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**COUNTY GOVERNMENTS ACT**

NO. 17 OF 2012

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**NO. 17 OF 2012**

**COUNTY GOVERNMENTS ACT**

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**NO. 17 OF 2012**  
**COUNTY GOVERNMENTS ACT**

[Date of assent: 24th July, 2012.]

[Date of commencement: See Section 1.]

**An Act of Parliament to give effect to Chapter Eleven of the Constitution; to provide for county governments' powers, functions and responsibilities to deliver services and for connected purposes**

[Act No. 17 of 2012, Act No. 13 of 2014, Act No. 1 of 2016, Act No. 7 of 2016, Act No. 43 of 2016.]

**PART I – PRELIMINARY**

**1. Short title and commencement**

This Act may be cited as the County Governments Act, 2012 and shall come into operation upon the final announcement of the results of the first elections under the Constitution.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**analysis of functions**” means processes of and mechanisms for, reviewing and reassigning powers and competencies between the national government and county governments in accordance with the provisions of the Constitution generally and in particular, the provisions of the Fourth Schedule thereto;

“**apex body**” means the body established under the law governing inter-governmental relations;

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

“**authorized officer**” includes—

- (a) the holder of the office of county chief officer in a county department; or
- (b) in case of a department that is not assigned or under direct administration of a county chief officer, the head of that department; and
- (c) any other public officer appointed by the County Public Service Board to be an authorized officer with respect to a specified public body including a city or urban area;

“**Cabinet Secretary**” means the Cabinet Secretary responsible for matters relating to inter-governmental relations;

“**city**” has the meaning assigned to it under the Urban Areas and Cities Act, 2011 (No. 13 of 2011);

“**code of conduct**” means any written standard issued by a lawful authority to guide the conduct of any county public officer or category of county public officers;

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

**“conditions of service”** includes any criterion or circumstance or factor for a person’s—

- (a) appointment, secondment, deployment, promotion or discipline with respect to a public office;
- (b) retention in employment as a public officer; or
- (c) remunerative, retirement and other benefits;

**“Constitution”** means the Constitution of Kenya, 2010;

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

**“county assembly member”** means a member elected or nominated in accordance with Article 177(1) of the Constitution;

**“county chief officer”** means a county chief officer appointed under section 45;

**“county executive committee”** means a county executive committee established in accordance with Article 176 of the Constitution;

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

**“county government”** means the county government provided for under Article 176 of the Constitution;

**“county government election”** means an election of governor and county assembly members;

**“county public office”** means an office in the county public service or an office in a public body but does not include any office specifically exempted by the Constitution from the powers of the county government;

**“county public officer”** means any person appointed by the county government and holding or acting in any county public office whether paid, unpaid, or on contractual or permanent terms but does not include a person engaged on a part-time basis in a county public body paid at an hourly or daily rate;

**“county public service”** means the collectivity of all individuals performing functions within any department of the county government or its agency, but does not include the governor, deputy governor, members of the county executive committee and the members of the county assembly;

**“deputy governor”** means a person nominated by the governor in accordance with Article 180 of the Constitution;

**“disciplinary control”** means the imposition of any punishment against a public officer on account of breach of a code of conduct;



**“GIS based database system”** means a geographical information management system that integrates hardware, software and data for capturing, managing, analyzing and displaying forms of geographically referenced information;

**“governor”** means a county governor elected in accordance with Article 180 of the Constitution;

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

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

**“merit”** when used with reference to a person who is a candidate for appointment, promotion or re-designation to a county public office, means—

- (a) the abilities, qualifications and personal qualities required to satisfy any prescribed criteria for appointments in the county public service, or to carry out the duties of the county public office; and
- (b) the person’s potential for development;

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

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

**“promotion”** means the conferment upon a person in the county public service of an office to which is attached a higher salary or salary scale than that attached to the previous office substantively held by that person;

**“public officer”** has the meaning assigned to it in Article 260 of the Constitution;

**“qualification”** means any prescribed factor of eligibility or ineligibility attached to holding or acting in a county public office;

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

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

**“Salaries and Remuneration Commission”** means the Salaries and Remuneration Commission established under Article 230(1) of the Constitution;

**“secondment”** means a temporary leave from discharging the duties of a county public office with a view of the concerned county public officer being employed outside the county public service or in another public body;

**“shared services”** means—

- (a) the centralisation at a county or other level of those administrative functions of a county that could be performed by different units including matters such as supply chain management, human resource management, information technology, purchasing, inventory, payroll, hiring, and information technology; or
- (b) partnerships between counties, a county or counties and national government and public private partnerships to deliver a specified set of public services;

**“speaker”** means the speaker of a county assembly elected under Article 178 of the Constitution;

**“the public”**, when used in relation to public participation in this Act, means—

- (a) the residents of a particular county;
- (b) the rate payers of a particular city or municipality;
- (c) any resident civic organisation or non-governmental, private sector or labour organization with an interest in the governance of a particular county, city or municipality;
- (d) non-resident persons who because of their temporary presence in a particular county, city or municipality make use of services or facilities provided by the county, city or municipality;

**“urban area”** has the meaning assigned to it under the Urban Areas and Cities Act, 2011 (No. 13 of 2011);

**“Ward”** means an electoral unit within a constituency delimited in accordance with Article 89 of the Constitution and any other relevant law; and

**“Ward representative”** means a county assembly member representing a particular Ward.

[Act No. 1 of 2016, s. 2.]

### 3. Object and purpose of the Act

The object and purpose of this Act is to—

- (a) provide for matters necessary or convenient to give effect to Chapter Eleven of the Constitution pursuant to Article 200 of the Constitution;
- (b) give effect to the objects and principles of devolution as set out in Articles 174 and 175 of the Constitution;
- (c) give effect to Article 176(2) of the Constitution in respect of further decentralization;
- (d) provide for the removal from office of the speaker of the county assembly in accordance with Article 178 of the Constitution;
- (e) provide for the powers, privileges and immunities of county assemblies, their committees and members under Article 196 of the Constitution;

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- (f) provide for public participation in the conduct of the activities of the county assembly as required under Article 196 of the Constitution;
- (g) seek to ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee as contemplated in Article 197 of the Constitution;
- (h) prescribe mechanisms to protect minorities within counties pursuant to Article 197 of the Constitution;
- (i) prescribe additional requirements in respect of the publication of county legislation as contemplated in Article 199 of the Constitution;
- (j) provide, pursuant to Article 200 of the Constitution, for—
  - (i) the manner of nomination or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;
  - (ii) the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and
  - (iii) the suspension of assemblies and executive committees;
- (k) prescribe, pursuant to Article 235 of the Constitution, 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; and
- (l) provide for the promotion, evaluation and reporting on the compliance by county public officers with the values and principles in Articles 10 and 232 of the Constitution.

**4. County symbols**

(1) Every county shall enact legislation prescribing the following county symbols—

- (a) the county flag;
- (b) county coat of arms; and
- (c) the county public seal.

(2) The County Executive Committee shall develop the symbols of the county through a consultative process for approval by the county assembly by legislation.

(3) The county legislation enacted under subsection (1) shall provide for the use of the county symbols in the same manner as provided for in the National Flag, Emblems and Names Act (Cap. 99).

(4) A county symbol shall not be the same as, or bear a likeness or similarity to a national symbol.

[Act No. 7 of 2016, Sch.]

## PART II – COUNTY GOVERNMENTS

**5. Functions of county governments**

(1) A county government shall be responsible for any function assigned to it under the Constitution or by an Act of Parliament.

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

- (a) county legislation in accordance with Article 185 of the Constitution;
- (b) exercising 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 county governments 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; and
- (f) establishing and staffing its public service as contemplated under Article 235 of the Constitution.

(3) A county government may seek assistance from the Kenya Law Reform Commission in the development or reform of county legislation under subsection (2)(a).

[Act No. 7 of 2016, Sch.]

**6. Powers of county governments**

(1) As an entity exercising constitutional authority, a county government shall be a body corporate with perpetual succession and shall have all the powers necessary for the discharge of its functions.

(2) Without prejudice to the generality of subsection (1), a county government may—

- (a) enter into a contract;
- (b) acquire, purchase or lease any land; or
- (c) delegate any of its functions to its officers, decentralised units or other entities within the county.

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

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

(5) To ensure efficiency in the delivery of service or carrying out of a function for which the county government is responsible, the county government may—

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

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

#### **6A. Location of county governments**

(1) Each of the county governments shall be located in the respective physical location set out in the Third Schedule.

(2) A County Assembly may, by a resolution supported by at least two-thirds of the members of the County Assembly and with the approval of Parliament, transfer the headquarters of the county government from the physical location specified in the Third Schedule to such other physical location as it may consider appropriate.

(3) A County Assembly shall, before passing a resolution under subsection (2), facilitate public participation.

(4) The county governor shall confer the status of an urban area to the seat of the physical location of the county government in accordance with the provisions set out in the Urban Areas and Cities Act (No. 13 of 2011).

[Act No. 1 of 2016, s. 3.]

### **PART III – COUNTY ASSEMBLY**

#### **7. Membership of the county assembly**

(1) In addition to the members who are elected under Article 177(a), or nominated under Article 177(b) of the Constitution, a county assembly shall comprise—

- (a) six nominated members as contemplated in Article 177(c) of the Constitution; and
- (b) the speaker, who is an *ex officio* member elected in accordance with Article 178 of the Constitution.

(2) The political party nominating persons under subsection (1) shall ensure that—

- (a) community and cultural diversity of the county is reflected in the county assembly; and
- (b) there is adequate representation to protect minorities within the county in accordance with Article 197 of the Constitution.

(3) The number of members nominated under subsection (1)(a) shall be reviewed to accord with the number of Wards determined by the Independent Electoral and Boundaries Commission under section 27(3)(a).

#### **8. Role of the county assembly**

(1) The county assembly shall—

- (a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;
- (b) perform the roles set out under Article 185 of the Constitution;
- (c) approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220(2) of the Constitution, guided by Articles 201 and 203 of the Constitution;
- (d) approve the borrowing by the county government in accordance with Article 212 of the Constitution;

- (e) approve county development planning; and
- (f) perform any other role as may be set out under the Constitution or legislation.

