

The Transition to Devolved Government Bill, 2011

THE TRANSITION TO DEVOVED GOVERNMENT BILL, 2011

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THE TRANSITION TO DEVOLVED GOVERNMENT BILL, 2011

A Bill for

AN ACT of Parliament to provide for a framework for transitional arrangements and processes for the establishment and operationalization of devolved government; the phased transfer of functions and powers; and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

PART I – PRELIMINARY

Short title. **1.** This Act may be cited as the Transition to Devolved Government Act, 2011.

Interpretation. **2.** (1) In this Act unless the context otherwise requires—

“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;

“authority” means the County Transition Authority established under section 4 of this Act;

“cabinet secretary” means the Cabinet Secretary responsible for matters relating to devolved government;

“chairperson” means the chairperson of the Authority appointed under section 5 of this Act;

“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;

“member” means a member of the Authority appointed under section 5 of this Act;

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“transition period” means the period between the coming into force of this Act and the 14th day of August, 2015.

(2) For the period prior to the announcement of the results of the first elections of Parliament as contemplated by section 2 of the Sixth Schedule to the Constitution, references in this Act-

- (a) to a Cabinet Secretary shall be construed to be a reference to a Cabinet Minister responsible for local government;
- (b) to a Principal Secretary shall be construed to be a reference to a Permanent Secretary.

Objects and purposes of the Act.

3. The objects and purposes of this Act are to-

- (a) provide a legal and institutional framework for a coordinated transition to devolved government while ensuring continuity of service to citizens;
- (b) provide, pursuant to section 15 of the Sixth Schedule to the Constitution, for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them under Article 185 of the Constitution.
- (c) provide for the way in which the national government shall—
 - (i) facilitate the devolution of power;
 - (ii) Assist the Commission for the Implementation of the Constitution in the review of bills that require revision to ensure they are consistent with the constitutional provisions on devolution;
 - (iii) assist county governments in building their capacity to govern effectively and provide the services for which they are responsible;
 - (iv) support county governments during the transition process;

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- (d) provide for policy and operational mechanisms during the transition period for audit, verification and transfer from central and local governments to national and county governments of;
 - (i) assets and liabilities;
 - (ii) personnel ;
 - (iii) pensions and other benefits of personnel of central government and local authorities;
 - (iv) or any other matters connected thereto
- (e) provide for closure and transfer of public records;
- (f) facilitate the asymmetrical devolution of powers to ensure that functions are devolved promptly to counties that have the capacity to perform them but that no county is given functions it cannot perform.
- (g) Identify the capacity building requirements of the different county governments and make arrangements for the gaps to be addressed.

PART II—THE COUNTY TRANSITION AUTHORITY

Establishment of the Authority.

4. (1) There is established an authority to be known as the County Transition Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of –

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution and this Act as may be lawfully done or performed by a body

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corporate.

Membership of
the Authority.

- 5.** (1) The Authority shall consist of the following members;—
- (a) a Chairperson and eight members appointed by the President on the recommendation of the Cabinet Secretary responsible for devolved government;
 - (b) the Principal Secretary in the Ministry responsible for devolved government;
 - (c) the Principal Secretary in the Ministry responsible for public service;
 - (d) the Principal Secretary in the Ministry responsible for finance;
 - (e) the Principal Secretary in the Ministry responsible for justice;
 - (f) the Attorney General who shall be ex-officio with no right to vote.

(2) The Chairperson and members appointed under paragraph (a) of subsection (1) shall serve on a full-time basis.

Appointment
and
qualifications for
chairperson and
members.

6. (1) The procedure for the appointment of the Chairperson and members of the Authority under section 5 (1) (a) of this Act is as set out in the First Schedule of this Act.

(2) The Chairperson of the Authority shall be appointed from amongst persons qualified to hold the office of a Judge of the Supreme Court under the Constitution.

(3) A person shall be qualified for appointment as a member of the Authority if such person-

- (a) holds a degree from a recognised university;
- (b) has at least ten years post qualification professional experience; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

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(4) A person shall not be qualified for appointment as a member of the Authority if such person—

- (a) is a member of Parliament or county assembly; or
- (b) is a member of a Commission established by the Constitution; or
- (c) is a member of the executive organ of a political party.

