

THE DEVOLVED GOVERNMENT BILL, 2011

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SCHEDULE

THE DEVOLVED GOVERNMENT BILL, 2011

A Bill for

AN ACT of Parliament to give effect to Chapter eleven of the Constitution; to provide for county governments powers, functions, and responsibilities to deliver services and to provide for other connected purposes

ENACTED by the Parliament of Kenya as follows–

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the Devolved Government Act, 2011.

Interpretation.

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

“advisory authority” means the county public service advisory authority established under section 84 of this Act.

“analysis of functions” means the processes and mechanisms of reviewing and reassigning of powers and competencies between the national government and county governments in accordance with the provisions of the Constitution generally and Schedule four specifically;

“appointment” includes appointment, acting appointment, reappointment, promotion and re-designation

“authorized officer” includes –

- (a) for a county department, the holder of the office of county principal secretary established under section 41 of the this Act;
- (b) in case of a department which is not assigned or under direct administration of a county principal secretary, the head of that department; and
- (c) any other public officer appointed by the county public service board to be an authorized officer with respect to a specified public body including a city or urban area for the purpose of this Act.

‘Code of Conduct’ means any written standard that guides the conduct of any county public officer or category of county public officers or public body issued by any lawful authority

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“competencies” means powers given to a public authority in respect of a specific activity key to ensuring the provision of a public service. It would generally refer to powers of planning, regulating, setting standards, constructing, financing, managing, monitoring and evaluating, sanctioning or intervening in any way to ensure that a function is discharged;

“Conditions of service” includes any criterion or circumstance or factors for a person’s –

- (a) Appointment, acting appointment, promotion, re-designation, secondment or deployment with respect to a public office;
- (b) Retention in employment as a public officer; or
- (c) Remunerative, retirement and other benefits;

“Constitution” means the Constitution of Kenya, 2010;

“Coordinating Council” means the National and County Governments Coordination Council established under the Inter-governmental Relations Act;

“county assembly” means a county assembly established under Article 176 of the Constitution;

“county executive” means a county executive committee established by Article 176 of the Constitution;

“county Gazette” means a county gazette published by the authority of the county government or a supplement of the county gazette;

‘County government’ means the county government provided for under Article 176 of the Constitution;

“county governor” means a county governor elected under Part 2 of Chapter Eleven of the Constitution;

‘county public office’ means an office in the county public service subject to the constitutional and statutory functions of the county government and includes an office in a public body except an office specifically exempted by the Constitution from the powers of the county government.

‘county public officer’ means any person holding or acting in any county public office whether paid, unpaid, or, on contractual or permanent terms but does not include a person engaged on part-time in a county public body who is

paid at an hourly or daily rate.

‘County public service’ means the collectivity of all individuals other than the Governor, deputy governor, members of the county executive committee and the members of the county assembly performing functions within any department of the county government or its agency;

‘disciplinary control’ means imposition of any punishment against a public officer on account of breach of any code of conduct;

“input indicator” means an indicator that measures the costs, resources and time used to produce an output;

“marginalised group” has the meaning assigned to it by Article 260 of the Constitution;

‘merit’ means with reference to a person who is a candidate for appointment, promotion or re-designation to a county public office, that the person-

- (a) has abilities, qualifications and personal qualities relevant to carrying out of the duties of the county public office,
- (b) has potential for development , and
- (c)meets the prescribed criteria for appointments in the county public service

“outcome indicator” means an indicator that measures the quality and or impact of an output in achieving a particular objective;

“output indicator” means an indicator that measures the results of activities, processes and strategies of programmes or projects of a county government;

‘promotion’ means the conferment upon a person in the county public service of an office to which is attached a higher salary or salary scale than that attached to the office to which he last held substantively;

“public Officer” has the same meaning assigned to it in the Constitution;

‘qualifications’ means any prescribed factor of eligibility or ineligibility

attached to holding or acting in a county public office;

‘re-designation’ means conferment upon a person, a county public office at a grade equal to or substantially equal to the one held before the re-designation and whose major consequence is to change from one cadre to the other to facilitate that officer’s horizontal mobility characterized with change in career path;

‘retirement’ means removal of an officer from the public service with full separation benefits including pension benefits, gratuity or such other terminal benefits as may be provided for in the applicable law or the contract of service or a special retirement scheme agreed upon between the public officer and the relevant lawful authority;

‘salaries and remuneration commission’ means the salaries and remuneration commission established under Article 230 (1) of the Constitution;

‘Secondment’ means a temporary leave from discharging the duties of a county public office with a view of the concerned county public officer getting employed outside the county public service or in another public body;

"Shared services" refers to the centralisation at a county or other level of those administrative functions of a county that could be performed by different units including matters such as supply chain management, human resource management, information technology, purchasing, inventory, payroll, hiring, and information technology. It would also refer to partnerships between counties, a county or counties and national government to deliver a specified set of public services;

“the public” in relation to public participation in this Act means persons comprising;

- (a) the residents of the county’
- (b) The rate payers of a city or municipalities;
- (c) Any resident civic organisation and non-governmental, private sector or labour organisations with interest in the governance of the county, city or municipality;
- (d) Non-resident persons who because of their temporary presence in the county, city, municipality make use of services or facilities provided by

the county, city and municipality;

- (e)“urban area” refers to an area designated as such under Urban Areas and Cities Act in accordance to Article 184 of the Constitution.

Objects and purposes of the Act.

3 (1) The object and purposes of this Act is to provide for all matters necessary or convenient to give effect to the Constitution.

(2) Without prejudice to the generality of subsection (1), this Act-

- (a) provides for all matters necessary or convenient to give effect to Chapter Eleven of the Constitution pursuant to Article 200 of the Constitution;
- (b) gives effect to the objects and principles of devolution as set out in Articles 174 and 175 of the Constitution;
- (c) gives effect to Article 176 (2) in respect of further decentralisation;
- (d) provides for the election and removal from office of the speakers of the county assembly pursuant to Article 178 of the Constitution;
- (e) provides for the powers, privileges and immunities of county assemblies, their committees and members under Article 196 of the Constitution;
- (f) ensures that the community and cultural diversity of a county is reflected in its county assembly and county executive committee pursuant to Article 197 of the Constitution;
- (g) prescribes mechanisms to protect minorities within counties pursuant to Article 197 of the Constitution;
- (h) prescribes additional requirements in respect of the publication of county legislation pursuant to Article 199;
- (i) provides, pursuant to Article 200, for-
 - (i) the transfer of functions and powers by one level of government to another, including the transfer of legislative powers from the national government to county governments;
 - (ii) the manner of election or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;
 - (iii) the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting;

and

- (iv) the suspension of assemblies and executive committees;
- (g) prescribes, pursuant to Article 235 uniform norms and standards, for—
 - (i) establishing and abolishing offices in the county public service;
 - (ii) appointing persons to hold or act in those offices, and confirming appointments; and
 - (iii) exercising disciplinary control over and removing persons holding or acting in those offices.
- (h) Provides for the promotion, evaluation and reporting on the compliance by county public officers of values and principles in Articles 10 and 232 of the Constitution

Symbols of the county.

- 4.** (1) Every county shall have symbols, the form of which shall be prescribed in county legislation.
- (2) The symbols of the county are—
- (a) the county flag;
 - (b) county coat of arms; and
 - (c) the county public seal.
- (3) The County Executive shall develop the symbols of the county through a consultative process and for approval by the county assembly by legislation.

PART II - COUNTY GOVERNMENTS

Functions of county governments.

- 5.** (1) A county government shall be responsible for any function assigned to it under the Constitution or by an Act of Parliament.
- (2) Without prejudice to the generality of subsection (1), a county government shall be responsible for –
- (a) legislation of laws in accordance to Article 185 of the Constitution;
 - (b) exercising executive functions in accordance with Article 183 of the

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Constitution;

- (c) functions provided for in Article 186 and assigned in the Fourth Schedule of the Constitution;
- (d) any other function that may be transferred to them from the national government under Article 187 of the Constitution;
- (e) any functions agreed upon with other county governments under Article 189 (2) of the Constitution;
- (f) establishment and staffing of its public service.

Powers of county governments.

6. (1) A county government may enter into any contract necessary for the discharge of any of its functions.

(2) A county government may, for the purpose of any of its functions acquire, purchase, or lease, any land, whether situated within or without its area of its jurisdiction.

(3) A county government may enter into partnerships with any public or private organization in accordance with the provisions of any law relating to public or private partnerships for any work, service or function for which it is responsible within its area of jurisdiction.

(4) All contracts lawfully entered into under this section shall be valid and binding on the county government, its successors, and all other parties thereto.

(5) A county government may, to ensure efficiency in the delivery of service or carrying on a function for which the county government is responsible –

- (a) establish a company, firm or other body for the delivery of a particular service or carrying on a particular function;
- (b) contract any person, company, firm or other body for the delivery of a particular service or carrying on a particular function; or
- (c) delegate any function to any of its decentralised units.

(6) In exercising its powers or performing any of its functions a county government shall ensure efficiency, effectiveness, inclusivity and participation of the people in the county.

PART III - COUNTY ASSEMBLY

Membership of the county assembly in accordance with Article 177 of the Constitution

7. A county assembly shall consist of—

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general

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election of Members of Parliament, being the second Tuesday in August, in every fifth year

(b) members holding the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;

(a) six members nominated by political parties according to the proportion of members of the county assembly to ensure that the marginalised groups including persons with disabilities and the youth are represented in the county assembly

(d) the Speaker, who is an *ex officio* member.

Provided that the nominations in 1 (b) and (c) shall ensure that community and cultural diversity, of the county is reflected in the county assembly and there is adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.

Role of the county assembly.

8. The county assembly shall -

- (a) perform the roles set out under Article 185 of the Constitution;
- (b) approve the budget and expenditure of the county government in accordance with Articles 207 and 220(2) of the Constitution;
- (c) approve the borrowing by the county government in accordance with Article 212 of the Constitution; and
- (d) perform any other role as may be set out under the Constitution or legislation.

Role of members of the county assembly.

9. (1) Without prejudice to the responsibilities conferred on a member of a county assembly under section 8 of this Act, the member shall –

- (a) maintain close contact with the electorate and consult them on the issues before or under discussion in the county assembly;
- (b) present views, opinions and proposals of the electorate to the county assembly;
- (c) attend sessions of the county assembly and its committees;
- (d) provide a linkage between the county assembly and the electorate on public service delivery;
- (e) extend professional knowledge, experience or specialised knowledge to any issue for discussion in the Assembly; and
- (f) provide oversight over developmental activity affecting the county.

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(2) A member of the county assembly shall not in any way get directly involved in the –

- (a) executive functions of the county government and its administration;
- (b) delivery of services as if the member were an officer or employee of the county executive.

(3) A county assembly shall be sworn in by the county assembly clerk within fourteen days, after the announcement of the final results of the general elections, in such manner as may be provided for in the county assembly's standing orders.

Election of county speaker and deputy county speaker.

10. (1) At the first sitting after every election, a county assembly shall elect –

- (a) a county speaker from among persons who are not members of the county assembly; and
- (b) a deputy county speaker from among persons who are members of the county assembly.

(2) A person shall be qualified for election as county speaker if the person-

- (a) is a holder of a degree from a recognised university or its equivalent;
- (b) fulfils the requirements of Chapter 6 of the Constitution; and
- (c) has at least five years' working experience.

(3) A person is disqualified from being elected a speaker of a county assembly if the person—

- (a) is a State officer or public officer or a member of the county assembly;
- (b) has, at any time within the five years immediately before the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is of unsound mind;
- (e) is an undischarged bankrupt;
- (f) is serving a sentence of imprisonment of at least six months; or
- (g) has been found, in accordance with any law, to have misused or

abused a State office or public office or to have contravened Chapter Six of the Constitution.

(4) A person is not disqualified under clause (3) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

(5) Prospective candidates for the position of county speaker during the first election under the Constitution shall apply to the Clerk of the National Assembly and to the respective county assembly clerk in subsequent elections.

(6) The county speaker shall preside over the election and removal of a deputy county speaker.

(7) A person shall not be declared elected as county speaker or deputy county speaker unless that person receives more than fifty percent of the votes of all the members of the county assembly.

(8) If no person gets more than fifty percent of the votes at the first round of voting, the elections shall be repeated between the first two persons having the highest number of votes.

(9) In the second round of voting, the person who gets the majority of the votes cast shall be declared the winner.

(10) If only one person is nominated during the election of the county speaker or the deputy county speaker, that person shall be declared county speaker or deputy county speaker.

County assembly party leaders.

11. (1) There shall be, in the county assembly, a leader of the majority party and a leader of the minority party.

(2) The leader of the majority party shall be the person who is the leader in the county assembly of the largest party or coalition of parties.

(3) The leader of the minority party shall be the person who is the leader in the county assembly of the second largest party or coalition of parties.

(4) The following order of precedence shall be observed in the county assembly –

- (a) the speaker of the county assembly;
- (b) the leader of the majority party; and
- (c) the leader of the minority party.

Removal of speaker from office.

12. (1) A county speaker or county deputy speaker may be removed from office by the county assembly through a resolution supported by not less than seventy five percent of all the members of the county assembly.

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(2) Notice of the intention to move a motion for a resolution to remove the county speaker shall be given in writing to the clerk of the county assembly, signed by at least one third of all the members of the county assembly stating the grounds for removal.

(3) A motion for a resolution to remove the county speaker shall be presided over by the deputy speaker of the county assembly.

(4) Notice of the intention to move a motion for a resolution to remove the deputy Speaker shall be given in writing to the speaker, signed by at least one third of all the members of the assembly stating the grounds for removal and the speaker shall convene a meeting for the purpose.

