

**THE DEVOLVED GOVERNMENTS BILL, 2011**

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I – PRELIMINARY**

- 1—Short title.
- 2—Interpretation.
- 3—Objects and purposes of the Act.
- 4—Symbols of the county.

**PART II – COUNTY GOVERNMENTS**

- 5—Functions of county governments.
- 6—Powers of county governments.

**PART III – COUNTY ASSEMBLY**

- 7—Role of the county assembly.
- 8—Role of members of the county assembly.
- 9—Election of county speaker and deputy county speaker.
- 10—County assembly party leaders.
- 11—Removal of speaker from office.
- 12—County assembly clerk.
- 13—Procedure and committees of the county assembly.
- 14—Right to petition county assembly.
- 15—Freedom of speech and debate.
- 16—Powers, privileges and immunities of a county assembly
- 17—Official languages of a county assembly.
- 18—Quorum.
- 19—Voting in a county assembly.
- 20—Procedure for the exercise of legislative powers.

- 21—Introduction of a Bill
- 22—Bill to have a title.
- 23—Method of publication of a Bill.
- 24—Distribution of and debating the Bill.
- 25—Assenting to a Bill
- 26—Coming into force of a law.

**PART IV—ELECTORAL WARDS**

- 27—Number, and delimitation, of electoral wards; etc

**PART V - COUNTY EXECUTIVE**

- 28—Exercise of county executive authority.
- 29—Establishment and organization of the county executive committee.
- 30—Functions of the Executive Committee.
- 31—Oath of office for the executive committee.
- 32—Executive committee members to be responsible to governor, assembly.
- 33—Authority and functions of the governor.
- 34—Role of governor.
- 35—Functions of the deputy governor.
- 36—Removal of member of executive committee.
- 37—Decision of county executive to be recorded, etc.
- 38—County executive to remain in office after elections.
- 39—County chief secretary.
- 40—County secretaries
- 41—County executive committee to determine organisation etc, of county administration.
- 42—Performance evaluation.

**PART VI –DECENTRALIZED UNITS**

43—Decentralized units.

44—Urban areas and cities structures.

45—County sub-county administrator

46— Sub-county citizen participation forum.

47—Establishment of the office of ward administrator.

48—Ward citizen participation forum.

49—Village units

## **PART VII - COUNTY PUBLIC SERVICE**

50—Objectives.

51—Establishment of the county public service.

52—Establishment of the county public service advisory authority.

53—Composition of the Advisory Authority

54—Functions of the Advisory Authority.

55—Powers of the Advisory Authority.

56—Report of the Authority.

57—Establishment of the county public service board

58—Composition of the county public service board.

59—Functions of the public service board.

60—Criteria for establishment of offices, etc.

61—Criteria for abolition of offices, etc.

62—Board may abolish office.

63—Authority of the board to make appointments.

64—No unqualified person may be appointed in acting capacity.

65—Matters to take into account on appointments, etc.

66—Adverts of positions to be publicised widely, etc.

- 67—Appointments etc, to be in writing.
- 68—Board to maintain records of applicants.
- 69—Re-designation of officers.
- 70—Provisions on appointments to apply to promotions.
- 71—Confirmation of appointment on lapse of period.
- 72—Authority to deploy public officers
- 73—Secondments.
- 74— Public service board to regulate persons on contract, etc
- 75—Action on irregular, etc actions, decisions.
- 76—Prohibition of punishment contrary to the constitution, etc.
- 77—Appeals to the Public Service Commission.
- 78—Application of Part.
- 79—Grounds for retirement.
- 80—Retirement on age grounds.
- 81—Retirement on the ground of ill health
- 82—Retirement on grounds of abolition of office.
- 83—Retirement on grounds of public interest.
- 84—Retirement pursuant to agreement or special retirement scheme.
- 85—Entitlement to apply for review.
- 86—Delegation by county public service board.

#### **PART VIII— CITIZEN PARTICIPATION**

- 87—Principles of citizen participation in counties.
- 88—Citizens’ right to petition and challenge
- 89— Duty to respond to citizen’s petitions or challenges
- 90— Matters subject to local referenda
- 91—Results of a referendum.

92—Establishment of modalities and platforms for citizen participation.

**PART IX— PUBLIC COMMUNICATION AND ACCESS TO INFORMATION**

93—Functions of County Communication

94— County Communication Framework

95— Access to information

96— Inclusion and integration of minorities and marginalized group

**PART X – CIVIC EDUCATION**

97—Principles of civic education

98—Purpose and objectives of civic education

99—Design and implementation of civic education

100—Institutional framework for civic education

101—Powers of the county civic education committee

102—Functions of the county civic education committee

103—County civic education implementation unit

**PART XI – COUNTY PLANNING**

104—Principles of planning and development facilitation.

105—Objectives of county planning.

106—Obligation to plan by the county.

