

Annex (1)
Water Resources Act 1995
Ministry of Irrigation and Water Resources
Khartoum, Sudan

In pursuance to the provisions of the fifth Constitutional Decree of 1991, The Transitional National Assembly has passed, and the president of the Republic has approved, the following Act:

Chapter One

Preliminary Provisions

Name of Act and start of enforcement

1- This Act is entitled (the Water Resources Act of 1995) and shall come into force from the date of being signed.

Cancellation and Exemption

2- The Nile Water Withdrawal Monitoring Act of 1939 shall be cancelled, however, the regulations issued according to the provisions thereof shall be valid as if they had been issued according to the provisions of this Act, until they are cancelled or amended accordingly.

Interpretation

3- In this Act, unless otherwise being stated:

Non-Nilotic rivers: stand for the rivers of no connection with the River Nile Via their water.

Pavements: stand for natural ones, or man-made on the two banks of the Nile bed or the beds of Non-Nilotic rivers, or other river beds, or the pavements built to in certain conditions, for the protection of lands and properties near the said river beds.

Other river beds: stand for the beds of any Nilotic rivers, streams, valleys, springs, lakes or ponds from which water flows or confined therein, whether permanently or seasonally, including artificial canals.

The Council: stands for the National Council of Water Resources, established according to the provisions of Article 4(1).

The licensee: stands for the person granted a license by the minister to withdraw water, or any person given a permission to share the licensee in using the withdrawn water.

The ground water: stands for the water which is found deep inside the ground in different layers, be it near the ground surface or deep.

Water resources: stand for surface and ground water resources, crossing or non-crossing.

Surface water: stands for the water on the surface of the ground whether they are Nile water, non-Nilotic water or water from other canals.

Crossing water: stands for surface or ground water, crossing the Sudan's international borders, or the borders of any two neighboring states.

The Nile: stands for the main Nile of its two tributaries Blue Nile and White Nile in addition to the River Atbara and the tributaries of these rivers.

The Ministry: stands for the Ministry of Irrigation and Water Resources.

Minister: stands for the Minister of Irrigation and Water Resources.

Chapter Two

The National Council of Water Resources

Establishment, seat and supervision of the Council

4- (1) A council entitled " The National Council of Water Resources shall be established, and it shall have an identity, sustainable contracting characteristic, general stamp and a right of suing in the name thereof.

(2) The main seat of the council shall be in Khartoum.

(3) The council shall be under the supervision of the president of the republic.

The Council's Composition

5- The council shall be composed by a presidential decree, under the chairmanship of the Ministry of Irrigation and Water Resources, and a membership of a number of members, characterized of appropriate qualifications and adequate experience and knowledge, in Water Resources affairs. All the relevant bodies shall be represented in the council.

Competencies and authorities of the council

6- (1) In spite of the provisions of any other law, the council shall in particular - have the following competences and authorities:-

A- Making the general policy of the Water Resources, including the numeration, evaluation, directing the management and using thereof, in addition to tacking the consequences of natural disasters, resulting from drought and floods, protection of these resources from contamination and deterioration and development of these resources in an integrated and balanced ways with the other natural resources, in such a way that they can be optimally utilized, and coordination and cooperation with other relevant bodies shall be realized.

B- Setting of a long-term federal program for optimal and balanced use of water resources, with specification of priorities.

C- Presenting the necessary resolutions and recommendations in connection with:-

First: joint water resources with other countries.

Second: principles of cooperation with the international organizations, in order to procure international and national financial sources, to implement the programs of water resources development and to protect and maintain them.

D- The periodic auditing of legislations in connection with water resources, to make sure if they are keeping pace with the development of water resources, and presenting recommendations to relevant bodies.

E- Encouragement of scientific research in water resources domains.

F- Formation of specialized Committees to assist the council in the tasks thereof.

(2) After considering the total magnitude of water available from the Sudan's share of the international water in pursuance to the agreements with other countries, and the magnitude of the water available from the different national water resources, the council's competences include the following issues:-

A- General supervision of water withdrawal from the Nile, non-Nilotic rivers, other canals and ground water, for the purposes of irrigation, drinking, industry, generation of hydropower, sewage systems ... etc, as well as the distribution and using of all these types of water, including determination of land area which shall be planted, the establishments built for water using in different purposes, protection of canals and water from contamination by sewage, industry, agricultural chemicals, pesticides ... etc and treatment of sewage water, through the coordination with the Higher Council of Environment and Natural Resources, and the areas in question.

B- Setting the principles of the following:

First: Giving the licenses of withdrawal of water from the Nile, non-Nilotic rivers, other canals or ground water, as well as the licenses of sharing the water withdrawn by the public sector or the co-operative sector, in addition to renewal and annulment of these licenses.