County assembly clerk.

13. (1) There shall be a clerk of each county assembly, who shall be appointed by the county public service board with the approval of the county assembly.

(2) The office of the clerk of the county assembly shall be an office in the county public service.

(3) For the purposes of this Act the clerk shall be an authorized officer.

Procedure and committees of the county assembly.

14. (1) Subject to the Constitution and this Act, the county assembly may -

(a) make standing orders regulating the procedure of the county assembly including, in particular, orders for the orderly conduct of proceedings;

(b) subject to standing orders made under paragraph (a), establish committees in such manner and for such general or special purposes as it considers fit, and regulate the procedure of any committee so established.

(2) The proceedings of the county assembly are not invalid—

(a) if there is a vacancy in its membership; or

(b) the presence or participation of any person not entitled to be present at, or to participate in, the proceedings of the county assembly.

(3) When a county assembly considers any appointment for which its approval is required under this Constitution, an Act of Parliament or county legislation—

(a) the appointment shall be considered by a committee of the county assembly;

(b) the committee's recommendation shall be tabled before the county assembly for approval; and

(c) the proceedings of the committee and the county assembly shall

be open to the public.

(4) In establishing committees under this section, the county assembly shall ensure that each member of the county assembly is appointed to at least one committee.

(5) A county assembly may jointly with another county assembly, establish committees consisting of members of both county assemblies.

(6) Where a county assembly establishes a joint committee with another assembly, the election of members and regulation of the conduct of the business of the joint committee shall be as agreed between the two county assemblies.

(7) Where a county assembly has yet to provide for its rules of procedure under subsection (1), the standing orders of the National Assembly shall, with the necessary modifications, apply to that county assembly.

Right to petition county assembly.

15. (1) Any person has a right to petition a county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

(2) The county assembly shall prescribe the procedure for exercising the right under subsection (1).

Freedom of speech and debate.

16. (1) There shall be freedom of speech and debate in the proceedings of a county assembly and that freedom shall not be questioned in any court, tribunal or other place outside that county assembly.

(2) Subject to the provisions of this section, no civil or criminal proceedings may be instituted in any court or tribunal against a member of a county assembly by reason of any matter said in any debate, petition, motion or other proceedings in the county assembly

Powers, privileges and immunities of a county assembly

17. The national law regulating the powers and privileges of Parliament shall, with the necessary modifications, apply to a county assembly.

Official languages of a county assembly.

18. (1) The official languages of a county assembly shall be Kiswahili and English.

(2) In case of a conflict between different languages versions of a county legislation, the English version prevails.

(3) The Hansard of a county assembly shall be recorded in the official languages.

Quorum.

19. The quorum of a county assembly is one third of all the members of the county assembly.

Voting in a county assembly.

20. (1) Except as otherwise provided in the Constitution, in this Act or in other legislation, any question proposed for decision in the county assembly shall be determined by a majority of the members of the county assembly present and voting.

(2) On a question proposed for decision in the county assembly—

(a) the county speaker has no vote; and

(b) in the case of a tie, the question is lost.

(3) A member of a county assembly shall at all times observe the principle of integrity and shall declare any interest that he or she may have in a matter being discussed in the assembly.

(4) A member of the county assembly shall not vote on any question in which the member has a pecuniary interest.

Procedure for the exercise of legislative powers

21.(1) In exercising its legislative power a county assembly may –

(a) consider, pass, amend or reject any bill before it; and

(b) initiate or prepare a bill, except money bills.

(2) A county assembly shall exercise its legislative power through Bills passed by the county assembly and assented to by the county governor.

(3) In the case of “a money Bill”, the county assembly may proceed only in accordance with the recommendation of the relevant committee of the county assembly after taking into account the views of the county secretary responsible for finance.

(4) A “money Bill” for purposes of this Act, means a Bill that contains provisions dealing with—

(a) taxes;

(b) the imposition of charges on a public fund or the variation or repeal of any of those charges;

(c) the appropriation, receipt, custody, investment or issue of public money;

(d) the raising or guaranteeing of any loan or its repayment; or

(e) matters incidental to any of those matters.

- Introduction of a Bill **22.** A Bill introduced by a member of the assembly shall, before its publication, first be introduced by a motion to which the Bill is attached and if the motion is carried by the assembly the Bill will then be published.
- Bill to have a title **23.** A Bill introduced in the county assembly is to be identified by a title placed at the beginning of the Bill and this title shall include the subject matter of the statute to be enacted.
- Publication of a Bill **24.** A Bill shall be published by including the Bill as a supplement in the county gazette and the Kenya Gazette.
- Distribution of and debating a Bill **25.** (1) After the publication of a Bill, the Speaker shall cause the distribution of copies of the Bill as published to all members of the county assembly to enable them to study, and consult the residents of their respective wards on, the Bill.
- (2) Debating of the Bill is to take place at least fourteen days after its publication but in case of a public emergency, the period may be waived by a resolution of the Assembly.
- (3) At the beginning of the debate the Speaker shall call upon the member introducing the Bill to give the introductory speech, giving reasons and the objectives of the Bill.
- (4) The debate will then be open for the members following the basis of the memorandum to the Bill and the introductory speech.
- (5) Amendments to the Bill may be moved by members, in writing, at any time before the closure of the debate.
- (6) After the debate the county speaker shall put the question in respect of each clause as published or as amended by any member.
- (7) The Bill shall be passed when all clauses as published or as amended are passed by the county assembly.
- Assenting to a Bill **26.** (1) The Speaker shall, within fourteen days, forward a Bill passed by the county assembly to the Governor.
- (2) The Governor shall within fourteen days after receipt of a Bill—
- (a) assent to the Bill; or

- (b) refer the bill back to the county assembly with a memorandum outlining reasons for the referral.
- (3) If the Governor refers a Bill back to the Assembly, the county assembly may, following the appropriate procedures under this section—
- (a) amend the Bill taking into account the issues raised by the Governor; or
 - (b) pass the Bill without amendment.
- (4) If a County Assembly amends the Bill taking into consideration the issues raised by the Governor, the Speaker shall within fourteen days submit the Bill to the Governor for assent.
- (5) If a County Assembly passes the Bill a second time, without amendment, or with amendments which do not accommodate the Governor's concerns by a vote supported by two-thirds of members of the Assembly, the Speaker shall within seven days re-submit the Bill to the Governor and the Governor shall within seven days assent to the Bill.
- (6) If the Governor does not assent to a Bill or refer it back within the period referred to under this section, the Bill shall be taken to have been assented to on the expiry of that period.

Coming into force of a law.

- 27.** (1) A statute of a County Assembly comes into force on a day following its publication in the *Kenya Gazette* and the *County Gazette*, unless the statute provides a different effective date.
- (2) A statute of County Assembly that confers a direct benefit whether financial or in kind on members of the County Assembly shall come into force after the next general election of members of the County Assembly.

PART IV—ELECTORAL WARDS

Number, and delimitation of, electoral wards etc.

- 28.** (1) There shall be up to one thousand four hundred and fifty electoral wards for purposes of the election of county assembly members.
- (2) The Independent Electoral and Boundaries Commission shall review the names and boundaries of wards at intervals of not less than eight years, and not more than twelve years, but any review shall--
- (a) ensure that no county shall comprise of less than twenty five members:

Provided that where a county does not meet the criteria under subsection (2) (a), nomination of members shall be done to meet the requirements;

- (b) be completed at least twelve months before a general election of county assembly members.
- (3) The requirements under sub-section (2) above will not apply to the review of ward boundaries preceding the first election under this Act in accordance to section 27 (3) of the sixth schedule of the Constitution.
- (4) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall not take effect for purposes of that election.
- (5) The boundaries of each ward shall be such that the number of inhabitants in the ward is, as nearly as possible, equal to the population quota, but the number of inhabitants of a ward may be greater or lesser than the population quota in the manner mentioned in sub-section (6) to take account of—
- (a) geographical features and urban centres;
 - (b) community of interest, historical, economic and cultural ties;
and
 - (c) means of communication.
- (6) The number of inhabitants of a ward may be greater or lesser than the population quota by a margin of not more than—
- (a) forty per cent for cities and sparsely populated areas; or
 - (b) thirty per cent for the other areas.
- (7) In choosing the formula to adopt, there shall be provision to deviate from the number of wards determined for each county for purposes of ensuring—
- (a) that a county assembly is capable of effectively exercising its oversight mandate under Article 185 of the Constitution and in this Act;
 - (b) active participation by all ward assembly members in the county assembly meetings;
 - (c) good and timely executive and legislative decisions;
 - (d) ensuring responsiveness and accountability of the county assembly, taking into account the possible use of modern communication techniques and facilities; or
 - (e) the optimum use of county government funds for assembly members' allowances and administrative support facilities.
- (8) In reviewing ward boundaries the Independent Electoral and Boundaries

Commission (IEBC) shall—

- (a) consult all interested parties; and
- (b) progressively work towards ensuring that the number of inhabitants in each constituency and ward is, as nearly as possible, equal to the population quota.

PART V - COUNTY EXECUTIVE

Exercise of executive authority.

29. The county executive committee shall exercise the executive authority—

- (a) in accordance with the Constitution, relevant Acts of Parliament and county legislation
- (b) for the well-being and benefit of the people;
- (c) taking into account the principles of devolution of government set out under Article 174 of the Constitution;
- (d) while enhancing self-governance for communities in the management of development programs;
- (e) while ensuring the protection and promotion of the interests and rights of minorities and marginalized communities;
- (f) while promoting gender equity;
- (g) while promoting social and economic development within the county; and
- (h) while ensuring equitable sharing of available resources throughout the county.

Appointment of county executive members

30. (1) Subject to Article 179 of the Constitution, the Governor while nominating members of the executive committee, shall ensure that membership of that committee represents the diversity of the county.

(2) The county assembly shall not approve the nominations for appointment to the executive committee unless such nomination takes into account--

- (a) gender balance;
- (b) representation of the minorities, marginalised groups and communities; and
- (c) regional balance within the county.

(3) A person may be appointed as member of the county executive committee only if that person—

- (a) is a holder of at least a first degree from a recognized university or its equivalent;

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- (b) satisfies the requirements of Chapter Six of the Constitution; and
- (c) has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.

(4) A member of the county executive committee shall not hold any other State or public office.

Functions of the Executive Committee

31. (1) In addition to the functions provided under Article 183 of the Constitution, a county executive committee shall—

- (a) supervise the administration and delivery of services in the county and all decentralised units and agencies in the county;
- (b) perform any other functions conferred on it by the Constitution or national legislation;
- (c) carry out any other function incidental to any of the above functions.

(2) In the performance of its functions, the county executive committee shall have power to determine its own programme of activities and every member of the committee shall observe integrity and disclosure of interest in any matter before the committee.

Oath of office for the executive committee.

32. A person appointed as a member of the executive committee under Article 179 of the Constitution shall before assumption of office, take a prescribed oath or affirmation of office provided in the Schedule to this Act.

Accountability of members of the executive committee.

33. (1) The members of the executive committee shall be individually and collectively be accountable to the governor in the exercise of their powers and performance of their duties and responsibilities.

(2) A committee of the county assembly may require a member of the executive committee to—

- (a) attend/appear before the committee; and
- (b) answer any question relating to his/her responsibilities.

Powers of the governor

34. (1) The governor—

- (a) may, in accordance with section 37 of this Act dismiss a county executive committee member;
- (b) shall dismiss a county executive committee member, if required to do so by a resolution of the county assembly as provided under

section 37 (2) of this Act;

- (c) shall designate a person to be the accounting officer in the county with the approval of the executive committee.

Functions and
Responsibilities of the
governor,

35. (1) Subject to the Constitution, the governor shall—

- (a) chair meetings of the county executive committee;
- (b) with the approval of the County Assembly constitute the executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county;
- (c) assign to every member of the executive committee, with the approval of the Assembly, responsibility to ensure the discharge of any function within the county and the provision of related services to the people.
- (d) submit of the county plans and policies to the County Assembly for approval;
- (e) submit to the county assembly of an annual report on the implementation status of the county policies and plans;
- (f) consider, approve and assent to bills passed by the county assembly;
- (g) representation of the county in national and international fora and events;
- (h) provide due and diligent execution of the functions and authority provided for in the Constitution and legislation;
- (i) deliver annual state of the county address.
- (j) perform such state functions within the county as the President may determine.
- (k) be the chair of any security organ operating within the county as provided for in Article 239 (5) of the Constitution.

(2) In performing the functions under sub-section 1, the governor shall--

- (a) provide ethical leadership and guidance in the county's governance and development;
- (b) provide ethical leadership to the county executive committee and administration based on the county policies and plans;
- (c) promote of democracy, good governance, unity and cohesion within the county;

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- (d) promote of peace and order within the county;
- (e) advance and development of the competitiveness of the county;
- (f) be accountable for the management and use of the county resources;
- (g) promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the county

Functions of the deputy governor.

36. (1) The deputy governor shall deputize for the governor in the execution of the governor's functions.

(2) The governor shall, with the approval of the county assembly assign the deputy governor such other responsibility or portfolio as member of the county executive committee.

(3) When acting in office by virtue of Article 179 (5) of the Constitution the deputy governor shall not exercise the powers of the governor to nominate, appoint or dismiss which are assigned to the governor under the constitution or other written law.

(4) The governor shall not delegate to the deputy governor any of the functions mentioned in subsection (3).

Removal of member of executive committee.

37. (1) A member of the county executive committee may be removed from office by the governor on any of the following grounds—

- (a) incompetence;
- (b) abuse of office;
- (c) gross misconduct;
- (d) failure, without reasonable excuse, to attend three consecutive meetings of the county executive committee without written authority of the governor; or
- (e) physical or mental incapacity rendering the Executive Committee member incapable of performing the duties of the county executive member.

