



long term technical assistance

**EU-AFD TECHNICAL ASSISTANCE PROGRAMME TO SUPPORT
REFORMS IN THE WATER AND WASTEWATER SECTORS
IN LEBANON**



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**LEBANESE WATER SECTOR LEGISLATION
SUMMARY ANALYTICAL REPORT**

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L'ingénierie au service du développement



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APPENDICES:

- A - Consolidated table of recommendations to implement the water sector legislation.
- B – The General and Special Roles and Functions of the MoEW.
- C - The General and Special Roles and Functions of the WEs.
- D - The General and Special Roles and Functions of the Ministries and other public administrations.

LIST OF ACRONYMS

AFD : Agence Française de Développement

ATIL: Access to Information Law

BMLWE: Beirut and Mount Lebanon Water Establishment

BWE: Bekaa Water Establishment

CEDRE : Conférence économique pour le développement, par les réformes et avec les entreprises

CDR: Council for Development and Reconstruction

CIP: Capital Investment Program

CoM: Council of Ministers

GWMP: General Water Master Plan

IWRM: Integrated Water Resource Management

LIBNOR: The Lebanese Standards Institution

LOWS: Law 221/2000 Organizing the Water Sector

LRA: Litani River Authority

MoA: Ministry of Agriculture

MoE: Ministry of Environment

MoET: Ministry of Economy and Trade

MoEW: Ministry of Energy and Water

MoF: Ministry of Finance

Mol: Ministry of Industry

MoIM: Ministry of Interior and Municipalities

MoPH: Ministry of Public Health /or MoH: Ministry of Health

MoPWT: Ministry of Public Works and Transport

MoT: Ministry of Tourism

NLWE: North Lebanon Water Establishment

NSWS: The National Strategy for the Wastewater Sector

NWC: National Water Council

NWSS: National Water Sector Strategy

OMSAR: Office of the Minister of State for Administrative Reform

PM: Prime Minister

PPP: Public–Private Partnership

SLWE: South Lebanon Water Establishment

UN: United Nations

UNSC: United Nations Security Council

UNWC: The United Nations Watercourses Convention

WE-OR: Water Establishments Operating Regulations

WEs: Water Establishments

WL: Water Law (No. 192 dated 22/10/2020)

WUA: Water User Association

Introduction

Lebanon's water resources are under stress from a growing population, rapid urbanization, economic growth, mismanagement of water, pollution, climate change, and ineffective water governance. All these stressors pose serious short and long-term challenges, and necessitate proper management including good governance practices and characterized by integrity in managing water resources. All such challenges need to be translated into appropriate legislative and regulatory reforms.

Thus, Lebanon's water sector has experienced many reforms throughout its history, each of which has had a considerable impact on the country's overall management of the resources and on the behavior of water users. Since the Ottoman Mejelle in 1877, and until the enactment of the Water Law No. 192 dated 22/10/2020 (the WL), a series of laws and regulations were adopted to organize and institutionalize the water sector, both to (i) regulate the substantive rights and duties afferent to the public and private rights in water and to (ii) organize the various authorities and institutions entrusted with the planning, oversight and management of water. Today, the chief public authorities responsible for water and sanitation in Lebanon are the Ministry of Energy and Water resources ("the MoEW) and five public water Establishments ("the WEs), working alongside many other actors, institutions and stakeholders, with many overlaps, duplications and fragmentation of responsibilities.

Many studies and analyses agree that the problematic areas hindering effective reform towards improved water sector management relate mainly to the lack of appropriate governance for the water sector, marred for decades with institutional duplication and fragmentation of responsibilities and weak implementation and accountability¹. Many enacted laws, especially the WL, still lack their required implementation decrees and administrative decisions.

In April 2018, the CEDRE Conference and the validation of the Capital Investment Program (CIP) have recognized the importance, urgency, and necessity of implementing reforms in the water sector. In this context, it is generally recognized by all stakeholders, including the MoEW and the WEs, that the effective implementation of the recently enacted WL is a priority for the implementation of the needed reforms, particularly through the drafting of the required implementation decrees and administrative decisions.

To assist in that perspective, the Agence Francaise de Development (AFD) and in preparation of the development and drafting of the said implementation instruments, has commissioned our Law Firm to draft this analytical report about Lebanese water law and its governance, particularly in light of the WL, which has adopted the following methodology:

Research: The Report has taken stock of the available bibliography on the Lebanese water sector, in addition to the orientations included in the new draft updated Water National Strategy and information gathered from preliminary meetings held with the MoEW and WEs representatives.

¹ E.g. Report of the "Second Water Forum (2019)", "Lebanon's Water Laws: Bridging Policy Frameworks to Address New Challenges", Organized by OXFAM in collaboration with AUB IFI for public Policy and International Affairs.

Analysis: The Report is mostly intended to provide a review and analysis of current legislation, in the sense that it summarily describes the applicable provisions and highlights, when needed, its strengths and challenges. Thus, it does not intent, given its limited scope and size, neither to provide for a detailed analysis of all the provisions of the applicable legislation, nor to dwell on its historic development, except for the necessary comments necessary to clarify the current legal context.

Structure: Given the complex nature of the various legal and regulatory texts applicable to the water sector, the Report does not strictly follow the outline of the WL, but has rather restructured the subject-matters in a way that allows for a clearer understanding of the various thematic provisions covered by the WL and related legislation.

Practical Recommendations: The Report offers recommendations for actions to be taken to implement the water sector legislation, particularly through the required implementation decrees and administrative decisions of the WL 192/2020; (*Cf. Appendix A providing for the consolidated list of recommendations to implement the water sector legislation*).

The Report will hopefully be useful to trigger a constructive dialogue with the water sector stakeholders, particularly the MoEW and the WEs, and hopefully constitute the conceptual basis to assist in the implementation of the approved reforms and actions.

1 SOURCES OF THE WATER SECTOR LEGISLATION

1.1. General Objectives of the Water Sector Legislation

The objectives of the WL and by extension, of the whole regulations applicable to the water sector, are encapsulated in Article 3 WL as follows: *“This law aims at the regulation, development, rationalization, exploitation of water resources and protection of the same from depletion and pollution. It also aims at raising the efficiency of water transportation and distribution systems, as well as ensuring good maintenance and operation of water facilities, to guarantee a sustainable management of the Lebanese State’s natural water resources”*. These objectives were further developed in the rationale of the law that were published in the Official Gazette together with the law itself and could be used, if necessary, to interpret the intention of the legislator in cases of uncertainty, or to further develop the implementation decrees and other administrative instruments.

1.2. International Law

International law is a source of legislation in Lebanon based on the principle of the hierarchy of norms, in the sense that the provisions of international treaties, multilateral and bilateral agreements are all directly applicable and supersede domestic legislation. In case of conflict, international law prevails and replaces domestic legislation². Furthermore, it must be noted that the WL has adopted a strange definition in its article 4 (never to be used in the substantive provisions of the WL), using the term “Water Diplomacy”, to refer to the “diplomacy applicable to the international waterways per international and UN conventions”.

1.2.1. International Conventions

Lebanon has ratified a relatively limited number of multilateral treaties related to the water sector. The only such notable treaties are the following:

- 1 - The United Nations Watercourses Convention (UNWC) governing non-sailable waterways (1997).
- 2 - The International Convention on Wetlands of International Importance, especially as a habitat for waterfowl, 1971 (ratified by Lebanon in 1999).

The Ministry of Environment agreed to join this treaty and named three Lebanese regions with the aim of including them on the list of wetlands of international importance stipulated in the agreement. These three areas are: “Ammiq” swamp in the Bekaa, Tire sandy beach and Ras al-Shaqa'a in Chekka.

1.2.2. Bilateral Water Issues

The United Nations Watercourses Convention (UNWC) governing non-sailable waterways (1997) that was ratified by Lebanon, establishes the general legal international framework for the rights of

² Article 2, Parag. 2 of the Code of Civil Procedure (Law-Decree No. 90 of 16/9/1983)

Lebanon in its share of water from international waterways. Lebanon made little use of this convention to exercise its rights over watercourses that it shares with Syria and with Israel, with whom it is at war, not recognized yet at a state, with relations merely governed by an armistice agreement and other relevant UNSC resolutions.

1.2.2.1. *Treaties with Syria*

Aassi River: Lebanon entered with Syria in 2002 a bi-lateral treaty for the “sharing of the ‘Aassi river flowing from Lebanon’s Hermel Quadaa”³.

Narhr El Kebir River: Also, Lebanon entered with Syria in 2002 another bi-lateral treaty for “the sharing of the water of the Narhr El Kebir Southern Basin and the building of a shared dam on the main waterway of the river”⁴.

These treaties have yet to be followed by appropriate implementation, particularly through the execution of infrastructural projects to make appropriate use of the Lebanese established rights on its water share.

1.2.2.2. *Conflict with Israel over Shared Rivers (mainly the Hasbani and Wazzani)*

Israel had always had its own contentions over the Lebanese waters in a region that is particularly in dire need of the “blue-gold”, Lebanon has been unsuccessful in reaching any agreement over the use of its shared waterways, particularly the Hasbani and the Wazzani rivers. A few attempts have been made in 2002 to negotiate, through the UN, the establishment of a dam in Ibl-el-Saki over these two rivers, with no success so far.

1 - Recommendations: Develop two policy documents related to the Water Diplomacy (as defined by the WL), setting the general recommended guidelines needed for the development of resources and rights available to Lebanon on international waterways: (i) the first related to the Aassi River; and (ii) the second related to the Hasbani and Wazzani.

1.3. Domestic Legislation

1.3.1. Primary Legislation

The Lebanese legislation applicable to the water sector has seen a great development in the recent few years. After many decades where the applicable laws were still governed by old customs and statutes dating back to the Ottoman Empire⁵ and the French Mandate periods⁶, news statutes were enacted that maintained the validity of provisions of different previous legislations, thus creating

³ Ratification authorized by Law No. 464 published in the Official Gazette on 19/12/2002 and its addendum, whose ratification was authorized by Law No. 465 published in the official Gazette on 19/12/2002.

⁴ Ratification authorized by Law No. 458 published in the Official Gazette No. 50 on 5/9/2002.

⁵ The Ottoman provisions of the Mejelleh Ottoman Code, that govern water rights are in Title 4, Chapters 1,2,3,4,5,6,7. Articles 1234 to 1328 and Title 5 – Chapter 2 governing, in part, the rights of the state.

⁶ Arrêté 144 du 10 Juin 1925 relatif au domaine public et l'Arrêté 320 du 26 Mai 1926 relatif a la protection et a l'utilisation des eaux publiques. Also, the Irrigation Law of 1913 and another law related to the refurbishing of irrigation water canals of 1918.

some levels of uncertainties and lacunas, that have to be filled by implementation decrees and proper practices.

1.3.1.1. The Water Law

The main statute applicable to the water sector is the Water Law No. 192 published in the Official Gazette on 22/10/2020 (the “Water Law” or “WL”)⁷ that was enacted following many efforts spanning about 17 years⁸. This law introduces fundamental reforms in all areas of the water sector in such an all-encompassing manner that it was referred to by many, inappropriately, as the “Lebanese water code”. Article 104 WL itself boasts unusually about its all-encompassing intent by stating that its provisions “... shall apply on all that is relevant to the water sector”.

To that effect, the Water Law has expressly, but also cautiously, repealed and cancelled in its Article 103 two statutes that it has replaced without doubt⁹. However, it has explicitly maintained many other applicable legislations to the water sector; it has also modified explicitly or impliedly other laws and statutes. All these measures leave some doubt or uncertainties about the extent of this residual body of laws that is still applicable to the water sector.

Therefore, the Water Law falls short of pretending to be an all-inclusive corpus of legislation, because many other statutes still govern major areas of the whole water sector. This is why we do not refer to the Water Law as a “water code” and will leave that term for the compilation of all the laws, statutes, decrees and administrative decisions applicable to the water sector, which is being currently developed separately to become a reference document.

1.3.1.2. Residual Legislation

Alongside the Water Law, other laws are still in force that should be considered part of the water sector legislation in Lebanon. The Water Law itself has provided in its Articles 103 and 104 for the impact it has on the existing corpus of law as follows:

- By providing for the list of laws that remain in full force and effect¹⁰;

⁷ The Water Law itself is a reenactment and thorough modification of Law No. 77 originally issued on 13/4/2018.

⁸ For a detailed description of the process leading to the enactment by parliament of the WL, Cf. the Rationale of the law published in the Official Gazette at the end of the law itself.

⁹ Article 103: “...- Legislative Decree No. 227 dated October 1, 1942 relevant to the projects of drawing drinking water shall be cancelled. - The law on repairing and restoring common channels issued in March 1918 (1334 H.) shall be cancelled.” Law No. 77/2018 shall be cancelled.

¹⁰ Article 104 : « ... 2- In the event a provision is not enacted in this law, the following legislative and regulatory provisions shall apply: * Law No. 221 dated May 29, 2000 (Law on the Regulation of the Water Sector). * Legislative Decree No. 108 dated September 16, 1983. * Law No. 210 dated March 30, 2012 (Law on the Regulation of the Treatment, Processing, Filling, and Selling of Bottled Drinking Water). * Law on the establishment of the Litani Water Authority issued on August 14, 1954 and the amendments thereof relevant to the authority. * Law No. 63 dated October 10, 2016 and Laws No. 64 and 65 dated November 3, 2016.

- By making specific references to legal provision that are still applicable through specific references made in the drafting of many provisions of the Water Law itself.
- By explicitly partially cancelling specific provisions of laws, otherwise maintained in force for the remainder of its provisions¹¹;
- By impliedly cancelling “...all the texts issued prior to this law which contradicts the provisions thereof, ...”. This section of the Water Law is the most tricky to interpret, as it has been enacted as a catch-all-clause, leaving it to the implementers of the law to decide which ones of the previous provisions of older laws are still in force.

2 - Recommendation: Develop a new version of the Water Code incorporating the legal provisions that should be considered to having been explicitly or impliedly cancelled with appropriate comments when necessary. Note that in a few instances that may be uncertain or contentious, an opinion may have to be requested from the MoJ’s Department of Legislation and Advice.

1.3.1.3. Water Institutions Law

The second most important law impacting the water sector is Law No. 221 published on 8 June 2000, titled “Organization of the Water Sector” تنظيم قطاع المياه (“the Water Institutions Law” or “WIL), which is the main statute organizing the institutional setup managing the water sector, through the Ministry of Energy and Water (“MoEW”), and five public water establishments¹², namely: (i) the Litani River Authority (LRA)¹³; (ii) Beirut and Mount Lebanon (BMLWE); (iii) North Lebanon (NLWE); (iv) South Lebanon (SLWE); and (v) the Bekaa (BWE). This statute was completed with several implementation decrees organizing the structure and operations of the said WEs. The most important of such decrees are the ones organizing the operations of the WEs, which impact the operational relationships between the WEs and the users.

The WIL is not the only law governing the WEs nor does it cover the whole institutional setup of the water sector. We shall review the governance of the water sector with a review of its various actors and stakeholders in the related section of this report.

¹¹ Article 103: “... - Article 5 of the Decree No. 4537/1972 shall be cancelled. - The following articles and paragraphs of the Decision No. 320/1926 shall be cancelled: * Paragraph 7 of Article 1. * Article 3, Articles 6-12, and the Sixth Section (Syndicate Associations) Articles 30-56. - The effects of Articles 21, 22, and 23 of Decision 144/S issued on June 10, 1925 relevant to the water sector shall be cancelled.

¹² These establishments are a merger of the 21 water authorities that were previously in charge of the water sector.

¹³ the Litani River Authority (LRA), is considered by the WL one of the WEs, albeit with a special history, legal structure and set of specific competences and authorities.