Second: Allocation of any specified ratio or quantities of surface or ground water, from the total federal quantity, to any state, whether in a general fashion or for any specific purpose or purposes, and permission for the withdrawal of these allocated quantities and sharing of using the withdrawn quantities.

Third: Fair distribution of the available water, to be used in different purposes in an optimal manner.

Fourth: Regulation of using water in different purposes in such a way as to be secured from contamination, in coordination with the bodies in question.

Fifth: The necessary inspection to guarantee efficient supervision on surface or ground water use for any purpose.

Sixth: Establishment of stores, plants of generation of hydropower, the works of protection, sewage systems, industrial sewage, drinking and irrigation water ... etc, in coordination with the areas in questions.

Seventh: Regulation of digging of shallow and deep water wells, and conducting the necessary studies to recognize the quantities, movement and recharging of ground water.

The council's meetings

7- 1) The council shall meet twice a year at least to deal with ordinary activities.

2) The chairperson or one-third of the members can call the council for an extra-ordinary meeting to discuss urgent issues.

3) In case of the chairperson's absence, the members can elect one of them to chair the council.

4) The council's quorum is regarded as complete the attendance of one-half of the members number.

5) The council's resolutions and recommendations are passed by the majority, according to the regulations issued thereby.

6) The council has the right of calling any person to attend any session, without having (the person) the right of voting.

The general secretariat of the council

8- 1) The council shall nominate a full-time secretary general, who undertakes the responsibility of the general secretariat of the council, in terms of administrative, writing and financial works, as well as the registration of the minutes of the meetings, preparation and analysis of the necessary information and data about the water resources, preparation of the meetings agenda, keeping of records, and any other assignments entrusted by the council's chairperson thereto.

2) The council determines the allowances and remunerations of the secretary general.

Chapter Three

Finance, accounts and audit

Financial resources of the council

9- The council's financial resources are composed of:-

1) Credits allocated by the federal government.

2) Grants, donations and aids.

3) Any other resources approved by the council.

The council's budget

10- (1) The council shall have an independent budget prepared in accordance with the sound accounting principles.

(2) The council passes the draft budget prepared by the general secretariat.

Depositing of funds

11- The council shall deposit the funds thereof into current accounts or deposit accounts in the Bank of Sudan or any other bank approved by the Bank of Sudan, provided, withdrawing from these accounts shall take place according to the way specified by the regulations.

Accounts and audit

12- 1) The council's shall keep regular and precise accounts about the revenues and outlays thereof, according to sound accounting principles.

2) The Auditor General, or any one authorized thereby, shall audit the council's accounts, after the end of each financial year.

Chapter Four

Provisions of water resources

The right of water using:

13- 1) The state is the owner of the right of the flow, control and use of water and of anything in connection with water resources.

2) The public have the right in using water in different purposes, in accordance with the provisions of this Act and any other relevant act.

Chapter Five

Provisions of licensing

Necessity of having the license

A) using of pump or other tool for withdrawing water from the Nile or other non-Nilotic rivers or any other canals or ground water for irrigation, drinking, sewage or industrial drainage ... etc, unless the user takes the necessary license from the ministry.

B) Ratification of any agreement with any persons for using water for which the user has had the license of withdrawing for any purpose, unless the user has a previous approval from the ministry.

2) With consideration to the provisions of Article (1) above, the ministry is allowed to issue any of the following two types of license of withdrawing and using of water, namely:-

A- License of water withdrawal.

B- With considerations of the provisions of item (B) of Article (1) above, license for sharing the use of water having the license to be withdrawn.

3) The regulations determine the procedures which shall be followed when granting the licenses stated in Article (2) above, and the conditions and restrictions which determine the issuance, signature, annulment and renewal of these licenses.

4) For the purposes of the Articles (A) and (B) above, the ministry must be sure of the land ownership by the license seeker, i.e. the land for which the license is requested for irrigation or leasing, and the ministry must be sure about the type of using the water which is going to be licensed for.

The ministry's freedom from responsibility against the works done by the licensee

15- The ministry is irresponsible from any work drawn by the licensee in accordance with the license given thereto.

Validity of working with the previous license

16- (1) Any person who has a true and valid license of withdrawing water or of sharing the use of withdrawn water, within the effectiveness of this Act, has the right to continue working with that license until its period terminates.

(2) In case of un-terminated licenses, at the time of starting the work with this Act, the ministry is allowed to call the licensees, through a written declaration, lasts for six months, to apply for licenses in accordance with the provisions of this Act.

(3) With consideration to the provisions of Article (13) above, the ministry shall issue new licenses, according to the provisions of this Act, for any licensee whose license duration has elapsed after starting working with this Act, and to any one who applies for a license in accordance with the provisions of Article (2). If the licensee does not apply, within the period specified in Article (2) the license which the licensee is carrying shall be deemed annulled.

