

CHAPTER 435
THE NATIONAL IRRIGATION ACT
[PRINCIPAL LEGISLATION]
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SCHEDULE

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CHAPTER 435

THE NATIONAL IRRIGATION ACT

An Act to provide for the establishment of the National Irrigation Commission; to provide for the development, operation and maintenance of irrigation and drainage systems; to provide for effective implementation of the National Irrigation Policy, the National Irrigation Development Strategy and to provide for other related matters.

[.....]

Act No.
5 of 2013

PART I PRELIMINARY PROVISIONS

Short title and
commencement

1. This Act may be cited as the National Irrigation Act, 2013 and shall come into operation on such date as the Minister may by notice in the *Gazette*, appoint.

Interpretation

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

“authorised officer” means an officer acting for and on behalf of the Commission, Local Government Authority or the Management Committee of Irrigators’ Organisation for the purposes of implementation of this Act;

“canal” means an open channel allowing free or controlled flow of water and may include underground channel;

“channel” means any ditch, channel, aqueduct, trench, conduct, tunnel, sluice, flume allowing free or controlled flow of water for irrigation;

“Commission” means the National Irrigation Commission as established under section 3;

“conduit” means a pipe or line of pipes of any material or a series of culverts joined together for conveyance of water for irrigation or drainage purposes;

“Director General” means the Chief Executive Officer of the Commission appointed under section 8;

“distribution system” includes-

- (a) all main canals or conduits, branch canals or conduits, distribution canals or conduits or minor canals constructed, maintained and operated for the supply and distribution of water for irrigation;
- (b) all works, structures and appliances connected with the distribution of water for irrigation; and
- (c) all field channels, farm channels and other related channels and structures under a sluice or turn out;

“drainage” means the removal of water from the surface or subsoil of land by natural or artificial means for betterment of agriculture or other purposes;

“drainage system” means a series of structures and other allied infrastructure including the main, secondary, tertiary and field drainage canals or conduits necessary for the removal of excess water and salts from an irrigation scheme in order to allow effective agricultural operations and to prevent water logging;

“drainage water” means water which is removed from land by means of drainage works or by natural drainage means;

“drainage works” includes the construction and maintenance of drainage canals and channels including sub-soil drainage pipes, culverts, banks, water gates, sluices and other similar works for drainage purposes;

“Fund” means Irrigation Development Fund as established under section 52;

“field channel” means irrigation system channel used to convey irrigation water from tertiary canal into the fields;

“headworks” means the engineering works constructed at the point of abstraction of irrigation water such as structures on a river stream, pumping system or works at a dam or water reservoir;

- “Integrated Water Resources Management” means an approach in water resources management and development which holistically considers all users of the resource upstream and downstream of the system including the ecology;
- “irrigable” as applied to land means land of such situation and quality as to be capable of being irrigated from the works or proposed works of an undertaking;
- “irrigation” means the application of a specific amount of water at a particular location in order to meet the requirements of a crop growing at that location in amounts that are appropriate to the crop’s stage of growth, it can also involve the application of water in amounts necessary to bring soil to the desired moisture level prior to crop planting;
- “irrigation activities” means operation and maintenance of the irrigation system in an irrigation scheme for the purpose of crop production;
- “irrigation area” means an area irrigated or capable of being irrigated either by gravitational flow or by lift irrigation or by any other method so declared by the Minister responsible for land under the provisions of section 16;
- “irrigation efficiency” means a ratio between the amount of water effectively used for crop growth to the amount diverted from the source;
- “Irrigation Inspector” means an officer appointed under section 13 to work as inspector;
- “irrigation potential” means a total area which is technically feasible, economically and financially profitable, socially viable and environmentally acceptable that is irrigated or capable of being irrigated on the basis of water availability, land availability and suitability;
- “irrigation project” means an undertaking to rehabilitate, upgrade, improve or develop an irrigation and drainage system within a specified time frame;

“irrigation scheme” means an area where crops are grown under irrigation through any method including flood recession; gravity or pump fed canal systems supplying either surface or groundwater; water harvesting and pressurised systems such as drip and sprinkler;

“irrigation season” means that period of time determined by the Irrigators’ Management Committee during which irrigation water shall be made available to an irrigation area;

“irrigation service” means all activities aimed at enhancing sustainability of an irrigation scheme including but not limited to studies, planning, research, designing, construction, operation and maintenance of irrigation scheme and capacity building programme;

“irrigation service fees” means fees payable and collected in terms of section 39 for the purposes of meeting costs of development, operations and maintenance of irrigation works;

“irrigation system” means a series of structures and other allied infrastructure including the headworks, water conveyance and distribution systems, farm infrastructure, machinery and equipment, necessary to provide the supply of water for irrigation to a parcel of land;

“irrigation water” means water which is put on to or retained on land in an irrigation area by means of irrigation works and includes water reaching such land as rainfall;

“irrigation works or irrigation and drainage infrastructure” means physical infrastructure developed or installed in an irrigation system for the purpose of facilitating availability of irrigation water from a water source for crop production covering abstraction structures, conveyance structures, distribution structures, drainage structures and on-farm service roads and include-

- (a) all canals, field channels, dam and tanks, tube wells and filter point wells which are intended or which may be used for the supply, collection, storage or retention of water used for agricultural purposes;

- (b) all works, embankments, structures, supply and escape channels connected with such canals, channels, dams or tanks and spouts installed to supply water;
- (c) all water courses which are supplied with water from such canals, channels, dam, tanks or spouts;
- (d) all drainage works associated with irrigation systems, such as canals, channels, escape channels from a canal or channel, dam or tanks, weirs, embankments, sluices, groynes, field channels, and other works for the protection or benefit of agricultural lands or for the reclamation of such other lands;
- (e) all works intended for preventing or regulating the entry of salt water into agricultural lands;
- (f) all works in an irrigation scheme occupied by irrigators for the purpose of facilitating irrigated agriculture such as canals, channels, reservoirs or tanks and all buildings, machinery, fences, gates and other erections on such lands; and
- (g) and any other work which the Commission may, by notification, declared to be an irrigation work;

“irrigator” means an individual, company, or organisation which undertakes irrigation operation in a particular scheme;

“irrigators’ organisation” means group of farmers formed and registered under this Act or any other written law, and approved by the Commission pursuant to section 29 to-

- (a) accommodate joint interests and activities of all farmers on an irrigation scheme; and
- (b) ensure increased crop production and productivity through optimal management of land, irrigation water and operation and maintenance of their scheme;

“land or plot holder” means the owner, or any other person in lawful possession of land in the irrigable area of any irrigation scheme recorded as such in the records of the Commission and includes a lease or tenant and cultivator or other person in actual possession, management or control of any irrigable land;

Cap. 287

“large scale irrigation scheme” means an irrigation scheme with a command area greater than two thousand hectares;

“lift irrigation work” means an irrigation work by which water is supplied for agricultural purposes with the aid of a pump set or other mechanical devices;

“local government authority” means a local government authority as defined in the Local Government (District Authorities) Act and term “local government authorities” shall be construed accordingly;

“medium scale irrigation scheme” means irrigation scheme with a command area between five hundred and two thousand hectares;

“Member” means a member of the Commission, including the Chairman;

“Minister” means the Minister responsible for irrigation;

“minor irrigation work” includes any irrigation work facilitating irrigation or useful for the drainage or protection of an irrigable area of not more than fifteen hectares but shall not include a lift irrigation work;

“prescribe” means prescribed by regulations or rules made under this Act;

Cap. 97

“Regional Secretariat” means the Regional Secretariat established under the Regional Administration Act;

Caps. 113 and 114

“right of occupancy” has the meaning ascribed to it under the Land Act and Village Land Act;

“shared functions” means a joint function undertaken or to be undertaken by all stakeholders as may be agreed upon including research, training, extension services, inputs supply, crop development and promotion, irrigation and drainage infrastructure development;

“small holder farmer” means a farmer engaged in irrigation farming on a small holding of agricultural land which is up to five hectares and which is worked by only himself or with members of his family;

“small scale irrigation scheme” means an irrigation scheme with a command area up to five hundred hectares;

“stakeholders” means a person or an organisation involved in the irrigation sector including central government, local government authorities, Commission, development partners, cooperative societies, producers, dealers of irrigation equipment, input suppliers, research and extension service providers and all persons with vested interest in irrigation development;

“water course” means a river, stream, springs, channel, lake and includes any tributary or branch of any river, stream, springs or channel;

“water management” means all deliberative human activities designed to optimise the availability and utilisation of water for agricultural purposes;

Cap. 331

“water resource” has the meaning ascribed to it under the Water Resources Management Act;

“water user” includes any individual or body corporate or a society or an institution or organisation using water for any purpose from an irrigation system; and

Cap. 331

“water use permit” shall have the same meaning as ascribed to it under the Water Resources Management Act.

PART II ADMINISTRATION

Establishment
of National
Irrigation
Commission

3.—(1) There is hereby established a Commission to be known as the National Irrigation Commission.

(2) The Commission shall be an independent department of the Government under the Ministry responsible for irrigation.

