

Approved for tabling.

Bat SNA
2/7/19

REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THIRD SESSION

THE MEDIATION COMMITTEE ON THE IRRIGATION BILL, (NATIONAL
ASSEMBLY BILLS No. 46 of 2017)

REPORT ON THE CONSIDERATION OF THE IRRIGATION BILL,
(NATIONAL ASSEMBLY BILLS No. 46 of 2017)

Joint Clerk's Chambers
Parliament Buildings,
NAIROBI.

JUNE, 2019

TABLE OF CONTENTS

PREFACE	iii
Mandate of the Committee	iii
Membership of the Committee	iii
Committee Sitings.....	iv
CHAPTER 1 INTRODUCTION	1
1.1 Background on the Irrigation Bill (National Assembly Bills No. 46 of 2017)	1
CHAPTER 2 CONSIDERATION OF THE IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2017).....	2
2.1 Amendments passed by the Senate to the Irrigation Bill (National Assembly Bills No. 46 of 2017)	2
2.2 The National Assembly Comments on the Senate amendments	6
CHAPTER 3 RESOLUTIONS OF THE MEDIATION COMMITTEE.....	15



PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Mediation Committee on the Irrigation Bill (National Assembly Bills No. 46 of 2017) was constituted by the Speaker of the National Assembly pursuant to Article 113 of the Constitution and standing order 146 of the National Assembly Standing Orders and by the Speaker of the Senate pursuant to standing order 160 of the Senate Standing Orders on 28th March, 2019.

Mandate of the Committee

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya, National Assembly Standing Order 146 and Senate Standing Order 160 (1). The Committee was established to negotiate a version of the Irrigation Bill (National Assembly Bills No. 46 of 2017) that both Houses will pass.

Membership of the Committee

The Committee is comprised of the following Members-

- | | | |
|--------------------------------------|---|------------------|
| 1. Hon. Aden Duale, EGH, MP | - | Chairperson |
| 2. Sen. Peter Njeru Ndwiga, EGH, MP | - | Vice-Chairperson |
| 3. Sen. (Dr.) Ochilo Ayacko, EGH, MP | - | Member |
| 4. Hon. (Dr.) Chris Wamalwa, CBS, MP | - | Member |
| 5. Hon. Josephat Kabinga, MP | - | Member |
| 6. Hon. (Dr.) Daniel Tuitoek, MP | - | Member |
| 7. Sen. Naomi Jillo Waqo, MP | - | Member |
| 8. Hon. Florence Mutua, MP | - | Member |
| 9. Sen. Judith Pareno, MP | - | Member |
| 10. Sen. Falhada Iman, MP | - | Member |

Secretariat of the Committee

The Committee secretariat is comprised of –



1. Ms. Vane Akama - Director, Legal Services (National Assembly)
2. Mr. Ahmad Kadhi - Clerk Assistant I (National Assembly)
3. Ms. Jemimah Waigwa - Legal Counsel I (National Assembly)
4. Ms. Sombe Toona - Legal Counsel II (Senate)
5. Mr. Mitchell Otoro - Legal Counsel II (Senate)
6. Ms. Carol Kirorei - Clerk Assistant III (Senate)
7. Ms. Sylvia Ocharo - Research Officer (Office of the Leader of Majority)
8. Mr. John Ng'ang'a - Audio Officer (Joint Services)

Committee Sitings

The Committee held its first meeting on 19th June, 2019 and elected Hon. Aden Duale, EGH, MP and Sen. Njeru Ndwiga, EGH, MP as Chairperson and Vice-Chairperson respectively. The Committee thereafter considered the provisions of the Bill.

The Committee resolved to adopt all clauses that were fully adopted by the National Assembly Departmental Committee on Agriculture and Livestock in their report tabled before the National Assembly on 17th March, 2019. These were clauses 2, (definition of the term “irrigation” and “licence”); 6 (b) (ii); 8; and 9 (a) (i). The National Assembly had also accepted the Senate amendment to Clause 3 subject to a further amendment.

The Clauses in contention were clauses 6 (paragraphs (a), (b) (i), (b) (iii) and (c); 9 (paragraphs (a) (ii), a(iii), (b), (c), and (d)); 14 (paragraph (b)); 16; 17; 20; 25; 34; and the Schedule.

The Committee held its final meeting on Wednesday, 26th June, 2019 to adopt its report.

Adoption of the Report

We the Members of the Mediation Committee on the Irrigation Bill (National Assembly Bills No. 46 of 2017) have adopted this report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached schedule. (Appendix II)



2.

Acknowledgment

The Committee thanks the Offices of the Speakers and the Offices of the Clerks of both Houses of Parliament for the necessary support extended to it in the execution of its mandate.

The Chairperson and Vice-Chairperson thank all the Members of the Committee for their sacrifice, commitment and selflessness to the cause of the mediation process resulting in agreement and arrival at an agreed version of the Bill.


Mr. Speaker Sir,

It is our pleasant duty, pursuant to standing order 150 (1) of the National Assembly Standing Orders and standing order 161 (1) of the Senate Standing Orders to present this report of the Mediation Committee on the Irrigation Bill (National Assembly Bills No. 46 of 2017) for consideration by both Houses of Parliament.

Signed.......... Date..... 26-6-2019

HON. ADEN DUALE, EGH, M.P.

CHAIRPERSON

Signed.......... Date..... 26th June 2019

SEN. PETER NJERU NDWIGA, EGH, M.P.

VICE - CHAIRPERSON

CHAPTER 1 INTRODUCTION

1.1 Background on the Irrigation Bill (National Assembly Bills No. 46 of 2017)

The Irrigation Bill (National Assembly Bills No. 10 of 2017) seeks to provide for the development, management and regulation of irrigation, to support sustainable food security and socioeconomic development in Kenya and for the connected purposes. The Bill also seeks to repeal the Irrigation Act, CAP 347 of the Laws of Kenya, which commenced on 24th June, 1966.

The Irrigation Bill, 2017 was read a First Time in the National Assembly and committed to the Committee on Agriculture and Livestock on Wednesday 14th February, 2017 pursuant to Standing Order 127. The Bill was later passed by the National Assembly on Tuesday, 15th May, 2018 and subsequently forwarded to the Senate for consideration pursuant to provisions of Article 110 (4) of the Constitution and standing order 142 of the National Assembly Standing Orders.

The Bill was read a First Time in the Senate on 16th May, 2018. The Second Reading of the Bill in the Senate was done on 25th July, 2018, 26th July, 2018 and 12th September, 2018. The Bill was read the Third Time on 19th and 20th February, 2019 and was passed by the Senate with amendments. Through a message from the Senate, the Bill was then forwarded back to the National Assembly for concurrence pursuant to standing order 158 of the Senate Standing orders on Tuesday, 5th March, 2019.

The National Assembly considered the amendments forwarded by the National Assembly and rejected some of them on 14th March, 2019. Consequently, pursuant to Article 113 of the Constitution, standing order 146 of the National Assembly Standing Orders and standing order 160 (1) of the Senate Standing Orders, the Bill was referred to a Mediation Committee with the sole objective of negotiating an agreed version of the Bill that would be presented to both Houses for approval.

**CHAPTER 2 CONSIDERATION OF THE IRRIGATION BILL
(NATIONAL ASSEMBLY BILLS NO. 10 OF 2017)**

2.1 Amendments passed by the Senate to the Irrigation Bill (National Assembly Bills No. 46 of 2017)

The Senate passed the following amendments to the Bill-

CLAUSE 2

THAT clause 2 of the Bill be amended by—

(a) deleting the definition of the word “irrigation” and substituting therefor the following new definition—

“irrigation” means any process, other than by natural precipitation, which supplies water to crops or any other cultivated plants, livestock, aquaculture and desired forest trees;

(b) deleting the definition of the word “licence” and substituting therefor the following new definition—

“licence” means a licence issued by the Cabinet Secretary or such other person as the Cabinet Secretary may authorize;

CLAUSE 3

THAT Clause 3 of the Bill be amended in subclause (1) by deleting the words “as more specifically provided in the Act for” appearing immediately after the words “Act shall apply” and substituting therefor the words “to matters relating to the”

CLAUSE 6

THAT Clause 6 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) The Cabinet Secretary shall, in consultation with the Council of County Governors, regulate and promote the development and proper management of irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authority or person under the authority of the Cabinet Secretary of their powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation.

(b) in subclause (2) by—

- (i) inserting the words “in consultation with the Council of County Governors” immediately after the words “Cabinet Secretary shall” in the introductory clause;
 - (ii) deleting the word “facilitate” appearing at the beginning of paragraph (d) and substituting therefor the word “promote”; and
 - (iii) deleting the word “Parliament” appearing immediately after the words “report to” in paragraph (h) and substituting therefor the words “the National Assembly and the Senate”; and
- (c) by inserting the following new subclause immediately after subclause (3)—
- (3A) The Cabinet Secretary shall consult the County Governments of all counties affected by an irrigation scheme before issuing a licence under subsection (2)(f).

CLAUSE 8

THAT Clause 8 of the Bill be amended in subclause (2) by inserting the words “safe storage” immediately after the words “promote the marketing” in paragraph (k).

CLAUSE 9

THAT Clause 9 of the Bill be amended—

(a) in subclause (1) by—

(i) deleting the words “State Department of” appearing immediately after the words “the Principal Secretary” in paragraph (b) and substituting therefor the words “responsible for”;

(ii) deleting the words “five other” appearing at the beginning of paragraph (f) and substituting therefor the word “two”;

(iii) inserting the following new paragraph immediately after the paragraph (f)—

(g) four persons nominated by the Council of County Governors and appointed by the Cabinet Secretary, taking into account the various stakeholder interests in irrigation development and management as defined in subsection (2).

(b) in subclause (2) by deleting the words “include two representatives of county governments nominated by the Council of Governors and shall” appearing at the beginning of paragraph (b);

(c) by inserting the following new subclause immediately after subclause (2)—

(2A) The Council of County Governors shall, for purposes of subsection (2) (b), nominate and submit to the Cabinet Secretary, the names of eight persons out of whom the Cabinet Secretary shall appoint four.

(d) by deleting subclause (4).

CLAUSE 14

THAT Clause 14 of the Bill be amended—

(a) in subclause (1) by deleting the words “an irrigation function delegated by the Cabinet Secretary as may be prescribed in the Regulations” appearing immediately after the words “carrying out of” and substituting therefor the words “its functions with respect to irrigation pursuant to Part 2 of the Fourth Schedule of the Constitution”; and

(b) in subclause (2) by deleting the word “Parliament” appearing immediately after the words “and approved by” and substituting therefor the words “the National Assembly and the Senate”.

CLAUSE 16

THAT Clause 16 of the Bill be amended in subclause (6) by inserting the words “and the impact of the irrigation scheme is likely to have on the environment” immediately after the words “and fish producers”.

CLAUSE 17

THAT Clause 17 of the Bill be amended in subclause (1) by—

(a) inserting the words “in consultation with the Council of County Governors,” immediately after the words “Cabinet Secretary shall” in the introductory clause; and

(b) inserting the following new paragraph immediately after paragraph (b)—

(c) in consultation with the Water Resources Authority, for the handling of irrigation water effluent.

CLAUSE 20

THAT Clause 20 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclause—

(3) An association may, with the approval by the Cabinet Secretary, enter into an agreement with the National Government, a county government, a private sector institution or another farmers’ association for the establishment, expansion, implementation, improvement, modernisation, operation or maintenance of a scheme.

CLAUSE 25

THAT Clause 25 of the Bill be amended in subclause (1) by inserting the word “intra-scheme” immediately after the words “scheme development, management,”.

CLAUSE 34

THAT Clause 34 of the Bill be amended —

(a) in subclause (1) by inserting the words “and with the approval of the Senate and the National Assembly”, immediately after the words “ with county governments”; and

(b) in subclause (2) by deleting paragraph(e) and substituting therfor the following new paragraph —

(e) the requirements, procedures and forms for licensing of irrigation schemes;

SCHEDULE

THAT the schedule to the Bill be amended in paragraph 3 by deleting subparagraph (5) and substituting the following new subparagraph —

(5) the chairperson shall preside at every meeting of the Board of and in the absence of the chairperson, a member of the Board elected by the members present from among their numbers shall preside.

2.2 The National Assembly Comments on the Senate amendments

The National Assembly Departmental Committee on Agriculture and Livestock considered the amendments passed by the Senate and rejected some amendments, agreed to others and agreed to some with further amendments. Pursuant to standing order 159 of the National Assembly Standing Orders, the Committee recommended that the National Assembly rejects the amendments.