Validity of previous agreement and privileges

17- No provision in this Act shall have any effect on any articles of any valid agreement or privilege, save the license, between the government of Sudan and any one, which gives that person the right to withdraw any water or to ratify any other agreement with other persons to share him the use of withdrawn water for irrigation or drinking purposes or any other purposes.

The ministry's Competences and authorities

18- (1) The ministry shall have the following competences and authorities:-

A) Issuance of licenses of withdrawing water from the Nile, non-Nilotic rivers, other canals or ground water, as well as issuance of sharing the use of withdrawn water.

B) Monitoring the implementation of the plants having the licenses of withdrawing the water from the Nile, non-Nilotic rivers or other rivers.

C) Monitoring of water input in the Nile, non-Nilotic rivers and other canals (rivers), and monitoring of the quantities and movement of ground water. No other authority shall do this work without taking a consent from the ministry or in accordance to the provisions of this Act.

D) Localization of the areas of extraction of ground water for irrigation and drinking purposes or for any other purposes.

E) With consideration to the provisions of Article 6(2) (13) (sixth), conduction of the necessary inspection to guarantee the use of withdrawn water in the purposes specified for.

F) Making sure about the commitment towards the crops cycle in the lands irrigated by the water withdrawn according to the license.

G) Conduction - at the expense of the licensee - of the implementation of any obligation imposed by the license granting and the licensee refused to implement it.

H) Determination of license fees, and any fees for the services given thereby, in accordance with the provisions of the Act, and specification of the body which receives these fees, after taking the consent of the minister of Finance.

2- The ministry is allowed to delegate any of its authorities stated in Article (1) to any body inside any state, without violating any of the following actions:-

A- Issuance of licenses to the vessels (boats) for internal river navigation, in accordance with Article (9) of the River Navigation Regulation Act of 1992.

However, if a vessel is exposed to any accident, such as crash, drowning or stopping from navigation due to water shortage, the owner of that vessel after reporting that accident officially has to inform the ministry to be assured of getting that vessel, or its wreckage, out of the water. If the owner refuses, the ministry shall do the action at the owner's expense.

B) Issuance of licenses in connection with the establishment of berths of vessels at the Nile or non-Nilotic rivers or any other Canal, according to the provisions of Article 10(C) of the River Navigation Regulation Act of 1992.

C) Issuance of licenses for bricks furnaces at the banks of the Nile, non- Nilotic rivers or other canals, in accordance with the provisions of Article 7 (5) of the Mines and Quarries Act of 1972.

Ban of some works

19- No body is allowed to do any of the following works:-

(1) Establishment of dams on the Nile, non-Nilotic rivers, other canals or ground water before taking a consent from the minister.

(2) Planting the state - owned lands, which lie within the pavements, or using these lands for any other purpose without a license issued by the ministry according to the conditions specified thereby.

(3) Erection of any establishment between the pavements, without a permission from the ministry issued according to the conditions determined thereby.

(4) With consideration of any other law, "Cutting the trees" or date palms planted or being planted on the land near the pavements, owned by individuals.

The Minister's authorities

20- (1) In the event of extraordinary rise of the water levels of the Nile, non-Nilotic rivers or other canals, the minister is allowed to practice any of the following authorities:-

(A) Declares a state of general danger, which threatens the people living at the sides of the Nile or the other rivers or canals.

B) Takes the Urgent actions to protect the pavements and the standing water establishments from danger, via consultation with the Minister of Interior, Minister of Finance and the Wali(s) of the state or states affected by the danger.

(2) In the event of inadequacy (rarity) of the water of the Nile, non-Nilotic rivers, other canals or ground water, or if the water level is too low to fulfill the licenses requirements, the minister, or any one authorized thereby, has the authority to distribute the water to the licenses owners, in such a method as seen fair thereby, and the licenses owners shall be informed with this distribution, in writing, after which the minister's decision is deemed final.

Chapter Six

Concluding provisions

Violations and punishments

21- Any one who violates any of the provisions of this Act, or of the regulations issued according to it, is deemed a crime perpetrator, and shall be punished with imprisonment for a period not exceeding six months or with a fine or with the two punishments, without prejudice to any other harder punishment imposed due to any other law.

Suspension or termination of work

22- The Court in question, following a request from the minister, in case of crossing water, or from the Wali of the concerned state, in case of the non- crossing water, is allowed to order - at any of the suit stages - the suspension or termination of any work violating the provisions of Article 13

(1)

The authority of issuing the regulations

23- The minister - in consultation with the council - is allowed to issue the regulations necessary for the implementation of the provisions of this Act.