(2) If a county assembly fails to enact any particular legislation required to give further effect to any provision of this Act, a corresponding national legislation, if any, shall with necessary modifications apply to the matter in question until the county assembly enacts the required legislation.

### **9. Role of members of the county assembly**

(1) A member of a county assembly shall—

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

(2) A member of the county assembly shall not be directly or indirectly involved in the—

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

(3) Members of a county assembly shall be sworn in by the county assembly clerk within fourteen days, after the announcement of the final results of an election, in the manner set out in the Schedule to this Act.

(4) At any time in the absence of the speaker of the county assembly or in matters that directly affect the speaker, the county assembly shall elect a member to act as speaker as contemplated under Article 178(2)(b) of the Constitution.

(5) Unless otherwise removed, the first member elected under subsection (4), shall, in the absence of the Speaker, preside over the sittings of the assembly for the term of the county assembly.

### **10. County assembly party leaders**

(1) There shall be in each 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 of the largest party or coalition of parties in the county assembly.

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

(4) A county assembly shall observe the following order of precedence—

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

**11. Removal of speaker from office**

(1) A speaker of a county assembly 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) A notice of the intention to move a motion for a resolution to remove the 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 speaker shall be presided over by a member of the county assembly elected under section 9(4).

(4) Before the debate and voting on a motion under subsection (3), the speaker shall be accorded an opportunity to respond to the allegations on the floor of the county assembly.

**12. The county assembly service board**

(1) There shall be a county assembly service board for each county assembly.

(2) The county assembly service board shall be a body corporate with perpetual succession and a common seal.

(3) The county assembly service board shall consist of—

- (a) the Speaker of the county assembly as the chairperson;
- (b) the leader of the majority party or a member of the county assembly deputed by him or her, as the vice-chairperson;
- (c) the leader of the minority party or a member of the county assembly deputed by him or her; and
- (d) one person resident in the county, appointed by the county assembly from among persons who have knowledge and experience in public affairs, but who is not a member of the county assembly.

(4) The county assembly clerk shall be the secretary to the county assembly service board.

(5) A member of the county assembly service board shall vacate office—

- (a) if the person is a member of the county assembly—
  - (i) at the end of the term of the county assembly; or
  - (ii) if the person ceases to be a member of the county assembly; or
- (b) if the person is an appointed member, on revocation of the person's appointment by the county assembly; or
- (c) if the person is the Speaker, leader of majority party or leader of minority party when the person ceases to be such Speaker, leader of majority party or leader of minority party.

(6) Despite subsection (5), when the term of the county assembly ends, a member of the county assembly service board under subsection (3)(d) shall continue in office until a new member has assumed office in the member's place in the next assembly.

(7) The county assembly service board is responsible for—

- (a) providing services and facilities to ensure the efficient and effective functioning of the county assembly;

- (b) constituting offices in the county assembly service, and appointing and supervising office holders;
- (c) preparing annual estimates of expenditure of the county assembly service and submitting them to the county assembly for approval, and exercising budgetary control over the service;
- (d) undertaking, singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and
- (e) performing other functions—
  - (i) necessary for the well-being of the members and staff of the county assembly; or
  - (ii) prescribed by national legislation.

**13. Clerk and staff of the county assembly**

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

(2) A person shall not be qualified for appointment as a clerk of the county assembly unless such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognised in Kenya or its equivalent;
- (c) has had at least five years relevant professional experience;
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The functions and powers of a Clerk of Parliament shall with necessary modifications be the functions and powers of the clerk of a county assembly.

(4) For the purposes of this Act, the clerk of a county assembly is an authorized officer.

(5) The office of the clerk of the county assembly and the offices of members of the staff of the clerk of the county assembly shall be offices in the county assembly service board.

(6) The remuneration of the clerk and staff of the county assembly shall be determined by the county assembly service board upon the advice of the Salaries and Remuneration Commission.

**14. Procedure and committees of the county assembly**

(1) A county assembly—

- (a) may make standing orders consistent with the Constitution and this Act regulating the procedure of the county assembly including, in particular, orders for the proper conduct of proceedings; and
- (b) subject to standing orders made under paragraph (a), may establish committees in such manner and for such general or special purposes as it considers fit, and regulate the procedure of any committee so established.



(2) The county assembly proceedings are valid despite—

- (a) there being a vacancy in its membership at the particular time; or
- (b) the presence or participation at the particular time of a person not entitled to be present at, or to participate in, the proceedings of the county assembly.

(3) In considering any appointment for which approval of the county assembly is required under the Constitution, an Act of Parliament or county legislation—

- (a) the appointment shall be considered first by a committee of the county assembly;
- (b) the committee's recommendation shall be tabled before the county assembly for approval; and
- (c) the proceedings of the committee and the county assembly shall be open to the public.

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

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

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

(7) Until a county assembly makes its standing orders under subsection (1), the standing orders of the National Assembly shall, with the necessary modifications, apply to that county assembly.

(8) Without limiting the generality of subsection (1), the Standing Orders made under this section shall provide for the matters specified in the Second Schedule.

#### **15. Right to petition county assembly**

(1) A 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) Each county assembly shall prescribe a procedure for exercising the right under subsection (1).

#### **16. Freedom of speech and debate**

No civil or criminal proceedings may be instituted in any court or tribunal against a member of a county assembly by reason of any matter said in any debate, petition, motion or other proceedings of the county assembly.

#### **17. Powers, privileges and immunities of a county assembly**

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

**18. Official languages of a county assembly**

(1) The official languages of a county assembly shall be Kiswahili, English and Kenyan sign language and the business of the county assembly may be conducted in English, Kiswahili and Kenyan sign language.

(2) No business of the county assembly or any of its committees or other organs may be conducted or transacted in a language other than the official languages.

(3) In case of a conflict between different language versions of a county legislation, the version in which the legislation was originally enacted prevails.

(4) The verbatim report of the proceedings of a county assembly shall be recorded in the official language in which it was presented.

**19. Quorum**

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

**20. Voting in a county assembly**

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

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

- (a) the speaker of the county assembly has no vote; and
- (b) in the case of a tie, the question is lost.

(3) A member of a county assembly shall—

- (a) at all times observe the principles of integrity including those set out in Chapter Six of the Constitution; and
- (b) promptly declare to the speaker any interest that the member has in any matter being discussed in the county assembly.

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

**21. Procedure for the exercise of legislative powers**

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

(2) A Bill may be introduced by any member or committee of the county assembly, but a money Bill may be introduced only in accordance with subsection (4).

(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 executive committee member responsible for finance.

(4) For the purposes of this Act, “**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.

## **22. Bill to have a title**

A Bill introduced in the county assembly shall be identified by a title placed at the beginning of the Bill and the title shall include the subject matter of the statute to be enacted.

## **23. Publication of a Bill**

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

## **24. Assenting to a Bill**

(1) The Speaker shall, within fourteen days, forward a Bill passed by the county assembly to the governor.

(2) The governor shall within fourteen days after receipt of a Bill—

- (a) assent to the Bill; or
- (b) refer the bill back to the county assembly with a memorandum outlining reasons for the referral.

(3) If the governor refers a Bill back to the county assembly, the county assembly may, following the appropriate procedures under this section—

- (a) amend the Bill taking into account the issues raised by the governor; or
- (b) pass the Bill without amendment.

(4) If a county assembly amends the Bill taking into consideration the issues raised by the governor, the speaker shall within fourteen days submit the Bill to the governor for assent.

(5) If a county assembly passes the Bill a second time, without amendment, or with amendments which do not accommodate the governor’s concerns by a vote supported by two-thirds of members of the county assembly, the speaker shall within seven days re-submit the Bill to the governor and the governor shall within seven days assent to the Bill.

(6) If the governor does not assent to a Bill or refer it back within the period referred to under this section, the Bill shall be taken to have been assented to on the expiry of that period.

**25. Coming into force of a law**

(1) A legislation passed by the county assembly and assented to by the governor shall be published in the county *Gazette* and Kenya *Gazette* within seven days after assent.

(2) Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the county *Gazette* and Kenya *Gazette*, whichever comes earlier, unless the legislation stipulates a different date on or time at which it shall come into force.

(3) A county assembly legislation 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.

(4) Subsection (3) does not apply to an interest that members of county assembly have as members of the public.

**PART IV – ELECTORAL WARDS****26. Number and delimitation of electoral Wards, etc.**

(1) There shall be not more than one thousand four hundred and fifty electoral Wards for purposes of the election of county assembly members.

(2) For purposes of the first general elections under the Constitution, the Independent Electoral and Boundaries Commission (in this Part referred to as the “Commission”) shall ensure that each county comprises at least ten Wards.

(3) The Commission shall review the names and boundaries of Wards at intervals of not less than eight years, and not more than twelve years, but any review shall—

- (a) ensure that no county shall comprise less than twenty-five Wards; and
- (b) be completed at least twelve months before a general election of county assembly members.

(4) The requirements under subsection (3) above shall not apply to the review of Ward boundaries preceding the first election under this Act.

(5) If a general election is to be held within twelve months after the completion of a review by the Commission, the new boundaries shall take effect in the subsequent election.

(6) The boundaries of each Ward shall be such that the number of inhabitants in the Ward is, as nearly as possible, equal to the population quota, but the number of inhabitants of a Ward may be more or less than the population quota in the manner mentioned in subsection (7) to take account of—

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

(7) The number of inhabitants of a Ward may be more or less than the population quota by a margin of not more than—

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

(8) In reviewing 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.

[Act No. 7 of 2016, Sch.]

## **27. Recall of a county assembly member**

(1) The electorate in a county ward may recall their member of the county assembly before the end of the term of the member on any of the grounds specified in subsection (2).

(2) A member of a county assembly may be recalled where the member—

- (a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;
- (b) is found, after due process of the law, to have mismanaged public resources;
- (c) is convicted of an offence under the Elections Act (No. 24 of 2011).

(3) A recall of a member of the county assembly under subsection (1) shall only be initiated upon a judgment or finding by the High Court confirming the grounds specified in subsection (2).

(4) A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of the county assembly and not later than twelve months immediately preceding the next general election.

(5) A recall petition shall not be filed against a member of the county assembly more than once during the term of that member in the county assembly.

(6) A person who unsuccessfully contested an election under the Elections Act (No. 24 of 2011) shall not be eligible, directly or indirectly, to initiate a petition under this section.