Conduct of business and affairs of the Authority.

7. (1) The conduct and regulation of the business and affairs of the Authority shall be as set out in the Second Schedule of this Act.

(2) Except as provided in the Second Schedule, the Authority may regulate its own procedure.

Oath of office.

8. The Chairperson, members and secretary of the Authority shall each take and subscribe to the oath or affirmation as set out in the Third Schedule of this Act.

Functions of the Authority

9. (1) The primary function of the Authority shall be to facilitate a coordinated transition to the first elected county governments.

(2) Notwithstanding the generality of subsection (1) the Authority shall-

- (a) facilitate a comprehensive and effective transfer of functions as provided for under paragraph 15 of the Sixth Schedule of the Constitution;
- (b) carry out an audit of the existing assets and infrastructure of the national government and local authorities with respect to the devolved functions and oversee their reallocation, disposal or transfer to either level of government;
- (c) carry out an audit of the existing human resource in the national government and local authorities and advise on effective and efficient rationalization and deployment of the human resource to either level of government;
- (d) determine the capacity needs of county governments and undertake the necessary measures to ensure that they have adequate capacity within the three years to enable them undertake the assigned functions;

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- (e) carry out an audit of ongoing reform processes, development programmes and projects and advise on their coordinated management, reallocation or transfer to either level of government during the transition period;
- (f) facilitate the transfer of assets, liabilities and staff of national government and local authorities to county governments;
- (g) facilitate asymmetric transfer of functions to county governments;
- (h) monitor and report to the Commission on Implementation of the Constitution and the Commission on Revenue Allocation through the Cabinet Secretary on continuity of services and ensure efficient transfer of service provision during the transition period;
- (i) coordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- (j) advise county governments in developing inter-governmental agreements relating to transfer of functions;
- (k) liaise with government agencies and other training institutions to develop and implement capacity building training programmes to ensure adequate capacity of national and county government staff to perform their functions;
- (l) facilitate the implementation of civic education as provided for in the Devolved Government Act
- (m) coordinate with any government ministry, department, commissions or agency to ensure a successful transition to county governments;
- (n) facilitate classification of urban areas and confirmation of city, municipality and town status;
- (o) perform any other function as may be assigned by national or county government legislation.

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Transition
phases.

(3) In the exercise of its functions, the Authority shall be answerable to the cabinet secretary responsible for devolved government.

10. (1) In performing its functions under section 9, the Authority shall programme its work in two phases as set out in the Fourth Schedule of this Act.

(2) The first phase of the transition period shall start upon the commencement of this Act to the first election under the Constitution and shall include the following activities-

- (a) audit of assets and liabilities of local authorities;
- (b) audit of staff of central government and local authorities;
- (c) civic education on devolved governments;
- (d) assist in the preparation of county budgets;
- (e) preparation of county profiles;
- (f) analysis of functions.
- (g) classification of cities, municipalities and towns.

(3) The second phase shall be the period of not more than three years after the first election as provided for in paragraph 15 of the Sixth Schedule of the Constitution and shall include the following activities-

- (a) capacity building of county governments;
- (b) transfer of functions from national to county governments;
- (c) continuous review of performance of county governments;
- (d) evaluation and reporting on the progress of implementation of Devolution.

(4) The Authority shall implement the devolution transition programme referred to in subsection (1) in consultation with the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation.

Powers of the
Authority.

11. The Authority shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without

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prejudice to the generality of the foregoing, the Authority shall have power to –

- (a) control, supervise and administer its assets in such manner that best promotes the purpose for which the Authority is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) open such banking accounts for its funds as may be necessary;
- (e) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 24 ;
- (f) gather relevant information, including requisition of reports, records, documents or any information from any source, including governmental authorities, and to compel the production of any information as and when necessary;
- (g) interview any individual, group or members of organizations or institutions.
- (h) hold inquiries for the purposes of performing its functions under this Act;
- (i) undertake any activity necessary for the fulfilment of any of its functions.

Guiding principles.