107—Planning in the county

108—Integrating national and county planning

109—Types and purposes of plans

110—County strategic plan

111—County sectoral plans

**PART XII— DELIVERY OF COUNTY PUBLIC SERVICES**

112— Duty to deliver public services

- 113— Principles of public service delivery
- 114— Standards and norms for public service delivery
- 115— Tariffs and pricing of public services

**PART XIII— TRANSFER OF FUNCTIONS**

- 116— Power to transfer function
- 117— Principles of delegation of powers, functions and competencies
- 118— Agreements covering transfer of functions
- 119 —Standards
- 120 —Criteria for transferring powers, functions and competencies
- 121 —Costing of functions
- 122 —Adjustments to powers, functions and competencies
- 123—Capacity to receive functions.
- 124—Transfer of assets and liabilities.
- 125—transition from existing local authrioties.
- 126—Grounds for suspension arising from conflict or war
- 127—Suspension of county government in exceptional circumstances.
- 128—Prorogation of the county assembly.
- 129—Suspension of the county executive committee
- 130—Establishment of the interim county management board
- 131—Functions of the interim county management board
- 132—Dissolution of the interim county management board
- 133—Termination of suspension.
- 134—County elections after suspension

**PART XV- MISCELLANEOUS**

- 135—Protection against personal liability.
- 136—Repeal of Cap.265.
- 137—Regulations.

**PART XVI—TRANSITIONAL PROVISIONS**

**138**—First Sitting of the county assembly

**139**— Civic education facilitation.

**140**— Arrangements for public servants.

**THE DEVOLVED GOVERNMENTS BILL, 2011**

**A Bill for**

**AN ACT of Parliament to give effect to the provisions of the Constitution regarding devolution of government; to provide for county government’s powers, functions, and responsibilities to deliver services as established by the Constitution 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 Governments Act, 2011.

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

“county assembly” means a county assembly established under Part 2 of Chapter Eleven of the Constitution;

“county executive” means a county executive committee established by Article 177 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 a county government established by article 196 of the Constitution;

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

“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;

“marginalised group” has the meaning assigned to it by article 260 of the

Constitution;

“urban area” refers to an area established as such under legislation made under 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) to give effect to the objects and principles of devolution as set out in Articles 174 and 175 of the Constitution;
- (c) provides for the election and removal from office of the speakers of the county assembly pursuant to article 178 of the Constitution;
- (d) provides for the procedure of removal of a county governor under article 181 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.

Symbols of the  
county.

**4.** (1) Every county shall have symbols, the form of which is prescribed in  
county legislation.

(2) The symbols of the county are—

(a) the county coat of arms; and

(b) the county public seal.

## **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 an Act of Parliament.

(2) Without prejudice to the generality of subsection (1), a county  
government shall be responsible for –

(a) legislative functions assigned to it under Article 185 of the  
Constitution;

(b) executive functions in accordance with Article 183 of the 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) 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.
- (2) A county government may enter into any contract necessary for the discharge of any of its functions.
- (3) A county government may, for the purpose of any of its functions acquire, purchase, or lease, any land, whether situate within or without its area of its jurisdiction.
- (4) 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.
- (5) All contracts lawfully entered into under this section shall be valid and binding on the county government, its successors, and all other parties thereto.
- (6) 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.

### **PART III - COUNTY ASSEMBLY**

Role of the  
county  
assembly.

- 7.** The county assembly-
- (a) performs the roles set out under article 185 of the Constitution;
  - (b) approves the budget and expenditure of the county government in accordance with Articles 207 and 220(2) of the Constitution;
  - (c) approves the burrowing of the county government in accordance with article 212 of the Constitution;
  - (d) performs any other role as may be set out under the Constitution or legislation.

Role of members of the county assembly.

**8.** Without prejudice to the responsibilities conferred on a member of a county assembly under section 6, 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) report to the electorate the general decisions of the county assembly and the actions it is taking to solve problems raised by residents of the electoral area;
  - (e) extend professional knowledge, experience or specialised knowledge to any issue for discussion in the Assembly; and
  - (f) oversight developmental activity affecting the county.
- (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 their 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 by the county assembly clerk in within fourteen days, in such manner as may be provided for in the county assembly's standing orders.

Election of county speaker and deputy county speaker.

**9.** (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;
  - (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 other public officer, other than 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.

(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 Senate 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 elections, the elections shall be repeated between the first two persons having the highest number of votes until one of them gets more than fifty percent.

(9) 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.

**10.** (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.

**11.** (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.

(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.

**12.** (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 offices of the clerk of the county assembly and offices of the members of the staff of the office of the clerk of the county assembly shall be in the county public service.

(3) For the purposes of this Act the clerk shall be a head of department and authorized officer.

Procedure and  
committees of  
the county  
assembly.

**13.** (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 thinks fit, and regulate the procedure of any committee so established.

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

- (a) 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 in 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 the county assembly and the other county assembly.

(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 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.

**14.** (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 make provision for the procedure for exercising the right under subsection (1).

Freedom of  
speech and  
debate.

**15.** (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 out of 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 anything said in any debate, petition, motion or other

proceedings in the county assembly

Powers, privileges and immunities of a county assembly

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

Official languages of a county assembly.

**17.** (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 language.

Quorum.

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

Voting in a county assembly.

**19.** (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 in 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 the county assembly shall not vote on any question in which the member has a pecuniary interest.

(4) In reckoning the number of members of a county assembly for any purpose of voting in the county assembly, the county speaker shall not be counted as a member.

Procedure for the exercise of legislative powers

**20.** (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” 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

**21.** 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

**22.** 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.

Method of publication of a Bill

**23.** A Bill shall be published by including the Bill as a supplement in the county gazette and the Kenya Gazette.

Distribution of and debating the Bill

**24** (1) After the publication of the Bill, the Speaker shall cause the distribution of copies of the Bill as published to all members of the Assembly to enable them to study and consult their communities 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 objective 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 is passed when all clauses as published or as amended are passed by the county assembly.