## **28. Petition for recall**

(1) A recall under section 27 shall be initiated by a petition which shall be filed with the Independent Electoral and Boundaries Commission and which shall be—

- (a) in writing;
- (b) signed by a petitioner who—
  - (i) is a voter in the Ward in respect of which the recall is sought;and

- (ii) was registered to vote in the election in respect of which the recall is sought;
  - (c) accompanied by an order of the High Court issued in terms of section 27(3).
- (2) The petition referred to in subsection (1) shall—
  - (a) specify the grounds for the recall as specified under section 27(2);
  - (b) contain a list of such number of names of voters in the Ward which shall represent at least thirty percent of the registered voters in that Ward; and
  - (c) be accompanied by the fee prescribed for an election petition.
- (3) The list of names referred to in subsection (2)(b) shall contain the names, address, voter card number, national identity card or passport number and signature of the voters supporting the petition.
- (4) The voters supporting a petition under subsection (3) shall represent the diversity of the people in the Ward.
- (5) The petitioner shall collect and submit to the Commission the list of names under subsection (2)(b) within a period of thirty days after filing the petition.
- (6) The Commission shall verify the list of names within a period of thirty days of receipt of that list.
- (7) The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the speaker of the county assembly.
- (8) The Commission shall conduct a recall election within the Ward within ninety days of the publication of the question.

**29. Recall elections**

- (1) Where a member of the county assembly is to be recalled under section 27, the Independent Electoral and Boundaries Commission shall frame the question to be determined at the recall election.
- (2) A question referred to in subsection (1) shall be framed in such a manner as to require the answer “yes” or the answer “no”.
- (3) The Commission shall assign a symbol for each answer to the recall question.
- (4) The voting at a recall election shall be by secret ballot.
- (5) A recall election shall be decided by a simple majority of the voters voting in the recall election.
- (6) Where a recall election results in the removal of a member of the county assembly, the Commission shall conduct a by-election in the affected Ward.
- (7) A member of the county assembly who has been recalled may run in the by-election conducted under subsection (6).

## PART V – COUNTY EXECUTIVE

**30. Functions and responsibilities of a county governor**

(1) The governor shall take and subscribe to the oath or affirmation as set out in the Schedule to this Act before assuming office.

(2) Subject to the Constitution, the governor shall—

- (a) diligently execute the functions and exercise the authority provided for in the Constitution and legislation;
- (b) perform such State functions within the county as the President may from time to time assign on the basis of mutual consultations;
- (c) represent the county in national and international fora and events;
- (d) appoint, with the approval of the county assembly, the county executive committee in accordance with Article 179(2)(b) of the Constitution;
- (e) constitute the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county;
- (f) submit the county plans and policies to the county assembly for approval;
- (g) consider, approve and assent to bills passed by the county assembly;
- (h) chair meetings of the county executive committee;
- (i) by a decision notified in the county *Gazette*, assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people;
- (j) submit to the county assembly an annual report on the implementation status of the county policies and plans;
- (k) deliver annual state of the county address containing such matters as may be specified in county legislation; and
- (l) sign and cause to be published in the county *Gazette*, notice of all important formal decisions made by the governor or by the county executive committee.

(3) In performing the functions under subsection (2), the governor shall—

- (a) provide leadership in the county's governance and development;
- (b) provide leadership to the county executive committee and administration based on the county policies and plans;
- (c) promote democracy, good governance, unity and cohesion within the county;
- (d) promote peace and order within the county;
- (e) promote the competitiveness of the county;
- (f) be accountable for the management and use of the county resources; and

- (g) promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the county.

### **31. Powers of the governor**

The governor—

- (a) may, despite section 40, dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so;
- (b) shall dismiss a county executive committee member, if required to do so by a resolution of the county assembly as provided under section 40;
- (c) may appoint an accounting officer for each department, entity or decentralized unit of the county government; and
- (d) shall have such powers as may be necessary for the execution of the duties of the office of governor.

### **32. Functions of the deputy governor**

(1) The deputy governor shall take and subscribe to the oath or affirmation as set out in the First Schedule to this Act before assuming office.

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

(3) The governor may assign the deputy governor any other responsibility or portfolio as a member of the county executive committee.

(4) When acting in office as contemplated in Article 179(5) of the Constitution, the deputy governor shall not exercise any powers of the governor, to nominate, appoint or dismiss, that are assigned to the governor under the Constitution or other written law.

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

[Act No. 7 of 2016, Sch.]

### **33. Removal of a governor**

(1) A member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.

(2) If a motion under subsection (1) is supported by at least two-thirds of all the members of the county assembly—

- (a) the speaker of the county assembly shall inform the Speaker of the Senate of that resolution within two days; and
- (b) the governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.

(3) Within seven days after receiving notice of a resolution from the speaker of the county assembly—

- (a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the governor; and



(b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

(4) A special committee appointed under subsection (3)(b) shall—

(a) investigate the matter; and

(b) report to the Senate within ten days on whether it finds the particulars of the allegations against the governor to have been substantiated.

(5) The governor shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the governor—

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or

(b) have been substantiated, the Senate shall, after according the governor an opportunity to be heard, vote on the impeachment charges.

(7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the governor shall cease to hold office.

(8) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the speaker of the concerned county assembly accordingly and the motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.

(9) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.

(10) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.

#### **34. Exercise of executive authority**

The county executive committee shall exercise the executive authority—

(a) in accordance with the Constitution and relevant national and county legislation;

(b) for the well-being and benefit of the people;

(c) taking into account the objects and principles of devolution of government set out under Articles 174 and 175 of the Constitution;

(d) while enhancing self-governance for communities in the management of development programs;

(e) while ensuring the protection and promotion of the interests and rights of minorities and marginalized communities;

(f) while promoting gender equity;

(g) while promoting social and economic development within the county; and

- (h) while ensuring equitable sharing of available resources throughout the county.

### **35. Appointment of county executive members**

(1) The governor shall, when nominating members of the executive committee—

- (a) ensure that to the fullest extent possible, the composition of the executive committee reflects the community and cultural diversity of the county; and
- (b) take into account the principles of affirmative action as provided for in the Constitution.

(2) The county assembly shall not approve nominations for appointment to the executive committee that do not take into account—

- (a) not more than two thirds of either gender;
- (b) representation of the minorities, marginalized groups and communities; and
- (c) community and cultural diversity within the county.

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

- (a) is a Kenyan citizen;
- (b) is a holder of at least a first degree from a university recognised in Kenya;
- (c) satisfies the requirements of Chapter Six of the Constitution; and
- (d) has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.

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

### **36. Functions of the executive committee**

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

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

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

**37. Role of the executive committee in urban area or city planning**

A county executive committee shall—

- (a) monitor the process of planning, formulation and adoption of the integrated development plan by a city or municipality within the county;
- (b) assist a city or municipality with the planning, formulation, adoption and review of its integrated development plan;
- (c) facilitate the coordination and alignment of integrated development plans of different cities or municipalities within the county and with the plans, strategies and programmes of national and county governments; and
- (d) take appropriate steps to resolve any disputes or differences in connection with the planning, formulation, adoption or review of an integrated development plan.

**38. Oath of office for the executive committee**

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

[Act No. 7 of 2016, Sch.]

**39. Accountability of members of the executive committee**

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

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

- (a) attend or appear before the committee; and
- (b) answer any question relating to the member's responsibilities.

**40. Removal of member of executive committee**

(1) Subject to subsection (2), the Governor may remove a member of the county executive committee from office on any of the following grounds—

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

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

(3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—

- (a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and
- (b) the select committee shall report, within ten days, to the county 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 county assembly shall vote whether to approve the resolution requiring the county executive committee member to be dismissed.

(6) If a resolution under subsection (5)(b) is supported by a majority of the members of the county assembly—

- (a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and
- (b) the governor shall dismiss the county executive committee member.

#### **41. Meetings of the county executive committee**

(1) The deliberations of all meetings of the county executive committee shall be recorded in writing.

(2) The quorum of a meeting of a county executive committee shall be more than one half of its membership.

(3) A resolution of the county executive committee shall be by a majority of the members present and voting.

(4) A resolution arrived at pursuant to subsection (2) shall be accessible to the public.

#### **42. County executive to remain in office after elections**

(1) When a general election is held for a county government, the outgoing county executive committee shall remain in office until a new county executive committee is constituted after the election.

(2) The constitution of a new executive committee after an election under subsection (1) shall be finalized within twenty-one days of the swearing in of the members of the county assembly.

#### **43. Representation of county government by Attorney-General in court**

A county government may, pursuant to Article 156(4) of the Constitution request the Attorney-General to represent the county government in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings.

**44. Appointment of county secretary**

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

(2) The county secretary—

- (a) shall be competitively sourced from amongst persons who are university graduates with at least ten years experience in administration and management;
- (b) shall be nominated from persons competitively sourced under paragraph (a) by the governor and, with the approval of the county assembly, appointed by the governor; and
- (c) may, subject to the conditions and terms of appointment, be dismissed by the governor.

(3) The county secretary shall—

- (a) be the head of the county public service;
- (b) be responsible for arranging the business, and keeping the minutes, of the county executive committee subject to the directions of the executive committee;
- (c) convey the decisions of the county executive committee to the appropriate persons or authorities; and
- (d) perform any other functions as directed by the county executive committee.

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

**45. Appointment of county chief officers**

(1) The governor shall—

- (a) nominate qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board; and
- (b) with the approval of the county assembly, appoint county chief officers.

(2) The office of a county chief officer shall be an office in the county public service.

(3) A county chief officer shall be responsible to the respective county executive committee member for the administration of a county department as provided under section 46.

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

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

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

[Act No. 7 of 2016, Sch.]

**46. County executive committee to determine organisation of county**

(1) The county executive committee shall determine the organization of the county and 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 decentralized units;
- (c) abolish any department; and
- (d) determine or change the name of any department.

(2) When establishing departments and organizing the county, the county executive committee shall 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 devolved 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 coordination of departments and functions;
- (g) allow participatory decision making as far as is practicable; and
- (h) provide an equitable, fair, open and non-discriminatory working environment.

[Act No. 7 of 2016, Sch.]

**47. Performance management plan**

(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 among others—

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

(3) The governor shall submit the annual performance reports of the county executive committee and public service to the county assembly for consideration.