12. In the performance of its functions or the exercise of powers conferred by this Act, the Authority shall—

- (a) exercise its functions subject to chapter 6 of the Constitution;
- (b) be accountable to the people of Kenya and ensure their participation in its affairs;
- (c) facilitate the transition in a transparent, objective and fair manner;

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- (d) promote and sustain fair procedures in its functioning and operations;
- (e) have the technical and administrative competence to ensure that the requirements of the transition process are fulfilled;
- (f) adhere to its code of conduct and ethics as may be prescribed;
- (g) be non-partisan and non-political in its orientation and in its operations; and
- (h) apply and promote such other positive values as the Authority may be prescribed.

Secretary to the Authority.

13 (1) There shall be a secretary to the Authority who shall be competitively recruited and appointed by the Authority in accordance with this section.

(2) The Secretary shall be hired on such terms and conditions as the Authority may determine upon advice by the Salaries and Remuneration Commission.

(3) No person shall be qualified for appointment as a secretary unless that person —

- (a) holds at least a degree from a recognised university or its equivalent;
- (b) has at least five years' post-qualification experience;
- (c) has demonstrated competence in the performance of administrative duties for not less than five years; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(4) The secretary shall be the chief executive and accounting officer of the Authority and shall serve on a full-time basis.

(5) As the chief executive officer, the secretary shall be responsible to the Authority for—

- (a) the implementation of functions of the Authority;

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- (b) the formation and development of an efficient administration;
- (c) the organization, control and management of staff;
- (d) maintaining accurate records on financial matters and resource use;
- (e) ensuring the drawing up and approval of the required budget; and
- (f) performing any other duties as may be assigned by the Authority from time to time.

(6) The secretary may be removed from office by the Authority in accordance with the terms and conditions of service, for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or negligence of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

(7) Before the secretary is removed under subsection (6), the secretary shall be given an opportunity to be heard on any allegations against them.

Staff of the Authority.

14. (1) The Authority may appoint such officers and other staff as are necessary for the proper discharge of the functions of the Authority under this Act.

(2) The Authority may request for the secondment of such public officers as it may deem necessary for the performance of its functions.

(3) A public officer who is seconded to the Authority under subsection (1) shall, during the secondment, be deemed to be an officer of the Authority and subject to its direction and control.

Terms and conditions of service for members and

15. (1) The Authority shall pay to its members and staff such salaries, benefits and allowances for expenses as it may upon the advice of the Salaries and Remuneration Commission determine.

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staff.

Code of conduct. **16.** (1) The Authority shall develop and recommend to the minister a code of conduct for the members and staff of the Authority.

(2) No member or staff of the Authority shall transact any business or trade with the Authority.

(3) A person who serves on the Authority as the chairperson, deputy chairperson, member or secretary shall be precluded from being elected or appointed to a county government office for a period of five years from the end of the transition period.

Delegation by the Authority.

17. The Authority may, by resolution either generally or in any particular case, delegate to any committee or member of the Authority or to any officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

Protection from personal liability

18. No matter or thing done by a member of the Authority or any officer, employee or agent of the Authority shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

Common seal.

19. (1) The common seal of the Authority shall be kept in such custody as the Authority may direct and shall not be used except on the order of the Authority

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Secretary and any document not required by law to be made under seal and all decisions of the Authority may be authenticated by the signatures of both the Chairperson and the Secretary.

(3) Notwithstanding the provisions of subsection (2) the Authority shall, in the absence of either the Chairperson or the Secretary in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Secretary.

(4) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Authority under this section shall be presumed to have been duly

given.

PART III— FINANCIAL PROVISIONS

Funds of the Authority.

20. (1) The funds of the Authority shall comprise of –

- (a) such sums as may be appropriated by parliament towards the expenditure of the Authority in performance of its functions and exercise of its powers ;
- (b) such fees, monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (c) all monies from any other lawful source provided for or donated or lent to the Authority.

(2) The receipts, earnings or accruals of the Authority and the balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained for purposes of this Act.

Financial year.

21. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

22. (1) At least three months before the commencement of each financial year, the Authority shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall include –

- (a) the payment of the salaries, allowances and other charges in respect of members and staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority;

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(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Authority may deem appropriate, and

(f) any other general expenditure relating to the operations of the Authority.

