

Approved for tabling *[Signature]*
SNA
4/8/2021



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION - 2021

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON:

THE IRRIGATION (AMENDMENT) BILL, 2021 (NATIONAL ASSEMBLY BILL NO. 12 OF 2021)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 AUG 2021	DAY: Wednesday
TABLED BY:	Chairperson, DC on Environment & Natural Resources
CLERK-AT THE TABLE:	Gretinde chebet

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2021

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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Irrigation (Amendment) Bill (*National Assembly Bill No. 12 of 2021*) which was published on 16th April, 2021 and read a First Time on 8th June, 2021. The Bill was thereafter, committed to the Departmental Committee on Environment and Natural Resources pursuant to National Assembly Standing Order 127.

Following placement of an advert in the print media on 11th June, 2021 requesting for comments on the Bill from members of the public and stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received memorandum from the Council of Governors.

The Committee invited the Ministry of Water, Sanitation and Irrigation vide letter REF: NA/DDC/ENR/2021/039 dated 14th July, 2021 for a meeting on the Bill, which was held on Wednesday, 21st July 2021 at Windsor Golf Hotel & Country Club. The outcome of deliberations with the Ministry and stakeholders' proposed amendments to the Bill have been taken into account while determining the final proposed amendments and are contained in Part III of the Bill.

The Bill provides for the deletion of the original definition of Department and Irrigation in the Act and replace them with the following respectively; Department to mean a State Department responsible for matters relating to irrigation whereas Irrigation refers to any hydraulic engineering driven process which supplies water to crops or any other cultivated plants, livestock, aquaculture and desired forest trees.

The principal object of the Bill is to amend the Irrigation Act to expand the administration and management of irrigation matters in Kenya. To achieve this expansion, the Bill seeks to amend various sections of the Act to ensure adoption of best practices in irrigation as well as enhance sustainable development of irrigation infrastructure, investment and financing.

On behalf of the Departmental Committee on Environment and Natural Resources and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Irrigation (Amendment) Bill (*National Assembly Bill No. 12 of 2021*). The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) and have the honour to report back to the National Assembly with the recommendation that the Bill be **approved with amendments** as contained in the report.

Hon. Kareke Mbiuki, CBS, MP

1.0 PREFACE

1.1 Committee Mandate

1. The Departmental Committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-
 2.
 - a) *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
 - b) *Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;*
 - c) ***Study and review all legislation referred to it;***
 - d) *Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;*
 - e) *Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - f) *Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and*
 - g) *Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*
3. The subject matters of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Oversight

4. In executing its mandate, the Committee directly oversees the following Government Ministries and Departments: -
 - a) The Ministry of Environment and Forestry;
 - b) The Ministry of Water & Sanitation and Irrigation;
 - c) The State Department for Wildlife; and
 - d) The Ministry of Petroleum and Mining.

1.3 Committee Membership

5. The Committee comprises the following Members:

Chairperson

The Hon. Kareke Mbiuki, CBS, M.P.
Maara Constituency

Jubilee Party

Vice-Chairperson

The Hon. Sophia Abdi Noor, M.P.
Ijaara Constituency

Party of Development and Reforms (PDR)

The Hon. David Kangogo Bowen, M.P.
Marakwet East Constituency
Jubilee Party

The Hon. Francis Chachu Ganya, M.P.
North Horr Constituency
Frontier Alliance Party (FAP)

The Hon. Ali Wario Guyo, M.P.
Garsen Constituency
Wiper Party

The Hon. Benard Masaka Shinali, M.P.
Ikolomani Constituency
Jubilee Party

The Hon. George Macharia Kariuki, M.P.,
Ndia Constituency
Jubilee Party

The Hon. Charity K. Chepkwony, M.P.
Njoro Constituency
Jubilee Party

The Hon. Simon Ng'ang'a King'ara, M.P.
Ruiru Constituency
Jubilee Party

The Hon. Peter Kimari Kihara, M. P.
Mathioya Constituency
Jubilee Party

The Hon. Janet Ong'era, MP.
Kisii County
Orange Democratic Movement (ODM)

The Hon. Charles Ong'ondo Were, M.P.
Kasipul Constituency
Orange Democratic Movement (ODM)

The Hon. Nasri Sahal Ibrahim, M.P.
Nominated
Forum for Restoration of Democracy-K

The Hon. Rozaah Buyu, M.P.
Kisumu County
Orange Democratic Movement (ODM)

The Hon. Said Hiribae, M.P.
Galole Constituency
Forum for Restoration of Democracy- K

The Hon. Hassan Oda Hulufu, M.P.
Isiolo North Constituency
Kenya Patriots' Party (KPP)

The Hon. Amin Deddy Mohamed Ali, M.P.
Laikipia East Constituency
Jubilee Party

The Hon. Rehema Hassan, M.P.
Tana River County
Maendeleo Chap Chap Party (MCC)

The Hon. (Eng.) Paul M. Nzengu, M.P.
Mwingi North Constituency
Wiper Party

1.4 Secretariat

6. The Committee is serviced by the following staff:

Ms. Esther Nginyo
Second Clerk Assistant
Lead Clerk

Mr. Dennis Mogare Ogechi
Second Clerk Assistant

Dr. Benjamin Ngimor
Senior Fiscal Analyst

Ms. Lynette Otieno
Legal Counsel I

Mr. Eugene Apaa
Research Officer

2.0 OVERVIEW OF THE IRRIGATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO 12 OF 2021)

2.1 Introduction

7. The principal object of the Bill is to amend the Irrigation Act to expand the administration and management of irrigation matters in Kenya. To achieve this expansion the Bill seeks to amend various sections of the Act to ensure adoption of best practices in irrigation as well as enhance sustainable development of irrigation infrastructure, investment and financing.
8. Additionally, the Bill seeks to consolidate the provision, management and administration of land in national or public irrigation schemes as well as inter county schemes for public use. This amendment is in clause 5 which proposes to delete Section 8 sub section 2 paragraph (j) and substituting with “provide, management and administration of land in national or public irrigation schemes as well as inter-county schemes for public use”.
9. Clause 6 of the Bill seeks to increase the number of Board Members of the Authority from nine to eleven which goes against Mwongozo Code of Governance for State Corporations. Clause 16 of the Bill introduces instances where the Cabinet Secretary can remove either Chairperson or Member of the Board other than an ex officio member. The amendment is expressly captured by Chapter six of the Constitution; the removal of Board Members be done in accordance with the provisions of the Act.
10. The Bill is a money Bill as per the provisions of Article 114 of the Constitution and the National Assembly Standing Order No. 117 (d); the enactment of the Bill shall occasion expenditure of public funds to be provided for through the annual estimates.
11. The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution as it contains provisions that affect the powers of the county governments, in as far as the function of agriculture includes crops and animal husbandry in which irrigation is a factor in enhancing crop and livestock production.

