

THE [?][Deleted] PAKHTUNKHWA] *[ENERGY] DEVELOPMENT
ORGANIZATION ACT, 1993.

([KHYBER PAKHTUNKHWA] ACT NO. I OF 1993)

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THE "[?][Deleted] PAKHTUNKHWA] "ENERGY] DEVELOPMENT
ORGANIZATION ACT, 1993.

(3[KHYBER PAKHTUNKHWA] ACT NO. I OF 1993)

[First published after having received the assent of the Governor of the 'Khyber Pakhtunkhwa in the Gazette of "Khyber Pakhtunkhwa (Extraordinary), dated the 24" February, 1993].

AN
ACT
to provide for the development of power resources of the
'8 Khyber Pakhtunkhwa].

Preamble.—WHEREAS it is expedient to provide for the development of power resources of the '?[Khyber Pakhtunkhwa].

It is hereby enacted as follows:-

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the 2°11 Deleted] Pakhtunkhwa] 7'[Energy] Development Organization Act, 1993.

(2) It extends to the whole of the Province of the 3) Khyber Pakhtunkhwa].

(3) It shall come into force at once.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,-

(i) "Authority" means the Water and Power Development Authority established under the Pakistan Water and Power Development Authority Act, 1958 (W.P. Act XXXI of 1958);

(ii) "Board" means the Board of Directors of the *"[?][Deleted] Pakhtunkhwa] 6 Energy] Development Organization;

Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Deleted vide Khyber Pakhtunkhwa Act No. V of 2013

Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

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Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*5Deleted vide Khyber Pakhtunkhwa Act No. V of 2013

**Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

(iii) "71" "Chairman" means the Chairman of the Energy Apex Committee or Board or Executive Committee or Investment Committee, as the case may be;

°8\ (iii-a) "Energy Apex Committee" means the Energy Apex Committee constituted under section 3A of this Act;

(iv) "Federal Government" means the Government of Islamic Republic of Pakistan;

(v) "Government" means the Government of the 21 Khyber Pakhtunkhwa];

(vi) "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(vii) "local body" means a Local Council constituted under the North-West Frontier Province Local Government Ordnance, 1979 (N.W.F.P. Ord. No. IV of 1979);

(viii) *°["Chief Executive Officer"] means the *! [Chief Executive Officer] of the **[**[Deleted] Pakhtunkhwa] **[Energy] Development Organization;

(ix) | "member" means a member of the Board;

(x) "Organization" means the *(Deleted] Pakhtunkhwa] >7[Energy] Development Organization established under section 3;

(xi) "officer" means an Officer of the Organization including the **[Chief Executive Officer];

(xii) "power" includes hydraulic power, electrical energy, steam, gas, **[thermal generation, alternate renewable sources of energy] or any other

power notified as such by Government in the official Gazette;

(xiii) "prescribed" means prescribed by rules and regulations;

*7Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

*'Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*°Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

*'Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

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"Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

**Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

*Deleted vide Khyber Pakhtunkhwa Act No. V of 2013

*?Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

*'Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Inserted vide Khyber Pakhtunkhwa Act No. XIII of 2014

(xiv) "Province" means the 4^oKhyber Pakhtunkhwa];

(xv) "regulations" means regulations framed under this Act;

(xvi) "rules" means rules made under this Act;

(xvii) "section" means a section of this Act, and

(xviii) "Scheduled Bank" means a Bank for the time being included in list of Banks maintained under sub-section (1) of section 37 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956).

CHAPTER II

"|Constitution of Energy Apex Committee and Board]

3. Establishment of Organization.---(1) There shall be established an Organization to be known as the "[**[Deleted] Pakhtunkhwa] "[Energy] Development Organization.

(2) The Organization shall be a body corporate having power to *Acquire, hold and sell] property, both movable and immovable, shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The head office of the Organization shall be at Peshawar.

46 [3-A. Constitution of Energy Apex Committee.---(1) The Government shall constitute an Energy Apex Committee to provide policy guide line to the Board.

(2) The Energy Apex Committee shall be headed by the Chief Minister, Khyber Pakhtunkhwa and shall consist of such other persons as the Government may determine.

(3) The meeting of the Energy Apex Committee shall be held in such a manner as may be prescribed.]

"14. Board of Directors.---(1) Subject to the provisions of section 3-A of this Act, the powers, functions and management of the Organization shall vest in a Board constituted under this section.

