

THE INTERGOVERNMENTAL RELATIONS BILL, 2011

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A Bill for

An Act of Parliament to establish a framework for intergovernmental and intra-governmental consultation, co-operation and dispute resolution; to provide mechanisms for the transfer of functions between governments and for connected purposes.

ENACTED by the Parliament of Kenya, as follows-

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Intergovernmental and Intra-governmental Relations Act, 2011 and shall come into operation on the date of its publication upon the final announcement of all the results of the first elections held under the Constitution.

Interpretation

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

“Citizens Service Centre” means the Citizens Service Centre established under section 57.

“Council of Counties” means the Council of Counties established under section 9;

“County Citizens’ Forum” means the County Citizens Forum established under section 25;

“draft agreement” means the draft transfer of functions and powers agreement drafted in terms of section 32;

“Inter-City and Municipality Forum” means the Inter-City and Municipality Forum established under section 21;

“Intra-County Forum” means the Intra-County Forum established

under section 17;

“levels of government” means the national and county levels of government.

“National and County Government Coordinating Council” means the National and County Government Coordinating Council established under section 5;

“Sectoral Forum” means the Sectoral Forum established under section 13;

“Tribunal” means the Devolved Government Disputes Resolution Tribunal established under section 40;

“units of government” means the decentralized units of county government.

“Village council of elders” means the council of elders established under section 50.

Objects and purposes of the Act

3. The objects and purposes of this Act are to-
 - (a) establish institutional structures and mechanisms for intergovernmental and intra-governmental relations;
 - (b) provide mechanisms for the resolution of intergovernmental and intra-governmental disputes where they arise; and
 - (c) provide procedural mechanisms for the transfer of functions between governments.

Principles and guidelines

4. (1) The structures and institutions set out in sub-section (2) shall, in the performance of their functions-
 - (a) facilitate the realization of the objects and principles of devolution provided for under Articles 174 and 175 of the

- Constitution;
- (b) conduct their mutual relations on the basis of consultation and cooperation as required under Article 6(3) of the Constitution;
 - (c) facilitate cooperation and consultation at all levels and units of government in a transparent, objective, accountable and fair manner;
 - (d) provide a forum for co-ordinating government policies and functions;
 - (e) ensure efficient sharing of all necessary data and information;
 - (f) ensure full disclosure of all necessary information;
 - (g) ensure and facilitate the use of appropriate information and communication technologies by the levels and units of government and by the institutions established in this Act;
 - (h) promote accountability and oversight between the organs and institutions of government;
 - (i) provide a forum for dispute resolution;
 - (j) promote the national values and principles of governance provided for under Article 10 of the Constitution;
 - (k) ensure that the intergovernmental and intra-governmental relations do not compromise national cohesion and national unity;
 - (l) be accountable to the people of Kenya and ensure their participation at all levels and units of government;
 - (m) promote and maintain fair procedures and administrative actions in their functioning and operations;
 - (n) provide the technical and administrative support required in the transition phase; and
 - (o) promote the well-being of the people.
- (2) The principles and guidelines in sub-section (1) shall bind-
- (a) the national and county governments;
 - (b) the units of government;

- (c) the intergovernmental and intra-governmental structures established in this Act or in any other written law;
- (d) the Tribunal and
- (e) all other dispute resolution bodies and institutions established under this Act or in any other written law.

PART II - ESTABLISHMENT, COMPOSITION, FUNCTIONS AND POWERS OF INTERGOVERNMENTAL AND INTRA-GOVERNMENTAL STRUCTURES

A. National and County Government Coordinating Council

Establishment of the
National and County
Government
Coordinating Council

5. There is established a National and County Government Coordinating Council which shall consist of-
- (a) the President who shall be the chairperson of the Council;
 - (b) the Deputy President;
 - (c) the Cabinet Secretaries;
 - (d) the Governors of each of the forty-seven counties;
 - (e) the chairperson of an inclusive association of cities and municipalities; and
 - (f) the Attorney General.

Functions of the
Council

6. The Council shall-
- (a) provide a forum for consultation between the national and county governments;
 - (b) consider matters of national interest that affect county governments;
 - (c) support county governments in—
 - (i) the implementation of national policy and legislation in the counties;
 - (ii) the co-ordination and alignment of priorities, objectives and strategies across national and county governments;
 - (iii) any other matters of strategic importance that affect the

- interests of the Republic;
- (d) provide a forum for the assessment of the performance of devolved organs and structures;
- (e) consider-
 - (i) reports from other intergovernmental forums and intra-governmental forums on matters affecting national interest; and
 - (ii) other reports dealing with the performance of counties;
- (f) facilitate the resolution of disputes between the national and county governments and between counties within the framework provided under this Act;
- (g) discuss the performance of the national and county levels of government in the execution of their functions and initiate preventive or corrective action where necessary; and
- (h) recommend incentives for counties which undertake joint projects.

