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**TRANSITION TO DEVOLVED GOVERNMENT ACT**

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**TRANSITION TO DEVOLVED GOVERNMENT ACT**

**ARRANGEMENT OF SECTIONS**

**PART I – PRELIMINARY**

*Section*

1. Short title.
2. Interpretation.
3. Object and purpose of the Act.

**PART II – TRANSITION MECHANISM TO  
DEVOLVED GOVERNMENT SYSTEM**

4. Establishment of the Authority.
5. Composition of the Authority.
6. Appointment and qualifications of chairperson and members.
7. Functions of the Authority.
8. Powers of the Authority.
9. Appointment of secretary.
10. Removal of secretary.
11. Vacation of office.
12. Removal from office.
13. Filling of vacancy.
14. Guiding principles.
15. Monitoring of transition process.
16. Transition Plan.
17. Staff of the Authority.
18. Oath of office.
19. Election of the vice-chairperson.
20. Committees of the Authority.
21. Delegation by the Authority.
22. Protection from personal liability.

**PART III – PHASED TRANSFER OF FUNCTIONS**

23. Procedure for phased transfer of functions.
24. Criteria for transfer of function.

**PART IV – PROGRESS AND ANNUAL REPORTS**

25. Progress report.
26. Annual Report.
27. Access to information.

**PART V – FINANCIAL PROVISIONS**

28. Funds of the Authority.
29. Financial year.
30. Annual estimates.
31. Accounts and audit.

PART VI – MISCELLANEOUS PROVISIONS

*Section*

- 32. Duty to co-operate.
- 33. Offences.
- 34. Dispute resolution mechanism.
- 35. Moratorium on transfer of assets.
- 36. Regulations.
- 37. Dissolution of the Authority.

SCHEDULES

FIRST SCHEDULE–	PROCEDURE FOR APPOINTMENT OF MEMBERS OF THE AUTHORITY
SECOND SCHEDULE –	PROCEDURE FOR THE CONDUCT OF AFFAIRS OF THE AUTHORITY
THIRD SCHEDULE –	OATH/AFFIRMATION OF THE OFFICE OF CHAIRPERSON/MEMBERS/SECRETARY
FOURTH SCHEDULE –	TRANSITION PHASES

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**NO. 1 OF 2012**

**TRANSITION TO DEVOLVED GOVERNMENT ACT**

[Date of assent: 27th February, 2012.]

[Date of commencement: 9th March, 2012.]

**An Act of Parliament to provide a framework for the transition to devolved government pursuant to section 15 of the Sixth Schedule to the Constitution, and for connected purposes**

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Transition to Devolved Government Act, 2012.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**analysis of functions**” means the process and mechanism of reviewing and reassigning of functions, powers and competencies between the national government and county governments in accordance with the Constitution;

“**Authority**” means the Transition Authority established under section 4;

“**Cabinet Secretary**” means the Cabinet Secretary responsible for matters relating to devolution;

“**Phase One**” means the period between commencement of this Act and the date of the first election under the Constitution;

“**Phase Two**” means the period between the date of the first elections and three years after the first elections under the Constitution;

“**transition period**” means the period between commencement of this Act and three years after the first elections under the Constitution.

(2) Until after the first elections under the Constitution, references in this Act to “Cabinet Secretary”, “State departments” and “Principal Secretary” shall be construed to mean “Minister”, “Ministries” and “Permanent Secretaries” respectively.

**3. Object and purpose of the Act**

The object and purpose of this Act is to—

- (a) provide a legal and institutional framework for a co-ordinated transition to the devolved system of government while ensuring continued delivery of services to citizens;

- (b) provide, pursuant to section 15 of the Sixth Schedule to the Constitution, for the transfer of powers and functions to the national and county governments;
- (c) provide mechanisms to ensure that the Commission for the Implementation of the Constitution performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively;
- (d) provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of—
  - (i) assets and liabilities;
  - (ii) human resources;
  - (iii) pensions and other staff benefits of employees of the government and local authorities; and
  - (iv) any other connected matters;
- (e) provide for closure and transfer of public records; and
- (f) provide for the mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.

