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CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Irrigation (Amendment) Bill, 2021341



THE IRRIGATION (AMENDMENT) BILL, 2021**A Bill for****AN ACT of Parliament to amend the Irrigation Act**

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Irrigation (Amendment) Act, 2021.

Short title.

2. Section 2 of the Irrigation Act, 2019, in this Act referred to as “the principal Act”, is amended—

Amendment of Section 2 of No 14 of 2019.

(a) by deleting the definition of “Department” and substituting therefor the following new definition—

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

(b) by deleting the definition of “irrigation” and substituting therefor the following new definition—

“irrigation” means any hydraulic engineering driven process, which supplies water to crops or any other cultivated plants, livestock, aquaculture and desired forest tress;

(c) by inserting the following new definitions in proper alphabetical sequence—

“agency contract” means a legal agreement creating a fiduciary relationship whereby the principal agrees that subsequent actions by the agent are binding as if the principal acted thereupon;

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

No.2 of 2012.

“Council of Governors” means the Council of County Governors established under the Intergovernmental Relations Act, 2012;

“irrigators” means the persons or entities which own, operate or manage an irrigation scheme;

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

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

“transboundary, trans-county or inter county irrigation scheme” means a scheme whose area of coverage lies across at least two administrative county boundaries; and

“strategic irrigation scheme” means a national or a county scheme which serves a specific production purpose.

3. Section 3 of the principal Act is amended in subsection (2) by inserting the words “management and regulation” immediately after the word “development”.

Amendment of section 3 of No 14 of 2019.

4. Section 6 of the principal Act is amended in subsection (2) —

Amendment of section 6 of No. 14 of 2019.

(a) by deleting the words “and management” appearing in the opening statement and substituting therefor the words “management and regulation”;

(b) by deleting the words “and management” appearing in paragraph (h) and substituting therefor the words “management and regulation”; and

(c) by deleting the words “and management” appearing in paragraph (i) and substituting therefor the words “management and regulation”.

5. Section 8 of the principal Act is amended in subsection (2) by deleting paragraph (j) and substituting therefor the following new paragraph—

Amendment of section 8 of No. 14 of 2019.

“(j) provide, manage, and administer land in national or public irrigation schemes as well as inter-county schemes for public use;

6. Section 9 of the principal Act is amended—

Amendment of section 9 of No. 14 of 2019.

(a) in subsection (1) —

(i) by deleting paragraph (f) and substituting therefor the following new paragraph—

(f) two persons of opposite gender and from different regions, with knowledge and experience in matters relating to water,

agriculture, irrigation or environmental studies, appointed by the Cabinet Secretary from a list of four nominees submitted by the Council of County Governors;

(ii) by deleting paragraph (g) and substituting therefor the following new paragraph—

(g) one person with knowledge and experience in matters relating to civil engineering, economics, finance or rural development, appointed by the Cabinet Secretary from a list of three nominees submitted by a registered private sector membership organisation with a national outlook;

(iii) by deleting paragraph (h) and substituting therefor the following new paragraph—

(h) two persons appointed by the Cabinet Secretary out of four persons nominated by the National Irrigation Farmers Associations;

(iv) by inserting the following new paragraph immediately after paragraph (h) —

(i) the Attorney-General or his representative;

(b) by deleting subsection (5) and substituting therefor the following new subsection—

“(5) The Board shall adhere to principles of corporate governance and may from time to time establish committees for the better carrying out of its functions.”

7. Section 11 of the principal Act is amended in paragraph (g) by inserting the word “other” immediately before the word “activity”.

Amendment of section 11 of No. 14 of 2019.

8. Section 13 of the principal Act is amended by deleting the expression “section 34” and substituting therefor the expression “section 35”.

Amendment of section 13 of No. 14 of 2019.

9. Section 15 of the principal Act is amended in subsection (2) by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 15 of No. 14 of 2019.

“(a) in consultation with the Water Resources Authority, put in place appropriate water use fees structures and make arrangements with the Water Resources Authority in respect of requisition of irrigation water in bulk;”

10. Section 16 of the principal Act is amended—

Amendment of section 16 of No. 14 of 2019.

(a) in subsection (2) by deleting the words “the Department” and substituting therefor the words “the Authority”;

(b) in subsection (3) by deleting the words “the Department” and substituting therefor the words “the Authority”

11. The principal Act is amended by repealing section 17 and replacing it with the following new section—

Repeal and replacement of section 17 of No. 14 of 2019.

Administrative and legal framework water storage.

17. (1) The Cabinet shall in consultation with the Water Resource Authority Secretary, the National Water Storage and Harvesting Authority, the National Land Commission, the Council of Governors and other stakeholders prescribe administrative and regulatory frameworks within existing laws and regulations on water storage existing and future irrigating requirements.

(2) Without prejudice to subsection (1), the Cabinet Secretary shall ensure that irrigation developemnts are planned and implemented—

(a) in accordance with Intergrated Water Resources Management Principles;

(b) in accordance with agreements between irrigation water users and other stakeholders; and

(c) in such a manner as to reduce conflicts on water resources,

protect the environment and public health and share water appropriately and equitably for multiple uses.

12. Section 20 of the principal Act is amended in subsection (3) by inserting the words “subject to mandatory approvals” immediately after the word “a scheme”.

Amendment of section 20 of No. 14 of 2019.

13. Section 22 of the principal Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (d)—

Amendment of section 22 of No. 14 of 2019.

- (e) estimated expenditure for development of infrastructure for the development of irrigation;
- (f) estimated expenditure for the provision of irrigation services and advisory support.