(4) The performance management plan and reports under this section shall be public documents.

## PART VI – DECENTRALIZED UNITS

**48. Decentralized units**

(1) Subject to subsection (3), the functions and provision of services of each county government shall be decentralized to—

- (a) the urban areas and cities within the county established in accordance with the Urban Areas and Cities Act (No. 13 of 2011);
- (b) the sub-counties equivalent to the constituencies within the county established under Article 89 of the Constitution;
- (c) the Wards within the county established under Article 89 of the Constitution and section 26;
- (d) such number of village units in each county as may be determined by the county assembly of the respective county; and
- (e) such other or further units as a county government may determine.

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

(3) In establishing a village unit under subsection (1)(d), a county assembly shall take into account the—

- (a) population size;
- (b) geographical features;
- (c) community of interest, historical, economic and cultural ties; and
- (d) means of communication.

(4) A county assembly shall enact legislation to provide for the delineation and establishment of the village units in the county.

(5) Nothing in this Part may be construed as precluding the county government, through county legislation, from adjusting the units created under subsection (1) for purposes of further decentralizing its functions and provision of its services in accordance with Article 176(2) of the Constitution.

**49. Urban areas and cities structures**

The structures and functions of urban areas and cities shall be as is provided for in the Urban Areas and Cities Act (No. 13 of 2011).

**50. Office of the sub-county administrator**

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

(2) The sub-county administrator shall have qualifications and knowledge in administration or management and shall be competitively appointed by the County Public Service Board in accordance with the provisions of this Act.

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

- (a) the development of policies and plans;
- (b) service delivery;
- (c) developmental activities to empower the community;
- (d) the provision and maintenance of infrastructure and facilities of public services;
- (e) the county public service;
- (f) exercise any functions and powers delegated by the County Public Service Board under section 86; and
- (g) facilitation and coordination of citizen participation in the development of policies and plans and delivery of services.

(4) In carrying out the functions and obligations in subsection (3), the sub-county administrator shall be responsible to the relevant county chief officer.

#### **51. Establishment of the office of Ward administrator**

(1) There is established for each Ward in a county the office of the Ward administrator.

(2) The Ward administrator shall have professional qualifications and technical knowledge in administration and shall be competitively appointed by the County Public Service Board in accordance with the provisions of this Act.

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

- (a) the development of policies and plans;
- (b) service delivery;
- (c) developmental activities to empower the community;
- (d) the provision and maintenance of infrastructure and facilities of public services;
- (e) the county public service;
- (f) exercise any functions and powers delegated by the County Public Service Board under section 86; and
- (g) coordination and facilitation of citizen participation in the development of policies and plans and delivery of services.

(4) In carrying out the functions and obligations in subsection (3), the Ward administrator shall be responsible to the sub-county administrator.

#### **52. Establishment of the office of village administrator**

(1) There is established the office of village administrator for each village unit established in a county.

(2) A village administrator shall have professional qualifications and technical knowledge in administration and shall be appointed by the County Public Service Board in accordance with the provisions of this Act.



(3) A village administrator shall coordinate, manage and supervise the general administrative functions in the village including—

- (a) pursuant to paragraph 14 of Part II of the Fourth Schedule to the Constitution—
  - (i) ensuring and coordinating the participation of the village unit in governance; and
  - (ii) assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level; and
- (b) the exercise of any functions and powers delegated by the County Public Service Board under section 86.

(4) In carrying out the functions and obligations in subsection (3), a village administrator shall be responsible to the relevant Ward administrator.

### **53. Village council**

- (1) There is established, for each village unit, a village council comprising—
  - (a) the village administrator who shall be the chairperson of the village council; and
  - (b) not less than three and not more than five village elders competitively appointed by the village administrator with the approval of the county assembly, taking into account gender balance.
- (2) A village council shall be responsible for—
  - (a) ensuring and coordinating the participation of the village unit in governance;
  - (b) assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level;
  - (c) monitoring the implementation of policies at the village unit;
  - (d) advising the ward administrator and sub-county administrator on matters pertaining to the village; and
  - (e) any other function necessary for the better administration of the village unit.
- (3) A person shall be eligible for appointment as a village elder if the person—
  - (a) is a citizen of Kenya;
  - (b) has been a resident of or has been the owner of property in the respective village unit for a continuous period of not less than five years prior to the appointment date;
  - (c) meets the requirements of Chapter Six of the Constitution; and
  - (d) is not disqualified for appointment to office by this Act or any other law.

(4) A village elder shall be paid such allowance as shall be determined by the respective county assembly.

**54. Structures of decentralization**

(1) There shall be such further structures of decentralization as may be provided for in county legislation.

(2) There shall be, for every county, a consultative forum for the co-ordination of development activities consisting of the heads of departments in the county and heads of recognised professional bodies in the county.

(3) The consultative forum shall be chaired by the Governor or in his or her absence, the deputy Governor, and in the absence of both, a member of the county executive committee designated by the governor.

(4) The consultative forum may carry out such other function as may be provided in any county legislation.

(5) The governor shall chair such other committee or other forum as may be established at the county level pursuant to Articles 6(2), 189(2) and 239(5) of the Constitution.

(6) The governor shall receive regular briefings from county security committee referred to under section 41(1)(d) of the National Police Service Act, 2011.

[Act No. 7 of 2016, Sch.]

**PART VII – COUNTY PUBLIC SERVICE****55. Objectives**

The objectives of this Part are to—

- (a) 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;
- (b) provide for the organization, staffing and functioning of the county public service in ways that ensure efficient, quality and productive services for the people of the county;
- (c) provide for institutions, systems and mechanisms for human resource utilization and development in a manner that best enhances service delivery by county public service institutions;
- (d) provide a framework of uniform norms and standards to be applied in all counties in respect of—
  - (i) establishment and abolition of offices in the county public service;
  - (ii) appointment of persons to hold or act in those offices;
  - (iii) confirming appointments; or

- (iv) exercising disciplinary control over and removal of persons holding or acting in those offices;
- (e) provide for the promotion of the values and principles set out in Articles 10 and 232 of the Constitution in the county public service;
- (f) provide for human resource management and career development practices;
- (g) address staff shortages and barriers to staff mobility between counties;
- (h) provide for standards to promote ethical conduct and professionalism in county public service;
- (i) provide for the establishment of County Public Service Boards; and
- (j) make further provisions relating to appeals in respect of county governments' public service.

**56. County to have county public service**

(1) Each county shall, in accordance with Article 235 of the Constitution, have its own public service to be known as county public service.

(2) The county public service shall be headed by a county secretary appointed under section 44.

(3) For purposes of subsection (1), the designation county public officer shall be restricted to an officer appointed by the county government.

**57. Establishment of the County Public Service Board**

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.

**58. Composition of the County Public Service Board**

(1) The County Public Service Board shall comprise—

- (a) a chairperson nominated and appointed by the county governor with the approval of the county assembly;
- (b) not less than three but not more than five other members nominated and appointed by the county governor, with the approval of the county assembly; and
- (c) a certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.

(2) The appointment of the members of the Board shall be through a competitive process.

(3) A person shall be qualified to be appointed as a member under subsection (1) if that person—

- (a) satisfies the provisions of Chapter Six of the Constitution;
- (b) is not a state or public officer;

- (c) in the case of chairperson or vice-chairperson, possesses a minimum qualification of a bachelor's degree from a recognised university and working experience of not less than ten years; and
- (d) in the case of any other members—
  - (i) possesses a minimum of a bachelor's degree from a recognised university and working experience of not less than five years; and
  - (ii) is a professional, demonstrates absence of breach of the relevant professional code of conduct.
- (4) A member of the Board shall—
  - (a) hold office for a non-renewable term of six years; and
  - (b) may serve on a part-time basis.
- (5) The members of the Board may only be removed from office—
  - (a) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution; and
  - (b) by a vote of not less than seventy five percent of all the members of the county assembly.
- (6) The board shall elect a vice-chairperson from amongst its members.
- (7) The chairperson and vice-chairperson shall be of opposite gender.

#### **59. Functions and powers of a County Public Service Board**

- (1) The functions of the County Public Service Board shall be, on behalf of the county government, to—
  - (a) establish and abolish offices in the county public service;
  - (b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
  - (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;
  - (d) prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
  - (e) promote in the county public service the values and principles referred to in Articles 10 and 232;
  - (f) evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;
  - (g) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;
  - (h) advise the county government on human resource management and development;
  - (i) advise county government on implementation and monitoring of the national performance management system in counties;

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- (j) make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees.

(2) In appointing a person as a secretary to a board of a city or an urban area under subsection (1)(b), the County Public Service Board shall ensure that such person is a certified public secretary of good professional standing.

(3) The reports under subsection (1)(d) shall contain the details of persons appointed including gender, persons with disabilities, persons from the minority and marginalized communities.

(4) In the performance of its functions under subsection (1)(e), the County Public Service Board shall have powers to—

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

(5) The report by the County Public Service Board under subsection (1)(f) shall—

- (a) be delivered each December to the county assembly;
- (b) include all the steps taken and decisions made by the board;
- (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) include any impediment in the promotion of the values and principles; and

- (f) include the programmes the board is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.

(6) The Board shall publish a report required under this section in the county *Gazette* not later than seven days after the report has been delivered to the county assembly.

[Act No. 7 of 2016, Sch.]

#### **60. Criteria for establishment of public offices, etc.**

(1) The County Public Service Board shall establish a public office within the county public service if it is satisfied that—

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

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

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

(4) In deciding whether or not to establish a public office, the County Public Service Board shall take into account—

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

#### **61. Criteria for abolition of public offices**

(1) The County Public Service Board shall abolish a public office when it is satisfied that—

- (a) the abolition of the public office shall serve the public interest in view of the core functions of the county government;

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

(2) Any decision by the County Public Service Board to abolish an office in the county public service shall be subject to the due process of removing or retiring the affected public officer including adherence to the principles of natural justice, unless the affected public officer has been re-deployed to another office.

### **62. Powers of the County Public Service Board to establish or abolish office**

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

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

(3) The County Public Service Board shall give the county chief officer of the concerned department an opportunity to make representation in respect of any action to be taken under this section before making the decision in that regard.

(4) If the County Public Service Board establishes an office and the concerned department fails to fill the vacancy for a period of twelve months after its establishment, the office shall stand abolished and the County Public Service Board shall not be required to make a decision to abolish that office.