(2) A member of the county assembly, supported by at least one-quarter of all the members of the assembly, may propose a motion requiring the Governor to dismiss a county executive committee member on the grounds set out in subsection (1).

(3) If a motion under clause (2) is supported by at least one-third of the members of the County Assembly—

- (a) the Assembly shall appoint a select committee comprising five of its members to investigate the matter; and

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(b) the select committee shall, within ten days, report to the assembly whether it finds the allegations against the county executive committee member to be substantiated.

(4) The county executive committee member has the right to appear and be represented before the select committee during its investigations.

(5) If the select committee reports that it finds the allegations—

(a) unsubstantiated, no further proceedings shall be taken; or

(b) substantiated, the Assembly shall—

(i) afford the county executive committee member an opportunity to be heard; and

(ii) vote whether to approve the resolution requiring the county executive committee to be dismissed.

(6) If a resolution under subsection (5) (b) (ii) requiring the governor to dismiss a county executive committee member is supported by a majority of the members of the county assembly—

(a) the county speaker shall promptly deliver the resolution to the governor; and

(b) the governor shall dismiss the county executive committee member.

Meetings of the county executive

38. All meetings of the county executive committee shall be minuted and any decision arrived at shall have at least two third of the members present..

County executive to remain in office after elections.

39. When general elections are held for the county government, the county executive committee shall remain in office and function until a new executive committee is constituted after the election.

Appointment of County chief secretary.

40. (1) There is established for each county the office of the county chief secretary who shall be secretary to the county executive committee.

(2) The county chief secretary shall be nominated and appointed by the governor upon approval by the county assembly through a competitive process and may be dismissed by the governor in accordance to his terms of appointment.

(3) The county chief secretary shall—

(a) be in charge of the county public service;

(b) be responsible, subject to the directions of the county executive committee, for arranging the business, and keeping the minutes, of the county executive committee;

(c) convey the decisions of the county executive committee to the appropriate persons or authorities; and

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(d) have other functions as directed by the county executive committee.

(4) The county chief secretary may resign from office by giving notice to the governor.

Appointment of County principal secretaries

41. (1) There is established the office of county principal secretary, which shall be an office in the county public service.

(2) The governor shall—

- (a) nominate a person for appointment as county principal secretary from among persons recommended by the county public service board; and
- (b) with the approval of the county assembly, appoint county principal secretaries.

(3) Each county department in the county shall be under the administration of a county principal secretary who shall be in charge of the administration of a county department as provided under section 42 of this Act.

(4) The principal county secretary shall be the authorized officer in respect of exercise of delegated power.

(5) The governor may re-assign a county principal secretary.

(6) A county principal secretary may resign from office by giving notice, in writing, to the governor.

County executive committee to determine organisation of county administration.

42. (1) The county executive committee shall determine the organisation of the county administration and of its various departments, and for that purpose may—

- (a) establish, continue or vary any department, and determine the objects and purposes of the department;
- (b) determine the number and nature of departments at the decentralised units;
- (c) abolish any department;
- (d) determine or change the name of any department.

(2) The county executive committee shall in establishing and organizing its administration take into account, and be guided by, the need to—

- (a) be responsive to the needs of the local community and the functions and competencies assigned to and transferred to the county;
- (b) facilitate a culture of public service and accountability in the county public service;

- (c) be performance oriented and focused on the objects of devolution of government set out in Article 174 of the Constitution;
- (d) ensure that the county departments align their roles and responsibilities with the priorities and objectives set out in the county's policies and plans;
- (e) organise its departments and other structures in a flexible way in order to respond to changing priorities and circumstances;
- (f) assign clear responsibilities for the management and co-ordination of departments;
- (g) allow participatory decision making as far as is practicable; and
- (h) provide an equitable, fair, open and non-discriminatory working environment.

Performance evaluation.

43. (1) The county executive committee shall design a performance management plan to evaluate performance of the county public service and the implementation of county policies.

(2) The plan shall provide for--

- (a) objective, measurable and time bound performance indicators;
- (b) linkage to mandates;
- (c) annual performance reports;
- (d) citizen participation in the evaluation of the performance of county government; and
- (e) public sharing of performance progress reports.

(3) The governor shall submit the annual performance reports to the county assembly for consideration.

PART VI –DECENTRALIZED UNITS

Decentralized units.

44. (1) The functions and provision of services of each county government shall be decentralized at the following units—

- (a) urban areas and cities established in accordance with the Urban Areas and Cities Act;

(b) sub-county units equivalent to the constituencies established under Article 89 of the Constitution;

(c) ward units established under Article 89 of the Constitution and section 28 of this Act which are situated within the county; and

(d) village units in accordance to section 48 of this Act.

(2) Where the constituency or part of a constituency falls under urban areas or cities, that constituency or part of the constituency, as the case may be, shall be administered under subsection (1)(a).

Urban areas and cities structures.

45. The structures and functions of urban areas and cities shall be as is provided for in the Urban Areas and Cities Act.

Office of the sub-county administrator.

46. (1) There shall be established at the level of each sub-county the office of the sub-county administrator.

(2) The sub-county administrator shall have qualifications and knowledge in administration or management and shall be appointed by the county public service board in accordance with the provisions of this Act.

(3) The sub-county administrator shall be responsible for the coordination, management and supervision of the general administrative functions in the sub-county unit, including the coordination —

- (a) of the development of policies and plans at the sub-county unit;
- (b) of service delivery within the sub-county unit and supervision thereof;
- (c) and supervision of developmental activities to empower the community within the sub-county unit;
- (d) and supervision of the provision and maintenance of infrastructure and facilities of public services at the sub-county unit;
- (e) and supervision of the county public service within the sub-county unit; and
- (f) facilitation and coordination of citizen participation in the development of policies and plans and delivery of services in the sub-county unit.

(4) In carrying out the functions and obligations in sub-section (3), the sub-county administrator will be responsible to the relevant county principal

secretary.

Establishment of the office
of ward administrator

47. (1) There shall be established for each ward in a county the office of the ward administrator.

(2) The ward administrator shall have the professional qualifications and technical knowledge in administration and shall be appointed by the county public service board in accordance with the provisions of this Act.

(3) The ward administrator will coordinate, manage and supervise the general administrative functions in the ward unit, including —

- (a) coordination of the development of policies and plans at the ward unit;
- (b) coordination and supervision of service delivery within the ward unit;
- (c) coordination and supervision of developmental activities to empower the community within the ward unit;
- (d) coordination and supervision of the provision and maintenance of infrastructure and facilities of public services at the ward unit;
- (e) coordination and supervision of the county public service within the ward unit;
- (f) coordination and facilitation of citizen participation in the development of policies and plans and delivery of services in the ward unit.

(4) In carrying out the functions and obligations in sub-section (3), the ward administrator will be responsible to the sub-county administrator

Establishment of village
units.

48. (1) There shall be established, within the ward, village units each administered by a village administrator.

(2) Legislation of the county assembly shall provide for the delimitation and the number of the village units in each ward within the county.

(3) The village units shall be for purposes of enabling the implementation of Paragraph 14 of Part II of the Fourth Schedule to the Constitution.

Appointment of Village
elders

49. (1). There shall be not more than five village elders appointed for each village who shall constitute a Village Council.

(2) The village elders shall be the principal assistants to the village

administrator.

- (3) A village elder shall be paid an allowance as shall be determined by each respective county government;
- (4) A village council shall be chaired by the village administrator.
- (5) The village elders shall collectively, as a council, be responsible for—
 - (a) mobilisation of the community for public participation;
 - (b) reviewing village priorities and advising the sub county administrator appropriately;
 - (c) monitoring implementation of government's policy at the respective village level;
 - (d) monitoring and reporting on programmes and projects at the village level;
 - (e) providing feedback to the relevant government agencies; and
 - (f) performing of any other relevant matter in respect of the welfare of the village.
- (6) The village administrator shall provide the secretariat of the village council.
- (7) Each county assembly shall make regulations for the appointment of village elders.

Qualifications of village elders

50. A person shall be eligible for appointment as a village elder if he or she is—

- (a) a Kenyan citizen;
- (b) a resident of that village or a person who owns property in the village in which the person seeks to be appointed and who has owned such property for a continuous period of not less than five years prior to the appointment;
- (c) meets the requirement of Chapter Six of the Constitution; and
- (d) is not disqualified for appointment by any provision of this Act or any other written law.

Criteria for establishment of village units, etc.

51. (1) In establishing a village unit, the county assembly shall be guided by—

- (a) population size;
- (b) community of interest; and

(c) geographical and communication factors.

(2) For purposes of delineating and establishing the village units, the assemblies shall formulate local guidelines for the delineation and establishment of the village units taking into account such national guidelines as may be prescribed by a resolution of Parliament.

PART VII - COUNTY PUBLIC SERVICE

General Provisions

Objectives.

52.The objectives of this Part are to—

- (a) provide for the organization and functioning of the county public service in ways that ensure staffing of county public service leading to efficient, quality and productive services for the people of the county;
- (b) provide for institutions, systems and mechanisms for human resources utilization and development in a manner that best enhances service delivery by county public service institutions;
- (c) provide a framework of uniform norms and standards to be applied in all counties in respect of;
 - (i) establishment and abolition of offices in the public service;
 - (ii) appointment of persons to hold or act in those offices;
 - (iii) confirming appointments; or
 - (iv) exercising disciplinary control over and removal of persons holding or acting in those offices;
- (d) provide for the promotion of the values and principles set out in Articles 10 and 232 of the Constitution in the county public service;
- (e) provide for evaluation and reporting on the extent to which the values and principles referred to in Articles 10 and 232 of the Constitution are complied with in the county public service;
- (f) provide for human resource management and career development practices;
- (g) address staff shortages and barriers to staff mobility between counties;

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- (h) provide for standards of conduct to promote ethical conduct and professionalism in county public service;
- (i) provide for the establishment of county public service boards to assist respective county governments in carrying out the various responsibilities in their respective county public services;
- (j) provide for the establishment of the county public service advisory authority to assist county governments in carrying out various responsibilities in their respective county public services; and
- (k) make further provisions relating to appeals in respect of county governments' public service.

Establishment of the county public service.

53. (1) Each county shall have its own public service to be known as county public service.

(2) The county public service shall be headed by a county chief secretary who is appointed under section 40 of this Act.

Establishment of the county public service board.

54. There is established a county public service board in each County, which shall be —

- (a) a body corporate with perpetual succession and a seal; and
- (b) capable of suing and being sued in its corporate name.

Composition of the county public service board.

55. (1) The county public service board shall be composed of—

- (a) a chairperson appointed by the governor, and approved by the county assembly;
- (b) two members, being one woman and one man, appointed by the governor and approved by the county assembly;
- (c) two members, being one woman and one man appointed by the county assembly;
- (d) three members, not being public officers, who shall include persons with disabilities and persons from the minorities and marginalised communities;
- (e) county chief secretary, who shall be the secretary to the board.

(2) The members appointed under paragraphs (a), (b) and (c) shall be professionals from outside the county public service one of whom has experience in the management of human resources in the public service and nominated by the governor with the approval of the county assembly to represent the public and who shall not—

- (a) be state officers;
 - (b) be members of the governing body of a political party.
- (3) The appointment of the members of the board shall be through a competitive process.
- (4) A person is qualified to be a chairperson, vice-chairperson or a member of the Board if that person;
- (a) satisfies the provisions of chapter six of the Constitution;
 - (b) in the case of chairperson and vice-chairpersons, possesses a minimum qualification of a bachelor's degree from a recognised university or its equivalent and working experience of not less than fifteen years;
 - (c) in the case of other members, possess a minimum of a bachelor's degree from a recognised university or its equivalent;
 - (d) If the person is a professional, demonstrates absence of breach of the relevant professional code of conduct.
- (5) The members shall hold office on a part-time basis for a term of three years, renewable once.
- (6) The members of the Board may only be removed from office on grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution and by a vote of not less than seventy five percent of all the members of the county assembly.
- (7) The board shall elect a vice chairperson from amongst its members.
- (8) the chairperson and vice-chairperson shall be of opposite gender;

Functions of the public service board.

- 56.** (1) The functions of the county public service board shall be, on behalf of the county government, to—
- (a) establish and abolish offices in the county public service;
 - (b) appoint persons to hold or act in offices of the county public service and to confirm appointments;
 - (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for in section 72; or
 - (d) prepare regular reports for submission to the county assembly on the execution of the functions;
- (2) The reports under sub-section (1) (d) shall contain the details of persons appointed including gender, persons with disabilities, persons from the minority and marginalised communities.

Establishment and abolition of offices in the county public service

Criteria for establishment of public offices, etc.

57. (1) The county public service board shall establish a public office if it is satisfied that—

- (a) the establishment of the public office shall serve public interest in line with the core functions of the county government;
- (b) there exists no other public office in the county public service discharging or capable of discharging the duties for which the county government is requested to establish another office;
- (c) upon the establishment of the office, the office shall be vacant to be filled competitively and transparently in accordance with the prescribed appointment or promotion procedures;
- (d) the establishment of the office including its level of grading, qualification and remuneration shall not disadvantage similar offices in the county public service or occasion unfair competition for staff among county public bodies;
- (e) the establishment of the office will not confer unfair advantage to a group of or individual serving public officers;
- (f) the county government entity has prudently utilized offices previously provided in its establishment; and
- (g) funding for the office to be established is duly provided for.

(2) In determining the provision of funding under sub-section (1) (g), the County Public Service Board shall take due regard to the need to limit the component of personnel emoluments to a level that does not adversely affect other budgetary provisions in the recurrent vote.