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

- (a) suing and be sued;
- (b) acquiring and disposing movable or immovable property;
- (c) borrowing money and entering into contracts or other transactions; and

(d) doing all such other things for proper performance of its duties, and discharge its functions under this Act and any other subsidiary legislation made thereunder.

(4) Notwithstanding the preceeding provisions of this section-

(a) the Commission shall have a duty of notifying the Attorney General of any impending suit or intention to institute a suit or matter for or against the Commission;

(b) the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Commission.

(5) Where the Attorney General intervenes in any matter in pursuance of subsection (4), the provisions of the Government Proceedings Act, shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

(6) The Commission shall have a governing Board composed of a Chairman appointed by the President and ten other members appointed by the Minister as follows:

(a) a representative nominated from the Ministry responsible for agriculture;

(b) a representative nominated from the Ministry responsible for land;

(c) a representative nominated from the Ministry responsible for water;

(d) a representative nominated from the Ministry responsible for environmental matters;

(e) a Principal State Attorney nominated by the Attorney General;

(f) a representative nominated from the Ministry responsible for local government;

(g) a representative nominated from the Ministry responsible for livestock and fisheries development;

(h) two representatives from the irrigators' organisations; and

- (i) a person qualified in matters relating to irrigation nominated from a higher learning institution that offers irrigation training programme.

(7) The Director General of the Commission shall be the Secretary.

(8) In exercising powers under subsection (6), the nominating authority shall-

- (a) ensure that the nominated person has adequate knowledge and competence in his respective profession;
- (b) nominate a principal officer; and
- (c) take into account gender balance.

(9) The provision of the Schedule shall have effect as to tenure of office, cessation of membership and other proceedings of the Commission.

(10) The Minister may, by order published in the *Gazette*, amend, add to, vary, revoke or replace any of the provisions of the Schedule other than the provisions set out in paragraph 2 of the Schedule.

Investment
in irrigation
development

4.-(1) Subject to the provisions of this Act, the Commission may by itself or in collaboration with the private sector, invest in the irrigation development as the Commission may deem fit, and may vary, withdraw or realise any such investments.

(2) The Commission shall exercise such powers for the carrying out of such activities as are necessary and advantageous in the development and management of the irrigation sector.

(3) The Commission shall primarily oversee, monitor, regulate and supervise the implementation of functions of the Commission as prescribed under this Act.

Functions
and powers of
Commission

5.-(1) The Commission shall be responsible for coordination, promotional and regulatory functions in the development of the irrigation sector.

(2) Without prejudice to the generality of subsection (1), the Commission shall-

- (a) advise the Government on implementation and review of the National Irrigation Policy, Strategy, National Irrigation Master Plan and related legislation;
- (b) represent the Government in national and international *fora* and collaborate with both local and international firms or organisations in all matters pertaining to irrigation development and management;
- (c) coordinate all interventions in irrigation sector conducted by the development partners and other stakeholders;
- (d) promote and maintain cooperation in irrigation and drainage with similar bodies in other countries and with international bodies connected with irrigation and drainage;
- (e) advise the Minister on declaration of irrigation areas for the purposes of this Act;
- (f) plan, carry out studies, design, construct, supervise and administer implementations of the irrigation projects;
- (g) establish and maintain irrigation construction equipment centres and provide hiring services to support the private sector in irrigation investment;
- (h) register and maintain a register of all Irrigators;
- (i) promote institutional linkages training programmes and support the recruitment of persons for purposes of employment in connection with the irrigation sector;
- (j) act as a forum for information sharing pertaining to irrigation and drainage matters;
- (k) build capacity of irrigators for effective participation at all levels in irrigation planning, implementation, operation and management;
- (l) undertake and coordinate research, disseminate appropriate technologies emanating from the research findings and provide technical support services on irrigation;

- (m) promote development of multipurpose water storage facilities for irrigation purposes and other social economic activities;
- (n) regulate all matters related to irrigation development and to oversee collaboration among different players in the development of irrigation and drainage;
- (o) approve construction of irrigation works, standards and guidelines for the development and management of irrigation and drainage;
- (p) promote efficient water use in irrigation systems and ensure compliance with the Integrated Water Resources Management approach in irrigation development;
- (q) advise the government in all matters relating to development and management of irrigation sector in the country; and
- (r) perform any other functions which are necessary for effectively carrying out the purposes of this Act.

Committees of
Commission

6.—(1) The Commission may, for the purpose of facilitation of the performance of its functions under this Act, establish such number of Committees to perform specific functions as may be directed by the Commission.

(2) The size, functions, terms and conditions of such committees shall be as may be determined by the Commission.

Seal of
Commission

7.—(1) The common seal of the Commission shall not be affixed to any instrument except in the presence of the Chairman or the Director General, or in their absence, by an authorised officer of the Commission and two members of the Board.

(2) The Commission may appoint and employ agents or officer to manage, administer, transact any business or do any act or render any services required to be transacted or done in the execution of its functions or for the better carrying into effect the purposes of this Act or any other written law enforced by the Commission.

Appointment of
Director General

8.—(1) There shall be the Director General of the Commission who shall be appointed by the President from amongst persons with integrity, necessary qualifications, experience and competence to manage efficiently and effectively the affairs of the Commission.

(2) The Director General shall be the Chief Executive Officer of the Commission and shall be responsible for day to day administration and management of the affairs of the Commission and shall in particular—

- (a) be responsible for the management of funds, property and business of the Commission and for the administration, organisation and control of the staff of the Commission;
- (b) enforce the provisions of this Act and any other subsidiary legislation made thereunder;
- (c) keep in custody the seal of the Commission;
- (d) maintain records of all activities of the Commission;
- (e) register and maintain a register of irrigators and irrigation schemes;
- (f) monitor and assess activities being carried out in the irrigation schemes in order to ensure that they are advantageous to the national economy; and
- (g) perform any other functions that are necessary for effective carrying out the provisions of this Act.

(3) For proper discharge of his functions under this Act, the Director General may assign any function provided herein to any authorised officer.

(4) In the performance of his functions under this Act or any subsidiary legislation made thereunder, the Director General shall comply with the directive of the Commission as may be issued.

Appointment of
other directors

9. There shall be such number of directors to be appointed or employed by the Commission from amongst persons who possess high level of integrity, necessary qualifications, experience and competence to manage efficiently and effectively the affairs of the Commission.

Staff of
Commission

10.—(1) The Commission shall have powers to establish such numbers of sections or offices as it may deem fit for proper discharge of its functions under this Act.

(2) The Commission may appoint such officers or other staff as necessary for the proper discharge of its functions under this Act or any other written law and upon such terms and conditions of service as the Commission may determine.

(3) Officers and employees of the Commission shall hold office for such period, receive such salaries, allowances and benefits, subject to such terms and conditions of service as may be determined by the Commission.

(4) Where a person is seconded or transferred to the service of the Commission under this Act, his terms and conditions of employment with the Commission shall not be less favourable than those of his previous employment in the public service, and his service with the Commission shall be deemed to be continuous with his previous employment in the public service for the purposes of determining his entitlement to and quantum of pension, gratuity or other superannuation benefit.

Regional
irrigation
offices

11.—(1) For effective discharge of functions of the Commission, the Commission shall establish such number of region irrigation offices to be headed by Regional Irrigation Engineers as it may deem fit.

(2) A Regional Irrigation Engineers shall be responsible for the following functions:

- (a) provision of expertise and services to the local government authorities in the development and management of irrigation and drainage infrastructure within respective jurisdictions in collaboration with other relevant authorities;
- (b) identification of irrigation potential areas for development within their respective jurisdictions;
- (c) preparation of irrigation projects feasibility studies, detailed designs and tender documents;

- (d) provision of technical support to local government authorities and the private sector in the development and management of irrigation schemes in their areas;
- (e) preparation of manuals for operation and maintenance of irrigation schemes;
- (f) assisting in the formation of farmers irrigation organisations;
- (g) incorporate or mainstream environmental management issues in irrigation and drainage plans and designs;
- (h) data collection for irrigation data bank;
- (i) preparation of plans for the utilisation of ground water and surface water resources for irrigation purposes;
- (j) ensuring quality control of irrigation and drainage infrastructure;
- (k) supervision of construction and rehabilitation of irrigation and drainage works;
- (l) dissemination of new construction innovations on irrigation and drainage infrastructure;
- (m) facilitation on the undertaking of adaptive and applied research on various irrigation and drainage aspects;
- (n) promotion of renewable energy for irrigation and drainage purposes;
- (o) promotion on the use of locally available construction materials tested with positive results for optimisation of costs and water losses;
- (p) collaboration with Basin Water Boards established under the Water Resources Management Act to promote integrated Water Resources Management and issues regarding irrigation water use permits;
- (q) to coordinate activities of the Commission and District Authorities on the enforcement of this Act;
- (r) facilitate promotion, development, fostering and upholding of local government authorities towards realisation of their goals and targets pertaining to irrigation development;

- (s) advise the Director General on the implementation of this Act;
- (t) facilitate the designation of the district irrigation Offices in the areas to foster irrigation development and management; and
- (u) perform such other functions as may be entrusted to them by the Commission for the better implementation of this Act.