### **63. Powers of the County Public Service Board to make appointments**

(1) Except as provided for in the Constitution or legislation, the County Public Service Board has the power to make appointments including promotions in respect of offices in the county public service.

(2) The power of the County Public Service Board under subsection (1) shall be exercised—

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

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

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

(2) Acting appointments shall be made only by the lawful appointing authority and for a specified period.

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

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

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

- (a) be made by an officer who is 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) If 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.

**65. Matters to take into account during appointments, etc.**

(1) In selecting candidates for appointment, the County Public Service Board shall consider—

- (a) the standards, values and principles set out in Articles 10, 27(4), 56(c) and 232(1) of the Constitution;
- (b) the prescribed qualifications for holding or acting in the office;
- (c) the experience and achievements attained by the candidate;
- (d) the conduct of the candidate in view of any 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) the need for open and transparent recruitment of public servants; and
- (g) individual performance.

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

**66. Advertisements of positions to be widely publicised**

If a public office is to be filled, the County Public Service Board shall invite applications through advertisement and other modes of communication so as to reach as wide a population of potential applicants as possible and especially persons who for any reason have been or may be disadvantaged.



**67. Appointments to be in writing**

No appointment or assignment of a duty in a county public service shall be valid unless it is evidenced in writing.

**68. Board to maintain records of applicants**

Subject to the relevant legislation, the County Public Service Board shall, for a specified period, maintain a record of all applications received in response to advertisements inviting applications and such record may be inspected by any person.

**69. Re-designation of officers**

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

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

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

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

**70. Provisions on appointments to apply to promotions**

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

(2) If a public officer has been promoted, the head of department shall within sixty days after the date of the promotion release the public officer to take up the promotion and if the officer is not so released, he or she stands released upon the lapse of sixty days.

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

**71. Confirmation of appointment on lapse of period**

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

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

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

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

## **72. Power to deploy public officers**

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

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

## **73. Secondments**

(1) The national government shall put in place measures to protect its public officers on secondment to the counties from loss or disadvantage with respect to pension benefits, gratuity or other terminal benefits.

(2) Unless there is an agreement to the contrary, it shall be the responsibility of the national government to pay the salaries, remuneration, allowances and other benefits due to the staff seconded to a county government during the transition period.

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

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

(5) The County Public Service Board making a decision on secondment shall not allow the secondment unless it has considered the representation by the concerned authorized officer or head of department.

## **74. County Public Service Board to regulate appointment of persons on contract**

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.

## **75. Action on irregularity of process**

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 Public Service Board shall investigate the matter and, if satisfied that the irregularity or fraud has occurred, the County Public Service Board may—

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

#### **76. Prohibition of punishment contrary to the Constitution**

(1) In exercising its disciplinary powers, the County Public Service Board shall observe the principles of natural justice.

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

(3) Nothing in this section shall limit the powers conferred on 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 although the misconduct has been proven—

- (a) the officer has nevertheless raised a mitigation factor that 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) If criminal proceedings are instituted against a county public officer, disciplinary proceedings against the officer for dismissal or imposition of any other punishment on any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal therefrom has been made.

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

#### **77. Appeals to the Public Service Commission**

(1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the “Commission”) against the decision.

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

- (a) recruitment, selection, appointment and qualifications attached to any office;

- (b) remuneration and terms and conditions of service;
- (c) disciplinary control;
- (d) national values and principles of governance, under Article 10, and values and principles of public service under Article 232 of the Constitution;
- (e) retirement and other removal from service;
- (f) pension benefits, gratuity and any other terminal benefits; or
- (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.

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

(4) The Commission shall not entertain an appeal more than once in respect to the same decision.

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

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

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

#### **78. Resignation, retirement, etc.**

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

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

(3) Resignation under this section shall take effect thirty days after 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.

#### **79. Grounds for retirement**

A person may retire from the county public service—

- (a) on attainment of the mandatory retirement age prescribed under the relevant legislation or policy or as agreed upon between the county public officer and relevant appointing authority;
- (b) on grounds of ill health subject to section 81;

- (c) on abolition of the county public office;
- (d) in the public interest; or
- (e) under a special retirement scheme agreed between a public officer or the representative of the public officer and the relevant appointing authority.

**80. Prescription of retirement on age**

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

**81. Retirement on the ground of ill health**

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

- (a) the concerned county chief officer considers that the public officer is incapable, by reason of any infirmity of body or mind, of discharging the functions of the public office and it is in the best interest for the officer to retire; or
- (b) the public officer requests to be retired on the ground of ill health, in which case, the county chief officer shall initiate the process for the retirement in accordance with this section.

(2) If a public officer is considered for retirement or has requested to be retired in accordance with subsection (1), the concerned county chief officer shall require the officer to be examined by a medical board constituted by the director of medical services in the national government with the view to ascertain whether or not the public officer should be retired on the ground of ill health.

(3) After the public officer has been examined in accordance with subsection (2) and the finding is that he or she should be retired, the director of medical services shall forward the medical board's records of proceedings and findings to the county head of public service who shall—

- (a) request the officer to make any representation in view of the medical board's record of proceeding and findings;
- (b) make 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 this subsection to the County Public Service Board.

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

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

[Act No. 7 of 2016, Sch.]

**82. Retirement on grounds of abolition of office**

(1) If more than one county public officers, holding similar public offices are to be retired on the ground of abolition of office but one or more public officers is to remain in office, the concerned county chief officer shall inform the public officers that their retirement is under consideration and shall invite each of them to make representation within reasonable time.

(2) Upon receipt of the representations in subsection (1) or upon failure to receive any representation within the prescribed time, the county chief officer shall forward the case to the County Public Service Board including a recommendation justifying the retirement of the officer together with the officer's representation if any.

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

(4) The County Public Service Board shall not retire any public officer on the ground of abolition of office unless there is written evidence that the public office concerned has been abolished.

**83. Retirement on grounds of public interest**

(1) If a county chief officer, after having considered the report of the complaint against a public officer and it is apparent that it is desirable to retire the officer on the ground of public interest, the county chief officer shall—

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

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

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

**84. Retirement pursuant to agreement or special retirement scheme**

(1) The County Public Service Board may retire a public officer if—

- (a) the officer's contractual terms and conditions 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 a 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 representations on the intended retirement.

#### **85. Entitlement to apply for review**

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

- (a) fresh material facts 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 the circumstances and facts of the case.

#### **86. Delegation by County Public Service Board**

(1) The County Public Service Board may delegate, in writing, any of its functions to any one or more of its members and the county secretary, county chief officer, sub-county or Ward administrator, village administrator, city or municipal manager and town administrators.

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

### PART VIII – CITIZEN PARTICIPATION

#### **87. Principles of citizen participation in counties**

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) reasonable 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, marginalized groups and communities and their access to relevant information;
- (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 traditionally marginalized communities, including women, the youth, and disadvantaged communities;
- (e) reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;

- (f) promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and
- (g) recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.

### 88. Citizens right to petition and challenge

- (1) Citizens have a right to petition the county government on any matter under the responsibility of the county government.
- (2) Citizen petitions shall be made in writing to the county government.
- (3) County legislation shall give further effect to this section.

[Act No. 7 of 2016, Sch.]

### 89. Duty to respond to citizens' petitions or challenges

County government authorities, agencies and agents have a duty to respond expeditiously to petitions and challenges from citizens.

### 90. Matters subject to local referenda

- (1) A county government may conduct a local referendum on among other local issues—
  - (a) county laws and petitions; or
  - (b) planning and investment decisions affecting the county for which a petition has been raised and duly signed by at least twenty five percent of the registered voters where the referendum is to take place.
- (2) The Elections Act (No. 24 of 2011) shall apply, with necessary modifications, with regard to a referendum referred to under subsection (1).

### 91. Establishment of modalities and platforms for citizen participation

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 preparation and validation fora;
- (d) notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest;
- (e) development project sites;
- (f) *deleted by Act No. 13 of 2014, s. 3;*
- (g) establishment of citizen fora at county and decentralized units.

[Act No. 13 of 2014, s. 3.]

### 91A. Establishment of County Development Boards

- (1) There is established, for each county, a board to be known as the County Development Board, consisting of the following persons—
  - (a) the member of the Senate for the county elected under Article 98(1) (a) of the Constitution, who shall be the chairperson of the Board and convener of the Board's meetings;
  - (b) the members of the National Assembly elected under Article 97(1) (a) of the Constitution representing the constituencies located in the county;



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- (c) the woman member of the National Assembly for the county elected under Article 97 (1) (b) of the Constitution;
- (d) the governor, as the chief executive officer of the county government, who shall be the vice-chairperson of the Board, and in his absence, the deputy governor of the county shall be the vice-chairperson;
- (e) the deputy governor of the county;
- (f) the leader of the majority party in the county assembly;
- (g) the leader of the minority party in the county assembly;
- (h) the chairperson of the county assembly committee responsible for finance and planning;
- (i) the chairperson of the county assembly committee responsible for budget;
- (j) the chairperson of the County Public Service Board, who shall be an *ex-officio* member;
- (k) the County Secretary, who shall be the secretary of the Board and shall also provide Secretariat services to the Board, as an *ex-officio* member;
- (l) the County Commissioner, as an *ex-officio* member; and
- (m) the head of a department of the national government or the county government or any other person invited by the Board to attend a specific meeting of the Board.

## (2) The County Development Board, for each county, shall—

- (a) provide a forum, at the county level, for consultation and coordination between the national government and the county governments on matters of development and projects in accordance with the Constitution and, more specifically, Article 6(2), Article 10 and Article 174 of the Constitution;
- (b) consider and give input on any county development plans before they are tabled in the county assembly for consideration;
- (c) consider and give input on county annual budgets before they are tabled in the county assembly for consideration;
- (d) consider and advise on any issues of concern that may arise within the county.

(3) The quorum for any meeting of the County Development Board shall be one-third of all the members of the Board and for the purposes of this section, an immediate former member shall remain a member of the Board until a new member is elected or appointed, as the case may be.

(4) Meetings of the County Development Board shall be held at the County headquarters at least once in each quarter.

(5) In the absence of the chairperson, the vice-chairperson shall preside over the meetings of the Board, and in the absence of the chairperson and the vice-chairperson, the Board shall elect a member to chair the meeting.