The National Assembly rejected the amendments on 27th March, 2019. Below is a summary of the National Assembly's consideration of the Senate amendments to the Bill-

CLAUSE 2

THAT clause 2 of the Bill be amended by—

(a) deleting the definition of the word “irrigation” and substituting therefor the following new definition—

“irrigation” means any process, other than by natural precipitation, which supplies water to crops or any other cultivated plants, livestock, aquaculture and desired forest trees;

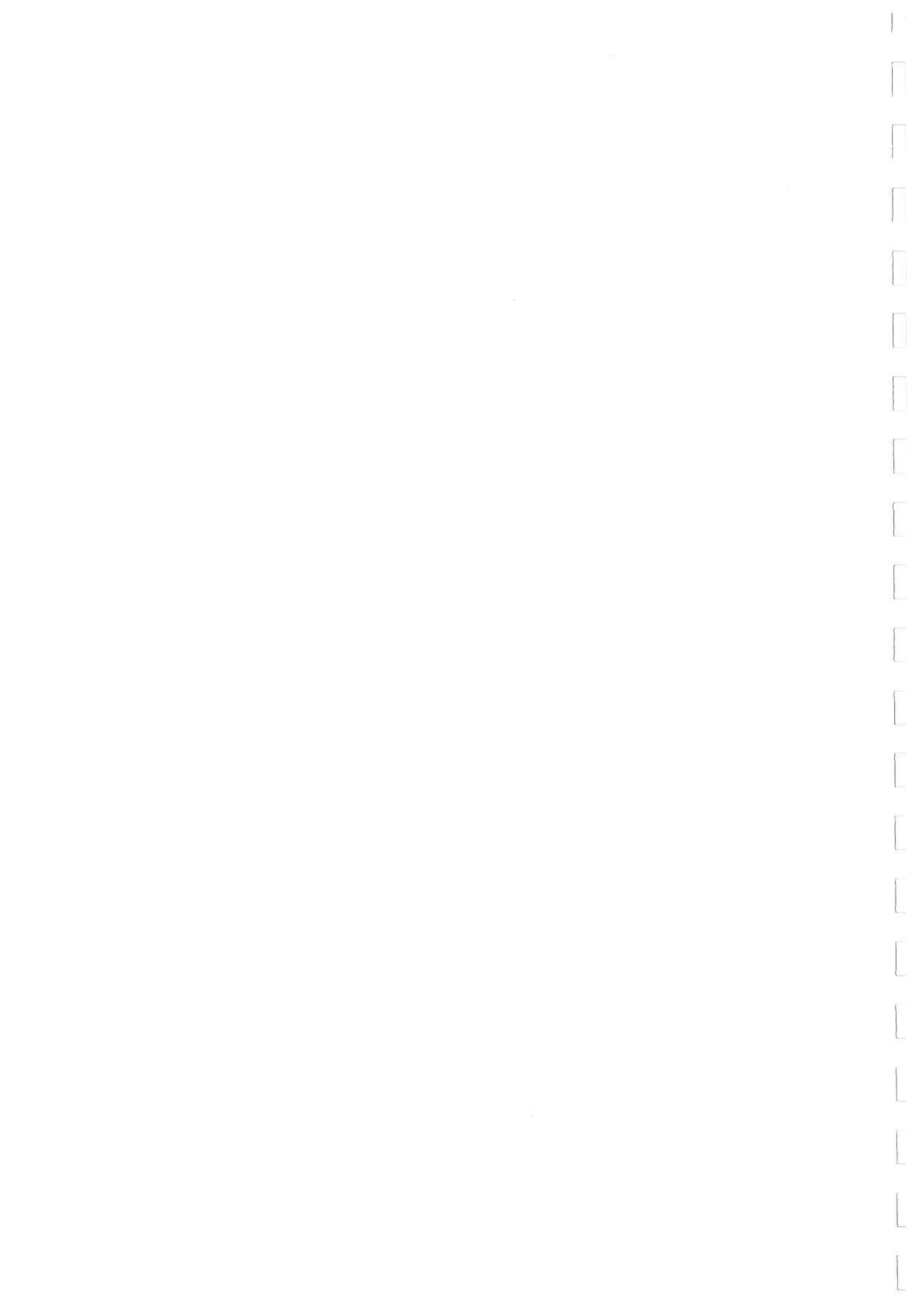
(b) deleting the definition of the word “licence” and substituting therefor the following new definition—

“licence” means a licence issued by the Cabinet Secretary or such other person as the Cabinet Secretary may authorize;

Recommendation: The Committee agreed to the Senate amendment.

CLAUSE 3

THAT Clause 3 of the Bill be amended in subclause (1) by deleting the words “as more specifically provided in the Act for” appearing immediately after the words “Act shall apply” and substituting therefor the words “to matters relating to the”.



Recommendation: The Committee agreed to the Senate amendment subject to deletion of the word “for” appearing immediately after the words “in the Act,”

Justification: The Senate amendment does not alter the substance of the provision but seeks to bring the provision into conformity with good drafting practices.

CLAUSE 6

THAT Clause 6 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) The Cabinet Secretary shall, in consultation with the Council of County Governors, regulate and promote the development and proper management of irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authority or person under the authority of the Cabinet Secretary of their powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation.

(b) in subclause (2) by—

- (i) inserting the words “in consultation with the Council of County Governors” immediately after the words “Cabinet Secretary shall” in the introductory clause;
- (ii) deleting the word “facilitate” appearing at the beginning of paragraph (d) and substituting therefor the word “promote”; and
- (iii) deleting the word “Parliament” appearing immediately after the words “report to” in paragraph (h) and substituting therefor the words “the National Assembly and the Senate”; and

(c) by inserting the following new subclause immediately after subclause (3)—

(3A) The Cabinet Secretary shall consult the county governments of all counties affected by an irrigation scheme before issuing a licence under subsection (2)(f).



Recommendation: The Committee agreed to the Senate amendment in paragraph (b) (ii). The Committee rejected the Senate amendments in paragraphs (a), (b) (i), (b) (iii) and (c).

Justification: The Committee agreed with the Senate amendment in paragraph (b) (ii) because the use of the term “promote” connotes sensitization or awareness creation which was the intention of the paragraph vis-a-vis facilitation which connotes a person or a group of persons ensuring that an activity is performed.

Part 1 of the Fourth Schedule of the Constitution provides that the national government has the function relating to the agricultural policy whereas Part 2 of the Schedule assigns county governments the function relating to crop and animal husbandry. However, irrigation is not agriculture, hence it is not a devolved function and it is not included in Part 2 of the Fourth Schedule of the Constitution. Consequent thereto, irrigation is a residual function of the national government in accordance with Article 186(3) of the Constitution, which provides that functions not assigned by the Constitution or national legislation to a county be retained as a function of the national government.

To compel the Cabinet Secretary to consult the Council of County Governors as the Cabinet Secretary exercises responsibility with regard to development and management of irrigation will make regulation and promotion of development and proper management of irrigation impossible.

Article 93 of the Constitution provides that the Parliament of Kenya consists of the Senate and the National Assembly. The Senate amendment is therefore unnecessary.

The Cabinet Secretary under the national government retains the power to issue irrigation licences and the requirement for the Cabinet Secretary to consult the county governments before issuance of a licence will cause unnecessary delays to the process.

CLAUSE 8

THAT Clause 8 of the Bill be amended in subclause (2) by inserting the words “safe storage” immediately after the words “promote the marketing” in paragraph (k).



Recommendation: The Committee agreed to the Senate amendment.

Justification: The additional power of the National Irrigation Authority to promote safe storage of crops, animal and fish products grown or produced on national and other irrigation schemes further enriches the Bill.

CLAUSE 9

THAT Clause 9 of the Bill be amended—

(a) in subclause (1) by—

(i) deleting the words “State Department of” appearing immediately after the words “the Principal Secretary” in paragraph (b) and substituting therefor the words “responsible for”;

(ii) deleting the words “five other” appearing at the beginning of paragraph (f) and substituting therefor the word “two”;

(iii) inserting the following new paragraph immediately after the paragraph (f)—

(a) four persons nominated by the Council of County Governors and appointed by the Cabinet Secretary, taking into account the various stakeholder interests in irrigation development and management as defined in subsection (2).

(b) in subclause (2) by deleting the words “include two representatives of county governments nominated by the Council of Governors and shall” appearing at the beginning of paragraph (b);

(c) by inserting the following new subclause immediately after subclause (2)—

(2A) The Council of County Governors shall, for purposes of subsection (2) (b), nominate and submit to the Cabinet Secretary, the names of eight persons out of whom the Cabinet Secretary shall appoint four.

(d) by deleting subclause (4).

Recommendation: The Committee agreed to Senate amendment in paragraph (a) (i).



The Committee rejected Senate amendments in paragraphs (a) (ii), a(iii), (b), (c), and (d).

Justification: The Committee agreed to Senate amendment in paragraph (a)(i) because it cleans up the paragraph. The Senate amendments unduly expand the composition of the Board of the National Irrigation Authority. This goes against the Mwongozo Guidelines, the Code of Governance for State Corporations which prescribes that the Board membership of all State Corporations shall be between seven and nine members.

The provision enables the members of the Board to elect a vice- Chairperson from among themselves and to have gender parity in leadership.

CLAUSE 14

THAT Clause 14 of the Bill be amended—

- (a) in subclause (1) by deleting the words “an irrigation function delegated by the Cabinet Secretary as may be prescribed in the Regulations” appearing immediately after the words “carrying out of” and substituting therefor the words “its functions with respect to irrigation pursuant to Part 2 of the Fourth Schedule of the Constitution”; and
- (b) in subclause (2) by deleting the word “Parliament” appearing immediately after the words “and approved by” and substituting therefor the words “the National Assembly and the Senate”.

Recommendation: The Committee rejected Senate amendments.

Justification: Part 1 of the Fourth Schedule of the Constitution provides that the national government has the function relating to the agricultural policy whereas Part 2 of the Schedule assigns county governments the function relating to crop and animal husbandry. However, irrigation is not agriculture, hence it is not a devolved function and it is not included in Part 2 of the Fourth Schedule of the Constitution. Consequent thereto, irrigation is a residual function of the national government in accordance with Article 186(3) of the Constitution, which provides that functions not assigned by the



Constitution or national legislation to a county be retained as a function of the national government.

Article 93 of the Constitution provides that the Parliament of Kenya consists of the Senate and the National Assembly. The Senate amendment is therefore unnecessary.

CLAUSE 16

THAT Clause 16 of the Bill be amended in subclause (6) by inserting the words “and the impact of the irrigation scheme is likely to have on the environment” immediately after the words “and fish producers”.

Recommendation: The Committee rejected the Senate amendment to Clause 16.

Justification: Safeguards on the environment are already provided for under the Environmental Management and Coordination Act.

CLAUSE 17

THAT Clause 17 of the Bill be amended in subclause (1) by—

(a) inserting the words “in consultation with the Council of County Governors,” immediately after the words “Cabinet Secretary shall” in the introductory clause; and

(b) inserting the following new paragraph immediately after paragraph (b)—

(c) in consultation with the Water Resources Authority, for the handling of irrigation water effluent.

Recommendation: The Committee rejected the Senate amendment to Clause 17.

Justification: Part 1 of the Fourth Schedule of the Constitution provides that the national government has the function relating to the agricultural policy whereas Part 2 of the Schedule assigns county governments the function relating to crop and animal husbandry. However, irrigation is not agriculture, hence it is not a devolved function and it is not included in Part 2 of the Fourth Schedule of the Constitution. Consequent thereto, irrigation is a residual function of the national government in accordance with Article 186(3) of the Constitution, which provides that functions not assigned by the



Constitution or national legislation to a county be retained as a function of the national government.

The Cabinet Secretary has the exclusive power to make regulations and in establishing an administrative and regulatory framework, the Cabinet Secretary is obligated under the Constitution and the Statutory Instruments Act, 2013 to make appropriate consultations. This includes the Council of County Governors and other stakeholders. Further, to compel the Cabinet Secretary to consult the Council of County Governors will impede regulation-making function of the Cabinet Secretary.

Section 108 of the Water Act, 2016 provides for the manner in which effluents are regulated.

CLAUSE 20

THAT Clause 20 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclause—

(3) An association may, with the approval by the Cabinet Secretary, enter into an agreement with the National Government, a county government, a private sector institution or another farmers' association for the establishment, expansion, implementation, improvement, modernisation, operation or maintenance of a scheme.

Recommendation: The Committee rejected the Senate amendment to Clause 20.

Justification: The Senate amendment removes the aspect of cost-sharing in the agreement but does not propose alternatives.

CLAUSE 25

That, Clause 25 of the Bill be amended in subclause (1) by inserting the word “intra-scheme” immediately after the words “scheme development, management,”.

Recommendation: The Committee rejected the Senate amendment to Clause 25

Justification: The effect of the Senate amendment is that it connotes that disputes will arise within the schemes in regard to water allocations and delivery. However, disputes



may arise between one scheme and another. Therefore, a broader provision as it is in the provision covers disputes contemplated in the Senate amendment.