#### PART II – TRANSITION MECHANISM TO DEVOLVED GOVERNMENT SYSTEM

#### **4. Establishment of the Authority**

- (1) There is established an authority to be known as the Transition Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—
  - (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and
  - (c) doing or performing all such other things or acts for the proper discharge of its functions under the Constitution and this Act as may be lawfully done or performed by a body corporate.

#### **5. Composition of the Authority**

- (1) The Authority shall comprise—
  - (a) a chairperson and eight other members appointed by the President, in consultation with the Prime Minister and with the approval of the National Assembly as provided in the First Schedule to this Act;
  - (b) the Principal Secretary, office of the President and Secretary to Cabinet;
  - (c) the Principal Secretary in the State department responsible for matters relating to devolution;
  - (d) the Principal Secretary in the State department service responsible for the public service;

- (e) the Principal Secretary in the State department responsible for finance;
- (f) the Principal Secretary in the State department responsible for planning;
- (g) the Principal Secretary in the State department responsible for justice;
- (h) the Attorney-General who shall be an *ex-officio* member with no right to vote; and
- (i) the secretary appointed under section 9 who shall be an *ex-officio* member with no right to vote.

(2) The members of the Authority under paragraphs (b) to (h) of subsection (1) may designate an officer from their respective State department to represent them.

(3) The chairperson and members under paragraphs (a) and (i) of subsection (1) shall serve on a full-time basis.

#### **6. Appointment and qualifications of chairperson and members**

(1) The procedure for the appointment of the chairperson and members of the Authority under section 5(1)(a) shall be as set out in the First Schedule to this Act.

(2) A person shall be qualified for appointment as a chairperson under section 5(1)(a) if such person—

- (a) holds a masters degree from a university recognized in Kenya;
- (b) has a distinguished career in a senior management position in either the private or public sector;
- (c) holds at least ten years' post-qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

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

- (a) holds a degree from a university recognized in Kenya;
- (b) has a distinguished career in their respective field;
- (c) has at least ten years' post-qualification professional experience; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

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

- (a) is a member of Parliament or County Assembly;
- (b) is a member of a governing body of a political party;
- (c) is an elected or nominated member of a local authority;
- (d) is a member of a Commission established under the Constitution;
- (e) is an undischarged bankrupt;

- (f) has been removed from office for contravening the Constitution or any other law; or
- (g) has, in the conduct of his affairs, not met any statutory obligations.

## **7. Functions of the Authority**

(1) The Authority shall facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the Constitution.

(2) Despite the generality of subsection (1), the Authority shall—

- (a) facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule to the Constitution to the national and county governments;
- (b) determine the resource requirements for each of the functions;
- (c) develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule to the Constitution;
- (d) co-ordinate with the relevant State organ or public entity in order to—
  - (i) facilitate the development of the budget for county governments during Phase One of the transition period;
  - (ii) establish the status of ongoing reform processes, development programmes and projects and make recommendations on the management, reallocation or transfer to either level of government during the transition period; and
  - (iii) ensure the successful transition to the devolved system of government;
- (e) prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
- (f) make recommendations for the effective management of assets of the national and county governments;
- (g) provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period;
- (h) pursuant to section 15(2)(b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments, including—
  - (i) such criteria as may be necessary to guide the transfer of functions to county governments; and
  - (ii) the criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities;
- (i) carry out an audit of the existing human resource of the Government and local authorities;
- (j) assess the capacity needs of national and county governments;



- (k) recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions;
- (l) co-ordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- (m) advise on the effective and efficient rationalization and deployment of the human resource to either level of government;
- (n) submit monthly reports to the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation on the progress in the implementation of the transition to the devolved system of government;
- (o) perform any other function as may be assigned by national legislation.