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Authority shall not increase the annual estimates without the consent of the Cabinet Secretary.

Accounts and
audit.

23. (1) The Authority shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.

(2) Within a period of four months after the end of each financial year, the Authority shall submit to the Auditor-General or to an auditor appointed by the Auditor General, the accounts of the Authority together with-

(a) a statement of the income and expenditure of the Authority during that year; and

(b) a balance sheet of the Authority on the last day of that year.

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(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003.

Investment of
funds.

24. The Authority may invest any of its funds in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART IV— PHASED TRANSFER OF FUNCTIONS

Procedure for
phased transfer
of functions.

25. (1) Every county government shall make a request to the Authority for a transfer of a function in accordance with paragraph 15 of the Sixth Schedule to the Constitution in the prescribed manner.

(2) The Authority shall, upon the request of a county government

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under subsection (1), determine whether a county government meets the prescribed criteria to enable the transfer of a function.

(3) The Authority shall expeditiously consider and dispose of any application under subsection (2) and shall in any case make its determination within sixty days of receipt of such application.

(4) A decision of the Authority under subsection (3) shall be in the form of an objective capacity assessment report which shall contain the function which is the subject of the application and the concise reasons on which the determination is based.

(5) Where the Authority determines that a county government does not meet the criteria for a transfer of function under Section 26 of this Act, it shall propose clear and proactive measures to build the capacity of the county government during the transition period to enable the county government assume their functions.

Criteria for
transfer of
function

26. The criteria referred to under section 25 shall include but not limited to —

- (a) the existence of draft legislation relating to the function applied for;
- (b) whether a framework for service delivery has been put into place to implement the function;
- (c) taking due cognisance of the need for shared services;
- (d) whether, where applicable, the county government has identified or established administrative units related to the function;
- (e) whether the county government has undertaken a capacity assessment in relation to the function;
- (f) the arrangements for and the extent of further decentralization of the function and provision of related services by the county government;
- (g) whether the county government has the requisite infrastructure to deliver the function;
- (h) whether the county government has the necessary financial management systems in place;
- (i) whether the county government has an approved budget in relation

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to the function; and

- (j) any other variable as may be prescribed after consultations between the Authority, county governments and the Commission on the Implementation of the Constitution and the Commission on Revenue Allocation.

Review of Authority decision not to approve transfer of function

27. (1) A county government dissatisfied with the determination of the Authority relating to an application for transfer of a function may request for a review of the decision to the Cabinet Secretary within fourteen days of being formally informed of the decision and the Authority shall issue its decision within seven days of receipt of the application for review.

(2) Where a county government is not satisfied with the decision of the Authority on review, it may refer the matter to the Commission on the Implementation of the Constitution for resolution.

National government to pay seconded staff

28. It shall be the responsibility of the national government to pay the salaries and remuneration of seconded staff to a county government during the transition period.

PART V— INFORMATION

Progress report.

29. (1) The Authority shall prepare a progress report every three months and submit the report to the Cabinet Secretary President, National Assembly, Commission for Implementation of the Constitution and Commission on Revenue Allocation.

(2) The progress report shall—

- (a) state the progress in the transition to county governments;
- (b) identify any impediments to the transition programme;
- (c) recommend any legal and administrative measures to address specific concerns identified by the Authority; and
- (d) state any other information relating to its function that the Authority considers necessary.

(3) The Authority shall publish the progress report in the Gazette and in such other manner as the Authority may determine.

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(4) For the period after the announcement of the results of the first elections as contemplated by section 2 of the Sixth Schedule to the Constitution, the Authority shall submit the progress report to the Senate and to the relevant county assemblies and county executives committees through the Cabinet Secretary.

Annual Report

30. (1) The Authority shall cause an annual report of the Authority to be prepared for each financial year.

(2) The Authority shall submit the annual report to the Cabinet Secretary within three months after the end of the year to which it relates.

(3) The annual report shall contain, in respect of the year to which it relates—

- (a) the financial statements of the Authority;
- (b) a description of the activities of the Authority;
- (c) details of its plan of work;
- (d) details of applications for transfer of functions submitted to it and the outcome thereof;
- (e) such other statistical information as the Authority considers appropriate relating to the Authority's functions; and
- (f) any other information relating to its functions that the Authority considers necessary.