Meetings of the Council

- 7. (1) The Council shall meet at least twice a year.
- (2) The Council shall have joint secretaries, being-
 - (a) one of the executive committee members of the forty-seven counties responsible for devolution who shall be nominated by the governors; and
 - (b) the cabinet secretary responsible for devolution.
- (2) The joint secretaries shall provide the necessary administrative and technical support to the Council.
- (3) The First Schedule shall apply to the meetings of the Council.

Reporting

- 8. (1) The Council shall submit an annual report to Parliament.
- (2) Notwithstanding subsection (1), Parliament may, at any time,

require a report from the Council on a particular matter.

B. Council of Counties

Establishment of
Council of Counties

9. (1) There is established a Council of Counties which shall comprise-

- (a) the governors of each of the forty-seven counties;
- (b) the secretary of an inclusive association of cities and municipalities;
- (c) a senior county public servant nominated by each department forums to represent the departments.

(2) The Council of Counties shall elect a chairperson from amongst the members under sub-section (1)(a).

(3) The chairperson shall serve for a non-renewable term of one year.

Functions of the
Council of Counties

10. The Council of Counties shall-

- (a) provide a forum for consultation between county governments;
- (b) consider matters of interest to county governments;
- (c) support county governments in–
 - (i) the implementation of national policy and legislation in counties;
 - (ii) the co-ordination and alignment of priorities, objectives and strategies across national and county governments;
 - (iii) any other matters of strategic importance that affect the interests of the Republic at large and the counties;
- (d) provide a forum for the assessment of the performance of devolved organs and structures;
- (e) oversee the entering into and implementation of inter-county agreements on trans-border projects;

- (f) consider-
 - (i) reports from other intergovernmental forums on matters affecting national and county interests; and
 - (ii) other reports dealing with the performance of counties;
- (g) facilitate the resolution of disputes between the national and county governments, between counties and between and amongst cities and municipalities within the framework provided under this Act; and
- (h) discuss the performance of the counties in the execution of their functions and initiate preventive or corrective action where necessary.

Meetings of the Council of Counties

11. (1) The Council of Counties shall meet at least once in every quarter.

(2) The county executive committee of which the chairperson of the Council is the Governor shall provide the necessary administrative and technical support to the Council.

(3) The First Schedule shall apply to the meetings of the Council.

Reporting

12. (1) The Council of Counties shall submit an annual report to the National and County Government Coordinating Council and submit copies of the report to the Senate and to the respective county assemblies.

(2) Notwithstanding sub-section (1), the Council of Counties may, where necessary, submit any other reports to the National and County Government Coordinating Council and to the Senate.

C. Sectoral Forum

Establishment of a

13. Each cabinet secretary shall, in consultation with the respective

Sectoral Forum executive committee members of the forty-seven counties, establish a Sectoral Forum for the respective sector comprising-

- (a) the cabinet secretary responsible for the Sector, who shall be the chairperson of the forum;
- (b) the executive committee members of each of the forty-seven counties who are responsible for the sector; and
- (c) the principal secretary responsible for the sector.

Functions of a Sectoral Forum

14. The Sectoral Forum shall-
- (a) provide a forum for consultation on the respective sector and in particular on-
 - (i) the implementation of national and county policy and legislation relating to the sector;
 - (ii) the co-ordination and alignment of national and county strategic and performance plans relating to the sector;
 - (iii) the performance of the sector in the execution of its functions and initiate preventive or corrective action where necessary;
 - (iv) any other matters of strategic importance to the sector;
 - (b) facilitate the resolution of intergovernmental and intra-governmental disputes arising within the sector within the framework provided under this Act;
 - (c) undertake any functions that may be referred to it by the National Coordinating Council or the Council of Counties;
 - (d) make regular reports to the National Coordinating Council and the Council of Counties on any matter referred to it by either Council; and
 - (e) perform any other functions that may be conferred by legislation.

Meetings of the Sectoral Forum

15. (1) A Sectoral Forum shall meet at least once in every quarter.

- (2) The Sectoral Forum shall have joint secretaries, being-
 - (a) the respective executive committee member; and
 - (b) the respective principal secretary.

(2) The joint secretaries shall provide the necessary administrative and technical support to the Sectoral Forum.

(3) The First Schedule shall apply to the meetings of the Sectoral Forum.