14. Section 27 of the principal Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 27 of No. 14 of 2019.

- (a) develop and implement a monitoring and evaluation system for the development, governance, management, regulation, provision and financing of irrigation at all levels, including assessment of inputs, outputs immediate outcomes and ultimate impacts based on the results;

15. Section 34 of the principal Act is amended—

Amendment of section 34 of No. 14 of 2019.

- (a) in subsection (3) by inserting the following new paragraphs immediately after paragraph (i)—
 - (j) development of irrigation including infrastructure, frameworks, complementary installations, water harvesting, storage, distribution and licensing; and
 - (k) multi-government agencies consultation, collaboration, cooperation and accountability in the implementation of this Act.
- (b) in subsection (4) by deleting the words “within ninety days of the enactment of this Act” appearing immediately after the words “the Gazette” and substituting therefor the words “within eighteen months of the enactment of this Act or as otherwise determined upon consultation with stakeholders”;

16. The Schedule to the principal Act is amended—

Amendment of the
Schedule of No.
14 of 2019.

(a) in paragraph 2 by inserting the following new subparagraph immediately after subparagraph (b)—

“(c) be removed from office by the Cabinet Secretary with justification if the member—

(i) conducts himself in a manner undesirable of a Director;

(ii) carries himself in a way that puts the organization into disrepute; or

(iii) acts irresponsibly and in contravention of codes, policies and procedures in the public service.

(b) in paragraph 3, by deleting the word “seven” and substituting therefore the word “five” appearing in subparagraph (4).

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to make amendments to the Irrigation Act, 2019.

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 3, 4 and 5 of the Bill seeks to amend the Act by expanding the administration of irrigation matter to include management and regulation of irrigation matters.

Clause 6 of the Bill seeks to amend the Act to provide for the appointing and nominating authorities in line with the Constitution.

Clause 8 of the Bill seeks to amend Act to harmonize the provision of the irrigation Act, Water Act and Water Resources Management Rules, 2007.

Clause 10 of the Bill seeks to amend the Act by substituting the reporting obligation under the Act from the Department to the Authority.

Clause 11 of the Bill seeks to amend the Act by taking into account the already existing legislative and regulatory structures when prescribing administrative and regulatory framework on water storage.

Clause 13 of the Bill seeks to amend the Act in Section 22 on annual estimates to include estimated expenditure for development of infrastructure and for the provision of irrigation services.

Clause 14 of the Bill seeks to amend the Act in section 27 to include the output level of results in monitoring and evaluation.

Clause 15 of the Bill seeks to amend the Act in section 34 to enable the Cabinet Secretary to make regulations to provide for the development of irrigation, including infrastructure and water storage, and to provide for multi-government agencies consultation and collaboration .

Clause 16 of the Bill seeks to amend the Act in the Schedule in paragraph 2 to provide for other conditions for removal of a board member by the Cabinet Secretary.

Clause 17 of the Bill seeks to amend the Act in the Schedule 4 to provide for quorum for meeting to harmonize the provision with existing policies on board meetings.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill does concern County Governments in terms of Article 110 (1) (a) of the Constitution as it does contain provisions that affect the powers of the County Government, in as far as the function of agriculture includes crop and animal husbandry in which irrigation is a factor in enhancing crop and livestock production

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall occasion expenditure of public funds to be provided for through the annual estimates.

Dated the 30th March, 2021.

AMOS KIMUNYA,
Leader of Majority.

Section 2 of No.14 of 2019 which it is proposed to amend—

2. Interpretation

In this Act, unless the context otherwise requires—

“**agriculture**” has 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);

“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).

Section 3 of No. 14 of 2019 which it is proposed to amend—

3. Scope of application

(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.

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

Section 6 of No. 14 of 2019 which it is proposed to amend—

6. Role of national government

(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.

(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 the 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.

(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.

Section 8 of No. 14 of 2019 which it is proposed to amend—

8. Powers and functions of the Authority

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

- (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.

Section 9 of No. 14 of 2019 which it is proposed to amend—

9. The Board of Authority

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

- (a) a chairperson, who shall be appointed by the President subject to subsection (4);
 - (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.

Section 11 of No. 14 of 2019 which it is proposed to amend—

11. Powers of the Board

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

(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.

Section 13 of No. 14 of 2019 which it is proposed to amend—

13. Other staff

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.

Section 15 of No. 14 of 2019 which it is proposed to amend—

15. Water for irrigation

(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.

(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.

Section 16 of No. 14 of 2019 which it is proposed to amend—

16. Setting apart of land, access rights etc

(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.

(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, (No. 6 of 2012), shall have effect.

(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.

Section 17 of No. 14 of 2019 which it is proposed to amend—

17. Administrative and legal framework for water storage

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

- (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.

Section 20 of No. 14 of 2019 which it is proposed to amend—

20. Formation of irrigation water users' associations

(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.

(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 of 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.

Section 22 of No. 14 of 2019 which it is proposed to amend—

22. Annual estimates

(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.

(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 the 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.

Section 27 of No. 14 of 2019 which it is proposed to amend—

27. Monitoring and evaluation

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

- (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.

Section 34 of No. 14 of 2019 which it is proposed to amend—

34. Making of Regulations

(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.

(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.

Schedule of No. 14 of 2019 which it is proposed to amend—

SCHEDULE [Section 10.]

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

1. Tenure of office

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.

2. Vacation of office

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

- (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. Meetings

(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.

(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 of 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. Disclosure of interest

(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.

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

5. Common seal

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:

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. Contracts and instruments

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.

