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SPECIAL BILL SUPPLEMENT

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THE WATER RESOURCES MANAGEMENT (AMENDMENT) ACT, 2022

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NOTICE
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This Bill to be submitted to the National Assembly is published for general information to the public together with a statement of its objects and reasons.

Dodoma,
6th June, 2022

HUSSEIN A. KATTANGA
Secretary to the Cabinet

A Bill
for

An Act to amend the Water Resources Management Act.

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title
Cap. 331

1. This Act may be cited as the Water Resources Management (Amendment) Act, 2022, and shall be read as one with the Water Resources Management Act, 2019 hereinafter referred to as the “principal Act”.

PART II
AMENDMENT OF VARIOUS PROVISIONS

General
amendment

2. The Act is amended generally by deleting the words “Basin Water Officer” wherever they appear in the Act and substituting for them the words “Basin Water Director.”

Amendment
of section 3

3. The principal Act is amended in section 3 by inserting in its appropriate alphabetical order the following new definition:

“court” means primary court, district court, resident magistrate’s court or the high court.”

Amendment
of section 8

4. The principal Act is amended in section 8 by deleting the phrase “a major water project is planned” and substituting for them the phrase “water programmes and development plans are prepared.”

Amendment
of section
21

5. The principal Act is amended in paragraph (b) of section 21 by deleting the words “ investment priorities and financing patterns and coordinate and harmonise” and substituting for them the words “coordination and harmonisation of”

Amendment
of section
23

6. The principal Act is amended in section 23, by-

- (a) deleting the “full stop” appearing at the end of paragraph (o) and substituting for it a “semi-colon”;
- (b) adding immediately after paragraph (o), the following:
 - “(p) create awareness to stakeholders on matters relating to water resources conservation and management; and
 - (q) perform any other function as the Minister may, subject to the provisions of this Act, direct.”

Amendment
of section
24

7. The principal Act is amended in section 24, by-

- (a) adding immediately after subsection (1), the following:
 - “(2) A person shall not qualify to be appointed as a Basin Water Director unless such person-
 - (a) holds a degree in the field of hydrology, hydrogeology, environmental engineering, civil engineering, water resources engineering or a degree in any other related field;

- (b) possesses at least five years experience in managerial position or such other additional qualification;
 - (c) has a demonstrated knowledge and experience in the water sector;
 - (d) possesses any other criteria as may be specified in that behalf.”
 - (b) renumbering subsections (2) and (3) as subsections (3) and (4) respectively.

- Amendment of section 37
 - 8. The principal Act is amended in section 37, by-
 - (a) adding immediately after subsection (3) the following:
 - “(4) A person who contravenes the provisions of notice issued under subsection (3) commits an offence and shall, on conviction, be liable to pay a fine of not less than one million shillings or imprisonment for a term of not less than six months or to both”;
 - and
 - (b) renumbering subsections (4), (5) and (6) as subsections (5),(6) and (7) respectively.

- Amendment of section 43
 - 9. The principal Act is amended in section 43 by inserting the word “impounds” between the words “dams” and “stores” appearing in subsection (1).

- Repeal and replacement of section 44
 - 10. The principal Act is amended by repealing section 44 and replacing for it the following:
 - “Use of water contrary to permit
 - 44. Any person who uses water in excess of amount authorized in the water use permit or uses water contrary to purpose authorized by water use permit commits an offence and shall, on conviction-
 - (a) in case the offender is a natural person, be liable to a fine of not less than three hundred thousand shillings but not exceeding five

million shillings or to imprisonment for a term of not less than three months but not exceeding six months; or

- (b) in case the offender is a legal person, be liable to a fine of not less than five million shillings:

Provided that, in the case of subsequent offences, the offender shall pay a fine of not less than one hundred thousand shillings for each day in which the offence continues.”

Addition of section 44A

11. The principal Act is amended by adding immediately after section 44, the following:

“Use of water without permit

44A.-(1) A person who diverts, dams, impounds, store, abstracts or uses water without water use permit commits an offence and shall, on conviction-

- (a) in case the offender is a natural person, be liable to a fine of not less than two million shillings but not exceeding ten million shillings or to imprisonment for a term of not less than three months but not exceeding six months; or
- (b) in case the offender is a legal person, be liable to a fine of not less than ten million shillings:

Provided that, in the case of subsequent offences, the offender shall pay a fine of not less than one hundred thousand shillings for each day in which the offence continues.”