Assenting to a Bill

**25.** (1) The Speaker shall within fourteen days submit a Bill passed by the county assembly to the Governor and within fourteen days after receipt of a

Bill, the Governor shall—

(a) assent to the Bill; or

(b) refer the bill back to the county assembly with a memorandum outlining reasons for the referral.

(2) If the Governor refers a Bill back to the Assembly for reconsideration, the county assembly may, following the appropriate procedures under this section—

(a) amend the Bill in light of the Governor’s concerns; or

(b) pass the Bill a second time without amendment.

(3) If a County Assembly amends the Bill accommodating the Governor’s concerns the Speaker shall within fourteen days re-submit the Bill to the Governor for assent.

(4) 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.

(5) 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.

**26.** (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.

**27.** (1) There shall be one thousand six hundred and twenty five 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 be completed at least twelve months before a general election of county assembly members.

(3) 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.

(4) 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 constituency may be greater or lesser than the population quota in the manner mentioned in clause (5) to take account of—

- (a) geographical features and urban centres;
- (b) community of interest, historical, economic and culturalties; and
- (c) means of communication.

(5) The number of inhabitants of a constituency or ward maybe greater or lesser than the population quota by a margin of not more than—

- a. forty per cent for cities and sparsely populated areas; and
- b. thirty per cent for the other areas.

(6) In choosing the formula to adopt, there shall be allowances to deviate from the number of wards determined for each county for purposes of ensuring—

- (a) a county assembly is capable of effectively exercising its oversight mandate as per Article 185 of the Constitution and this Act;
- (b) active participation by all ward assembly members in 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 municipal funds for councillor allowances and administrative support facilities.

(7) In reviewing constituency and ward boundaries the Commission 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.

(8) If necessary, the Commission shall alter the names and boundaries of constituencies, and the number, names and boundaries of wards.

(9) No county assembly shall comprise fewer than 25 elected members.

## **PART V - COUNTY EXECUTIVE**

Exercise of  
county  
executive

**28.** The executive authority of a county shall be exercised in accordance with

- authority. the Constitution, relevant Acts of Parliament and county legislation and shall—
- (a) be exercised for the well-being and benefit of the people;
  - (b) take into account the principles of devolution of government set out in Article 174 of the Constitution;
  - (c) promote the enhancement of self-governance for communities in the management of development programs;
  - (d) ensure the protection and promotion of the interests and rights of minorities and marginalized communities;
  - (e) promote gender equity;
  - (f) promote of social and economic development within the county;
  - (a) ensure equitable sharing of available resources throughout the county.

Establishment and organization of the county executive committee.

**29.** (1) A county executive committee shall be established in accordance with Article 179 of the Constitution.

(2) The governor, in nominating persons for appointment to the county executive committee, shall ensure that membership of that committee represents the diversity of the county.

(3) The county assembly shall not approve the nominations for appointment to the executive committee unless such nomination takes into account gender balance, representation of the minorities, marginalised groups and communities within the county.

(4) 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;
- (b) satisfies the requirements of Chapter Six of the Constitution;
- (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 they are being appointed.

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

Functions of the Executive Committee

**30.** (1) A county executive committee shall, in accordance with Article 183 of the Constitution—

- (a) implement county legislation;
- (b) implement, within the county, national legislation to the extent that the legislation so requires;
- (c) manage and coordinate the functions of the county administration and its departments;
- (d) supervise the administration and delivery of services in all decentralised units and agencies in the county;
- (e) perform any other functions conferred on it by the Constitution or national legislation;
- (f) carry out any other function incidental to any of the above functions.

(2) A county executive committee may prepare proposed legislation for consideration by the County Assembly.

Oath of office for the executive committee.

**31.** A person appointed executive committee member shall after approval by the county assembly and before assumption of office, take a prescribed oath or affirmation of office as set out in the Schedule of this Act.

Executive committee members to be responsible to governor, assembly.

**32.** (1) In performance of their functions, members of the Executive Committee shall be individually and collectively accountable to the governor in the exercise of their powers and performance of their duties and responsibilities.

(2) A County executive committee member shall attend before a committee of the county assembly when required by the committee, and answer any question concerning a matter for which the county executive committee member is responsible.

Authority and functions of the governor

**33.** (1) The county governor and the deputy governor are the chief executive and deputy chief executive of the county, respectively.

(2) The governor shall--

- (a) with the approval of the County Assembly constitute the executive committee portfolio structure;

(b) 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.

(3) A county executive committee portfolio structure shall be constituted in such manner as to respond to the functions and competencies assigned to and transferred to each county.

(4) The governor –

(a) shall chair meetings of the county executive committee;

(b) may, in accordance with section 35 dismiss a county executive committee member; and

(c) shall dismiss a county executive committee member, if required to do so by a resolution of the county assembly.

(5) The governor shall deliver annual state of the county address.

Role of  
governor,

**34.** 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;

(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;

- (h) submit of the county plans and policies to the County Assembly for approval;
- (i) submit to the county assembly of an annual report on the implementation status of the county policies and plans;
- (j) consideration and approval where appropriate of bills passed by the County Assembly;
- (k) representation of the county in national and international fora and events;
- (l) provide due and diligent execution of the functions and authority provided for in the Constitution and legislation.