(3) The Authority shall, while undertaking its functions as specified under subsection (2), carry out the activities specified in respect of Phase One and Phase Two in the Fourth Schedule to this Act.

### **8. Powers of the Authority**

(1) The Authority shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Authority shall have powers to—

- (a) gather relevant information, including the requisition of reports, records, documents or any information from any source, including State departments or public entities;
- (b) compel the production of any information required for the performance of its functions as and when necessary;
- (c) interview any person, groups or members of organizations or institutions;
- (d) hold inquiries and investigations for the purposes of performing its functions under this Act;
- (e) make recommendations and facilitate the distribution of assets to the national and county governments; and
- (f) undertake any activity necessary to effectively carry out its functions.

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

(4) Except as provided in the Second Schedule to this Act, the Authority may regulate its own procedure.

### **9. Appointment of secretary**

(1) The secretary shall be competitively recruited and appointed by the Authority.

(2) A person shall qualify for appointment under subsection (1) if such person has at least—

- (a) a masters degree from a university recognized in Kenya;
- (b) ten years experience in a management position; and
- (c) satisfies the requirements of Chapter six of the Constitution.

(3) The secretary appointed under subsection (1) shall be responsible for the day to day administration of the functions of the Authority.

(4) Despite the generality of subsection (3), the secretary shall be the accounting officer of the Authority and responsible to the Authority for—

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

#### **10. Removal of secretary**

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

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

(2) Before the secretary is removed under subsection (1), the secretary shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

#### **11. Vacation of office**

A person shall cease to be a member of the Authority if such person—

- (a) resigns in writing, addressed, in case of the chairperson to the President and in the case of any other member, to the Cabinet Secretary;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is declared bankrupt;

- (d) is unable to perform the functions of his office by reason of mental or physical infirmity; or
- (e) dies.

**12. Removal from office**

(1) The chairperson or a member of the Authority may be removed from office only for—

- (a) violation of the Constitution or any other law, including a contravention of Chapter Six of the Constitution;
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence or neglect of duty; or
- (e) bankruptcy.

(2) A person desiring the removal of a member of the Authority on any ground specified in subsection (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and shall, through a resolution, if satisfied that it discloses a ground under subsection (1), forward it to the President.

(4) On receiving a petition under subsection (3), the President—

- (a) may suspend the member pending the outcome of the complaint; and
- (b) shall appoint a tribunal in accordance with subsection (5).

(5) The tribunal shall comprise—

- (a) a chairperson, who shall be a person who holds or has held, office as a judge of a Supreme Court or Court of Appeal;
- (b) at least two persons, who shall be persons who are qualified to be appointed as judges of a superior court; and
- (c) one other person who is qualified to assess the facts in respect of the particular ground for removal.

(6) The tribunal shall investigate the matter expeditiously, report on the facts and make a recommendation to the President.

(7) The tribunal shall accord the person under investigation sufficient hearing and the person may be represented by a person of his or her own choice, qualified in respect of the ground of removal.

(8) The President shall be bound by the recommendation made by the tribunal under subsection (6), and shall within thirty days take the necessary action.

(9) A person suspended under this section shall continue to receive one-half of the remuneration and benefits of the office during the period of suspension.

**13. Filling of vacancy**

Where a vacancy occurs in the membership of the Authority under section 11 or 12, the appointment procedure provided for under this Act shall apply.

**14. Guiding Principles**

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

- (a) perform its functions subject to the Constitution;
- (b) be accountable to the people of Kenya and ensure their participation in the transition process;
- (c) facilitate the transition to the devolved system of government in a transparent, objective and fair manner;
- (d) promote and sustain fair procedures in its operations;
- (e) ensure technical and administrative competence for the better carrying out of its functions;
- (f) be non-partisan and non-political in its operations; and
- (g) apply and promote national values and principles provided under the Constitution.