(3) A Regional Irrigation Engineer shall be appointed from amongst senior public officers with relevant qualifications, experience, skills and competence in irrigation development.

(4) The Regional Irrigation Engineer shall, in the performance of his functions be accountable to the Director General.

District Irrigation
Department

12.—(1) For the betterment of carrying out the provisions of this Act, the Minister responsible for local government may, in consultation with the Minister establish Irrigation Department in a District Authority as may be advised by the Commission.

(2) The District Irrigation Department shall be headed by the District Irrigation Engineer and equipped with professional qualified staff in relevant field.

(3) Functions of the District Irrigation Department shall be to assist the Commission in execution of its functions as provided for under section 5 of this Act.

(4) Without prejudice to the generality of subsection (3), the District Irrigation Department shall be responsible for the following:

- (a) to identify irrigation schemes, planning and designing, construction and operation and maintenance of irrigation schemes in collaboration with the Regional Irrigation Offices;
- (b) to provide linkage between Regional Irrigation Offices and irrigators' organisations;

- (c) to collaborate with stakeholders in respective districts as regards to the development and management of irrigation schemes;
 - (d) to collect, maintain and disseminate data in relation to the irrigation activities in their respective areas;
 - (e) to facilitate the formation of irrigators organisations and ensure that organisations are equipped with required skills for effective and sustainable irrigation management;
 - (f) to ensure that irrigators are provided with appropriate training for effective management of irrigation schemes for enhancing production and productivity of crops;
 - (g) to support the formulation and enforcement of irrigation by-laws by the irrigators' organisations in their jurisdiction areas;
 - (h) to support irrigators in soliciting funds for irrigation development;
 - (i) to disseminate guidelines on irrigation interventions;
 - (j) to ensure that village leadership support irrigation development intervention in their areas;
 - (k) to provide backstopping services to the farmers in the irrigation scheme by establishing irrigation scheme management support teams;
 - (l) to implement all directives as regards to the irrigation development and management which may be issued by the Commission; and
 - (m) to perform such other duties in regard to irrigation development as provided for under this Act.
- (5) The District Irrigation Engineer shall, prepare on quarterly basis a report on the performance of his functions for submission to the Regional Irrigation Engineer.
- (6) In performing functions under this Act, the District Irrigation Engineer shall, when dealing with all technical issues relating to irrigation, be accountable to the Commission.

(7) A Local Government Authority shall facilitate establishment and operation of the District Irrigation Departments and ensure that all allocated resources are effectively utilised so as to achieve objectives of this Act.

Appointment
of Irrigation
Inspector

13.—(1) The Commission shall, upon the recommendation of the Director General and by notice published in the *Gazette*, appoint or designate qualified irrigation engineers or any other qualified officer from regional offices or under the local government authorities to be Irrigation Inspector who shall exercise powers generally respecting irrigation matters in accordance with the provisions of this Act or as may be prescribed.

(2) A person appointed or designated as Inspector under subsection (1), shall be given a certificate, identity card or a document as showing proof of his appointment or designation which shall be produced in the exercise of his powers under this Act.

(3) Inspectors appointed under this section shall, in the performance of their function be accountable to the Director General.

Powers of
Irrigation
Inspectors

14.—(1) An Irrigation Inspector appointed or designated under section 13(1), may at any reasonable time of day and upon reasonable notice—

- (a) enter into any irrigation scheme or any place where irrigation activities are undertaken, and inspect and examine works for purposes of ensuring that the provisions of this Act or any regulation or rules made hereunder or any directions given or order made by the Minister or the Director General are being complied with;
- (b) require any person to produce for inspection or for the purpose of obtaining copies thereof or extract therefrom, any document relating to financing, drawings, designing, intended for the construction or installation of any irrigation work;

- (c) order the owner or occupier of the irrigation land to-
 - (i) maintain, repair, renew or replace any channel, pipe, building, structure, fitting, equipment, tank, pond, dam or other facility forming part of the irrigation and drainage system;
 - (ii) clear any channel, pipe, fitting, equipment, tank, pond, dam or other facility forming part of the irrigation or drainage system provided by the authority; and
 - (iii) clear the bush, weeds or sides of any drainage or irrigation works that are likely to damage works or harbour rats or other vermin; and
- (d) inspect, examine or survey land in connection with the planning, design or construction of an irrigation or drainage system, or extensions to or alterations of, an irrigation or drainage system and for that purpose the irrigation inspectors may-
 - (i) fix posts, stakes or other markers on the land;
 - (ii) dig trenches or sink test holes on the land to determine the nature of the top soil and underlying strata;
 - (iii) remove samples of any material from the land for analysis; or
 - (iv) exercise any other powers that are necessary for the implementation of this Act.

(2) The owner or occupier of any land or premises and every person found therein, shall give to an Irrigation Inspector all reasonable assistance in exercising his powers provided herein.

(3) An Irrigation Inspector may, if he has reasonable grounds that any of the provisions of this Act or regulations or orders made under this Act have been violated, seize any property or material which is connected to such violation or issue a stop order against any action to which the violation was committed.

(4) A person who is aggrieved by orders of an inspector under this section may, within fourteen days from the date of issuance of the orders, appeal to the Minister.

(5) The Minister shall determine the appeal within twenty-one days from the date of receipt of such appeal.

Restriction of
unqualified
Irrigation
Inspectors

15. Any person not being qualified as an Irrigation Inspector, who purports to act as Irrigation Inspector commits an offence and on conviction shall be liable to a fine not less than five million shillings or to imprisonment for a term of not less than two years but not exceeding three years or to both.

PART III

DECLARATION OF IRRIGATION AREA AND LAND CLASSIFICATION

Declaration of
irrigation area

16.-(1) The Minister responsible for land may, after consultation with the Minister and by order published in the *Gazette*, declare any area specified in the order to be an irrigation area for the purposes of this Act.

(2) A declaration made under subsection (1), shall define the boundaries of such area and may include head works and conveyance systems of any method.

(3) Where it is proposed to constitute an irrigation area under subsection (1), the Commission shall forward to the Minister a report with respect to the proposed areas which shall contain or be accompanied by the following particulars:

- (a) map or plan showing the boundaries and the extent of the lands proposed to be comprised in the area;
- (b) a description setting forth the scheme and purpose of the proposed irrigation works;
- (c) a general plan, prepared on a scale approved by the Minister, showing the nature and extent of the proposed irrigation works;
- (d) report on the Environmental and Social Impact Assessment;
- (e) an estimate of the total costs of the irrigation works where to be constructed by the Commission and of the annual charges necessary for the maintenance and management of the scheme;

- (f) an estimate of the annual revenue expected to be derived from the proposed works;
 - (g) an estimate of the quantity of water that is proposed to be made available for use for irrigation purposes in the area, after making allowance for present and probable future requirements for all or any other purposes; and a statement on the sources from which it is proposed to obtain it, specifying, where deemed necessary, the quantity and quality of water proposed to be taken from each of such sources and the seasons at which it is to be taken;
 - (h) statement of the existing water sources within or outside of the area, over or from which it is intended that the Commission should exercise any control or draw any part of its supply, and the nature or extent of such control, and for what purpose such control is necessary;
 - (i) an estimate of the approximate value of the existing irrigation works, if any, within the area which it is proposed that the Commission should take over from any existing authority or person;
 - (j) a statement of the quantity of irrigable land that may be beneficially irrigated, and of the character and description and value of such land in its then state, including all existing improvements;
 - (k) information in respect to the advantages which are likely to accrue generally from the establishment of the irrigation schemes in the said irrigated area; and
 - (l) any other information as may be prescribed in the regulations.
- (4) The Minister may, at any time and upon advice of the Commission, by order published in the *Gazette*-
- (a) combine two or more irrigation areas into one area;
 - (b) divide an irrigation area into two or more areas;
 - (c) alter the boundaries of an irrigation area by including in an area part of another area and excluding it from the latter;

- (d) include in an irrigation area an outlying area of the scheme;
- (e) abolish any irrigation area; or
- (f) adjust any financial or other matters in his opinion has an advantage or is beneficial for the irrigation development in the country.

(5) Where any declaration referred to in subsection (1), affects the existing land rights, the holder of such land shall be entitled if he so wishes to be a shareholder or to be compensated in accordance with relevant land laws or as may be agreed upon or to both.

Land acquisition
for irrigation
development

Cap. 118

17.—(1) Where it is necessary for better achievement of objectives of this Act, the Minister may, upon consultation with the Minister responsible for land and Minister responsible for local government, advise the President to acquire, subject to the provisions of the Land Acquisition Act, any land or any estate for the purposes of irrigation development.

(2) There shall be evidence of consultations with affected persons or Village General Assemblies of affected areas submitted to the President together with the advice of the Ministers.

Classification of
irrigation land

18. The Commission may, upon the recommendation of the Director General, classify all land within an irrigation area for its suitability for specific crops and irrigation methods.