Functions of the deputy governor.

**35.** (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 power of the governor of nomination, appointment or dismissal that are assigned to the governor under the constitution or other 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.

**36.** (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

(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.

Decision of  
county  
executive to be  
recorded, etc.

**37.** A decision by the county executive committee shall be made at properly constituted county executive committee meetings and shall be in writing and signed by the governor or the deputy governor.

County  
executive to  
remain in office  
after elections.

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

County chief  
secretary.

**39.** (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 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
- (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.

County  
secretaries

**40.** (1) There is established the office of county secretary, which is an office in the county public service.

(2) Each county department in the county shall be under the administration of a county secretary.

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

(4) The governor shall—

(a) nominate a person for appointment as county secretary from among persons recommended by the county public service board; and

(b) with the approval of the county Assembly, appoint County Secretaries.

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

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

County executive committee to determine organisation etc, of county administration.

**41.** (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.

**42.** (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;
- (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.

**43.** (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 provisions of the legislation governing urban areas and cities;
- (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 situated within the county;
- (d) village units.

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

Urban areas and cities structures.

**44.** The structures and functions of urban areas and cities shall be as provided for in the laws regulating urban areas and cities.

County sub-county administrator.

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

(2) The sub-county administrator shall have the 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 tasks in the constituency unit, including the coordination —

- (a) of the development of policies and plans at the constituency unit;
- (b) of service delivery within the constituency unit and supervision thereof;
- (c) coordination and supervision of developmental activities to empower the community within the constituency unit;

- (d) coordination and supervision of the provision and maintenance of infrastructure and facilities of public services at the constituency unit;
- (e) coordination and supervision of the county public service within the constituency unit;
- (f) facilitation and coordination of citizen participation in the development of policies and plans and delivery of services in the constituency unit.

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

Sub-county  
citizen  
participation  
forum

**46.** (1) A sub-county citizen participation forum shall be co-convened by the elected county assembly members quarterly to discuss and give views on respect to following issues—

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

(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 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 must ensure that the forum if fully publicized so as to enable attendance and participation of as wide a section of the population as possible, including marginalized groups and communities.

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 on the appointment of the county public service.

(3) The ward administrator will coordinate, manage and supervise the general administrative tasks 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 tasks and obligations in sub-section (3), the ward administrator will be responsible to the sub-county administrator.

Ward citizen participation forum.

**48. (1)** A ward citizen participation forum shall be convened by the elected county assembly member in every quarter 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 functioning of the ward administration;
- (d) the delivery of services by the ward public service.

(2) The forum shall be open to all citizens of the ward who desire to attend and 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 raise the issues arising from the forum with the relevant organs of the county government and give feedback at the next forum.

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

Village units.

**49. (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 of the Constitution.

## **PART VII - COUNTY PUBLIC SERVICE**

### *General Provisions*

Objectives of  
Part VII.

**50.** The objectives of this Part shall be to—

- (a) provide for the organization and functioning of county public service in ways that ensure staffing of county public service leads 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 establishment and abolition of offices in their public service, appointment of persons to hold or act in those offices, confirming appointments, 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 throughout the Republic;
- (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 to address staff shortages and barriers to staff mobility between counties;
- (g) provide for standards of conduct to promote ethical conduct and professionalism in county public service.
- (h) 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;

- (i) provide for county public service boards to assist respective county governments in carrying out the various responsibilities in their respective county public services
- (j) make further provisions relating to appeals in respect of county governments' public service.

Establishment of the county public service.

**51.** There shall be for each county a county public service.

Establishment of the county public service advisory authority.

**52.** 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

**53.** (1) The Advisory Authority shall comprise—

- (a) a chairperson nominated by the President and with the approval of the Senate appointed by the President;
- (b) eight members nominated by the cabinet secretary responsible for county affairs and with the approval of the Senate appointed by the cabinet secretary responsible for county affairs.

(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 forum of governors from the forty seven counties;
- (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 appointed 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 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.

**54.(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 in order 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 county.

(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 and authorized officers 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.

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

Report of the  
Authority.

**56.** (1) The Authority shall prepare and submit a report to the Senate on its evaluation of the extent to which the values and principles in Articles 10 and 232 are complied with in the public service of the counties annually and the report shall be in respect of every 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 Authority especially in performance of its duties under this section;
- (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 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 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) consequential to the debate, make relevant resolutions for the implementation of the recommendations in the report

(4) The 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 Authority, in the performance of its duties under this Act may require any public officer to produce any relevant document or information.

Establishment  
of the county  
public service  
board

**57.** 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.

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

- (a) a chairperson appointed by 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) county chief secretary, who shall be the secretary to the board;

(2) The members appointed or nominated under paragraphs (a), (b) and (c) shall be professionals from outside the county public service nominated by the governor with the approval of the county assembly to represent the public and who shall not—

(i) be state officers;

(ii) be members of the governing body of a political party;

(iii) have not in the last five years been a candidate for any political office.

(3) The appointment of the members of the board shall be through a competitive process.

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

(5) The members of the Board may only be removed 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 seventy five percent of all the members of the county assembly.

(6) The board shall elect a vice chairperson from amongst its members.

Functions of  
the public  
service board.

**59.** (1) The functions of the county public service board shall be to, on behalf of the county government—

(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 **74**.

