



WATER RESOURCE MANAGEMENT ACT

Overview

Presented at LEARNING WORKSHOP ON FORMING WUA

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1. Introduction

- ❖ Legislation governing water sector is divided into two regimes i.e water resources and water supply and sanitation services.
- ❖ The Water Resources Management Act No.11/2009 and the Water Supply and Sanitation Act No.12/2009 were enacted recently to repeal and replace WUA Cap 331 and WWA Cap 272 respectively.
- ❖ Currently no specific legislation governing irrigation sector.

Introduction (cont...

- ❖ Water legislation are implemented parallel with other pieces of legislation of the country.
- ❖ Other water related legislation include EMA No. 20/2004, Land Act No. 4/1999, EWURA Act No.11/2001, Forest Act, Water Supply and Sanitation Act etc.
- ❖ The current 9 Basin Water Boards (BWB) were established under the Water Utilisation (control and regulation) Act Cap 331.

Introduction (cont...

- The nine (9) basins established under Cap. 331 according to the hydrological zones or river basins are-
 1. **Pangani;**
 2. Wami/Ruvu;
 3. Rufiji;
 4. Ruvuma and southern coast;
 5. Lake Rukwa;
 6. Lake Tanganyika;
 7. Lake Victoria;
 8. Lake Nyasa;
 9. Internal drainage basin of lake Eyasi, Manyara and Bubu depression.

2. The Water Resource Management Act (WRMA)

Overview

- ❖ WRMA No.11/09 was passed by the National Assembly of the United Republic of Tanzania on 28th April 2009 and assented by the President on 12th May 2009.
- ❖ WRMA came into operation on 1st August 2009 vide GN. No. 235 published on 10th July 2009.

WRMA – Overview (cont...

- ❖ WRMA repeals the Water Utilisation (Control and Regulation) Act No. 42 of 1974 [Cap 331 R.E].
- ❖ Thus, the Water Utilisation (Control and Regulation) Act No. 42 of 1974 [Cap 331 R.E] ceased to apply since 1st August 2009.
- ❖ Despite the repeal of Act No. 42/1974 orders, notices, directions, appointment and acts or things lawfully made, issued or done under the repealed Act shall continue to have effect – s. 112.

WRMA – Overview (cont...

- ❖ WRMA is a result of NAWAPO 2002 and thus give legal back-up policy issues which require legal force.
- ❖ NAWAPO emphasize the principle of involvement of user organizations and private sector so as to attain equitable, efficient and sustainable water resources management.
- ❖ water resources management is a multi-sectoral activity that requires an effective collaboration and coordination mechanism among sectors at all levels.

WRMA - Overview (cont...

- ❖ WRMA has 16 parts; 114 sections and 4 schedules.
- ❖ Cover issues of institutional and legal framework; principles for water resources management (WRM); prevention and control of water pollution; establishment of National Water Board, BWB, Catchments and sub-catchments and offences and penalties.
- ❖ WRMA objective is “to ensure that the nation’s water resources are protected, used, developed, conserved, managed and controlled to meet the basic human needs of present and future generations”.

WRMA - Key Provisions on Water Resources Management

- ❑ Water resources are public resources and are vested in the President as the trustee for and on behalf of citizens – s. 10(1).
- ❑ **Water resources** defined as: water course, surface water, ground water and estuary water;
- ❑ **Water source** defined as: river, tributary, estuary, lake, swamp, marsh, wetland, aquifer, spring, sea water and interface btn sea water and fresh water, dam, pond, reservoir.

WRMA - Key Provisions on Water Resources Management (cont...

- ❑ Every person residing in TZ has a stake and duty to safeguard and protect water resources – s. 7.
- ❑ The right to use water from any water source is vested to Minister for Water – s. 11(1).
- ❑ Preferences for water allocation – s. 6(2):
 - (i) domestic purposes
 - (ii) environmental reserve
 - (iii) socio economic activities depending on the availability of water.

WRMA - Key Provisions on Water Resources Management (cont...