2.2 Analysis of the Bill

12. The Bill seeks to amend the Irrigation Act, 2019 as follows.
 - a) Clause 1 of the Bill sets out the short title of the proposed Act.
 - b) Clause 3, 4, and 5 of the Bill seeks to amend sections 3, 6 and 8 of the Act by expanding the administration of irrigation matter to include management and regulation of irrigation matters.
 - c) Clause 6 of the Bill seeks to amend section 9 of the Act to provide for the appointing and nominating Authorities in line with the Constitution.
 - d) Clause 8 of the Bill seeks to amend section 13 of the Act to harmonize the provision of the Irrigation Act, Water Act and Water Resources Management Rules, 2007.
 - e) Clause 10 of the Bill seeks to amend section 16 of the Act by substituting the reporting obligation under the Act from the Department to the Authority.
 - f) Clause 11 of the Bill seeks to amend section 17 of the Act. It proposes amendments that take into account the already existing legislative and regulatory structures when prescribing administrative and regulatory framework on water storage.

- g) 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.
- h) Clause 14 of the Bill seeks to amend the Act in Section 27 to include the output level of results in monitoring and evaluation.
- i) 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.
- j) 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. It further proposes amendments to paragraph 3 of the schedule to provide for quorum for meeting to harmonize the provision with existing policies on board meetings.

3.0 PUBLIC PARTICIPATION/VIEWS FROM STAKEHOLDERS

13. Following the call for memoranda from the public through placement of adverts in the print media of 11th June, 2021, the Committee received views from the Council of Governors. Further, the Committee vide its letter Ref: NA/DDC/ENR/2021 (039) dated 14th July, 2021 invited and deliberated on the Bill with the Ministry of Water, Sanitation and Irrigation.

14. The Stakeholders submitted as follows:

3.1 Ministry of Water, Sanitation and Irrigation

15. In a meeting with the Committee held on Wednesday, 21st July 2021, Mrs. Sicily Kariuki, Cabinet Secretary, Ministry of Water, Sanitation and Irrigation submitted as follows on the Bill:

16. The Irrigation Act was assented to in the year 2019 to repeal the archaic Irrigation Act (Cap 347) Laws of Kenya. As with other sectors, the irrigation sector was affected by the promulgation of the Constitution of Kenya, necessitating an overhaul of the sector legislation to align its provisions to the Constitution in order to embrace among other things, devolution.

17. The Irrigation Act of 2019 was meant to streamline the development, management and regulation of irrigation and to support sustainable food security and socio-economic development in Kenya. The Act outlines the respective roles of National and County Governments in facilitating irrigation activities in Kenya.

18. The Act has also embraced a multi-sectoral and participatory approach to irrigation development and management and fully recognized private sector involvement as well as other non-state actors in irrigation development and management for improved sustainability.

19. Additionally, it has strengthened and enhanced Institutions e.g. the formation of irrigation water users associations and umbrella farmer Organizations to give them autonomy, self-reliance, proper governance structure and the requisite legal status to enter into agreements with the national Government County Governments, private sector institutions or other associations. The Act has also expanded the mandate of the National Irrigation Authority (NIA) and provided for its Board composition in line with the principles of corporate governance.

20. Though a progressive piece of legislation that has brought about positive albeit gradual reforms in the irrigation sector, certain gaps and inconsistencies have been identified which would ultimately require some minimal amendments in order to ensure effective and seamless implementation of the Act.

21. Some of the areas of concern that necessitated amendments included: Omission of key terms from the definitions, even though these terms have been widely referred to under various Sections of the Act, lack of flexibility by the Appointing Authority in terms of Board appointments in order to meet the threshold of Article 6 of the Constitution and the Mwongozo Code of Governance for State Corporations as well as other governing legislations, need for harmonization with the provisions of the Water Act 2016 and related regulations e.g. the Water Resources regulations, and extension of time for publication of regulations owing to the extensive stakeholder consultation involved in the sub-sector.

22. The proposed amendments were summarized as follows:
23. Definitions clause: objective of amendment: To introduce new definitions not previously captured in the Act, and to review some definition of terms.
24. Clauses 3, 4 and 5 of the Bill: Objective of amendment: To expand the administration of irrigation to include management and regulation of irrigation matters.
25. Clause 6: Objective of amendment: To provide for the appointment and nominations in line with the Constitution
26. Clause 7: amendment of Section 11 of the Principal Act by inserting the word "other" immediately before the word "activity": Objective: Specificity
27. Clause 8: - Section 13 is amended by deleting the expression "Section 34" and substituting therefor the expression "Section 35": objective: To correct an error
28. Clause 9: amendment of Section 15(2) (a) of the Principal Act: Objective: To harmonize the provisions of the Irrigation Act, Water Act and Water Resources Regulations
29. Clause 10: amendments to Section 16(2) and (3) of the Principal Act: Objective: To substitute the reporting obligation under the Act from the Department to the Authority
30. Clause 11: repeal and replace Section 17 of the Principal Act: Objective: To amend the Act by taking into account the already existing legislative and regulatory structures when prescribing administrative and regulatory framework on water storage
31. Clause 12: amendment of Section 20(3) of the Principal Act to insert the words "subject to mandatory approvals" immediately after the word "scheme": objective: To take into consideration mandatory legal and regulatory approvals.
32. Clause 13: To introduce new paragraphs (e) and (f) into Section 22: Objective: To correct an omission
33. Clause 14- To amend Section 27 (1) (a) of the Principal Act: Objective: To include the output level of results in monitoring and evaluation
34. clause 15- To amend Section 34 of the Principal Act: Objective: To enable the Cabinet Secretary to make regulations to provide for the development of irrigation, including infrastructure and water storage, and to provide multi-governmental agencies consultation and collaboration
35. Clause 16:- amendment to paragraph 2 of the Schedule of the Act to introduce new subparagraphs: objective: To provide for other conditions for removal of a Board member by the Cabinet Secretary
36. Clause 17:- amendment of Schedule 4 of the Principal Act to review quorum for meetings: objective: To harmonize the provisions with existing policies on Board meetings.
37. The Committees comments on the proposed amendments are contained in the schedule annexed to this report.