CLAUSE 34

THAT Clause 34 of the Bill be amended —

(a) in subclause (1) by inserting the words “and with the approval of the Senate and the National Assembly”, immediately after the words “ with county governments”; and

(b) in subclause (2) by deleting paragraph(e) and substituting therefor the following new paragraph —

(e) the requirements, procedures and forms for licensing of irrigation schemes;

Recommendation: The Committee rejected the Senate amendment to Clause 34.

Justification: The Senate amendment will have the unintended consequence of compelling the Cabinet Secretary to seek approval from the National Assembly and the Senate before publication of Regulations yet the Statutory Instruments Act contemplates that a Cabinet Secretary is required to ensure that a copy of the statutory instrument shall be transmitted to the responsible Clerk of the relevant House of Parliament within 7 sitting days after publication of a statutory instrument. The role of Parliament in the scrutiny of statutory instruments is already provided for in the Statutory Instruments Act, 2013.

SCHEDULE

THAT the schedule to the Bill be amended in paragraph 3 by deleting subparagraph (5) and substituting the following new subparagraph —

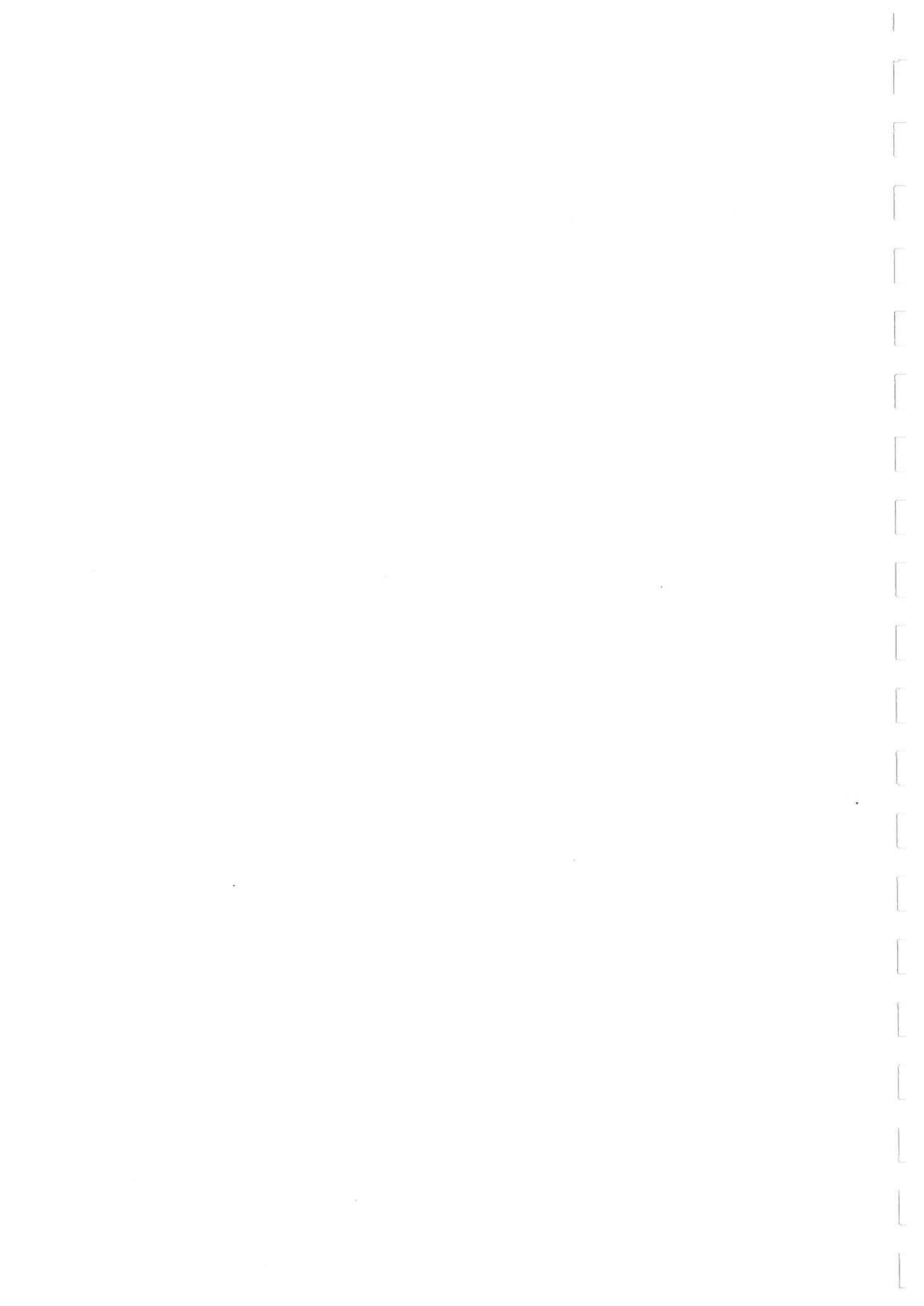
(5) the chairperson shall preside at every meeting of the Board of and in the absence of the chairperson, a member of the Board elected by the members present from among their numbers shall preside.

Recommendation: The committee rejected the Senate amendment to the Schedule subject to further amendment to provide that in the absence of the chairperson at a



meeting, the vice-chairperson shall preside at that meeting of the Board. Further, in the absence of the chairperson and the vice-chairperson at a meeting, the members present shall elect one of their number to preside at that meeting of the Board.

Justification: The Committee rejected the Senate amendment to Clause 9 paragraph (d). Therefore, there was need to harmonize it with the Schedule.



CHAPTER 3 RESOLUTIONS OF THE MEDIATION COMMITTEE

The Committee held meetings on 19th June, 2019 and considered the provisions of the Irrigation Bill, 2017. The National Assembly had accepted the Senate amendments to Clause 2 (definition of the term “irrigation” and “licence”); 6 (b) (ii); 8; and 9 (a) (i). The National Assembly had also accepted the Senate amendment to Clause 3 subject to a further amendment.

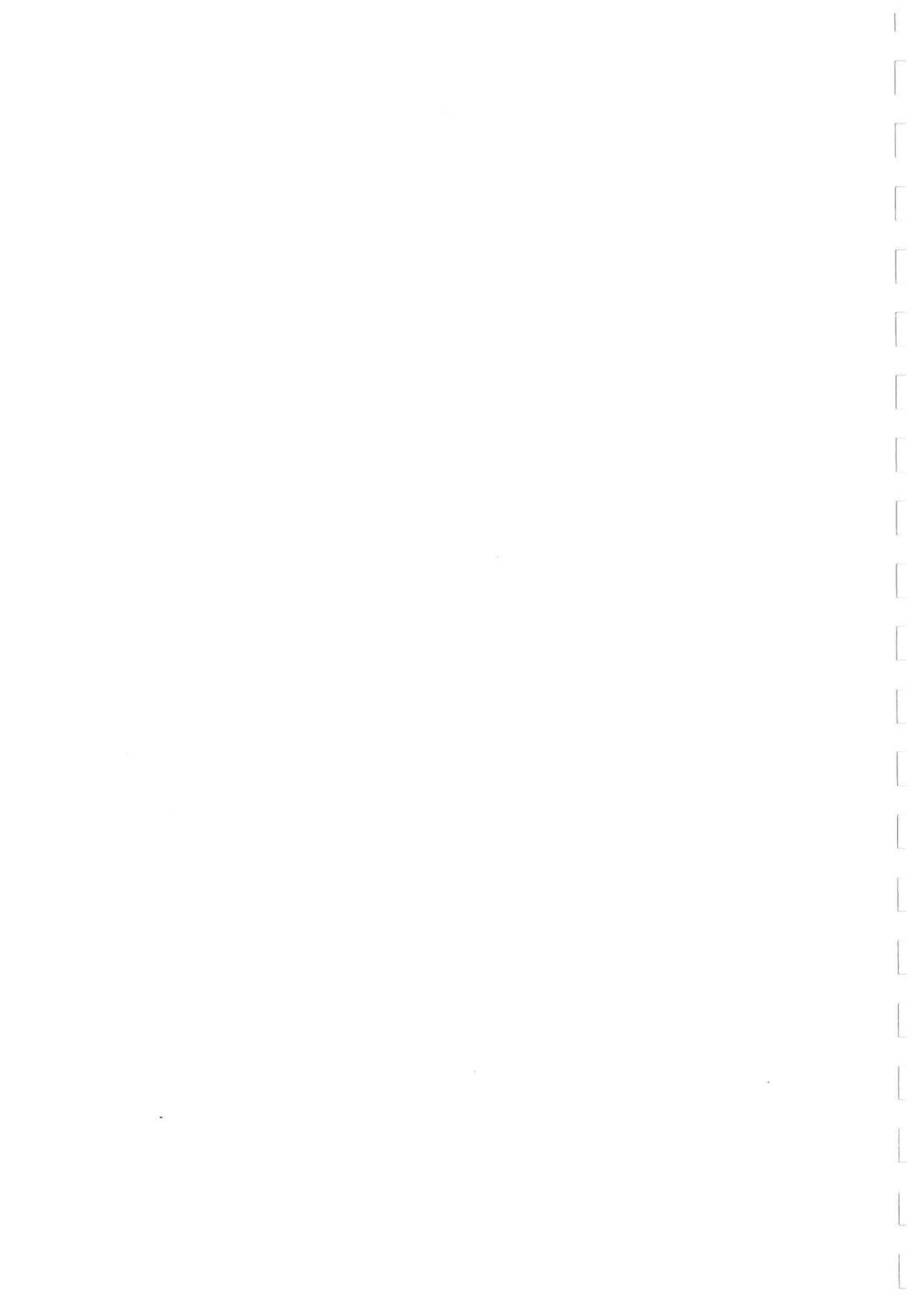
The Committee noting that the National Assembly concurred with the above-mentioned Senate amendments, resolved to adopt the Senate amendments as concurred to by the National Assembly.

The National Assembly rejected the Senate amendments to **Clause 6 (paragraphs (a), (b) (i), (b) (iii) and (c)); 9 (paragraphs (a) (ii), a(iii), (b), (c), and (d)); 14 (paragraph (b)); 16; 17; 20; 25; 34; and the Schedule.**

The Committee deliberated and made resolutions to the pending Senate amendments as follows:

CLAUSE 6

The Committee considered the proposed amendments to Clause 6(1), (2(introductory clause)) & the proposed (3A) and observed that there would be need to amend the clause to require the Cabinet Secretary, while performing his or her functions under the clause, to consult the Council of county governors among other persons. The Committee observed that consultation is a constitutional requirement as provided for in Articles 6 and 189 of the Constitution. To this end, the Committee agreed to drop the Senate amendments to Clause 6(1), (2(introductory clause)) & the proposed (3A) and amend sub-clause (3) to provide that the Cabinet Secretary consults the Council of County Governors and other stakeholders under the sub-clause in performing all his or her functions under clause 6.the Cabinet Secretary consult with the Council of County Governors.



The Committee also considered the Senate amendment to Clause 6 (2) (h) and observed that in order to ensure that reporting is done to both the National Assembly and the Senate, there is need to delete the term Parliament and substitute it with both Houses of Parliament.

Recommendation

The Committee agreed to amend clause 6 as follows-

Delete the term “Parliament” appearing in Clause 6 (2) (h) and substitute therefor “both Houses of Parliament”.

Amend sub-clause (3) to read:

(3) The Cabinet Secretary shall, in performance of the functions under this section and in order to encourage broad support for irrigation development and management, consult and seek the co-operation of –

- (a) other ministries and agencies of the National Government;
- (b) the Council of County Governors;
- (c) county governments; and
- (d) non- government entities.

CLAUSE 9

The Committee considered the proposed amendments to Clause 9 and observed that there would be need to have representatives of the county governments as well as persons representing other stakeholder interests in the National Irrigation Authority. In this regard, the Committee proposed to retain two persons nominated by the Council of County Governors and to amend clause 9 (1) further to include—

- (a) one person nominated by the registered association representing the largest number of entities in the private sector in Kenya and appointed by the Cabinet Secretary; and
- (b) one person nominated by the irrigation farmers associations and appointed by the Cabinet Secretary.

Further, the Committee agreed to delete sub-clause (4) as most Boards of Authorities and state corporations do not have substantive vice-chairpersons.

Recommendation

The Committee agreed to clause 9 as follows-

Delete paragraph (f) and substitute therefor the following new paragraphs-

- (f) two persons nominated by the Council of County Governors and appointed by the Cabinet Secretary;
- (g) one person nominated by the registered association representing the largest number of entities in the private sector in Kenya and appointed by the Cabinet Secretary; and
- (h) one person nominated by the irrigation farmers associations and appointed by the Cabinet Secretary.

The Committee agreed with the Senate amendments to Clause 9(2) (b) and 9(4).

CLAUSE 14

The Committee agreed with the Senate amendment providing that each county government may establish county irrigation development units for the better carrying out of its functions with respect to irrigation pursuant to Part 2 of the Fourth Schedule of the Constitution as the amendment is in line with the Constitution.