Reporting

16. (1) The Sectoral Forum shall submit an annual report to the Council of Counties, the National Coordinating Council and to Parliament.

(2) Notwithstanding sub-section (1), the Sectoral Forum may, where necessary, submit any other reports to the Council of Counties, the National Coordinating Council and to Parliament.

D. Intra-County Forum

Establishment of Intra-County Forum

17. Each county shall establish an Intra-County Forum comprising—
- (a) the Governor of the county;
 - (b) the members of the National Assembly who are registered as voters in the county;
 - (c) the members of the Senate who are registered as voters in the county;
 - (d) the members of the county assemblies elected in the counties;
 - (e) the mayors and chairpersons of councils in the county; and
 - (f) the city and municipal managers.

Functions of the Intra-County Forum

18. (1) The Intra-County Forum shall-
- (a) provide a forum for consultation by the elected and appointed representatives of the county on-

- (i) the implementation of national policy and legislation relating to matters affecting the county;
 - (ii) the implementation of county policy and legislation;
 - (iii) the co-ordination and alignment of national and county strategic and performance plans;
 - (iv) the performance of the county discuss in the execution of its functions and initiate preventive or corrective action where necessary;
 - (v) any other matters of strategic importance to the county;
- (b) facilitate the resolution of intra-county disputes and inter-governmental disputes within the framework provided under this Act;
- (c) undertake functions that may be referred to it by the National Coordinating Council and the Council of Counties;
- (d) make regular reports to the National Coordinating Council and the Council of Counties on any matter referred to it by either Council; and
- (e) perform any other functions that may be conferred by legislation.

Meetings of the Intra-County Forum

19. (1) The Intra-County Forum shall meet at least once in each quarter.

(2) The county executive committee shall provide the necessary administrative and technical support to the Intra-County Forum.

(3) The First Schedule shall apply to the meetings of the Intra-County Forum.

Reporting

20. (1) Each Intra-County Forum shall submit an annual report to the Council of Counties and to its county assembly.

(2) Notwithstanding sub-section (1), an Intra-County Forum may,

where it considers it necessary, submit any other reports to the Council of Counties and to its county assembly.

E. Inter-City and Municipality Forum

Establishment of Inter-City and Municipality Forum

21. (1) There is established an Inter-City and Municipality Forum which shall comprise-

- (a) the mayors of councils; and
- (b) the municipal managers of the councils.

(2) The Inter-City and Municipality Forum shall elect a chairperson from amongst the members under sub-section (1)(a).

(3) The chairperson shall serve for a non-renewable term of one year.

Functions of the Inter-City and Municipality Forum

22. The Inter- City and Municipality Forum shall-

- (a) provide a forum for consultation by cities and municipalities;
- (b) consider matters of interest to cities and municipalities;
- (c) support cities and municipalities in-
 - (i) the implementation of national policy and legislation in the cities and municipalities;
 - (ii) the co-ordination and alignment of priorities, objectives and strategies across the cities and municipalities;
 - (iii) any other matters of strategic importance that affect the interests of the Republic at large and the cities and municipalities;
- (d) provide a forum for the assessment of the performance of the cities and municipalities;
- (e) consider-
 - (iii) reports from other intergovernmental forums on matters affecting national, city and municipality interests; and
 - (iv) other reports dealing with the performance of counties;

- (f) facilitate the resolution of disputes amongst cities and municipalities and between the cities and municipalities and other levels or units of government within the framework provided under this Act; and
- (g) discuss the performance of the cities and municipalities in the execution of their functions and initiate preventive or corrective action where necessary.

Meetings of the Inter-City and Municipality Forum

23. (1) The Inter-City and Municipality Forum shall meet at least once in each quarter.

(2) The council of which the chairperson of the Inter-City and Municipality Forum is the mayor shall provide the necessary administrative and technical support to the Forum.

Reporting

24. (1) The Inter-City and Municipality Forum shall submit an annual report to the Council of Counties and to the county assemblies.

(2) Notwithstanding sub-section (1), the Inter-City and Municipality Forum may, where it considers it necessary, submit any other reports to the Council of Counties and to the county assemblies.

F. County Citizens' Forum

Establishment of County Citizens' Forums

25. Each Governor shall establish and facilitate County Citizens' Forums at the following levels and units of government–

- (a) the sub-county;
- (b) the ward;
- (c) the village; and
- (d) any other level or unit of government that may be found to be

appropriate.