1.4. Customs and Usages

The Water Law as well as the residual Ottoman and French Mandate period laws, have recognized the set of rules deriving from customs and usages, particularly in irrigation rights¹⁴. The Water Law has even included two special definitions to that subject in its Article 4: the first identified as “*the Traditional Water Rights*” defined as “*the usage rights which were exercised based on established customs, usages and traditions*”; the second identified as “*the traditional usage rights of water*” defined as “*the right to use water in a particular lot of land and for a particular purpose, which continued exercise is recognized by law or tradition or both, based on the individual or collective right to benefit from the water of rivers, springs, wells and water installations. These rights are exercised within the limits set by this law and other applicable laws*”. Given these definitions that are case-by-case based, these rights will be extremely hard to identify clearly; they are a source of almost embarrassment to the legislator, who has left their management to implementation decrees as well as to individual decisions to be made by the competent administrations, either the MoEW or the WEs.

The impact of these traditional rights will be particularly felt as exceptions to the principle of the public ownership of water resources, that is established by the law.

1.5. Implementation Decrees and Administrative Decisions

Many provisions of the statutes and laws enacted by parliament governing the water sector, particularly the Water Law, have left many details and sometimes rather important regulatory provisions of the law to be enacted by implementation decrees.

Usually, these laws provide, in its concluding articles, a general provision that grants authority to an executive body, usually the Council of Ministers (CoM), authority to regulate the details of the legal provisions by decrees or other administrative decisions. It has also been held by established jurisprudence and administrative case law, that in the absence of such article, the CoM can still maintain its right to regulate the details necessary for the proper implementation of the law, by decrees or other administrative decisions¹⁵.

The Water Law is special, in the sense that it did not include a similar general delegated legislation article, but rather an unusual provision in Art. 102 which stipulates simply that “*the implementation decrees mentioned in this law shall be issued upon the recommendation of the Minister*”. The debate in the relevant parliamentary sub-committee tends to confirm that such absence of the customary provision was meant, not a mistake.

Instead, the Water Law has provided, in specific articles, for a delegation of regulatory legislation to executive authorities that fall under either one of the following categories:

¹⁴ For a more detailed review of the evolution of water law and customs: cf. “Georges Gharios, “Legal pluralism and unofficial law: the evolution of water law in Lebanon through 4000 years”, Unesco Center for Water Law, Policy and Science, University of Dundee, UK,

¹⁵ Cf. Youssef Saadallah El Khoury, (1999) “General Administrative Law”, Vol. 1, p. 399.

- Implementation Decrees voted in CoM;
- Implementation (simple) Decrees, issued by the President of the Republic, the Prime Minister together with the Energy and MoEW Minister alone or with one or more ministers (Called implementation Simple Decrees or Decrees),
- Administrative decisions enacted by the MoEW Minister alone or together with other ministers, or by the prime minister alone, which is the case for the enactment of the National Water Council by-laws.

In a few instances, the delegation of authority is implied rather than clearly stated. This is the case of Article 5 Para. 3 which is drafted in a manner that would require interpretation: “... 3 - *The Ministry and the Public Water Establishments shall intervene to regulate the rights and obligations deriving from the water use in accordance with the provisions of this law and the implementation decrees which will be issued to execute its provisions*”.

It must be noted that all implementation regulatory implementation decrees and decisions must be vetted by the Council of State before they are appropriately enacted¹⁶.

This report highlights in the relevant recommendations, the various implementation decrees and administrative decisions that were explicitly delegated and that are required to complete the regulatory setup of the water sector. It also recommends to draft policy reports that should conclude with additional recommendations for implementation measures and policies.

¹⁶ Article 57 of the Law organizing the Council of State.

2 DEFINITIONS AND GENERAL PRINCIPLES OF WATER LAW

2.1 Definitions

Definitions, usually set in the beginning of laws, carry linguistic meanings identifying factual realities; they may also carry meanings that define legal concepts and could thus be akin to substantive provisions of the law.

2.1.1 Modern Definitions

The WL provides for a full Article 4 dedicated to definitions, that includes both the above-mentioned definitional contexts¹⁷.

Many of these definitions are found only in this article, never to be used again in the law¹⁸ or used incompletely¹⁹, which could be considered a legal drafting weakness. However, these definitions can still be useful, eventually, in implementation decrees.

Many other definitions are also scattered within the WL itself, notably those of “Water” incorporated in Art. 1, “Public Water” and “Private Water” defined respectively in Articles 8 and 9.

2.1.2 Residual Definitions

A few legal definitions are still in force, mostly incorporated in the Ottoman irrigation law. Many words may sound not only outdated, but also hard to use, because they have retained their original Turkish language, which makes them awkward in the Arabic modern legislative drafting context. Examples from Article 1 to 8 of the Ottoman Law include Turkish words, not used in the Lebanese practice, such as: Yadok, Khork, Aghzalog, Khandak, Sawjak, Ayak, Oughine.

5 - Recommendation: Develop a new set of modern Arabic-based definitions of water related installations to replace the archaic Turkish terms. Such effort could be useful to prepare for the development of a modern irrigation law to replace the Ottoman Law.

2.2 General Principles of Water Law

The WL provided for several general principles of water law, that set aspirational goals for the management of the water sector: (i) on the one hand, to provide for general rules that stand hierarchically above all the others in the WL and which therefore must be respected by all implementation decrees and other organizational and individual administrative decisions; (ii) on the

¹⁷ Examples of legal definitions are the terms: “Traditional Water Usufruct”, “Joint Project”, “Management by Delegation”.

¹⁸ Notable examples are: Water Diplomacy, “Delegated Management” (not used in Art. 58 where it could have).

¹⁹ Article 4 defines the term “Sustainable Water Management”, used in the title of Article 6 but not in its dispositive following wording. The definition itself seems to me an approximative translation of the term “Integrated Water Resource Management (IWRM)” which is an established concept for water management having inspired both the definitions and underlying legal principle of the Lebanese WL.

other hand, these principles can be used to interpret the law whenever there is a discrepancy within its own provisions or between those principles and other sets of applicable residual laws.

2.2.1. Access to Water:

The most superior of these general principles is “*Access to Water*” as a human right (strangely set in Article 2 of the WL rather than in the first), which solemnly declares that “*All humans have the fundamental right of access to necessary water, which provides the basic requirements for a dignified life, including sanitation. All that in exchange for the payment of water usage subscription fees*”. The last sentence included in this article is very strange for the drafting of a human right, since it subjects the exercise of this right to the payment of fees, which is certainly not the case in all instances, especially when considering that all uses of water are included in the fundamental right to Access to Water.

2.2.2 Water as a National Wealth:

Article 1 of the WL starts by qualifying water as a “National Wealth”, setting its quality as a general principle which must be preserved, almost equally to the state’s sovereign rights to all its water sources, internal, regional and international. This article goes on, strangely so, to include a definition of water resources (rather than a general principle per-se), “... *It includes surface water, ground water, fluctuating fresh water waves by the shores, and in general, water as an element of land and marine ecosystems*”.

2.2.3. Water as a Public Property:

Strangely, the WL established the general principle of Water as a public property, not in Chapters 1 or 2 dedicated to the Principles of Water Law, but rather in the first article of Chapter 3 dedicated to the Legal Status of Water. Moreover, it chronologically follows the establishment of the Private Rights of Water use as a general principle of water law, which is supposed to be -- even as stated by the WL itself -- as an exception to the principle of water as a public property.

This anachronism reflects, no doubt, the complexity of the relationship in Lebanese law between public and private rights to water (the limits between public and private rights to water are further developed in Chapter 3 dedicated to the legal status of water law).

2.2.4. The Usufruct Rights of Water Beneficiaries

The WL established the Usufruct water rights (انتفاع - منتفع) as a general principle., meaning the right of the beneficial owner to use and benefit from water, while its ownership still belongs to the state. Usufruct rights are granted to beneficiaries through a licensing system that is organized by law.

Article 5 regulated the Usufruct Rights as follows:

- 1- “All beneficiaries that have lawful access to any water resources through the right of usufruct, [shall exercise such right] in a manner that does neither damage the said resources nor the interests of third parties, and shall bear the same obligations that are imposed for the preservation and protection of the said resources from depletion and pollution.

2- Groundwater exploitation is banned without prior licensing from the competent authority”.

This drafting style of this article 5 goes beyond establishing a general principle, as it delves into organizational details, including a delegation to the MoEW and the WEs to regulate and organize such rights by appropriate implementation decrees and decisions.

Also, the whole WL incorporates the details applicable to this right as a water law principle into several articles, particularly in Chapter 3 (Arts. 9 and 12) and Section 2 (Arts. 33 to 37).

2.2.5. The Sustainable Management of Water (or Integrated Water Resource Management (IWRM))

Article 6 WL establishes this principle of Sustainable Management of Water under the specific title of “the General Goals [to be achieved] Through the Sustainable Water Management”. This term is also defined in article 4 WL as follows: “*Coordinated development reinforcement operation and relevant water and resource management, to increase economic and social benefits in an equitable manner without harming the sustainability of vital ecological systems*”.

This general principle is further developed in the WL, particularly in Article 6 itself and in the various provisions dedicated to water strategies and plans in Articles 16 through 23.

2.2.6. General Principles of Administrative Competence

Anachronically, and beyond setting general substantive principles related to water planning and management, Article 6 WL also sets general principles for administrative competence of the MoEW and WEs, in addition to the MoE. We will review the governance of the water sector in a later chapter of the Report.

3 LEGAL STATUS OF WATER LAW

The WL regulates the legal status of water as it relates to property rights, in the following five categories: (i) publicly owned water; (ii) water related public property; (iii) Non-public water; (iv) acquired water rights; (v) Usufruct Water Rights.

3.1. Publicly Owned Water

3.1.1. Definition:

Article 8 Para. 2 WL provides for the definition of the publicly owned water as a matter of principle, in the sense that all water is in the public domain, in the following broad terms²⁰: “... 2- *The Public ownership of water includes water in all its natural states, geological locations, accessories, and public facilities specialized or necessary for their management*”; It further details, by way of example (using the term “including”) the following as elements of Public Water:

- a- Water courses regardless of their type, within their borders determined through the line of their running water elevation in the event they are full before they overflow. The course banks, boundaries, and its retreat shall be determined by virtue of decrees.
- b- Natural or artificial lakes, coastal lakes, and swamps, and in general all water areas.
- c- Underground water, including freshwater springs under the sea off Lebanese shores.
- d- Fountains and wells, prospects, sub- water courses, springs, and other publicly available water sources, in addition to the potential barring of the nearby regions equipped to protect them directly.
- e- Sea and river dams, water dams, water ways, and their facilities.
- f- Irrigation, sewage, and draining canals, water drawing canals and their branches, pipes, water treatment facilities, pumping stations, and reservoirs, wastewater treatment plants when these facilities are specific for public use, in addition to equipment and their lands.
- g- Waterfalls suitable for electricity generation.

3.1.2. Legal Status:

Article 8 Para. 1 establishes the founding principle of public ownership of water emphatically in the following terms:

²⁰ It must be noted that this new definition of the publicly owned water is in line with the former definitions provided by: (i) Article 1234, 1235, 1236, 1237 and 1238 of the Ottoman Mejlleh; and by (ii) Article 2 of Decision 144 of June 10, 1925 related to the public state domain, within the limits of the private rights also protected by Article 3 of the same Decision No. 144 of 10 June 1925.

1- *“Water is a public property and may not be possessed, owned, or disposed of in any way, ...”*

The next part of the clause immediately sets the exception to this legal status, which is not absolute, as such inalienability of the public ownership must *“... tak[e] into account the provisions of decision No. 144/S dated June 10, 1925 and decision No. 320 dated May 26, 1926”*.

Article 19 WL also provides for a special status of underground water (already listed in section -c- of the definitional paragraph). It stipulates the following:

- 1- *“Under-ground water, regardless of its depth, is subject to a special system of regulation and control.*
- 2- *No one may extract under-ground water through drilling artesian wells or through any other means, without receiving a prior permission or license from the ministry of energy and water, in accordance with the conditions specified by virtue of the provisions of this law. “*

The detailed terms and conditions of the licensing and management of wells, given the extent of the practice, are regulated in articles 36 and 37.

3.2. Water Related Public Property

3.2.1. Definition:

The legal status of Publicly Owned Water is not limited to the water per-se, but extends also to other related public properties, including land and *“geological locations, accessories, and public facilities specialized or necessary for their management”* (Art. 8 WL).

Article 11 WL further extends to public properties and domain *“the boundaries of the Lebanese State’s public water properties and their belongings”, effectively considered as “extensions and annexes²¹” to the water proper, as provided by Article 2 of Decision 144/S dated June 10, 1925 relevant to the definition, determination, and temporary operation of public property.”*

This article 2 follows the first article that defines public property *“as all things affected by their nature for the general public use or for a use of public interest”, and provides a list of properties, including many water related, by way of example, as it states that “Public properties shall particularly include the ones mentioned hereinafter ...:*

“... waterways of any kind within the limits of the highest running water levels when full before overflow ...all waterway [and lakes] banks meaning the land running along its full distance which allows for protection, cleaning and maintenance, ... to which shall be added, on both sides of the banks, ten meters as a passageway ... irrigation and drying canals banks ... as well as all installations related to these properties ... the installations build to serve a public interest and for the use of hydraulic power ...”.

²¹ Article 4 of Decision 144

One may also include in the list of such water related public properties, the protection areas of wells, irrigation canals and waterways, as detailed in the ottoman irrigation law²².

Recommendation: Issue the decrees related to the identification of the waterway's banks, boundaries, and retreats [protected areas] (WL Art. 8 Parag. 2-a).

3.2.2. Legal Status:

The legal status of water related public properties is the same than the Publicly Owned Water itself.

3.3. Non-Public Water

3.3.1. Definition:

Article 9 of the WL sets the definition for what it literally calls “Non-Public Water” as follows:

“... rainwater [stored] in private facilities, swimming pools, entertainment basins, swamps, ponds, and tanks, ... Such water does not constitute a part of the public property of the Lebanese State.”

3.3.2. Legal Status:

Article 9 further defines the rights attached or afferent to this private water property as follows: “*All [those] who collect [Privately Owned Water] ... have all the right to use the same without the right to sell it to third parties.*”

3.4. Acquired Water Rights

3.4.1. Definition:

Article 12 WL reminds of the status of “Acquired water rights consecrated before the publication of the High Commissioner’s Decision No. 144/S dated June 10, 1925”.

3.4.2. Legal Status:

As stated earlier, the last sentence of the first paragraph of Article 8 WL sets the exception to the principle of the public exclusive ownership, which is not absolute, as the inalienability of the public ownership must “... tak[e] into account the provisions of Decision No. 144/S dated June 10, 1925 and Decision No. 320 dated May 26, 1926”, which both allow for the private water ownership and usufruct rights existing prior to June 10, 1925. These acquired rights can be registered in the real estate register and be the subject of any transaction of sale or be inherited like any other real right.

In such instances, the Decision provide that persons in possession of such acquired rights cannot be dispossessed or expropriated of these rights for a public interest reason, without being equitably indemnified. The Decision further defines the process through which this expropriation or

²² Articles 281 to 1291 of the Ottoman Mejelleh related to the “determination of the protected areas for wells, waterways and trees”.

dispossession can be decided either by the Council of State or by an arbitration process. These rights have been systematically upheld and protected by administrative court precedents²³.

Article 12 WL further provides for the following provisions applicable to acquired rights:

1- *“The acquired water rights consecrated before the enactment of decision No. 144/S dated June 10, 1925 shall be exercised according to the usages and customs that have justified its adoption, so long as they do not contradict the requirements of the sustainable management of water, taking into account the following provisions:*

a- *The exercise of these acquired rights shall cease when they become obsolete and when the reasons for which they were adopted cease, or when the exercise of these rights become impossible for material reasons.*

b- *Acquired rights on water may not be assigned separately from the land over which such rights are exercised²⁴.*

2- *The regulation of the conditions and terms of use and forfeiture of the acquired rights and/or their suspension to face any water deficit shall be issued by decree in the Council of Ministers based on the Minister’s recommendation.”*

Recommendation: *Issue the implementation decree related to the regulation of the conditions and terms of use and forfeiture of the acquired rights and/or their suspension to face any water deficit (WL Art. 12 Para. 2).*

3.5. Usufruct Water Rights

3.5.1. Definition and Principles of Usufruct Water Rights

Usufruct water rights (انتفاع) means the right of the beneficial owner to use and benefit from the publicly owned water, while its ownership still belongs to the state. Usufruct rights are granted to beneficiaries through a licensing system that is organized by law.