- ❑ A person may abstract and use water for domestic purpose without water use permit provided that no construction of any works – s. 11(2).
- ❑ Construction of a shallow hand dug well and use the water allowed subject to limitation of depth to be provided in regulations – s. 11(3).

WRMA - Key Provisions on Water Resources Management (cont...

- Any other use not stated in s 11, are subject to water use permit. Section 43(1) provides:
“Without prejudice to sections 11, 12 and 52, any person who diverts, dams, stores, abstracts or uses water from surface or underground water source, or for any such purpose constructs or maintains any works, shall apply for a Water Use Permit in accordance with this Act.”
- Section 12 – right to harvest rainwater for domestic purposes without water use permit provided the constructed works for that purpose **does not exceed the capacity to be prescribed by the minister.**
- Section 52 – Recognition of customary water rights as of equal status with granted right.

WRMA - Key Provisions on Water Resources Management (cont...

- ❑ Preparation of a National IWRM Plan (will include water balance, water demand, water availability etc) based on IWRMP prepared by BWBs and Catchment water committees and shall be subject to consultation with all stakeholders before approval– s. 31.
- ❑ Determination of reserve of each classified water resource - s. 33.
- ❑ Prohibition of human activities near water sources: Minister may declare distance beyond the 60m provided under EMA – s.34.

WRMA - Key Provisions on Water Resources Management (cont...

- ❑ Establishment of protected zones (in consultation with institution responsible for land management) with a view to protect water sources from pollution, erosion or adverse effects - s.37.
- ❑ Declaration of Groundwater Controlled Areas on recommendation of BWB – s.38.

NB: Compensation shall be payable to owner or occupier of land in area declared protected zone or GWCA

WRMA - National Water Board

- ❖ WRMA s. 20 establish the National Water Board (NWB) to replace the then Central Water Board.
- ❖ NWB is an advisory board to the minister on matters relating to multi-sectoral coordination in IWR planning and management as well as resolution of national and international water conflicts.

WRMA - National Water Board (cont...

Composition (1st schedule):

NWB consist of 11 members appointed by the minister being:

- The Chairman;
- 10 members from sectors/institutions as follows:
 - (4) from agriculture, energy, industry, forestry, environment, livestock, wildlife, lands, mining, irrigation, fisheries and infrastructure.
 - 1 representative from LG Admn.
 - 3 representatives from BWBs
 - 1 representative from private sector,
 - 1 representative from NGOs .

WRMA - Basin Water Board

Establishment

- ❖ Basin Water Boards (BWB) are established by the Minister by order in the Gazette – s. 22(1).
- ❖ Upon its establishment BWB become body corporate capable of suing and be sued – s. 22(2).
- ❖ *Before WRMA, BWBs had no capacity of suing and being sued.*
- ❖ Powers and functions of BWB shall be exercised and performed under direction of the Board – s. 22(3).

WRMA - Basin Water Board (cont...)

Source of Funds - s. 25

- fees and charges as may be collected from the issuance and operation of permits under WRMA;
 - u/s 96(1) – charges to be levied shall be published in the Gazette.
 - u/s 96(2) – charges shall base on a [pricing strategy](#) which will consider among others value of water by using economic parameters i.e inflation rate, market values and opportunity costs of water.

- any other payment due to the BWB in respect of any other matter incidental to its functions;

- such sums as may be approved for BWB by the parliament;

WRMA - Basin Water Board (cont...)

Source of Funds...

- such donations, grants, bequests and loans as the BWB may, from time to time receive from any person or organisation.
- The funds and resources of the BWB shall be applied in the exercise of the duties and powers of the BWB.

WRMA - Basin Water Board (cont...)

Composition - 2nd schedule

- ❖ Members of BWB shall not exceed 10 being –
 - ❑ Chairman – appointed by Minister;
 - ❑ 1 representative of private sector (from industry, mining, agriculture, power);
 - ❑ 3 representatives from catchment wc;

WRMA - Basin Water Board (cont...)

Composition ...