**15. Monitoring of transition process**

The Commission for the Implementation of the Constitution shall, pursuant to section 15(d) of the Sixth Schedule to the Constitution, monitor and oversee the transition process to devolved government.

**16. Transition plan**

(1) The Authority shall issue guidelines to State organs or public entities for the preparation of transition implementation plans.

(2) The Cabinet Secretary of a State department or, in the case of a public entity, an authorized officer shall submit to the Authority and the Commission for the Implementation of the Constitution a transition plan within a period specified by the Commission for the Implementation of the Constitution.

(3) After the first elections under the Constitution, each County government shall submit, to the Authority and the Commission for the Implementation of the Constitution, a transition plan and progress reports within a period specified by the Commission for the Implementation of the Constitution.

(4) The Commission for the Implementation of the Constitution—

- (a) shall monitor the progress of the implementation of the transition plans; and
- (b) may require the relevant State department to submit progress reports to it.

(5) A State organ, public entity or a county government shall, after the first elections under the Constitution, transmit copies of the transition plan and progress reports under subsection (2) and (3) to the National and County Government Co-ordinating Summit and the Council of County Governors.

**17. Staff of the Authority**

(1) The Authority may appoint such staff as may be necessary for the proper discharge of its functions under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions of service as the Authority determines subject to the advice of the Salaries and Remuneration Commission.

(3) A public officer seconded to the Authority shall, during the period of secondment, be deemed to be an officer of the Authority and shall be subject only to the direction and control of the Authority.

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

**18. Oath of office**

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

**19. Election of the vice-chairman**

(1) The chairperson shall, within seven days of the appointment of the members, convene the first meeting of the Authority in which the members shall elect the vice-chairperson of the Authority from amongst the members appointed under section 5(a).

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

(3) Whenever a vacancy occurs in the office of the vice-chairperson, the provisions of this section shall, with the necessary modifications, apply to the filling of the vacancy.

**20. Committees of the Authority**

(1) The Authority may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Authority may co-opt into the membership of committees established under subsection (1), other persons whose knowledge and skills are found necessary for the functions of the Authority.

**21. Delegation by the Authority**

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

**22. Protection from personal liability**

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

## PART III – PHASED TRANSFER OF FUNCTIONS

**23. Procedure for phased transfer of functions**

(1) The Authority shall, by notice in the *Gazette* at least thirty days before the first elections under the Constitution, identify functions which may be transferred to the county governments immediately after the first elections under the Constitution.

(2) After the initial transfer of functions under subsection (1), every county government shall make a request in the prescribed manner to the Authority for transfer of other functions in accordance with section 15 of the Sixth Schedule to the Constitution.

(3) The Authority shall, upon the request of a county government under subsection (2), determine whether a county government meets the criteria set out under section 24, to allow the transfer of a function.

(4) The Authority shall—

- (a) consider and dispose of any application under subsection (2); and
- (b) make its determination within sixty days of receipt of such an application.

(5) The decision of the Authority under subsection (4) shall be based on the criteria for transfer of functions, provided under section 24.

(6) Where the Authority determines that a county government does not meet the criteria for the transfer of function under section 24, it shall propose clear and practical measures to build the capacity of the county government during the transition period to enable the county government undertake its functions within the shortest time possible.

(7) A county government may appeal to the Senate against a decision made under subsection (6).

(8) A decision of the Senate on the appeal, by majority vote in accordance with Article 123 of the Constitution, shall be binding on the Authority.

**24. Criteria for transfer of function**

(1) Subject to section 23, the criteria for the transfer of functions shall include—

- (a) whether there is in existence legislation relating to the function applied for;
- (b) whether a framework for service delivery has been put into place to implement the function;
- (c) whether, where applicable, the county government has identified or established administrative units related to the function;
- (d) whether the county government has undertaken a capacity assessment in relation to the function;
- (e) the arrangements for and the extent of further decentralization of the function and provision of related services by the county government;

- (f) whether there is the required infrastructure and systems to deliver the function;
- (g) whether the county government has the necessary financial management systems in place;
- (h) whether the county government has an approved plan in relation to the function;
- (l) any other variable as may be prescribed after consultations between the Authority, county governments and the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation.