Article 5 WL regulated the Usufruct Rights as follows:

1 - “All beneficiaries that have lawful access to any water resources through the right of usufruct, [shall exercise such right] in a manner that does neither damage the said resources nor or the interests of third parties, and shall bear the same obligations that are imposed for the preservation and protection of the said resources from depletion and pollution.

2 - Groundwater exploitation is banned without prior licensing from the competent authority”.

²³ CE. Decision No. 73 dated 21/6/1971 – Recueil Chidiac 1971, p. 186; CE. Decision No. 879 dated 26/6/1968 – Recueil Chidiac 1967, p. 181; CE. Decision No. 68 dated 21/6/1972 – Recueil Chidiac, 1972, p. 193).

²⁴ This provision established a marked deviation from the old established law and practices since the 19th century to sell water rights separately from land property and vice-versa.

The applicable laws to usufruct water rights are, in addition to the WL, decision No. 329 dated May 1926 as impliedly modified or deleted by the WL (Art. 35 WL).

3.5.2. Traditional Usufruct Water Rights

Traditional usufruct water rights are not derived from any licensing decision, but rather as from *“practice[s] in accordance with the established customs, traditions, and norms” (Article 4 WL defining the Traditional Water Rights).*

Also in the same article, there is another detailed definition of “Traditional Water Usufruct Rights: water usufruct rights for a specific real estate and for specific purposes, the continuity of which is recognized through law or custom, or through both law and custom, and based on the individual or collective right to benefit from river, fountain, well, or water facility water. They are restricted by the limits stipulated in this law and other laws in force”.

Article 33 WL establishes the following applicable regime:

“Traditional rights on the use of rainwater and naturally flowing flood water are taken into consideration, in relation to their use in irrigation and due to their connection to the agricultural land and benefitting from the same. Traditional irrigation rights from other water resources are not consecrated except outside of the investment scope of the irrigation projects of Public water investment institutions. The detailed application of this article shall be determined by decree upon the suggestion of the minister. “

Recommendation: Issue the implementation decree related to the traditional use of water for irrigation (WL Art. 33).

Article 34 WL titled “Public Interest and the Right of Usufruct” provided that:

“Taking into consideration the provisions of article twelve of this law, the situations in which the Lebanese state may seize the water usufruct rights are determined if the public interest necessitated the same or for the necessity of orientation in the usage of water with fair compensation for the beneficiaries based on the implemented laws, by virtue of a decree issued by the council of ministers and upon the suggestion of the minister.”

Recommendations: Issue the decree in CoM related to the regulation of the right of the state to seize private water rights for public interest against just indemnification (WL Art. 34).

3.5.3. Licensing System of Usufruct Rights

The WL provides for a licensing system for all types of usufruct rights as well as specific licensing provisions for water wells.

Article 35 WL provides for the formalities required from all applications for licensing. It starts by reminding in section 1 that “The conditions mentioned in Decision No. 320 dated May 26, 1926 are taken into account with the exception of what has been amended or cancelled by this law.”

It also provides for an implementation decree to detail the terms and conditions applicable to the licensing system, provided that it includes the following:

- a- *Applicable procedures.*
- b- *Environmental impact evaluation.*
- c- *Formalities relevant to extractions, in particular the situations in which a lower level of water flow can be imposed.*
- d- *Procedures imposed to control the compliance with the provisions of this chapter*

Recommendation: *Issue the decree in CoM regulating the issuance of water Usufruct licenses (WL Art. 35).*

Article 36 details the general conditions for the issuance of the licenses by the Minister as follows:

- 1 *No natural or legal person may, after this law is issued, construct any water facility to block or impede flowing water, and water flowing in water courses and valleys, or to direct it away from its courses except after receiving a prior license. The ministry must conduct a comprehensive national survey of all the facilities constructed without a license before this law is issued, study each case individually, suggest technical amendments thereto, and administrative procedures where necessary.*

[...]

- 4 *The beneficiary must abide by the terms determined in the license which itself sets the conditions necessary for implementation.*
- 5 *Are subject to prior licensing, All the operations which may pose risks to public health and safety, impede the flow of water, diminish water resources, significantly increase flood risks, or damage the quality of the water environment or the biodiversity in the water medium.*
- 6 *All operations which include water destined for non-domestic use are subject to prior licensing. The same applies to irrigation facilities, hydroelectric facilities, fish farming, aquafarming equipment, and water exploration.*

Recommendation: *conduct the national survey of all unlicensed built facilities. (WL Art. 36)*

3.5.4. Special Conditions for Licensing Water Wells

The WL (Articles 36 and 37) provides for detailed special conditions for the licensing of water wells as well as for the settlement of any irregularities, especially for unlicensed wells.

Article 36 provides for the following two specific licensing conditions, that are required over and above the general licensing conditions:

- 1- Any water well may not be deepened or insulated without receiving a license, under the penalty of withdrawing the previously granted license and refill the well on the owner's expense.
- 2- A new well or an alternative well may not be drilled, nor any water facility established without the beneficiary receiving the proper license for that purpose.

Article 37 of the WL provides for the settlement of irregularities as follows:

** The beneficiaries of the ground water wells, drilled without a license issued by the Ministry or those drilled legally but the owners of which did not receive a usufruct license for it, may receive a usufruct license after submitting an application to settle their situations within a period of no more than two years as of the date of entry into force of this law, under the penalty of closing the well.*

** Licensing shall be denied in the following cases: - If the well is drilled on the property of a third party, public property, or common "mshaa" properties. - If the well affects the sources of flowing water and springs or those that supply lakes or rivers.*

** Temporary licenses are granted to those who may not receive licenses for the above-mentioned reasons when alternatives are provided to the competent water authorities, unless the well is drilled in public or private properties*

3.5.5. License Withdrawal with Indemnification

Article 36 section 7 WL provides for the following instances when licenses may be withdrawn or modified by a motivated decision of the Minister, taking into account the provisions of Decision No. 320 dated May 26, 1926:

- a- *If the decision is made in favor of the public interest.*
- b- *To prevent dangerous situations such as water scarcity or floods.*
- c- *In the event of a grave danger that threatens the natural components of water and the water ecosystems.*

In such cases, the license beneficiaries may be entitled to indemnities according to the common law rules, by a-contrario interpretation of the section's wording compared to the next provisions, as well as based on the provisions of Decision No. 320 dated May 26, 1926.

3.5.6. License Withdrawal Without Indemnification

Article 36 Section 7 also provides for the following instances when licenses may be withdrawn or modified without compensation by a motivated decision of the Minister:

- a- *When the water facility is abandoned, and its usufruct beneficial owners no longer need it.*
- b- *If the licensee does not begin drilling within the deadlines determined in the licensing system.*
- c- *If the license was used for a purpose other than that for which it was granted.*
- d- *If [the licensee] violates the conditions mentioned in the license.*
- e- *If the license was ceded in favor of a third party without the cession of the relevant real estate for a price or for free, without the approval of the authority granting the license.*

4 GOVERNANCE OF THE WATER SECTOR

4.1 General Governance Structure

The WL sets management principles for the Water sector, stating emphatically in Article 40 the industrial and commercial nature of the water public service that must be managed in compliance with the principle of the continuity and development of the public service.

The laws and regulations organizing the governance of the water sector are particularly based on the Law Organizing the Water Sector” published on 8/6/2000; in fact the law organizes the structures, roles and functions of the two main actors in the sector: (i) the Ministry of Energy and Water (“MoEW”) and (ii) the 5 water Establishments (“WEs”)²⁵. Thus, it appears that the Ministry, does not act only as an overseer authority for the WEs, but exercises specific functions and mandates in the management of the sector. The general competence, roles, and functions of the MoEW and the WEs are complemented with many provisions of the WL (*Cf. Appendix B for the General and Special Roles and Functions of the MoEW; Appendix C for the General and Special Roles and Functions of the WEs*).

Many actors in the public sector as well as in the private sector also perform prominent roles at national, regional, and local levels, in the various functions of regulation, planning, funding, oversight, management proper, prevention and enforcement. These roles and functions are provided for in a multiplicity of laws, enacted at different times preceding the enactment of the Water Law, which in turn, has provided for additional functions to be exercised by those public and private stakeholders. (*Cf. Appendix D for the General and Special Roles and Functions of the Ministries and other public administrations*).

When analyzing the roles and authorities exercised by these various actors and stakeholders, and in spite of the efforts made by the Water Law to establish clear delineation of authority, there remains many areas of blurred jurisdiction, intertwined or duplicated competence, unclear responsibilities, especially when it comes to the ones that must be jointly exercised, in collaboration or in coordination or within collegial structures (such as the National Water Council).

In this report, we will provide a summary of the complex governance structure of the water sector and its many players, with the hope that a more detailed study would show the grid of competences and make detailed recommendations on how best to improve on their exercise, in dialogue and collaboration with their representatives.

The below table shows a summary of the main actors at a glimpse, organized by the geographic extent of their respective roles, while the Report adopts a structure emphasizing their legal nature within the public and private sectors.

²⁵ It is worth noting that the WL includes the Litani River Authority as one of the five Water Industrial and Commercial Establishments, although it enjoys a separate legal type of entity, structure and different history.

Key actors in Lebanon's water sector and their main functions²⁶

National Level	
Council of Ministers	<ul style="list-style-type: none"> • Adopt national policies and Master Plans. • Adopt implementation regulatory decrees in areas decided by the WL.
National Water Council	<ul style="list-style-type: none"> • Share in the study of policies and master plans • follow-up on the proper implementation of the water policies.
Ministry of Energy and Water (MoEW)	<ul style="list-style-type: none"> • Regulatory, planning, oversight and management roles and functions in the water sector. • Develop national water master plans and studies. • Manage publicly owned Water. • follow-up on the proper implementation of the water policies. • Supervise the WEs and all other public institutions working in the water sector. • License Wells and all water extractions • Design, build and implement large water infrastructures such as dams, hill lakes, water and wastewater treatment plants, and water networks among others. • Control, monitor and measure water resources, and determine the needs and use of water resources on a national scale • Monitor the quality of surface and groundwater and setting the relevant quality standards. • Protect water resources from pollution.
Ministry of Finance	<ul style="list-style-type: none"> • Provide budgets for the implementation of projects
Ministry of Environment	<ul style="list-style-type: none"> • Control pollution and regulate all activities that impact the environment • Regulate activities that might have an impact on the environment • Evaluate the Environmental Impact Assessment
Ministry of Public Health	<ul style="list-style-type: none"> • Monitor and control drinking water quality, and ensure water quality standards are met • Monitor the incidence of waterborne diseases and publish related epidemiological data
Ministry of Agriculture	<ul style="list-style-type: none"> • Study irrigation projects and provide technical supervision during implementation • Regulate the distribution and use of irrigation, in particular for projects involving hill lakes and ponds through the Green Plan²⁷ and monitor the implementation of these regulations.

²⁶ Adapted from MEW, 2010; IFI 2015

²⁷ The Green Plan is a technical autonomous directorate under the Ministry of Agriculture that was created in 1963 to assist farmers in land reclamation; it is responsible for constructing earth ponds and small water reservoirs

Parliamentary Commissions of Public Works and Water and Environment	<ul style="list-style-type: none"> • Role in the legislation process such as examining draft laws. Considered as the technical entity enabling the parliament to accurately discuss water-related issues. • Plays an oversight role, by shedding light on practices, risks, and violations.
Council for Development and Reconstruction (CDR)	<ul style="list-style-type: none"> • Channels international funding for major water-related projects, including mobilizing financing and implementing projects such as the rehabilitation and construction of water distribution networks and water treatment facilities
The Lebanese Standards Institution (LIBNOR)	<ul style="list-style-type: none"> • setting the water quality standards.
Regional Level	
The 4 Water Establishments (WE): 1) North Lebanon 2) South Lebanon 3) Bekaa 4) Beirut and Mount Lebanon	<ul style="list-style-type: none"> • Plan and distribute water resources within their communities • Build, operate and maintain drinking, irrigation and sewage networks • Monitor the quality of water supplied to their communities • Recommend tariffs for water. • Implement the national water and wastewater plans.
5) The Litani River Authority	<ul style="list-style-type: none"> • Manage and operate irrigation operations in the Litani River Basin. • Establish and operate hydroelectric power plants on the Litani River.
Council of the South	<ul style="list-style-type: none"> • Build water supply systems in the south and west Bekaa region.
Central Fund for the Displaced	<ul style="list-style-type: none"> • Provide basic water services including building water supply systems in the villages of Chouf, Baabda and Aley.
Local Level	
Municipalities and their Federations	<ul style="list-style-type: none"> • Build and manage sanitation projects and sewage disposal facilities, levy their related taxes²⁸. • Control pollution at the local level
Water Associations Local Committees (under the supervision of the water establishments)	<ul style="list-style-type: none"> • Conduct light maintenance and repair of water facilities
Private Companies	<ul style="list-style-type: none"> • May be contracted for a broad array of service delivery, including through the PPP legal scheme.

Recommendation: Draft a report analyzing the detailed grid of the respective competences of all actors involved in the governance of the water sector, to conclude with detailed recommendations on how best to improve on their interactivity and limit overlaps, in dialogue and collaboration with their representatives.

²⁸ A particular issue arises as to whether or not such competence, mentioned by way of example, is maintained following the enactment of the WL which provides for the exclusivity on these matters granted to WEs.

4.2 Public Sector Actors

The Public sector actors derive their roles in the water sector from the laws organizing their own establishment and competence at various dates, in addition to special laws related to the governance of the water sector (particularly Law 221/2000), completed with a multiplicity of roles and competences scattered throughout the Water Law.

4.2.1 Ministries and Public Administrations

4.2.1.1 Council of Ministers

The Council of Ministers exercises the constitutional authority of the executive branch of government. It normally exercises the regulatory function, as is the case in many provisions of the WL, for issuing many implementation decrees that are identified by the WL in the type voted in the Council of Ministers. This is the case for the most important decisions regarding policy making in the water sector and enacting master plans.

4.2.1.2. The National Water Council

Organization: The National Water Council (NWC) is established by Art. 14 WL within the Prime Minister's Office (PM) as a quasi-ministerial committee, not enjoying independent legal status²⁹. It is chaired by the latter, the Minister of Energy and Water being the Vice chair, with the membership of the ministers of Environment, Industry, agriculture, public works, finance, interior and municipalities, tourism; also the directors general of all WEs are full members. The NWI may invite to its meetings whomever it deems appropriate from the public and private sectors and civil society organizations. The NWI sets its operating procedures (by-laws) by decision of the PM.

Functions: The NWC is entrusted it with the general function of collaborating with the MoEW in the follow-up on the water policy (Art. 98) and the consultative and coordination functions in the areas of policy making and planning provided by Art. 15 WL as follows:

- 1- The contribution in setting the goals and general guidance principles for a public and sustainable national policy for the water sector.
- 2- To study the water General Master Plan which shall enter into force by decree issued by the council of ministers.
- 3- To study the state' s capability on financing plans and projects and setting financing programs and determining their sources.
- 4- To study the plans and programs aiming for the regulation of the use of water and the prevention of its waste and to guide its consumption.

²⁹ The formal legal name of the NWC as used in Arabic by the WL is an "Institution" هيئة . Such term when translated could be misleading or misrepresenting its true nature, since it is just a committee, as it was described by the Constitutional Council, enjoying no independent legal personality. Therefore, we have opted for the non-literal translation of "National Water Council" rather than "National Water Institution".