Management of information

31 (1) The Authority shall publish and publicise the annual report as submitted under Section 30 (2) of this Act.

(2) A request for any information by a person-

- (a) shall be addressed to the Secretary or such other person as the Authority may for that purpose designate;
- (b) may be subject to the payment of a reasonable fee; and
- (c) may be subject to confidentiality requirements of the Authority.

(3) Subject to Article 35 of the Constitution, the Authority may

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decline to give information to an applicant on the following grounds—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by the Authority;
- (c) failure of payment of a prescribed fee; or
- (d) failure of the applicant to satisfy confidentiality requirements by the Authority.

(4) Every member and employee of the Authority shall sign a confidentiality agreement.

PART VI— MISCELLANEOUS PROVISIONS

Duty to cooperate.

32. (1) A state organ, state office or public officer responsible for the matter in question shall at all times co-operate with the Authority in ensuring the successful completion of the transition to county governments and shall in particular-

- (a) respond to any inquiry made by the Authority;
- (b) furnish the Authority with periodic reports as to the status of transition in respect of the question raised;
- (c) provide any other information that the Authority may require in the performance of its functions under this Act and any other written law.

(2) A public officer who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months or to both.

Regulations.

33. (1) The Cabinet Secretary may, upon recommendation by the Authority, make regulations generally for the better carrying out of its functions under this Act.

(2) Without prejudice to the generality provided for under subsection (1), the regulations may provide for-

- (a) the code of conduct for the members and staff;

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- (b) criteria for the transfer of functions;
- (c) manner in which a county government shall make a request for the phased transfer of functions and the forms to be used;
- (d) fees payable under this Act;

Dissolution of
the Authority

34. (1) The Authority shall stand dissolved three years after the first general elections under the Constitution or at the full transition to county governments, whichever is earlier, but the National Assembly may, by resolution, extend its life for not more than one year.

(2) Upon dissolution of the Authority under this Act, this Act shall lapse.

(3) During the period specified in subsections (1) and (2), the Authority shall ensure that its affairs are wound up in an orderly manner and, in particular shall ensure that—

- (a) those aspects of its work that will be of value to other institutions are preserved, documented and transferred to the relevant institution; and
- (b) its files and records are preserved and transferred to the Kenya National Archives and Documentation Service.

(4) Upon the dissolution of the Authority under subsections (1) and (2), any assets and liabilities of the Authority, shall become assets and liabilities of the national government.

(5) The terms of the Chairperson and members shall expire upon dissolution of the Authority.

(6) Despite sub clause (2) the secretariat may remain for a further period of thirty days upon dissolution only for purposes of winding the affairs of the Authority.

FIRST SCHEDULE

(s.6)

**PROCEDURE FOR APPOINTMENT OF MEMBERS OF THE
AUTHORITY**

1. Within fourteen days of the commencement of this Act, or of the

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occurrence of a vacancy in the office of the Chairperson or member, the Cabinet Secretary, by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Authority and constitute a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members under Section 5 (1) (a).

2. The panel shall comprise a chairperson and six members drawn from public and private sectors and civil society.

3. The panel shall, within seven days of its constitution, invite applications from qualified persons and publish the names and qualifications of all applicants in the Gazette and two daily newspapers of national circulation.

4. An application in respect of a vacancy declared under paragraph 1 shall be forwarded to the panel within fourteen days of the publication of the notice and may be made by –

(a) any qualified person; or

(b) any person, organization or group of persons proposing the nomination of any qualified person.

5. The panel shall consider the applications and shortlist and interview the applicants.

6. After carrying out the interviews, the panel shall select the persons qualified to be appointed as chairperson or members of the Authority and forward the names to the Cabinet Secretary.

7. The Cabinet Secretary shall, within seven days of receipt of the names forwarded under paragraph 6, submit them to the President for appointment by notice in the Gazette.

8. In selecting, nominating, approving or appointing the chairperson and members of the Authority, the selection panel, cabinet secretary, the President and the Prime Minister shall—

(a) ensure that the Authority reflects the regional and other diversities of the people of Kenya and that not more than two-thirds of the members are of the same gender;

(b) have due regard to the required experience and expertise.