For consistency purposes, the Committee also agreed to use “both Houses of Parliament” in place of the term “Parliament”.

Recommendation

The Committee agreed with the Senate amendment to clause 14 (1).

The Committee agreed to the Senate amendment to clause 14 (2) as follows-

Delete the term ‘Parliament’ and substitute therefor ‘both Houses of Parliament’.



CLAUSE 16

The Committee considered the Senate amendment to Clause 16 and observed that although the Environmental Management and Conservation Act provides for environment safeguards, there is need to include in Clause 16 (6), the impact an irrigation scheme is likely to have on the environment.

Recommendation

The Committee agreed with the Senate amendment to clause 16 (6) as follows—

Insert the words “and the impact the irrigation scheme is likely to have on the environment” immediately after the words “and fish producers”.

CLAUSE 17

The Committee noted that consultation with council of county governors is necessary in prescribing the administrative and regulatory framework. It therefore resolved to amend subclause 17(1). The Committee also observed that in respect of the proposed amendment to Clause 17 (1) (c), the Water Act, 2016 already provides for the manner in which effluents are regulated. It was therefore resolved to delete the proposed Clause 17 (1) (c).

Recommendation

The Committee rejected the Senate amendments and proposed to redraft clause 17 (1) as follows—

17 (1) The Cabinet Secretary shall in consultation with the council of county governors prescribe administrative and regulatory framework—

CLAUSE 20

The Committee considered the proposed amendment to Clause 20 and observed that there would be need to retain the provision as amended by the Senate allowing an irrigation water user association to enter into agreements with other bodies with the approval of the Cabinet Secretary. The Committee also observed that it was equally important to provide that the association could enter into cost sharing agreements in



which case there would be need for approval by the Cabinet Secretary and concurrence of the National Treasury.

Recommendation

The Committee agreed with the Senate amendment to sub-clause (3).

The Committee further agreed to insert the following new clause immediately after sub-clause (3)-

(3A) Despite sub-section (3), an association may only enter into cost-sharing agreements with the National Government, county governments, private sector institutions or other farmers' associations with the approval of the Cabinet Secretary and concurrence of the National Treasury.

CLAUSE 25

The Committee considered the proposed amendment to subclause (1) to insert the word "intra-scheme" immediately after the words "scheme development, management,". The Committee observed that the effect of the Senate amendment is that it connotes that disputes will arise within the schemes in regard to water allocations and delivery. However, the Committee observed that disputes may also arise between one scheme and another.

Recommendation

The Committee rejected the Senate amendment clause 25.

CLAUSE 34

The Committee observed that the proposed amendment to Clause 34 will have the unintended consequence of compelling the Cabinet Secretary to seek approval from the National Assembly and the Senate before making Regulations. The Committee observed that if the intention was to have both Houses of Parliament approve the regulations, then the remedy is to amend the clause further to specifically provide for that. The Committee also considered the proposed amendment to Clause 34 (2) (e) and the Committee agreed with it on the basis that it brings clarity on the licensing



processes. The Committee further proposed an amendment to include a timeline of ninety days within which the Cabinet Secretary is required to publish the regulations required under the Act.

Recommendation

The Committee rejected the Senate amendment to clause 34(1) and agreed to insert the following new amendment immediately after sub-clause (1)-

(2) The regulations made under this section shall be approved by both Houses of Parliament.

The Committee agreed with the Senate amendment to clause 34(2)(e).

The Committee proposed the following new sub-clause (4) –

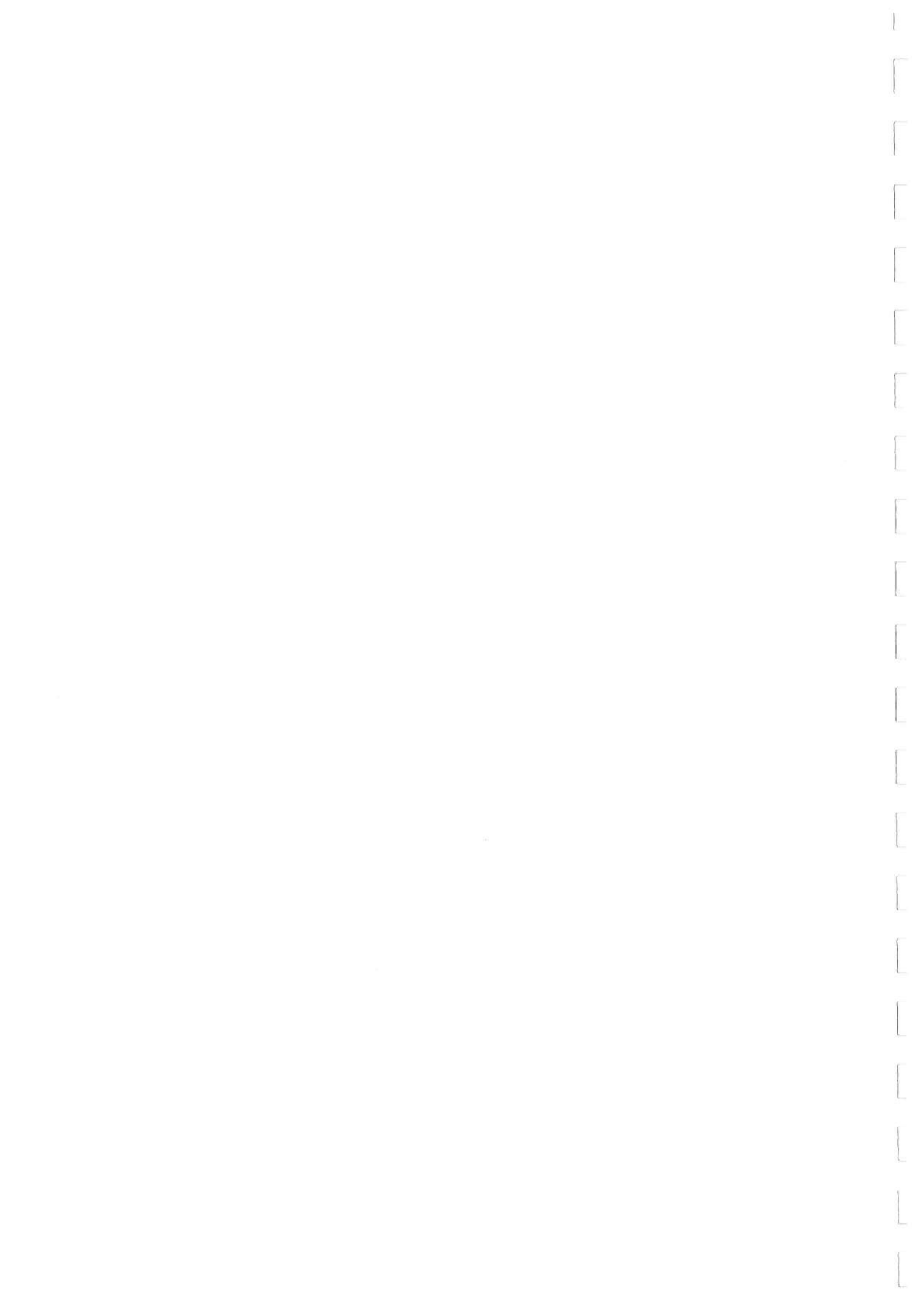
(4) The Cabinet Secretary shall publish the regulations required under this Act in the *Gazette* within ninety days of the enactment of this Act.

SCHEDULE

The Committee observed that the proposed amendment in the Schedule is a consequential amendment to Clause 9 which abolished the position of a vice-chairperson.

Recommendation

The Committee agreed with the Senate amendment to the Schedule.



APPENDICES

APPENDIX I	Minutes of the Mediation Committee Deliberations
APPENDIX II	Schedule of Members' Adoption of the Report
APPENDIX III	Agreed version of the Bill



APPENDIX I



**MINUTES OF THE FIRST SITTING OF THE MEDIATION COMMITTEE ON
THE IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO. 46 OF 2017)
HELD ON TUESDAY, 19TH JUNE, 2019 IN COMMITTEE ROOM 9, MAIN
PARLIAMENT BUILDING AT 11.00 A.M.**

PRESENT

1. Hon. Aden Duale, EGH, MP - Member
2. Sen. Peter Njeru Ndwiga, EGH, MP - Member
3. Hon. Josephat Kabinga, MP - Member
4. Sen. (Dr.) Ochilo Ayacko, MP - Member
5. Hon. (Dr.) Daniel Tuitoek, MP - Member
6. Sen. Naomi Jillo Waqo, MP - Member

ABSENT WITH APOLOGY

1. Hon. (Dr.) Chris Wamalwa, MP - Member
2. Hon. Florence Mutua, MP - Member
3. Sen. Judith Pareno, MP - Member
4. Sen. Falhada Iman, MP - Member

IN ATTENDANCE

1. Ms. Vane Akama - Director, Legal Services (National Assembly)
2. Mr. Ahmad Kadhi - Clerk Assistant I (National Assembly)
3. Ms. Jemimah Waigwa - Legal Counsel I (National Assembly)
4. Ms. Sombe Toona - Legal Counsel II (Senate)
5. Mr. Mitchell Otoro - Legal Counsel II (Senate)
6. Ms. Carol Kirorei - Clerk Assistant III (Senate)
7. Ms. Sylvia Ocharo - Research Officer (Office of the Leader of Majority)
8. Mr. John Ng'ang'a - Audio Officer (Joint Services)

THE SECRETARIAT

MIN. NO. MED/IRR/01/2019

PRELIMINARIES

Hon. Aden Duale, EGH, MP called the meeting to order at 11.25 a.m. followed by a word of prayer by Hon. Josephat Kabinga, M.P.

Hon. Aden Duale, MP noted that the conclusion of the Warehouse Receipt System Bill, 2017 passage was crucial for the unlocking of resources by the National Treasury. He added that the essence of mediation was give and take and hoped for fruitful deliberations and swift conclusion of the mediation process.

MIN. NO. MED/IRR/02/2019 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Hon. Aden Duale, EGH, MP and seconded by Sen. Njeru Ndwiga, EGH, MP.

MIN.NO. MED/IRR/03/2019 ELECTION OF THE CHAIRPERSON

Hon. Aden Duale, EGH, MP was nominated for the position of Chairperson of the Committee after he was proposed by Hon. (Dr.) Daniel Tuitoek, MP and seconded by Sen. Njeru Ndwiga, EGH, MP.

There being no other nominee proposed for the position of Chairperson, Hon. Aden Duale, EGH, MP was declared the duly elected Chairperson of the Committee.

MIN.NO. MED/IRR/04/2019 ELECTION OF THE VICE - CHAIRPERSON

Sen. Njeru Ndwiga, EGH, MP was nominated for the position of Vice-Chairperson of the Committee after he was proposed by Hon. Josephat Kabinga, MP and seconded by Sen. (Canon) Naomi Waqo, MP.

There being no other nominee proposed for the position of Vice-Chairperson, Sen. Njeru Ndwiga, EGH, MP was declared the duly elected Vice-Chairperson of Committee.

MIN. NO. MED/IRR/05/2019 DATE OF NEXT MEETING

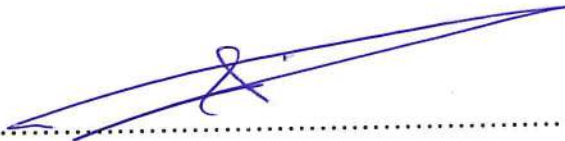
The next meeting would be on Thursday, 19th June, 2019 at 11.45 a.m.

MIN. NO. MED/IRR/06/2019

ADJOURNMENT

There being no other business, the sitting was adjourned at 11.40 a.m.

SIGNED:.....



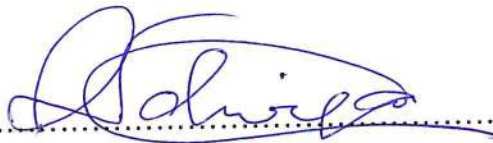
HON. ADEN DUALE, EGH, M.P.

(CHAIRPERSON)

DATE:.....

26/6/19

SIGNED:.....



SEN. NJERU NDWIGA, EGH, M.P.

(VICE-CHAIRPERSON)

DATE:.....

26/6/19

MINUTES OF THE SECOND SITTING OF THE MEDIATION COMMITTEE ON THE IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO. 46 OF 2017) HELD ON TUESDAY, 19TH JUNE, 2019 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING AT 11.45 A.M.