*Establishment and abolition of offices in the county public service*

Criteria for  
establishment

**60.** (1) The county public service board shall establish a public office when it is

of offices, etc. 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 as per 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 an 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) 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.

(3) In deciding whether or not to establish a public office, the county 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 offices, etc.

**61.** (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 for which 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 eliminate unfair competition for staff among county service departments and 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) Where a public office has been abolished by the county public service board and any affected public officer who by reason of such abolition has not been retired or otherwise removed from the service and he is in doubt about whether he continues to be a public officer, the county public service board shall, if the person requests, declare the person to be an existing public officer until any further decision shall be made in that regard.

(3) Any decision by the county public service board to abolish an office in its public service shall be subject to the due process of removing or retiring the affected public officer including adherence to the principles of natural justice.

(4) Where the board intends to establish or abolish an office it shall present such proposal for the approval by the county assembly through the county executive committee.

Board may  
abolish office.

**62.** (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 its public service in the discharge of its function as provided for in the Constitution.

(2) The county public service board shall give the head of department 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 the establishment, the office shall stand abolished and the county government's decision to abolish shall not be required in such a case.

(4) The provisions of sub-section (3) in respect to the period of 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*

Authority of the  
board to make  
appointments

**63.** (1) Except as provided for in the Constitution or legislation, the county public service board shall have the authority to make appointments including promotions in respect of offices in the county public service.

(2) The authority of the county public service board under sub-section (1) shall be exercised at the request of the head of department of the department to which the appointment is to be made.

(3) At 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.

**64.** (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 the concerned public office.

(2) Acting appointments shall be made only by 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 in favour 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 on appointments, etc.

**65.** (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 demonstrable experience and achievements attained by the candidate;
- (d) conduct of the candidate in view of relevant code of conduct, ethics and integrity;
- (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) provide for open and transparent recruitment of public servants.

(2) In determining whether an appointment including promotion and re-designation has been undertaken in a fair and transparent manner, the overriding factor shall be the absence of nepotism, tribalism, cronyism, corruption and political influence.

Adverts of positions to be publicised

**66.** (1) Where the public office is to be filled, the county public service board shall invite applications through advertisement so as to reach as wide

widely, etc.

population of potential applicants as possible and especially persons who for any reason have been or may be disadvantaged.

(2) A vacancy need not be advertised where the county public service board is satisfied that there is no reasonable likelihood of any application being received in response to the advertisement from a candidate who is likely to be qualified; or

(3) Where in the opinion of the county public service board, it would be likely to find a qualified public officer in some public body but not in the public body in which the vacancy has occurred or is anticipated to occur, applications may be invited only from serving public officers.

Appointments etc, to be in writing.

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

Board to maintain records of applicants.

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

Re-designation of officers.

**69.** (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 such a decision in which event the officer may opt to separate from service with full accrued entitlement.

(4) If a public officer is re-designated, the officer shall not in any way suffer

reduction in remuneration without his consent.

Provisions on appointments to apply to promotions.

**70.** The provisions of this Act and regulations or procedures 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 take up the promotion and if the officer is not so released, he 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 expiration of sixty days from the date of the decision and the officer shall revert back to the office held prior to the decision.

Confirmation of appointment on lapse of period.

**71.** (1) Where the relevant authority fails to confirm in appointment a public officer initially appointed on probationary terms and the term has lapsed with or without an extension, the officer shall stand confirmed in 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 service otherwise being satisfactory;

(b) affording the public officer an opportunity for improvement in any respect, in which his work or conduct have been adversely reported on.

Authority to deploy public officers

**72.** (1) The authority to deploy a county public officer within a department shall vest in the relevant head of department.

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

Secondments.

**73.** (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 so

remain seconded and the secondment period has not lapsed, the officer shall nevertheless 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 persons on contract, etc.

**74.** 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 irregular, etc actions, decisions.

**75.** 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 that it considers appropriate.

*Exercise of disciplinary control in the county public service*

Prohibition of punishment contrary to the constitution, etc.

**76.** (1) The county public service board shall in exercising its 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.

(5) 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.

Appeals to the  
Public Service  
Commission.

**77.** (1) Any person dissatisfied or affected by a decision made by the county government 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 relation 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 governances 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; and

(g) any other decision the Commission considers to fall within its constitutional competence to hear and determine an appeal in that regard.

(3) An appeal under subsection (1) shall be in writing and made within 90 days from the date of the decision provided that 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 representative in respect to the same decision.

(5) Any person dissatisfied or affected by a decision made by the commission following an 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

(5) An application for review under subsection (4) shall be in writing and made within the time prescribed by the commission in regulations governing disciplinary proceedings:

Provided that the commission may entertain an application for review out of time if, in the opinion of the commission, the circumstances warrant it.

(6) If criminal proceedings are instituted against a county public officer, disciplinary proceedings against the officer for his dismissal 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.

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

*Removal other than by disciplinary process in the public service*

Application of Part.

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

(1) A county public officer desirous of resigning from the county public office he is holding or acting in shall write a resignation letter to the lawful authority that appoints him to the public office.

(2) A resignation letter shall be delivered to the lawful authority that appoints the public officer desirous of resigning by hand delivery or by registered mail.

(3) Resignation shall take effect thirty days from the date of the resignation letter.

(4) 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.