Amendment
of section
56

12. The principal Act is amended in section 56 by adding the words “in a particular aquifer” immediately after the word “boreholes” appearing at the end of subsection (2).”

Amendment
of section
65

13. The principal Act is amended in section 65, by-
(a) deleting subsection (1) and substituting for it the following:

“(1) Without prejudice to subsection (2), the Minister may, by order published in the *Gazette*, establish water quality laboratory responsible for water quality management for analytical and reference under this Act.” and

(b) deleting the word “designated” appearing in subsection (2) and substituting for it the word “established.”

Amendment
of section
75

14. The principal Act is amended in section 75(2) by deleting the word “right” appearing between the words “water” and “and may” and substituting for it the word “permit”.

Amendment
of section
79

15. The principal Act is amended in section 79 by deleting the words “National Water Board” appearing in subsection (2) and substituting for them the words “Director of Water Resources”.

Amendment
of section
88

16. The principal Act is amended in section 88 by adding immediately after subsection (6) the following:

“(7) The Director shall, at owner’s costs, undertake dam site verification and review of design report in such manner as may be prescribed in the regulations.”

Addition of
section 97A

17. The principal Act is amended by adding immediately after section 97 the following:

“Summary
procedure

97A.-(1) Where, after the time fixed for the payment of any rate, a person fails to pay any rate due to him, the respective Basin Water Board shall cause a written demand to be issued to

such person and require him to pay the amount stated in such demand within thirty days after service of the demand.

(2) The provisions of the Civil Procedure Act relating to summary procedure shall apply *mutatis mutandis* in respect of any person who has defaulted to settle water rates due under this Act.”

Addition of section 105A

18. The principal Act is amended by adding immediately after section 105 the following:

“General penalty

105A. A person who commits an offence under this Act, for which no specific penalty is provided shall, on conviction, be liable to a fine of not less than one hundred thousand shillings but not exceeding five hundred thousand shillings or to imprisonment for a term of not less than six months but not exceeding one year or to both.”

Amendment of section 107

19. The principal Act is amended in section 107 by inserting the words “Without prejudice to the provisions of section 105,” at the beginning of subsection (1).

Amendment of section 111

20. The principal Act is amended in section 111(2), by-

- (a) deleting the word “or” appearing at the end of paragraph (i);
- (b) deleting “full stop” appearing at the end of paragraph (j) and substituting for it a “semi colon” and the word “or”; and
- (c) adding immediately after paragraph (j) the following:
 - “(k) permit transfer of water or waste water from one basin to another basin.”.

Amendment
of Third
Schedule

21. The principal Act is amended in the Third Schedule-

(a) in paragraph 1, by deleting subparagraph (2) and substituting for it the following:

“(2) All members under items (b), (c) and (d) shall be appointed by the respective Basin Water Board.”; and

(b) in paragraph 2, by deleting the word “Minister” appearing in subparagraph (4) and substituting for it the words “Basin Water Board.”

Amendment
of Fourth
Schedule

22. The principal Act is amended in the Fourth Schedule in paragraph 5(1) by adding the phrase “and at least two members shall be women” immediately after the word “members”.

OBJECTS AND REASONS

This Bill proposes to amend the Water Resources Management Act, Cap. 331 in order to align the provisions of the Act with the recent development that has taken place in the water sector.

The Bill is divided into two Parts. Part I deals with preliminary provisions which include the title of the Bill and the manner in which various provisions of the Act are amended.

Part II deals with amendments proposed to various sections of the Act as follows:

The Act is generally amended in order to change the designation of officers heading the Basin Water Boards from “Basin Water Officer” to “Basin Water Director” as the new title reflects the mandate and authority vested to them as the heads and accounting officers of the water basins.

Section 3 is proposed to be amended for the purpose of defining the term “court”. The definition includes primary courts, district courts and high court. The purpose of this amendment is to clearly provide in the Act courts which have original jurisdiction to entertain water related offences committed under the Act.

Section 8 is proposed to be amended by deleting the words “a major water projects is planned” and substituting for them the words “water programmes and development plans prepared”. The section was intended to cover water programmes which are subject to strategic assessment as opposed to “major projects” which are subject to environment impact assessment as provided for under section 104 of the Environmental Management Act, Cap. 191.