(2) The Authority shall perform the functions specified under subsection (1) in accordance with Article 187 of the Constitution.

#### PART IV – PROGRESS AND ANNUAL REPORTS

##### **25. Progress report**

(1) The Authority shall, in every three months, submit a progress report to the President, Parliament, the Commission for the Implementation of the Constitution and Commission on Revenue Allocation.

(2) The progress report shall include—

- (a) the status on transfer of functions to county governments;
- (b) any impediments to the transition programme;
- (c) recommendations to address specific concerns identified by the Authority; and
- (d) any other information of concern relating to the functions of the Authority.

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

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

##### **26. Annual Report**

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

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

- (a) the financial statements;
- (b) a description of the activities;
- (c) details of the work plan;
- (d) details of applications for transfer of functions submitted to it and the outcome;
- (e) such other statistical information relating to the functions as the Authority may consider appropriate; and

- (f) any other information relating to the functions that the Authority considers necessary.

(3) Prior to the first elections under the Constitution, the Authority shall submit the annual report to the President, Parliament, the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation.

(4) After the first elections under the Constitution, the Authority shall submit the annual report to the President, Parliament, the County Assemblies, the Council of Governors, the Commission for the Implementation of the Constitution and Commission on Revenue Allocation within three months after the end of the year to which it relates.

(5) The Authority shall publish and publicise the annual report as submitted under this section in such manner as the Authority may determine.

## **27. Access to information**

(1) A person may request the Authority for any information relating to its functions in accordance with Article 35 of the Constitution or any other written law.

(2) A request for any information under subsection (1)—

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

(3) Subject to Article 35 of the Constitution, the Authority may decline to give information to an applicant on grounds that—

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

## **PART V – FINANCIAL PROVISIONS**

### **28. Funds of the Authority**

(1) The funds of the Authority shall comprise—

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

(2) Parliament shall allocate adequate funds to enable the Authority to perform its functions.



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

### **29. Financial year**

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

### **30. Annual estimates**

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

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

- (a) the payment of the salaries, allowances and other charges in respect of members and staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority;
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Authority may deem appropriate; and
- (f) any other general expenditure relating to the operations of the Authority.

(3) The annual estimates shall be approved by the Authority before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in Parliament.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (3).

### **31. Accounts and audit**

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

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

- (a) a statement of the income and expenditure of the Authority during that year; and
- (b) a balance sheet of the Authority as at the last day of that year.

(3) The financial statements of the Authority shall be in such form as may be prescribed in accordance with the law relating to public financial management.

(4) The Authority shall submit or cause to be submitted to the Commission on Revenue Allocation and the Controller of Budgets copies of the financial statements of the Authority.

(5) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003 (No. 12 of 2003).

## PART VI – MISCELLANEOUS PROVISIONS

### **32. Duty to co-operate**

A State organ, State office or public office responsible for a matter in question before the Authority shall co-operate to ensure the successful completion of the transition to devolved government and shall in particular—

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

### **33. Offences**

(1) A person who—

- (a) without justification or lawful excuse, obstructs, hinders or threatens a member, an officer, employee or agent of the Authority acting under this Act;
- (b) submits false or misleading information to the Authority; or
- (c) makes a false representation to, or knowingly misleads a member, an officer, employee or agent of the Authority acting under this Act,

commits an offence and shall be liable, on conviction, to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than two years, or to both.

(2) A person who transfers assets without obtaining the requisite approval under section 36 or contrary to the mechanism provided by the Authority under section 7(2)(g) commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years, or to both.

### **34. Dispute resolution mechanism**

A dispute regarding the performance by the Authority of its functions under this section shall be resolved using the procedure set out in the law relating to intergovernmental relations.