- ~~5- To adopt projects and to organize the distribution of internationally and regionally important water, in addition to the determination of the advantages of projects and their distribution between the regions.~~
- 6- To study the trends and procedures which the competent ministries deem appropriate to implement the integrated management of water, especially to protect the water ecosystems, including tourism, industry, energy, forest management, agricultural activities, livestock-raising, fishing, and urban planning.
- 7- Issuing the recommendations relevant to the research, education, training, and media in the field of water, with the aim of improving the management of this resource.
- 8- Inspecting international conventions relevant to the water sharing in transnational rivers or that influences national water security and having issuing opinions on the same.

The Constitutional Council in its Decision No. 5 of 9/11/2020 ruled to strike down sections 1 and 5 of Art. 15 WL (as shown above) making them null and void, on the basis that the functions they granted to the NWC were executive in nature and violate therefore the exclusive executive competence granted by the constitution to the CoM and to Ministers, rather than the advisory functions of the remaining sections, considered similar to those exercised by ministerial committees.³⁰.

***Recommendation:** Issue the Prime Minister's administrative decision organizing the operating procedures (by-laws) of the National Water Institution (WL Art. 14 Parag. 3).*

4.2.1.3. Ministry of Energy and Water (MoEW)

The Minister of Energy and Water exercises the overall constitutional executive authority in all far-reaching competences that were granted to that ministry in the laws establishing it, in as well as in Law 221/2000 related to the organization of the water sector. Thus, Article 2 of that latter law entrusts the MoEW with important regulatory, planning, oversight and management roles and functions in the water sector organized into 14 sections summarized hereafter:

- 1- Observe, oversee, measure and study water resources, and evaluate the needs and various uses of water in all the regions.
- 2- Oversee the water quality and set its standards.
- 3- Prepare and update the draft various water plans and master plans ...
- 4- Study, plan, build and license the operation of the major water utilities and installations, such as dams, mountain lakes, tunnels, river courses, irrigation canals.
- 5- Artificially fill the subterranean reservoirs when needed and oversee the water pumping operated on them.
- 6- Protect water resources from depletion, pollution ...

³⁰ Constitutional Council Decision No. 5/2020 dated 5/11/2020, Official Gazette No. 46 of 26/11/2020.

- 7- License the operations of well drilling, use of public water and river public lands ...
- 8- Prepare water, hydrological and geological studies and compile related data ...
- 9- Exercise the rights of oversight and control over all WEs and other institutions active in the water sector as provided by laws and regulations.
- 10- Develop and oversee the performance of WEs, based on indicators include in their approved action plans.
- 11- Set the standards to be adhered to by the WEs in its studies, their execution, as well as setting the conditions and rules of operations of surface and underground water, wastewater, the measurement systems of water quality and their supervision.
- 12- Execute the expropriation for works done by the Ministry of the WEs.
- 13- Provide an opinion for the licensing of mines and quarries regarding their impact on water resources.
- 14- Ensure public relations and information with citizens in all matters related to water issues and its efficient use.

Article 6 WL provides for several functions to be discharged by the MoEW solely and with WEs and the MoE:

- It starts in its Para. 1 by establishing the general competence and duty of the MoEW to “... establish a sustainable water policy aiming at the preservation of the water wealth of the Lebanese state.
- Para. 1 continues with the joint duties of the MoEW and the WEs to “... *provide water services to all users for all types of usage*”.
- Article 6 continues in Parag. 2 with provisions related to the following mandate of the MoEW to be discharged in collaboration with the MoE:
 - a- *“Fight chronic pollution.*
 - b- *Prevent all further deterioration, preserve, and restore water environment, land ecosystems and relevant wetlands, in relation with their water needs.*
 - c- *Prevent pollution and work to gradually decrease the same.”*

The MoEW is granted many additional specific functions by the WL, which will be referred to in details in this report. Many provisions of the WL impliedly modify some of the roles and functions of the MoEW (e.g. setting water quality standards are now entrusted to LIBNOR in collaboration with the Ministry); others add general or specific functions (e.g. Article 7 WL emphasizes the role played by the MoEW to manage publicly owned water properties).

4.2.1.4. Other Ministries

Several ministries play a role in one or another of the aspects of the regulation, supervision, and management of the water sector. This is particularly the case of the ministries of Environment,

Agriculture, Public Works and Transport (which incorporates the directorate general of urban planning); but also the Ministry of Finance (which controls the disbursement of state resources and co-signs regulatory decisions including financial considerations), the Ministry of Interior (which oversees municipalities and their federations), and the Ministries of Industry and Tourism.

Whenever a different ministry has a role or function in an area of its subject-matter overall jurisdiction, the WL provides for a duty of collaboration, or consultation, or of joint decision-making, particularly for the issuance of implementation decrees that are co-signed with the Minister.

4.2.2 Public Establishments for Water Operations

Law 221/2000 and the WL entrust the management of the water public service to five Public Establishments for Water Operation "المؤسسات العامة الإستثمارية للمياه" ("WEs" in short) which plays a central role in the management of the water sector. WE enjoy a separate legal personality from that of the State, in addition to administrative and financial independence. They are meant to operate close to private-law institutions, away from the complexities and hurdles of the usual direct public management of public service. However, the effectiveness and efficiency of their role is fraught with problems which we shall briefly highlight hereinafter while reviewing the main legal aspects of WEs³¹.

4.2.2.1 Governing Laws and regulations:

The following main laws and regulations govern the establishment, organization and operation of WEs; due caveat being taken to some inconsistencies between legal and de facto implementation (which may only be fully clarified when looking at the details for the legal provisions and their implementation):

A - **Law 221/2000 Organizing the Water Sector (LOWS)**, which has restructured fundamentally the multiple establishments and organizations managing the water sector.

B - **The 2020 WL**, which has mostly governed the areas of the WEs competencies, putting most of the emphasis on the WEs for the management of the water related services to consumers.

C - **Decree No. 4517** dated 13/12/1972 governing the General Regime of Public Establishments, which still contains residual provisions applicable to WEs, not impliedly cancelled by the 2000 LOWS.

D – **Five implementation decrees governing the four WEs** (excluding the LTA) issued in 2005: governing each of the following areas: (i) Rules of procedure, (ii) Operating rules, (iii) Financial regulations, (iv) Staff rules and regulations, (v) Administrative organization.

³¹ See also: "Lebanon Water Forum "Report, May 26, 2016, OXFAN and AUB Issam Fares Institute.

4.2.2.2. WEs and LRA:

The LOWS created four “Public Establishments for Water Operation”³², in addition to maintaining the law establishing the Litani River Authority (LRA), all of whom are referred to as such in the definitional Article 4 of the WL as well as in this report.

- 1 - The first historical Establishment is the “Litani River National Authority” (“LRA”) المصلحة الوطنية لنهر الليطاني established by Law on 14/8/1954.
- 2 - The following Four WEs created by the LOWS to cover their respective administrative (Mohafazat) regions delineated by an attached map to the law:
 - 2.1. Beirut and Mount Lebanon (having its seat in Beirut)
 - 2.2. North Lebanon (having its seat in Tripoli)
 - 2.3. Beqaa (having its seat in Zahle)
 - 2.4. South Lebanon (having its seat in Saida).

4.2.2.3 Competence:

The LTA is entrusted with the following mandate³³ : (i) Implement the Litani River Project for irrigation, drainage, potable water and electricity production as provided for in the studies effected by the government; (ii) Operate the various sections of the project technically and financially; (ii) Plan, study, manage and operate irrigation water in its assigned geographic area (i.e to cover the Southern Beqaa and the South).

All new four WEs are mandated with the various tasks related to the management of water in the three main areas of drinking water, irrigation and wastewater, further defined by the provision of article 57 WL and the many other detailed provisions of this law.

Article 56 WL does not explicitly provide that the WEs exercises its authorities exclusively, but in article 62 and 68 WL. This would cause issues of competence in a few areas, particularly with municipalities, as discussed later in the Report. It is worthwhile noting that in its drafting, the WL used almost interchangeably, the terms of WE and Water Public Service (WPS), especially when providing for the exclusivity, that was granted to the WPS, not the legal person entrusted with its management, i.e. the WEs. Such drafting confusion was particularly made in Article 62 WL for drinking Water and 68 for wastewater, but not in Article 74 for irrigation where the term of exclusivity was not used.

Related Main Issues: the overlap of competence and responsibilities amongst and within institutions in the water sector, particularly with and within the WEs and the MoEW (this overlap is evidenced in

³² On the local and regional levels, the State gradually repurchased, between 1950 and 1970, the hydraulic concessions that had been granted across the country. It also established authorities and commissions tasked with managing the repurchased concessions. Up until 2002, 44 authorities and local commissions had been created to manage the water sector.

³³ The LRA was modified by Law of 30/12/1955, decree No. 14522 dated 16/5/1970 and in 1996 by Decree No. 9631 and by Article 7 of L 221/2000

the appendices attached to this Report). Responsibilities such as service provision, project planning and implementation and capital expenditures are scattered amongst various entities, without the proper coordination amongst authorities, hindering efficient performance. Some reforms have been initiated to overcome this overlap of duties; however, they have not been completed, urging the need to provide a distinct description of the roles of all stakeholders in the water sector.

4.2.2.4 Organizational Structure and Employment:

The governance structure of the four new WEs stipulated by the provisions of L 221 is identical, with a few modifications in the operations regulations of the South WE to take into-consideration the special legal structure of the LRA. The latter's governance has differences in view of its older and different legal and administrative history.

The law governing the WEs provide in principle for appointment of its corporate governing body (the six board members) and its executive body (the Chair acting as director general as well). Such appointments are made by decision of the CoM and are governed by public administrative civil service law. All other employments of staff are subject to private labor law and to the special rules stipulated by the decree governing staff rules and regulations.

WEs are currently suffering from a significant shortage in staff, specifically in managerial positions such as the heads of the wastewater and irrigation units. Instead, WEs largely rely on contractor-based staff, which consist of workers performing O&M duties (MoEW, 2010). This is due to budget shortages, which forced WEs to hire a large percentage of their staff as contractors. On the other hand, a majority of the WEs' permanent staff are nearing retirement age and lack strong technical expertise.

Related Main Issues:

Internal organizational gaps and shortcomings of the WEs internal governance and operating rules: the decrees governing the WEs organization and staff structure will require thorough revision to meet the increased requirements and needs of the water sector management, to increase its effectiveness and efficiency, particularly with regards to its autonomy towards political influence and administrative unnecessary controls.

Obstacles and Limitations on employment: The law and administrative regulations and practices, have subjected employments within the WEs to the decision of the MoEW and CoM. Article 21 of the law of salaries grid No. 46/2017 dated 21/8/2017 and Article 80 of the 2019 Budget Law No. 144, have provided to ban the employment in the public administrations and Public Establishments, thus causing many issues in terms of availability of expert staff members within the WEs³⁴. Article 80 is

³⁴ Noting, however, that the Council of Ministers may overrule this ban, in addition to the first category employees, "in the necessary cases of employment that are decided by the Council of Ministers following a feasibility economic and administrative study conducted by the concerned administration, of an investigation done by the Directorate of Studies and Advise of the Public Service Board" as it has also excluded from the ban rule "the procurement of services within the limits of what is decided in the budget of each concerned entity".

currently being reviewed in view of relaxing some of its most stringent provisions affecting public establishments.

4.2.2.5 Financial revenues:

The WEs should be appropriately funded through the resources provided by the WL, through the complex sources of funding (described in the next Chapter 5 of this Report), particularly through the various applicable tariffs.

Related Main Issues: Lack of appropriate financial revenues WEs do not have the proper resource to manage their establishments independently, often operating with yearly financial deficits, and failing to fully cover O&M costs. Although external institutions have had some financial contributions to the WEs, their annual budget is strictly reviewed by relevant ministries for approval, and usually result in the provision of low financial resources. In addition, unpaid customer bills and illegal access to water services have further aggravated these financial deficits. This lack of financial sustainability has rendered WEs unable to perform some of their responsibilities, such as rehabilitating and restoring water networks in designated areas and proper staffing.

4.2.2.6 Oversight and Tutelage:

As independent, autonomous legal persons of public law, the WEs are not subject to the any direct hierarchical authority by any ministry or other authority, but are rather subject to a large number of internal governance controls and external controls and tutelage, exercised by exception based on specific provisions of the LOWS, the WL and its implementation decrees. Such legal provisions are sometimes impacted (and almost de-facto modified) by administrative practices and political influence. The following is a summary of these controls and oversight mechanisms:

Internal control and oversight over the executive authority of the WEs (the Chair) is entrusted to the Board of Directors, operating under the provisions of the LOWS and related implementation decrees.

WEs are all subject to the main external administrative tutelage and control of the MoEW, exercised through the following main mechanism:

- **Tutelage:** which includes that many important decisions of the WEs, imitatively listed by law, are subject to the prior approval of the MoEW before they become effective and enforceable. Many tutelage decisions are linked to financial thresholds that have become very low due to the current sharp devaluation of the Lebanese Lira and require to be updated and modified.
- **Government Representative:** is in fact a MoEW civil servant appointed its Minister to each one of the WEs, to attend its BoD meetings, without having the right to vote. He may have his opinion recorded in the minutes of meeting. The GR exercises several prerogatives detailed by law.

- **The Quality Control Committee:** provided for by Art.6 of the LOWS, established within the MoEW appointed by the CoM upon the recommendation of the Ministers of MoEW and MoF. The decree organizing the QCC has not been issued yet, as provided by Art. 6 of the LOWS.

WEs are subject to other external direct or indirect oversight and controls of the following additional authorities:

- **Ministry of Finance:** many regulatory and implementation decisions require the approval of the MoF. Also, many documents and minutes of meetings should be automatically notified to this ministry.
- **Court of Audit:** which exercises ex-post fact controls based on a system of controls agreed with the Wes; however, in the practice of the Court, many decisions become in practice, equal to prior controls, especially in matters of public procurement.
- **Central Inspection Board.**
- **Civil Service Board:** WEs are not subject to the control of the CSB, except that the latter intervenes to provide its prior approval on the decree governing staff rules and regulations prior to its approval by the WE's Board of Directors and its subsequent approval by the MoEW. Furthermore, these provisions require that the appointment of staff examination committees and controls will have to be appointed by the head of the CSB, in addition to other employment detailed procedures.
- **An External Auditing Firm for each WE:** appointed by each of the WE's Boards of Directors.

Related Main Issues: Weak administrative independence and autonomy of the WEs. Although necessary, the system of administrative oversight and controls of WEs has become, by law and in practice, so complex and heavy, that it limits the effectiveness and efficiency of WEs, which were originally intended to operate as close as possible to a lean firm of industrial and commercial nature as provided by Art. 40 of the WL.

Recommendation: Draft a report analyzing in details the governance of the WEs, both in law and in practice, with a focus on the internal organizational gaps and shortcomings of the WEs internal governance and operating rules, in addition to the obstacles and limitations of their relationships with the various external tutelage and oversight bodies, particularly the MoEW, to conclude with detailed recommendations on how best to improve the effectiveness and efficiency of both internal and external dimensions, in dialogue and collaboration with the representatives of the respective stakeholders³⁵.

³⁵ This recommendation is in line with the Action Plan included in the revised Water Sector Strategy, Annex II E1, ("Priorities and short-term action plan"), namely:

A.1.2. Draft revised WE organizational by-laws, support the approval process and follow-up on their enactment.

A.2. Rationalize the tutelage framework with a view for clear dispatching between operational and regulatory activities

3.2.3. Other Public Establishment and Autonomous Institutions

Other public Establishment play a role in the financing and the execution of water related works and projects, particularly the Council for Development and Reconstruction (CDR), which channels international funding for major water-related projects, including mobilizing financing and implementing projects such as the rehabilitation and construction of water distribution networks and water treatment facilities.