(2) The Board shall have a Chairman to be appointed by Government for a period of three years from amongst the persons having at least twenty years experience in the field of

"Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

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"Inserted vide Khyber Pakhtunkhwa Act No. XIII of 2014

"Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

energy and power or industries or financial sector, in such a manner and on such terms and conditions as the Government may determine.

(3) The other members of the Board shall be as under:

@)

(Gi)

(iii)

(iv)

(v)

(vi)

Secretary to Government, Energy and Power Department;

Secretary to Government, Finance Department;

Secretary to Government, Home and Tribal Affairs Department;

President, Khyber Pakhtunkhwa Chamber of Commerce and Industries;

seven persons to be appointed by Government for a period of three years from amongst the persons having at least ten years experience in the field of energy and power or industries or financial sector; and

Chief Executive Officer.

Member

Member

Member

Member

Members

Member/Secretary

(4) The Board may co-opt any other Government functionary or sectoral expert as a co-opted member of the Board for a specific meeting as and when need so arises.

(5) The Chairman and members at clause (v) may at any time resign from his office by writing under his hand to Government.

(6) Government may remove, the Chairman and members at clause (v) before the expiry of their term on the ground of misconduct or of being incapable of properly performing the duties of his office by reason of physical or mental incapacity:

Provided that before removing the Chairman and members at clause (v), as the case may be, Government shall give them an opportunity of being heard in person.]

'ST4A, Executive Committee.---There shall be an Executive Committee consisting of-

- (i)
- (ii)
- (iii)

the Minister for Energy and Power;

Chairman

the Additional Chief Secretary to Government; Member

the Secretary to Government,

"Substituted vide Khyber Pakhtunkhwa Act No. V of 2013

Finance Member

Department;

(iv) | the Secretary to Government, Energy and Power Member Department; and

(v) the “[Chief Executive Officer] of the Member Organization.

(2) The Executive Committee shall perform such function as may be delegated to it by the Board from time to time.]

5. “Chief Executive Officer].--- *[(1) Government shall appoint the Chief Executive Officer of the Organization from amongst the persons having expertise in the field of energy and power sector on such terms and conditions as the Government may determine.]

(2) The [Chief Executive Officer] shall be the Chief Executive of the Organization and shall be responsible for its day to day administration and management. He shall also be responsible to carry out and implement the orders and decisions of the Board.

(3) The term of office of the (Chief Executive Officer] shall be four years. On expiry of his term of office, the “[Chief Executive Officer] shall be eligible for re-appointment for a subsequent term or terms or for such shorter term as Government may determine in consultation with the Board.

(4) The *[Chief Executive Officer] may, at any time, resign from his office and by virtue of his resignation, he shall cease to be member of the Board, or if he resigns from the membership of the Board, he shall cease to be the *[Chief Executive Officer]:

Provided that his resignation in either case shall not take effect until accepted by Government.

5716. Deleted]

7. Other Officers.---(1) The Board may employ such experts, advisers, consultants and other officers, as it considers necessary for the efficient performance of functions of the Organization, on such terms and conditions as may be determined by the Board.

(2) The [Chief Executive Officer], in case of emergency, may appoint such experts, advisers, consultants and other officers as may be considered necessary:

“Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

“Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

*!Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

*-Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

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**Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

**Deleted vide Khyber Pakhtunkhwa Act No. XIII of 2014

*Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Provided that every appointment made under this sub-section shall be reported to the Board without un-necessary delay and shall not continue beyond ~*[six] months unless approved by the Board.

8. Removal of [Chief Executive Officer].---Government may, by Notification, remove the °[Chief Executive Officer] -

- (a) if he refuses or fails to discharge or becomes, in the opinion of Government, incapable of discharging his responsibilities under this Act; or
- (b) if he has been declared insolvent; or
- (c) if he has been declared to be disqualified for the employment, or has been dismissed from, the service of Pakistan, or has been convicted of an offence involving moral turpitude; or
- (d) if he has knowingly acquired or continued to hold without the permission in writing of Government, directly or indirectly or through a partner, any share or interest in any contract or employment with, or on behalf of, the Organization or in any land or property which, in his knowledge is likely to benefit or has benefited as a result of the operation of the Organization.

9. Meeting of the Board.---(1) The Board shall meet at least once in every “[six] months in such manner and at such time and place as may be prescribed by the Chairman.

(2) The Chairman, or in his absence, a member authorised by him to preside over the meeting and [six] other members shall be present to constitute a quorum at meeting of the Board.

CHAPTER III POWER AND DUTIES OF THE ORGANIZATION.