PRESENT

- | | | |
|-------------------------------------|---|-------------------|
| 1. Hon. Aden Duale, EGH, MP | - | Chairperson |
| 2. Sen. Peter Njeru Ndwiga, EGH, MP | - | Vice- Chairperson |
| 3. Hon. Josephat Kabinga, MP | - | Member |
| 4. Sen. (Dr.) Ochilo Ayacko, MP | - | Member |
| 5. Hon. (Dr.) Daniel Tuitoek, MP | - | Member |
| 6. Sen. Naomi Jillo Waqo, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|---------------------------------|---|--------|
| 1. Hon. (Dr.) Chris Wamalwa, MP | - | Member |
| 2. Hon. Florence Mutua, MP | - | Member |
| 3. Sen. Judith Pareno, MP | - | Member |
| 4. Sen. Falhada Iman, MP | - | Member |

IN ATTENDANCE

- | | | |
|-----------------------|---|---|
| 1. Ms. Vane Akama | - | Director, Legal Services (National Assembly) |
| 2. Mr. Ahmad Kadhi | - | Clerk Assistant I (National Assembly) |
| 3. Ms. Jemimah Waigwa | - | Legal Counsel I (National Assembly) |
| 4. Ms. Sombe Toona | - | Legal Counsel II (Senate) |
| 5. Mr. Mitchell Otoro | - | Legal Counsel II (Senate) |
| 6. Ms. Carol Kirorei | - | Clerk Assistant III (Senate) |
| 7. Ms. Sylvia Ocharo | - | Research Officer (Office of the Leader of Majority) |
| 8. Mr. John Ng'ang'a | - | Audio Officer (Joint Services) |

THE SECRETARIAT

MIN. NO. MED/IRR/07/2019

PRAYER

The Chairperson called the meeting to order at 11.45 a.m. followed by a word of prayer.

MIN. NO. MED/IRR/08/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Hon. Josephat Kabinga, MP and seconded by Sen. (Canon) Naomi Waqo, MP.

MIN.NO. MED/IRR/09/2019

**CONSIDERATION OF IRRIGATION BILL,
(NATIONAL ASSEMBLY BILLS NO. 46 OF
2017**

The Chairperson informed the meeting that the National Assembly had considered the amendments passed by the Senate to the Irrigation Bill, (National Assembly Bills No. 46 of 2017) and had agreed on a number of amendments proposed to the Bill. The amendments adopted by the National Assembly included Clause 2, (definition of the term “irrigation” and “licence”); 6 (b) (ii); 8; and 9 (a) (i). The National Assembly had also accepted the Senate amendment to Clause 3 subject to a further amendment.

The National Assembly rejected the Senate amendments to **Clause 6 (paragraphs (a), (b) (i), (b) (iii) and (c); 9 (paragraphs (a) (ii), a(iii), (b), (c), and (d)); 14 (paragraph (b)); 16; 17; 20; 25; 34; and the Schedule.**

The Committee considered the various clauses to the Bill as summarized below:

1. Clause 6

THAT, Clause 6 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

- (1) The Cabinet Secretary shall, in consultation with the Council of County Governors, regulate and promote the development and proper management of irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authority or person under the authority of the Cabinet Secretary of

their powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation.

(b) in subclause (2) by—

(i) inserting the words “in consultation with the Council of County Governors” immediately after the words “Cabinet Secretary shall” in the introductory clause;

(ii) deleting the word “facilitate” appearing at the beginning of paragraph (d) and substituting therefor the word “promote”; and

(iii) deleting the word “Parliament” appearing immediately after the words “report to” in paragraph (h) and substituting therefor the words “the National Assembly and the Senate”; and

(c) by inserting the following new subclause immediately after subclause (3)—

(3A) The Cabinet Secretary shall consult the County Governments of all counties affected by an irrigation scheme before issuing a licence under subsection (2)(f).

Resolution: The Committee resolved to amend clause 6 (2) (h) by inserting the words “both Houses of Parliament” in place of the word “Parliament”. The Legal Counsel were tasked to redraft Clause 6 (3) and to provide that Cabinet Secretary shall consult with the council of county governors in irrigation development and management and report back to the committee for consideration and approval.

2. **Clause 9**

THAT, Clause 9 of the Bill be amended—

(a) in subclause (1) by—

(i) deleting the words “State Department of” appearing immediately after the words “the Principal Secretary” in paragraph (b) and substituting therefor the words “responsible for”;

(ii) deleting the words “five other” appearing at the beginning of paragraph (f) and substituting therefor the word “two”;

(iii) inserting the following new paragraph immediately after the paragraph (f)—

(g) four persons nominated by the Council of County Governors and appointed by the Cabinet Secretary, taking into account the various stakeholder interests in irrigation development and management as defined in subsection (2).

(b) in subclause (2) by deleting the words “include two representatives of county governments nominated by the Council of Governors and shall” appearing at the beginning of paragraph (b);

(c) by inserting the following new subclause immediately after subclause (2)—

(2A) The Council of County Governors shall, for purposes of subsection (2) (b), nominate and submit to the Cabinet Secretary, the names of eight persons out of whom the Cabinet Secretary shall appoint four.

(d) by deleting subclause (4).

Resolution: In line with the Mwongozo Guidelines, the Committee resolved to keep the membership of the Board at 9 members. It was agreed that the clause be amended to include two persons nominated by the council of county governors, one person representing the private sector and one person representing the umbrella farmers association in Kenya.

It was further resolved that subclause (4) be deleted as most Boards of Authorities and state corporations do not have substantive vice-chairpersons.

3. Clause 14

THAT, Clause 14 of the Bill be amended—

(a) in subclause (1) by deleting the words “an irrigation function delegated by the Cabinet Secretary as may be prescribed in the Regulations” appearing immediately after the words “carrying out of” and substituting therefor

the words "its functions with respect to irrigation pursuant to Part 2 of the Fourth Schedule of the Constitution"; and

- (b) in subclause (2) by deleting the word "Parliament" appearing immediately after the words "and approved by" and substituting therefor the words "the National Assembly and the Senate".

Resolution: The Committee agreed with the Senate amendment providing that each county government may establish county irrigation development units for the better carrying out of its functions with respect to irrigation pursuant to Part 2 of the Fourth Schedule of the Constitution as the amendment is in line with the Constitution.

For consistency purposes, the Committee also agreed to use "both Houses of Parliament" in place of the term "Parliament".

4. **Clause 16**

THAT, Clause 16 of the Bill be amended in subclause (6) by inserting the words "and the impact of the irrigation scheme is likely to have on the environment" immediately after the words "and fish producers".

Resolution: Agreed with amendment by the Senate since there is need to include the impact an irrigation scheme is likely to have on the environment.

5. **Clause 17**

THAT, Clause 17 of the Bill be amended in subclause (1) by—

- (a) inserting the words "in consultation with the Council of County Governors," immediately after the words "Cabinet Secretary shall" in the introductory clause; and
- (b) inserting the following new paragraph immediately after paragraph (b)—
- (c) in consultation with the Water Resources Authority, for the handling of irrigation water effluent.

Resolution: The Committee noted that consultation with council of county governors is necessary in prescribing the administrative and regulatory framework since the proposed framework is likely to impact county functions.

It therefore resolved to amend subclause 17 (1) to provide for the consultation. The Committee also observed that in respect of the proposed amendment to Clause 17 (1) (c), the Water Act, 2016 already provides for the manner in which effluents are regulated. It therefore resolved to delete the proposed Clause 17 (1) (c).

6. **Clause 20**

THAT, Clause 20 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclause—

(3) An association may, with the approval by the Cabinet Secretary, enter into an agreement with the National Government, a county government, a private sector institution or another farmers' association for the establishment, expansion, implementation, improvement, modernization, operation or maintenance of a scheme.

Resolution: The Committee agreed to the Senate amendment to provide for general agreements. It also resolved that it was also important to provide for cost sharing agreements. It was agreed that the clause be redrafted in this regard.

7. **Clause 25**

THAT, Clause 25 of the Bill be amended in subclause (1) by inserting the word "intra-scheme" immediately after the words "scheme development, management,".

Resolution: The Committee rejected the Senate amendment as it assumes that disputes will arise only within the schemes in regard to water allocations and delivery and does not take in to account disputes that may arise between one scheme and another.

8. **Clause 34**

THAT, Clause 34 of the Bill be amended —

- (a) in subclause (1) by inserting the words “and with the approval of the Senate and the National Assembly”, immediately after the words “ with county governments”; and
- (b) in subclause (2) by deleting paragraph (e) and substituting therefor the following new paragraph —
- (e) the requirements, procedures and forms for licensing of irrigation schemes;

Resolution: The Committee rejected the Senate amendment as it will have the unintended consequence of compelling the Cabinet Secretary to seek approval from the National Assembly and the Senate before making Regulations. The Committee observed that if the intention was to have both Houses of Parliament approve the regulations, then the remedy is to amend the clause further to specifically provide for that. The Committee also considered the proposed amendment to Clause 34 (2) (e) and the Committee agreed with it on the basis that it brings clarity on the licensing processes.

9. **Schedule**

THAT, the schedule to the Bill be amended in paragraph 3 by deleting subparagraph (5) and substituting the following new subparagraph —

- (5) the chairperson shall preside at every meeting of the Board of and in the absence of the chairperson, a member of the Board elected by the members present from among their numbers shall preside.

Resolution: Agreed with the Senate amendment in the Schedule as it is a consequential amendment to Clause 9 which abolished the position of a Vice-Chairperson.

MIN. NO. MED/IRR/10/2019

DATE OF NEXT MEETING

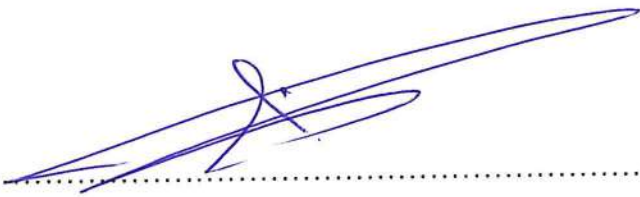
The next meeting will be held on notice.

MIN. NO. MED/IRR/11/2019

ADJOURNMENT

The Sitting was adjourned at 1.55 p.m.

SIGNED:.....



**HON. ADEN DUALE, EGH, M.P.
(CHAIRPERSON)**

DATE:.....

26/6/19

SIGNED:.....



**SEN. NJERU NDWIGA, EGH, M.P.
(VICE-CHAIRPERSON)**

DATE:.....

26/6/19

MINUTES OF THE THIRD SITTING OF THE MEDIATION COMMITTEE ON THE IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO. 46 OF 2017) HELD ON WEDNESDAY, 26TH JUNE, 2019 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING AT 11.00 A.M.

PRESENT

- | | | |
|--------------------------------------|---|------------------|
| 1. Hon. Aden Duale, EGH, MP | - | Chairperson |
| 2. Sen. Peter Njeru Ndwiga, EGH, MP | - | Vice-Chairperson |
| 3. Hon. Josephat Kabinga, MP | - | Member |
| 4. Hon. (Dr.) Daniel Tuitoek, MP | - | Member |
| 5. Sen. Naomi Jillo Waqo, MP | - | Member |
| 6. Hon. (Dr.) Chris Wamalwa, MP | - | Member |
| 7. Sen. (Dr.) Ochilo Ayacko, EGH, MP | - | Member |
| 8. Sen. Falhada Iman, MP | - | Member |

ABSENT WITH APOLOGY

- | | | |
|----------------------------|---|--------|
| 1. Hon. Florence Mutua, MP | - | Member |
| 2. Sen. Judith Pareno, MP | - | Member |

IN ATTENDANCE

- | | | |
|-------------------------|---|---|
| 1. Mr. Ahmad Kadhi | - | Clerk Assistant I (National Assembly) |
| 2. Ms. Jemimah Waigwa | - | Legal Counsel I (National Assembly) |
| 3. Mr. Salem Lorot | - | Legal Counsel II (National Assembly) |
| 4. Ms. Sombe Toona | - | Legal Counsel II (Senate) |
| 5. Ms. Carol Kirorei | - | Clerk Assistant III (Senate) |
| 6. Ms. Sylvia Ocharo | - | Research Officer (Office of the Leader of Majority) |
| 7. Ms. Joyce Chelang'at | - | Audio Officer (Joint Services) |

THE SECRETARIAT

MIN. NO. MED/IRR/12/2019

PRAYER

The Chairperson called the meeting to order at 11.30 a.m. followed by a word of prayer.

MIN. NO. MED/IRR/13/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Naomi Waqo, MP and seconded by Hon. Josephat Kabinga, MP.

MIN.NO. MED/IRR/14/2019 **CONFIRMATION OF PREVIOUS MINUTES**

1. The Minutes of the 1st Sitting held on Tuesday, 19th June, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson and Vice-Chairperson after being proposed by Hon. Daniel Tuitoek, MP, and seconded by Sen. (Dr.) Ochilo Ayacko, MP.
2. The Minutes of the 2nd Sitting held on Tuesday, 19th June, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson and Vice-Chairperson after being proposed by Hon. Josephat Kabinga MP, and seconded by Sen. Naomi Waqo, MP.