**79.** Retirement from the county public service shall be on grounds of –

- (a) attainment of the mandatory retirement age prescribed in the relevant legislation or policy or as agreed upon between the county public officer and relevant lawful authority;
- (b) ill health;
- (c) abolition of county public office;
- (d) public interest; and
- (e) special retirement scheme agreed between a public officer or his representative and the relevant lawful authority.

Retirement on age grounds.

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

Retirement on the ground of ill health

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

- (a) the concerned head of department 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 therefore is in the best interest of the officer to retire; or
- (b) the public officer requests to be retired on the ground of ill health, and in this case, the head of department must 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 head of department shall call upon the officer to present himself before a medical board constituted by the Principal Secretary responsible for health services in the national government with the view of it being ascertained 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 subsection (2) and the finding is that he should be so retired, the principal Secretary 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 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 government considers that further inquiry is necessary in

which case it shall issue directions to the authorized officer accordingly, it shall decide forthwith whether the public officer should be called upon to retire on the ground of ill health.

(5) Where the circumstance of ill health are such that a public officer cannot be called upon to attend medical board or to make his presentation on medical board's findings as provided for under this section, the authorized officer shall not commence or continue the proceedings until such a time the officer may be called upon or is able to make the representation as the case may be:

Provided that in such a case the public officer may never the less 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 the officer may be retained in the service in case of prolonged ill health.

Retirement on grounds of abolition of office.

**82.** (1) Where a county public officer, who is one of a number of public officers holding similar public offices is to be retired on the ground of abolition of office but one or more public officers is to remain in office, the head of department shall inform the public officer that his retirement is under consideration and invite him within reasonable time to make representation thereon, if any.

(2) Upon receipt of the representation in subsection (1) or failure to receive any representation within the prescribed time, the head of department shall forward the case to the county public service board including his recommendation justifying the recruitment 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 head of department accordingly, it shall decide forth with whether the public officer should be called upon to retire 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.

**83.** (1) If a head of department , 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 head of department 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 in view of the intended retirement ; 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 head of department accordingly, it shall decide forthwith whether the public officer should be called upon to retire on the ground of public interest.

(3) In this section, for a complaint or report to justify retirement on the ground of public interest, it must be established that in view of the complaint or report, the public officer has offended public policy as 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.

**84.** (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 accorded the officer a reasonable opportunity to make his representation in view of the intended retirement.

Entitlement to apply for review.

**85.** 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 of county public service board functions*

Delegation by county public service board.

**86.** (1) The county public service board may delegate in writing any of its functions to any one or more of its members, or to any officer in the cities or urban areas.

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

**PART VIII – CITIZEN PARTICIPATION**

Principles of citizen participation in counties.

**87.** 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;
- (c) protection and promotion of the interest and rights of minorities and 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;
- (g) recognition and promotion of the reciprocal roles of non-state actor participation and governmental facilitation and oversight.

Citizens right to petition and challenge.

**88.** (1) Citizens have a right to petition or challenge decisions of the county government

(2) Citizen petitions or challenges must be made in writing to the county government.

Duty to respond to citizen's petitions or challenges.

**89.** (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 91 (1).

(3) The petitioner should use the court as the last resort where the county government does not respond.

Matters subject to local referenda.

**90.** The following matters may be subject to local referenda –

- (a) county laws and regulations;

- (b) planning and investment decisions affecting the county for which a petition has been raised and duly signed on by citizens.

Results of a referendum.

**91.** The county government must publicize the result of a local referendum as provided for by regulations.

Establishment of modalities and platforms for citizen participation

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

- (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 importance);
- (e) county assembly and its committees;
- (f) development project sites

**PART IX—PUBLIC COMMUNICATION AND ACCESS TO INFORMATION**

Functions of county Communication

**93.** 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;
- (d) promotion of the freedom of the media.

County Communication

**94.(1)** County governments shall create a mechanisms for public

framework

communication and access to information which shall include—

- (a) television stations;
- (b) information communication technology (ICT) centres ;
- (c) websites;
- (d) community radio stations;
- (e) folk media.

(2) County governments shall establish communication and feedback mechanism--

- (a) by creating an internal public communication networks in the county;
- (b) create citizens participation structures supported by communication models;
- (c) develop policy on deregulation and regulation of the media.

Access to information.

**95.** The county government shall facilitate citizens' access to information in order to enable the—

- (a) promotion of human dignity, freedom, justice, peace and citizens participation in governance;
- (b) promotion of national values, the bill of rights and the rule of law;
- (c) promotion of the values of democratic governance; diversity; inclusiveness; transparency and accountability; citizens participation in public affairs, responsibility and mutual respect; and access to information;
- (d) provision mechanisms for mutual information and communication exchange among citizens, and with government

(2) In accordance with Article 35 of the Constitution, every person who is--

- (a) a Kenyan citizen, or
- (b) a permanent resident within the meaning of the Constitution has a

right to and shall, on request, be given access to any record under the control of a county government institution or its agencies.

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

(4) Subject to any other Act of Parliament, county governments shall develop and pass laws and regulations to ensure expeditious access to information by those entitled to receive it.

Inclusion and integration of minorities and marginalized groups.

**96.** The following principles shall be observed by county authorities, 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 persons, particularly women, 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;
- (g) promotion of effective participation of marginalised and minority groups in public and political life.

