

Government & Water Resources

Democracy and resources

A nation, if it is fortunate, is endowed with specific resources. These resources are common goods in the sense that they are owned by all those citizens who go to make up the nation. At any rate, this is the case in a democracy. The latter is a normative system in which the citizens as the subjects elect persons from among their own ranks to represent their interests, to legislate and to act as the executive. Those laws created by the elected representatives are ultimately subject to public debate and public legitimation.

The nation's resources are managed by a set of those representatives on behalf of the citizens, whereby we refer to that set as the government. So, what exactly is government in a democracy? In the Nigerian case, under the democratic dispensation the citizens vote for a president who forms a government. At the same time, the citizens elect representatives whose job it is to oversee what the government does if only because the entire polity cannot be expected to spend its time doing such oversight. The citizens, therefore, vote for members of the two houses whose role is to legislate and oversee that government.

The presidential government is, in other words, elected by the citizens in order to provide certain services for the citizens. This is crucial, because it means that the subjects, the citizens, do not appoint someone to rule over them, but appoint someone and his/her government to rule on their behalf. When such a government ceases to render the requisite services to its citizens it loses its legitimacy and logically will be voted out at the next election.

Nigeria is such a fortunate nation. It is blessed with huge natural resources, including water deposits deep underground in most of the Northeast. It is blessed with many rivers. Although it may seem incongruous to start a discussion of the Water Resources Bill before the National Assembly by recalling the basic premises of democratic governance, this is crucial as the issue involved is how government decides to use a common good, water. And the issue is itself crucial, in that for all the blessing, water is becoming a scarce common good in some geographical parts owing to climate change.

Inundated with water? Or by legislation?

Recent events show the need for better water management, as climate change causes flash

flooding on a new scale as witnessed in Kebbi.[i] Indeed, one of the key challenges to agricultural productivity being increased is the availability of water. By all accounts, the government has for long been negligent in its duty to the people in this regard:[ii]

And now there is a Water Resources Bill that has passed two readings in the House of Representatives and is expected to be taken forward to the Senate after third reading and passage. It is perhaps worthy of note that we have to do here with a case of recidivism: It was brought before and rejected by the Eighth Assembly.

In light of the above remarks, the main questions are: Does it address the key issues of irrigation to enhance agricultural productivity and combat climate challenge? Does it improve water conservation and management or clarify doubts over use of this common good? The latter issue is not trivial as the matter of the Kiri Dam in Adamawa State shows. The dam was built as a reservoir dam but included bays for turbines. In the late Noughties an argument ensued between the Federal Ministry of Water Resources and the State government over who had the right to operate the dam as a hydropower plant: The Federation as it owned the water, or the state as it claimed that through the Gongola River Basin Authority it owned the water and the river banks. The issue was never clarified in court and the hydropower plant never built in a region that otherwise had no generating assets.

So does the Water Resources Bill as is now in the National Assembly clarify such ownership issues, ensure the Ministry of Water Resources is able to act decisively to support agriculture, etc., and define once and for all how the nation shall adjudicate use of this common good.

The simple answer is: It does not! In fact, it does nothing of the kind.

There has been much hue and cry over the reintroduction of this bill. Although on the surface the legislation is seemingly about water regulation, closer inspection reveals there are provisions that violate property rights, introduces stringent licensing rules, etc. And there is a general perception that it is essentially a vehicle for forcing through the discredited 2019 RUGA policy.

With all the controversy surrounding the bill, it is most surprising that it went through the first and second readings in the lower chamber of the NASS without a hitch. Some lawmakers expressed vehement opposition to its passage and have called for a public hearing where typically, members of the public could vent their concerns and questions about a proposed legislation and debates would be held on the merits or lack of before any further action is

taken on it. Some lawmakers, however, are not favourably disposed to the idea of public hearing to avoid detailed scrutiny of the legislation. Their argument is that given the bill was introduced in the Eight Assembly and went through public hearing then, it should not go through that process again. This is not in line with the accepted procedure for passage and enactment of legislation: Any bill that does not complete the process of passage and enactment before the end of a particular Assembly must start from scratch if at a later date someone wants to make it a law. Why are some lawmakers determined to avoid a public hearing?

A few public figures have expressed grave concerns about the bill, most notable amongst them Nigeria's Nobel Laureate, Wole Soyinka, who warned against the passage of this bill into law stating: "It must be resisted across board. No compromising, or this nation is doomed, since it will be resisted by any and all means"

Is there any real cause for alarm?