### **35. Moratorium on transfer of assets**

(1) A State organ, public office, public entity or local authority shall not transfer assets and liabilities during the transition period.

(2) Despite subsection (1), a State organ, public office, public entity or local authority shall—

- (a) during Phase One, transfer assets or liabilities with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation, the Ministry of Local Government and the Ministry of Lands; or
- (b) during Phase Two, transfer assets or liabilities with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations; and
- (c) transfer immovable property, with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations and lands.

(3) The Authority may, on its own motion or on a petition by any person, review or reverse any irregular transfer of assets or liabilities in contravention of subsection (1).

(4) Any transfer of assets or liabilities made in contravention of subsection (1) shall be invalid.

### **36. Regulations**

The Authority may, in consultation with the Cabinet Secretary, make regulations for the better carrying out of its functions under this Act.

### **37. Dissolution of the Authority**

(1) The Authority shall stand dissolved three years after the first general elections under the Constitution or upon the full transition to county governments, whichever is the earlier.

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

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

- (a) those aspects of its work that will be of value to other institutions are preserved, documented and transferred to the relevant institution; and
- (b) its files and records are preserved and transferred to the National and County Governments Co-ordinating Summit.

(4) Upon the dissolution of the Authority—

- (a) the net assets and liabilities of the Authority shall, subject to paragraph (b) become assets and liabilities of the National and County Government Co-ordinating Summit established under the law relating to intergovernmental relations; and
- (b) any monies held by the Authority shall be paid into the Consolidated Fund.

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

(6) Despite subsection (1), the secretary and staff of the Authority may remain for a further period of thirty days upon dissolution only for the purposes of winding up the affairs of the Authority.

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## FIRST SCHEDULE

[Section 6.]

### PROCEDURE FOR APPOINTMENT OF MEMBERS OF THE AUTHORITY

1. Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of the Chairperson or member, the Public Service Commission shall, by notice in the *Gazette* and in at least two newspapers of national circulation, declare vacancies in the Authority, inviting applications from qualified persons and competitively convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members under clause 5(1)(a).
2. The panel shall comprise a chairperson and six members drawn from public and private sectors and civil society.
3. An application in respect of a vacancy declared under paragraph 1 shall be forwarded to the panel within seven days of the publication of the notice and may be made by—
  - (a) any qualified person; or
  - (b) any, person, organization or group of persons proposing the nomination of any qualified person.
4. The panel shall, subject to this section, determine its own procedure and the Public Service Commission shall provide it with such facilities and other support as it may require for the discharge of its functions.
5. The panel shall consider the applications and shortlist and publish the names and qualifications of all shortlisted applicants in the *Gazette* and two daily newspapers of national circulation within seven days from the last day of receipt of the applications under paragraph 3.
6. The Panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under paragraph 5.
7. After carrying out the interviews, the panel shall select the three persons qualified to be appointed as chairperson and thirteen persons qualified to be members of the Authority and forward the names to the President.
8. The President shall, within seven days of receipt of the names forwarded under paragraph (6), nominate a chairperson and other members of the Authority and forward the names of the nominees to the National Assembly.

**9.** The National Assembly shall, within twenty one days of the day it next sits after receipt of the names of the nominees under paragraph (8), consider all nominations and may approve or reject any nomination.

**10.** Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the President for appointment.

**11.** The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the *Gazette*, appoint the chairperson and members approved by the National Assembly.

**12.** Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President who shall submit fresh nominations and the procedure set out under this section shall with necessary modifications, apply.

**13.** For the purposes of the appointment of the first Authority and filling of any vacancy in the Authority before the first general elections after the commencement of this Act, the President shall act in consultation with the Prime Minister.

**14.** Despite the foregoing provisions of this section, the President, in consultation with the Prime Minister may, by notice in the *Gazette*, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

**15.** In selecting, nominating, approving or appointing the chairperson and members of the Authority, the selection panel, the National Assembly, the President and the Prime Minister shall—

- (a) ensure that the Authority reflects the regional and other diversities of the people of Kenya and that not more than two thirds of the members are of the same gender; and
- (b) have due regard to the required experience and expertise.

