the terms and conditions to be observed by the Owner.

(3) A commercial borehole Permit shall be renewable every five years or such other period as the Commission may prescribe.

Observation

It is inequitable to make merchants renew at a fee.

SECTION 125 – ENTRY ONTO LAND IN FURTHERANCE OF DUTIES

(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.

Observation

Regardless of the intendments of the draftsman, this provision will amount to invasion on property and privacy under the guise of legislation or regulation. It is at best a licence to arbitrary encroachment.

(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.

Observation

This provision is tantamount to bullying of private citizens. An otherwise equitable civil piece of legislation will not compel citizens to assist an agent of government in carrying out an invasion on their own properties

SECTION 129 – EXEMPTION FROM LIABILITY

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

Observation

Contravention of Labour law/ Employee compensation provisions.

SECTION 131 – NON-COMPLIANCE

(1) *No person shall-*

(a) use water otherwise than as permitted under this Act;

Observation

Restricting the purpose of private water use is an overbearing provision. The Act cannot possibly successfully exhaust the list of usage of water.

Summary of Analysis

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

1. This Bill, if allowed to scale through with its current intent and imperfections, would result in dispossessing Nigerian citizens of their inherited and cultural rights to water. This is by no means a humane venture.
2. Establishment of new Federal Government Commission, Institute and Boards to take over the responsibilities of the States on water resources within territorial jurisdiction which is their States. This once again runs contrary to the spirit of true federalism.
3. Close to 50 million Nigerians still rely, exclusively, on surface water sources to meet their domestic needs, it is therefore the primary responsibility of government to provide water and ensure effective distribution rather than abrogate such responsibilities while further creating obstacles for average private water users through the guise of stringent regulations.
4. It is quite interesting that the Objectives of the Bill, as contained in Part I include:

Section 1(1) (a) "citizens' right of access to clean water and sanitation";

Section 1(1) (c) "promoting equitable and affordable access to water and reducing poverty"

The above-highlighted provisions clearly admit as well as recognize access to water as a matter of right for the citizen as opposed to being a privilege. However, from careful perusal, it is apparent that the provisions of the same Bill are not in tandem with the listed objectives.

Conclusion

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

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

This Bill however fails that required obligation to integrate the tenets of Human Right to water by falling short in prioritizing the normative elements of accessibility, affordability and availability of water as mutually exclusive components of the Human Rights to water by ordinary Nigerian citizens.

WAY FORWARD

Mr. President, we request that you use your good office to recall the current contentious document from the legislative quarters and kickstart a fresh process which will entail consultation with the good people of Nigeria from the initial stages through the entire process at the National Assembly.

We believe that such move will birth a truly inclusive and people-oriented legislation that will entrench equitable access to water resources.

Mr President, as non-partisan organisations committed to the advancement and promotion of Human Rights and good governance, we are ready to support your government in the processes that will guarantee universal access for all Nigerians.

Signed,



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