Functions of the County
Citizens' Forum

26. (1) The County Citizens' Forum shall provide the forum for county citizens to-

(a) deliberate and make proposals to the relevant bodies or institutions on-

(i) the provision of services in the county;

(ii) proposed county policies and county legislation;

(iii) proposed national policies and national legislation;

(iv) the proposed annual budget estimates of the county and of the national government;

(v) the proposed development plans of the county and of the national government; and

(vi) any other matters of concern to the county citizens;

(b) plan strategies for engaging the various levels and units of government on matters of concern to county citizens;

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

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

Meetings of the County
Citizens' Forum

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

(a) at least once in each quarter; and

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

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

Reporting

28. (1) The Governor shall submit an annual report on the County

Citizens' Forums to the county assembly.

(2) Notwithstanding sub-section (1), the Governor may, where necessary, submit any other reports to the county assemblies.

G. Establishment of Other Intergovernmental and Intra-Governmental Structures

Other intergovernmental and intra-governmental structures

29. A level or unit of government may establish an inter-governmental or intra-governmental structure not provided for in this Act where such a structure is necessary for the achievement of the objects of devolution.

Joint committees

30. A level or unit of government may establish a joint committee with a specific mandate.

Procedure of other structures and joint committees

31. (1) A structure established under section 29 and a joint committee established under section 30 shall-

(a) apply the principles and guidelines set out under section 4;

and

(b) apply the provisions of the First Schedule to the conduct of their meetings.

PART III - TRANSFER OF FUNCTIONS AND POWERS

Procedure for transfer of functions and powers

32. (1) Where one level or unit of government proposes to transfer a function or power assigned to it to another level or unit of government, the cabinet secretary and the executive committee member responsible for the sector in which the particular function falls shall enter into negotiations and jointly propose a draft transfer of functions or powers agreement.

(2) The general form of a transfer of functions and powers

agreement shall be as set in the Second Schedule with such modifications as may be necessary.

(3) The executive committee member shall, within fourteen days of the conclusion of the draft agreement, submit a report on the draft agreement to the clerk of the county assembly.

(4) The clerk of the county assembly shall, within fourteen days of the receipt of the draft agreement-

(a) publish and publicize the draft agreement through publication in-

(i) the *Gazette*;

(ii) at least two newspapers with national circulation;

(iii) at least one newspaper with county-wide circulation; and

(iv) the national and county government websites; and

(b) invite representations from the public on the draft agreement.

(5) Within fourteen days of the close of the date specified for receipt of representations from the public, the county assembly shall consider the report on the draft agreement and approve or reject the proposed transfer of functions or powers.

(6) The clerk of the county assembly shall inform the executive committee member and the responsible cabinet secretary of the approval or rejection of the proposed transfer of functions or powers.

(7) Where the county assembly approves the transfer of functions or powers, the responsible cabinet secretary shall present a report on the draft agreement to the Senate.

(8) The Senate shall, taking into account any further representations by the public on the draft agreement, consider the

report on the draft agreement and shall either approve or reject the proposed transfer of functions or powers.

(9) Where the Senate approves the transfer of functions or powers, the responsible cabinet secretary and executive committee member shall, within seven days of the resolution, execute the agreement, taking into account the amendments, if any, proposed by the Senate.

(10) Where a proposed transfer of functions or powers relates to a matter in respect of which legislation requires ratification by the people through a referendum in either or both of the concerned levels or units of government the proposed transfer of functions shall-

- (a) be subjected to referendum after the approval by the Senate under sub-section (8); and
- (b) if ratified in the referendum, be executed in terms of sub-section (9).

Monitoring, evaluation
and support

33. (1) A level or unit of government that transfers a function or power assigned to it to another level or unit of government shall-
- (a) transfer the resources, data and information necessary for the performance of the function or the exercise of the power that has been transferred to the receiving level or unit of government within the timelines stipulated in the agreement and where no timelines are stipulated, within the shortest time possible;
 - (b) ensure that in the transition phase, services in respect of the function or power that is to be transferred continue to be effectively rendered; and
 - (c) monitor the performance of the function through mechanisms that are jointly agreed between the transferring and receiving levels or units of government.

(2) The receiving level or unit of government shall make reports to the transferring level or unit of government at such times as shall be agreed between the two governments.

(3) The two levels or units of government that are party to a transfer of functions or powers agreement shall-

- (a) inform and consult each other on any proposed changes in policy or legislation that may affect the implementation of the function or power that has been transferred;
- (b) ensure efficient and timely transmission of necessary resources, data and information; and
- (c) take all steps necessary to resolve any disputes arising from the transfer of the function or power amicably and through the framework set out in the agreement or in this Act.

(4) The National and County Government Coordinating Council shall oversee the implementation of a transfer of functions or powers agreement.