#### **PART X— CIVIC EDUCATION**

Principles of civic education

**97.** The principles of civic education are intended to promote—

- (a) empowerment and enlightenment of citizens;
- (b) continuous and systemic engagement;

(c) inculcate values and principles of the Constitution.

Purpose and objectives of civic education

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

(2) The objectives of civic education are—

(d) sustained citizens' engagement in the implementation of the Constitution;

(e) improved understanding, appreciation and engagement in the operationalization of the devolved system of government;

(f) a culture of constitutionalism;

(g) knowledge of Kenya's transformed political system, context and implications;

(h) enhanced knowledge and understanding of electoral system and procedures;

(i) enhanced awareness and mainstreaming of the Bill of Rights and National values;

(j) heightened demand by citizens for service delivery by institutions of governance at the county level;

(k) ownership and knowledge on the principal economic, social and political issues facing county administrations and their form, structures and procedures;

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

Design and implementation of civic education

**99.** (1) There shall be an appropriate civic education programme to be implemented in each county.

(2) The county governments shall facilitate the design and implementation of the civic education programme under subsection (1).

(3) For the purposes of (b) a joint committee of county representatives nominated separately by the county executive and registered non –state actors shall oversee the design of the county civic education programme.

Institutional  
framework for  
civic education

**100.** (1) The county governments shall facilitate establishment of the following organs for purposes of implementing civic education—

(a) county civic education committee;

(b) constituency civic education committee;

(c) ward 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 each 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 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 constitution the committees under this section, the requirements of the Constitution with regards to inclusion and diversity shall be complied with.

(7) The constituency civic education committee reports to the county civic education committee and shall exercise oversight over implementation of civic education at the constituency level.

(8) The ward civic education committee reports to the constituency 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 constituency and ward civic education committees shall submit quarterly reports to the county civic education committee.

Powers of the  
county civic  
education  
committee

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

(a) determine civic education providers;

(b) determine the contents of any curriculum and other materials to be

used in the delivery of civic education;

- (c) enforce the code of conduct for civic education providers;
- (d) determine the structure, functions and personnel establishment of its Secretariat;
- (e) require submission of reports from civic education providers.

Functions of  
the county civic  
education  
committee

**102.** (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) set standards for the delivery of civic education;
- (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

**103.** (1) The county civic education committee shall facilitate establishment of a

implementation unit    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) 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;
- (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.

**104.** Planning and development facilitation in a county shall –

- (a) integrate national values in all processes and concepts;
- (b) protect the right to self-fulfillment within the county communities and with responsibility to future generations;
- (c) protection and integration of 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.

**105.** 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 as 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.

Obligation to plan by the county.

- 106.** (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, urban areas, wards and sub-counties as planning authorities of the county.
  - (4) In the endeavor to promote public participation, non-state actors shall be incorporated in the planning processes by all authorities.

Planning in the county

- 107.** Planning in the county shall be coordinated by a county planning unit that shall be responsible for;
- (a) coordinate planning within the county;
  - (b) ensure integrated planning within the county and across counties;
  - (c) ensure linkages between county plans and the national plan;
  - (d) ensure meaningful engagement of citizens in the planning process.

Integrating national and county planning **108.** (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 planning shall provide for citizen participation.

Types and purposes of plans **109.** (1) To guide, harmonize and facilitate development within a county there shall be the following plans –

(a) county strategic plan

(b) county sectoral plans

(c) county urban areas plans

(2) County plans shall be the basis for budgeting in a county.

County strategic plan **110.** There shall be a five year county strategic 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;

(d) clear reporting mechanisms.

County sectoral plans **111.** There shall be annual county sectoral plans developed by every county department based on the county strategic plan—

(a) the sectoral plans shall be programme based;

(b) the sectoral plans shall be the basis for ;

(c) budgeting;

(d) performance management tool.

## **PART XII— DELIVERY OF COUNTY PUBLIC SERVICES**

Duty to deliver public services **112.** The county government and their agencies shall have an obligation to deliver services within their designated areas of jurisdiction

Principles of public service delivery **113.** Services in the county shall be delivered in keeping with the following principles—

- (a) equity,
- (b) efficiency,
- (c) accessibility,
- (d) non-discrimination
- (e) transparency
- (f) accountability

Standards and norms for public service delivery

**114.** (1) In delivering public services, county governments and their agencies shall—

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

(2) Such 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) financial and environmental sustainability; and

(3) County governments shall carry out regular review of the delivery of services with a view to improvement.

Tariffs and pricing of public services

**115.** (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 Act

(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) County governments may make laws and regulations to give effect to the implementation and enforcement of tariff policies.

### **PART XIII –TRANSFER OF FUNCTIONS**

Power to transfer functions

**116.** Subject to the Constitution, County governments shall have the power to transfer functions to the following entities:

- (a) national government;
- (b) other county government;
- (c) joint committees, authorities or companies;
- (d) sub- county levels of government.