(3) A written request for establishment of an office complying with the conditions in this section shall be submitted to the board by the concerned head of department.

(4) In deciding whether or not to establish a public office, the county public service board shall take into account—

- (a) the overall workload in the county public service concerned; and
- (b) the suitability of that department but not any other to be the domicile of the public office to be established.

Criteria for abolition of public offices.

58. (1) The board shall abolish a public office where it is satisfied that—

- (a) the abolition of the public office shall serve the public interest in view of the core functions of the county government;
- (b) there exists another public office in the county public service discharging or capable of discharging the duties of the office which

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the county government is requested to abolish an office;

- (c) the abolition of the office in view of its level is necessary so as to—
 - (i) eliminate unfair competition for staff among county public service departments; and
 - (ii) to promote parity of treatment among officers of similar qualifications holding public offices with the same responsibilities;
- (d) the abolition of the office will not confer unfair advantage to a group of, or individual public officer; or
- (e) the county government or office has been reorganized or abolished.

(2) Any decision by the county public service board to abolish an office in the county public service, where the affected public officer has not been re-deployed to another office, shall be subject to the due process of removing or retiring the affected public officer including adherence to the principles of natural justice.

(3) Where the board intends to establish or abolish an office it shall submit its proposal to the county assembly for approval through the county executive committee member responsible for the county public service.

Powers of the Board to establish or abolish office.

59. (1) Taking into account the provisions of this Part, the county public service board may on its own motion establish or abolish any office in the county public service.

(2) The county public service board shall give the county principal secretary of the concerned department an opportunity to make representation in respect of the action to be taken under this section before making the decision in that regard.

(3) Where the county public service board has established an office and the concerned department has failed to fill the vacancy for a period of twelve months since its establishment, the office shall stand abolished and the county public service board shall not be required to make a decision to abolish in such a case.

(4) The provisions of sub-section (3) in respect to the period of the vacancy of an established post may be waived by the county government under exceptional circumstances.

Appointments, acting appointments, re-designations, confirmation in appointment, promotions, deployments and related matters

Powers of the board to make appointments

60. (1) Except as provided for in the Constitution or legislation, the county public service board shall have the power to make appointments including

promotions in respect of offices in the county public service.

(2) The power of the county public service board under sub-section (1) shall be exercised;

- (a) at the request of the relevant county principal secretary of the department to which the appointment is to be made;
- (b) at the request of the clerk of the county assembly; and or
- (c) on the county public service board's own motion on account of best interest of the county public service and parity of treatment of public officers taking into account the circumstances of each case.

No unqualified person may be appointed in acting capacity.

61. (1) A person shall not be appointed to hold a public office in an acting capacity unless the person satisfies all the prescribed qualifications for holding that public office.

(2) Acting appointments shall be made only by the lawful appointing authority

(3) Nothing in this section shall prevent a public officer from –

- (a) delegating a duty for which the law does not prohibit delegation; or
- (b) deploying another officer to perform duties vested in another office during a temporary absence.

(4) Any delegation or deployment under subsection (3) shall –

- (a) be made of an officer who is duly qualified and competent to perform the duty; and
- (b) not undermine the expeditious appointment or deployment of a competent person to the public office concerned.

(5) Where it comes to the attention of the county public service board that a public officer has purportedly made an acting appointment, delegation or deployment as the case may be, contrary to the provisions of this section, the county public service board shall take the necessary corrective action.

Matters to take into account during appointments, etc.

62.(1) In selecting candidates for appointment, acting appointment, promotion, re-designation, or deployment, the county public service board shall have regard to –

- (a) the standards, values and principles set out in Articles 10, 27 (4), 56 (c) and 232 (1) of the Constitution;
- (b) the prescribed qualifications for holding or acting in the office;
- (c) the experience and achievements attained by the candidate;
- (d) the conduct of the candidate in view of relevant code of conduct, ethics and integrity;

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(e) the need to ensure that at least thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county;

(f) the need for open and transparent recruitment of public servants.

(2) In determining whether an appointment, promotion or re-designation has been undertaken in a fair and transparent manner, the overriding factors shall be fair competition and representation of the diversity of the county.

Advertisements of positions to be widely publicised.

63. Where a public office is to be filled, the county public service board shall invite applications through advertisement so as to reach as wide population of potential applicants as possible and especially persons who for any reason have been or may be disadvantaged.

Appointments to be in writing.

64. No appointment, acting appointment, promotion, re-designation, deployment or other assignment of a duty in a county public service shall be valid unless, it is evidenced in writing.

Board to maintain records of applicants.

65. The county public service board shall, subject to the relevant legislation, maintain a record of all applications received in response to advertisements inviting applications and such record may be inspected by any person.

Re-designation of officers.

66. (1) In selecting public officers for re-designation, the criteria for appointment as prescribed under this Part shall apply.

(2) A public officer shall not be re-designated to hold or act in a public office if –

- (a) the office is not vacant;
- (b) the public officer does not meet all the qualifications, except for experience at a lower grade in the relevant cadre, attached to the public office;
- (c) the decision to re-designate the officer may disadvantage any public officer already serving in the relevant cadre; or
- (d) the officer subject to re-designation has not consented to the re-designation.

(3) If a public officer is re-designated, the officer shall not in any way suffer reduction in remuneration.

Provisions on appointments to apply to promotions.

67. (1) The provisions of this Act and regulations or procedures made under this Act which apply to appointments shall also apply to promotions.

(2) Where a public officer has been promoted, the head of department must within sixty days from the date of the promotion release the public officer to

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take up the promotion and if the officer is not so released, he or she stands released upon the lapse of sixty days.

(3) Where a public officer has been promoted and has failed to take up the promotion, the promotional decision shall lapse upon the expiry of sixty days from the date of the decision and the officer shall revert back to the office held prior to the decision subject, to confirmation that the person received the official communication on the promotion.

Confirmation of appointment on lapse of period.

68. (1) Where the relevant authority fails to confirm an appointment of a public officer initially appointed on probationary terms and the term has lapsed with or without an extension, the officer shall stand confirmed in the appointment on the due date.

(2) The period served on probationary terms shall be taken into account when computing the period of service for the purpose of payment of pension benefits, gratuity or any other terminal benefit.

(3) A probationary period of service shall not be extended except on account of –

- (a) affording the public officer further opportunity to pass an examination the passing of which is a condition for the confirmation, his or her service otherwise being satisfactory;
- (b) affording the public officer an opportunity for improvement in any respect, in which his or her work or conduct have been adversely reported on.

Power to deploy public officers

69. (1) The power to deploy a county public officer within a department shall vest in the relevant county principal secretary.

(2) The power to deploy a county public officer from one department to another shall vest in the head of the county public service.

Secondments.

70. (1) The respective county public service boards shall put in place measures to protect public officers on secondment from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.

(2) Unless there is an agreement to the contrary, the public body or organization to which a public officer is seconded shall bear all the costs, remuneration, allowances and other benefits due to the officer during secondment.

(3) Where for any reason it is not necessary for an officer on secondment to remain seconded and the secondment period has not lapsed, the officer shall be entitled to revert back to the public office held before secondment.

(4) The county public service board shall not allow a public officer to proceed on secondment if it is not in the interest of the public officer or the concerned

county public service.

(5) The county public service board making a decision on secondment shall not allow the secondment unless it has considered the representation by the concerned authorized officer or head of department.

Public service board to regulate appointment of persons on contract.

71. The county public service board shall regulate the engagement of persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices.

Action on irregularity of process.

72. If it comes to the attention of the county public service board that there is reason to believe that any process or decision under this Part may have occurred in an irregular or fraudulent manner, the county government shall investigate the matter and, if satisfied that the irregularity or fraud has occurred, the county public service board may –

- (a) revoke the decision or direct the concerned lawful authority to commence the process afresh; or
- (b) direct the concerned head of department or lawful authority to commence the process afresh; or
- (c) take any corrective action including disciplinary action.

Exercise of disciplinary control in the county public service

Prohibition of punishment contrary to the constitution.

73. (1) The county public service board shall in exercising of disciplinary powers observe the principles of natural justice.

(2) No public officer may be punished in a manner contrary to any provision of the Constitution and any Act of Parliament.

(3) Nothing in this section shall limit the powers conferred to the county government or any other lawful authority discharging a disciplinary function from retiring an officer from the county public service on the ground of public interest.

(4) In this section, retirement on the ground of public interest may be imposed instead of any other punishment if the decision maker considers that the misconduct having been proven—

- (a) the officer has nevertheless raised a mitigation factor which renders imposition of a punishment too harsh in view of the circumstances of the case; or
- (b) the length of service benefits accrued and previous good record of the officer justifies the retirement; or
- (c) imposing a punishment against the officer is likely to adversely affect the reputation of the public body concerned or the county public service generally.

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(5) Where criminal proceedings are instituted against a county public officer, disciplinary proceedings against the officer for his or her dismissal or imposition of any other punishment upon any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal there from has been made.

(6) Nothing in subsection (5) shall be interpreted as prohibiting or restricting the power of the county government or the concerned county principal secretary or other lawful authority to interdict or suspend or take any interlocutory decision against the public officer.

(7) Disciplinary proceedings against any county public officer shall uphold the fundamental right to fair administrative action as provided for in Article 47 of the Constitution and the provisions of Article 236 of the Constitution.

Appeals to the Public
Service Commission.

74. (1) Any person dissatisfied or affected by a decision made by the county public service board or person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission against the decision.

(2) The Commission shall entertain appeals on any decision relating to employment of any person in a county government including a decision in respect of--

- (a) recruitment, selection, appointment, promotion, re-designation, deployment, and qualifications attached to any office;
- (b) remuneration and terms and conditions of service;
- (c) disciplinary control;
- (d) national values and principles of governance, under Article 10, and, values and principles of public service under Article 232 of the Constitution;
- (e) retirement and otherwise removal from service except on account of dismissal;
- (f) pension benefits, gratuity and any other terminal benefits; or
- (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.

(3) An appeal under subsection (1) shall be in writing and made within ninety days from the date of the decision but the commission may entertain an appeal out of time, if in the opinion of the commission, the circumstances warrant it.

(4) The commission shall not entertain an appeal more than once by the same public officer or his or her representative in respect to the same decision.

(5) Any person dissatisfied or affected by a decision made by the Commission on appeal in a decision made in a disciplinary case may apply for review and

the commission may admit the application if—

(a) the Commission is satisfied that there appear in the application new and material facts which might have affected its earlier decision, and if adequate reasons for the non-disclosure of such facts at an earlier date are given; or

(b) there is an error apparent on record of either decision

(6) An application for review under subsection (5) shall be in writing and made within the time prescribed by the Commission in regulations governing disciplinary proceedings, but the commission may entertain an application for review out of time if, in the opinion of the Commission, the circumstances warrant it.

Removal other than by disciplinary process from the public service

Application of Part.

75. (1) This Part applies to resignation, retirement and related matters.

(2) A county public officer desirous of resigning from office may do so in writing addressed to the lawful appointing authority for the public office.

(3) The resignation letter shall be delivered to the lawful appointing authority by hand or by registered mail.

(4) Resignation under this section shall take effect thirty days from the date of the resignation letter.

(5) A person who has resigned from the county public service may rejoin the service in accordance with the provision governing the relevant appointment.

Grounds for retirement.

76. A person may retire from the county public service –

(a) on attainment of the mandatory retirement age prescribed under the relevant legislation or policy or as agreed upon between the county public officer and relevant appointing authority;

(b) for ill health;

(c) on abolition of county public office;

(d) in public interest; and

(e) under special retirement scheme agreed between a public officer or his or her representative and the relevant appointing authority.

Prescription of retirement on age.

77. The mandatory retirement age for a county public officer generally or for any category of public officers, shall be prescribed by policy of the national government.

Retirement on the ground of ill health

78. (1) A county public officer may retire from the county public office on the ground of ill health if—

(a) the concerned County Principal Secretary considers that the public

officer is incapable, by reason of any infirmity of body or mind, of discharging the functions of the public office and it is in the best interest for the officer to retire; or

- (b) the public officer requests to be retired on the ground of ill health, and in which case, the County Principal Secretary shall initiate the process for the retirement in accordance with this section.

(2) Where a public officer is considered for retirement or has requested to be retired in accordance with subsection (1), the concerned county principal secretary shall call upon the officer to present himself or herself before a medical board constituted by the director of medical services in the national government with the view to ascertain whether or not the public officer should be retired on the ground of ill health.

(3) After the public officer has been examined in accordance with sub-section

(2) and the finding is that he or she should be retired, the director of medical

services shall forward the medical board's records of proceedings and findings to the county head of public service who shall –

- (a) request the officer to make any representation in view of the medical board's record of proceeding and findings;
- (b) make his or her recommendations in view of the medical board's findings and the officer's representation, if any; and
- (c) forward all the documents referred to in the subsection to the county public service board.

(4) Unless the county public service board considers that further inquiry is necessary in which case it shall issue directions to the authorized officer accordingly, the board shall decide forthwith whether the public officer should be called upon to retire on the ground of ill health.

(5) Where the circumstances of ill health are such that a public officer cannot be attend medical board or make his or her presentation on the findings of the medical board as provided for under this section, the public officer may nevertheless be retired by the county public service board, if the authorized officer submits the case to it, on the ground of ill health in accordance with the law or service regulation or prescribed terms of service dealing with the period an officer may be retained in the service in case of prolonged ill health.

Retirement on grounds of abolition of office.