Section 21 is proposed to be amended in paragraph (b) for the purpose of eliminating the words that describe the role of the National Water Board in advising on investment priorities and access to finance which are also stipulated in paragraph (f). The amendment aims at separating the

responsibilities described in paragraph (b) and (f) in order to avoid repetition.

Section 23 is amended so that Basin Water Board will be responsible for undertaking awareness creation interventions to stakeholders on water resources management. The purpose of this amendment is to involve stakeholders in matters relating to conservation and preservation of water resources. Section 24 is amended by adding subsection (2) for the purpose of giving mandate the Minister to prescribe the procedure and qualifications of appointing the Water Basin Director.

Section 37 is proposed to be amended by adding subsection (4) to prescribe the offence of conducting human activities in areas gazetted in the Government *Gazette* as protected areas of water sources. The amendment aim to strengthening the protection and conservation of water sources from pollution, soil erosion or any other adverse effect.

Section 43 is amended in subsection (1) in order to include provisions relating to impoundment of water as one of the activities that require a water permit. Impoundment of water entails interference of natural flows of water which may lead to adverse effects to water resource, environment and other water uses. The amendment aims at regulating impoundment activities by requiring the developer thereof to apply for a water permit.

The Act is further amended by repealing and replacing section 44 for the purposes of separating the offence of using water contrary to permit and the offence of using water without a permit. Section 44A is added in order to provide for the offence of using water without a permit.

Section 56 is amended in subsection (2) by adding the words “in a particular aquifer” at the end of the subsection in order to provide for a requirement of considering nature of aquifers in determining distance between boreholes. The nature of the aquifer differs from one geological formation to another, hence distance between boreholes cannot be uniform.

Section 65 of the Act is amended in order to provide powers to the Minister to establish water quality laboratories responsible for water quality management for analytical and reference under the Act instead of designating the laboratories which is the responsibility of the National

Environmental Management Council under section 162 of the Environmental Management Act, Cap. 191. The amendment aims at legally establishing the water quality laboratories under the Act through an order in the *Gazette*.

Section 75 is amended in subsection (2) by deleting the words “right” and substituting for it the word “permit”. The amendment intends to cure the anomalies existing in the Act. In fact, the Basin Water Board issues a water permit and not water right.

Section 88 is proposed to be amended by adding subsection (7) in order to impose conditions to dam owners to pay the costs of dam site verification and reviewing of design report. The aim is to address the challenge of costs and speed up the process of registration of dams with safety risk.

Section 97A is proposed to be added in order to provide for summary procedure in recovery of arrears which are due to the Basin Water Boards from users who have defaulted in paying fees and other charges. The purpose of this amendment is to save the time of the Government that would otherwise be spent on long litigations.

Section 105A is added in order to introduce a general penalty in the offences which penalty is not expressly provided for. The aim is to avoid the risk of not punishing a person found guilty of an offence under the Act.

Section 107 is amended by inserting the words “Without prejudice to the provisions of section 105,” at the beginning of the section in order to avoid the ambiguity of compensation referred to in sections 105 and 107.

Section 111 is amended in subsection (2) in order to allow transfer of water or waste water from a water basin to another water basin which does not have sufficient water to meet demand in the respective basin.

The Third Schedule is proposed to be amended in order to confer power to the Basin Water Board to appoint members of Catchment Water Committee. Also, the Schedule is amended to substitute the word “Minister” with the words “Basin Water Board” as disciplinary authority of Catchment Water Committee members. The amendment aims at avoiding miss-interpretation of the appointing authority between National Water

Board and Basin Water Board as well as the disciplinary authority between the Minister and Basin Water Board.

Finally, the Fourth Schedule is amended by adding the words “and at least two members shall be women” so as to consider gender in selecting members of Management Committee of Water Users Association.

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MADHUMUNI NA SABABU

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Muswada huu unapendekeza kufanya marekebisho katika Sheria ya Usimamizi wa Rasilimali za Maji, Sura ya 331. Lengo la marekebisho yanayopendekezwa ni pamoja na kuyafanya masharti ya Sheria hiyo kuendana na mabadiliko mbalimbali yaliyotokea katika Sekta ya Maji Nchini.

Muswada umegawanyika katika Sehemu Mbili. Sehemu ya Kwanza inahusu masharti ya awali ambayo yanajumuisha jina la Muswada na masharti kuhusu namna ambavyo vifungu mbalimbali vya Sheria vinafanyiwa marekebisho.