PART IV

CONSTRUCTION OF IRRIGATION WORKS

Undertaking of
irrigation works

19.—(1) For the purposes of this Act, irrigation works may be undertaken in an irrigation area by-

- (a) local government authorities;
- (b) individual farmer;
- (c) irrigators organisations;
- (d) registered companies or firms;

(e) Governmental or Non-Governmental Organisations;
or

(f) any other person approved by the Commission pursuant to this Act.

(2) Notwithstanding the provisions of subsection (1), undertaking of irrigation works may be supported by the Commission in collaboration with any of approved entities.

(3) Where a local government authority or any other person or corporate body intends to invest in irrigated agriculture including carrying out studies, undertaking, operation and maintenance, may request for the services of the Commission to undertake such activities subject to such terms and conditions as may be agreed upon.

(4) Where necessary, construction of irrigation schemes shall among others, consider incorporation of watering points for the purposes of providing drinking water for livestock.

Application for
construction of
irrigation works

Cap. 191

20.—(1) Irrigation works shall not be constructed until the proposed scheme of the undertaking has been submitted to the Commission for approval and such project is subjected to the Environmental Impact Assessment as provided for under the Environmental Management Act.

(2) A person other than the Commission who wishes to construct irrigation works in any irrigation area shall first apply for the approval of the Director General or any authorised officer acting on his behalf pursuant to the procedures prescribed in the regulations made under this Act.

(3) Application made under subsection (2) shall be accompanied with the following:

- (a) design report;
- (b) list of drawings;
- (c) bill of quantities;
- (d) water use permit;
- (e) title deed in case of private sector;
- (f) registration certificate issued under this Act for aggregated farmers;

- (g) detailed feasibility study report; and
- (h) such other information as may be required by the Commission.

(4) Where the Director General is satisfied with the contents of the application, he shall refer to the Commission for approval, a list of applicants with their respective irrigation works.

(5) The Director General shall issue an irrigation certificate to every approved construction irrigation work.

Construction and
commissioning of
irrigation works
by Commission

21. Where the Commission considers that it is necessary, in the interest of the general public, to construct an irrigation work of any kind on an irrigation area in collaboration with any person or body of persons, the Commission may, by notice publishing in the *Gazette*, declare its intention specifying the area which is proposed to be covered by such irrigation work and such other particulars of the intended irrigation.

Consequences of
construction of
irrigation works
Cap. 331

22.—(1) Subject to the provisions of the Water Resources Management Act, where the Commission or any person authorised under this Act constructs an irrigation work for utilising the water from a water source, the Commission or such other person shall be entitled to regulate abstractions, utilise, protect and distribute water in accordance with water use permit from such water source in such a manner as may suit the public purpose.

(2) A person shall not, without the sanction of the Commission or such authority as may be authorised by the Commission in that behalf, construct any irrigation works or interfere with or obstruct the flow of water in any water channel.

(3) A person shall not use water from any irrigation work owned or controlled or maintained by the Commission for any purpose other than domestic purpose without the authorisation by the Commission or any other authorised officer.

Compensation
for damage
suffered due to
construction of
irrigation works

23. A person who, by reason of the construction of an irrigation work or exercise of any powers by any person or body of persons under this Act, suffers material damage on account of the deprivation or infringement of his right to use water source for the purpose of irrigating his land or for any other purpose, shall be entitled to a compensation for such damage in accordance with relevant laws governing compensation.

Entrustment of
irrigation works

24.—(1) Where the Commission considers it necessary so to do, it may, subject to such terms and conditions as may be specified by it, entrust the construction of irrigation works, to any local government authority or irrigators organisation or to any other body corporate.

(2) The local government authority or irrigators' organisation or any other body corporate to which any work is entrusted under subsection (1) shall undertake the operation and maintenance of such work after completion of formal agreement which shall stipulate terms and conditions for such maintenance and upkeep.

Construction of
minor irrigation
works

25. The Commission may enter into service level agreement with the local government authority, irrigators' organisations or any person for providing support in the construction and maintenance of all minor irrigation works as may be agreed upon.

PART V

CATEGORISATION AND APPROVAL OF IRRIGATION SCHEMES AND IRRIGATORS

Categorisation
of irrigation
schemes

26.—(1) The following shall be categories of irrigation schemes for the purposes of this Act:

- (a) small scale irrigation schemes;
- (b) medium scale irrigation schemes; and
- (c) large scale irrigation scheme.

(2) All irrigation works on an irrigation area shall be subject to approval or registration according to categorisation at the Commission, regional and district levels in the manner provided for in the regulations.

Categorisation
and approval of
irrigators

27.—(1) The following shall be categories of irrigators for the purposes of this Act:

- (a) individual farmers;
- (b) irrigators' organisations;
- (c) companies;
- (d) public entities;
- (e) Non-Governmental Organisations; and
- (f) any other body of persons.

(2) An individual farmer or body corporate shall be recognised and approved as an irrigator pursuant to this Act if he-

- (a) is the owner or occupier of the land in a particular irrigation scheme and is a holder of Water Use Permit for irrigation purposes as issued under the Water Resources Management Act;
- (b) is in the approved irrigation scheme; and
- (c) is a holder of irrigation certificate issued under this Act.

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PART VI

MANAGEMENT OF IRRIGATION SCHEMES

Management
of irrigation
schemes

28.—(1) An irrigation scheme shall be managed by the local government authorities, public or private entities, individual farmers, or irrigators' organisations or any other body or body corporate.

(2) For effective management of irrigation schemes, it shall be the duty of the Commission, Regional Secretariat and local government authorities in collaboration with respective irrigators, to-

- (a) promote the formation of irrigators' organisations;
- (b) ensure that all farmers owning land in an irrigation scheme are members of the irrigators' organisation;

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- (c) strengthen the capacity of irrigators;
- (d) support irrigators to prepare bylaws and facilitate their enforcement;
- (e) institute mandatory formal transaction on transfer of land from one farmer to another in an irrigation scheme for openness and transparency pertaining to the responsibility for the operation and maintenance of the irrigation infrastructure where necessary;
- (f) create awareness on Integrated Water Resources Management approach;
- (g) facilitate the establishment of apex forums of the irrigators' organisation to enable them to have effective representation of schemes management into river basin management subsystem as provided for in the Water Resources Management Act;
- (h) institute public private partnership arrangement for effective operation and maintenance of irrigation schemes;
- (i) undertake transitional measures by providing competent staff to form scheme management support teams while the farmers through their organisations are getting experience to take over their responsibilities;
- (j) monitor public entities and private investors in medium and large commercial irrigation schemes to ensure that they abide by the prevailing contractual agreements and propagate the benefits of their experience to the out-growers;
- (k) promote management of irrigation infrastructures by service providers in the private sector where farmers have demonstrated inadequate capacity;
- (l) create awareness and enforcement on participator, demand driven, cost sharing and recovery on investments for schemes implemented through public funds;
- (m) promote development of value addition and marketing infrastructure to leverage investment;

- (n) ensure establishment and maintenance of irrigation data base at both national and local government authority levels for effective planning, implementation and management of irrigation interventions; and
 - (o) perform any other functions.
- (3) Irrigators in a particular irrigation scheme shall be recognised as beneficiaries of the said scheme and as such, they shall-
- (a) be responsible for identifying problems and opportunities associated with their schemes;
 - (b) participate in the planning, design and implementation of irrigation development and be fully responsible on operation and maintenance of their irrigation schemes in specified areas within the respective schemes; and
 - (c) be entitled to receive relevant training and information on the management of water, environment, irrigation and best agronomic practices.

Establishment
of irrigators'
organisation

29.-(1) The Commission in collaboration with the local government authorities, facilitate establishment of the irrigators' organisations with due consideration of layout of a particular irrigation scheme.

(2) With effect from the date of registration, all the farmers having agricultural lands or fields within a particular irrigation scheme shall be required to become members of the organisation and be bound by the organisation's by-laws.

(3) There shall be an officer to assist in the management of the activities of the irrigators' organisations who shall be designated or appointed from the District Irrigation Department by the relevant local government authorities after consultation with the Commission.

(4) The Commission or local government authority may, give directions or suggest modifications as and when required for the functions of the Irrigators' organisations or committee or authorise any officer or body of officers for forming and monitoring the activities of such organisations.

Objects of
irrigators'
organisation

30. Objects of the irrigators' organisations shall include-

- (a) to promote and secure equitable distribution of irrigation water among its users;
- (b) to create awareness for water conservation, adequate maintenance of the irrigation systems, efficient and economical utilisation of water to optimise crop production; and
- (c) to protect the environment and to ensure ecological balance by involving the farmers, inculcating a sense of ownership of the irrigation systems in accordance with the provisions of the Environmental Management Act, the Water Resources Management Act, and any other related legislation.