3.2 Comments from the Council of Governors

38. The Council of Governors vide their letter Ref: COG/6/11 Vol.2(65) dated 21st June, 2021 noted with concern that the bill does not respect Article 6(2) of the Constitution that recognizes the two levels of government as distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation. Article 189 requires government at either level to perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government of the other level. This is due to the fact that the Bill intends to prescribe the manner in which the Council of Governors should nominate its representative to the National Irrigation Authority.

39. They proposed deletion of the proposed 6(a) and substitution of the same as follows-

6. Section 9 of the principal Act is amended as follows—

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

(f) two persons of the opposite gender and from different regions, with knowledge and experience in matters relating to water, agriculture, irrigation or environmental studies nominated by the Council of Governors and appointed by the Cabinet Secretary.

COMMITTEE'S COMMENTS

The Committee observed that there is need for the Cabinet Secretary to have flexibility in appointing the Board Members to ensure regional and gender balance principles are maintained in the appointment. The Committee therefore rejected the proposal by the Council of Governors.

4.0 COMMITTEE'S OBSERVATIONS

40. In considering the Bill, the Committee observed as follows:

41. The Bill forms the critical nexus for the management and administration of irrigation matters by the National Irrigation Board in consultation with the national, county governments and other stakeholders while adhering to the principles of corporate governance in carrying out of its functions.
42. Further, as provided in clause 10 of the Bill; the substitution of the reporting obligation under the Act from the Department to the Authority shall accelerate performance of irrigation services, infrastructure development and investment.
43. Amendment of the Act in clause 11 by repealing Section 17 of the Act to take into account the already existing legislative and regulatory structures when prescribing administrative and regulatory framework on water storage. This will fundamentally allow for coordinated management and use of water resources through adherence to the existing legal and regulatory framework.
44. Clause 2 of the Bill seeks to insert the definition of the terms "cabinet secretary" and "monitoring and evaluation" in section 2 of the Act. However, these definitions already exist in the Act in similar words thereby making the proposal superfluous.
45. Clause 16 (a) seeks to amend paragraph 2 of the Schedule to provide for additional ways members may be removed from the Board. A member may be removed from office by the Cabinet Secretary with justification if the member conducts himself in a manner undesirable of a director and carries himself in a way that puts the organization into disrepute. The Committee notes this provision is ambiguous as it does not clearly state what exactly amounts to conducting oneself in an undesirable manner thereby creating room for abuse.
46. The Bill proposes to reduce the quorum for conducting business of the Board from seven (7) to five (5) despite it also proposing to increase the number of board members from nine (9) to eleven (11). The proposed increase in membership of the Board to eleven (11) is contrary to the *Mwongozo* Code of Conduct for the State Corporation that caps membership at nine (9).
47. There is need to provide for the relevant academic qualifications of the Chairperson of the Board noting the technical and specialized functions the Board is required to perform in the Irrigation sector.
48. There is need to harmonize the Water Act, 2016 and the Irrigation Act, 2019 to align the cross-cutting functions of the authorities established in the two Acts.
49. The Committee noted that the water fees chargeable are relatively high. The Committee recommends that the fees be regulated in the Water Act, 2016 and the corresponding regulations.

5.0 COMMITTEE'S RECOMMENDATION

50. The Committee having considered the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021) recommends that the House approves the Bill with amendments as proposed in the schedule below.

6.0 SCHEDULE OF PROPOSED AMENDMENTS

51. The Committee proposed the following amendments to be considered by the House in the Committee Stage:

CLAUSE 2

THAT, clause 2 of the Bill be amended in paragraph (c) by—

- (a) by deleting the proposed new definition of the expression “cabinet secretary”; and
- (b) by deleting the proposed new definition of the expression “monitoring and evaluation”

CLAUSE 4

THAT, clause 4 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a) —

- (aa) by deleting the word “projects” appearing in paragraph (g) and substituting therefor the word “schemes”.

CLAUSE 6

THAT, clause 6 of the Bill be amended —

- (a) in paragraph (a)—
 - (i) in subparagraph (iii) by deleting the words “two persons appointed by the Cabinet Secretary out of four” appearing in the proposed new paragraph (h) and substituting therefor the words “one person appointed by the Cabinet Secretary out of three”;
 - (ii) by deleting subparagraph (iv); and
- (b) by inserting the following new paragraph immediately after paragraph (a) —
 - (aa) in subsection (4) by deleting the words “or its equivalent in any field” appearing in paragraph (c) and substituting therefor the words “in water, civil engineering, agriculture, irrigation or environmental studies.”

CLAUSE 12

THAT, clause 12 of the Bill be amended by deleting the words “subject to mandatory approvals” and substituting therefor the words “subject to mandatory approvals in accordance with regulations”

CLAUSE 16

THAT, clause 16 of the Bill be amended in paragraph (a) by deleting the proposed new sub-paragraph (c) and substituting therefor the following new sub-paragraph—

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

- (i) contravenes the provisions of Chapter six of the Constitution; or
- (ii) acts in contravention of codes, policies and procedures in the public service.