79. (1) Where a county public officer, holding similar public offices are to be retired on the ground of abolition of office but one or more public officers is to remain in office, the concerned county Principal Secretary shall inform the public officer that his retirement is under consideration and shall invite him or her to make representation within reasonable time.

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(2) Upon receipt of the representation in subsection (1) or failure to receive any representation within the prescribed time, the County Principal Secretary shall forward the case to the county public service board including his recommendation justifying the retirement of the officer together with the officer's representation if any.

(3) Unless the county public service board considers that further justification is necessary, in which case it shall issue directions to the County Principal Secretary accordingly, it shall decide whether the public officer should be retired on the ground of abolition of office.

(4) The county public service board shall not retire any public officer on the ground of abolition of office unless there is written evidence that the public office in the issue has been abolished.

Retirement on grounds of public interest.

80. (1) If a county principal secretary, after having considered the report of the complaint against a public officer and it is apparent that it is desirable to retire the officer on the ground of public interest, the County Principal Secretary shall –

- (a) serve the public officer a notice setting out the particulars of the complaint as reported and asking the officer to make representation within a reasonable time; and
- (b) upon receipt of the representation or if none is received within the prescribed time, forward to the county public service board all the details of the case.

(2) Unless the county public service board considers that further inquiry into the complaint is necessary, in which case it shall issue direction to the County Principal Secretary accordingly, it shall decide forthwith whether the public officer should be retired on the ground of public interest.

(3) For a complaint or report to justify retirement on the ground of public interest, it must be established that the public officer offended public policy protected in prescribed government policy, Act of Parliament or binding decision made by a competent court of law.

Retirement pursuant to agreement or special retirement scheme.

81. (1) The county public service board may retire any public officer where –

- (a) the officer's contractual terms and condition of service provide for a special retirement clause and has fallen due; or
- (b) the officer is required or is willing to voluntarily retire in accordance with the terms and conditions prescribed in special retirement scheme.

(2) Except in cases of voluntary retirement or retirement in accordance with contractual terms and conditions, a public officer shall not be retired under this section unless the county public service board or other lawful authority has

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accorded the officer a reasonable opportunity to make his representation on the intended retirement.

Entitlement to apply for review.

82. A public officer retired under this Act shall be entitled to apply for a review against the decision on account of –

- (a) fresh material fact which with due diligence could not be presented when the decision was initially made;
- (b) an error apparent on the record of the initial decision; or
- (c) manifest absence of parity of treatment in view of circumstances and facts of the case.

Delegation by county public service board.

83. (1) The county public service board may delegate, in writing, any of its functions to any one or more of its members, the county chief secretary, county principal secretary, the clerk to county assembly or to city and municipal managers

(2) The provisions of this Part shall apply to the person to whom the powers are delegated under this section.

Advisory Authority

Establishment of the county public service advisory authority.

84. There is established an advisory authority to be known as the county public service advisory authority.

(2) The advisory authority shall--

- (a) be a body corporate with perpetual succession and a seal; and
- (b) be capable of suing and being sued in its corporate name.

Composition of the Advisory Authority

85. (1) The Advisory Authority shall comprise—

- (a) a chairperson nominated by the President with the approval of the Senate appointed by the President;
- (b) eight members, one of whom has experience in management of human resources in the public service, appointed by the cabinet secretary responsible for county affairs and with the approval of the Senate.

(2) The members in subsection (1) shall be identified and proposed for nomination by a panel comprising—

- (a) seven representatives of the county governments elected by a council of

County Governors established under the Intergovernmental Relations Act;

(b) one member nominated by the registered umbrella body of trade unions;

(c) one member nominated by the registered umbrella body representing employers.

(3) The panel referred to in subsection (2) shall be responsible for putting up public advertisements, short-listing and interviews for the persons to be nominated for appointment as members of the Authority.

(4) The members shall hold office on a part-time basis for a term of three years renewable once.

(5) The members of the Authority may only be removed from office on grounds set out for the removal of members of a Constitutional Commission under article 251(1) and by a vote of at least seventy five percent of all the members of the Senate.

(6) In electing the representatives in subsection (2)(a), the forum shall—

(a) ensure gender equity and the inclusion of minorities and marginalized communities;

(b) take into account merit based on expertise and qualification.

Functions of the Advisory Authority.

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

(a) promote the values and principles referred to in Articles 10 and 232 in the county public service throughout the Republic;

(b) evaluate and report to the county assemblies and the senate on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;

(c) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;

(d) facilitate the exchange of information on human resource between counties in order to promote the transfer and secondment of staff between counties to address staff surpluses and deficits in terms of numbers and skills;

(e) advise counties on human resource management and development;

(f) advise county governments on implementation and monitoring of the national performance management system in counties.

(g) make recommendations to the Salaries and Remuneration Commission, on behalf of county governments, on the remuneration,

pensions and gratuities for county public service employees.

(2) The Authority shall prescribe a code of practice to be implemented by all county governments to promote the implementation of the national values and principles of governance in Article 10 and the values and principles of public service in Article 232 (1) of the Constitution.

Powers of the Advisory Authority.

87. The Advisory Authority in discharge of its functions to promote national values and principles of governance in Article 10 and the values and principles of public service in Article 232 (1) of the Constitution shall have powers to—

- (a) inform and educate county public officers and the public about the values and principles;
- (b) recommend to the county governments and the Senate the effective measures to promote the values and principles;
- (c) assist county governments in the formulation and implementation of programmes intended to inculcate in public officers the duty to uphold the values and principles;
- (d) advise the county governments on their obligations under international treaties and conventions on good governance in the county public service;
- (e) visit any county public office or body with a view to assessing and inspecting the status of compliance with the values and principles;
- (f) investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any values and principles;
- (g) recommend to the relevant lawful authority, any necessary action in view of the violation of the values and principles by any person or public body;
- (h) cooperate with other institutions working in the field of good governance in the public service;
- (i) perform such other functions as the Authority may consider necessary for the promotion of the values and principles.

Annual Report of the Authority.

88. (1) The Advisory Authority shall annually prepare and submit an annual report to the county government and the Senate on its evaluation of the extent to which the values and principles in Articles 10 and 232 of the Constitution are complied with in the public service of the counties for each financial year.

(2) The report by the Authority under this section shall –

- (a) be delivered every December to the county assemblies and to the Speaker of the Senate;
- (b) include all the steps taken and decisions made by the Advisory

Authority especially in the performance of its duties under this Act;

- (c) include specific recommendations that require to be implemented in the promotion and protection of the values and principles;
- (d) include specific decisions on particulars of persons or public body who have violated the values and principles including action taken or recommended against them;
- (e) any impediment in the promotion of the values and principles; and
- (f) the programmes the Advisory Authority is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.

(3) The Speaker of the Senate shall, in accordance with respective standing orders, cause the report by the Advisory Authority submitted in accordance with this section –

- (a) to be debated by the respective Houses of Parliament within four months from the date of the submission; and
- (b) subsequent to the debate under paragraph (a), make relevant resolutions for the implementation of the recommendations in the report

(4) The Advisory Authority shall publish its report in the Gazette not later than seven days from the date of its delivery to the county assemblies and the Senate.

(5) The Advisory Authority, in the performance of its duties under this Act may require a county government to produce any relevant document or information.

PART VIII – CITIZEN PARTICIPATION

Principles of citizen participation in counties.

89. Citizen participation in county governments shall be based upon the following principles—

- (a) timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
- (b) access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;

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- (c) protection and promotion of the interest and rights of minorities, marginalised groups and communities;
- (d) legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and communities traditionally marginalized, including women, the youth, and disadvantaged communities;
- (e) reasonable balance in the roles and obligations of governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide within all levels of government complementary authority and oversight;
- (f) promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and
- (g) recognition and promotion of the reciprocal roles of non-state actors participation and governmental facilitation and oversight.

Citizens right to petition and challenge.

- 90.** (1) Citizens have a right to petition the county government on any matter under the responsibility of the County government
- (2) Citizen petitions must be made in writing to the county government.

Duty to respond to citizen's petitions or challenges.

- 91.** (1) County government authorities, agencies and agents have a duty to expeditiously respond to petitions and challenges from citizens
- (2) The county government shall make regulations to give effect to section 90 (1).
- (3) The citizens shall use the court as the last resort where the county government does not respond to their concerns.

Matters subject to local referenda.

- 92.** A county government may conduct a local referenda on the following –
- (a) county laws and petitions; or
 - (b) planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty five percent of the registered voters where the referenda is to take place.

Results of a referendum.

- 93.** The county government shall publicize the result of a local referendum as shall be provided by Regulations.

Establishment of modalities and platforms for citizen participation

- 94.** The county government shall facilitate the establishment of structures for citizen participation including—

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- (a) information communication technology based platforms;
- (b) town hall meetings;
- (c) budget validation fora;
- (d) notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest;
- (e) development project sites; or
- (f) avenues for the participation of peoples' representatives including but not limited to members of the national assembly and senate.

Establishment of County
Citizens' Forums

95. (1) Each county government shall establish and facilitate county citizens' participation Forums at the following units of government—

- (a) the county;
- (b) the urban areas and cities;
- (c) the sub-county;
- (d) the ward; and
- (e) the village.

Functions of the County
Citizens' participation
Forum

96. The Citizens' participation Forums shall provide the forum for county citizens to—

- (a) deliberate and make proposals to the relevant bodies or institutions on-
 - (i) the provision of services in the county;
 - (ii) proposed county policies and county legislation;
 - (iii) proposed national policies and national legislation;
 - (iv) the proposed annual budget estimates of the county and of the national government;
 - (v) the proposed development plans of the county and of the national government; and
 - (vi) any other matters of concern to the county citizens;
- (b) plan strategies for engaging the various levels and units of government on matters of concern to county citizens;

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(c) monitor the activities of elected and appointed officials of the county;

(d) receive representations, including feedback on issues raised by the county citizens, from elected and appointed county officials on the provision of services in the county and on any other matters.

Meetings of the County
Citizens' Forum

97. (1) The County Citizens' Forum shall meet-

(a) at least once in each quarter; and

(b) whenever there is an urgent matter requiring a meeting of the Forum.

(2) The county executive shall convene and provide the necessary administrative and technical support to the County Citizens' Forum.

Reporting

98. The Governor shall submit an annual report to the county assembly on the County Citizens' Forums.

Sub-county, City and
Urban area citizen
participation forum

99. (1) A sub-county, city and urban area citizen participation forum shall be co-convened on a quarterly basis by the elected county assembly members in the areas to discuss and give views in respect to following issues—

(a) the interests of the sub-county, city and urban area;

(b) implementation of county policies and plans in the sub-county city and urban area; or

(c) the functioning of the sub-county, city and urban area administration in the delivery of services.

(2) The conveners of the forum shall appoint a secretary for purposes of taking the minutes and shall be responsible for publicizing the minutes throughout the sub-county, city and urban area and shall raise the issues arising from the forum with the relevant organs of the county government and give feedback at the next forum.

(3) The conveners of the forum shall ensure that the forum is fully publicized to enable attendance and participation of as wide a section of the population as possible, including marginalized groups and communities.

(4) The county government shall put in place laws and regulations governing the conduct of the meetings of the citizens' participation forum in their areas of jurisdiction.

Ward citizen participation
forum.

100. (1) A ward citizen participation forum shall be convened by

the elected county assembly member of the ward on a quarterly basis to discuss and give views with respect to the following issues—

- (a) the interests of the ward;
- (b) implementation of county policies and plans in the ward;
- (c) the administration and functioning of the ward; or
- (d) the delivery of services by the public service in the ward.

(2) The forum shall be open to all citizens of the ward who desire to attend and citizens shall be allowed to speak through representatives or directly.

(3) The convener of the forum shall appoint a secretary for purposes of taking the minutes and shall be responsible for publicizing the minutes throughout the ward and shall—

- (a) raise the issues arising from the forum with the relevant organs of the county government; and
- (b) give feedback at the next forum.

(4) The convener of the forum must ensure that the forum is fully publicized to enable attendance and participation of as wide a section of the population as possible, including marginalized groups and communities.

PART IX—PUBLIC COMMUNICATION AND ACCESS TO INFORMATION

Principles of Public Communication.

101. Public communication and access to information shall be based on the following—

- (a) integration of communication in all development activities;
- (b) observation of access to information by county media in accordance with Article 35 of the Constitution; and
- (c) observation of media ethics, standards and professionalism.

Objectives of county Communication.

102. County governments shall use the media to—

- (a) create awareness on devolution and governance;
- (b) promote citizens understanding for purposes of peace and national cohesion;
- (c) undertake advocacy on core development issues such as agriculture, education, health, security, economics, sustainable environment among others; and
- (d) promotion of the freedom of the media.

County communication

103. (1) County governments shall establish mechanisms for public

framework.

communication and access to information which shall include—

- (a) television stations;
- (b) information communication technology centres ;
- (c) websites;
- (d) community radio stations;
- (e) public meetings; or
- (f) traditional media.

(2) The county government shall encourage and facilitate other means of mass communication including traditional media.

Access to information.

104. (1) Every Kenyan citizen shall on request have access to information held by any county government or any unit or department thereof or any other State organ in accordance with Article 35 of the Constitution.

(2) Every county government and its agencies shall designate an office for purposes of ensuring access to information as required by subsection one (1).

(3) Subject to any other Act of Parliament, county governments shall develop and pass laws and regulations to ensure expeditious access to information.

Inclusion and integration of minorities and marginalized groups.