Caps. 191 and 331

Functions
of irrigators'
organisations

31. The irrigators' organisations shall perform the following functions:

- (a) to prepare and implement water schedule for each irrigation season, consistent with the operational plan, based upon the water use permits, area, soil and cropping pattern as approved by the Commission or local government authority;
- (b) to prepare a plan for the operation and maintenance of irrigation system at the end of each cropping season and carry out the maintenance works of the irrigation system under its control with the funds of the irrigators organisation;
- (c) to regulate the use of water and land in its irrigation system;
- (d) to promote water use efficiency of allocated water;
- (e) to assist the Commission or local government authority in the collection of irrigation service fees and costs recovery fees;
- (f) to maintain a register of land holders and organisation members within their irrigation scheme;
- (g) to prepare and maintain an inventory of the irrigation system including assets and liabilities within their irrigation scheme;

- (h) to monitor and keep records of water flows for irrigation;
- (i) to resolve any dispute between the members within their irrigation scheme;
- (j) to cause and maintain annual audited accounts and other records as may be prescribed;
- (k) to review regularly water allocations and periodical performance monitoring and evaluation as may be prescribed; and
- (l) to perform any other functions as may be prescribed in their by-laws.

Source of funds
for irrigators'
organisations

32. The irrigators' organisations shall maintain their own funds for proper management of their activities such funds shall comprise the following:

- (a) fees collected from their members as provided for in their by-laws;
- (b) such other funds received by way of grant or donation from the Government, individuals or body corporate to support for the irrigation development in their area of operation;
- (c) and any amount received from any other lawful source.

Procedure for
taking up works

33. The Commission or local government authority shall authorise the Irrigators' organisations to take up and execute all the works for rehabilitation of their irrigation systems under close supervision of the Commission or local government authorities.

Allocation of
irrigation plots

34.—(l) For the schemes owned by irrigators' organisations, the Management Committee of the irrigators' organisation shall in consultation with the Village General Assembly, authenticate ownership of plots or allocate plots on an irrigation scheme as the case may be, to its members for such terms and conditions as it deems fit for effective development of irrigation within its area.

(2) In authentication or allocating plots, the Management Committee shall have regard to the residence of the farmer and his capacity to effectively manage the authenticated or allocated land.

(3) A plot shall be registered in the name of a person whom the plot has been authenticated or allocated and shall be held by such registered holder for a period specified in the certificate of allocation.

(4) A registered holder of a plot may in consultation with his Management Committee, dispose or transfer his right to any person or body corporate pursuant to the relevant land laws.

(5) Where the right to hold a plot is transferred to another person, such new owner shall become fully responsible for the management of the land and associated irrigation infrastructure in accordance with the provisions of this Act.

Disputes
settlement on
irrigation scheme

35.—(1) In order to minimise water and land conflicts on irrigation schemes, the Commission shall collaborate with the local government authorities, basin water boards and respective irrigators using water from the same source and establish a mechanism for amicable settlement of disputes within the schemes through involvement of relevant government institutions or systems.

Cap. 331

(2) For the purposes of this section “Basin Water Board” means Basin Water Board established under the Water Resources Management Act.

Withdraw and
surrender of
irrigation plots
Caps. 113 and
114.

36. The provisions of Land Act and Village Land Act governing land withdraw or surrender of land shall apply in relation to any holder of a plot who breaches the conditions for ownership or occupation of a plot in irrigation schemes or wishes to surrender the plot.

Power to
prescribe good
agricultural
practices and
irrigation
methods in
irrigation area

37.—(1) Whenever the Commission is satisfied that for the better utilisation of land for irrigation and water use efficiency on an irrigation scheme, it is expedient and desirable in public interests to regulate the kind of agricultural practices and irrigation methods on irrigation area under such irrigation scheme, may by notice published in the *Gazette*, make a declaration to that effect.

(2) Subject to subsection (1), the Commission, after consultation with the irrigators and respective local government authority, may specify by notification published in such manner as may be prescribed, the kinds of farming systems and irrigation methods that shall be practiced on any irrigation area.

(3) On the publication of a notification under subsection (1), a person shall not practice farming systems or use irrigation methods other than that specified in such notification during the period specified in such notification.

(4) A person who contravenes the provision of sub-section (3), commits an offence and on conviction shall be liable to a fine not less than two million shillings but not exceeding ten million shillings or to imprisonment for the terms of two years or to both.

Power to takeover
irrigation works
for maintenance

38.—(1) Where the Commission considers that any irrigation scheme owned by any person or body of persons is neglected or mismanaged, for the public interest, may by notification to such owner or occupier, temporarily take over the scheme and place under its management or management of the local government authority for maintenance.

(2) For the purposes of subsection (1), the Commission shall return the management of the scheme to the owner or occupier after necessary remedies and recover from the owner or occupier of the scheme, the costs relating to operation and maintenance thereof.

Irrigation service
fees

39.—(1) The Minister shall upon consultation with the Minister responsible for finance, and by order published in the *Gazette* prescribe irrigation service fees and such other fees or charges for irrigation operation and maintenance in an irrigation area.

(2) The irrigation service fees shall be collected by the Commission, local government authorities or irrigators' organisations for operation and maintenance of irrigation schemes.

Irrigation
schemes

40.—(1) Depending on the size and nature of an irrigation scheme, the responsibility for operation and maintenance of such schemes shall be as follows—

- (a) for small scale irrigation schemes, the owners of the lands benefited by the irrigation system shall be solely responsible for the operation and maintenance unless otherwise specified;
- (b) for medium and large scale irrigation schemes, the irrigators benefited by the irrigation system shall be responsible for the operation and maintenance of secondary and tertiary conveyance systems up to the field level and the local government authority or the Commission shall be responsible for ensuring proper management of head works and main conveyance systems unless otherwise specified; and
- (c) for privately owned irrigation schemes, it shall be the responsibility of the owner of the scheme to operate and manage the irrigation system unless otherwise specified.

(2) Where the land owners fail to operate and maintain their irrigation schemes and the Irrigation Inspector is satisfied that operation and maintenance of schemes is necessary for proper irrigation of lands of such owners, the Irrigation Inspector shall by notice, require the land owners concerned to operate and maintain the systems within such time or manner as may be specified in the notice.

Clearance of
banks

41.—(1) The Commission may, by notice in writing, require the owner or occupier of any land within any irrigation or drainage area to clear the banks or sides of any drainage or irrigation works that is likely to damage such works or harbour pests.

(2) Such notice shall require the owner or occupier to take the necessary action within a certain fixed time, which shall not be less than fourteen days from the date of the service of the notice, and if default is made in complying with the provisions of such notice the Irrigation Inspector may enter upon such land and cause action to be taken as required by the notice and may recover the costs of so doing from such owner or occupier in any court of competent jurisdiction.

(3) The Irrigation Inspector may, by notice in writing, prohibit the owner or occupier of any land within such area from planting any tree or plant on the banks or sides of any irrigation or drainage works that are likely to damage such works or harbour pests.

(4) Where a default is made in complying with the provisions of a notice issued under subsection (2), the Irrigation Inspector or any authorised officer may enter upon such land and cause action to be taken to clear any tree, plant or weed from such banks or sides or to remove any such tree, plant or weed and may recover the cost of so doing from the said owner or occupier in any court of competent jurisdiction.

(5) Where the Irrigation Inspector requires the destruction of, or destroys, valuable trees or plants he shall, unless notice has been issued on a previous occasion under subsection (2) in respect of the land on which such trees or plants are growing, pay the owner or occupier reasonable compensation for the same.

Commission to
order provision of
proper banks

42. The Commission or any Irrigation Inspector may, by notice in writing, require the owner or occupier of any land within such area to provide, either individually or jointly with other

owners or occupiers, proper banks or bunds to specify levels and distribution or drainage channels for the supply, drainage, retention or exclusion of water:

Provided that, a person shall not be required under this section to provide banks, bunds, distribution or drainage channels which will not benefit the land whereof he is the owner or occupier.

Procedure
on failure to
contribute for
costs or labour for
work to be done
by joint labour

43.—(1) Where, by an agreement or for any other good reason, any irrigation work is to be done by the joint labour of irrigators in a particular irrigation scheme or at the costs of owners of all the lands likely to be benefited by such work, and where any of such owners fails or neglects to do his share of the work or contribute his share of the cost of labour, it shall be lawful for the Irrigation Inspector, or the Management Committee, or any other officer authorised by the Commission to investigate the matter and pass such order as he deems fit, and he may, by such order, also direct the defaulting owner to execute any portion of such work or pay any portion of the costs of the work.

(2) An order directing that the defaulting owner shall execute the portion of the work shall also specify the portion of the work to be executed, the time within which it shall be done, or the estimate of the costs of such work prepared in such manner as may be prescribed.

(3) Where the defaulting owner refuses or fails to execute such work within the time specified in the order under subsection (1), the Irrigation Inspector, the Management Committee or such other officer authorised by the Commission under that subsection may entrust the work to be executed by some other person, and the cost thereof may be recovered from the defaulting owner in such manner as may be prescribed.

Distribution
of water from
irrigation works

44.—(1) The Commission shall, upon the advice of the Director General and by notice published in the *Gazette* and any newspaper of wide circulation, prescribe and circulate to the

irrigators' organisation guidelines for the distribution of water for all irrigation works constructed or maintained wholly or partly at the costs of Government.