Signed:

HON. KAREKE MBIUKI, CBS, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND
NATURAL RESOURCES

Date: 03/08/2021

COMMITTEE MINUTES

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD AT THE WINDSOR GOLF HOTEL & COUNTRY CLUB ON WEDNESDAY, 21ST JULY, 2021 AT 2.30 PM.

PRESENT

- | | |
|---|-------------------------|
| 1. The Hon. Hassan Oda Hulufu, M.P | Chairing |
| 2. The Hon. Sophia Abdi Noor, M.P., | Vice Chairperson |
| 3. The Hon. Charity Kathambi Chepkwony, M.P | |
| 4. The Hon. Charles Ong'ondo Were, M.P. | |
| 5. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 6. The Hon. Eng. Paul Musyimi Nzengu, M.P. | |
| 7. The Hon. Said Hiribae, M.P. | |

APOLOGIES

- | | |
|---|--------------------|
| 1. The Hon. Japhet Kareke Mbiuki, CBS, M.P., | Chairperson |
| 2. The Hon. David Kangogo Bowen, M.P. | |
| 3. The Hon. Simon King'ara, M.P. | |
| 4. The Hon. Amin Deddy Mohamed Ali, M.P. | |
| 5. The Hon. Ali Wario Guyo, M.P. | |
| 6. The Hon. Janet Ong'era, MP. | |
| 7. The Hon. Bernard Shinali, M.P. | |
| 8. The Hon. Rozaah Buyu. M.P. | |
| 9. The Hon. Peter Kimari Kihara, M. P | |
| 10. The Hon. George Kariuki, M.P. | |
| 11. The Hon. Rehema Hassan, M.P. | |

IN ATTENDANCE

MINISTRY OF WATER, SANITATION AND IRRIGATION

- | | | |
|--------------------------|---|---|
| 1. Dr. Andrew Tuimur | - | Chief Administrative Secretary |
| 2. Mr. Joseph Irungu | - | Principal Secretary |
| 3. Mr. Mohamed M. Shurie | - | CEO, WRA |
| 4. Mr. G. Mugambi | - | CEO, NIA |
| 5. Eng. Peter Nyagah | - | Ag. CEO, WASREB |
| 6. Eng. S.A.O. Alima | - | Water Secretary |
| 7. Mr. Aboud Moeva | - | Irrigation Secretary |
| 8. Nderi Ndiani | - | Legal Counsel |
| 9. Joan Ogolla | - | Legal Counsel |
| 10. Phanael Webi | - | Ag. Director, Irrigation Water Management |
| 11. Eng. Vincent Kabuti | - | Deputy General Manager, NIA |
| 12. Sharon Abonyo | - | Ag. CEO, Chief Executive Officer, NWWSA |

THE NATIONAL ASSEMBLY

1.	Ms. Esther Nginyo	-	Clerk Assistant II
2.	Mr. Dennis M. Ogechi	-	Clerk Assistant II
3.	Mr. Benjamin Ngimor	-	Senior Fiscal Analyst
4.	Ms. Lynette Otieno	-	Legal Counsel I
5.	Mr. Eugene Akaa	-	Research Officer III
6.	Mr. Mark Mbuthia	-	Audio Recording Officer
7.	Mr. Boniface Mugambi	-	Serjeant-At-Arms

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising
- iv) **Meeting with the Cabinet Secretary for Water, Sanitation and Irrigation on the Irrigation (Amendment) Bill, 2021.**
- v) Date of the next Sitting

MIN.NO. DC/ENR/162/2021: - **PRELIMINARIES**

The Meeting was called to order at 2.45 pm after which prayers were said. The Chairperson then stated that the main agenda of the meeting was meeting with the Cabinet Secretary for Water, Sanitation and Irrigation on the Irrigation (Amendment) Bill, 2021.

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/163/2021: - **CONFIRMATION OF MINUTES**

Confirmation of Minutes of the previous Sitting was deferred to the next meeting.

MIN.NO. DC/ENR/164/2021: - **MEETING WITH THE CABINET SECRETARY FOR WATER, SANITATION AND IRRIGATION ON THE IRRIGATION (AMENDMENT) BILL, 2021.**

Dr. Andrew Tuimur, Chief Administrative Secretary for the Ministry of Water, Sanitation and Irrigation appeared before the Committee, on behalf of the Cabinet Secretary, and briefed as follows:

1. The Irrigation Act was assented to in the year 2019 to repeal the archaic Irrigation Act (Cap 347) Laws of Kenya. As with other sectors, the irrigation sector was affected by the promulgation of the Constitution of Kenya, necessitating an overhaul of the sector legislation to align its provisions to the Constitution in order to embrace among other things, devolution.

2. The Irrigation Act of 2019 was meant to streamline the development, management and regulation of irrigation and to support sustainable food security and socio-economic development in Kenya.
3. The Act outlines the respective roles of National and County Governments in facilitating irrigation activities in Kenya. The Act has also embraced a multi-sectoral and participatory approach to irrigation development and management and fully recognized private sector involvement as well as other non-state actors in irrigation development and management for improved sustainability. Additionally, it has strengthened and enhanced Institutions e.g. the formation of irrigation water users associations and umbrella farmer Organizations to give them autonomy, self-reliance, proper governance structure and the requisite legal status to enter into agreements with the national Government County Governments, private sector institutions or other associations.
4. The Act has also expanded the mandate of the National Irrigation Authority (NIA) and provided for its Board composition in line with the principles of corporate governance.
5. Though a progressive piece of legislation that has brought about positive albeit gradual reforms in the irrigation sector, certain gaps and inconsistencies have been identified which would ultimately require some minimal amendments in order to ensure effective and seamless implementation of the Act. Some of the areas of concern are as follows:
 - a) Omission of key terms from the definitions, even though these terms have been widely referred to under various Sections of the Act
 - b) Lack of flexibility by the Appointing Authority in terms of Board appointments in order to meet the threshold of Article 6 of the Constitution and the Mwangozo Code of Governance for State Corporations as well as other governing legislations
 - c) Need for harmonization with the provisions of the Water Act 2016 and related regulations e.g. the Water Resources regulations
 - d) Extension of time for publication of regulations owing to the extensive stakeholder consultation involved in the sub-sector.