The Lebanese Standards Institution (LIBNOR) for setting the water quality standards.

Other the public institutions, such as the Council of the South and Displaced Fund are also involved regionally for the funding and implementation of projects.

4.2.4. Municipalities and Federations of Municipalities

The municipalities law (Law Decree 118 dated 30 June 1977), provides for a very broad mandate for municipalities and their federations to engage in any actions of public nature or interest within the municipal territory, including, by way of examples, in the water sector.

Thus, the Municipal Council may decide to create all sorts of public interest projects of whichever kind, including water related projects. Article 49 further spells-out the following examples: “swimming pools, sewers and waste management projects (which includes wastewater); Oversee the operations of Establishments and report about them to the competent authorities. Municipalities may also indemnify citizens from any damages caused from any type of catastrophe, including floods. Article 126 includes similar provisions for the federation of municipalities, which explicitly mentions “sewers” as projects which may be decided by its councils.

Municipalities may fund their projects through special taxes on water and wastewater management. Law 60 (12/8/1988) provides for a sewers and walkways tax in the rate of one per-mill of the sales value per square meter of any licensed planned construction. Also, municipalities may levy a wastewater and sewers maintenance tax of 1.5 per-cent of the building’s rental value. They also receive a percentage from VAT earmarked for water management.

Municipalities, and other public law institutions (such as other Public Establishments or the Council of the South) may enter into agreements with the MoEW and WEs, to provide for the sustainable management and development of the water public service, under the conditions further defined by Article 58 WL.

Given that Article 56 WL has entrusted WEs with the management of the Water Public Service according to the 2020 WL and 2000 WEL, and given that Articles 61 to 74 provide for the exclusivity of Water Public Services (for drinking water, wastewater and irrigation) the question arises if such provisions are deemed to have impliedly modified the Municipalities Law to the effect of excluding the municipalities and their federations from their rights to build and/or operate water related projects, without any prior agreement with WEs under Article 58 WL and also, if they may still levy sewage related tax.

In favor of the argument of the non-modification: one could also argue that municipalities and their federations are part of the legal system of decentralization, whereby they constitute separate legal persons from the state, operating under the general principle of *Subsidiarity*. This would practically mean that the Water Public Services, as defined in the WL, could be

exercised by the decentralized entities to ensure the continuity of the public service, in the event where such service is not be performed by the State or the WEs.

In favor of the argument of implied modification: one could argue that the legislator's intent was to establish exclusivity for the WEs within the realm of its very broad jurisdiction for the management of the three Water Public Services of drinking water, wastewater and irrigation. Also, in view of a jurisdictional contradiction between two laws, the WL is deemed to supersede the Municipalities Law, based on Article 103 WL and the general legal interpretational rules: (i) because of its special nature (in the water field) and (ii) because it was enacted later than the Municipalities Law.

Thereupon, we are of the opinion of the latter set of arguments, concluding that municipalities and their federations no longer may build and/or operate any water project, unless by agreement with the WEs. Also, and whereas such services may no more be rendered locally, municipalities may no more levy sewage related tax.

Such opinion, expressed briefly here, may be further elaborated in the report suggested in the recommendation above. It can also be the further validated through a request for opinion addressed by the MoEW to the "Department of Legislation and Advice" within the Ministry of Justice.

Recommendation: the MoEW to request a formal opinion from the Department of Legislation and Advice within the MoJ, as to whether or not municipalities and their federations: (i) may still build and/or operate water related projects without a formal agreement with WEs; and (ii) may still levy sewage tax.

4.3 Private Sector Actors

4.3.2 Water Committees

Historically, local water committees played a role in the water management, particularly of irrigation water. However, the WL which has provided for the exclusivity of management granted to WEs, also provided that the latter shall replace, and therefore dissolve, "all committees and potable water projects prior to the publication of law 221/2000 which have not be replaced yet, within a year from its publication.

4.3.3 Associations

The WL (in articles 75, 76 and 77) has regulated the process through which non-profit Irrigation Water Users Associations ("Water Associations") can be incorporated as well as their object and role. Not many of such Water Associations exist in practice.

Strangely, Article 75 provides that Water Associations can be established by CoM Decrees upon the recommendation of the Minister, itself based on the request of the WEs. 65% of Its members must be beneficiaries of a certain water source, who represent at least 51% of the benefitting geographical region.

Article 76 and 77 WL provides for the following main object and activities of the Water Associations that revolve around functions related to the operation, maintenance and preservation of the sub-distribution grid, through an agreement with the WEs within its own area.

The WL also entrusts environmental associations and other private sector institutions with the role of informing and educating citizen about the right to water and general water-related education (Art. 101); in addition to being a source of information gathering (Art. 99).

Recommendation: Issue a decree in CoM, the details applicable to the establishment of water users' associations (WL Art 75 Parag 5).

4.3.4 Private Firms and Companies

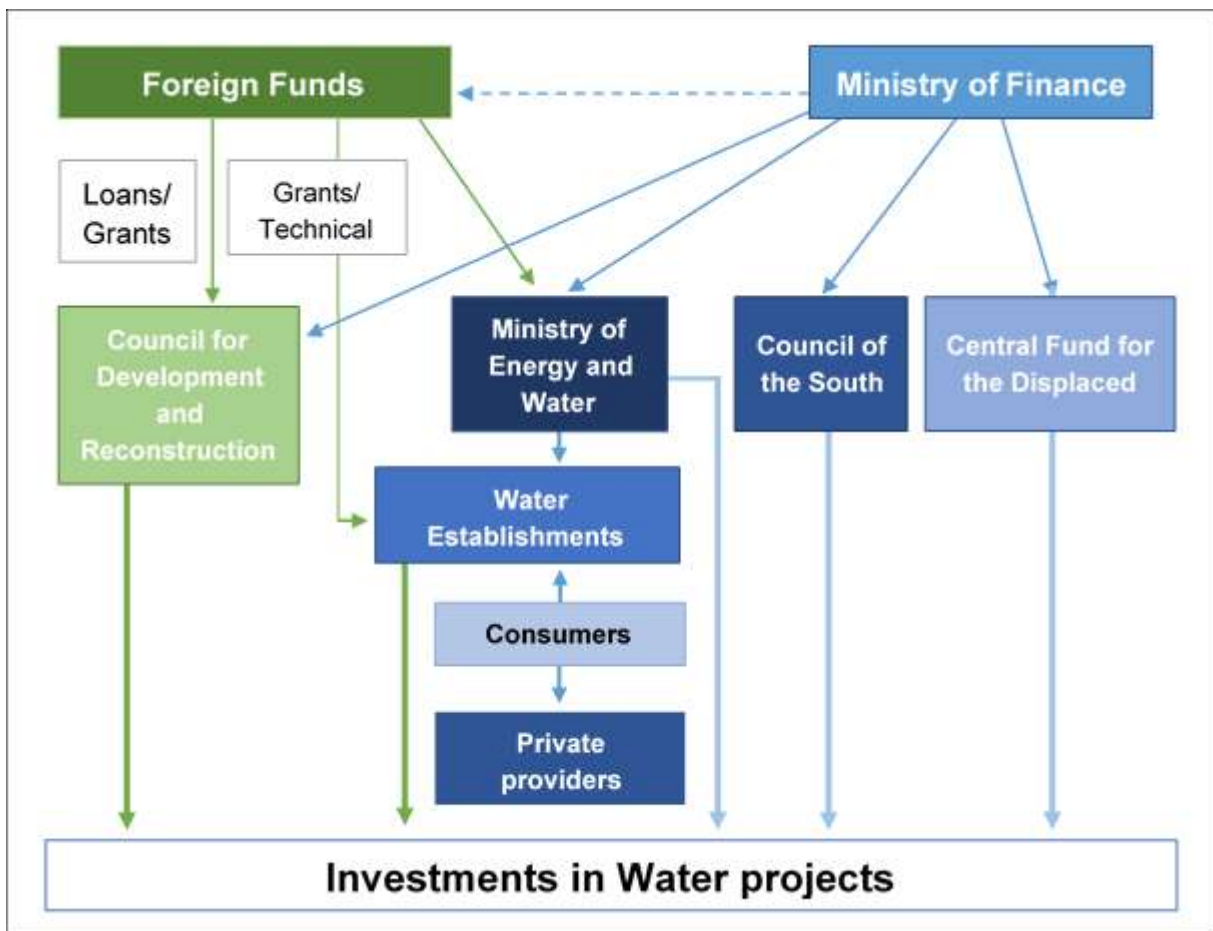
Articles 59 and 60 WL emphasize and regulate the collaborations between the public and private sectors through agreements for “common projects” that may be entered with private companies and firms based on Law No. 48 dated 7/9/2017 (the so-called Public Private Partnership Law). The definitional section of “common Projects” in Art. 4, provides details of these projects that the private sector may share in the funding and management of the following activities, at least: “design, build, construction, development, restoring, equipping, maintenance, rehabilitation and operation”.

All existing contractual arrangements with WEs are considered to remain in force until new Common Project arrangements are set in place.

All such agreements must respect the General Water Master Plan, the Water Basins Master Plans and may not contravene the object of management of the water public service, including the rights and competence of the WEs.

5 FINANCIAL REVENUES AND ACCOUNTING PROVISIONS

The funding of the water sector, particularly for the development of the required installations, is generated from a variety of sources, both international and domestic, generated from tariffs paid by the users and beneficiaries, or channeled to the sector through a number of established public institutions. The following figure summarizes the channeling of this funding:



5.1 Financial Revenues

Article 2 WL provides that access to necessary water, including sanitation shall be provided “... *in exchange for the payment of water usage subscription fees*”.

Article 41 WL also provides for the basic principle that WEs must achieve financial balance subscription fees and revenues paid by the beneficiaries. The WL as well as practice has provided for a variety of such revenues as well as rules for accounting and financial transparency.

Given the current economic and financial crisis, it has become crucial for WEs to restructure and revise their tariffs according to the new provisions of the WL.

5.1.1. Tariffs

5.1.1.1. General List of tariffs:

Article 46 provides for the list of tariffs which may be established as follows:

- Potable water service tariffs.
- Sewage service tariffs.
- Irrigation service tariffs.
- Water resource preservation and water system protection tariffs.
- Tariffs resulting from pollution.
- Touristic, industrial, fishing, fish farming, and power generation investment tariffs.

5.1.1.2. Special Conditions for Selected Tariffs:

Potable Water Tariffs: Article 47 provides for specific conditions for the potable water tariffs and subscriptions which are due by the beneficiaries of the public water grid. The public potable water grid subscription tariffs shall be determined based on the volume of water consumed by the subscriber as determined by water counters.

Sewage Tariffs: Article 48 provides for specific terms for Sewage Tariffs, which should include the collective and non-collective sewage tariffs

Irrigation Tariffs: Article 49 provides for specific conditions for the Irrigation tariffs, due upon “all beneficiaries or real estate owners connected to the public irrigation grid”, “determined based on the irrigated area or the volume of water consumed, taking into account the quality of the irrigated plants”.

5.1.1.3. Decision Making:

Article 45 WL provides that the tariffs shall be adopted by the WEs Board of Directors with the approval of the MoEW, including the tariffs of connection to the public grid within the area of the WEs. Such authority granted to the MoEW is equal to an ex-post / a-priori control, and has practically limited the autonomy of WEs, financial independence and capacity to meet the great responsibilities and expectations in the management of the water sector. This decision-making process coupled with the method for determining the tariffs, has practically granted to the MoEW a high degree of discretion, which has furthermore become, de-facto, entangled with socio-political considerations

5.1.1.4. Method for Determining the Tariffs:

Article 42 provides for the method that should be used in determining the tariffs, “after taking into consideration the WE’s financial balance and the socioeconomic situation of the beneficiaries, and these tariffs follow an ascending curve based on the amount of consumption. Until the procedures leading to the application of the consumption size- based tariff, lump-sum tariffs shall be applied in the areas not yet equipped with counters.

Recommendation: Set the tariffs for service against water services (WL Art. 45).

5.1.2. Indemnities

5.1.2.1. Indemnities for the preservation of water resources and the protection of water systems

Although the WL identifies it as a fee, Article 50 establishes an amount akin to an indemnity, that is due not against a service, but in prevention "... should the need arise ..." allocated to finance the cost expected to be paid by the WEs to "...preserve the water resource and to protect the water systems".

This payment can be imposed upon "natural or legal persons benefitting from water, based on the irrigated area or the number of cubic meters drawn, consumed or earmarked for being provided.

The WEs shall determine the subject beneficiaries, the concerned activities, and the due tariffs/indemnities, based on the economic, social, cultural, and environmental importance of these activities, revenues, and profits of any type

The last clause of Article 50 WL provides that The WEs shall collect these tariffs/indemnities "regardless of the identity of the beneficiary", which seem to be in contradiction with the above preceding above-mentioned clause. Practice and further analysis will have to settle this matter when Article will be implemented.

***Recommendation:** Set by decisions of all WEs. the tariffs/indemnities for the preservation of water resources and the protection of water systems (WL Art. 45).*

5.1.2.2. Polluter Pays Indemnity

Article 51 of the WL has introduced this new polluter-pays indemnity, rightly qualified as such, while also wrongly qualified in Article 46 as a fee-for-service.

This indemnity can be applied by the WEs to "All natural and legal persons, whose activities lead to the pollution of environmental and water systems that can neither be mitigated nor subject to prior treatment, and whose level of pollution does not exceed the nationally and internationally accepted standards". Note: the underlined words "does not exceed" must have been mistakenly typed, as it should read "exceeds" to provide the appropriate meaning and effect of the clause.

The indemnity shall be determined by decree upon the recommendation of the Minister. We believe that this clause should be reinterpreted to mean, not the indemnity in each and every one of the cases, but as a system of indemnity, that may include a scale for instance and a procedure for its implementation; otherwise, the whole system would be crippled by ineffectiveness.

The indemnity "shall be commensurate to the gravity of the pollution and the extent of damage sustained by the water environment.

The indemnity may be decreased considering the measures taken by the damaging party to correct it.

The payment of the polluter-pays indemnity is considered by the WL as not hindering criminal or civil liability of the polluter if his actions were to cause the damages or constitute a crime.

Recommendation: set by Decree the indemnity due against damages caused by pollution (WL Art. 51 Parag. 1).

5.1.3. Public Notices About Tariffs

Article 54 WL proves that the water beneficiaries shall be publicly notified of the new tariffs, the justifications for their amendment, and the date they enter into force. The issued receipts must determine the old and new tariffs after the amendment thereof.

5.1.4. State Contributions

Article 43 of the WL stipulates that, notwithstanding the provisions of articles 40 and 41 that provide for the economic autonomy of the WEs, "... the Lebanese state may provide financial contributions to the WEs for the "renewal, renovation, expansion and operational costs of its projects.

Such state contribution may indeed be provided through the national budget or through any other means.

5.1.5. International Funding and Assistance

Many bilateral or multilateral international agreements have been ratified by Lebanon for grants and loans³⁶, to subsidize the very large needs of the water sector in infra-structural development as well as in capacity building and governance reforms. The water sector has thus been supported by many international donor and lending institutions, including by the CEDRE Conference, which has been the political trigger and incentive for the voting of the WL itself, as stated in its own rationale.

It must be noted that such international agreements may be entered between the international party and any one of the Lebanese state represented by the MoEW (or any other concerned ministry or public establishments), or any other public or private entity entrusted with the implementation of any project, including but not limited to the WEs, CDR and Municipalities.

These agreements need to be assessed thoroughly from a legal and contractual perspectives, to recommend any action that should eventually be taken (e.g. extend contractual terms, ratify agreements signed but not yet authorized by parliament, meet conditions that are not met yet).

Recommendation: The MoEW to compile, in collaboration with the CDR, all current international funding agreements, in order to (i) assess their current legal status, and (ii) better map, plan and match between the current and future needs and the available and potential future resources.

³⁶ Review the full list of the international funding agreements in the special volume published in the draft Water Code.