MIN.NO. MED/IRR/15/2019 **MATTERS ARISING FROM PREVIOUS MINUTES**

Ex. Minute No. MED/IRR/09/2019

Under Clause 9, Members clarified that it was agreed that one person representing “irrigation farmers association” would be nominated to the Board and not a person representing an “umbrella farmers association”.

MIN.NO. MED/IRR/16/2019 **CONSIDERATION AND ADOPTION OF THE REPORT ON MEDIATION ON IRRIGATION BILL, (NATIONAL ASSEMBLY BILLS NO. 46 OF 2017)**

The Legal Counsel presented the draft amendment to Clause 6(3) as follows:

(3) The Cabinet Secretary shall, in performance of the functions under this section and in order to encourage broad support for irrigation development and management, consult and seek the co-operation of –

(a) other ministries and agencies of the National Government;

(b) the Council of County Governors;

(c) county governments; and

(d) non- government entities.

The Committee approved the amendment to clause 6(3) as presented.

Hon. Aden Duale, M.P. expressed his reservations with the agreed version of clause 6, which replaced the word “Parliament” with the words “both Houses of Parliament” noting the Article 93(1) of the Constitution establishes Parliament that shall consist of two Houses i.e. the National Assembly and the Senate. In addition, he opined that the amendment to clause 9(1) to include one person nominated by the registered association representing the largest number of entities in the private sector in Kenya should instead refer to Kenya Private Sector Alliance (KEPSA).

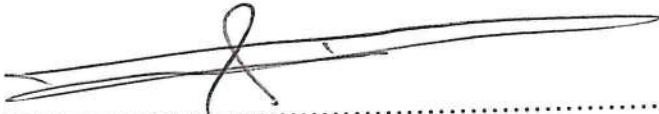
The Committee deliberated on the two clauses and agreed to retain the proposals agreed at the previous meeting. In addition the Committee resolved that a provision be included in the Bill to compel the Cabinet Secretary to revoke Regulations in force under CAP 347 and to come up with new Regulations within 90 days of enactment of the Bill.

Members considered the Report of the Mediation Committee on the Irrigation Bill. The Committee adopted the Report after being proposed by Hon. (Dr.) Daniel Tuitoek, MP and seconded by Sen. Naomi Waqo, MP.

MIN. NO. MED/IRR/17/2019


ADJOURNMENT

There being no other business, Sitting was adjourned at 12.30 p.m.

SIGNED:.....


**HON. ADEN DUALE, EGH, M.P.
(CHAIRPERSON)**

DATE:..... 27/6/19

SIGNED:.....


**SEN. NJERU NDWIGA, EGH, M.P.
(VICE-CHAIRPERSON)**



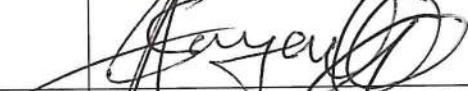
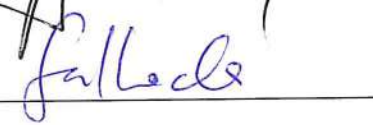

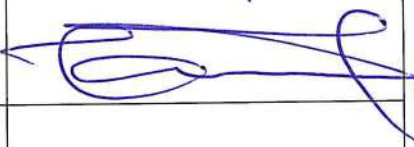


DATE:..... 27/6/19

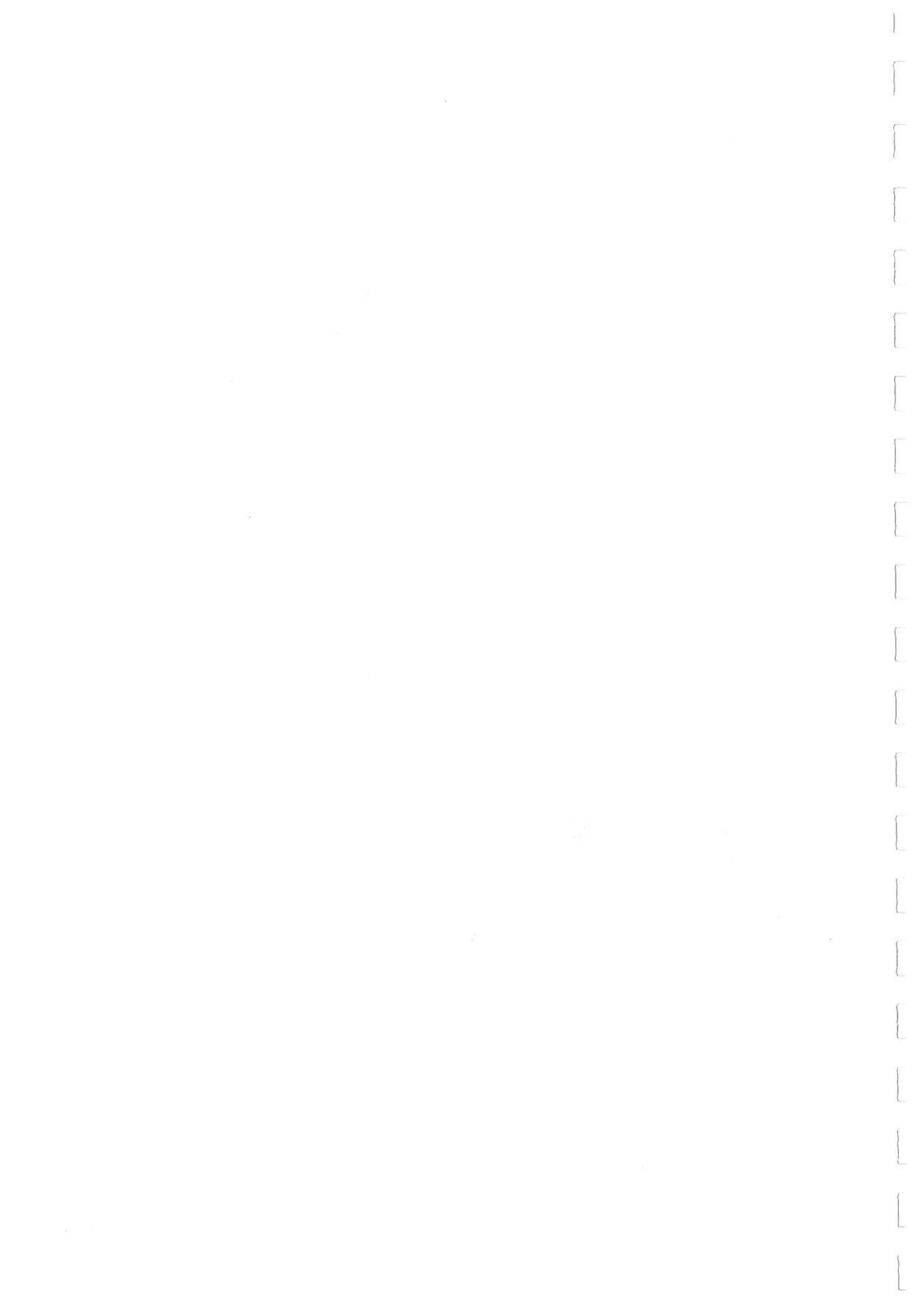
APPENDIX II



**ADOPTION OF THE REPORT OF THE MEDIATION COMMITTEE ON THE
IRRIGATION BILL (NATIONAL ASSEMBLY BILLS NO. 46 OF 2017)**

We, the undersigned Members of the Mediation Committee do hereby append our signatures to adopt the Report-

NAME	SIGNATURE
HON. ADEN DUALE, EGH, MP - CHAIRPERSON	
SEN. PETER NJERU NDWIGA, EGH MP. - VICE CHAIRPERSON	
SEN. (DR.) OCHILO AYACKO	
SEN. FALHADA IMAN	
SEN. JUDITH PARENO, MP	
SEN. (CANON) NAOMI WAQO	
HON. (DR.) CHRIS WAMALWA, MP ^{C&S}	
HON. FLORENCE MUTUA, MP	
HON. (DR.) DANIEL KAMUREN TUITOEK, MP	
HON. JOSEPHAT WACHIRA KABINGA, MP	



APPENDIX III





REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 46 of 2017)

THE IRRIGATION BILL, 2017

(A Bill published in the Kenya Gazette Supplement No. 183 of 2017 and passed by the National Assembly, with amendments, on April 19th, 2018)

N.A. /B/No. 46/2017

THE IRRIGATION BILL, 2017
ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Scope of application.
- 4—Act to prevail in irrigation matters.
- 5— Guiding principles.

PART II— REGULATION OF IRRIGATION

- 6— Role of National Government.

**PART III—THE NATIONAL IRRIGATION DEVELOPMENT
AUTHORITY**

- 7— Establishment of the Authority.
- 8— Powers and Functions of the Authority.
- 9— The Board of the Authority.
- 10— Conduct of business of the Board.
- 11— Powers of the Board.
- 12— Chief Executive Officer.
- 13— Other Staff.

PART IV—RESPONSIBILITY OF COUNTY GOVERNMENTS

- 14— Role of county government.

PART V— IRRIGATION SERVICES

- 15— Water for irrigation
- 16— Setting apart of land, access rights etc.
- 17—Establishment of Administrative and legal framework.
- 18— Irrigation research, innovation and training.
- 19— Management of irrigation schemes.
- 20—Formation of irrigation water users' associations.

PART VI— FINANCIAL PROVISIONS

- 21— Finances of the Authority.

- 22— Annual estimates.
- 23— Accounts and Audit.
- 24— Annual reports.

PART VII—DISPUTE RESOLUTION

- 25— Dispute resolution.
- 26— Appeals.

**PART VIII—MISCELLANEOUS AND OFFENCES
PROVISIONS**

- 27— Monitoring and evaluation.
- 28— Protection from Liability.
- 29— Wilful damage.
- 30— Destructive practices.
- 31— Setting fire.
- 32— Harmful chemicals.
- 33— Abstraction of water.

PART IX—PROVISIONS ON DELEGATED POWERS

- 34— Making of regulations.

PART X—REPEALS AND TRANSITIONAL

- 35— Repeal of Cap. 347.

THE IRRIGATION BILL, 2017

A Bill for

AN ACT of Parliament to provide for the development, management and regulation of irrigation, to support sustainable food security and socioeconomic development in Kenya, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Irrigation Act, 2017.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“agriculture” shall have the meaning assigned to it under section 2 of the Agriculture, Fisheries and Food Authority Act, 2013;

No 13 of 2013.

“Authority” means the National Irrigation Authority established under section 7;

“authorized” means authorized by or under this Act;

“Board” means the Board of the Authority established under section 9;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to irrigation;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 12;

“commercial irrigation farmer” means a farmer who by means of irrigation grows crops primarily for sale;

“county irrigation development unit” means the unit or entity established by a county government to carry out irrigation matters under section 14;

“Department” means State Department of Irrigation;

“Dispute Resolution Committee” means the Dispute Resolution Committee established under section 8(2)(d).

“farmer” includes a crop, livestock or fish farmer;

“irrigation” means any process, other than by natural precipitation, which supplies water to crops or any other cultivated plants, livestock, aquaculture and desired forest trees;

“irrigation scheme” means a systematic and orderly irrigation system covering a defined area of land regardless of the type or system of irrigation employed;

“irrigation management transfer” means the transfer to the users of authority and responsibility for both governance and delivery of management services in an irrigation and drainage scheme;

“irrigation service fee” means the rates to be charged to water users for receiving irrigation services;

“irrigation service plan” means the annual plan for water acquisition and distribution, scheme maintenance and repairs, other management tasks, staff and group labour mobilization, budget and irrigation service fee;

“irrigation water user” means a member of a water users’ association who uses water from an irrigation scheme for an approved purpose such as for crops, livestock, and fish farming;

“irrigation water users’ association” means any association established under section 20;

“large scale irrigation scheme” means a scheme which acreage size covers over three thousand acres, and is developed and managed by the Authority, and is established for national strategic purposes, or such schemes as implemented by the private sector;

“licence” means a licence issued by the Cabinet Secretary or such other person as the Cabinet Secretary may authorize;

“medium scale irrigation scheme” means a scheme which in acreage size covers over one hundred acres to three thousand acres, and is implemented by the Authority, or another state agency in collaboration with county government, or such schemes as implemented by a private entity;

“Ministry” means the Ministry for the time being responsible for matters related to irrigation;

“monitoring and evaluation” means a system of measuring, reporting and interpreting the quantity and quality of inputs provided, actions implemented, immediate outcomes achieved and ultimate impacts realized;

“national irrigation scheme” means an area of land designated as such by the Authority through a notice;

“Scheme Management Committee” means the Scheme Management Committee established under section 8 (2)(c);

“State department” means the State Department responsible for matters relating to Irrigation;

“smallholder irrigation and drainage scheme” means an irrigation scheme that is developed, owned and managed by communities as irrigation water user groups or individual farmers;

“small scale irrigation scheme” means a scheme which in acreage size covers less than one hundred acres and implemented by a county government, or by the national government through Authority in case of trans boundary or inter county schemes or strategic schemes or such schemes as implemented by a private entity;

“storage” means infrastructure and practices designed to capture and store water for use in irrigation;

“Water Tribunal” means the Water Tribunal established under section 119 of the Water Act, 2016;

No. 43 of 2016.