Transfer of functions and powers within a county

34. This Part shall apply, with necessary modifications, to the transfer of functions and powers within a county.

PART IV –DISPUTE RESOLUTION MECHANISMS

A. Intergovernmental and Intra-governmental Dispute Resolution Mechanisms

Application

35. (1) This Part shall apply to the resolution of disputes arising between-

- (a) the two levels of government;
- (b) counties
- (c) the units of a level of government, including cities and

municipalities;

(d) a level or unit of government and a person or body; and

(e) the intergovernmental and intra-governmental structures established in this Act.

(2) In this Part, unless the context otherwise requires, “dispute” shall include an intergovernmental dispute and an intra-governmental dispute.

Duty to avoid disputes

36. (1) All levels and units of government shall take all reasonable measures to-

(a) avoid disputes when exercising their statutory powers or performing their statutory functions; and

(b) resolve disputes amicably, without necessarily resorting to judicial proceedings.

Dispute resolution mechanisms

37. (1) An agreement between two or more levels or units of government shall include a dispute resolution mechanism that is appropriate to the nature of the agreement and that provides for alternative dispute resolution mechanisms with judicial proceedings as a last resort.

(2) Where an agreement does not provide a dispute resolution mechanism or provides for one that does not accord with subsection (1), a dispute arising shall be dealt with within the framework under this Part.

Declaring a dispute as a formal dispute

38. (1) A level or unit of government that is a party to a dispute with another level or unit may declare the dispute a formal dispute by notifying the other party of such declaration in writing.

(2) Before declaring a formal dispute, a level or unit of government shall, in good faith, make every reasonable effort to

resolve the dispute, including by-

- (a) the initiation of direct negotiations with the other party or negotiations through an intermediary;
- (b) referral to the National and County Government Coordinating Council, the Council of Counties, the Sectoral Forum, the Intra-County Forum, or the Inter-City and Municipality Forum, as may be appropriate.

Consequences of
declaring a formal
dispute

39. (1) Within twenty-one days of the declaration of a formal dispute, the parties to the dispute shall convene a meeting of the two parties or their designated representatives at which the parties or their representatives shall-

- (a) determine the nature of the dispute, including-
 - (i) the precise issues that are in dispute; and
 - (ii) any material issues which are not in dispute;
- (b) identify the mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist them in settling the dispute, including a mechanism or procedure provided for in this Act, other legislation or in an agreement between the parties; and
- (c) agree on an appropriate mechanism or procedure for resolving the dispute, including mediation or arbitration.

(2) Where a mechanism or procedure is specifically provided for in legislation or in an agreement between the parties, the parties must make every reasonable effort to resolve the dispute in terms of such mechanism or procedure.

(3) If the parties to a dispute fail to convene a meeting in terms of sub-section (1), the meeting shall be convened and jointly chaired by-

- (d) the cabinet secretary for the time being responsible for devolution; and

- (e) the executive committee member for the time being serving as the joint secretary of the National and County Government Coordinating Council.

The Devolved
Government Disputes
Resolution Tribunal

40. (1) There is established a tribunal to be known as the Devolved Government Disputes Resolution Tribunal which shall consist of-

- (a) a chairperson who shall be a person qualified for appointment as a judge of the High Court, nominated by the Judicial Service Commission;
- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya; and
- (c) four persons who possess demonstrated and extensive knowledge and expertise in the field of devolution and decentralization nominated as follows-
 - (i) two persons, being one man and one woman, nominated by an inclusive association of cities and municipalities; and
 - (ii) two persons, being one man and one woman, nominated by the Council of Counties.

(2) The members of the Tribunal shall be appointed by the President with the approval of the Senate.

(2) The principal office of the Tribunal shall be in the capital city but the Tribunal may hold its sittings in any place within the Republic.

(4) A member of the Tribunal shall serve for a term of five years which may be renewed for one further term of five years.

(5) Notwithstanding sub-section (4), in order to ensure continuity in the functions of the Tribunal, the members of the first Tribunal established under this Act shall serve for the following respective

terms-

- (a) the chairperson shall serve for a term of four years;
- (b) the member under subsection (1)(b) shall serve for a period of three years; and
- (c) the members under subsection (1)(c) for a period of six years.

(6) For the avoidance of doubt, any renewal of the term of a member serving a term under subsection (5) shall be for a term of five years.

Proceedings of the
Tribunal

41. (1) The Tribunal shall apply the rules of evidence and procedure under the Evidence Act with the necessary modifications while ensuring that its proceedings do not give undue regard to procedural technicalities.

(2) The Tribunal shall, upon receipt of a dispute under this Act referred to it by any party, inquire into the matter and make an award on the matter or give directions, make orders or make decisions as may be appropriate.