(2) Owners of private irrigation schemes shall prepare records of water abstractions and distributions and submit a copy of such records to the Commission through respective Regional Irrigation Offices to enable the Commission to monitor compliance with crop water requirement and Water Use Permit.

(3) A person who contravenes subsections (1) and (2) commits an offence and on conviction shall be liable to a fine of not less than one million shillings and not exceeding five million shillings or to imprisonment for a term of not less than one year or to both.

Prohibited acts

45.—(1) A person shall not—

- (a) occupy or encroach an irrigation area for purposes other than irrigated agriculture;
- (b) let out any toxic industrial or domestic effluent to any irrigation scheme without proper treatment;
- (c) operate a sluice gate, regulator or flood gate of a reservoir, canal, or any other water conveyance systems of an irrigation work owned, controlled or maintained by the Government or irrigators' organisations unless such person is an Irrigation Inspector or a person duly empowered by him in his behalf;
- (d) fish in any reservoir owned, maintained or controlled by the Government or irrigators organisations without the prior permission in writing of the Irrigation Inspector and except in accordance with such terms and conditions and subject to the payment of such fees, as may be prescribed;
- (e) use any explosive or any poisonous substance for the purpose of fishing in a reservoir;
- (f) without the written permission of the Commission conduct mining or carrying operation using explosives

or any other activity which may cause destructive seismic forces within a distance of one kilometer from the irrigation scheme:

- (g) let out water from an irrigation work owned, controlled or maintained by the Government and irrigators' organisations by cutting any bund or constructing a sluice or outlet or by any other similar contrivance;
- (h) connects a channel or pipe to the irrigation or drainage system;
- (i) places or causes to be placed a structure or install equipment in a channel or pipe connected to the irrigation or drainage system; and
- (j) uses a method of distributing irrigation water to plants on his land that has not been approved by the Commission in respect of the land and the plants to be irrigated.

(2) Every landholder shall-

- (a) ensure that irrigation water does not drain or otherwise escape onto or into adjoining land so as to cause a nuisance to the adjoining landowner;
- (b) maintain, and when necessary repair or replace the irrigation and drainage systems if so required;
- (c) not block or impede the flow of water in any part of the irrigation or drainage system except at the direction, or with the approval, of the Commission or any authorised officer acting on its behalf;
- (d) when necessary, clear channels and pipes of the irrigation or drainage system provided to his land; or
- (e) ensure that channels and pipes on his land including those forming part of the irrigation and drainage systems are protected from damage that is reasonably foreseeable.

(3) A person who contravenes the provisions of this section commits an offence and on conviction shall be liable to a fine of not less than two million shillings and not exceeding five million shillings or to imprisonment for a term of not less than one year or to both.

Obligation of
land owners in
respect of works
affecting safety of
irrigation works

46.—(1) An owner of land whose tank, well, pond or other reservoir is situated above the level of any irrigation work, shall maintain the bunds and any other protection arrangements of such tank, well, pond or other reservoir in safe and efficient condition.

(2) Where the Irrigation Inspector is of the opinion that the bunds or protection arrangements referred to in subsection (1) are not in a fit condition and are likely to endanger the irrigation work below, the owner concerned shall be served with a notice requiring him to maintain such bunds or protection arrangements in a reasonably fit condition in such manner and within such time as may be specified in the notice.

(3) Where the owner fails to comply with the notice under subsection (2) or the repairs done by him are in the opinion of the Irrigation Inspector unsatisfactory, the Irrigation Inspector may carry out necessary repairs to keep such bunds and protection arrangements in a fit condition, and the costs thereof shall be realised from such owner in such manner as may be prescribed.

(4) A person who is aggrieved by orders of an inspector under subsection (3) may, within fourteen days from the date of receipt of the order, appeal to the Minister.

(5) The Minister shall determine the appeal within twenty one days from the date of receipt of such appeal.

Control of
navigation and
unplanned canal
crossings

47.—(7) The Commission may, in consultation with the Ministry responsible for transportation and the local government authorities, by regulation prohibit or regulate navigation in an irrigation work.

(2) Every irrigator or owner of irrigation scheme shall ensure that there is no unplanned canal crossings or watering points in an irrigation scheme.

(3) A person who crosses through unplanned canal crossings or takes water or livestock to unplanned watering points, commits an offence and on conviction, shall be liable to a fine not less than one million or to imprisonment for a term of not less than one year or to both.

Inter – basin
water transfer for
irrigation
Cap. 331

48. Subject to the provisions of the Water Resources Management Act, irrigation water from a water source in the basin of an irrigation area shall not be transferred to any other basin, except in accordance with an agreement between the Commission, Basin Water Boards and respective local government authorities.

Monitoring and
evaluation of
performance
of irrigation
schemes

49.-(1) At the end of each cropping season, the Irrigator's Management Committee in collaboration with the Commission and local government authority shall conduct an evaluation including continuous monitoring of respective irrigation scheme.

(2) Monitoring and evaluation referred to under subsection (1) shall involve both water utilisation against water allocations and expenditure incurred for maintenance of the irrigation system with reference to funds available to the irrigators' organisation.

(3) The performance monitoring and evaluation shall cover-

- (a) equity in water distribution;
- (b) increase in production;
- (c) increase in productivity;
- (d) crop diversification;
- (e) multiple cropping;
- (f) water use efficiency;
- (g) water quality;
- (h) utilisation of resources for execution of works;
- (i) improvement in the cultivated areas of the irrigators organisation compared to previous season;
- (j) utilisation of research facilities in adopting high yield varieties of seeds, pesticides;
- (k) quality of works undertaken; and
- (l) step-wise development of irrigation system.

(4) The results so obtained shall be made known to all the beneficiaries of the irrigators organisations by displaying a list containing the benefits accrued with reference to funds spent on the notice board of the irrigators' organisations.

(5) Wherever a work is taken up by an irrigators' organisation, the estimated cost of the work, item of work proposed to be executed, details of the executed work are to be exhibited on a board at the place of work.

(6) The Commission may render any assistance in the conduct of the performance monitoring and evaluation and the results shall be sent to all concerned parties as stipulated by the Commission.

(7) The performance monitoring and evaluation report shall be utilised on general performance improvements of the scheme.

(8) A copy of the audit report referred to in subsection shall be exhibited on the notice board of the irrigators' organisation.

PART VII

ENVIRONMENTAL AND HEALTH PROTECTION

Compliance with
environmental
requirement

50.—(1) The Commission shall ensure that all irrigation development are integrated with other natural resources development and management activities such as catchment management in order to protect the environment.

(2) A person who pollutes or causes to be polluted any irrigation works commits an offence and on conviction, shall be liable to a fine of not less than one million shillings or to imprisonment for a term of not less than six months or to both.

(3) Without prejudice to the generality of the foregoing, the Commission, in collaboration with other competent authorities in environment and health, shall-

- (a) carry out such other activities and take such other measures with regard to irrigation as may be necessary or expedient for the better protection of the environment and human health;
- (b) ensure compliance to the environmental protection requirement during planning, implementation and operation stages of irrigation schemes;

- (c) ensure that unacceptable environmental impacts are avoided and that features such as high-watertables, salinity and erosion are monitored;
 - (d) ensure that designs of irrigation schemes take into consideration safety measures for flood control and other natural disasters;
 - (e) prohibit the use of such chemicals, pesticides and other substances as may be specified on any land under irrigation farming;
 - (f) control the grazing of livestock in irrigation and drainage areas and river banks of rivers supplying water to an irrigation scheme;
 - (g) provide for the environmental standards to be adhered by the irrigators in the schemes development; and
 - (h) ensure that all irrigators comply with other written laws governing the environmental protection and good agricultural practices.
- (4) For the purposes of environmental protection, local government authorities and other stakeholders shall-
- (a) ensure that all irrigators comply with the directions requiring them to protect the environment within and in the vicinity of the irrigation areas; and
 - (b) ensure that all irrigators and other stakeholders do not undertake interventions detrimental to the environment in irrigation areas.

Commission
to coordinate
and promote
irrigation
research

51.-(1) For the purposes of improving the performance of irrigated agriculture for crop production, productivity and profitability and ensuring irrigation water efficiency, the Commission in collaboration with other local and international public and private entities, shall conduct, coordinate research on irrigation and drainage and promote the findings for use by the beneficiaries in line with the National Irrigation Policy and Strategy.

(2) The irrigation and drainage research shall aim at improving hydraulic performance of irrigation infrastructure for effective water management and enhanced crop production and productivity in irrigation schemes-

- (a) ensuring effective operation and maintenance of irrigation schemes;
- (b) increased adoption of appropriate technologies by farmers for sustainable irrigation development;
- (c) provide for capacity building of irrigation experts, service providers and farmers in irrigation sector;
- (d) identification of irrigation and drainage research challenges and their solutions;
- (e) solicitation of adequate funds for conducting irrigation and drainage research activities;
- (f) documentation, publication and dissemination of research findings.
- (g) establishment of mechanisms for linkage and coordination of all types of irrigation research by various stakeholders nationally and internationally;
- (h) conduct and disseminate irrigation technologies, research findings and innovations to the irrigators in the country;
- (i) promote the use of appropriate technologies and innovations in irrigation development;
- (j) promote awareness on appropriate and improved irrigation practices and conduct tailor made training programmes to the irrigators;
- (k) conduct tailor made in-service training to develop the newly recruited staff into professionals as quickly as possible and based on the research results to strengthen technical knowledge and skills of the irrigation staff for enhanced, effective, efficient and sustainable development of the irrigation sector;
- (l) identify, compile and adopt available irrigation technologies, practices and innovations;
- (m) facilitate solicitation of funds to support on urban and peri-urban irrigated agriculture where water harvesting from roof tops, treated waste water and appropriate technologies can be used;

- (n) establish and strengthen collaboration and networking with national and international irrigation-based institutions including higher learning institutions; and
- (o) perform any other duties which deems fit.