105. The following principles shall be observed by county governments, public and private organisations, and private individuals, whether State or non-state actors in the protection and guarantee of the rights of minority and marginalised groups—

- (a) protection of marginalised and minority groups from discrimination and from treatment of distinction of any kind, including, but not limited to, on the basis of language, religion, culture, national or social origin, sex, caste, birth, descent or other status;
- (b) non-discrimination and equality of treatment in all areas of economic, educational, social, religious, political and cultural life of the marginalised and minority groups;
- (c) special protection to vulnerable persons who may be subject to threats or acts of discrimination, hostility, violence and abuse as a result of their ethnic, cultural, linguistic, religious or other identity;
- (d) special measures of affirmative action for marginalised and minority groups to ensure their enjoyment of equal rights with the rest of the population;
- (e) respect and promotion of the identity and characteristics of minorities shall be;
- (f) promotion of diversity and intercultural education; and
- (g) promotion of effective participation of marginalised and minority groups in public and political life.

PART X— CIVIC EDUCATION

Principles of civic education.

106. (1) The principles of civic education are intended to promote—

- (a) empowerment and enlightenment of citizens and government;
- (b) continuous and systemic engagement of citizens and government; and
- (c) values and principles of devolution in the Constitution.

(2) No other content will be disseminated under Civic education other than as provided for under this Act.

Purpose and objectives of civic education.

107. (1) The purpose of civic education under this Act is to have an informed citizenry that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding and ownership of the Constitution.

(2) The objectives of civic education are—

- (a) sustained citizens' engagement in the implementation of the Constitution;
- (b) improved understanding, appreciation and engagement in the operationalization of the devolved system of government;
- (c) institutionalising a culture of constitutionalism;
- (d) knowledge of Kenya's transformed political system, context and implications;
- (e) enhanced knowledge and understanding of electoral system and procedures;
- (f) enhanced awareness and mainstreaming of the Bill of Rights and National values;
- (g) heightened demand by citizens for service delivery by institutions of governance at the county level;
- (h) ownership and knowledge on the principal economic, social and political issues facing county administrations and their form, structures and procedures; and

- (i) appreciation for the diversity of Kenya's communities as building blocks for national cohesion and integration.

Design and implementation of civic education.

108. (1) Each county shall implement an appropriate civic education programme.

(2) For purposes of (1), there shall be established a national design and framework of civic education, to determine the contents of the curriculum for civic education as provided for under Article 33 of the Constitution.

(3) The national and county governments shall facilitate the implementation of civic education programme under subsection (2).

(4) For the purposes of subsection (2), a joint committee of county representatives nominated separately by the county executive and registered non-state actors shall oversee the implementation of the county civic education programme.

Institutional framework for civic education.

109. (1) The county governments shall facilitate establishment of the following committees for purposes of implementing civic education—

- (a) county civic education committee;
- (b) sub-county, city and urban area civic education committee;
- (c) ward civic education committee; and
- (d) village civic education committee

(2) The county civic education committee shall facilitate establishment of constituency and ward civic education committees and shall exercise oversight over implementation of civic education programme in a county.

(3) The committees shall comprise of eighteen members, nine of whom nominated separately by the county executive committee and registered non-state actors within a county.

(4) For purposes of subsection (2), registered non-state actors shall democratically elect their representatives from among civic education providers operating within a county.

(5) The tenure of office of members of civic education committees under this section shall be three years.

(6) In constituting the committees under this section, the requirements of the Constitution with regards to inclusion and diversity shall be complied with.

(7) The Sub-County, city and urban area civic education committee reports to

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the county civic education committee and shall exercise oversight over implementation of civic education at the sub-county, city and urban area level.

(8) The Ward civic education committee reports to the sub-county or Municipality civic education and shall exercise oversight over implementation of civic education at the Ward level.

(9) The county civic education committee shall submit quarterly reports to the county executive.

(10) The sub-county, city, urban area and ward civic education committees shall submit quarterly reports to the county civic education committee.

Powers of the county civic education committee.

110. The county civic education committee shall have the power to—

- (a) determine civic education providers;
- (b) within the national framework of civic education, determine the contents of the curriculum for civic education to address the unique needs of the county;
- (c) domesticate civic education materials to address the unique needs of the county;
- (d) enforce the code of conduct for civic education providers;
- (e) determine the structure, functions and personnel establishment of its Secretariat;
- (f) require submission of reports from civic education providers;
- (g) carry out regular review of county civic education programme.

Functions of the county civic education committee.

111. (1) The primary function of the county civic education committee shall be to facilitate a coordinated delivery of civic education at the county level.

(2) Notwithstanding the generality of subsection (1) the county civic education committee shall –

- (a) liaise with relevant institutions of the National Government concerned with civic education;
- (b) facilitate mobilization of resources for civic education;
- (c) certify civic education providers ;
- (d) subject to section 110 (b), set standards for the delivery of the civic education for the unique needs of the county;

(e) develop a common monitoring and evaluation mechanism;

(f) develop and enforce a code of conduct to guide civic education providers in the delivery of civic education.

County civic education implementation unit.

112. (1) The county civic education committee shall facilitate establishment of a county civic education implementation unit.

(2) The civic education implementation unit shall perform the following functions –

(a) overall coordination of civic education implementation in the county;

(b) provide technical support to the civic education programme in the county;

(c) management of the day to day running of civic education programme in the county;

(d) ensuring quality assurance and timely, efficient and effective delivery of civic education programme;

(e) ensuring prudent utilization and accountability for resources;

(f) management of civic education programme finances;

(g) development of human capacities at the county level so as to match needs;

(h) programme monitoring and evaluation;

(i) management of civic education programme communication strategy; and

(j) review of proposals and contracting civic education providers.

(3) The unit will be managed and run by professionals and appropriate support staff appointed by the county civic education committee.

(4) The unit shall be headed by a programme director recruited competitively under the overall guidance of the county civic education committee.

PART XI— COUNTY PLANNING

Principles of planning and development facilitation.

113. The principles of planning and development facilitation in a county shall

- (a) integrate national values in all processes and concepts;
- (b) protect the right to self-fulfilment within the county communities and with responsibility to future generations;
- (c) protect and integrate rights and interest of minorities and marginalized groups and communities;
- (d) protect and develop natural resources in a manner that aligns national and devolved government policies;
- (e) align county financial and institutional resources to agreed policy objectives and programmes;
- (f) engender effective resource mobilization for sustainable development;
- (g) promote the pursuit of equity in the county ;
- (h) provide a platform for unifying planning, budgeting, financing, implementation and performance review; and
- (i) serve as a basis for engagement between county government and the citizenry, other stakeholders and interest groups.

Objectives of county planning.

114. The objectives of county planning shall be to –

- (a) ensure harmony between national, county and sub-county spatial planning requirements;
- (b) facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county;
- (c) maintain a viable system of green and open spaces for sustainable environment;
- (d) harmonize the development of county communication system, infrastructure and related services;
- (e) develop urban and rural areas as integrated areas of economic and social activity;
- (f) provide the preconditions for integrating under-developed and marginalized areas to bring them to the level generally enjoyed by the rest of the county;
- (g) protect the historical and cultural heritage, artifacts and sites within the county; and
- (h) make reservations for public security and other critical national infrastructure and other utilities and services.

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- Obligation to plan by the county. **115.** (1) The county government is obligated to plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly;
- (2) The county planning framework shall integrate economic, physical, social, environmental and spatial planning;
- (3) The county government shall designate county departments, cities urban areas, wards and sub-counties as planning authorities of the county;
- (4) In the endeavour to promote public participation, non-state actors shall be incorporated in the planning processes by all authorities;
- (5) County plans shall be binding on all sub-county units for developmental activities within a County.
- Planning in the county. **116.** (1) A county planning unit that shall be responsible for;
- (a) coordinating integrated development planning within the county;
- (b) ensuring integrated planning within the county and across counties;
- (c) ensuring linkages between county plans and the national plan; and
- (d) ensuring meaningful engagement of citizens in the planning process.
- (2) The designated planning authority in the county shall appropriately organise for the effective implementation of the planning function within the county.
- Integrating national and county planning. **117.** (1) Cooperation in planning shall be undertaken in the context of Inter-Governmental Relations Act.
- (2) County plans shall be based on relevant national policies.
- (3) County plans shall take due cognisance of the financial viability of development programmes
- (4) County planning shall provide for citizen participation.
- Types and purposes of plans. **118.** (1) To guide, harmonize and facilitate development within each county there shall be the following plans –
- (a) county integrated development plan;
- (b) county sectoral plans;
- (c) county spatial plan; or
- (d) cities and urban areas plans as provided for under the Urban Areas and Cities Act.
- (2) The County plans shall be the basis for all budgeting and spending in a county.

County integrated
development plan.

119. (1) There shall be a five year county integrated development plan for each county which shall have—

- (a) clear goals and objectives;
- (b) an implementation plan with clear outcomes;
- (c) provisions for monitoring and evaluation; and
- (d) clear reporting mechanisms.

(2) Each county integrated development plan must at least identify -

- (a) the institutional framework, which must include an organogram, required for-
 - (i) the implementation of the integrated development plan; and
 - (ii) addressing the county's internal transformation needs;
- (b) as informed by the strategies and programmes set out in the plan-
 - (i) any investment initiatives in the county;
 - (ii) any development initiatives in the county, including infrastructure, physical, social, economic and institutional development;
 - (iii) all known projects, plans and programs to be implemented' within the county by any organ of state; and
 - (iv) the key performance indicators set by the county.

(3) An integrated development plan shall-

- (a) have attached to it maps, statistics and other appropriate documents; or
- (b) refer to maps, statistics and other appropriate documents that are not attached:

Provided that the plans under paragraph (a) and (b) are open for public inspection at the offices of the county in question.

(4) A resource mobilisation and management framework shall be reflected in a county's integrated development plan and must at least -

- (a) include the budget projection required under the County Government Financial Management Act;
- (b) indicate the financial resources that are available for capital project developments and operational expenditure; and
- (c) include a financial strategy that defines sound financial management and expenditure control: as well as ways and means of increasing revenues and external funding for the county and its development priorities and objectives, which strategy may address the following-
 - (i) Revenue raising strategies;

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- (ii) asset management strategies;
- (iii) financial management strategies;
- (iv) capital financing strategies;
- (v) operational financing strategies; and
- (vi) strategies that would enhance cost-effectiveness.

County sectoral plans.

120. (1) A County department shall develop a ten year county sectoral plan as component parts of the county integrated county development plan—

(2) The County sectoral plans shall-

- (a) be programme based;
- (b) be the basis for budgeting and performance management; and
- (c) be reviewed every five years by the county executive and approved by the county assembly, but updated annually

County spatial plans.

121. (1) There shall be a ten year county spatial plan for each county, which shall be a component part of the county integrated development plan providing

-

- (a) a spatial depiction of the social and economic development programme of the county as articulated in the integrated county development plan;
- (b) clear statements of how the spatial plan is linked to the regional, national and other county plans; and
- (c) clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

(2) The spatial plan, which shall be spatial development framework for the county, must-

- (a) give effect to the principles and objects contained in sections 113 and 114 of this Act;
- (b) set out objectives that reflect the desired spatial form of the county taking into account the development programme of the county as articulated in its integrated county development plan;
- (c) contain strategies and policies regarding the manner in which the objectives referred to in paragraph (b), which strategies and policies must-
 - (i) indicate desired patterns of land use within the county;
 - (ii) address the spatial construction or reconstruction of the county; and
 - (iii) provide strategic guidance in respect of the location and

nature of development within the county;

(iv) set out basic guidelines for a land use management system in the county taking into account any guidelines, regulations or laws as provided for under Article 67(2) (h) of the Constitution;

(v) set out a capital investment framework for the county's development programs;

(vi) contain a strategic assessment of the environmental impact of the spatial development framework;'

(vii) identify programs and projects for the development of land within the county; and

(viii) be aligned with the spatial frameworks reflected in development the integrated development plans of neighbouring counties.

(d) must indicate where public and private land development and infrastructure investment should take place;

(e) must indicate desired or undesired utilisation of space in a particular area;

(f) may delineate the urban edges of the municipalities within its jurisdiction and mechanisms of dealing with the rural urban interfaces;

(g) must identify areas where strategic intervention is required;

(h) must indicate areas where priority spending is required; and

(i) clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

(3) Each county spatial plan shall be developed by the county executive committee and approved by the respective county assemblies in accordance with procedures approved by the respective county assembly.

(4) Each county spatial plan shall be reviewed every 10 years and the revisions approved by the respective county assemblies.

City or Municipal plans.

122.(1) For each city and municipality there shall be the following plans—

(a) City or municipal land use plans;

(b) City or municipal building and zoning plans; and

(c) City or area building and zoning plans.

(2) The city or municipal plans shall be the instruments for development facilitation and development control within the respective counties.

(3) The city or municipal plans shall, within each city or municipality, provide for-

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- (a) functions and principles of land use and building plans;
- (b) location of various types of infrastructure within the city or municipality;
- (c) development control in the city or municipality within the national housing and building code framework.

(4) City or municipal land use and building plans shall be binding on all public entities and private citizens operating within the county

(5) City or municipal land use and building plans shall be the regulatory instruments for guiding and facilitating development within the county

(6) Each city or municipal land use and building plan shall be reviewed every 5 years and the revisions approved by the respective county assemblies.

Process for amending county integrated development plans.

123. (1) Only the county executive committee may introduce a proposal for amending the county's integrated development plan.

(2) An amendment to a county's integrated development plan shall be adopted by a decision taken by a county executive committee and approved by the county assembly in accordance with regulations developed by the county assembly

(3) A proposal for amending a county's integrated development plan shall be-

- (a) accompanied by a memorandum setting out the reasons for the proposal; and
- (b) aligned with the framework adopted in terms of section 114 of this Act.