5.2 Budgeting, Accounting and Receipts

5.2.2 Budgeting and Accounting

Article 44 of the WL provides for a system of budgeting and accounting that has to be applied by the WEs, to be further detailed and enacted through an accounting plan that must be drawn up for each service within the WEs.

The budget and accounts of the WEs must show in detail, in the manner of the distribution of the operational, investment, and maintenance works of each of the drinking water, sewage, and agricultural irrigation.

Also, the funds and tariffs generated by the operational works mentioned above may not be used to finance the investment and maintenance of precipitation collection facilities not subject to the WE's authority.

Recommendation: Issue by decisions of all WEs. The special accounting plan for each service the decree in CoM regulating the issuance of licenses (WL Art. 44 Parag. 2).

5.2.3 Receipts

Articles 52, 53 and 54 WL provide for several special rules for the issuance of receipts by WEs. Thus:

- The receipts must clearly show the tariffs of each utility.
- The WEs may issue several receipts annually, and each party benefitting from the water of this utility has the choice to pay the value of the due annual subscriptions by several instalments.
- The issued receipts must determine the old and new tariffs when the latter are modified.

6 DATA COMPILATION AND PLANNING

6.1 Data Compilation

The Water Law provides for data compilation and the management thereof through newly established registers and sharing of information systems, that are intended to make setting water strategies and planning of the water sector and overseeing its management more effective.

6.1.1 The Water Register:

Article 13 WL establishes and organizes the Water Register, which is defined in Article 4 as “a non-binding administrative instrument, drawn up and periodically updated by the MoEW. It shall record “the acquired rights provided for in article 12 WL and of the public water inventory which makes up the water ecosystem of the Lebanese State”.

A Decree must provide for the details of the organization and management of the Register.

All relevant public and private administrations and institutions which have records and data relevant to water must provide the Register with such available data and information, i.e. the secretariat of the real estate register, the directorate general of urban planning, municipalities, all public administrations, public and private institutions.

6.1.2 Register of Off-Shore Water Sources

This register is provided by Article 84 *Parag Fifth-1* and is meant to identify, by decree upon the recommendations of both the MoEW and the MoE the sources of off-shore springs.

6.1.3 Data Collection and documentation:

Article 99 WL provides for a system of data collection and documentation by the MoEW “of all information and data available in the public and private sectors, international organizations, and non-governmental associations and organizations working in the area of water protection³⁷, related to the water ecosystems, and the management of public services charged with the management of drinking water services and its piping, the wastewater grid, and the rainwater and irrigation water grid”.

6.1.4 Register of Water Related Works

Article 28 WL provides for the establishment at the MoEW of a water-related works register مدونة which shall record:

- All water equipment, facilities, operations and works provided for in article 27 WL.

³⁷ The question is asked about the reason why the source of information was limited by the WL to CSOs dealing with “water protection”. The practice of the MoEW should use this Article to collect and document water related data from any available source.

- The nature of restrictions to which these works are subject to, taking into consideration the effects which may result on the quality or flow of water and the water ecosystems.
- The accurate specific levels applied to areas of drought, as identified in the General Water Masterplan.

This register is meant to have a dual function: (i) collecting and compiling the related data; and (ii) regulating the preventive and protective measures of the ecosystem.

The register of water-related works shall be organized by decree on CoM upon the Minister's recommendation.

Recommendations:

1. *Issue the decree regulating the organization and management of the water registry (WL Art. 13 Parag. 2).*
2. *Issue the decree identifying the sources of off-shore springs (WL Art. 84 Parag Fifth-1).*
3. *Issue the decree regulating the register of Water related Works مَدُونَة organizing the information and rules applicable to the water equipment, facilities, operations and works provided for in article 27 (WL Art. 28 Parag.*

6.1.5 Register of Irrigation Services Delivered by WEs

Article 74 WL provides that the WEs must keep a register that shows the names of the beneficiaries, the irrigated areas, the adopted plantations, and the drawn volumes, which is continually updated.

Recommendation: WEs to develop, keep and update the irrigation register provided by article 74.

6.2 Planning Water Resources and Management

The Water Law made an important space related to setting policies and strategies for the planning and management of the water sector. Many provisions were dedicated to various levels of policies and strategies at national, regional, and water-basin levels. The responsibilities for setting these policies and strategies involved a big number of actors; the prominent role of the MoEW is emphasized, however marred by the drafting negotiations that tempted to limit its role by collegial or collaborative mandated measures.

Thus Article 6 WL entrust the MoEW with the general mandate of "adopting a sustainable water policy to preserve the Lebanese State's water resources; then Article 16 provides that the water sustainable management shall be embodied into the General Water Masterplan, which is adopted by the Council of Minister following a complex process.

Then the WL involves the WEs with the MoEW "each within its own jurisdiction determined through Law No. 221/2000, to provide water services to all users for all types of usage, all based on the

policy principles provided for in Article 6 and in the National Water Masterplan and Water Basins Masterplans.

We shall review hereafter the decision-making process for each strategy planning principles, policies and instrument provided by the WL.

6.2.5 Legal Principles of Sustainable Water Management Policies

The WL establishes principles that constitute a mandated legal framework for the policies, strategies, and decisions to be decided by all authorities involved in the water sector.

Article 6 starts with setting a general goal to be achieved by the MoEW and the WEs to “... *provide water services to all users for all types of usage*”. “In order to achieve that goal”, Article 6 of the WL goes-on to provide for a set of priorities and general principles that could, together, be qualified as the overall principle of Sustainable Water Management. These priorities and principles are the following:

- a- *Prioritize the supply of potable water to citizens.*
- b- *Achieve sewage for wastewater.*
- c- *Meet the necessary water requirements for agriculture, livestock-raising, hunting, fishing and fish farming in internal waters, extracting mineral water, for industrial purposes, electricity generation, transportation, tourism, for the protection of water, land, and natural sites and views, and all human activities which are legally practiced.*
- d- *Benefit, where possible, from non-traditional water sources: desalination, treated water produced from sewage treatment plants, and others.*
- e- *Control floods, drought, and pollution emergencies or chronic pollution in cooperation with the competent ministries and departments, and in general, forecast the damages which may affect public health and safety and [define the] means for prevention. “*

Within the logical framework and drafting style of this sequence of water use and actions for the purpose of water planning and management, one may conclude that:

- sections (a – b – c) which provide for the various water uses, are listed in order of descending priority.
- Section (d) sets a general planning rule encouraging authorities to benefit from non-traditional sources of water.
- Section (e) sets a general principle related to the prevention and fight of water depletion.

6.2.6 National Policies and Strategies

The WL does provide for the setting of policies and strategies by the State in few of its provisions, that would both require some analysis and discussion:

In its article 15 – 1, it had provided that the NWC shall be in charge of: *“the contribution in setting the goals and general guidance principles for a public and sustainable national policy for the water sector”*. However, this section was annulled by the Constitutional Council on the basis that the NWC may not be validly granted but advisory authority to the exclusion of any decision-making authority.

Article 6 WL entrust the MoEW with the general mandate of “adopting a sustainable water policy to preserve the Lebanese State’s water resources; then Article 16 provides that the water sustainable management shall be embodied into the General Water Masterplan, which is adopted by the Council of Minister following a complex process.

In practice, and before the enactment of the WL, the CoM had enacted by several strategy documents:

- [The ten-year plan for the Integrated Water Resource Management \(IWRM\)](#) was developed by the MoEW and approved by the CoM in several decisions in the years 2000 and 2003³⁸. This plan was incorporated into a multi-year plan of the 2001 Budget Law.
- [The National Strategy for the Wastewater Sector \(NSWS\)](#) after the adoption of the NWSS by CoM resolution 35 on October 17, 2012.
- [The National Water Sector Strategy \(NWSS\)](#) on March 9, 2012 considered as a major document for the reform of the sector. This Strategy is currently subject to a thoroughly updated draft version, that was prepared for the CEDRE Conference in 2019 (‘Updated NWSS’). The latest update of the NWSS is dated 2020. This strategy document is of the utmost importance for the development of the country’s water sector and includes multiple elements of: general policies, strategy, master-plan and implementation action plan, including an updated strategy for the Wastewater Sector and a list of projects with their details. The following is the general table of content of the 2020 updated draft NWSS:

VOLUME I : EXECUTIVE SUMMARY

VOLUME II : WATER SECTOR GOVERNANCE

Section II A Strategy pillar – SDG

Section II B Current legal and Institutional frameworks

Section II C Human Resources of the WEs

Section II D Water tariff analysis

Section II E Strategic action - Recommendations

VOLUME III : WATER RESOURCES MANAGEMENT

Section III A Available water resources - Impact of climate change

Section III B Surface water resources management

³⁸ CoM resolutions 14/99 and 12/2000 and 18/2003 and 3/2003)

Section III C Groundwater resources management

Section III D Guidelines for monitoring water quality

Section III E Wastewater and sludge management

Section III F Strategic Environmental and Social Assessment Annexes

VOLUME IV : WATER SECTOR CURRENT SITUATION

Section IV A Tapped water resources and wastewater facilities

Section IV B Demand criteria, assumptions, and water balance

Section IV C Appendices to Volume IV

VOLUME V : PROPOSED PROJECTS

Section V A Criteria for projects and priorities selection

Section V B Proposed Projects

Section V C Appendices to Proposed Projects

VOLUME VI : DRAWING

The adoption of the 2020 draft updated NWSS, not formally provided by the WL and preceding its enactment can: (i) either be enacted based on the general principle of constitutional law establishing the authority of the Council of Ministers to set policies and strategies, upon the recommendation of the MoEW as the competent ministry, or (ii) be folded into the General Water Master Plan, which is provided to by many articles of the WL and made a mandatory document that must be respected and upheld and all stakeholders of the water sector.

6.2.7 General Water Master Plan

The Water Law provides in Article 16-2 for the General Water Master Plan (GWMP) as an instrument to achieve the principle of sustainable water management, to be applied over the entire Lebanese territory, “and includes coastal waters, water basin grids within the perimeter of the hydrographic basin”³⁹.

For the planning and management of the water sector, the WL provides for both a geographic division of the territory as well an administrative division⁴⁰. It states that “the Republic of Lebanon shall be divided into water or administrative basins and geographic areas, and the water resources of each region shall be evaluated, and plans shall be set for their development and use as existing units, and shall be organized on the basis of the principle of the integration of the management of water

³⁹ The drafting of the WL was apparently influenced in that respect by French law, which adopts the Schémas directeurs d'aménagement et de gestion des eaux (SDAGE) as well as the 2000 European “Directive cadre sur l'eau (DCE).

⁴⁰ This legislative choice is consecrating a prior administrative legal reality, which consist of WEs organized on the one hand over a water basin delineation (the Litani River WE) and on the other hand over geographic delineations (for Beirut and Mount Lebanon, the North, the South and the Bequaa).

resources in accordance with the trends of social and economic development and the preservation of the environment”.

The GWMP, once issued by the CoM, becomes mandatory for all ministries, public administrations, administrative and investment public institutions.

Several articles provide for the details of its drafting and adoption (Art. 17), content (Art.18), respect for other existing plans and rights (Art. 19) and evaluation (Art. 20).

The drafting and adoption process and related provisions of the WL were the ones that were the most bitterly debated. Article 17 ultimately settled for a complex process through which the GWMP is developed and drafted (i) by the MoEW, (ii) in collaboration with the WEs, (ii) in coordination with relevant ministries (of environment, agriculture, public works and industry); (iii) studied by the National Water Council, and then (iv) finally issued by Decree in Council of Minister.

***Recommendation:** Issue the General Water Master Plan by CoM Decree (WL Art. 17) based on a draft prepared by the MoEW in collaboration with the WEs and the ministries of Environment, Agriculture, Public Works and Industry; also following debate by the NWC. Consider including in the GWMP all the elements developed into the NWSS and the NSWS.*

6.2.8 Water Basins Strategies

A key development incorporated in the Water Law is the emphasis put on water basin management and the water basins plans, provided by Articles 21, 22 and 23, which is considered as an integral part of the GWMP. These plans are developed and drafted by the relevant WE and ratified by the MoEW, based on a system established by the CoM upon the recommendation of the MoEW.

The whole process is rather circumvolved with responsibilities intertwined between the CoM, the MoEW and the relevant WEs. Therefore, the details for the implementation of Article 6 was left to be determined by Decree in CoM upon the recommendation of the MoEW Minister.

The process starts with the MoEW setting a system to rank the basins and the water regions considering its water conditions, and the goal of this system is to implement one type of procedural approach to similar basins. Each basin or region shall have a water plan set by the competent WE, compatible with the GWMP.

Recommendations:

1 - Regulate the procedures through which the Water Basin Master Plans are developed by CoM Decree upon the recommendation of the MoEW (WL Art. 21).

2 – Regulate the system to classify the basins and water regions by MoEW Decision (WL Art. 22).

3 – Issue the individual basins and water regions action plans by decision of the different WEs (WL Art. 23).

6.2.9 Other Strategies

Art. 19 WL provides that, when implementing the GWMP, each concerned administration must “take into account all the [existing] plans, programs, basin plans, granted licenses and permits, urban planning, population percentages in the regions, and the position of ranked institutions. In general, it must take into account all the former administrative decisions relevant to water”.

This provision of the law may cause implementation issues as it may undermine the GWMP itself with countless administrative and legal situations of varying order of obligation and precedence. Such issue must compel planners and drafter of the GWMP and well as for the WBMP to take all such rights and issues into consideration at the planning and drafting phases and not only at the phase of implementation as provided in the law.

Also the term used by the law “take into consideration” مراعاة seems to indicate that the implementing administration should reconcile eventual discrepancies between preexisting plans and rights and those provided by the GWMP. However, other plans and rights are mandatory by law and should be upheld systematically rather than simply taken into consideration. This is the case, for instance, of the National Master Plan for Land Use, which is equally established by the land planning law to be mandatory to all administrative authorities⁴¹.

⁴¹ The National Master Plan for Land Use is enacted by Decree No. 2366 dated 2/7/2009 (based on Law Decree No. 69 dated 9/9/1983 relative to Urban Planning).

7 CONTROL AND PROTECTION OF WATER AND ECO-SYSTEMS

The Water Law provides for a set of provisions related to the control and protection of water and eco-systems (in Articles 24 through 32) in addition to the provisions that remain in force of Law No. 221 dated May 29, 2000 and its amendments, and the provisions of articles 1 and 2 of Decision No. 320 dated May 26, 1926; and Law on the protection of the environment No. 444/2002, particularly articles 21 to 48. The complete set of such applicable rule will clearly appear in the Water Code when all such provisions are brought together. However, we shall focus hereinafter on the special provisions of the WL.

7.1 Setting Quality Standards and Providing for Quality Control

7.1.1 Setting Water Quality Standards

The Water Law (Art. 24) has provided for the enactment of quality standards and their related measures to protect water and its related ecosystem, including specifically the various usages of water and their impact on the aquatic ecosystem. Such regulations are meant as a practical measure to ensure a sustainable management of water and ecosystems.

Such standards are meant to be issued by LIBNOR, the Lebanese standard setting public institution, and to complement the provisions set into previous laws (Law No. 221 dated 29 May 2000 and article 1 and 2 of decision No. 320 dated 26 May 1926).

Recommendation: Issue the Water Quality Standards by decision of LIBNOR with the participation of the MoEW and MoE (WL Art. 24).

7.1.2 Organizing Water Quality Control

Article 26 WL organized the quality control of water through the intervention of both the MoEW and the WEs:

“1- The ministry shall provide quality control for surface, ground, coastal water, and fountains, including springs and rivers, and exploited and neglected explorations. The WEs shall commit to the control obligations mentioned in this paragraph when they affect the water sources invested by said institutions.

2 - The ministry, and in cooperation with the WEs shall undertake the technical control of the equipment, facilities, and operations to check the quality of the extracted water, controlling water ecosystems, and protecting the same from pollution.”