PART VIII

FINANCIAL PROVISIONS

Establishment
of Irrigation
Development
Fund

52.—(1) There is hereby established a Fund which shall be known as the Irrigation Development Fund for ensuring development and sustainability of the irrigation sector.

(2) The source of Irrigation Development Fund shall consist of-

- (a) monies accrued from disposition or transfer of the government owned irrigation schemes;
- (b) any monies accrued from the recoverable costs to be paid by irrigators for irrigation development under this Act;
- (c) funds accrued from disposal of obsolete plants and equipments;
- (d) any other monies that may be payable to the Fund from moneys appropriated for that purpose by the Parliament;
- (e) monies obtained by way of charge or fees in respect of programmes, publication, documents and other services provided by the Commission;
- (f) any monies that Fund may obtain, with approval of the Minister and the Minister responsible for finance, by way of donations, loans or other financial assistance from within or outside the Country; and
- (g) any monies that may accrue to the Fund, whether in terms of this Act or otherwise as approved by the Commission.

Use of Fund

53.—(1) The resources of the Fund shall be utilised for the purposes of-

- (a) meeting costs of planning, feasibility studies, designing, construction, operation and maintenance of irrigation schemes;

- (b) financing, by way of loan or grant, any irrigation and drainage research or study carried on by or for the benefit of persons or organisations engaged in irrigation and drainage;
- (c) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objectives of the Fund;
- (d) financing by way of loan or grant, the training or capacity building courses of experts or farmers engaged in irrigation sector;
- (e) making an award or awards to persons who contributed to the development of irrigation sector;
- (f) meeting any expenses of the Commission and those arising from the establishment and maintenance of the Fund; and
- (g) any purposes which the Minister, on the recommendation of the Commission, considers to be in the interest of the objectives of the Fund.

Management of
Fund

54.—(1) Subject to any general or special directives of the Minister, the fund shall be administered by the Commission.

(2) For the purposes of this section, the Commission shall maintain funds in a separately designated bank account or accounts, which shall operate in accordance with such directions as the Minister may, give in that behalf, save that the Commission shall not make any payment out of the Fund except in accordance with the agreed annual expenditure framework.

(3) Without prejudice to the preceeding provisions of this section, the Commission may, where circumstances so require, maintain and administer as part of the Fund any special account or accounts for the purposes of any project or programme carried on jointly with a foreign institution, department or organisation for the advancement of irrigation development in the United Republic.

Accounts and
audit of Irrigation
Development
Fund

55.—(1) The Commission shall cause to be provided and kept proper books of accounts of the payments made into and out of the Fund.

Cap. 418

(2) The accounts of the Fund shall be audited annually by the Controller and Auditor-General in accordance with the Public Audit Act, and the audited Accounts of the Fund shall be published simultaneously with other audited accounts of the Commission.

Funds of
Commission

56. The sources of funds of the Commission shall be—

- (a) such moneys as may be appropriated by the Parliament;
- (b) such sums as may be payable to the Commission by way of donations, gifts, grants and loans; or irrigation service fees; or
- (c) any other sources lawfully accrued or obtained by the Commission.

Annual budget
of Commission

57. The Commission shall prepare its income and expenditure estimates for the succeeding financial year and submit them to the Minister for scrutiny and submission to the National Assembly for approval.

Accounting
and audit

58.—(1) The Commission shall cause to be kept and maintained in accordance with the International Accounting Standards, proper books of accounts with respect to—

- (a) all sums of moneys received and expended;
- (b) all the assets and liabilities of the Commission; and
- (c) all the income and expenditure statement of the Commission.

Cap. 418

(2) Within six months of the close of every financial year, the Controller and Auditor-General in accordance with the Public Audit Act shall audit the accounts including the balance sheet of the Commission.

(3) Every income and expenditure accounts and audited balance sheet shall be placed before a meeting of the Commission of and, if adopted, it shall be endorsed with a certificate to that effect.

(4) As soon as the accounts of the Commission have been audited, and in any case not later than six months after the close of the financial year, the Commission shall submit to the Minister a copy of the audited statement of accounts together with a copy of the report on that statement made by the auditors.

(5) The Minister may, where the report submitted to him under this section has any anomalies, direct the Commission to correct or furnish him with adequate explanatory information and the Commission shall give into effect such direction of the Minister.

(6) The Minister shall, as soon as practicable after receiving the report, lay before the National Assembly the audited accounts of the Commission together with the auditor's report, if any, on the accounts.

Powers to borrow
and invest

59.—(1) Subject to the prior approval of the Minister and the Minister responsible for Finance, the Commission may, borrow moneys for the purposes of its activities by way of loan or overdraft, and upon such security and such terms and conditions relating to repayment of the principal and payment of interest, subject to any direction by the Minister, the Commission may consider fit.

(2) The moneys held by the Commission pursuant to this Act, in so far they are not required to be expended or utilised by the Commission under this Act, may be invested in such manner as the Commission deems fit with the approval of the Minister and the Minister responsible for Finance.

Financial year

60. The financial year of the Commission shall be the period of twelve months beginning from 1st day of July and ending at the 30th day of June of the following year.

PART IX

OFFENCES AND PENALTIES

Offences and
penalties

61.—(1) A person who—

- (a) willfully damages or fails to maintain irrigation systems or irrigation works;
- (b) interferes without any authority with any part of an irrigation or drainage system or with any property of an irrigators' organisation used in, or in connection with, the irrigation or drainage of land;
- (c) wilfully makes any statement knowing the same to be false or not having reason to believe the same to be true;
- (d) by overt act or writing, threatens, incites, intimidates or prevents construction of any irrigation works;
- (e) engages in practices which are destructive or potentially destructive to the catchment area of a river or public water course supplying water to an irrigation scheme;
- (f) grazes or permits livestock to graze in irrigation areas;
- (g) sets or causes to be set on fire crops on an irrigation scheme or on any irrigated farm, garden or plot, or
- (h) without reasonable cause refuses to assist in averting, fighting or extinguishing a fire on an irrigation scheme or on any irrigated farm, garden or plot;
- (i) applies or causes to be applied on an irrigation scheme, farm, garden or plot under irrigation any chemicals or substances prohibited under this Act or any order made by the Minister;
- (j) provides any false or misleading information to the Director General or any authorised officer responsible for the enforcement of this Act;
- (k) refuses or neglects to furnish information which he may be required to furnish under the provisions of this Act or subsidiary legislation under this Act;

- (l) constructs or extends any irrigation works contrary to this Act or fails, without reasonable excuse, to comply with a requirement made under this Act or subsidiary legislation;
 - (m) willfully obstructs, damages or destroys any irrigation works or destroys, defaces or moves any level mark, beacon or other structure or appliance;
 - (n) obstructs, molests or hinders any public officer in the lawful exercise of his powers or duties under this Act or subsidiary legislation made there under;
 - (o) interferes with, increases or diminishes supply of water from or to any irrigation work;
 - (p) interferes with or alters the flow of water in any irrigation work so as to endanger, injure or render less useful, any such work;
 - (q) being entitled to the use of water from an irrigation work, causes or occasions waste of water in such irrigation work or interferes with the authorised distribution of water there from or uses water in any unauthorised manner;
 - (r) intentionally corrupts or fouls water of any irrigation work so as to render it less fit for the purpose for which it is ordinarily used;
 - (s) destroys, defaces, removes or alters any level marked or water gauge or any other mark or sign fixed in an irrigation work,
- commits an offence and on conviction shall be liable-
- (i) if it is an individual, to a fine of not less than one million shillings or to imprisonment for a term not less than one year but not exceeding three or to both;
 - (ii) if is a body corporate, to a fine of not less than ten million shillings and not more than fifty million shillings and to imprisonment for a term not less than three years but not exceeding five years or to both.

(2) The court may in addition to any penalty imposed under this Act, order any article in respect of which such offence has been committed or which has been used for the commission of such offence to be forfeited.

(3) The Minister shall have the power to determine the procedures for disposal of anything forfeited to the Government under subsection (2).

(4) Where an offence has been committed and because of that commission a person has suffered a direct damage or loss of his property, the court may, in addition to the penalty provided under subsection (1), order the offender to compensate the person who has suffered loss or damage.