(4) Where the amendment impacts on neighbouring counties, the county making the amendment to its to its integrated development plan shall-

- (a) consult all the affected county governments by the said the proposed amendment; and
- (b) take all comments submitted to it under paragraph (a) in that area into account before it takes a final decision on the proposed amendment.

(5) A county that considers an amendment to its integrated development plan shall -

- (a) consult the municipalities within the county on the proposed amendment; and
- (b) take all comments submitted to it by the municipalities into account before it takes a final decision on the proposed amendment.

(6) No amendment to a county's integrated development plan may be adopted by the county assembly unless-

- (a) all the members of the county assembly have been given

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reasonable notice;

- (b) the proposed amendment has been published for public comment for a period of at least twenty one days in a manner that allows the public an opportunity to make representations with regard to the proposed amendment.

Giving effect to the county integrated development plan.

124. (1) A county's integrated development plan shall -

- (a) inform the county's budget which must be based on the annual development priorities and objectives referred to in section 114 of this Act and the performance targets set by the county in terms of section 121 (d); and
- (b) be used to prepare action plans for the implementation of strategies identified by the county.

(2) Each county integrated development plan shall provide clear input, output and outcome performance indicators, including-

- (a) the percentage of households with access to basic services contemplated under Article 43 of the Bill of Rights of the constitution;
- (b) the percentage of a county's capital budget actually spent on capital projects identified for a particular financial year in terms of the county's integrated development plan;
- (c) the number of jobs created through any local economic development initiatives including capital projects; and
- (d) financial viability of the integrated development plan in accordance with nationally applicable ratios.

(3) Notwithstanding the provisions of subsection (2) above, the performance management system shall adhere to nationally applicable guidelines in this matter.

Planning for nationally significant projects in a county.

125. (1) Development of nationally significant development projects within counties shall be preceded by mandatory public hearings in each of the affected counties.

(2) Projects under subsection (1) shall, subsequent to the mandatory public hearings, be approved by the respective county assemblies

Public participation in county planning.

126. (1) Public participation in the county planning processes shall be mandatory and be facilitated through mechanisms provided for in Part VIII of this Act.

(2) In addition to the provisions on citizen participation in this act, citizens shall, as a basis for ensuring their effective participation, have a right to clear any unambiguous information on any matter under consideration in the planning process, including-

- (a) clear strategic environmental assessments;

- (b) clear environmental impact assessment reports;
- (c) expected development outcomes; and
- (d) development options and their cost implications

(3) Each county assembly shall develop regulations and laws giving effect to the requirement for effective citizen participation in development planning and performance management within the county and such guidelines and laws shall adhere to minimum national requirements.

PART XII— DELIVERY OF COUNTY PUBLIC SERVICES

Principles of public service delivery in a county.

127. (1) A county government and its agencies shall have an obligation to deliver services within its designated area of jurisdiction.

(2) A county shall be deliver services while observing the principles of equity, efficiency, accessibility, non-discrimination, transparency, accountability, sharing of data and information, and subsidiarity.

Standards and norms for public service delivery.

128. (1) A, county government and its agencies shall in delivering public services—

- (a) give priority to the basic needs of the public;
- (b) promote the development of the public service delivery institutions; and
- (c) ensure that all members of the public have access to at least the minimum level of basic services.

(2) Public services shall be equitably delivered in a manner that accords to—

- (a) prudent, economic, efficient, effective and sustainable use of available resources;
- (b) continuous improvement of standards and quality;
- (c) appropriate incorporation of the use of information technology; and
- (d) financial and environmental sustainability.

(3) A county government shall carry out regular review of the delivery of services with a view to improvement.

Shared services.

129. (1) A county may enter into an agreement with the national government, or another county, to provide or receive any service that each county participating in the agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purposes of any of the participating counties.

(2) Each county shall have a county shared services platform aligned to set national policies, standards and norms.

Citizen's Service Centre.

130. (1) A Governor shall in his or her county establish a Citizens Service Centre at-

- (a) the county;
- (b) the sub-county; and
- (c) the ward.

(2) A Citizens' Service Centre shall serve as the central office for the provision by the county executive committee in conjunction with the national government for the provision of public services to the county citizens.

(3) The Governor shall ensure the use of appropriate information and communication technologies at a Citizens' Service Centre to aid in the provision of timely and efficient services to the county citizens.

Tariffs and pricing of public services.

131. (1) A county government or any agency delivering services in the county shall adopt and implement a tariffs and pricing policy for the provision of public services

(2) A county government or agency delivering services through service delivery agreements, shall comply with the provisions of this Section.

(3) A tariff policy adopted under subsection (1) shall reflect following guidelines —

- (a) users of county services should be treated equitably in the application of tariffs, fees, levies or charges;
- (b) the amount individual users pay for services should generally be in proportion to their use of that service;
- (c) poor households shall have access to at least basic services through—
 - (a) tariffs that cover only operating and maintenance costs;
 - (b) special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or

- (c) any other direct or indirect method of subsidies of tariffs for poor households;
 - (d) tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;
 - (e) tariffs must be set at levels that facilitate the financial sustainability of the service, taking into account subsidy from sources other than the service concerned;
 - (f) provision may be made in appropriate circumstances for a surcharge on the tariff for a service;
 - (g) provision may be made for the promotion of local economic development through special tariffs for categories of commercial and industrial users;
 - (h) promotion of the economic, efficient, effective and sustainable use of resources, the recycling of waste, and other appropriate environmental objectives ;and
 - (i) Full disclosure of the subsidies on tariffs for poor households and other categories of users.
- (3) A tariff policy may differentiate between different categories of users, debtors, service providers, services, service standards, geographical areas and other matters as long as the differentiation does not amount to unfair discrimination.
- (4) A County government may make laws and regulations to give effect to the implementation and enforcement of tariff policies.

PART XIII –TRANSFER OF FUNCTIONS

Power to transfer or delegate powers, functions and competencies

- 132.** Subject to Article 185 of the Constitution, a county government shall have the power to transfer and delegate functions to the following -
- (a) national government or another county government;
 - (b) joint committees, authorities or companies; or
 - (c) Sub-county, wards or village units.

Principles of transfer or delegation of powers, functions and competencies.

- 133.** The following principles shall inform the processes and decisions of delegation of powers, functions and competencies, namely—
- (a) subsidiarity to ensure that powers, functions and competencies are assigned to the level of government best placed to perform them;

- (b) transferability of functions between the various levels of government by agreement between the various levels of government or to other entities accompanied by the appropriate resources to perform those functions;
- (c) equal protection and non-discrimination through development of and enforcement of rules, regulations, or ordinances that do not discriminate and which apply with equal protection to all facets of the population;
- (d) preemption by development and enforcing laws, rules and regulations that are not in conflict with laws, policies or regulations of a higher authority;
- (e) due process by ensuring that procedural functions of county governments whether legislative, administrative or quasi-judicial, to accord due process by confirming to fundamental principles of justice and constitutional guarantees;
- (f) reasonableness through ensuring that no action of county governments is arbitrary or excessive in scope;
- (g) adequacy by ensuring that the capacity of the recipients of delegated functions, powers and competencies is commensurate with their legal responsibilities; and
- (h) ensuring that receiving entities are financially and fiscally empowered through alignment of finances with functions.

Agreements covering transfer of functions.

134. (1) There shall be explicit “memoranda of agreement” between the various levels of government when powers, functions, or competencies are being transferred from—

- (a) national to county governments;
- (b) county to national governments; or
- (c) county governments to municipalities.

(2) Each agreement between the various levels of government in respect of transfer of functions make specifications to the items, including clear statements on--

- (a) the transferring entity;
- (b) the receiving entity;

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- (c) the functions, powers or competencies being transferred;
 - (d) the specific legal provisions supporting the transfer of functions, powers or competencies;
 - (e) the reasons for the transfer of the functions, powers or competencies;
 - (f) the performance standards and frameworks in respect of the functions, powers or competencies being transferred;
 - (g) the resourcing framework for delivery of the functions, powers or competencies being transferred;
 - (h) the capacity of the receiving entity to perform the functions, powers or competencies being transferred; or
 - (i) a capacity building framework for enhancing any deficits identified in the receiving entity
- (3) The agreement shall be signed by the governor and be published in the Gazette at least fourteen days before the effective date of transfer of powers, functions and competencies.

Standards.

- 135.** (1) For each power, function or competency, there shall be minimum service standards or norms of performance that shall be jointly determined between the national and county governments through the various intergovernmental structures.
- (2) These minimum service standards or norms of performance shall form the basis of allocation of resources between the various levels of government.

Criteria for transferring powers, functions and competencies.

- 136.** The criteria for transferring powers, functions and competencies shall include—
- (a) any technical, operational or financial factors which imply transfer suitability;
 - (b) the capacity of the receiving entity or entities;
 - (c) comparative assessment of the capacity or potential capacity of the administrator's department and the entity or entities;
 - (d) the extent to which the transfer would allow for greater accountability;
 - (e) the extent to which the function requires a single authority across a whole county, municipality or across the Republic;
 - (f) the extent to which there would be any benefit in terms of cost or efficiency in managing the function broadly across a whole county, municipality or across the Republic;

- (g) a high-level of technical and managerial expertise is required;
- (h) the provision of the service or function requires substantial crossing of boundaries or large-scale bulk infrastructure;
- (i) appropriateness in terms of any other factor which is reasonably considered relevant;
- (j) the implications for inter-governmental fiscal arrangements; and
- (k) the transfer costs relating to staff, assets and professional or expert advice.

Costing of functions.

- 137.** (1) Each power, function and competency shall be appropriately costed.
- (2) There shall be determined, through the various intergovernmental structures, and in consultation with the Commission on Revenue Allocation appropriate frameworks for costing of functions and competencies.
- (3) Each public entity shall provide accurate information relating to the costs of delivering a specific power, function or competency assigned or transferred to them.

Adjustments to powers, functions and competencies.

- 138.** (1) Powers, functions and competencies assigned or transferred to various levels of government shall be reviewed once every five years.
- (2) Review of the assignment or transfer of functions between the different levels of government shall take into account factors including--
- (a) requirements for integrated and holistic development and growth;
 - or
 - (b) the term of office of the various governments.
- (3) The process of determining adjustments in the assignment or transfers of powers and functions shall be consultative and shall include—
- (a) mandated public hearings;
 - (b) stakeholder forums comprised of the national government, county governments, interested civil society and faith based groups;
 - (c) provision of clear and accurate information to facilitate decision making; and
 - (d) performance and capacity reports of public entities currently performing and potentially likely to receive powers, functions or competencies.
- (4) There shall be conducted annual capacity assessments of each of the entities that has been assigned powers, functions and competencies.

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(5) Capacity assessments shall clearly make statements regarding, including, the following matters—

- (a) clear definition of each power, function or competency;
- (b) the type of capacity needed to perform that power, function or competency;
- (c) the entities currently performing that power, function or competency and their current capacities;
- (d) the current status of performance in respect of the said power, function or competency including existing levels of service;
- (e) the existing capacity deficits and measures needed to close that deficit;
- (f) recommendations on proposed adjustments to the power, function or competency; and
- (g) any other matter relevant and connected thereto.

(3) Notwithstanding the provisions of this section, no review shall undermine the integrity of the levels of government as established under this constitution.

Capacity to receive functions.

139. A County government's capacity to receive a power, function or competency shall be determined by various factors, including—

- (a) whether an entity is currently performing a function;
- (b) staffing arrangements;
- (c) financing arrangements;
- (d) infrastructure to deliver; and
- (e) any other relevant function.

Transfer of assets and liabilities.

140. Each adjustment to powers, functions and competencies shall also include provisions for the appropriate mechanisms for the management of a transfer of the necessary assets and liabilities.

Transition from existing local authorities.

141. A governor of a county shall, proclaim an order in the Gazette announcing the transfer of functions from existing local authorities within a county to newly established decentralised units.

PART XIV—PROCEDURE FOR SUSPENSION OF COUNTY GOVERNMENT

Grounds for suspension arising from conflict or war.

142. (1) The President may suspend a county government in circumstances of conflict or war occasioning breakdown of peace and public order and threatening to violate or violates human rights and safety of citizens.

(2) The President shall, within fourteen days upon receiving a complaint or petition against a county Government under sub-section one (1) above, submit a report on the averments made and grounds giving rise to suspension of a county government before the National and County Government Coordinating Council (in this Part referred to as the Coordinating Council) established under the Inter-Governmental Relations Act for approval.

(3) Upon approval by the Coordinating Council the President shall by notice in the Gazette suspend the county government for a period not exceeding ninety days.

Suspension of County Government in exceptional circumstances.

143. (1) Any person may petition the the president to suspend a county government when the county government engages in actions which are deemed to be against the common needs and interests of the citizens of a county.

(2) The President shall, within fourteen days upon receiving a complaint or petition against a county government under sub-section one (1) above, submit a report on the averments made and grounds giving rise to suspension of a county government before the Coordinating Council for approval.

(3) Upon approval by the Coordinating Council the President shall, nominate members of a Commission to inquire into and investigate the situation in the county, and make recommendations on the suspension of the county government, and shall, after approval by Senate, appoint the members of the Commission by notice in the Gazette.

(4) The Commission shall comprise of—

- (a) a chairperson, who shall be an advocate of the High Court of Kenya with at least fifteen years' experience;
- (b) the inspector General of the National Police Service; and
- (c) two persons resident in the affected county and who have not for the last ten years stood for elective office in the affected county government, or been an officer or employee of the affected county government;
- (d) two other persons not resident in the affected county with experience in conflict management.

(5) The Commission shall have vested in it all or any of the powers vested in a Commission under the Commissions of Inquiry Act, and at any inquiry directed under this section, the county government in question and any

member thereof shall be entitled to be heard.