Also, Article 31 entrusts the MoEW and the WEs with the duty to “control the quality of water resources, in order guarantee its quality for use and control its quality during transportation, distribution and use”. This last sentence seems to target the business of private water transport of water through cisterns.

7.1 Preventive Measures

7.2.1. Prevention of Water Pollution

Article 30 WL provides for guidance to WEs related to the preservation of water quality, while “determining the rules of equitable distribution of water amongst the different categories of beneficiaries, while preserving the quality of water”. Article 30 WL further provides that WEs “must prevent any kind of direct or indirect drainage and leakage of sewage water or polluted water and prevent any type of work that shall lead to the change in the quality of water or the water ecosystems, and impose measures necessary to the preservation of the quality of water.

Recommendation: Issue by decisions of the WEs the rules applicable to the equitable distribution of water to the various users (WL Art. 30).

7.2.2 Obligations of Facility Owners to Prevent Water Pollution

Article 32 WL further reinforces the liability of facility owners to prevent water pollution through establishing the obligation to treat all types of wastes from their activities before they are disposed of, dumped, unloaded or leaked in river courses and other surface or underground water. The treatment must be done “in accordance with the formalities stipulated in the applicable laws under the penalty of withdrawing the licenses granted to them”.

The Industrial and ranked institution owners, industrial, commercial, agricultural, and sanitary facility owners established before this law was published must submit applications to the competent authorities in order to settle the situations of their facilities in accordance with its provisions under the penalty of withdrawing their licenses. within six months of the date of the entry into-force of the WL (i.e 22/10/2020).

7.3 Protective Measures

7.3.2 Protection of Water Resources

Article 25 WL entrusts the MoEW and the WEs with the responsibility to protect water resources “from pollution, control emission standards and pollution sources, set the formalities and procedures for control on equipment belonging to the water facility, prevent activities that may lead to the pollution or the deterioration of the quality of water, and combat emergency pollution situations”.

The MoEW and the WEs shall also implement all or some of the following administrative measures against the person causing the damage:

“a- Banning a specific activity which causes grave damages to the water ecosystems or to ban the continuation of said activity.

b- Implementing reforms such as removing pollution and maintaining the locations on the expense of the person causing the damage.

C - Imposing administrative and technical obligations and fines.

D - All measures aiming for prevention or limitation of all damages to the water ecosystems.”

7.2.2. Controlling Works and Operations

Article 27 WL provides that the equipment, facilities, operations, and works which are completed by any natural or legal person belonging to either the public or private sector, are subject to the control system, and which leads to:

- 1- Extraction of surface, ground, or coastal water, or fountain water, and returning the same or not to its source.
- 2- The amendment of the level or method of water flow.
- 3- Emptying, flowing, reduction, or direct or indirect chronic or circumstantial leakage which may lead to effects on water or the water ecosystems, even if it does not lead to pollution in the water ecosystem.
- 4- Extracting groundwater.
- 5- Cleaning, deepening, levelling, or organizing temporary or permanent water courses.

8 PROTECTION OF WATER RESOURCES

8.1. Principle of Citizen Participation in the protection

Article 80 – 1 WL provides for the obligation established upon “each individual [to] actively contribute to the preservation and protection of water in all the Lebanese territories, as well as the water ecosystems and water, and to notify the competent authorities of all deficiencies and damages it may suffer”.

Also Article 39 WL provides for a duty put on each person to notify the competent authorities when they come to know of an event that forms a risk to public safety and to the quality of water, its distribution, and its preservation, or the Lebanese water and fish resources.

Also, “All persons who have caused any action that damages the water quality, must, and as soon of their knowledge of said event, take the initiative to apply all the appropriate measures to end the risk or the damages affecting the water ecosystem and to remedy the same”.

Article 83 WL establishes an obligation for “the owner of a real estate near a river bank [to] ensure the good care for the river banks and the preservation of plant and animal life within the respect of water ecosystems

8.2. Public Responsibility for the protection

Section 2 of Article 80 confirms the responsibility of public authorities for the protection of water resources, as follows: “The public administrations, and the ministry, the ministry of finance, and the WEs and the governors in particular, each within its powers, ensure the protection of water and water ecosystems, in accordance with the legal provisions in force”.

Article 81 establishes the general principle that the protection of the water system is an intrinsic element of the water management public service.

Article 82 further defines the state’s general obligations as follows:

- 1- The competent public administrations shall be charged of the protection of the public water utility and may ensure the works and operations related to the same by virtue of agreements or contracts.
- 2- The competent public administrations, those in contract with the same, and those benefitting from the rights from the public water utility, may provide the maintenance of the water medium, and protect the national plant, animal, and marine resources. The guarantees the unrestricted flow of water, the limitation of its pollution, and the protection of facilities related to the same

8.3. Protection of Water Collection Sites

Article 84 WL provided for extended provisions related to the protection of water collection sites in five main sections:

First: The Scope of Protection

Second: the regime of the protected areas

Third: Protection of the Natural and Cultural Water Resources

Fourth: Cultural Water Resources

Fifth: The protection of coastal water sources

Recommendation: *Issue by decree upon recommendation of MoEW and MoE the details for the implementation of Article 84 WL related to the protection of water collections sites, in addition to the details related to the allocation of spring water to supply the inhabitants or other usages (WL Art. 84 – Fifth - 1).*

Recommendation: Determine the perimeter of protection for water collection by decisions of the minister and/or all the ministers concerned within the framework of their respective competencies (WL Art. 84 - First).

9 PREVENTION AND MITIGATION OF NATURAL HAZARDS

It is worthwhile noting that the provisions of the Water Law on the issues of prevention and mitigation of natural hazards should be brought into the context of the laws and regulations applicable in the context of urban planning and construction law, as they are regulated and controlled by the Urban Planning Board.

9.1 Prevention of Floods

Article 85 WL provides for general provisions applicable to the prevention of floods as follows:

“Taking into consideration the conditions and provisions of sustainable water management, the MoEW Minister shall take the appropriate precautionary measures to limit floods and the damages resulting therefrom, in areas exposed to risks of flooding and floods, as determined in the GWMP”.

Article 86 WL provides for special provisions applicable to the *“the areas in which there is a risk of flooding determined in the GWMP, the following shall be determined by Decree upon the recommendation of the Minister and the ministers of (public works and transportation, environment, and agriculture):*

a- Geographical locations in which all constructions, works, arrangements, or operations may be banned. Should the need arise, to subject the works which may be conducted, without putting the inhabitants at risk, to certain rules.

b- Geographical areas in which all constructions, works, arrangements, or activities which may increase the risk of flooding or its damaging consequences may be regulated or banned should the need arise.

2- The operations necessary for these provisions or rules shall be undertaken by the owners, investors, or beneficiaries.

3- The restrictions relevant to the use of the land resulting from the provisions of this article shall form public benefit usufructs.

Recommendation: Issue the decree providing for the rules and regulations applicable for the prevention of floods (WL Art. 86 Parag. 1)

9.2 Prevention of Water Shortage

Article 87 WL sets the principles for the prevention of water shortages as follows:

1- In the regions suffering from water deficit determined in the public water guidance plan, the ministry shall implement the required administrative procedures which guarantee the regulation and orientation of water usage, while preserving a sufficient average in the water courses to guarantee the ecosystem balance if possible.

2- Meeting domestic water needs is considered a priority for inhabitants, followed by irrigation requirements, in regions suffering from water deficit determined in the public water guidance plan.

3- Non-traditional water may be used to cover the deficit such that it meets sanitary standards.

Also, Article 88 WL provides for a set of practical preventive measures as follows:

1- The minister shall adopt the measures necessary to ensure a sustainable management of water through a decision based on the GWMP or upon the suggestion of the WEs.

2- If a water deficit is proven, the minister may impose certain measures on some categories of water usage which may include the temporary suspension of rights for water or to decrease the volume of water object of these rights by virtue of a decision.

3- The adopted measures shall be appropriate to the situation of the crisis, and the following shall be determined by virtue thereof:

a- The conditions of providing priority services.

b- The usages subject to a ban, and those subject to rules, as well as the deadlines and minutes of the application of said ban or rules.

c- The formalities of distributing water upon and amongst beneficiaries.

d- Should the need arise, the conditions of transferring water between basins.

4- In exceptional cases, special measures may be imposed by virtue of a decree issued based on the minister's suggestion.

Recommendation: Issue the ministerial decision to guarantee the sustainable management of water (WL Art. 88 Parag. 1 and Art. 87).

10 SPECIAL PROVISIONS FOR WATER SECTORS MANAGEMENT

The WL provides for general rules and regulations governing the provision of services by the WEs in three water sectors, namely drinking water, irrigation water and wastewater. Other sectors are not regulated appropriately.

These WL provisions are completed by other laws and regulations that cover the same subjects and sectors, namely:

- Decrees related to the “Operating Regulations of WEs”, in quite similar wording, are already issued to organize the details of the relationship of WEs (within the limits of each one’s geographic jurisdiction), with beneficiaries and usufruct rights owners in the delivery of services related to all three sectors of drinking water, irrigation water and wastewater management (“the WE-OR”)⁴². The terms and conditions of these decrees are quite similar between the four WEs, except for the Litani River Authority, different for many historic and legal reasons⁴³.
- In the sector of mineral and bottled water, such operations are regulated by Law Decree No. 108 dated 16/9/193 related to the “Organization and operation of water and refreshments filled in containers”; and Law No. 210 dated 3/3/2012 related to the “Treatment, filtering, filling and sale of drinking water”; (“the Bottled Water Law”).
- In the sector of irrigation, such operations are regulated by the Ottoman law.

10.1 Drinking Water

The provision of drinking or potable water is the first and highest priority set by the WL. It is mostly provided for through the services of the WEs. However, mineral, or bottled water, very prevalent on the Lebanese market, is provided by private companies under extensive regulation. The private transport of water, very prevalent as well, is not regulated at all.

10.1.1 Public Procurement of Water

Quality: Article 61 WL stresses on the primary value and objective of the distributed water quality, which “must be safe to drink, regardless of the manner of the management of the utility”. Such quality must meet the standards and specifications to be set by LIBNOR and must be controlled and enforced by all competent administrations, particularly the MoEW and the MoH.

Exclusive Management by WEs: Article 62 WL reinforces the principle of the exclusive management of the water public service by the WEs⁴⁴.

⁴² Decree No. No. 14597 dated 14-06-2005 and its amendments for the Beirut and Mount Lebanon WE; Decree No. No. 14603 dated 14/06/2005 and its amendments for the North WE; Decree No. 14601 dated 14/06/2005 and its amendments for the South WE; Decree No. 14599 dated 14-06-2005 and its amendments for the Beqaa WE,

⁴³ Note that the Decree for the South WE is slightly different for irrigation services, to take into consideration the special mandate of the Litani WE with which there is a geographic jurisdictional overlap.

⁴⁴ In fact, the law provides for exclusivity for the Water Public Service. Cf. Note No. – above.

Connection to the Grid: Article 63 WL establishes the obligation put on all building owners to connect to the water grid before their occupation according to the detailed rules set by the WEs. *“No transactions relevant to an in-kind right on the real estate subscribing to the potable water shall be registered onto the real estate register, except after the real estate owner provides a discharge certificate issued by the institution certifying that the subscriber has paid all the tariffs and fines due upon the same”.*

Use of Water for non-Domestic Purposes: Article 64 WL allows the use of public potable by beneficiaries for non-domestic purposes, against special tariffs.

Performance of the Water Public Service: Article 65 WL reinforces the duty of the water public service to insure continuity and quality of water provision as well as all terms and deadlines provided management agreements with the WEs.

Measurement of Potable Water Consumption: Article 66 WL provides for the measurement of water consumption by appropriate counters as well as the principle to mandate the installation of such counters not yet fitted by a deadline to be set by the WEs. Note that the party responsible for the installation, at least for the cost of it, is left quite unclear due to the drafting style used; however, the clause should be interpreted to hold the beneficiary responsible for such installation or cost.

Delegation of detailed regulations to the WEs: Article 67 WL delegates such authority to regulate by Decree the relationship with the beneficiaries, and especially “the terms and conditions for the connections, tariffs, locations specified for the placement of consumption measurement equipment, and the performance of the utility”. Note that such list is only meant to be indicative and not limitative; the Decree could therefore go into more regulatory details at the will of the regulatory authority, i.e. the WE and the MoEW.

WEs Operating Regulations: The WE-OR Decree incorporates several detailed provisions related to the following main issues: tariffs for services of all types, including its conditions and management terms, special installations (including water connections to the grid), provision of water and conditions of its cutting, obligations of the beneficiaries, invoices terms and conditions, quantities of water provided, controls and water policing, judicial prosecution, penalties and fines.

Recommendations:

1 - Issue by decisions of the WEs the rules applicable to the connection to the water grid (WL Art. 63 Parag. 1).

2 - Revise and update the WEs Decrees related to its “Management Regulations”.

10.1.2 Private procurement of water

10.1.2.1 Bottled Water

The practice of the provision of bottled drinking water, in all its forms, has been long widespread in Lebanon and has led to many abuses. Therefore, two statutes were adopted, first in 1983 to “Organize the operation of bottled [drinking] water and refreshments” by Law Decree No. 108 dated 16/9/1093 (“LD 108”). Subsequently, when the problems of lack of licensing and lack of quality and

appropriate controls persisted, Law No. 210 was enacted in 31/3/2012 to “Organize the treatment, filtering, bottling and sale of drinking water” (L 210). Together, they constitute the body of law governing this activity, while there are no provisions on the matter in the Water Law.

LD 108 regulates the types of drinking water destined to be sold to the public that are regulated, namely: Natural Water, Natural Mineral Water, Naturally sparkling Water, Gazified Water and Refreshments; It sets quality standards for such bottled waters; regulated containers and stickers; regulates the system for licensing of production and sales. A prominent role is given by the law to the MoH in collaboration with the MoEW.

L 210 further entrusted LIBNOR with the responsibility to define standards of water quality; regulated the material of the water containers; established new detailed standards of quality and publication of relevant information on the container sticker; provided for the production licensing by joint decree between the MoH and Ministry of Industry with oversight and control responsibilities granted to both; provided for new penalties in case of violation by decision of the MoH.

***Recommendation:** Evaluate the opportunity and need to develop and modify the implementation decrees of LD 108 and L 210 to better mainstream with the new WL.*

10.1.2.2. Mobile Cisterns

The practice of the provision of water to the public through mobile cisterns, has been long widespread in Lebanon and has led to many abuses, practically fed by the lack of action by the authorities who may recognize that such practices fill a need vacuum for the people while the WEs do not or cannot provide for the market needs up to required quantities or standards..

However, legally speaking, such activity is outrightly a violation of the WL which prohibits the sale of publicly owned water, particularly of well water. It also constitutes a breach of the exclusivity granted to the WEs for the management of water.

It further constitutes a health hazards to the users because the transported water does not always conform to the required quality for use. Thus, the only such article 31 of the WL targeting this issue, which entrusts the MoEW and the WEs with the duty to “control the quality of water resources, in order guarantee its quality for use and control its quality during transportation, distribution and use”. This last sentence may be extended to target the business of private water transport of water through cisterns. However, at closer legal analysis, such quality control is only meant by the legislator to govern the quality of water legally transported through the means organized by the WEs and no others.

However, rather than leaving this very widely practiced private business, in systematic and widespread violation of the law, unaddressed, the MoEW and the WEs should join forces to develop policies, strategies, and actions to deal with this market practice appropriately.

***Recommendation:** develop a concerted policy between the MoEW and the WEs about how to deal with the sale of water and delivery to clients through mobile cisterns; also consider*

developing, based on such policy, the appropriate regulation of such business, either by appropriate laws, decrees or administrative decisions.

10.2 Wastewater

Wastewater management, or Management of the Collective [and non-collective] Sewage Utility” as it is called in the WL, is the second priority set by the WL. It is this regulated in some details by Article 68 through 71 WL and by each one of the WEs Operating Regulations.