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9. The panel shall, subject to this schedule, determine its own procedure and the Ministry responsible for devolved government shall provide it with the facilities and other support as it may require for the discharge of its functions.

Tenure of office.

12. The Chairperson or a member of the Authority other than ex-officio members shall, subject to the provisions of this Schedule, hold office for the life of the Authority.

Vacation of office.

13. (1) A member other than an ex-officio member may-

(a) at any time resign from office by notice in writing to the President;

(b) be removed from office by the President on recommendation of the Authority for –

(i) absent from three consecutive meetings of the Authority without its permission;

(a) serious violation of the Constitution or any other law, including a contravention of Chapter Six;

(b) gross misconduct, whether in the performance of the member's functions or otherwise;

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence;

(e) bankruptcy; or

(f) otherwise being unable or unfit to discharge the functions of office.

(2) The President shall notify every resignation, vacancy or removal from office in the Gazette within seven days of its occurrence.

(3) A member appointed to fill a vacancy under this paragraph shall serve for the unexpired term of the member in respect of whom the vacancy arose

SECOND SCHEDULE

(s.7)

PROCEDURE FOR THE CONDUCT OF AFFAIRS OF THE AUTHORITY

Meetings.

1. (1) The Authority shall, at its first meeting, elect a vice-chairperson from amongst its members.

(2) The chairperson and the vice- chairperson shall be of opposite gender.

(3) The Authority shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Authority at any time for the transaction of the business of the Authority

(3) Unless three quarters of the total members of the Authority otherwise agree, at least fourteen days' written notice of every meeting of the Authority shall be given to every member of the Authority

(4) The quorum for the conduct of the business of the Authority shall be a third of the total members including the person presiding.

(5) The Chairperson or in his or her absence, the Vice-Chairperson, shall-

(a) preside at every meeting of the Authority ;

(b) be the spokesperson of the Authority.

(6) Unless a unanimous decision is reached, a decision on any matter before the Authority shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (6), no proceedings of the Authority shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Authority may determine its own procedure and the procedure for any committee of the

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Authority and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Authority.

2. (1) The Authority may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Authority shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Authority may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Authority.

Disclosure of interest.

3. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Authority who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

Contracts and instruments.

4. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Authority by any person generally or specially authorized by the Authority for that purpose.

THIRD SCHEDULE (s.8)

OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/A MEMBER/SECRETARY

I having been appointed (the chairperson/member of

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/Secretary) to the County Transition Authority, do swear/ solemnly affirms that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/declared by the said

Before me this day of..... 20.....

Chief Justice.

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Transition Period Phase I

ACTIONS	JUSTIFICATION	ACTOR(S)	OUTCOME	TIME FRAME
AUDIT OF ASSETS AND LIABILITIES OF LAs	Clearing of outstanding financial obligations of LAs	ODPM/MoLG, LAs, Transition Secretariat	Debts and liabilities of each LA established	May 2011-June 2012
AUDIT OF LA INFRASTRUCTURE COUNTIES	Vesting of plant & equipment to county governments	Ministry of Public Works, LAs, ODPM/MoLG and Transition Secretariat	Number and functionality of plant & equipment established	July 2011- March 2012
AUDIT OF CENTRAL GOVERNMENT INFRASTRUCTURE IN COUNTIES	Vesting of some plant & equipment to county governments	MoPW, MDAs and Transition Secretariat	Number and functionality of plant & equipment established	July 2011- March 2012
AUDIT OF CENTRAL GOVERNMENT STAFF IN COUNTIES	Secondment of central government staff to county governments	MoSPS and other MDAs	Number of staff in each county by cadre, grades, gender, age & qualification	March 2011- December 2011
AUDIT OF LA STAFF IN	Secondment of LA staff to county	ODPM/MoLG, LAs &	Number of LA staff in each county by cadre, grades, gender, age &	July 2011- March 2012