- ❑ 2 representative from key water related sectors which are of importance in the basin (agriculture, energy, minerals, trade and industry, forestry, environment, natural resources, lands, livestock, fisheries, infrastructures;
- ❑ 1 representative from LGAs;
- ❑ 1 representative from water supply authorities;
- ❑ 1 representative from MoW.
- ❑ *Basin Water Officer is the secretary to the BWB.*

WRMA - Basin Water Board (cont...)

Composition ...

- ❑ One third of the members shall be women;
- ❑ The members shall be involved in and have adequate knowledge and experience in water resources affairs in the respective BWB.

Note: Before WRMA, members of BWB were not more than 10 for bigger basin and 7 for smaller basin appointed from public, private, NGOs and women organisations.

WRMA - Basin Water Board (cont...)

Tenure & Meetings

- ❑ A member hold office for 3yrs and shall be eligible for re-appointment.
- ❑ Members of board shall elect 1 of its number to be VC for a term of 3yrs.
- ❑ BWB shall ordinarily meet 4 times a year and may hold 2 extra ordinary meeting.
- ❑ Where no regulations published by the minister, BWB shall conduct its business in such manner as it shall determine.
(Powers and Functions – ppp 2)

WRMA – Catchment and sub-catchment

- ❑ Catchment and sub-catchment water committee may be established by the Minister after consultation with BWB.
- ❑ Composition – 3rd schedule consist of not less than 3 and not more than 5 members from major private water users, representatives of water users association and LGA.
- ❑ **Water users associations** are formed by agreement of water users and registered by the BWB.

WRMA - Offences and Penalties

❖ **OFFENCES created relate to:**

- Use of water in excess of a wup s.44;
- Failure to obtain ground water permit s. 55;
- Water pollution s. 64;
- Assault, threaten, resist, hinder, delay an authorised officer s. 101;
- Making false statement in order to procure permit s. 102(1);
- water pollution s. 103;

Offences and Penalties (cont...

- S. 44 → Use of water in excess of a wup: 300,000/ ≤ **fine** ≤ 500,000/ or 2month ≤ **imprisonment** ≤ 6month or **both f&i** and in case of continuing one an additional of not less 50,000/- per day.

- S. 55 → Failure to obtain ground water permit : 500,000/ ≤ **fine** or **imprisonment** ≤ 6month or **both f&i**. and in case of continuing one an additional of not less 50,000/- in every case.

- S. 64 and 103 → Water pollution:
 - Pay cost of remedying the damage caused; and
 - 300, 000/- ≤ **fine** or **imprisonment** ≤ 1year or **both f&i**.
 - 1m/- ≤ **fine** ≤ 10m/- or 6moth ≤ **imprisonment** ≤ 2years or **both f&i**.

Offences and Penalties (cont...

- ❑ S. 101 → Assault, threaten, resist, hinder, delay an authorised officer/person in performance of his powers : 500,000/- ≤ **fine** ≤ 10m/- or 1 year ≤ **imprisonment** ≤ 2 year or **both f&I.**
- ❑ S. 102(1) → Making false statement in order to procure permit : 500,000/- ≤ **fine** ≤ 5m/ or 1year ≤ **imprisonment** ≤ 2year.
- ❑ S. 102(3) → Refuse to give information without reasonable excuse: **fine** ≤ 0.5m/ or **imprisonment** ≤ 2year or **both f&I.**

Offences and Penalties (cont...

- Under s. 104 of the WRMA a BWB/BWO may **compound** offences where:
 - there is evidence supporting the charge.
 - the person admits the offence in writing.
 - the fine of the offence does not exceed 500,000/=.

(where the compounding is suitable basing on the above given conditions, the BWO may accept the sum specified for the offence + all reasonable expenses incurred by the BWB + due fees and charges).

3. Water Related Legislation

Water Supply and Sanitation Act No. 12/2009

- ❖ Section 44 establish a National Water Investment Fund (NWIF).
- ❖ The objectives of NWIF is to provide investment support for water service provision and **management of catchments areas serving water supply abstractions.**
- ❖ NWIF is vested in Board of Trustees which consists of chairman and 4 members from ministries responsible for finance, water and LG.
- ❖ Minister will issue regulations prescribing the procedures for the performance of the fns. and use of the fund.