(6) County Development Boards shall be constituted within sixty days after the date of a general election.

(7) Despite sub-section (6), a County Development Board shall be established in each county within thirty days of the commencement of this Act.

[Act No. 13 of 2014, s. 2.]

#### **91B. Operational expenses**

The operational expenses in respect of the County Development Board shall be provided for in the annual estimates of the revenue and expenditure of the respective county government.

[Act No. 13 of 2014, s. 4.]

#### **91C. Offence of obstructing or hindering the County Development Board**

Any person who knowingly and unlawfully obstructs, hinders, undermines or prevents the County Development Board from discharging its functions under this Act commits an offence and is liable, on conviction, to punishment by a fine not exceeding one million shillings or imprisonment for a term not exceeding one year, or both.

[Act No. 13 of 2014, s. 4.]

#### **92. Part to apply to decentralized units**

(1) The provisions of this Part shall apply with necessary modifications to all decentralized units of the county.

***(Continued on Page C43 – 49.)***

(2) The governor shall submit an annual report to the county assembly on citizen participation in the affairs of the county government.

(3) Regulations made under section 135 of this Act and County legislation may give full effect to this Part.

#### PART IX – PUBLIC COMMUNICATION AND ACCESS TO INFORMATION

##### **93. Principles of public communication**

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

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

##### **94. Objectives of county communication**

A County government shall use the media to—

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

##### **95. County communication framework**

(1) A County government shall establish mechanisms to facilitate public communication and access to information in the form of media with the widest public outreach in the county, which may include—

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

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

##### **96. Access to information**

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

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

(3) Subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information.

(4) A county legislation enacted pursuant to subsection (3), may impose reasonable fees or charges for accessing information held by the county government, its departments or agencies.

#### **97. Inclusion and integration of minorities and marginalized groups**

A county government, public and private organisation and private individual, shall observe the following principles—

- (a) protection of marginalized and minority groups from discrimination and from treatment of distinction of any kind, including 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 marginalized and minority groups;
- (c) special protection to vulnerable persons who may be subject to threats or acts of discrimination, hostility, violence and abuse as a result of their ethnic, cultural, linguistic, religious or other identity;
- (d) special measures of affirmative action for marginalized 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;
- (f) promotion of diversity and intercultural education; and
- (g) promotion of effective participation of marginalised and minority groups in public and political life.

### **PART X – CIVIC EDUCATION**

#### **98. Principles of civic education**

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

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

(2) No other content may be disseminated under civic education other than as provided for under section 100.

#### **99. Purpose and objectives of civic education**

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

(2) The objectives of civic education are—

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

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

#### **100. Design and implementation of civic education**

(1) Subject to subsection (2), each county shall implement an appropriate civic education programme and establish a civic education unit in this regard.

(2) For purposes of subsection (1), there shall be established a national design and framework of civic education, to determine the contents of the curriculum for civic education taking into account the provisions of Article 33 of the Constitution.

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

(4) The design and implementation of county civic education programmes under this section shall involve the participation of registered non-state actors as may by regulations be prescribed.

#### **101. Institutional framework for civic education**

Subject to section 100, County legislation shall provide the requisite institutional framework for purposes of facilitating and implementing civic education programmes under this Part.

### PART XI – COUNTY PLANNING

#### **102. Principles of planning and development facilitation**

The principles of planning and development facilitation in a county shall—

- (a) integrate national values in all processes and concepts;
- (b) protect the right to self-fulfilment within the county communities and with responsibility to future generations;
- (c) protect and integrate rights and interest of minorities and marginalized groups and communities;

- (d) protect and develop natural resources in a manner that aligns national and county governments 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 resource allocation within the county;
- (h) provide a platform for unifying planning, budgeting, financing, programme implementation and performance review; and
- (i) serve as a basis for engagement between county government and the citizenry, other stakeholders and interest groups.

**103. Objectives of county planning**

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 a functioning eco-system;
- (d) harmonize the development of county communication system, infrastructure and related services;
- (e) develop urban and rural areas as integrated areas of economic and social activity;
- (f) provide the preconditions for integrating under-developed and marginalized areas to bring them to the level generally enjoyed by the rest of the county;
- (g) protect the historical and cultural heritage, artefacts and sites within the county;
- (h) make reservations for public security and other critical national infrastructure and other utilities and services;
- (i) work towards the achievement and maintenance of a tree cover of at least ten per cent of the land area of Kenya as provided in Article 69 of the Constitution; and
- (j) develop the human resource capacity of the county.

**104. Obligation to plan by the county**

(1) A county government shall plan for the county and no public funds shall be appropriated outside a planning framework developed by the county executive committee and approved by the county assembly.

(2) The county planning framework shall integrate economic, physical, social, environmental and spatial planning.

(3) The county government shall designate county departments, cities and urban areas, sub-counties and Wards as planning authorities of the county.

(4) To promote public participation, non-state actors shall be incorporated in the planning processes by all authorities.

(5) County plans shall be binding on all sub-county units for developmental activities within a County.

#### **105. Planning in the county**

(1) A county planning unit shall be responsible for—

- (a) coordinating integrated development planning within the county;
- (b) ensuring integrated planning within the county;
- (c) ensuring linkages between county plans and the national planning framework;
- (d) ensuring meaningful engagement of citizens in the planning process;
- (e) ensuring the collection, collation, storage and updating of data and information suitable for the planning process; and
- (f) ensuring the establishment of a GIS based database system.

(2) The designated planning authority in the county shall appropriately organise for the effective implementation of the planning function within the county.

#### **106. Integrating national and county planning**

(1) Cooperation in planning shall be undertaken in the context of the law governing inter-governmental relations.

(2) County plans shall be based on the functions of the county governments as specified in the Fourth Schedule to the Constitution and on relevant national policies.

(3) County plans shall take due cognisance of the financial viability of development programmes.

(4) County planning shall provide for citizen participation.

#### **107. Types and purposes of county plans**

(1) To guide, harmonize and facilitate development within each county there shall be the following plans—

- (a) county integrated development plan;
- (b) county sectoral plans;
- (c) county spatial plan; and
- (d) cities and urban areas plans as provided for under the Urban Areas and Cities Act (No. 13 of 2011).

(2) The County plans shall be the basis for all budgeting and spending in a county.

**108. County integrated development plan**

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

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

(2) Each county integrated development plan shall at least identify—

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

(3) An integrated development plan shall—

- (a) have attached to it maps, statistics and other appropriate documents; or
- (b) refer to maps, statistics and other appropriate documents that are not attached but held in a GIS based database system:

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

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

- (a) include the budget projection required under the law governing county government financial management;
- (b) indicate the financial resources that are available for capital project developments and operational expenditure; and
- (c) include a financial strategy that defines sound financial management and expenditure control: as well as ways and means of increasing revenues and external funding for the county and its development priorities and objectives, which strategy may address the following—
  - (i) revenue raising strategies;
  - (ii) asset management strategies;
  - (iii) financial management strategies;
  - (iv) capital financing strategies;



- (v) operational financing strategies; and
- (vi) strategies that would enhance cost-effectiveness.

**109. County sectoral plans**

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

(2) The County sectoral plans shall be—

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

**110. County spatial plans**

(1) There shall be a ten year county GIS based database system spatial plan for each county, which shall be a component part of the county integrated development plan providing—

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

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

- (a) give effect to the principles and objects contained in sections 102 and 103;
- (b) set out objectives that reflect the desired spatial form of the county taking into account the development programme of the county as articulated in its county integrated development plan;
- (c) contain strategies and policies regarding the manner in which the objectives referred to in paragraph (b), which strategies and policies shall—
  - (i) indicate desired patterns of land use within the county;
  - (ii) address the spatial construction or reconstruction of the county;
  - (iii) provide strategic guidance in respect of the location and nature of development within the county;
  - (iv) set out basic guidelines for a land use management system in the county taking into account any guidelines, regulations or laws as provided for under Article 67(2)(h) of the Constitution;
  - (v) set out a capital investment framework for the county's development programs;
  - (vi) contain a strategic assessment of the environmental impact of the spatial development framework;

- (vii) identify programs and projects for the development of land within the county; and
- (viii) be aligned with the spatial frameworks reflected in development the integrated development plans of neighbouring counties;
- (d) shall indicate where public and private land development and infrastructure investment should take place;
- (e) shall indicate desired or undesired utilization of space in a particular area;
- (f) may delineate the urban edges of the municipalities within its jurisdiction and mechanisms of dealing with the rural urban interfaces;
- (g) shall identify areas where strategic intervention is required;
- (h) shall indicate areas where priority spending is required;
- (i) clear clarifications on the anticipated sustainable development outcomes of the spatial plan; and
- (j) shall indicate the areas designated to conservation and recreation.

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

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

#### **111. City or municipal plans**

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

- (a) city or municipal land use plans;
- (b) city or municipal building and zoning plans;
- (c) city or urban area building and zoning plans;
- (d) location of recreational areas and public facilities.

(2) A city or municipal plans shall be the instrument for development facilitation and development control within the respective city or municipality.

(3) A city or municipal plan shall, within a particular city or municipality, provide for—

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

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

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

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

### **112. Amending county integrated development plans**

(1) A county executive committee may by a resolution, introduce a proposal to amend the county's integrated development plan.

(2) A proposed amendment under subsection (1) to a county's integrated development plan shall be considered and approved or rejected by the county assembly in accordance with its standing orders.

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

- (a) accompanied by a memorandum setting out the reasons for the proposal; and
- (b) aligned with the framework adopted in terms of section 106.

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

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

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

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

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

- (a) all the members of the county assembly have been given reasonable notice; and
- (b) the proposed amendment has been published for public comment for a period of at least twenty one days in a manner that allows the public an opportunity to make representations with regard to the proposed amendment.

(7) Subject to this section, nothing may be construed as precluding a person ordinarily resident in a county from proposing an amendment to the county integrated development plan.

### **113. Giving effect to the county integrated development plan**

(1) A county's integrated development plan shall—

- (a) inform the county's budget which shall be based on the annual development priorities and objectives referred to in section 103 of this Act and the performance targets set by the county; and

- (b) be used to prepare action plans for the implementation of strategies identified by the county.