(3) The Tribunal shall communicate an award, directions, orders or decisions made under sub-section (2) to the parties to the dispute.

(4) The proceedings of the Tribunal shall be open to the public except where the Tribunal, for good cause, directs otherwise.

(5) Except as expressly provided in this Act or in Regulations made under this Act, the Tribunal shall regulate the conduct of its proceedings.

Orders of the Tribunal

42. The Tribunal may make orders for the purposes of-

- (a) securing the attendance of a person at any place where

Tribunal is sitting; or

- (b) discovery or production of any document concerning a matter that is before the Tribunal.

Quorum of the Tribunal
for determination

43. (1) For the purposes of hearing and determining a matter under this Act, the chairperson and two members of the Tribunal shall constitute a quorum.

- (2) A member of the Tribunal who has a direct interest in a matter which is the subject of the proceedings before the Tribunal shall, at the earliest opportunity, declare the interest and shall not take further part in those proceedings.

Appeals to the High
Court

44. (1) A person who is aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against the decision or order in the High Court.

- (2) A decision or order of the Tribunal shall not be enforced until the thirty day period under sub-section (1) has lapsed.

(3) Upon hearing an appeal under this section, the High Court may-

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with instructions for further consideration in a manner specified by the High Court;
- (c) make such other orders as it may deem fit, including orders as to costs of the appeal or the earlier proceedings before the Tribunal.

Offence

45. (1) A person commits an offence if the person-

- (a) fails to attend a sitting of the Tribunal having been required to do so under section 42(a);

- (b) refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives false evidence or information to the Tribunal; or
- (d) interrupts the proceedings of the Tribunal.

(2) A person who commits an offence under sub-section (1) is liable for a term of imprisonment of six months or to a fine not exceeding two hundred thousand shillings, or to both.

Advisory opinion of the Supreme Court

46. A level or unit of government may seek the advisory opinion of the Supreme Court on any matter concerning county government in terms of Article 163(6) of the Constitution.

Role of the Senate in dispute resolution

47. The Senate may, through its committees, facilitate the resolution of intergovernmental and intra-governmental disputes.

B. Intra-County Dispute Resolution Mechanisms

Dispute resolution officer

48. The governor of each county shall appoint a dispute resolution officer who shall serve on the secretariat of the county executive.

Functions of a dispute resolution officer

49. A dispute resolution officer shall-

- (a) facilitate the resolution of disputes arising within and between the decentralized units of the county;
- (b) assist in facilitating the resolution of intergovernmental disputes;
- (c) identify areas of potential conflict and address or mitigate the effect of such conflict;
- (d) promote the use of alternative dispute resolution mechanism to amicably resolve intra-county disputes; and
- (e) perform any other duty or function as may be assigned by

the governor.

Appointment of the
village council of elders

50. (1) The governor of each county shall, with the approval of the county assembly, appoint a village council of elders for each village.

(2) A village elder shall be a public officer and shall be paid such salary and allowances as may, from time to time, be determined.

(3) A village council of elders shall comprise five persons at least two of whom shall be of either gender.

(4) A village council of elders shall elect a chairperson from amongst its members.

(5) A members of the village council of elders shall serve for a renewable term of five years.

Qualifications for
appointment as a village
elder

51. A person shall qualify for appointment as a village elder if the person-

(a) is a Kenyan citizen;

(b) is registered as a voter in the county in which the person seeks to be appointed;

(c) has been a resident or has owned property in the village in which the person seeks to be appointed for a continuous period of not less than five years prior to the nomination for appointment;

(d) possesses a high moral character and is a person of integrity;

(e) meets the requirements of Chapter Six of the Constitution;
and

(f) is not disqualified for appointment by any provision of this Act or any other written law.

Removal of a village elder from office

52. A village elder shall cease to hold office if the village elder—
- (a) ceases to be a resident of the village;
 - (b) is incompetent;
 - (c) resigns from office;
 - (d) suffers such physical or mental incapacity, including insanity, as would render the village elder incapable of performing the duties of office;
 - (e) is adjudged bankrupt;
 - (f) is convicted to a term of imprisonment for a period of more than six months; and
 - (g) violates the Constitution, this Act or any other law; .