Water Related Legislation (cont...

Water Supply and Sanitation Act ...

- ❖ S. 7 of WRMA provides that “Every person living in Mainland Tanzania shall have a stake and a duty to safeguard and protect water resources and to inform the relevant authority of any activity and phenomenon that may affect the quantity and quality of the water resources significantly.”
- ❖ Duty to protect water resources has been translated as a specific function of WAs under s. 20(d) of Act No. 12/2009 ie. ‘to protect and maintain water sources’.

Water Related Legislation (cont...

Environment Management Act Cap. 191.

- ❖ The Environmental Management Act, **2004 No. 20 of 2004** (EMA) is a comprehensive legislation dealing with protection of environment degradation.
- ❑ EMA is a multi-sectoral/cross cutting legislation.
- ❑ Defines 'environment' to include air, land, **water**, the biological factors of animals and plants etc.
- ❑ Section 6 provides "every person living in Tanzania shall have a stake and a duty to safeguard and enhance the environment and to inform the relevant authority of any activity and phenomenon that may affect the environment significantly" [Cf s. 7 of WRMA].

Water Related Legislation (cont...

Environment Management Act ...

- ❑ S. 7(3)(d): polluter pays principle which requires that any person causing adverse effect on the environment to pay in full social and environmental costs of avoiding, mitigating, and or remedying those adverse effects.
- ❑ Each sector is required to oversee the implementation of EIA required for investments.
- ❑ S. 54: a river, riverbank, lake or lakeshore and shoreline may be declared to be protected areas.

Water Related Legislation (cont...

Environment Management Act ...

- ❑ S. 57 (1) prohibit human activities within 60 metres likely to compromise or adversely affect conservation or the protection of ocean, natural lake, shoreline, riverbank, Water dam or reservoir.
- ❑ EMA provisions prevail over any provision of any other written law in case of inconsistent (s. 232).
- ❑ Section 34 of WRMA Minister for water may publish in the Gazette a distance limit beyond 60 metres.

Water Related Legislation (cont...

The Land Act, 1999 No. 4 of 1999 (Cap. 113)

- ❑ Section 4: All land in Tanzania is a Public land and is vested in the President as trustee for and on behalf of all citizens of Tanzania.

- ❑ For purposes of land management, Public land has been categorized into 3 categories:-
 - (i) General land
 - (ii) Village land
 - (iii) **Reserved land**

- ❑ S. 6 (1) (b): Reserved land is “Land parcel within a natural drainage system from which the water resource of the drainage basin originates”.

Water Related Legislation (cont...

The Forest Act No. 14 of 2002

- ❑ The Forest Act deals with management of forests.
- ❑ One of the objectives is to ensure ecosystem stability through conservation of forest biodiversity, **water catchments** and soil fertility.
- ❑ S. 22 (1) and (2)(b) the Minister for forest may declare in the *Gazette* any area of land to be national forests reserve or local authority forest reserve.
- ❑ The area could be a land covered by forest reserved or used principally for the purposes of protection of **water sheds**, soil conservation and the protection of wild plants.

Water Related Legislation (cont...

The Forest Act ...

- ❑ EIA shall be done for any proposed development in a forest reserve, private forest or sensitive forest area including **water sheds**.
- ❑ EIA report be submitted to the Director of forest.
- ❑ A permit issued under the Forest Act does not prevent the permit holder from the requirement of any other written laws [s.49(5)].

4. Conclusion

- ❖ WRMA is a good law as far as management of water resources is concern. However, existence of the law alone is not sufficient. Implementation of law is highly required in order to achieve the purposes of its enactment.
- ❖ WRMA which come into operation on 1st August 2009, requires preparations of regulations to provide details for smooth implementation of the Act.
- ❖ BWBs as key implementers of the WRMA are required to participate fully in the process of making the regulations.
- ❖ Water legislation must be read in tandem with other water related legislation in the process of managing our water resources.

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