In a nutshell, yes. The proposed bill, if passed, would empower the Federal Government to control all sources of water in Nigeria – a clear usurpation of powers ordinarily vested in state governments, which is in direct contravention of the Constitution. Other disturbing aspects include: the introduction of licensing for commercial use of water and drilling of boreholes which must be renewed on a five-year basis; the powers to be conferred on a proposed Water Resources Commission to declare any land a water reserve; unrestricted access to privately owned property granted to the proposed commission; unfettered rights conferred on persons to water livestock at any source of water whether on private or public land, and so on.

These provisions of the bill are disturbing on various levels. First up, the immense cost to the public purse of establishing a commission when a plethora of MDA (Ministry of Water Resources, NIWA, river basin authorities, water resource commissions at the state level) already exist.

Painful legal provisions

Second and perhaps most alarming to the public are the provisions which have led many to conclude that the legislation will encourage a land grab and facilitate appropriation of land that currently belongs to state governments and private individuals.

Specifically, Section 3 of the proposed legislation reads that:

“Notwithstanding the provisions set out in Section 2 of this Bill, but subject to Regulations issued by the relevant State Agency identified pursuant to Section 79 hereunder, and in overriding Public Interest, a person may, without license:

- Take water from a water source to which the public has free access for the use of his household or for watering domestic livestock;
- Use water for the purposes of subsistence fishing or for navigation to the extent that such use is not inconsistent with this Bill or any other existing law;
- 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 watercourse, for reasonable household use, watering livestock and for personal irrigation not for commercial purposes.”

And it gets worse: Section 71 states:

“The 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 for the protection -

- of public water supplies;
- of the environment; or
- for water supplies used for agriculture, industry or other private purposes.

(2) The 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.”

Legal experts, public policy analysts, renowned lawyers and social commentators have, in their analysis of this bill, highlighted similar provisions that were innate in the ill-fated RUGA policy introduced in 2019, which set out to appropriate and designate richly-irrigated parcels of land spanning the entire country for rearing of livestock. And many are concerned by the

unilateral powers conferred on the proposed commission to take over any land it deems fit. It should be noted that the bill is strangely silent when it comes to defining what constitutes a potential “groundwater conservation area”.

Another salient aspect of the legislation is the licensing of water contained in section 62. The bill stipulates that:

“Any person who, undertakes the following activities (in this section referred to as “prescribed activities”) in relation to water sources listed in the First Schedule to this Bill, shall be licensed by the commission:

- abstraction of surface water and groundwater;
- diversion, pumping, storage or use on a commercial scale of any water;
- the construction of boreholes for commercial purposes.”

This particular provision has enraged the public who are already suffering untold economic hardship.

Trespass to property and infringement of property rights can also be inferred from several sections in this Bill, such as Section 67 (3):

An Order under this section may require or authorize-

- the laying of pipes and the construction of works on any land;
- the entry on to any land by officers or agents of the Commission; and
- such other measures that the Commission may consider necessary to overcome the shortage of water or effect of any accident

The Water Resources Bill is all about grabbing land, imposing yet more levies on the populace, and creating yet more legal confusion over rights of way. Bad luck to him or her who owns land where someone decides a water pipe needs to cross or where there is a borehole some person in the commission decides needs to be used by others.

Legislation for the people

First and foremost, the bill is an example of both the executive and legislative arms of government forgetting what their original duty is, namely, to represent the wishes of the majority of the citizens – and serve them. In this instance, the National Assembly is negligent in its oversight duty as it is not securing equal rights, property rights of individuals and use of a common good.

Government clearly lacks legitimacy as it cannot be construed to be providing a service to the people, this bill does not seek to enable water to be used by the nation for the nation- to drive productivity, neither does it seek to put institutions in place to ensure proper management and conservation of water in an age of climate change, where the resource is becoming scarce in some regions and exposing other to the risks of flash flooding.

[i] 3 Sept. *“President Muhammadu Buhari Wednesday expressed concern over the heavy floods, which destroyed lives, submerged thousands of hectares of farmlands and houses in Kebbi State. The flood, according to a statement by the presidential spokesman, Malam Garba Shehu, also destroyed farm produce and personal belongings in the affected communities.*

[ii]
[https://guardian.ng/saturday-magazine/cover/dams-neglected-water-resources-amid-acute-fo
od-insecurity/](https://guardian.ng/saturday-magazine/cover/dams-neglected-water-resources-amid-acute-food-insecurity/)

Image from from Flickr