Sehemu ya Pili inahusu marekebisho yanayopendekezwa katika vifungu mbalimbali vya Sheria kama ifuatavyo:

Muswada unapendekeza kufanya marekebisho ya jumla kwa kufuta maneno “Basin Water Officer” popote yanapojitokeza katika Sheria na badala yake kuweka maneno “Basin Water Director”. Madhumuni ya marekebisho haya ni kuakisi cheo sahihi cha wakuu na maafisa masuuli wa mabonde ya maji.

Kifungu cha 3 kinarekebishwa kwa kuongeza tafsiri ya neno “mahakama” inayojumuisha mahakama za mwanzo, mahakama za wilaya na mahakama kuu. Lengo la marekebisho haya ni kuweka bayana katika Sheria mahakama zitakazokuwa na mamlaka ya kushughulikia makosa yanayotendwa chini ya Sheria hii. Hatua hii itasaidia kuondoa utata wa kimamlaka na kusogeza huduma ya mahakama maeneo yote kwa kujumuisha mahakama za mwanzo.

Marekebisho yanayopendekezwa katika kifungu cha 8 yanalenga kuzingatia masharti ya kifungu cha 104 cha Sheria ya Usimamizi wa Mazingira, Sura ya 191 kinachoelekeza kuwa, Tathmini ya Mazingira Kimkakati ifanyike kuhusu Miswada, Kanuni, Sera, Mikakati, Programu na Mipango. Hivyo inapendekezwa kufuta maneno “a major water project is planned” na badala yake kuandika maneno “water programmes and

development plans prepared”. Lengo la marekebisho haya ni kuondoa mkanganyiko wakati wa utekelezaji wa miradi mikubwa ya maji.

Kifungu cha 21 kinapendekezwa kurekebishwa katika kipengele (b) kwa lengo la kuondoa maneno yanayoeleza jukumu la Bodi ya Maji ya Taifa la kushauri kuhusu vipaumbele vya uwekezaji na upatikanaji wa fedha ambayo yapo pia kwenye kipengele (f). Hivyo marekebisho yanafanyika ili kutenganisha majukumu yaliyoelezwa kwenye kipengele (b) na (f) na kuondoa marudio.

Kifungu cha 23 kinapendekezwa kurekebishwa kwa lengo la kuzipa Bodi za Mabonde ya Maji jukumu la kutoa taarifa kwa wadau kuhusu hatua stahiki zinazopaswa kuchukuliwa katika usimamizi wa rasilimali za maji. Vilevile, kifungu cha 24 kinapendekezwa kurekebishwa kwa kuongeza kifungu kidogo cha (2) ili kumpa Waziri mamlaka ya kuweka taratibu na sifa za uteuzi wa Mkurugenzi wa Bonde la Maji.

Kifungu cha 37 kinapendekezwa kurekebishwa kwa kuongezwa kifungu kidogo cha (4) ili kubainisha kosa la kufanya shughuli za kibinadamu kwenye maeneo ambayo yametangazwa kwenye Gazeti la Serikali kuwa maeneo tengefu (protected zones) ya vyanzo vya maji. Marekebisho hayo yanalenga kuimarisha ulinzi na uhifadhi wa vyanzo vya maji dhidi ya uchafuzi, mmomonyoko wa udongo na athari hasi zinazoweza kutokea kutokana na uvamizi katika maeneo hayo.

Kifungu cha 43(1) kinapendekezwa kurekebishwa ili kujumuisha suala la kuzuia maji “*impoundment of water*” kwenye mkondo kama moja ya suala ambalo linahitaji kuombewa kibali. Marekebisho hayo yanalenga kudhibiti vitendo vya kuzuia maji kwenye mkondo bila kuwa na kibali.

Kifungu cha 44 kinapendekezwa kurekebishwa kwa kufutwa na kuandikwa upya kwa madhumuni ya kutenganisha kosa la matumizi ya maji kinyume na kibali na kosa la matumizi ya maji bila kibali. Kifungu cha 44A kinapendekezwa kuongezwa ili kubainisha kosa la matumizi ya maji bila kuwa na kibali. Lengo la marekebisho haya ni kutenganisha kosa la matumizi ya maji kinyume na kibali na kosa la matumizi ya maji bila kibali.

Kifungu cha 56 kinapendekezwa kurekebishwa kwa kuongeza mwishoni mwa kifungu kidogo cha (2) maneno “*in a particular aquifer*” ili

kuweka takwa la kuzingatia hali ya mwamba “*geological formation*” katika kuainisha umbali kati ya kisima na kisima.