Functions of a village council of elders

53. A village council of elders shall—
- (a) where appropriate, work closely with the dispute resolution manager in facilitating the resolution of intra-governmental disputes;
 - (b) where appropriate, assist in facilitating the resolution of inter-governmental disputes;
 - (c) identify areas of potential conflict and address or mitigate the effect of such conflict;
 - (d) identify early warning signs of possible conflict including issues which threaten to breach the peace within a village;
 - (e) promote the use of alternative dispute resolution mechanism to amicably resolve intra-county disputes;
 - (f) participate in developing and evaluating policies and programs of the village particularly those relating to dispute resolution; and
 - (g) perform any other duty or function as may be assigned by the governor.

Reporting

54. (1) A village council of elders shall submit a quarterly report to

the Governor and to the county assembly.

(2) Notwithstanding sub-section (1), a village council of elders may, where necessary, submit any other reports to the Governor and to the county assembly.

PART V - MISCELLANEOUS PROVISIONS

Reports by the county
assembly

55. (1) The speaker of a county assembly shall submit quarterly reports on the business of the assembly to-

- (a) the Senate; and
- (b) the Intra-County Forum.

(2) The Senate and the Intra-County Forum shall report back to the county assembly on their observations and recommendations arising from the report submitted under sub-section (1).

Attendance of members
of Parliament in county
assembly sittings

56. (1) In this section, member of Parliament means-

- (a) a member of the National Assembly who is registered as a voter in the county; and
- (b) a member of the Senate who is registered as a voter in the county.

(2) A member of Parliament may attend the sittings of the respective county assembly at which-

- (c) the annual budget estimates are presented and deliberated; and
- (d) the development plans are presented and deliberated.

(3) Notwithstanding sub-section (2), the speaker of the county assembly may invite a member of Parliament to attend any other sitting of a county assembly.

(5) A member of Parliament attending a sitting of the county assembly in terms of this section shall have the right to participate at the session but shall not be entitled to vote.

Citizens' Service Centre

57. (1) The Governor of each county shall establish a Citizens Service Centre at the following units of government-

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

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

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

Administrative and technical costs

58. (1) The administrative and technical costs of the structures and institutions established in this Act shall be provided for in the annual estimates of the revenue and expenditure of the national and county governments in the following manner-

- (a) the National and County Government Coordinating Council as a charge to the national government;
- (b) the Council of Counties as a charge to the national government;
- (c) the Sectoral Forums as a charge to the national government;
- (d) the Intra-County Forums as a charge to the county governments;
- (e) the Inter-City and Municipality Forum as a charge to the national government;

- (f) the Tribunal as a charge to the national government; and
- (g) the village council of elders as a charge to the county governments.

(2) The annual estimates of the national and county governments shall make provision for the respective expenditure of the relevant institution.

Regulations

59. The cabinet secretary responsible for devolution may make regulations generally for the better carrying out of the provisions of this Act.

FIRST SCHEDULE

[s. 7, 11, 15, 19, 23, 31(b)]

**PROVISIONS ON THE CONDUCT OF THE MEETINGS OF THE
INTERGOVERNMENTAL AND INTRA-GOVERNMENTAL STRUCTURES**

- Interpretation
1. In this Schedule, unless the context otherwise requires-
“body” means an intergovernmental and intra-governmental structure established under this Act.
“meeting” means a meeting of any of the intergovernmental or intra-governmental structures established under this Act.
- Convening of meetings
2. (1) The chairperson of a body shall-
 - (a) determine the agenda of the meetings of the body including the date, time and venue of the meeting; and
 - (b) convene and chair its meetings.
(2) In the absence of the chairperson at a meeting -
 - (a) in the case of the National and County Government Coordinating Council, the meeting shall be chaired by the Deputy President and in the absence of the Deputy President, by one of the cabinet secretaries who shall be designated to chair the meeting by the President;
 - (b) in the case of the other bodies, the members present shall elect one of their number to chair the meeting.
- Special meetings
3. The chairperson may, on the written requisition of one-third of the members of a body, convene a special meeting of the body.
- Notice of meetings
4. (1) Unless in the case of a special meeting, at least fourteen days written notice of a meeting of a body shall be issued to each member of the body.

(2) In the case of a special meeting, the chairperson shall convene a meeting within seven days of receipt of the requisition for the special meeting.