He subsequently provided a matrix of the proposed amendments (attached).

OBSERVATIONS

Members observed that:

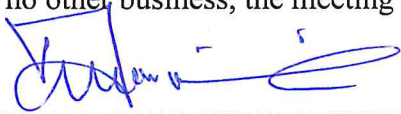
1. The Bill forms the critical nexus for the management and administration of irrigation matters by the National Irrigation Board in consultation with the national, county governments and other stakeholders while adhering to the principles of corporate governance in carrying out of its functions.
2. Further, as provided in clause 10 of the Bill; the substitution of the reporting obligation under the Act from the Department to the Authority shall accelerate performance of irrigation services, infrastructure development and investment.
3. Amendment of the Act in clause 11 by repealing Section 17 of the Act to take into account the already existing legislative and regulatory structures when prescribing administrative and regulatory framework on water storage. This will fundamentally allow for coordinated management and use of water resources through adherence to the existing legal and regulatory framework.

4. Clause 2 of the Bill seeks to insert the definition of the terms “cabinet secretary” and “monitoring and evaluation” in section 2 of the Act. However, these definitions are already existing in the Act in similar words and therefore the proposal is superfluous.
5. Clause 16 (a) seeks to amend paragraph 2 of the Schedule to provide for additional ways members may be removed from the Board. The members may be removed from office by the Cabinet Secretary with justification if the member conducts himself in a manner undesirable of a director and carries himself in a way that puts the organization into disrepute. The Committee notes this provision is ambiguous as it does not clear state what exactly amounts to conducting oneself in an undesirable manner thereby giving discretion to the Cabinet Secretary to make the determination which can be subject to abuse.
6. The amendment Bill proposes to reduce the quorum for conducting business of the Board from seven (7) to five (5) despite it also proposing to increase the number of board members from nine (9) to eleven (11). The proposed increase in membership of the Board to eleven (11) is contrary to the Mwongozo Code of Conduct for the State Corporation that caps membership at nine (9).
7. There is need to provide for the relevant academic qualifications of the Chairperson of the Board noting the technical and specialized functions the Board is required to perform in the Irrigation sector.
8. There is need to harmonize the Water Act, 2016 and the Irrigation Act, 2019 to align the cross-cutting functions of the authorities established in the two Acts.
9. The Committee noted that the water fees are relatively high. The Committee recommends that water fees be regulated in the Water Act, 2016 and the corresponding regulations.

MIN.NO. DC/ENR/165/2021:

- **ADJOURNMENT**

There being no other business, the meeting was adjourned at 5.04 pm.



SIGNED:

THE HON. KAREKE MBIUKI, CBS, M.P.

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 03 - 08 - 2021

MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD AT THE WINDSOR GOLF HOTEL & COUNTRY CLUB ON FRIDAY, 23RD JULY, 2021 AT 9.30 AM.

PRESENT

- | | |
|---|-------------------------|
| 1. The Hon. Hassan Oda Hulufu, M.P | Chairing |
| 2. The Hon. Sophia Abdi Noor, M.P., | Vice Chairperson |
| 3. The Hon. Charity Kathambi Chepkwony, M.P | |
| 4. The Hon. Charles Ong'ondo Were, M.P. | |
| 5. The Hon. Nasri Sahal Ibrahim, M.P. | |
| 6. The Hon. Eng. Paul Musyimi Nzengu, M.P. | |
| 7. The Hon. Said Hiribae, M.P. | |

APOLOGIES

- | | |
|---|--------------------|
| 1. The Hon. Japhet Kareke Mbiuki, CBS, M.P., | Chairperson |
| 2. The David Kangogo Bowen, M.P. | |
| 3. The Hon. Simon King'ara, M.P. | |
| 4. The Hon. Amin Deddy Mohamed Ali, M.P. | |
| 5. The Hon. Ali Wario Guyo, M.P. | |
| 6. The Hon. Janet Ong'era, MP. | |
| 7. The Hon. Bernard Shinali, M.P. | |
| 8. The Hon. Rozaah Buyu. M.P. | |
| 9. The Hon. Peter Kimari Kihara, M. P | |
| 10. The Hon. George Kariuki, M.P. | |
| 11. The Hon. Rehema Hassan, M.P. | |

IN ATTENDANCE

THE NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant II |
| 2. Mr. Dennis M. Ogechi | - | Clerk Assistant II |
| 3. Mr. Benjamin Ngimor | - | Senior Fiscal Analyst |
| 4. Ms. Lynette Otieno | - | Legal Counsel I |
| 5. Mr. Eugene Apaa | - | Research Officer III |
| 6. Mr. Mark Mbuthia | - | Audio Recording Officer |
| 7. Mr. Boniface Mugambi | - | Serjeant-At-Arms |

AGENDA

- i) Prayers
- ii) Confirmation of Minutes
- iii) Matters Arising

- iv) **Consideration and adoption of a report on the Consideration of the Irrigation (Amendment) Bill No. 12 of 2021**
- v) Date of the next Sitting

MIN.NO. DC/ENR/170/2021: - PRELIMINARIES

The meeting was called to order at 9.43 am after which prayers were said. The Chairperson then stated that the main agenda of the meeting was consideration and adoption of a report on the Consideration of the Irrigation (Amendment) Bill No. 12 of 2021.

The Members adopted the agenda of the meeting.

MIN.NO. DC/ENR/171/2021: - CONFIRMATION OF MINUTES

Confirmation of minutes of the previous sitting was deferred to the next meeting.

MIN.NO. DC/ENR/172/2021: - CONSIDERATION AND ADOPTION OF A REPORT ON THE CONSIDERATION OF THE IRRIGATION (AMENDMENT) BILL NO. 12 OF 2021

After lengthy deliberations, the report on the Consideration of the Irrigation (Amendment) Bill No. 12 Of 2021 was adopted after being proposed by Hon. Eng. Paul Musyimi Nzengu, M.P and seconded by Hon. Charity Kathambi Chepkwony, M.P.