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

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

(3) Notwithstanding the provisions of subsection (2), the performance management system shall conform to nationally applicable guidelines on the matter.

#### **114. Planning for nationally significant projects in a county**

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

(2) Projects under subsection (1) shall, subsequent to the mandatory public hearings, be considered and approved or rejected by the county assembly.

#### **115. Public participation in county planning**

(1) Public participation in the county planning processes shall be mandatory and be facilitated through—

- (a) mechanisms provided for in Part VIII of this Act; and
- (b) provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including—
  - (i) clear strategic environmental assessments;
  - (ii) clear environmental impact assessment reports;
  - (iii) expected development outcomes; and
  - (iv) development options and their cost implications.

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

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

#### **116. Principles of public services delivery in the county**

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

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

#### **117. Standards and norms for public service delivery**

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

- (a) give priority to the basic needs of the public;
- (aa) Notwithstanding subsection (1), a county government or any agency delivering services in the county shall adopt and implement tariffs and pricing policy subject to the existing National Government laws and policies.
- (b) promote the development of the public service delivery institutions and,

ensure that all members of the public have access to basic services.

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

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

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

[Act No. 43 of 2016, s. 159.]

#### **118. Shared services**

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

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

#### **119. Citizen's Service Centre**

(1) A county executive committee shall establish a Citizens' Service Centre at—

- (a) the county;
- (b) the sub-county;
- (c) the Ward; and
- (d) any other decentralized level.

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

**120. Tariffs and pricing of public services**

(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.

(1A) Notwithstanding subsection (1), a county government or any agency delivering services in the county shall adopt and implement tariffs and pricing policy subject to the existing National Government laws and policies.

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

(3) A tariff policy adopted under subsection (1) shall reflect the 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 —
  - (i) tariffs that cover only operating and maintenance costs;
  - (ii) special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or
  - (iii) any other direct or indirect method of subsidies of tariffs for poor households;
- (d) tariffs shall reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges;
- (e) tariffs shall 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.

(4) 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.

(5) A county government may make laws and regulations to give effect to the implementation and enforcement of tariff policies.

[Act No. 43 of 2016, s. 159.]

**121. Support to county governments**

(1) The ministry or government department responsible for matters relating to intergovernmental relations shall provide support to county governments to enable them to perform their functions.

(2) Without prejudice to the generality of subsection (1), the ministry or government department shall—

- (a) on its own initiative or on request by a county government or group of persons, assess the performance of a county government with a view to determine its support requirements;
- (b) make a report on the assessment made under paragraph (a) and the capacity needs of the county governments;
- (c) in consultation with the relevant county government, conduct research or inquiries to determine the extent of its support requirements;
- (d) where necessary assess and value the requirements of the county for the cabinet secretary to take the relevant measures towards providing support;
- (e) collect information on county performance and on best practices in resolving performance problems;
- (f) assist county governments to identify the causes of their performance problems, and potential solutions to the problems;
- (g) where circumstances indicate that the county is unable or has difficulty in performing its functions, prepare clear and practical measures and recovery plan to build the capacity of the county to enable it to effectively perform its functions;
- (h) in collaboration with the relevant county secretary consult with the cabinet secretary for finance on any matter of support relating to finance;
- (i) consult with the relevant county assembly on the findings of the report made under paragraph (b) and the recommendations under paragraph (f) and jointly adopt an implementation plan; and
- (j) with the approval of the secretary, obtain the services of any financial expert to perform any specific work for the service.

(3) The report made under subsection (2) shall give full and clear details of inability of the county to function and cover all aspects that hinder the county from undertaking its functions.

(4) Where after receiving the report under subsection (1) the cabinet secretary is of the view that it is necessary for the national government to intervene and perform the relevant functions, the Cabinet Secretary shall seek the approval of Parliament before assuming responsibility for the functions.

(5) The Cabinet Secretary shall give notice to the county government of the nature of intervention, the measures to be taken and the period required to rectify the problem.

[Act No. 7 of 2016, Sch.]

PART XIII – PROCEDURE FOR  
SUSPENSION OF COUNTY GOVERNMENT**122. Grounds for suspension arising from conflict or war**

The President may suspend a county government—

- (a) in an emergency arising out of internal conflict or war; or
- (b) in any other exceptional circumstances.

**123. Suspension of county government in exceptional circumstances**

(1) Subject to subsection (2), a person may petition the President to suspend a county government in accordance with Article 192(1)(b) of the Constitution if the county government engages in actions that are deemed to be against the common needs and interests of the citizens of a county.

(2) A petition under subsection (1) shall be supported by the signatures of not less than ten percent of the registered voters in the county.

(3) The President shall, within fourteen days after receiving a petition against a county government under subsection (1), submit a report on the averments made and grounds giving rise to suspension of a county government before the apex intergovernmental body (hereinafter referred to as the apex body) established under the law governing intergovernmental relations for approval.

(4) Upon approval by the apex body, 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*.

(5) The Commission shall comprise—

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

(6) The Commission shall have all or any of the powers vested in a Commission under the Commissions of Inquiry Act (Cap. 102), and at any inquiry directed under this section, the county government in question and any member thereof shall be entitled to be heard.

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

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



(9) The speaker shall cause a motion for the suspension of the county government to be laid before the Senate within seven days and approval by Senate shall be by a resolution adopted in accordance with the provisions of Articles 122 and 123 of the Constitution.

(10) Upon approval by the Senate, the President shall, by notice in the *Gazette*, suspend the county government for a period not exceeding ninety days, or until the suspension is terminated earlier by the Senate in accordance with Article 192(4) of the Constitution.

#### **124. Prorogation of the county assembly**

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

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

(3) All Bills introduced before the county assembly and that have not received assent prior to suspension shall expire and shall be re-introduced as new bills upon the cessation of the 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) if the suspension is terminated by the 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 *Kenya Gazette* by the Independent Electoral and Boundaries Commission according to the provisions of the Elections Act (No. 24 of 2011).

#### **125. Suspension of the county executive committee**

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

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

#### **126. Establishment of the Interim County Management Board**

(1) An Interim County Management Board for a suspended county government shall be appointed by the President by notice in the *Gazette*.

(2) The Interim County Management Board shall comprise—

- (a) a chairperson appointed by the President with the approval of the Senate;
- (b) not less than three, or more than five other members appointed by the Cabinet Secretary responsible for intergovernmental relations with the approval of the Senate; and
- (c) a certified public secretary of good professional standing appointed by the Cabinet Secretary responsible for intergovernmental relations who shall be the secretary to the board.

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

- (a) is a resident of the county in question;
- (b) has knowledge, expertise and reasonable experience in management of the security sector or management of the private or public sector, and in addition a degree from a university recognised in Kenya;
- (c) 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; and
- (d) has not, for the last five years, been a member of a governing body of a political party.

(4) The Board may 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 Board may specify.

#### **127. Functions of the Interim County Management Board**

(1) The Interim County Management Board shall have all powers and functions vested in the county executive committee under the Constitution and under this Act for the performance of its functions and, in particular the power to—

- (a) assist the county government in setting up a programme for complete restoration of protection of human rights, peace, security and public order;
- (b) work closely with the county administration in improving the general governance and service delivery;
- (c) summon any member, officer or employee of county government or any other person to appear before the Board concerning matters relevant to its functions;
- (d) summon any member, officer or employee of county government or any other person to produce any books or documents relating to the functions of the Board;
- (e) require the county government to provide additional information or to explain any inconsistency, where the Board determines, based on information it may have obtained;
- (f) hear and receive evidence and examine witnesses; and
- (g) issue instructions in writing to members, officers and employees of the county government for the better implementation of its functions.

(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 wilfully gives any evidence which is untrue in any particular matter,

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

(4) The Cabinet Secretary responsible for intergovernmental relations 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 in good faith for the due execution of the functions, powers or duties of the Board under this Act, render such member, officer, or agent personally liable to any legal action, claim, demand or liability whatsoever.

(7) The Interim County Management Board shall within ninety days of appointment prepare and submit to the President a report of its activities and its recommendations.

#### **128. Dissolution of the Interim County Management Board**

The President by notice in the *Gazette* shall dissolve an Interim County Management Board upon the new county government coming to office after holding elections pursuant to Article 192(6) of the Constitution.

#### **129. Termination of suspension**

The suspension of a county government shall be terminated in the following ways—

- (a) in the circumstances described in Article 192(4) and (5); or
- (b) upon termination by the Senate by a resolution adopted in accordance with Articles 122 and 123 of the Constitution.

#### **130. County elections after suspension**

(1) Elections for a suspended county shall be held within ninety days after the suspension.

(2) The Independent Electoral and Boundaries Commission shall cause elections of the governor and county assembly to be held in the affected county according to the provisions of the Elections Act (No. 24 of 2011).

## PART XIV – MISCELLANEOUS PROVISIONS

**131. Financial provision**

(1) The funds and financial management of county governments shall be as provided under the law relating to public finance.

(2) The procedure of budgeting, borrowing powers and grants management shall be as provided in the law relating to public finance.

**132. Pension schemes**

Subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government.

**133. Protection against personal liability**

(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) and 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.

**134. Repeal of Cap. 265**

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

(2) All issues that may arise as a consequence of the repeal under subsection (1) shall be dealt with and discharged by the body responsible for matters relating to transition.

**135. Regulations**

(1) 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 further units of decentralization generally or for any class of county governments and further units of decentralization.

(2) Regulations made under this section shall be tabled before the Senate for approval, and shall not take effect until such approval is obtained.

## PART XV – TRANSITIONAL PROVISIONS

**136. First sitting of the county assembly**

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

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

**137. Facilitation of civic education**

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

(2) For the purposes of this section and for the avoidance of doubt—

- (a) the Ministries responsible for matters of civic education, devolution and county governments respectively shall be responsible for the design and coordination of overall civic education on devolution as provided for in this Act; and
- (b) the Commission for the Implementation of the Constitution shall ensure that the content of civic education curriculum and materials developed pursuant thereto, reflect the letter and spirit of Chapter Eleven of the Constitution.

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

**138. Arrangements for public servants**

(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 office's 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

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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 body responsible for the transition to county governments shall in consultation with the Public Service Commission and relevant ministries facilitate the redeployment, transfers and secondment of staff to the national and county governments.