10. General powers and duties of the Organization and framing of schemes.---(1) Subject to any other law for the time being in force, the Organization shall prepare, for the approval of Government, a comprehensive plan for the development and utilization of the power and energy resources of the Province. The Organization may also undertake such other schemes as Government may direct.

(2) Without prejudice to the provisions of sub-section (1), the Organization may frame a scheme or schemes for the Province or any part thereof providing for all or any of the following matters, namely:-

Substituted vide Khyber Pakhtunkhwa Act No. V of 2013

Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

*Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Substituted vide Khyber Pakhtunkhwa Act No. V of 2013

"Substituted vide Khyber Pakhtunkhwa Act No. V of 2013

- (i) the generation, transmission and distribution of power;
- (ii) the construction, maintenance and operation of power houses, grids and microgrids, transmission and distribution lines specially in the remote mountainous areas of the Province.

(3) Every scheme prepared by the Organization under sub-sections (1) and (2) shall be processed in accordance with Government procedures or instructions, which may be issued to the Organization from time to time. The Organization will submit to the Government periodical reviews and other reports required by it.

(4) Government may sanction or may refuse to sanction or may return for reconsideration or further examination any scheme submitted to it under sub-section (3), or may call for such further details or information about any such scheme as it may consider necessary.

(5) The Organization will act as adviser to the Government on all matters regarding issuance of licenses and joint ventures in the power sector.

(6) The Chairman may request the Government to provide assistance for the efficient functioning of the Organization.

11. Survey and experiments.---The Organization, if it considers necessary or expedient for carrying out the purposes of this Act, may-

- (a) cause studies, prefeasibility studies, detailed feasibility studies, surveys, experiments of technical research to be made, or
- (b) contribute towards the cost of any such studies surveys, experiments or technical research made by any other agency.

12. Winding up of the Hydel Development Organization and transfer of assets and liability.---Consequent upon the winding up of the Small Hydel Development Organization under section 12 of the Khyber Pakhtunkhwa] Hydel Development Organization Ordinance, 1992 [Khyber Pakhtunkhwa] Ordinance II of 1992), having since been repealed with effect from the 3TM June, 1992, all officers, servants and other employees of the aforesaid Organization transferred to the Organization established under the repealed Ordinance shall be officers, servants and employees of the Organization established under this Act and shall continue to work on the same terms and conditions as applicable to them immediately before the commencement of this Act.

13. Control over power houses, grids and transmission and distribution lines.---(1)
Subject to the provisions of any other law for the time being in force, the Organization-

"Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

"Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(i) shall have control over the operation of all power houses, grids, transmission and distribution lines in the Province constructed by, or transferred to, the Organization, including such ancillary works as may be considered necessary for their proper operation;

(ii) | may make recommendations to Government for prescribing standards for the maintenance of power houses, grids, microgrids and transmission and distribution lines of the Organization; and

(iii) may make recommendations to Government for promoting simplification of methods of charge for supplies of electricity and standardization of the system of supply.

(2) Before the Organization exercise any control under clause (i) of sub-section (1), the area over which and the extent to which control is intended to be exercised shall be agreed to and notified by Government in the official Gazette.

14. Organization to have powers and obligations of licensee under Electricity Act, 1910.---The organization shall, for the purposes of the Electricity Act, 1910, be deemed to be a licensee and shall have all the powers and discharge all the obligations of a licensee under the said Act:

Provided that nothing in sections 3 to 11, sub-sections (2) and (3) of section 21 and sections 22, 23 and 27 of the said Act, or in clauses I to XII of the Schedule to the said Act, relating to the duties and obligations of a licensee shall apply to the Organization.

15. Powers regarding certain matters.---(1) The Organization may take such measures and exercise such powers as it considers necessary or expedient for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by the preceding sections and the provisions of sub-section (1), the Organization may, in the prescribed manner and subject to the provisions of this Act-

(a) undertake any work, incur any expenditure, procure plant, machinery and materials required for its use and enter into and perform all such contracts as it may consider necessary or expedient to carry out the purposes of this Act;

(b) acquire by purchase, lease, exchange or otherwise and dispose of by sale, lease, exchange or otherwise, “[any immovable property or any interest in such property];

“Substituted vide Khyber Pakhtunkhwa Act No. V of 2013

(c) place wires, poles, wall brackets, stays, apparatus and appliances for the transmission of electricity or for the transmission of telegraphic or telephone communications necessary for the proper execution of a scheme;

(d) undertake any anti-corrosion operations;