It was adopted with the recommendation that the House approves the Bill with amendments as proposed below:

CLAUSE 2

THAT, clause 2 of the Bill be amended in paragraph (c) by—

- (a) by deleting the proposed new definition of the expression “cabinet secretary”; and
- (b) by deleting the proposed new definition of the expression “monitoring and evaluation”

CLAUSE 4

THAT, clause 4 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a) —

- (aa) by deleting the word “projects” appearing in paragraph (g) and substituting therefor the word “schemes”.

CLAUSE 6

THAT, clause 6 of the Bill be amended —

- (a) in paragraph (a)—
 - (i) in subparagraph (iii) by deleting the words “two persons appointed by the Cabinet Secretary out of four” appearing in the proposed new paragraph (h) and substituting therefor the words “one person appointed by the Cabinet Secretary out of three”;
 - (ii) by deleting subparagraph (iv); and

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

(aa) in subsection (4) by deleting the words “or its equivalent in any field” appearing in paragraph (c) and substituting therefor the words “in water, civil engineering, agriculture, irrigation or environmental studies.”

CLAUSE 12

THAT, clause 12 of the Bill be amended by deleting the words “subject to mandatory approvals” and substituting therefor the words “subject to mandatory approvals in accordance with regulations”

CLAUSE 16

THAT, clause 16 of the Bill be amended in paragraph (a) by deleting the proposed new sub-paragraph (c) and substituting therefor the following new sub-paragraph—

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

- (i) contravenes the provisions of Chapter six of the Constitution; or
- (ii) acts in contravention of codes, policies and procedures in the public service.

MIN.NO. DC/ENR/173/2021:

ADJOURNMENT

There being no other business, the meeting was adjourned at 1.17 pm.

SIGNED:

THE HON. KAREKE MBIUKI, CBS, M.P.
CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

DATE: 03-08-2021

STAKEHOLDER'S SUBMISSIONS



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution

And

In the Matter of Consideration by the National Assembly of;

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020); 2. The Pharmacy and Poisons (Amendment) Bill (National Assembly Bill No. 1 of 2021); 3. The Health (Amendment) Bill (National Assembly Bill No. 14 of 2021); 4. The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021); 5. The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021); 6. The Community Groups Registration Bill (National Assembly Bill No. 20 of 2021); 7. The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021); | <ol style="list-style-type: none"> 8. The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021) 9. The Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2021); 10. The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020); 11. The Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020); 12. The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020); 13. The Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021); 14. The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021). |
|--|--|

SUBMISSION OF MEMORANDA

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the aforementioned Bills, whose objects are as follows;

The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37 of 2020) sponsored by Hon. Paul Mwangi, MP, Igembe South Constituency, seeks to amend the Higher Education Loans Board Act in order to provide that a loanee shall commence the repayment of his or her loan once he or she secures employment. The amendment is meant to cushion unemployed graduates from being charged interest on the loan before they have secured employment.

The Pharmacy and Poisons (Amendment) Bill, 2021 (National Assembly No 1 of 2021) sponsored by Hon. Alfred Keter, MP, Nandi Hills Constituency, seeks to amend the Pharmacy and Poison Act to prohibit the sale or dispensing of medicine without written prescription from a registered medical practitioners

The Health (Amendment) Bill, 2021 (National Assembly No 14 of 2021) sponsored by Hon. Moses Mwambu Wekesa Mabonga, MP, Bumula Constituency, seeks to amend the Health Act No 21 of 2017 to provide that the National government and county governments shall, in consultation through the existing inter-governmental relations mechanism establish regional cancer centers; to make it an offence for a person in-charge of a Public Health facility to demand or permit of payments of advance medical fees as pre-condition for the provision of medical services; to make it an offence for person in-charge of a Public Health facility to detain a body of deceased person as means of enforcing settlement of outstanding medical bills and to provide for regulation on levying of charges for the practice of conventional medical practice.

The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021) seeks to provide for the establishment and operationalization of the National Electronic Single Window System in order to facilitate trade, the establishment of the Kenya Trade Network Agency, to provide for electronic transactions, and for connected purposes.

The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021) seeks to provide for development, regulation and promotion of the Coffee Industry, provide for establishment, powers and functions of the Coffee Board of Kenya.

The Community Groups Registration Bill, 2021 (National Assembly Bill No.20 of 2021) seeks to provide a regulatory framework for the registration and regulation of community groups and connected purposes.

The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021) sponsored by Hon. David Kosgey, MP, Pokot South Constituency, seeks to amend the Kenya Roads Act (No. 2 of 2007) to align the Act with the provisions of the Constitution with regard to the auditing functions of the Office of the Auditor-General. The Act currently refers to the defunct office of the Controller of Budget and the Auditor-General. The Bill further seeks to amend the term of office of and the qualification for the Director-General of the Kenya Roads Board appointed under the Act.

The Computer Misuse and Cybercrimes (Amendment) Bill, 2021 (National Assembly Bill No. 11 of 2021) sponsored by Hon. Aden Bare Duale, MP, Garissa Township Constituency, seeks to amend The Computer Misuse and Cybercrimes Act, 2018 to provide for the prohibition against the sharing of pornography through the internet and prohibit use of electronic mediums to promote terrorism, extreme religious and cult activities.

Kenya Industrial Research and Development Institute Bill, 2021 (National Assembly Bill No. 44 of 2021) seeks to establish the Kenya Industrial Research and Development Institute, and for connected purposes. It further provides for the promotion of research, development, technology and innovation in industrial and allied technologies, and for initiation and support of industrial development.

The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020) sponsored by Hon. David Gikaria, MP, Nakuru Town East Constituency, seeks to amend the National Construction Authority Act, No. 41 of 2011 to ensure women, youth and persons living with disabilities with start-up businesses who apply to be registered as contractors under category six, seven and eight are exempted from paying the prescribed fee. The amendment seeks to recognize women, youth and persons living with disabilities as marginalized groups and to cushion them from the burden of paying registration fees.