Exclusivity: Article 68 WL establishes the principle of the exclusive right granted to the WEs, to manage this sector and have the exclusive right to maintain all the facilities and canals necessary for this utility”⁴⁵.

The Obligation to Connect to the Public Sewage Grid: Article 69 provides for the obligation of all building owners to connect to the grid within a deadline not exceeding one year as of the date of the full implementation of the sewage system. As for the buildings and sections not specified for housing, they must be connected to the sewage grid within the mentioned deadline, in relation to domestic wastes. All persons are bound to connect to the sewage grid, and the sewage tariffs shall be determined on the basis of the subscriber’s consumption on the public potable water grid. However, if the same benefits completely or partially of a private water source, that party must declare said benefit to the institution managing the public utility, and the sewage tariffs due upon the party shall be determined through the measurement of consumption from the private source”.

Private Subscription Contracts: Article 70 WL provides for the terms and conditions for the connection of non- domestic wastewater, and to determine the formalities of estimating the pollution and drained volumes in the mentioned agreement. As for the seasonal activities, it may exceptionally and for a determined period, be approved on temporary agreements to drain the wastes, such that this does not lead to any damages to the drawing or wastewater treatment facilities, or to the medium in which it is dumped

Performance Guarantees: Article 71 sets an obligation upon WEs to guarantee the continuity and quality of the collection and treatment of wastewater.

Delegation of detailed regulations to the WEs: Article 72 WL delegates such authority to regulate by Decree the relationship with the beneficiaries to the WEs with the approval of the MoEW.

Non-Collective wastewater facilities: Article 73 simply delegates to the competent authorities” the task of regulating by decree, the rules applicable to the control and management of non-collective sewage facilities.

WEs Operating Regulations: The WE-OR Decree incorporates several detailed provisions related to the following main issues: defining classifying the areas per type of wastewater management, subscription to the wastewater sewage grid, installations, tariffs, controls and controls and water policing, judicial prosecution, penalties and fines.

⁴⁵ In fact, the law provides for exclusivity for the Water Public Service. Cf. Note No. – above.

Recommendations:

1 - Issue by decree of the relevant administrations the rules applicable to the oversight and management of the non-public wastewater installations (WL Art. 73).

2 - Issue by decisions of the WEs the rules applicable to the connection to the wastewater grid (WL Art. 63 Parag. 1).

10.3 Irrigation

Irrigation law is the area that has the most intricate an intertwined set of laws:

a - The WL intervened minimally in setting rules and can be limited to article 74 (while articles 75 through 77 regulate the associations of water users, dealt with earlier in this study).

b – Relevant provisions of the WEs Operating Regulations, issued by Decrees.

c – Customary Law; particularly as such traditional rights and acquired rights are consecrated by many articles of the WL itself, particularly 33 et seq.

D - The Ottoman Irrigation laws (of 1913 and of 1918 relating to the repairing refurbishing of the irrigation canals).

E – Scattered provisions of High Commissioner’s Decision No. 320 of 26 May 1926.

The compilation of the Water Code in a structured manner may show the consistencies, as well as the inconsistencies in the irrigation law and may pave the way for the development of a more systematic modern legislation on the subject.

General Provisions: Article 74 WL provides for the following general rules:

- 1- WEs are entrusted with the management and operation of all aspects of irrigation.
- 2- Regulates the conditions for the subscription applications and its terms and conditions and modifications thereon.
- 3- The WEs must keep a register that shows the names of the beneficiaries, the irrigated areas, the adopted plantations, and the drawn volumes, which is continually updated.
- 4- All WEs shall take charge of all committees and irrigation water projects prior to the Law No. 221/2000 and which have not been taken charge of yet, and that within a one- year deadline as of the date of the issuance of this law and based on the enforced formalities.

WEs Operating Regulations: The WE-OR Decree incorporates several detailed provisions related to the following main issues: classification of land, subscription to irrigation land, the subscription contract, its term and conditions, determination of the irrigated area, distribution of water, installations and its maintenance, various tariffs and conditions of payment, controls and policing, penalties and its types, discharges.

Recommendations: Consider compiling all irrigation related provisions of the various applicable law to pave the way for the drafting of a model unified irrigation law.

10.4 Other Sectors

Sectors of the water public services other than the three main sectors of drinking water, wastewater, and Irrigation water, are not appropriately regulated in Lebanese law. The WL barely refers to other sectors “*en passant*” in the following instances:

- In Article 18 when listing areas of water use that should be included in the GWMP, such as: “... hydroelectric production, tourism and leisure activities”.
- In Article 46 when listing tariffs for the following cluster of water use: touristic, industrial, fishing, pisciculture and energy production”.
- In Article 64 which provides for the possibility of the drinking Water Service to provide water to beneficiaries for non-domestics use, against special tariffs.
- Article 17 of the Law of 14 August 1954 also provides that the conditions for operating the Litani project after its execution and the conditions for operating the connection network would be laid down in a subsequent law, which has not been enacted since 1954.

Recommendation: develop a concerted policy between the MoEW and the WEs about how to deal with the following water sectors: a - Hydroelectric production; b - Building Dams; c - Water related leisure activities; d – Pisciculture; e – Fishing.

Also consider developing, based on such policy, the appropriate regulation of such businesses, either by appropriate laws, decrees, or administrative decisions.

11 ADMINISTRATIVE AND PENAL LAW ENFORCEMENT

The WL provided for a comprehensive set of administrative and penal enforcement measures, both complementing one another. Article 97 WL thus confirms that criminal prosecution shall not halt, impede, +or contradict the administrative measures or decisions that are made based on Article 38.

11.1 Administrative Enforcement Measures

Article 38 provides for the following administrative measures and decisions that can be taken by the MoEW against any violator of the licensing provisions of article 36 WL and 745 to 749 Penal Law (special crimes relating to water systems):

- 1- *To warn the violating party, the investor, or the owner to abide by the provisions and instructions relevant to the violation, within a deadline determined by the ministry.*
- 2- *To determine the procedures the violating party shall undertake to remove the damage caused.*
- 3- *In the event a risk of pollution or the deterioration of the situation of the water ecosystem or damage to public health or a threat that affects the supply of potable water, to take immediate procedures on the expense and responsibility of the people mentioned above to prevent the occurring pollution and to limit the same.*
- 4- *To suspend or withdraw the license.*
- 5- *To draw up a seizure report against the violating party and to transfer the same to the environmental public prosecutor or the competent unique penal judge.*

Article 38 also mandated the MoEW and the WEs with the obligation to remedy immediately any damage caused to the water ecosystems. The law also authorizes both to be reimbursed by the competent court decision of all expenses they may have incurred, from the person or persons liable for causing the damage. The same provisions are also repeated in Article 39-3.

3- The competent administration which has intervened to take the measures aiming to put an end to the damages affecting the water ecosystem may be reimbursed for all its expenses by the party causing the damage before the competent judicial authorities.

11.1 Criminal Provisions

11.1.1 General Criminal Law

Article 89 WL restates the criminal law provisions that are applicable in the cases of violations of the WL: “-particularly articles 90- 97 thereof. - Articles 58- 60 of the decision No. 320 dated May 26, 1926. - Article 23 of the decision No. 144 dated June 10, 1925. - Articles 745- 749 of the Penal Code related to crimes committed in relation to the Water Regulation. - The law issued by virtue of the Decree No. 8735 dated August 23, 1974 relevant to public cleanliness. - Law No. 64 issued on August 12, 1988 relevant to the preservation of the environment against pollution from toxic,

damaging, and dangerous wastes. - Law No. 623 issued on April 23, 1997 relevant to imposing tougher penalties on the violations of the electric, phone, and water grids. - Law No. 444 dated July 29, 2002 relevant to the protection of the environment, especially section six thereof. - Law No. 80 issued on October 18, 2018 "The Integrated Management of Solid Waste Law."

11.1.2 Special Water Law Penalties

The Water Law provided for special misdemeanors and offenses that are specific to the violations related to the water sector.

Article 90: provides for the following misdemeanors: 1- *"All those who draw water in violation of the obligation of receipt of licensing stipulated by virtue of article 36 of this law" ... 2 - "all those who have constructed, modified, or exploited a utility, conducted works or activities within the same, without receiving a license for said works"... "All those who have built a construction, or installed equipment, or conducted works or activities without abiding by the conditions determined in the licensing document".*

Article 91: provides for the following offenses:

- 1- *"All those who have intentionally or unintentionally thrown, spilled, flung, or dumped a material or several materials which damage surface water, groundwater, or seawater, or thrown, emptied, or left wastes in water regardless of their consequences on surface water, groundwater, or seawater, within the Lebanese territorial waters"*
- 2- These penalties shall apply in the event these offenses are committed at the riverbanks or the seashores.
- 3- The penalties mentioned above shall be toughened in the event these actions cause damage to public health or the plant, animal, or fish resources, or leads to substantial modifications to the normal water supply system, or to the restriction of the use of swimming areas.

Article 92: provided for toughened offenses in cases of [exploitation of] a facility or equipment, or conducted works or activities in violation of a measure concerned with a ban, suspension, or destruction judged by the court as implementation of article 96 of this law"

Article 93: provided for the doubling of the penalties in cases of repetition.

11.2 Additional Measures

Article 95 WL provides for the additional special measures that can be decided by courts in addition to the criminal penalties.

- 1- *Suspension of operations, activities, or works.*
- 2- *Halting operations and banning the use of equipment or facilities.*
- 3- *Removing and/or confiscating the equipment and facilities.*
- 4- *Imposing the rehabilitation of the water medium and/or the ecosystem.*

5- Adopting all the measures leading to the removal of the damage and the prevention of its exacerbation

11.3 Water Police

Article 94 provides for special criminal procedures applicable, particularly to the effect of granting powers of judicial police to the employees of the MoEW and the WEs, who shall, each within their own scope, be granted the powers of law enforcement in relation with the control of crimes resulting from the implementation of this law and its executive decrees⁴⁶. For this purpose, they may conduct the following actions:

- Enter the perimeters and buildings of suspected utilities, exploitations, and institutions.
- Inspect all equipment, facilities, machines, and warehouses.
- Receive all documents and information concerning the relevant equipment and activities.
- Take samples and adopt the necessary protective measures.

They shall also dispose of the right to duly seek assistance from the security forces under the control of the competent public prosecution should the need arise and in order to discharge their functions.

2- While maintaining the competence of the environmental prosecutor, (as provided by article 11 bis of the Code of Criminal Procedures), the water police employees may refer their reports documenting the offenses directly to the competent sole criminal judge, who shall thus be appropriately seized of the public action to pursue the trail thereupon according to the usual procedures; The judge may take any of the measures stipulated in Article 95 of the WL (criminal measures).

3- Should the need arise, the formalities of the application of this article shall be determined by virtue of a decree based on the suggestion of the minister and the minister of justice.

Recommendation: Issue the decree providing for the detailed rules granting employees authorities of the water judicial police (WL Art. 94).

11.4 Special Criminal Procedures

Article 95 WL provides for additional measures to be decided by courts, in addition to the criminal penalties and fines, if the damage resulting from the actions and crimes committed is proven to lead to the damaging of human health or that of the water ecosystems, or to damage the water's quantity or quality. These measures are the following:

- 1- Suspension of operations, activities, or works.
- 2- Halting operations and banning the use of equipment or facilities.
- 3- Removing and/or confiscating the equipment and facilities.

⁴⁶ These provisions also complement the authority granted by the WL the MoEW to control water quality and water related projects and activities (particularly articles 26 and 27).

- 4- Imposing the rehabilitation of the water medium and/or the ecosystem.
- 5- Adopting all the measures leading to the removal of the damage and the prevention of its exacerbation

Article 9 WL provides for effective procedures for the expeditious enforcement of court decisions. It provides that appeals do not stop its implementation, as is usually the case in common criminal procedures. The decisions of the sole judge may be enforced before the lapse of the appeals deadline and before a decision is rendered in appeal, unless the appellate court decides otherwise within 10 days of the appeal, based on a sufficiently detailed reasoning, showing the factual and legal basis for such decision.

12 OVERSIGHT AND FOLLOW-UP

12.1 Follow-Up on Water Policies

Article 98 WL establishes a responsibility of the MoEW in collaboration with NWI, to follow-up on the proper implementation of the water policies. The implementation of this collaboration will indeed be a challenge if not appropriately channeled through the NWI By-Laws.

12.1 Annual Reports and Public Information

The Water Law establishes a system of public reporting on the sector, which serves at improving transparency for information; it could also develop into a tool for public engagement in dialogue, oversight, and accountability⁴⁷.

The legal system of public reporting needs to be complemented and superseded by the obligations of annual public reporting and regular (quasi monthly) publication of public expenditures above 50 Million LL, that are provided by articles 7 and 8 the Access to Information Law (No. 28/2017 and its modifications).

Obligated administrations: The MoEW and the WEs (Art. 78 WL and Art 2. ATIL).

Content of WEs per Art. 78 WL: “the administrative, technical, and financial characteristics and conditions, the operational procedures, the performance of the utility, the changes which may affect the quality of water, the investment average, the tariffs, the position of the collection of bills, the current and future water needs, the extension works, renewing completed water facilities, and their respective programs.

Content of the MoEW per Art. 79 WL: “The Minister issues an annual report yearly in which the sustainable management of water is discussed. The report includes in particular:

- 1- The procedures of the application of this law, be it in relation to the decrees, decisions, circulars, plans, programs, or normal procedures.
- 2- The evolution of available qualitative and quantitative data.
- 3- The entirety of the water management and economic use program.
- 4- The procedures implemented by the administration. The annual report on the general condition and sustainable management of water is published in the official gazette and a copy of the same is sent to the parliament and the national water authority

⁴⁷ Article 89 WL while providing for the obligation to prepare and publish annual reports, cites article 6 of law 221/2000 organizing the water sector, which provides for the submission of the WEs to the quality control of a special committee, to be established by decree.

Content of MoEW and WEs per Article 8 ATIL: “The annual reports must include at least the following: “Information on the work mechanism of the administration, including: costs, objectives, rules, achievements and difficulties encountered in the progress of work, audited accounts, Approved general policy, Projects of the administration: implemented and not yet implemented, and the reasons for that, any suggestions that would contribute to the development of the work of the administration”.

Review and Publication Art. 78 WL: The annual report is sent to the Minister after it is adopted by the board of directors of the WE. The minister duly sends a copy of the annual report to parliament, and the report shall be published on the official website of the ministry of energy and water. [and on the WEs website (Art.8 ATIL)].

***Recommendation:** Issue templates for the annual reports to facilitate their drafting.*

12.2 Regular Reports published about Water Quality

Article 100 WL provides for the following:

- 1- In order to allow the citizens to exercise their rights and complete their obligations, and to guarantee a sustainable management of resources and the water ecosystems, the ministry and the public water investment institutions shall publish all information relevant to the quality of potable and irrigation water provided to consumers on a regular basis.
- 2- The same shall be published on the ministry’s website, or those of the water institutions concerned, and through any other means.
- 3- In the regions subject to the risks mentioned in the seventh section of this law, the competent authorities shall provide the information related to rectify and manage these risks at the citizens’ disposal.

12.3 Beneficiaries’ Surveys

Article 55 WL provides for an obligation to conduct a survey of the beneficiaries to “improve the services and the sustainable development”. The surveys must be conducted every three years by the WEs and shared with the MoEW and published in the media.

12.4 Training on the Proper Implementation of the Law

Article 101 WL provides for the training on the appropriate implementation of the WL and on sustainable water management as follows:

“1- The Ministry shall be charged of notifying and training the employees and working wage earners, on the application of this law and the sustainable management of water. The training programs for the sustainable management of water include levels appropriate to the different levels of education.

2- The ministries of (the environment, education and higher education) and the public water investment institutions shall join the environmental protection associations and the public sector in educating the citizens on the concept of the right to water and the water culture.”