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COUNTIES	governments	Transition Authority	qualification	
CIVIC EDUCATION	Sensitisation of the public on Acts related to county governments	ODPM/MoLG, MOJCA, and stakeholders	Civic education on devolution started	August 2011- June 2012
COUNTY BUDGETS	Agreement on initial budgets for counties	ODPM/MoF, CRA, CIC & Transition Secretariat	Initial County budgets agreed	March 2012
COUNTY PROFILES	Establishment of basic data and framework for data collection and analysis in counties	MoPND & VISION 2030	Profiles of counties produced and printed	May 2011- Dec 2011
ANALYSIS OF FUNCTIONS	Development of understanding & framework for devolving functions to counties by MDAs	All MDAs	Definition and plan for distribution of functions published & necessary Acts amended	Sept. 2011- March 2012
CLASSIFICATION OF URBAN AREAS	To re-establish cities, municipalities and towns	Transition Authority, MoLG	Gazettement of new cities, municipalities and towns	Jan. 2012 – Aug. 2012

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Transition Period Phase II

ACTIONS	JUSTIFICATION	ACTOR(S)	OUTCOME	TIME FRAME
Formation of county governments	Swearing in of Governor and Deputy Governor	Presiding Judge of the County High Court	Governor and Deputy Governor sworn in	Aug. 2012
	Swearing of County Assembly	Presiding Judge of the County High Court	County assembly sworn in	Aug. 2012
	Appointment and swearing in of Speaker of County Assembly	County Assembly & County Executive & Presiding Judge of the County High Court	Speaker appointed	Aug. 2012
	Appointment of Clerk of County Assembly	County Assembly & County Executive	Clerk of the National Assembly appointed	Aug. 2012
	Appointment, confirmation and swearing in of County Executive committee	Governor & County Assembly	county executive committee appointed and sworn in.	September 2012
	Establishment of county public service	County executive committee	County public service established	Nov. 2012

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	board	County assembly		
	Appointment of county public service staff	County Executive	County public service staff recruited	March 2013
	Appointment of staff for County Assembly	County Executive	County public service staff recruited	September 2012
Capacity Building	To develop capacity of county governments	National government County governments Transition Authority	Capacity of county governments developed.	August 2012 – August 2015
Transfer of functions	To transfer functions from national government to county governments	National government ministries County governments Transition Authority	Functions transferred to county governments	August 2012 – August 2015

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MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a framework for a coordinated transition to county government regime. It does this by creating the necessary institutional arrangements, processes and related procedures.

Part I provides for the short title and interpretation of terms used. It also articulates the specific object and purpose of the Bill.

Part II provides for the establishment, composition, appointment, mandate and powers of the County Transition Authority which has the primary role of facilitating the transition. The provisions ensure that the members are appointed in a transparent and fair manner is observed. A selection panel comprising both the public and private sector together with civil society is catered for with the Executive and Parliament also participating in the appointment process. This Part also provides for a professional secretariat to be headed by a Secretary and supported by the requisite staff. .

Part III provides for the financial matters. These include sources of funds for the Authority, accounts and audit of its books and preparation of annual estimates. Specifically, the requirement that the Salaries and Remuneration Commission is involved in the determination of terms of members and staff is provided for.

Part IV provides for the phased transfer of functions to county governments and the matter of capacity building are also covered under this Part

Part V sets out the general provisions which include the requirement that public and state officers should cooperate with the Authority to ensure smooth transition to county governments' regime. Also addressed are the accountability mechanisms such as progress and annual reports of the Authority to both the Commission on Implementation of the Constitution, Parliament and President respectively through the Cabinet Secretary. Management of information, protection from personal liability, and disclosure of personal interest by members, matters of conflict of interest where persons who serve on the Transition Authority are excluded from immediate future county appointments is also provided for.

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

Part VI sets out the miscellaneous provisions. It includes matters relating to a duty on state organs and officers as well as the public to cooperate with the Authority. It addresses matters of regulations by the Authority and Cabinet Secretary. The dissolution of the Authority is addressed here.

Schedules – there are four schedules to this Bill. The first details the procedures of appointment of the Authority, Schedule 2 provides for the conduct of the affairs of the Authority, while the third Schedule deals with the oath of office for the chairperson, members and Secretary of the Authority. In the fourth schedule, general details of issues under transition are provided for.