Kifungu cha 65 kinapendekezwa kurekebishwa ili kumpa Waziri mamlaka ya kuunda maabara za ubora za maji zitakazo kuwa na jukumu la kusimamia uchunguzi na uhakiki wa ubora wa maji kwa mujibu wa Sheria hii na Sheria ya Usimamizi wa Mazingira, Sura ya 191. Lengo la marekebisho haya ni kutambua maabara hizo kisheria na kuzipa ithibati.

Kifungu cha 75 kinapendekezwa kurekebishwa katika kifungu kidogo cha (2) kwa kufuta maneno “right” na badala yake kuweka maneno “permit”. Marekebisho haya yanalenga kuweka bayana kuwa vibali vinavyotolewa na Bodi za Mabonde ya Maji ni “water permit” na siyo “water right”.

Kifungu cha 79 kinapendekezwa kurekebishwa katika kifungu kidogo cha (2) kwa kufuta maneno “National Water Board” na badala yake kuweka maneno “Director of Water Resources”. Lengo la marekebisho haya ni kubainisha kuwa Jukumu la kupokea taarifa za daftari la maji kutoka Bodi za Mabonde ya Maji ni la Mkurugenzi wa Rasilimali za Maji na siyo la Bodi ya Maji ya Taifa.

Kifungu cha 88 kinapendekezwa kuongeza kifungu kidogo cha (7) ili kuweka masharti kwa wamiliki wa mabwawa kulipa gharama za uhakiki na mapitio ya ripoti ya ubunifu wa eneo la bwawa kama itakavyoainishwa katika kanuni. Kifungu kipya cha 97A kinapendekezwa kuongezwa ili kuweka utaratibu mfupi (*summary procedure*) ambao Bodi za Mabonde ya Maji zitautumia katika kudai au kufuatilia maduhuli kwa wadaiwa. Lengo la marekebisho haya ni kuepuka gharama kubwa za kugharamia kesi za madai kwa kufuata utaratibu wa kawaida.

Kifungu cha 105A kinapendekezwa kuongezwa ili kuweka adhabu ya jumla kwa makosa ambayo adhabu zake hazijawekwa bayana katika vifungu husika. Lengo la marekebisho haya ni kuepuka uwezekano wa kutotoa adhabu kwa mtu ambaye amethibitika kutenda kosa chini ya Sheria hii.

Kifungu cha 107 kinapendekezwa kurekebishwa kwa kuongeza maneno “Without prejudice to provisions of section 105,” mwanzoni mwa

kifungu kwa lengo la kuepuka utata wa fidia zilizotajwa kwenye kifungu cha 105 na fidia zilizotajwa kwenye kifungu cha 107.

Kifungu cha 111 kinapendekezwa kurekebishwa katika kifungu kidogo cha (2) kwa kuongeza aya mpya ya (k) ili kumpa mamlaka Waziri kutengeneza kanuni zitakazotoa utaratibu wa kuhamisha maji kutoka bonde moja kwenda bonde jingine. Lengo ni kwamba kuna baadhi ya mabonde yana upungufu wa maji hivyo utaratibu huu utasaidia kuhamisha maji kutoka bonde moja kwenda bonde jingine ili kukabiliana na upungufu huo.

Jedwali la Tatu linapendekezwa kurekebishwa kwa lengo la kuipa mamlaka Bodi ya Bonde la Maji jukumu la kuteua wajumbe wa Kamati za Vidaka Maji (*Catchment Water Committee*) kwa mujibu wa Sheria. Vilevile, jedwali hilo linapendekezwa kurekebishwa ili kufuta neno “Minister” na badala yake kuweka maneno “Basin Water Board”. Marekebisho haya yanalenga kuipa Bodi ya Bonde la Maji mamlaka ya nidhamu kwa Kamati za Vidaka Maji.

Mwisho, Jedwali la Nne linapendekezwa kurekebishwa ili kuongeza maneno “and at least two members shall be women”. Lengo la marekebisho haya ni kuhakikisha kuwa kuna uwiano wa kijinsia katika uwakilishi kwenye usimamizi wa rasilimali za maji katika ngazi ya Jumuiya za Watumia Maji.

Dodoma,
5 Juni, 2022

JUMAA H. AWESO,
Waziri wa Maji