(e) ^o restrict or prohibit by general or special order, the clearing and breaking up of land in the catchment area of any river; ^o[Deleted]

SI (f) establish thermal, solar, wind or other alternate renewable energy based power houses, erect test masts, collect wind and solar data for power generation, lay or cause to be laid, pipelines for supply of fuel, establish fuel supply means, engage in transmission, trading, distribution and sale of energy to industries and domestic consumers, manage demand discipline, cause setting of tariff, recover and collect charges, fees and tariffs and do all other things necessary and incidental with power produced or generated by or through the Organization; and]

^o [(g)] seek and obtain advice and assistance in the preparation or execution of a scheme from any local body or agency of the Government, and such local body or agency shall give the advice and assistance so sought to the best of its ability, knowledge and judgment:

Provided that the Organization shall pay the cost of such advice and assistance, if the giving of such advice and assistance entails additional expenditure to the local body or the agency concerned.

(3) The acquisition of any land or any interest in land for the Organization under this section, or for any scheme under this Act, shall be deemed to be an acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894, and the provisions of the said Act shall apply to all such proceedings.

16. Right of entry.---The Chairman or any person authorized by him in writing may enter upon and survey any land, erect pillars for the determination of intended lines of works, make boring and excavations and do all other acts which may be necessary for the preparation of any scheme:

Provided that when the affected land does not vest in the Organization the power conferred by this sub-section shall be exercised in such manner as to cause the least interference with, and the least damage to the rights of the owner thereof.

17. Sanction of Government.---A scheme framed and sanctioned under this Act may be amended or modified by the Board at any time, but if a material change is made in the scheme

^oDeleted vide Khyber Pakhtunkhwa Act No. XIII of 2014

^oInserted vide Khyber Pakhtunkhwa Act No. XIII of 2014

^oRe-numbered vide Khyber Pakhtunkhwa Act No. XIII of 2014

and its cost or the revised cost exceeds the sanctioning limit of the Organization, then sanction of Government shall be obtained afresh.

18. Arrangement with local body or other agency.---(1) As soon as any scheme has been carried out by the Organization or at a later date, the Board may arrange by a written agreement with a local body or other agency within whose jurisdiction any particular area covered by the scheme lies, to take over and maintain any of the works and services in that area. If the Board fails to obtain the assent of such a local body or other agency, it may refer the matter to Government, and Government may give such directions to the local body or other agency as it may deem fit.

(2) Government shall have the power to direct the Organization to hand over any scheme other than a power scheme or the power part of a multi-purpose scheme carried out by it to any agency of Government or a local body. In such a case the Organization shall be entitled to receive audited total cost incurred on that scheme.

CHAPTER IV ESTABLISHMENT.

19. Employment of officers and servants.---(1) The Board may from time to time employ directly or by induction, transfer, deputation or by absorption from Federal or other Provincial Governments, semi-autonomous and autonomous bodies, such officers and servants, as it may consider necessary for the efficient performance of its functions, on such terms and conditions as it may deem fit:

Provided that the terms and conditions of service of any such person as aforesaid shall not be varied by the Board to his disadvantage.

(2) Appointments and promotions of officers and employees upto and including BPS-16 shall be made by the [Chief Executive Officer] in the prescribed manner. Appointments and promotions in BPS-17 and above shall be made by the Board in the prescribed manner.

120. Deleted]

21. Immunity.---(1) The Chairman, members, [Chief Executive Officer], officers and servants of the Board or the Organization shall, when acting or purporting to act in pursuance of any of the provisions of this Act be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

(2) No suit, prosecution or other legal proceedings shall lie against the Chairman, [Chief Executive Officer], members or officers and servants in respect of anything done or intended to be done, in good faith under this Act.

Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Deleted vide Khyber Pakhtunkhwa Act No. IV of 1996

Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

22. Delegation of Powers.---The Board may, by general or special order, delegate to the Chairman, the "[Chief Executive Officer]", a member or any officer of the Organization any of its powers, duties or functions under this Act, subject to such conditions as it may think fit to impose.

CHAPTER V REPORTS AND STATEMENTS

23. Submission of yearly reports and returns, etc.---(1) The Board shall submit to the Provincial Assembly, as soon as possible after the end of every financial year but before the last day of October next following, a report on the conduct of the affairs of the Organization for the year including an analysis of its physical activities and financial achievements for discussion.