The Kenya Deposit Insurance (Amendment) Bill, 2020 (National Assembly Bill No. 43 of 2020) sponsored by Hon. Abdul Rahim Dawood, MP, Imenti North Constituency, seeks to amend section 28 of the Kenya Deposit Insurance Act, 2012 in order to increase the maximum amount a person with an account with an institution under liquidation is to be paid by the Kenya Deposit Insurance Corporation. It further seeks to delete the provision limiting the maximum amount a person is to be paid by the Corporation despite having different accounts.

The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill, 2020 (National Assembly Bill No. 49 of 2020) sponsored by Hon. Benjamin Gathiru Mwangi, MP, Embakasi Central Constituency, seeks to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenya citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect the Kenyan traders from foreign competitors.

The Irrigation (Amendment) Bill, 2021 (National Assembly Bill No. 12 of 2021) seeks to amend the Act by expanding the administration of irrigation matters to include management and regulation of irrigation matters. The Bill further seeks to amend the Act to harmonize the provision of the Irrigation Act, Water Act and Water Resources Management Rules, 2007.

The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021) seeks to amend the Tax Appeals Tribunal Act, 2013 to address the challenges affecting the performance of the Tax Appeals Tribunal to facilitate the expedition of tax disputes in the country.

Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, the Bills proposing amendments to the various Acts of Parliament are committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:

SCHEDULE

No.	BILL	COMMITTEE
1.	The Higher Education Loans Board (Amendment) Bill, 2020 (National Assembly Bill No. 37)	Education and Research
2.	The Pharmacy and Poisons (Amendment) Bill (National Assembly No 1 of 2021)	Health
3.	The Health (Amendment) Bill (National Assembly No 14 of 2021)	Health
4.	The Computer Misuse and Cybercrimes (Amendment) Bill (National Assembly Bill No. 11 of 2021)	Communication, Information and Innovation
5.	The Coffee Bill, 2021 (National Assembly Bill No. 17 of 2021)	Agriculture and Livestock
6.	The Community Groups Registration Bill (National Assembly Bill No.20 of 2021)	Labour and Social Welfare
7.	Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2021);	Trade, Industry and Cooperatives
8.	The Kenya Roads (Amendment) Bill, 2021 (National Assembly Bill No. 13 of 2021)	Transport, Public Works and Housing
9.	The National Construction Authority (Amendment) Bill, 2020 (National Assembly Bill No. 45 of 2020)	Transport, Public Works and Housing
10.	The Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No. 43 of 2020)	Finance and National Planning
11.	The Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 49 of 2020)	Finance and National Planning
12.	The National Electronic Single Window System Bill, 2021 (National Assembly Bill No. 15 of 2021)	Finance and National Planning
13.	The Tax Appeals Tribunal (Amendment) Bill (National Assembly Bill No. 19 of 2021)	Finance and National Planning
14.	Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021)	Environment and Natural Resources

The Bills were read a First Time pursuant to Standing Order 127(3) on 8th and 9th June 2021. Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Friday 18th June, 2021, at 5.00 pm.

MICHAEL SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
11th June 2021



Ahmed Kadhe
As facilitate
1/7/21

COUNCIL OF GOVERNORS

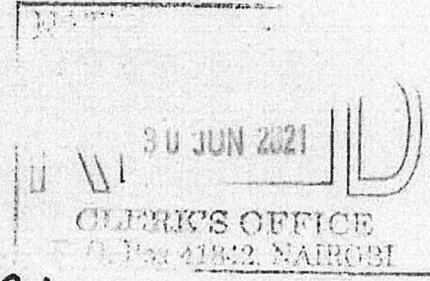
Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi

Tel: (020) 2403314, 2403313
+254 718 242 203
E-mail: info@cog.go.ke

Our Ref: COG/6/11 Vol. 2 (65)

21st June, 2021

Michael Sialai, CBS
The Clerk
The National Assembly
Parliament Buildings
NAIROBI



DISC
30/6/21

Dear

THE IRRIGATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2021

The above matter refers.

The Council of Governors takes cognizance of the fact that Article 6(2) of the Constitution which recognizes the two levels of government as distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. Further, Article 189 requires government at either level to perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government of the other level.

In view of the above, the Council of Governors notes with concern that the proposed **Clause 6 (a) (i) of the Irrigation (Amendment) Bill (National Assembly Bill No. 12 of 2021)** does not respect the aforementioned provisions of the Constitution by intending to prescribe the manner in which the Council of Governors should nominate its representatives to the National Irrigation Authority.

We therefore strongly condemn this ill-intended proposal and call upon the National Assembly to ensure that the proposed amended is deleted in its entirety or amended as follows:

6. Section 9 of the principal Act is amended as follows

(a) by deleting paragraph (f) and substituting therefore the following new paragraph-

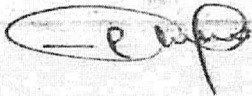
(f) two persons of the opposite gender and from different regions, with knowledge and experience in matters relating to water, agriculture, irrigation or



environmental studies nominated by the Council of County Governors and appointed by the Cabinet Secretary.

Thank you for the continued support.

Yours

A handwritten signature in black ink, appearing to read 'Mary Mwiti', enclosed within a hand-drawn oval.