Principles of delegation of powers, functions and competencies

**117.** 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

**118.** (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;

(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;

(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;

(i) a capacity building framework for enhancing any deficits identified in the receiving entity

(3) The agreement shall be published in the Gazette at least fourteen days before the effective date of transfer of powers, functions and competencies

Standards	<p><b>119.</b> (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 sector forums</p> <p>(2) These minimum service standards or norms of performance shall form the basis of allocation of resources between the various levels of government</p>
Criteria for transferring powers, functions and competencies	<p><b>120.</b> The criteria for transferring powers, functions and competencies may include—</p> <ul style="list-style-type: none"><li>(a) any technical, operational or financial factors which imply transfer suitability;</li><li>(b) the capacity of the receiving entity or entities;</li><li>(c) comparative assessment of the capacity or potential capacity of the administrator’s department and the entity or entities;</li><li>(d) the extent to which the transfer would allow for greater accountability;</li><li>(e) the extent to which the function requires a single authority across a whole county, municipality or across the Republic;</li><li>(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;</li><li>(g) a high-level of technical and managerial expertise is required;</li><li>(h) the provision of the service or function requires substantial crossing of boundaries or large-scale bulk infrastructure;</li><li>(i) appropriateness in terms of any other factor which is reasonably considered relevant;</li><li>(j) the implications for inter-governmental fiscal arrangements; and</li><li>(k) the transfer costs relating to staff, assets and professional or expert advice.</li></ul>
Costing of	<p><b>121.</b> (1) Each power, function and competency shall be appropriately costed.</p>

- functions
- (2) There shall be determined, through the various intergovernmental sector forums, 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
- 122.** (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;
  - (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 a consultative one 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;
  - (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.
- (5) Capacity assessments shall clearly make statements regarding, but not limited to, 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;
- (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

**123.** The capacity of an entity 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;
- (e) any other relevant function.

Transfer of assets and liabilities

**124.** 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.

**125.** The governor in 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—SUSPENSION OF COUNTY GOVERNMENT**

Grounds for suspension arising from conflict or war.

**126.** (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 Inter-Governmental Council established under

the Inter-Governmental Relations Act for approval.

(3) Upon approval by the Inter-Governmental 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.

**127.** (1) The president may 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.

(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 Inter-Governmental Council established under the Inter-Governmental Relations Act for approval.

(3) Upon approval by the Inter-Governmental 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 consist 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 (powers of the Act to be reproduced); 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 transmit 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 according to the 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.

**128.** (1) During the period of suspension of a county, 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 shall retain their full benefits and privileges.

(3) All Bills introduced before the county assembly and that have not received assent prior to suspension shall expire and shall be 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

**129.** (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

Committee undertaken by an interim county management board.

(2) during a period of suspension, the governor, deputy governor and members of the executive committee shall remain in office shall retain their full benefits and privileges.

Establishment  
of the Interim  
County  
Management  
Board

**130.** (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 consist of –

(a) a chairperson appointed by the President, on recommendation of the Cabinet Secretary in charge of county governments; 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—

i. 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;

ii. 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

**131.** (1) The interim county management board shall have all powers and functions vested in the county executive committee under the Constitution and this Act for the performance of its functions and, in particular, but without prejudice to the generality of the foregoing, 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 upon oath or affirmation (which oath or affirmation the board is hereby empowered to administer);
- (g) issue instructions in writing to members, officers and employees of the county government for the better implementation of its functions;

(2) 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 willfully 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.

(3) There shall be paid to the members of the Board such reimbursement for reasonable and necessary expenses as shall be advised by the Salaries and Remuneration Commission.

(4) 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.

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

(6) 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 bona fide 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.

(7) The interim county management board shall within ninety days of appointment prepare and submit to the President a report of its activities and recommendations.

Dissolution of  
the Interim  
County  
Management  
Board

**132.** The President shall by notice in the Gazette dissolve an interim county management board—

- (a) upon receipt of a report from the Board confirming that the circumstances that informed the decision to suspend the county have been addressed;
- (b) upon the publication of a notice on the holding of the election of the county governor and county assembly in the Gazette by the Independent Electoral and Boundaries Commission according to the provisions of the Elections Act;
- (c) upon expiry of ninety days after appointment.

Termination of  
suspension.

**133.** (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 130;

(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

**134.** (1) Elections shall be held in a suspended county after expiry of ninety days.

(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**

Protection  
against  
personal  
liability.

**135.** (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 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 **136.** (1) The Local Government Act is repealed.  
Cap.265

(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 **137.** 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. **138.** (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 declared.<sup>1</sup>

(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. **139.** (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 Ministry of Justice, National Cohesion and Constitutional Affairs and the Ministry of Local Government within the framework of the Kenya National Integrated Civic Education Programme.

(2) For the purposes of this proviso and for the avoidance of doubt, the Ministry of Justice, National Cohesion and Constitutional Affairs shall be responsible for the design and coordination of overall civic education on the Constitution and the Ministry of Local Government shall be responsible for the design and coordination of civic education on devolution.

Arrangements for public servants. **140.** (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 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 by the county public service board.
- (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 of ..... county; 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)*

### **MEMORANDUM OF OBJECTS AND REASONS**

The purpose of this Bill is to give further effect to the Constitution with respect to the operationalisation of the county governments established by Chapter Eleven of the Constitution. The Bill, specifically seeks to satisfy the requirement of Article 200 of the Constitution that directs the enactment legislation to provide for a number of issues mentioned in that Article.

The Bill makes provision for these matters mentioned in Article 200 as well as other matters either mandated by the constitution or those that would be incidental to the proper functioning of the counties and their governments.

The enactment of this Bill shall occasion expenditure of public fund to be provided through the estimates.

HON. MUSALIA MUDAVADI

*Deputy Prime Minister and Minister for Local Government*