“water harvesting” means activities where water from rainfall or surface runoff is collected, diverted, stored and utilized; and

“Water Resources Authority” has the meaning assigned to it under section 2 of the Water Act, 2016.

No. 43 of 2016.

3. (1) The provisions of this Act shall apply to matters relating to the development, management, financing, provision of support services and regulation of the entire irrigation sector in Kenya.

Scope of application.

(2) Upon the commencement of this Act, no irrigation development may be carried out in Kenya otherwise than under this Act.

4. The provisions of this Act shall prevail in the case of any inconsistency between this Act and any other legislation in matters relating to irrigation.

Act to prevail in irrigation matters.

5. In discharging functions under this Act, the Cabinet Secretary, any State corporation established under this Act, county governments and any person or persons administering or applying this Act shall be guided by the principles and values set out in Articles 10, 43, 60 and 232 of the Constitution.

Guiding principles.

PART II—DEVELOPMENT, MANAGEMENT AND REGULATION OF IRRIGATION

6. (1) The Cabinet Secretary shall develop, manage and regulate irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authority or person under the authority of the Cabinet Secretary of their powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation.

Role of national government

(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary shall have responsibility with regard to development and management of irrigation to—

- (a) formulate policies, make legislative proposals to Parliament, provide sector regulation, coordination and guidance, and monitoring and evaluation;
- (b) develop general principles, guidelines and standards for promoting development and for the coordination of irrigation planning;
- (c) establish, through a gazette notice, national, public or strategic schemes of any category as defined in this Act;
- (d) promote the use of efficient irrigation systems across the country;
- (e) subject to resource constraints, ensure availability and adequacy of water for irrigation;
- (f) receive and determine applications for any irrigation projects, including issuance of irrigation licences for irrigation schemes;

- (g) monitor and enforce conditions attached to licenses for all irrigation projects;
- (h) report to both Houses of Parliament annually, and from time to time as may be necessary, on the state of, and needs for, irrigation development and management in the country;
- (i) in collaboration with county governments, gather information and maintain data bases on irrigation development and management including data on irrigation water supplies, demands, projects, irrigated areas, management performance, potential for expansion and human resources;
- (j) conduct periodic technical and management audits of irrigation schemes infrastructure, governance, management and financing;
- (k) maintain storage investments for their proper use implementation; and
- (l) carry out other mandate as may be specified in this Act or any other written law.

(3) The Cabinet Secretary shall, in performance of the functions under this section and in order to encourage broad support for irrigation development and management, consult and seek the co-operation of—

- (a) other ministries and agencies of the National Government;
- (a) the Council of County Governors;
- (b) county governments; and
- (c) non-government entities.

(4) The Cabinet Secretary shall, in consultation with the county governments and other stakeholders, formulate and publish in the *Kenya Gazette*, a five-year national irrigation services strategy, based on, among others, the national irrigation policy for the time being in force.

(5) The Cabinet Secretary shall ensure effective implementation of the national irrigation services strategy and to this end shall institute reviews aligned to planning

cycles or at such times as the Cabinet Secretary may determine.

(6) The Cabinet Secretary may exercise any or some of the duties and functions under subsection (1) above directly or through the Authority.

PART III—THE NATIONAL IRRIGATION AUTHORITY

7. (1) There is established an authority to be known as the National Irrigation Authority.

Establishment of the Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts; and
- (e) doing such other acts necessary for the proper performance of the functions of the Authority.

(3) The headquarters of the Authority shall be in Nairobi.

(4) The Authority may establish such regional, county, catchments or sub-catchment or sub-county level offices as the Board, may consider necessary.

8. (1) The functions of the Authority shall be to—

Powers and functions of the Authority.

- (a) develop and improve irrigation infrastructure for national or public schemes;
- (b) provide irrigation support services to private medium and smallholder schemes, in consultation and cooperation with county governments and other stakeholders;
- (c) provide technical advisory services to irrigation schemes in design, construction supervision, administration, operation and maintenance under appropriate modalities, including agency contracts, as may be elaborated in regulations to this Act.

(2) The Authority shall exercise all such powers necessary to enable it to perform its functions under this Act and, without prejudice to the generality of the foregoing, the Authority may—

- (a) undertake irrigation development, including infrastructure, in national or public and smallholder schemes, including schemes which traverse or straddle more than one county;
- (b) in consultation with county governments, facilitate formation and strengthening of irrigation water users' associations at scheme level for operation, maintenance and management;
- (c) in consultation with the county governments and other stakeholders facilitate formation and strengthening of scheme management committees at scheme level for management of the schemes;
- (d) in consultation with the county governments and other stakeholders facilitate formation and strengthening of dispute resolution committees at scheme level for the resolution of disputes relating to scheme management;
- (e) in consultation with the Cabinet Secretary, the Cabinet Secretary for the time being responsible for finance, and the county governments raise funds for the development of infrastructure in national, public and smallholder schemes under appropriate mechanisms, including under agency contracts;
- (f) in consultation with the Cabinet Secretary and county governments, co-ordinate and plan settlement on national or public irrigation schemes, as well as schemes which traverse or straddle more than one county and determine the number of settlers thereof;
- (g) provide technical advisory services on a commercial basis, on irrigation water management, including water harvesting and storage, and waste water recycling for agricultural use to all schemes under appropriate modalities, including agency contracts;

- (h) in collaboration with county governments, the private sector, civil society organizations and other stakeholders, provide technical advisory services to community and smallholder irrigation schemes concerning design, construction supervision, administration and maintenance of irrigation infrastructure under appropriate modalities, including agency contracts;
- (i) facilitate linkages between and among the National Government and county governments, private sector, civil society organizations, communities and other stakeholders for the provision of support services to irrigation water user associations;
- (j) provide land in national irrigation schemes for public purposes;
- (k) in collaboration with county governments and other stakeholders, promote the marketing, safe storage and processing of crops, animal and fish products grown or produced on national and other irrigation schemes and to liaise in this regard with other responsible state agencies and organizations;
- (l) in collaboration with county government and other stakeholders and government agencies carry out periodic researches to determine and make recommendation on fair prices for crops, animals and fish products grown or produced on national and other irrigation schemes;
- (m) prepare and submit to the Cabinet Secretary, through the Principal Secretary, annual and other periodic reports concerning the performance of its mandate and functions; and
- (n) advise the Cabinet Secretary, through the Principal Secretary, on any matter in connection with the development, maintenance, expansion and availability of irrigation support services.

9. (1) There shall be a Board of the Authority which shall consist of—

The Board of Authority.

- (a) a chairperson, who shall be appointed by the President subject to subsection (5);
 - (b) the Principal Secretary responsible for Irrigation or his representative;
 - (c) the Principal Secretary responsible for finance or his representative;
 - (d) the principal secretary responsible for Agriculture or his representative;
 - (e) the Principal Secretary for the time being responsible for water or his representative;
 - (f) two persons nominated by the Council of County Governors and appointed by the Cabinet Secretary;
 - (g) one person nominated by the registered association representing the largest number of entities in the private sector in Kenya and appointed by the Cabinet Secretary; and
 - (h) one person nominated by irrigation farmers associations and appointed by the Cabinet Secretary.
- (2) The members of the Board shall—
- (a) reflect gender and regional balance in accordance with the Constitution; and
 - (b) be reflective of an appropriate professional, disciplinary and stakeholder mix.
- (3) The Chief Executive Officer of the Authority shall be an *ex officio* member of the Board.
- (4) A person shall be qualified for appointment as Chairperson of the Board if such a person—
- (a) is a citizen of Kenya;
 - (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution; and
 - (c) holds relevant academic and professional qualification including a university degree or its equivalent in any field.

(5) The Board may from time to time establish committees for better carrying out of its functions.

10. The conduct of business of the Board shall be in accordance with the Schedule.

Conduct of
business of the
Board.

11. (1) The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

Powers of the
Board.

(2) Without prejudice to the generality of the foregoing the Board shall have power to—

- (a) secure continuing improvement of performance, protect the long term viability, and ensure fiscal discipline of the Authority;
- (b) administer the assets of the Authority in such manner as best promotes the purposes for which the Authority is established;
- (c) ensure protection of the assets and developments of the Authority;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (e) receive any grants, gifts, donations or endowment and make legitimate disbursements therefrom;
- (f) invest any funds of the Authority not immediately required for its purposes;
- (g) undertake any activity necessary for the fulfilment of any of the functions of the Authority.

12. (1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Cabinet Secretary on recommendation of the Board on a competitive basis and on such terms and conditions as may be specified in the instrument of appointment.

Chief Executive
Officer.

(2) A person shall be qualified to be appointed as Chief Executive Officer of the Authority if that person—

- (a) is a citizen of Kenya;
- (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
- (c) holds relevant academic and professional qualifications including a university degree in

engineering or agriculture or any field related to irrigation; and

- (d) has at least fifteen years' experience in the management of a public or private institution, five of which should be at senior management level or is a distinguished scholar in a discipline relevant to irrigation.

(3) The Chief Executive Officer shall be responsible to the Board for the day-to-day management of the affairs of the Authority and for the performance of any other functions as the Board may direct, and shall be the accounting officer of the Authority.

(4) The Chief Executive Officer shall hold office for a term of three years and is eligible for re-appointment for a further term of three years.

(5) The Chief Executive Officer may be removed from office by the Cabinet Secretary on the recommendation of the Board in accordance with the terms and conditions of service.

13. Subject to the provisions in section 34 regarding transitional arrangements, the Authority may engage such other officers and staff as it may consider sufficient for the performance of its functions under this Act on such terms and conditions as are provided in approved establishment.

Other staff.

PART IV—RESPONSIBILITY OF COUNTY GOVERNMENTS

14. (1) Each county government may, within its area of jurisdiction, establish a county irrigation development unit for the better carrying out of its functions with respect to irrigation pursuant to Part 2 of the Fourth Schedule of the Constitution.

Role of county government.

(2) Each county government shall, for purposes of ensuring uniformity and national standards in the irrigation sub-sector, through its legislative and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet Secretary and approved by both Houses of Parliament.

(3) The county irrigation development units established under subsection (1) shall have the following functions—

- (a) formulate and implement county irrigation strategy in collaboration with relevant stakeholders, in line with national policies and strategies;
- (b) develop and maintain an irrigation database and integrate systematic monitoring and evaluation;
- (c) identify community-based smallholder schemes for implementation in line with national guidelines;
- (d) mainstream irrigation related statutory obligations such as those that relate to the environment, water and health;
- (e) provide capacity building for farmers and support establishment of viable farmer organizations, and in particular irrigation water users associations to develop and manage irrigation schemes including actively participating in conflicts resolution within irrigation schemes;
- (f) set up measures to implement adaptation and mitigation to climate change, and enhance sustainable environmental management.

PART V— IRRIGATION SERVICES

15. (1) The Cabinet Secretary shall, subject to water and other resource constraints, and in consultation with county governments, and other stakeholders ensure the adequacy and quality of water for irrigation purposes throughout the country.

Water for irrigation.

(2) Pursuant to subsection (1), the Cabinet Secretary shall take measures to—

- (a) approve appropriate tariff structures and make arrangements with the Water Resources Authority in respect of requisition of irrigation water in bulk;
- (b) seek advice of the Water Resources Authority on the development of new irrigation water sources, including water harvesting, flood control and storage for irrigation;
- (c) approve appropriate arrangements on inter-catchment transfers of irrigation water in

consultation with county governments and Water Resources Authority;

- (d) develop a mechanism on return on investment formula resulting from construction of irrigation schemes using public funds; and
- (e) develop guidelines on private sector involvement at various stages of the irrigation project implementation cycle.

16. (1) The Cabinet Secretary may, in consultation with the National Lands Commission, the Board and county governments, and by notice in the *Kenya Gazette*, designate an area of land, for which an irrigation water permit may be issued by the Water Resources Authority and an irrigation license may be issued.

Setting apart of land, access rights etc.

(2) In respect of land, other than public land, in a national or public irrigation scheme, the Cabinet Secretary shall, in accordance with the law for the time being relating to the compulsory acquisition of land, take such steps as may be necessary to acquire the right, title or interest in such land and to vest it in the Department for the purposes of this Act.

(3) In the case of community land forming part of a national or public irrigation scheme, the Cabinet Secretary, on behalf of the Department, may take the land on lease and on terms to be agreed between the Cabinet Secretary and the county government concerned.

(4) In default of agreement between the Cabinet Secretary and the county government as to the terms of a lease under subsection (3) of this section, the relevant provisions of the Land Act, 2012, shall have effect.

No. 6 of 2012.