Mary Mwiti
Ag. Chief Executive Officer

**COPY OF THE
BILL**

SPECIAL ISSUE

Kenya Gazette Supplement No. 65 (National Assembly Bills No. 12)



REPUBLIC OF KENYA

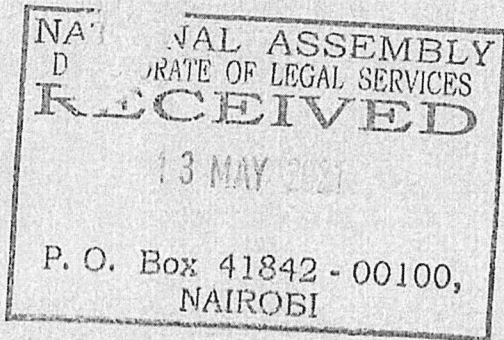
KENYA GAZETTE SUPPLEMENT

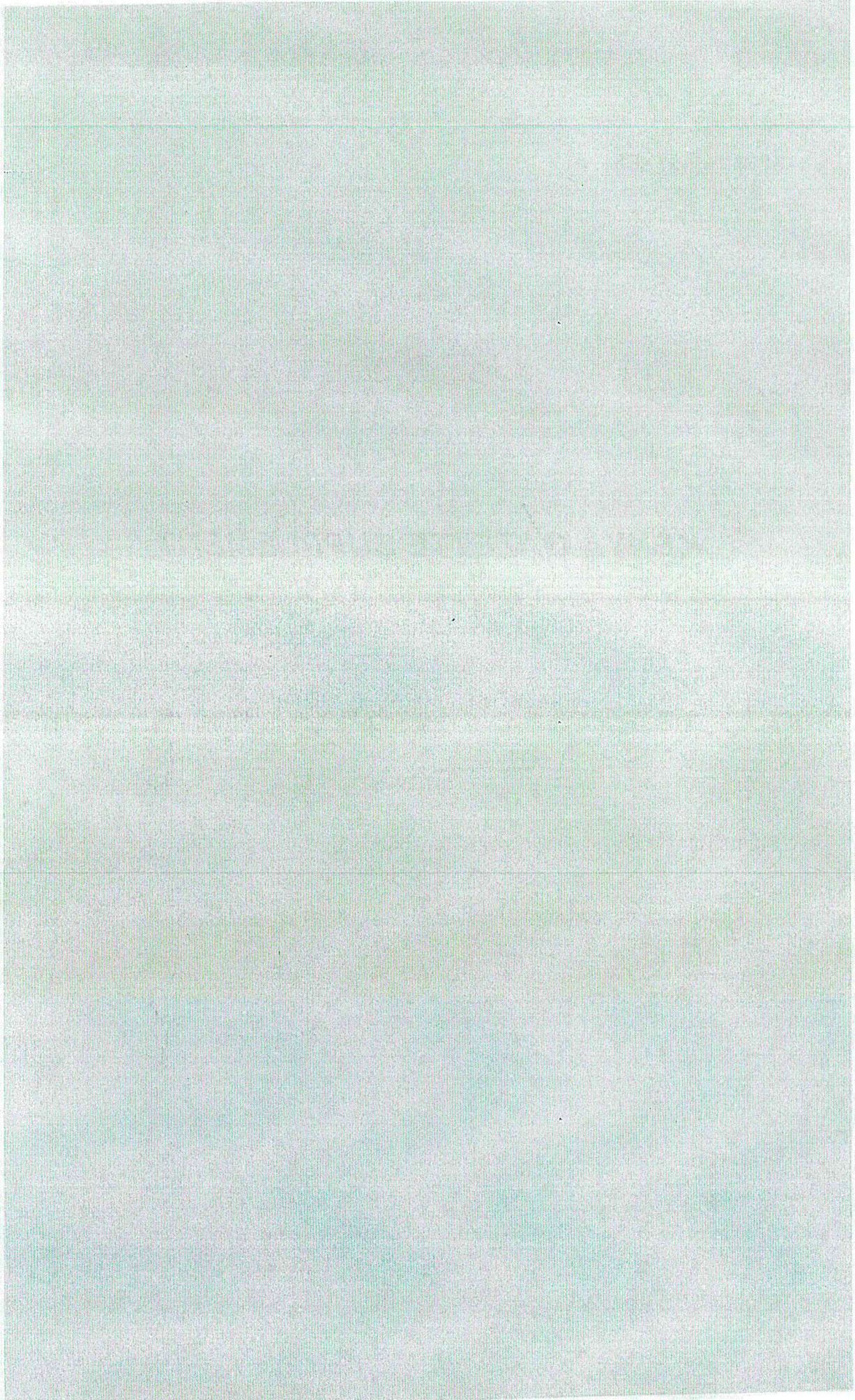
NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 16th April, 2021

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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 trees;

(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—

(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 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.

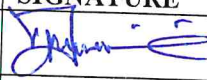



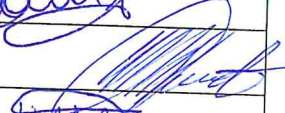



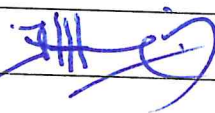

ADOPTION LIST

DC-ENR: DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ADOPTION LIST

REPORT ON THE CONSIDERATION OF THE IRRIGATION (AMENDMENT) BILL NO. 12 OF 2021.

We, the Members of the Departmental Committee on Environment and Natural Resources, have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Friday 23rd July, 2021.**

	NAME	SIGNATURE
1.	The Hon. Kareke Mbiuki, M.P. - Chairperson	
2.	The Hon. Sophia Abdi Noor, M.P. - Vice Chairperson	
3.	The Hon. David Kangogo Bowen, M.P.	
4.	The Hon. Francis Chachu Ganya, M.P.	
5.	The Hon. Bernard Shinali, M.P.	
6.	The Hon. Simon King'ara, M.P.	
7.	The Hon. Janet Ongera, MP.	
8.	The Hon. Amin Deddy Mohamed Ali, M.P.	
9.	The Hon. Charity Kathambi Chepkwony, M.P.	
10.	The Hon. Charles Ong'ondo Were, M.P.	
11.	The Hon. Hassan Oda Hulufu, M.P.	
12.	The Hon. George Kariuki, M.P.	
13.	The Hon. Ali Wario Guyo, M.P.	
14.	The Hon. Nasri Sahal Ibrahim, M.P.	
15.	The Hon. Peter Kimari Kihara, M.P.	
16.	The Hon. (Eng.) Paul Musyimi Nzengu, M.P.	
17.	The Hon. Rehema Hassan, M.P.	
18.	The Hon. Rozaah Buyu. M.P.	
19.	The Hon. Said Hiribae, M.P.	

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