(6) The Commission shall inquire into the matters before it expeditiously and report on the facts and make binding recommendations to the President.

(7) Upon receipt of the report of the Commission of Inquiry and upon being satisfied that justifiable grounds exist for suspension of a county, the President shall within seven days forward the report and the recommendations of the Commission of Inquiry, together with a petition for suspension of the county government to the Speaker of the Senate.

(8) The Speaker shall cause a motion to be laid for the suspension of the before Senate within seven days, and approval by Senate shall be a resolution of two-thirds majority of the voting members of Senate in accordance with provisions of Article 123 of the Constitution.

(9) Upon approval by Senate, the President shall, by notice in the Gazette, suspend the county government for a period not exceeding ninety days.

Prorogation of the County Assembly.

144. (1) During the period of suspension of a county government, the County Assembly shall stand prorogued.

(2) During a period of suspension, the speaker, deputy speaker, and members of the county assembly shall remain in office and shall retain their half benefits.

(3) All Bills introduced before the county assembly and that have not received assent prior to suspension shall expire and shall be re-introduced as new bills upon the cessation of suspension.

(4) County assembly committees shall be dissolved during the period of suspension and shall be reconstituted upon the cessation of suspension.

(5) The prorogation of the county assembly shall come to an end—

- (a) upon the suspension by Senate as provided in this Act;
- (b) upon the expiry of ninety days; or
- (c) upon the publication of a notice on the holding of the election of the county assembly in the Gazette by the Independent Electoral and Boundaries Commission according to the provisions of the Elections Act.

Suspension of the County Executive Committee.

145. (1) During the period of suspension of a county government the functions of the county executive committee shall be suspended and its functions shall be undertaken by an interim county management board.

(2) During a period of suspension, the governor, deputy governor and members of the executive committee shall receive their half benefits.

Establishment of the
Interim County
Management Board.

146. (1) An interim county management board for a suspended county shall be appointed by the President by notice in the Gazette.

(2) The Interim County Management Board shall comprise of –

- (a) a chairperson appointed by the President, and with the approval of Senate;
- (b) not less than three but not more than five other members appointed by the Cabinet Secretary in charge of county governments; and with the approval of Senate.

(3) A person shall qualify for appointment as a chairperson or a member of the Board if such a person—

- (a) is a resident of the county in question;
- (b) has knowledge, expertise and reasonable experience in management of the security sector or management of the private or public sector, and in addition a degree from a recognised university;
- (c) is not and has not for the last five years stood for elective office in the suspended county government, or been an officer or employee of the suspended county government.

(4) The Board may with approval of the President co-opt not more than three members with specialized knowledge or expertise to assist in the discharge of specific functions of the board and on such terms as the President may specify.

Functions of the interim
county management board.

147. (1) The interim county management board shall have all powers and functions vested in the county executive committee under the Constitution and under this Act for the performance of its functions and, in particular

(2) Without prejudice to the provisions of subsection (1), the Board shall have power to —

- (a) assist the county government in setting up a programme for complete restoration of protection of human rights, peace, security and public order;
- (b) work closely with the county administration in improving the general governance and service delivery;
- (c) summon any member, officer or employee of county government or any other person to appear before the board concerning matters relevant to its functions;
- (d) summon any member, officer or employee of county

government or any other person to produce any books or documents relating to the functions of the board;

- (e) require the county government to provide additional information or to explain any inconsistency, where the board determines, based on information it may have obtained;
- (f) hear and receive evidence and examine witnesses; and
- (g) issue instructions in writing to members, officers and employees of the county government for the better implementation of its functions;

(3) Any person who, without reasonable excuse--

- (a) neglects or refuses to comply with the summons issued by the Board;
- (b) having appeared, refuses to be examined on oath or affirmation or to take such oath or affirmation;
- (c) having taken such oath or affirmation, refuses to answer fully and satisfactorily, to the best of his knowledge and belief, all questions put to him; or
- (d) knowingly and wilfully gives any evidence which is untrue in any material particular,

commits an offence and shall be liable on conviction, for every such neglect or refusal, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year.

(4) The members of the Board shall be paid allowances to cater for their expenses as such reimbursement for reasonable and necessary expenses as shall be advised by the Salaries and Remuneration Commission.

(5) The Cabinet Secretary in charge of county governments shall provide such staff as may be necessary for purposes of the performance of the functions of the board.

(6) No member of the suspended county government shall exercise any supervisory or oversight control over the functions of the Board or its activities.

(7) No matter or thing done by a member of the board, or by any officer, or agent of the board shall, if the matter or thing is done in good faith for the due execution of the functions, powers or duties of the board under this act, render such member, officer, or agent personally liable to any legal action, claim, demand or liability whatsoever.

(8) The interim county management board shall within ninety days of

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appointment prepare and submit to the President a report of its activities and its recommendations.

Dissolution of the Interim
County Management
Board.

148. The President shall by notice in the Gazette dissolve an interim county management board upon the new county government coming to office after holding elections pursuant to Article 192 (6) of the Constitution.

Termination of suspension.

149. (1) The suspension of a county government shall be terminated in the following ways—

- (a) in the circumstances described in sub-section (1) and (3) of section 142;
- (b) upon termination by Senate by a resolution of a two-thirds majority vote of all the members of the Senate.

County Elections after
Suspension.

150. (1) Notwithstanding the provisions of section 149, elections for a suspended county shall be held within ninety days of suspension.

(2) The Independent Electoral Commission shall cause elections of the County governor and county assembly to be held in the affected county according to the provisions of the Elections Act.

PART XV—MISCELLANEOUS

Financial provision.

151. The financial provisions shall be as is provided –

- (1) The funds and financial management of county governments shall be as is provided under the County Government Financial Management Act.
- (2) The procedure of budgeting on borrowing powers and grants management shall be as stated in the Intergovernmental Fiscal Relations Act.

Protection against personal
liability.

152. (1) No act, matter or thing done or omitted to be done by –

- (a) any member of the county government or its administration board or committee;
- (b) any member of the county assembly;
- (c) any member of staff or other person in the service of the county government ; or
- (d) any person acting under the direction of the county government,

shall, if that act, matter or thing was done or omitted in good faith in the execution of a duty or under direction, render that member or person personally liable to any civil liability.

(2) A person who is not exempted from liability under subsection (1) who

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directs or concurs in the use of funds contrary to existing legal rules or instructions shall be accountable for any loss arising from that use and shall be required to make good the loss even if that person has ceased to hold office.

Repeal of Cap.265.

153. (1) The Local Government Act is repealed upon the final announcement of all the results of the first elections held under the Constitution

(2) All issues that may arise as a consequence of the repeal under subsection

(1) shall be dealt with and discharged by the Independent Transition Authority.

Regulations.

154. The cabinet secretary may make regulations for the better carrying out of the purposes and provisions of this Act and such regulations may be made in respect of all county governments and lower devolved governments generally or for any class of county or lower devolved governments.

PART XVI— TRANSITIONAL PROVISIONS

First sitting of the county assembly.

155. (1) The first sitting of a county assembly after the first election under the Constitution, shall take place at a time, place and date determined by the Independent Electoral and Boundaries Commission, which date shall not be later than fourteen days after the results of the elections have been gazetted.

(2) The Chief Justice shall designate a judge to swear in the members and the speaker elected at the meeting under subsection (1).

Civic education facilitation.

156. (1) In the period preceding establishment of county governments under Article 176 of the Constitution, the design, coordination and implementation of civic education shall be facilitated by the Ministries responsible for matters of civic education, devolution and county governments and such other programmes.

(2) For the purposes of this Section and for the avoidance of doubt, the Ministries responsible for matters of civic education, devolution and county governments respectively shall be responsible for the design and coordination of overall civic education on devolution as provided for in this Act.

(3) The Ministries specified under subsection (2) shall, create capacity and facilitate the county governments to effectively assume their responsibilities in the delivery of civic education in the county.

Arrangements for public servants.

157. (1) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is serving in a county on the date of the constitution of

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that county government shall be deemed to be in the service of the county government on secondment from national government with their terms of service as at that date and—

- (a) the officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage; and
 - (b) the officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal; and
 - (c) the officer's terms and conditions of service may be altered to their advantage.
- (2) Every public officer holding or acting in a public office to which the commission had appointed the officer as at the date of the establishment of the county government shall discharge those duties in relation to the relevant functions of the county government or national government as the case may be.
- (3) The Transitional Authority acting in consultation with the Public Service Commission and relevant ministries shall facilitate the redeployment, transfers and secondment of staff to the national and county governments.
- (4) The provision under (2) shall not preclude—
- (a) the county public service board or other lawful authority from promoting or appointing the officer to another public office in the county; or
 - (b) re-deployment by the relevant lawful authority.
- (5) The period of secondment under (1) will cease upon the transfer of a public officer from the national government to a county government or upon the release of an officer by the county government to the national government.
- (6) Appointment of a public officer by the commission includes appointment of a public officer on powers delegated by the commission.

SCHEDULE

OATHS OF OFFICE

Oath of Office for Governor/Deputy Governor

I , do swear/solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office the executive committee member of ----- county ; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will at all times, when so required, faithfully and truly give my counsel and advice to the governor of the ----- county; that I will do justice to all. (So help me God)

Oath of Office for Speaker/Deputy Speaker

I,....., having been elected as Speaker/Deputy Speaker of the County assembly of County do swear (in the name of the Almighty God) (solemnly affirm) that I will bear true faith and allegiance to the people and the Republic of Kenya; that I will faithfully and conscientiously discharge my duties Speaker/Deputy Speaker of the assembly; that I will respect, uphold, preserve, protect and defend this Constitution of the Republic Kenya; and that I will do right to all manner of persons in accordance Constitution of Kenya and the laws and conventions of Parliament fear or favour, affection or ill will (So help me God)

Oath of Office for County Assembly Clerk

I , do swear/solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office of the Clerk of the County assembly in county; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will at all times, when so required, faithfully and truly give my counsel and advice to the speaker of the county assembly ofcounty; that I will do justice to all. (So help me God)

Oath of Office for County Executive Committee Member

I , do swear/solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office the executive committee member of county ; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will at all times, when so required, faithfully and truly give my counsel and advice to the governor of the county; that I will do justice to all. (So help me God)

Oath of Office for County Assembly Committee Members

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I , do swear/solemnly affirm that I will always truly and diligently serve the people and the Republic of Kenya in the office of County Assembly committee member of county ; that I will diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I will at all times, respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I will do right to all manner of persons in accordance with the Constitution of Kenya and the laws and conventions of Parliament , that I will do justice to all (So help me God)

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to Chapter Eleven of the Constitution and to provide for the functions and staffing of the county government. It also provides for the forums for citizen participation and also provides for civic education. The Bill fulfils the requirement of Article 200 of the Constitution that specifies matters which requires to be legislated on, with regard to the devolved government.

PART I provides for preliminary matters.

PART II and III provides for functions and powers of the county governments including the county assembly. Clause 9 provides for responsibilities of a county assembly member while undertaking his constitutional functions.

PART IV provides for the delimitation of the electoral wards and the involvement by of the community by the Independent Electoral and boundaries Commission in reviewing of boundaries.

PART V contains provisions on the county executive. Clause 30 provides for the procedure the governor shall use while nominating the members of the county executive committee by taking into consideration the diversity of the county. Clause 40 establishes the office of the county chief secretary who shall be in charge for the county public service. Clause 41 establishes the office of the county principal secretary whose function shall be to administer a county department.

PART VI provides for decentralised units. Clause 44 provides for decentralised units to include urban areas and cities, sub county units, ward, and village units. Clause 46 establish the office of the sub county administrator whose functions shall *inter alia* be to co-ordinate, manage and be in charge of the general administration of the sub county unit.

PART VII contains the county public service and the county chief secretary shall be the overall in charge of the county public service. Article 235 of the Constitution provides for the function of a public service and Clause 54 establishes the county public service board. Clause 57 provides for the criteria for establishment of offices in the county public service.

PART VIII contains provisions on citizen participation .Clause 89 provides for the principles of citizen participation in counties. Clause 95 provides establishment citizen participation forums.

PART IX contains public communication and access to information. Clause 101 provides for the principles of public communication. Clause 103 establishes the county communication frameworks.

PART X contains civic education .Clause 109 establish the institutional framework for civic education to be undertaken in counties which comprise of civic education committee at each county administrative unit. Clause 112 establishes a county civic education implementation unit which shall be headed by a programme director with professionals to run and manage the day to day affairs of the unit.

PART XI contains the county planning .Clause 119 sets out the contents of the five year county integrated development plan. Clause 120 provides for a ten year sectoral plans and Clause 121 contains a ten year county spatial plan. Clause 126 provides for the requirement for public participation in county planning.

PART XII contains delivery of county public services. Clause 128 contains the standards and norms for public service delivery. Clause 129 provides for that a county may enter into an agreement with the national or with another county on shared services.

PART XIII contains the transfer of functions. Clause 134 provides for details of agreements between governments while transferring functions. Clause 136 provides for the criteria for transferring powers, functions and competencies.

PART XIV contains the procedure for suspension of a county government .Clause 142 provides for grounds for suspension arising from conflict or war. Clause 146 establishes the interim county management board which shall manage the affairs of a county during suspension of the county government.

PART XV contains miscellaneous provisions. Clause 152 protects officials of the county government against personal liability.

PART XVI contains the transitional provisions. Clause 155 provides for the first sitting of the county assembly. Clause 156 provides for civic education during the transition period.

The enactment of the Bill shall occasion additional expenditure of public funds which shall be provided for in the estimates.

Dated theday of.....2011.

MUSALIA MUDAVADI,
Minister for Local Government.