(5) Where any person is convicted of an offence under this section, the costs of removing the obstruction or interference, or repairing the damage, alteration or injury to anybody or to the irrigation work or of replacing or repairing the level mark or any other mark of sign, if any, incurred by any officer of the Government empowered to enforce this Act shall be recoverable from such person in such manner as may be prescribed.

Offence by body
corporate or firm

62.—(1) An act which if done by an individual would be an offence against this Act or any regulations or orders made under this Act shall, if done by a body corporate, be an offence by every Director, Secretary or Manager thereof unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all circumstances.

(2) Where an offence against this Act or any regulations or orders made under this Act has been committed by a partner in a firm, every person who at the time of the commission of the offence was partner in that firm, or was purporting to act in that capacity, shall be deemed to have committed that offence unless he proves that the offence was committed without his

consent and or connivance and he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Civil liability not affected

63. Subject to any express provisions in this Act, nothing contained in this Act shall affect the civil liability of any person for any damage resulting from the construction, alteration or destruction of tiny irrigation works or the failure to maintain the same in proper repair or from the obstruction.

PART X GENERAL PROVISIONS

Duty of secrecy

64.—(1) A member of any committee of the Commission and every person to be employed under this Act shall not disclose to any person, except in the performance of his duties under this Act or when required to do so by any written law, any information which he may have acquired in the course of his duties in relation to the financial or business affairs of any person, undertaking or business.

(2) A person who contravenes subsection (1) commits an offence and on conviction shall be liable to a fine of not less than two million shillings or to an amount equivalent to the financial gain generated by the offence, if such amount be greater, or to imprisonment for a term of five years or to both.

Service of notices

65. A notice under this Act shall be deemed to have been served on, or given to, any person where—

- (a) served on him personally;
- (b) left for him at his last known address; or
- (c) sent by registered post addressed to his last known address.

Keeping records

66.—(1) The Minister may, on the recommendation of the Commission, prescribe activities in respect of which records shall be kept for purposes of this Act and may require any

person in possession or control of such records to transmit the records to the Commission at such intervals as he may determine.

(2) A person who-

(a) fails to keep records required under this Act; or

(b) fraudulently or knowingly alters any such records, commits an offence and on conviction shall be liable to a fine of not less than one million shillings or to imprisonment for two years or to both.

Stakeholders' forum

67.-(1) For the purposes of promoting the development of the irrigation sector, there shall be a stakeholders' forum which shall be responsible for-

(a) putting in place mechanisms for the funding of the shared functions in the irrigation sector;

(b) making procedures for conducting annual general meetings;

(c) determine modalities for financing its activities and meetings; and

(d) establishing stakeholders' secretariat and other organs for better carrying out the shared functions.

(2) The stakeholders meeting shall be held at least once in a year to agree on the funding, implementation of the shared functions and other matters of common interest.

(3) A local government authority may, upon consultation with the Commission, make by-laws for the better carrying out of the shared functions agreed by the stakeholders.

Commission to call for information

68. The Commission may in writing, require any person or body of persons engaged in an activity affecting or relating to irrigation development to furnish to it any information related to that activity as the Commission may specify.

Powers of Minister to require information

69. The Commission shall furnish to the Minister with such returns, statistics, accounts, documentations or information with respect to the performance of any of its functions or exercising of its duties under this Act as the Minister may require.

Commission to establish and maintain collaboration

70. For the purposes of better performance of its functions the Commission shall establish and maintain a system of collaboration, consultation and co-operation with such other institutions and persons, whether corporate or unincorporated, and whether within or outside the United Republic, as are or would be likely to assist it in the effective and efficient discharge of its functions under this Act.

Indemnity and liability

71. A member of a Commission or officer of the Commission shall not be personally liable for any act or default which is done or omitted to be done in good faith in the exercise or purported exercise of the powers conferred by this Act or such subsidiary legislation made thereunder.

Recovery of costs of repairing damage where offender is unascertainable

72. Where a person causing any damage, alteration, enlargement or obstruction to any irrigation work without proper authority cannot, after such inquiry as the Irrigation Inspector may deem sufficient, be ascertained or identified, the Irrigation Inspector may on a requisition from the Director General and after giving not less than one month's notice to the owners of all the lands affected by the damage, alteration, enlargement or obstruction, and after hearing their representations, if any, recover from them, in such proportion as he thinks fit, the costs of repairing such damage, or of removing such alteration, enlargement or obstruction.

Mode of recovery of money

73. An amount due from any person in pursuance of the provisions of this Act or the regulations made thereunder may, where the amount is in arrears, be recovered, without prejudice to any other mode of recovery, in the same manner as an arrear of public revenue.

Powers to make regulations

74.-(1) The Minister may, after consultation with the Commission, make regulations for the better carrying into effect of the provisions of this Act.

(2) Without limiting the generality of subsection (1), the regulations may-

- (a) provide for maintenance of the irrigation and drainage system;
- (b) provide for the manner in which irrigation water may be used in irrigation and drainage area;
- (c) provide for the times at which irrigation water may be used in irrigation and drainage area;
- (d) provide for maintenance or improvement of the quality of irrigation water in irrigation and drainage area;
- (e) prescribe procedure for maintenance of irrigation works and drainage area;
- (f) prescribe the manner in which excess irrigation water shall be drained out of the irrigation and drainage system;
- (g) provide for the formation, functions, conduct and procedures of irrigators' organisations;
- (h) regulate the abstraction and distribution of water amongst irrigators;
- (i) prescribe the manner in which notification or information may be given under this Act;
- (j) provide for the assessment of the quantity of irrigation water or other water used by a landowner in irrigation and drainage system;
- (k) provide for the procedures for land allocation and administration by irrigators' organisations;
- (l) provide for dispute settlements;
- (m) provide for any fees or charges under this Act and the payment thereof;
- (n) provide for the forms to be used and the fees to be paid and be used in respect of any matter required or permitted to be done under this Act;
- (o) provide for the advertisement of applications for the use of irrigation works and for the giving of notice to interested persons;

- (p) regulate the procedure of appeals under this Act;
- (q) prescribe the registers and records to be kept and the manner in which they are to be kept;
- (r) provide for the installation, maintenance and testing of irrigation systems or for any other service provided to the irrigation and drainage system;
- (s) provide for the installation, maintenance and testing procedure for application for the installation, for compensation under the provisions of this Act and the assessment thereof;
- (t) provide for procedures for registration and deregistration of the irrigators;
- (u) provide for model by-laws, establishment of the management committees of the irrigators' organisations and administration of such organisations;
- (v) prohibit or regulate navigation in an irrigation work;
- (w) provide for the regulation and administration of the fund;
- (x) prescribe forms to be used under this Act; and
- (y) provide for any matter expressly required or allowed by this Act to be prescribed.

Transitional
provisions

75.—(1) Within twelve months of the commencement of this Act, an association, cooperative society, or any other entity or body that performs any functions as an irrigators' organisation shall submit to the Director General an application for registration under this Act.

(2) Upon the commencement of this Act, Zonal Irrigation Offices shall continue to perform their functions until the Regional Irrigation Offices are established as provided for in this Act.

SCHEDULE

(Made under section 3(9))

MEETING AND PROCEDURE OF THE COMMISSION

Vice Chairman	1. At its first meeting members of the commission shall elect amongst themselves a Vice Chairman.
Tenure of office	2. Members of the Commission shall hold office for three years and, unless their membership is otherwise terminated due to misconduct or non attendance without excuse for three successive meetings of the Commission, shall be eligible for re-appointment for one further term.
Meetings and power to convene meetings	3.-(1) The Commission shall meet at least three times in a year. (2) An ordinary meeting of the Commission shall be convened by the Chairman or in his absence the Vice Chairman. (3) The notice specifying the place, date, and time of, and agenda for, the meeting shall be sent to each member at his usual place of business or residence not less than fourteen days before the date of the meeting. (4) The Chairman, or in his absence, the vice Chairman or a member elected to act as Chairman, shall convene a special meeting of the Commission in writing signed by not less than three members of the Commission and, where such special meeting is convened, the agenda for such meeting shall be circulated to each member at his usual place of business or residence at least not less than three days before the date of the meeting. (5) A meeting of the Commission shall be presided over by the Chairman or in his absence, the vice Chairman or by a member elected by those members present at that meeting.
Quorum	4. Five members shall form a quorum of a meeting of the Commission.
Co-option of member	5. The Commission shall have power to co-opt any person to attend its meeting except that such co-opted person shall not have the right to vote.
Conflict of interest	6. A member who has any interest, direct or indirect in any matter coming before the Commission or Sub Committee shall, as soon as is reasonably practicable, disclose the nature of that interest to the meeting and shall not thereafter take part in any decision on that matter nor, except with the consent of a majority of the members present at that meeting, take part in any deliberations relating to that matter.
Commission regulate its proceedings	7. Subject to the provisions of this Schedule, the Commission shall regulate its own proceedings.

Reports of
activities of
Commission

8. The Commission shall prepare an annual report setting out its current activities and indicating its future activities.

Remuneration of
members of the
Commission

9. The Minister shall in consultation with the Minister responsible for finance prescribe emoluments and allowances payable to the members of the Commission.

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