(4) The provision under subsection (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 subsection (1) shall cease upon the transfer of a public officer from the national government to a county government or upon the release of an officer by the county government to the national government.

(6) Appointment of a public officer by the Commission includes appointment of a public officer on powers delegated by the Commission.

FIRST SCHEDULE

[Sections 9(3), 12(2), 30(1), 32(1)) and 38, Act No. 7 of 2016, Sch.]

OATHS OF OFFICE

OATH OF OFFICE FOR GOVERNOR/DEPUTY GOVERNOR

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

OATH OF OFFICE FOR SPEAKER/ACTING SPEAKER

*I, ....., having been elected as speaker/ acting speaker of the county assembly of ..... county do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office speaker/acting speaker of the county assembly in ..... county; that I shall respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I shall do right to all manner of persons in accordance with the Constitution of Kenya and the laws and conventions of Parliament without fear or favour, affection or ill health. (So help me God).*

FIRST SCHEDULE—*continued*

OATH OF OFFICE FOR COUNTY ASSEMBLY CLERK

*I, ....., do swear/solemnly affirm that I shall 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 shall diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I shall 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 shall do justice to all. (So help me God)*

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OATH OF OFFICE FOR COUNTY EXECUTIVE COMMITTEE MEMBER

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

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OATH OF OFFICE FOR COUNTY ASSEMBLY MEMBERS

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

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SECOND SCHEDULE

[Section 14(8).]

MATTERS TO BE PROVIDED FOR IN THE COUNTY ASSEMBLY STANDING ORDERS	
GENERAL SUBJECT MATTER	SPECIFIC MATTER TO BE ADDRESSED
Introductory	Interpretation
Swearing-in of members and election of Speaker	Proceedings on assembly of a new Assembly Swearing-in of members Election of the Speaker
Election of member to deputize for Speaker	Election of member to deputize the Speaker Chairperson of Committees of the Whole Assembly Presiding in the Assembly
Leader of the majority	Leader of the majority party Assembly
Governor and persons other than a Member	Governor's address to Assembly Governor entering or leaving Chamber Address by Senator or persons other than the Governor or member
Sittings and Adjournments of the Assembly	Location of sittings of a new Assembly Regular sessions of the Assembly Special sittings of the Assembly Hours of meeting Adjournment of the Assembly Adjournment on definite matter of urgent national or county importance
Quorum of the Assembly	Quorum at commencement of the Assembly Quorum during the proceeding of the Assembly Quorum during voting or division
Order of Business	Order Paper to be prepared and circulated Messages from the Governor or Senator Sequence of proceedings
Statements	Statement Hour
Approval of county public appointments	Committal to committees



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SECOND SCHEDULE—*continued*

GENERAL SUBJECT MATTER	SPECIFIC MATTER TO BE ADDRESSED
Motions	Notices of Motions Amendment of Notice of Motion Certain Motions not to be moved Time for moving Motions Motion withdrawn may be moved again Motions which may be moved without notice Manner of debating Motions, Amendments thereto and deferment of putting a question Amendments to be in writing Amendments to be relevant to Motion Question proposed after Motion made Motion in possession of the Assembly Question as amended put When amendment proposed but not made
Special Motions	Definition of Special Motion Procedure for removal of Governor Procedure for removal of Deputy Governor Procedure for removal of member of County Executive Committee
Voting and Divisions	Voting in the Assembly Division claimed Technical failure, confusion or error occurring Roll call voting In case of confusion or error Decorum during division Original vote
Rules of Debate	Proceedings to be in Kiswahili, English or Kenyan sign language Members to address the Speaker Two or more members rising to speak Speeches may not be read No member to speak after Question put Speaking twice to a Question Point of Order Anticipating debate

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SECOND SCHEDULE—*continued*

GENERAL SUBJECT MATTER	SPECIFIC MATTER TO BE ADDRESSED
	Proceedings of Select Committees not to be referred to Contents of speeches Matters sub judice or secret Declaration of interest Responsibility for statement of fact Member who has spoken to question may speak to amendment Debate on amendment confined to amendment Reserving rights of speech Closure of debate Adjournment of debate
Limitation of Debate	Limitation of debate
Order in the Assembly and in Committee of the Whole Assembly	Maintenance of order
	Security checks Firearms and other offensive weapon Lady members' handbags When the Speaker rises members to be silent Members and the Chair Members to be seated Members to remain in their places until the Speaker has left the Chamber Irrelevance or repetition Disorderly conduct Member may be suspended after being named Member suspended to withdraw from precincts of the Assembly Duration of suspension of a member Action to be taken on refusal to withdraw Grave disorder
Public Bills	Application and limitation Introduction of Bills Printing of amending provisions Memorandum of Objects and Reasons Publication

County Governments

SECOND SCHEDULE—*continued*

GENERAL SUBJECT MATTER	SPECIFIC MATTER TO BE ADDRESSED
	Not more than one stage of a Bill to be taken at the same sitting Reading of Bills First Reading Committal of Bills to Committees Second Reading Committal of Bills to Committee of the whole Assembly Sequence to be observed on a Bill in Committee Procedure in Committee of the whole Assembly on a Bill Report of Progress Bill to be reported Procedure on Bills reported from Committee of the whole Assembly Procedure on Bills reported from Select Committees Procedure upon the re-committal of a Bill Withdrawal of Bills Third Reading Re-introduction of Bills Custody of Bills
Committee of the Whole Assembly	Limits on consideration of matters by Committee Committee of the whole Assembly may not adjourn Report No debate on Motion for Report Chairperson leaves Chair without question put when directed to report General application of rules in Committee
Select Committees	Assembly Business Committee Nomination of members of select committees Criteria for nomination Approval of nomination Discharge of a member from a committee Composition of select committees Chairing of select committees and quorum Conduct of election Notice of meetings

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SECOND SCHEDULE—continued

GENERAL SUBJECT MATTER	SPECIFIC MATTER TO BE ADDRESSED
	Sitings of select committees Member adversely mentioned not to sit Adjournment for lack of quorum Frequency of meetings Failure to attend meetings Absence of chairperson and vice-chairperson List of attendance Minutes of select committees Summoning of witnesses Temporary absence of a member of a select committee Vote of no confidence in the chairperson or vice-chairperson Filling of vacancies in select committees Original vote Attendance by non-members of select committee Procedure in select committees Public access to meetings of select committee Reports of select committees Progress reports Reports on Assembly Resolutions Joint meetings of committees Engagement of experts County Public Accounts & Investments Committee Budget and Finance Committee Rules and Programme Committee Committee on Implementation Sectoral Committees Appointment of Sectoral Committees Limitation of mandate Committee to be limited to mandate
Public Petitions	Meaning of Public Petition Member's statement on presentation of Petition

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GENERAL SUBJECT MATTER	SPECIFIC MATTER TO BE ADDRESSED
	Petition on Private Bill Notice of intention to present Petition Form of Petition Presentation of Petition Comments on petitions Printing of Petitions Committal of Petitions
Financial Procedures	General Restrictions with regard to certain financial measures Presentation of Budget Policy Paper in liaison with commission for revenue allocation. Presentation of Annual Estimates and committal to Committees Committee of Ways and Means and Committee of Supply Procedure in Committee of Supply Procedure on Supplementary Estimates Consideration of Supply Resolutions Order of Votes
Journals, Records and Broadcast of Proceedings	Journals of the Assembly Custody of Journals and Record Hansard reports Secret or personal matters Broadcast of Assembly Proceedings
Communication with the Senate	Messages to and from the Senate Procedure for presentation of reports and other matters from the Senate
The Public	Places to which members of public are not admitted Exclusion of the public Press representatives infringing Standing Orders or the Speaker's Rules
General	In cases not provided for, the Speaker to decide Exemption of business from Standing Orders Seating in the Chamber Members travelling outside the County or outside Kenya Expenses of witnesses
Suspension and Amendment of Standing Orders	
Broadcasting Rules	Broadcasting of Assembly proceedings Protection of the dignity of the Assembly External media houses Breach of broadcasting Rules

## County Governments

**THIRD SCHEDULE**

[Section 6A (1), Act No. 1 of 2016, s. 4.]

## PHYSICAL LOCATION OF COUNTY GOVERNMENTS

County	<i>Physical Location</i>
1. Mombasa	Mombasa City
2. Kwale	Kwale Urban Area
3. Kilifi	Kilifi Urban Area
4. Tana River	Hola Urban Area
5. Lamu	Lamu Urban Area
6. Taita/Taveta	Wundanyi Urban Area
7. Garissa	Garissa Urban Area
8. Wajir	Wajir Urban Area
9. Mandera	Mandera Urban Area
10. Marsabit	Marsabit Urban Area
11. Isiolo	Isiolo Urban Area
12. Meru	Meru Urban Area
13. Tharaka-Nithi	Kathwana Urban Area
14. Embu	Embu Urban Area
15. Kitui	Kitui Urban Area
16. Machakos	Machakos Urban Area
17. Makueni	Makueni Urban Area
18. Nyandarua	Oi Kalou Urban Area
19. Nyeri	Nyeri Urban Area
20. Kirinyaga	Kerugoya Urban Area
21. Murang'a	Murang'a Urban Area
22. Kiambu	Kiambu Urban Area
23. Turkana	Lodwar Urban Area
24. West Pokot	Kapenguria Urban Area
25. Samburu	Maralal Urban Area
26. Trans Nzoia	Kitale Urban Area
27. Uasin Gishu	Eldoret Urban Area
28. Elgeyo/Marakwet	Iten Urban Area
29. Nandi	Kapsabet Urban Area
30. Baringo	Kabarnet Urban Area
31. Laikipia	Rumuruti Urban Area
32. Nakuru	Nakuru Urban Area
33. Narok	Narok Urban Area
34. Kajiado	Kajiado Urban Area

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35. Kericho	Kericho Urban Area
36. Bomet	Bomet Urban Area
37. Kakamega	Kakamega Urban Area
38. Vihiga	Vihiga Urban Area
39. Bungoma	Bungoma Urban Area
40. Busia	Busia Urban Area
41. Siaya	Siaya Urban Area
42. Kisumu	Kisumu City
43. HomaBay	Homa Bay Urban Area
44. Migori	Migori Urban Area
45. Kisii	Kisii Urban Area
46. Nyamira	Nyamira Urban Area
47. Nairobi	Nairobi City

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