- | | |
|---------------------------|---|
| Quorum | 5. The quorum for the conduct of the business of a meeting of a body shall be a majority of the total membership. |
| Decision making | 6. A decision of a body shall be made by the concurrence of a majority of the members present and voting. |
| Joint sittings of bodies | 7. A body may hold a joint sitting with any other body for the purpose of carrying out its mandate. |
| Attendance by non-members | 8. A body may invite a person who is not a member of the body to attend and participate at a sitting of the body but such person shall not be entitled to vote. |
| Committees | 9. A meeting of a body may establish standing or ad hoc committees charged with specific responsibilities. |
| Other procedures | 10. Except as provided in this Schedule, a body may regulate its own procedure. |

SECOND SCHEDULE

[s. 32(1)]

GENERAL FORM OF A TRANSFER OF FUNCTIONS OR POWERS AGREEMENT

TRANSFER OF [FUNCTIONS/POWERS] AGREEMENT

BETWEEN

[TRANSFERRING LEVEL OR UNIT OF GOVERNMENT]

AND

[RECEIVING LEVEL OR UNIT OF GOVERNMENT]

ON

[STATE PRECISE SUBJECT OF THE TRANSFER]

[DATE]

PREAMBLE

- 1. The Parties-**
 - 1.1 Having regard to ...
 - 1.2 Desiring to ...
 - 1.3 Recognizing the ...

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS-

- 2. Definitions-**

For the purpose of this Agreement, unless the context otherwise requires-
“agreement” means the agreement set out in this document and the annexures to the document.
...means
...

3 Objects of the Agreement

3.1 The objects of the agreement are-

...

3.2 The parties agree to act in common in pursuit of the objectives of the Agreement which shall be implemented in accordance with the following terms and conditions-

...

4. Roles and Responsibilities

4.1 The roles and responsibilities of the parties shall be as follows-

(a) Transferring level or unit of government-

...

(b) Receiving level or unit of government-

...

4.2 The roles and responsibilities of other key stakeholders shall be as follows-

(a) Name of institution (eg. Council of Counties)-

...

(b) Name of institution-

...

5. Workplan

5.1 The parties agree to the following Workplan-

...

6. Resources

The financial and non-financial resources attendant to the implementation of the transfer of the [function/power] shall be contributed as follows-

(a) Transferring level or unit of government-

...

(b) Receiving level or unit of government-

...

7. Management of the Agreement

The parties undertake to establish the following mechanisms and institutions (e.g. committees, joint committees) for the effective management of the Agreement-

...

8. Good Faith

- 8.1 The parties undertake to act in good faith
- 8.2 The parties warrant that they shall not do anything that may prejudice the implementation of the transfer of the [function/power].
- 8.3 The parties warrant that they shall not refrain from doing anything that may prejudice the implementation of the transfer of the [function/power].

9. Dispute Resolution

Any dispute arising between the parties with the regard to the implementation of this Agreement shall be resolved as follows-

- (a) the parties shall initially make all reasonable efforts to resolve any dispute through consultation and negotiation, including by referral to the [National and County Government Coordinating/ Council of Counties/ Inter-Sectoral Forum/ Intra-County Forum/ Inter-City and Municipality Forum, as appropriate];
- (b) should the dispute remain unresolved, the parties shall refer it to an agreed arbitrator or mediator;
- (c) if the parties fail to reach agreement on an arbitrator or mediator, the Chartered Association of Arbitrators shall appoint an arbitrator;
- (d) if a party is not satisfied with the determination in the arbitration, the party may refer the matter to the Intergovernmental Disputes Resolution Tribunal.

10. Duration, execution and amendment of the Agreement

- 11.1 This Agreement shall come into force on the date of its execution by the parties and will remain in force unless terminated by either of the parties in writing.
- 11.2 This Agreement may be amended through a written and duly executed addendum.

11 Termination of the Agreement

The parties may terminate the agreement if-

...

12 Other Provisions

[SIGNATURES OF THE PARTIES AND WITNESSES]

MEMORANDUM OF OBJECTS AND REASONS

The Constitution of Kenya, 2010 establishes two levels of government: the national and the county level. Article 6(2) of the Constitution recognizes that the two levels of government are distinct but are also inter-dependent. That provision therefore requires the two levels of government to conduct their mutual relations on the basis of consultation and cooperation.

Article 176 of the Constitution further requires a county government to decentralize its functions and the provision of its services to the extent that it is efficient and practicable so to do. Consultation and cooperation would be essential to the success of the decentralized units in the provision of their services to the county citizens.

This Bill therefore seeks to establish institutional structures and mechanisms for intergovernmental and intra-governmental consultation and cooperation. The Bill also seeks to provide mechanisms for the resolution of intergovernmental and intra-governmental disputes, where they arise.

The Bill further seeks to legislate on the transfer of functions and powers between the levels or units of government, pursuant to Articles 187 and 200(2)(b) of the Constitution. In particular, the Bill provides for the procedure and the mechanism applicable to a transfer of functions or powers between the levels of units of government.

The enactment of this Bill will occasion additional expenditure of public funds which are proposed to be provided for in the estimates of the national government or the county government in the manner set out in clause 59 of the Bill.

Dated

.....
Minister