(2) Provincial Assembly may require the Board to furnish with-

- (i) any return, statement, estimate, statistics or other information regarding any matter under the control of the Organization; or
- (ii) a report on any such matter; or
- (iii) a copy of any document in the charge of the Board; and the Board shall comply with such requisition.

CHAPTER VI FINANCE

24. Fund.---(1) There shall be a fund to be known as the Organization Fund vested in the Organization which shall be utilized by it to meet charges in connection with its functions under this Act, including the payment of salaries and other remunerations to the [Chief Executive Officer], officers, servants and employees.

(2) The fund shall consist of-

- (a) grants made by Government including the Federal Government;
- (b) — loans obtained from Government including the Federal Government;
- (c) grants made by local bodies as required by Government;
- (d) — sale proceeds of bonds issued under the authority of Government;
- (e) loans obtained by the Organization from commercial banks or any other source;

"Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

(f) foreign loans, grants or any other financial assistance obtained; and
(g) all other sums received by the Organization.

(3) The Organization may keep money in the Khyber Bank or any scheduled bank or a National Saving Centre, subject to the approval of the Board.

(4) Nothing in sub-section (3) shall be deemed to preclude the Organization from investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Trust Act, 1882 (Act No. II of 1882), or placing them in a fixed deposit with the Khyber Bank or any schedule bank or a National Saving Centre, subject to the approval of the Board.

(5) The Board will endeavor to promote private sector in the generation, transmission and distribution of power. For this purpose it may sponsor, promote or join private limited companies.

751(6) The Board may also permit the Organization-

(a) to join, promote, sponsor or incorporate public limited companies; or

(b) to join other statutory or corporate bodies, involved in the generation, transmission and distribution of power.]

124A. Investment Committee.---(1) There shall be an Investment Committee consisting of the following members:

(i) the [Chief Executive Officer] of the Chairman Organization; n

(ii) the Additional Secretary, Finance Department; | Member

"(iii) General Manager, Administration and Finance, Member

) Pakhtunkhwa Energy Development Organization;

(iv) Assistant Director Budget and Finance Member]
Pakhtunkhwa Energy Development Organization; and

80 a representative of Energy and Power Member]

[(v) Department not below the rank of Deputy

"Substituted vide Khyber Pakhtunkhwa Act No. IV of 1996

Inserted vide Khyber Pakhtunkhwa Act No. V of 2013

*Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Substituted vide Khyber Pakhtunkhwa Act No. XIII of 2014

Secretary.

(2) The Investment Committee shall have to invest the surplus fund in a manner as it may deemed fit.]

25. Organization to be deemed a local authority.---The Organization shall be deemed to be a local authority under the Local Authorities Loans Act, 1914, for the purpose of borrowing money under the said Act, and the making and execution of any scheme under this Act shall be deemed to be a work which such authority is legally authorized to carry out.

26. Limited liability.---The liability of Government to the creditors of the Organization shall be limited to the extent of grants made by it and the loans raised by the Organization with the sanction of Government.

27. Rates for sale of power.---The rates at which the Organization shall sell power shall be so fixed as to provide for meeting the operation costs, investment costs and depreciation of assets, the redemption at due time of loans other than those covered by depreciation, the payment of any taxes and a reasonable return on investment or the rates approved by Government.

28. Maintenance of Accounts.---The Organization shall maintain complete and accurate books of accounts in such form as may be prescribed by it:

Provided that separate accounts shall be maintained for all schemes and transactions relating to power.

29. Annual *[budget].---In the month of January each year, the Organization shall submit to Government for approval a statement of the estimated receipts and expenditure in respect of the next financial year.

30. + Audit.---(1) The accounts of the Organization shall be audited by Chartered Accountants within the meaning of the Chartered Accountants Ordinance, 1961 (Ord. X of 1961), appointed by the Board on such remunerations as it may deem fit.

(2) Notwithstanding the provisions of sub-section (1), the Auditor-General may, on the request of Government, cause to be audited the accounts of the Organization.

CHAPTER VII RULES AND REGULATIONS

131, Power to make rules.---For the purposes of carrying into effect the provisions of this Act, the Board may frame such rules as it considers necessary or expedient.]

¹Inserted vide Khyber Pakhtunkhwa Act No. XIII of 2014

²Substituted vide Khyber Pakhtunkhwa Act No. V of 2013

³Substituted vide Khyber Pakhtunkhwa Act No. IV of 1996

32. Repeal.--The Sarhad Hydel Development Organization Ordinance, 1993 (NWFP Ordinance No. I of 1993) is hereby repealed.