(5) The Cabinet Secretary shall, in collaboration with county governments support and facilitate access rights to land for all irrigators on national irrigation schemes in order to provide livelihoods for poor and vulnerable persons and groups, and adequate security for investments in land improvement and the irrigation schemes.

(6) The Cabinet Secretary shall, in consultation with county governments, ensure that the design of national or public irrigation schemes and others, takes into account the needs of various irrigation water users, including livestock

and fish producers and the impact the irrigation scheme is likely to have on the environment.

17. (1) The Cabinet Secretary shall in consultation with the council of county governors prescribe administrative and regulatory framework—

Administrative and legal framework for water storage.

- (a) for management and development of water storage infrastructure, and flood control and land reclamation, dams and dykes; and
- (b) for water storage creation requirement on all existing and future irrigation projects.

(2) Despite the provisions under subsection (1), the Cabinet Secretary shall, in consultation with the county governments, ensure that irrigation developments are planned and implemented within the framework of Integrated Water Resources Management, and in accordance with agreements between irrigation and other stakeholders, in such a manner as to reduce water resource conflicts, protect the environment and public health, and share water appropriately and equitably for multiple uses.

18. (1) The Cabinet Secretary shall take legislative and administrative measures to ensure that irrigation research, innovation and training functions are carried out and appropriately coordinated.

Irrigation research, innovation and training.

(2) Each county government may identify priority irrigation research, innovation and training areas and participate in irrigation research, innovation and training processes, in collaboration with the national government.

19. (1) The Cabinet Secretary shall, through the Authority, oversee management of existing and new national or public schemes, except those under county governments, and particularly storage dams, intake, main and secondary systems as necessary.

Management of irrigation schemes.

(2) The Cabinet Secretary through the Authority shall provide resources and direction for capacity building and technical services to irrigation water users associations, scheme management committees, dispute resolution committees and other farmer associations to enable them to progressively accept and assume full responsibility for management of national or public schemes under appropriate agency contracts with the National Government or county governments, as the case may be.

(3) Despite any agency contracts between the National Government or county governments and any irrigation water users' association, scheme management committees, dispute resolution committees under subsection (2), all assets of the national or public irrigation schemes shall remain vested in the national government or county government as appropriate, which shall also retain regulatory oversight over governance, management and financing of such schemes.

(4) The Cabinet Secretary shall, through the Authority and in collaboration with county governments and relevant stakeholders provide support, subject to availability of resources, and direction for capacity building and technical advisory services to irrigation water users' associations, scheme management committees, dispute resolution committees and other farmer associations to enable them to take over governance and management responsibility for smallholder schemes as soon as possible after they are developed.

20. (1) A resident of a catchment area who is a crop farmer, livestock producer, fish pond user, or small rural industry entrepreneur or otherwise uses water for irrigation purposes from a common water source may, together with other members or persons resident in the same area, form or join an irrigation water users association.

Formation of
irrigation water
users'
associations.

(2) Where an association pre-exists an irrigation scheme, the said association may be recognized as the *bona fide* association to operate and maintain a scheme established in the association's area of coverage, and more than one association may operate and maintain a scheme on appropriate and mutually agreed terms.

(3) An association may, with the approval by the Cabinet Secretary, enter into an agreement with the National Government, a county government, a private sector institution or another farmers' association for the establishment, expansion, implementation, improvement, modernisation, operation or maintenance of a scheme.

(4) Despite sub-section (3), an association may enter into cost-sharing agreements with the National Government, county governments, private sector institutions or other farmers' associations for implementing improvements, modernization, establishment or expansion of a scheme,

subject to approval by the Cabinet Secretary and concurrence of the National Treasury.

(5) The Cabinet Secretary, in consultation with county governments, may make rules for the establishment and governance of irrigation water users' associations under this section.

PART VI— FINANCIAL PROVISIONS

21. The funds and assets of the Authority shall consist of—

Finances of the Authority.

- (a) such monies as may be appropriated by the National Assembly for the purposes of the Authority;
- (b) any monies or property which may in any manner accrue or vest in the Authority in the course of the exercise of its functions under this Act;
- (c) such monies as may become payable to the Authority by way of fees in respect of services rendered by or through the Board; and
- (d) all monies from any other sources provided, donated or lent to the Authority.

22. (1) At least five months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

Annual estimates.

(2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned and in particular shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Authority and the Board of the Authority as the case may be;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits which are payable out of the funds of the Authority;
- (c) the acquisition, maintenance, repair and replacement of the equipment and other movable property of the Authority; and
- (d) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance and the replacement of

buildings or equipment, or in respect of such other matters as the Board may deem fit.

(3) The annual estimates shall be approved by the Board at least two months before commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Board given with prior written approval of the Cabinet Secretary and the Cabinet Secretary to the National Treasury.

23. The Board shall ensure that proper books of account of the income, expenditure, assets and liabilities of the Authority are kept, and shall in this regard be subject to the provisions of the State Corporations Act.

Accounts and
Audit.

Cap. 446.

24. (1) The Board shall, within a period of seven months after the end of each financial year, or within such longer period as the Cabinet Secretary may approve, submit to the Cabinet Secretary a report on the operations of the Authority during that year, and the auditor's report, together with the yearly balance sheet and such other statements of account as the Cabinet Secretary shall require, and the Board shall publish them in such manner as the Cabinet Secretary may specify.

Annual reports.

(2) A copy of every auditor's report, balance sheet and other statements of accounts submitted in accordance with subsection (1) shall be sent by the Authority to the Auditor-General, who may at any time examine the accounts, and the Auditor-General shall be entitled to require from the Authority and its auditors such further information and explanation as he may consider necessary.

(3) The financial reports of the Authority with the yearly balance sheet and such other statements of account as the Cabinet Secretary may deem appropriate, together with the auditor's report and any report made by the Auditor-General, shall be submitted through the Principal Secretary and the same shall be laid by the Cabinet Secretary before Parliament as soon as possible after it has been submitted to the Cabinet Secretary and shall constitute an integral part of the Cabinet Secretary's report required under this section.

PART VII—DISPUTE RESOLUTION

25. (1) Disputes related to irrigation and drainage scheme development, management, water allocations and delivery, financing, operation and maintenance and other matters shall be resolved within the irrigation water users association or at irrigation scheme level wherever possible.

Dispute resolution.

(2) Each association which is legally registered shall have a Dispute Resolution Committee that consists of at least three members selected by its governing body.

(3) Decisions regarding any dispute contemplated under this section shall be made by the relevant Dispute Resolution Committee within thirty days of the hearing of the dispute in question.

26. Where the water users association or at the irrigation scheme level is unable to resolve a dispute, the same shall be referred to the Dispute Resolution Committee at the first instance to consider and determine the matter before the same is referred to Court.

Appeals.

PART VIII—MISCELLANEOUS AND OFFENCES PROVISIONS

27. (1) The Cabinet Secretary shall, in consultation with the county governments—

Monitoring and evaluation.

(a) develop and implement a monitoring and evaluation system for the development, governance, management and financing of irrigation at all levels, and this may include assessment of inputs, immediate outcomes and ultimate impacts based on the results; and

(b) conduct periodic irrigation management and performance audits in strategically important schemes, and may assess the financial management and quality of governance obtaining in the schemes.

28. No liability shall attach to the Authority or its Board or its members, officers, agents or servants for any loss or damage sustained by any person as a result of any act or omission done or omitted to be done in good faith and without negligence in the performance or exercise of any duty or power imposed or conferred by or under this Act.

Protection from liability.

29. Any person who wilfully damages an irrigation infrastructure, water course, equipment or other appliances, or steals or otherwise unlawfully tampers or interferes with such infrastructure, watercourse, equipment, or other appliance, commits an offence and shall be liable upon conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding 24 months or to both such fine and imprisonment.

Wilful damage.

30. Any person who—

Destructive practices.

- (a) engages in activities or practices which are destructive or potentially destructive to the catchment areas of a river or public water body supplying water to an irrigation scheme; or
- (b) permits or causes animals to damage irrigation areas or infrastructure,

that person commits an offence and shall be liable upon conviction to a fine of not more than five hundred thousand shillings or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

31. Any person who—

Setting fire.

- (a) sets or causes to be set on fire on an irrigation scheme or on any irrigated or drained farm, garden or plot; or
- (b) being a person with responsibility over any aspect of an irrigation scheme, without reasonable excuse or cause, refuses to assist in averting, fighting or extinguishing a fire on an irrigation and or drainage scheme or on any irrigated and or drained farm, garden or plot,

that person commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

32. Any person who applies or causes to be applied on an irrigation scheme, farm, garden or plot under irrigation any chemicals or substances prohibited under this Act or any other law for the time being in force, commits an offence and shall be liable on conviction to a fine not exceeding one

Harmful chemicals.

million shillings or to imprisonment for a term of five years or to both such fine and imprisonment.

33. Any person who abstracts water from an irrigation system or disrupts the distribution plan of a scheme commits an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term of one year or to both such fine and imprisonment.

Abstraction of water.

PART IX—PROVISIONS ON DELEGATED POWERS

34. (1). The Cabinet Secretary may, in consultation with county governments, make Regulations, for the better carrying out of the purposes and provisions of this Act.

Making of Regulations.

(2) The regulations made under this section shall be approved by both Houses of Parliament.

(3) Without prejudice to the generality of the foregoing, Regulations made under this section may provide for—

- (a) the management of national, public and other irrigation schemes;
- (b) the standards of good on-farm water management;
- (c) the regulation of, and tariffs payable for, the use of water on national, public and other irrigation schemes;
- (d) the control of persons occupying any land comprising or forming part of a national irrigation scheme, the introduction of or the control of settlers on such land, the issue by the Authority as the case may be, of licenses or permits or leases to such persons or settlers, the revocation of such licenses and leases, and the terms and conditions which may be attached to such licenses and leases;
- (e) the requirements, procedures and forms for licensing of irrigation schemes;
- (f) the establishment, operations and governance of irrigation water users' associations, scheme management committees and dispute resolution committees;

- (g) prescribe fees payable by irrigation water users based on costs of operation and maintenance of the scheme;
 - (h) monitoring and evaluation and audits required under the Act; and
 - (i) adherence to environmental and public health matters.
- (3) Any Regulations made under this section may—
- (a) require acts to be performed to the satisfaction of a prescribed authority, may prohibit their performance without the prior approval of a specified authority, and may empower a specified authority to impose conditions for the performance of specific acts;
 - (b) be made to apply generally to all irrigation schemes or to any specified irrigation or to any specified area or areas thereof;
 - (c) provide for such penalty for the breach of any provision thereof, not exceeding a fine of fifty thousand shillings and or imprisonment for one year, as the Cabinet Secretary may regulate from time to time.
- (4) The Cabinet Secretary shall publish the regulations required under this Act in the *Gazette* within ninety days of the enactment of this Act.

PART X—REPEALS AND TRANSITIONAL PROVISIONS

35. (1) The Irrigation Act is repealed.

Repeal of Cap.
347.

- (2) Notwithstanding subsection (1) and upon commencement of this Act—
- (a) all the funds, assets and other property, both movable and immovable which were vested in the National Irrigation Board shall, by virtue of this paragraph, vest in the Authority;
 - (b) all rights, powers and liabilities which were vested in, imposed on or enforceable against the National Irrigation Board shall, by virtue of this paragraph,

be vested in, imposed on or enforceable against the Authority;

- (c) any reference in any written law or in any document or instrument to the National Irrigation Board shall be construed to be a reference to the Authority;
- (d) the annual estimates of the National Irrigation Board for the current financial year shall be deemed to be the annual estimates of the Authority for the remainder of that financial year:

Provided that such estimates may be varied by the Authority in such manner as the Cabinet Secretary may approve.

- (e) the administrative directions made by the National Irrigation Board or by the Cabinet Secretary which were in force before the commencement of this Act shall have force as if they were directions made by the Authority or the Cabinet Secretary under this Act;
- (f) any person who, immediately before the commencement of this Act, was an officer, agent, or member of staff appointed, seconded or deployed or otherwise employed by the National Irrigation Board shall become an employee or otherwise seconded or deployed to the Authority on similar terms and conditions of service or as may be provided by the law.

SCHEDULE (s. 10)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The Chairperson or a member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for a further period of three years.

Tenure of office.

2. The Chairperson or a member other than an *ex officio* member may—

Vacation of office.

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on the recommendation of the Board if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is incapacitated by prolonged physical or mental illness; or
 - (iv) is otherwise unable or unfit to discharge his functions.

3. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Despite the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be seven members including the Chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their numbers shall preside.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of

an equality of votes, the Chairperson or the person presiding shall have a second or casting vote.

(7) Subject to paragraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of interest.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The affixing of the Common seal of the Authority shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the Chairperson and the Chief Executive Officer:

Common seal.

Provided that the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in any particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Contracts and instruments.