**16.** The term of the Panel constituted under paragraph 2 shall expire upon the appointment of the members for which the panel was constituted under this Schedule.

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## SECOND SCHEDULE

[Section 8 (3).]

### PROCEDURE FOR THE CONDUCT OF AFFAIRS OF THE AUTHORITY

#### **1. Meetings**

(1) The Authority shall, at its first meeting, elect a vice-chairperson from amongst its members appointed under section 5(1)(a).

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

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

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

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

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

(7) The chairperson or in his absence, the vice-chairperson, shall—

- (a) preside over all meetings of the Authority;
- (b) be the spokesperson for the Authority; and
- (c) supervise and direct the work of the Authority.

(8) If the office of chairperson becomes vacant or if the chairperson is unable to exercise the powers or perform the functions of his office owing to absence, illness or any other cause, the vice-chairperson shall exercise those powers or perform those functions.

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

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

(11) Subject to the provisions of this Schedule, the Authority may determine its own procedure and the procedure for any committee of the Authority and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

## **2. Committees to the Authority**

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

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

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

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

## **3. Disclosure of interest**

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

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

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

**4. Contracts and instruments**

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

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**THIRD SCHEDULE**

[Section 18.]

**OATH/AFFIRMATION OF THE OFFICE OF  
CHAIRPERSON/MEMBERS/SECRETARY**

I ..... having been appointed (the chairperson/member/secretary) to the Transition Authority, do swear/solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice.

(SO HELP ME GOD).

Sworn/Declared by the said .....

Before me this Day of ..... of 20 .....

.....  
*Chief Justice.*

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**FOURTH SCHEDULE**

[Section 7(3).]

**TRANSITION PHASES**

*Phase One*

1. During Phase One of the transition period, the Authority shall carry out the following activities—

- (a) audit assets and liabilities of the government, to establish the asset, debts and liabilities of the government;
- (b) audit assets and liabilities of local authorities, to establish the asset, debts and liabilities of each Local Authority;
- (c) audit local authority infrastructure in the counties, to establish the number and functionality of plant and equipment in Local Authorities;

*Transition to Devolved Government*

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- (d) audit the government infrastructure in the counties, to establish the number and functionality of plant and equipment for the purpose of vesting them to either level of government;
- (e) audit the government staff in counties, to establish the number of staff in each county by cadre, grades, gender, age and qualification;
- (f) audit the Local Authority staff in the counties, to establish the number of local authority staff in each county by cadre, grades, gender, age and qualification;
- (g) facilitate civic education, to ensure civic education on devolution is commenced and co-ordinated;
- (h) facilitate the initial preparation of county budgets, to ensure such budgets are agreed upon;
- (i) facilitate the preparation of county profiles, to ensure that the profiles of counties are produced, published and publicized;
- (j) carry out an analysis of functions and competency assignment and ensure plan for distribution of functions and competency is published and necessary Acts amended;
- (k) provide mechanism for closure and transfer of public records and information;
- (l) facilitate the development of county public finance management system;
- (m) provide a mechanism for the transition of government and local authority employees;
- (n) provide for a mechanism for the transfer of government net assets and liabilities to national and county governments;
- (o) provide mechanisms for the transfer of assets and liabilities which may include vetting the transfer of assets during the transitional period;
- (p) provide for a mechanism that will secure assets and liabilities held by the Local Authorities; and
- (q) any other activity that may be necessary to carry out its functions.

*Phase Two*

[Section 7(3).]

1. During Phase Two of the transition period the Authority shall carry out the following activities—

- (a) complete any activity that may be outstanding from Phase One;
  - (b) oversee the transfer of functions from the national government to the county government;
  - (c) facilitate the county governments in the performance of their functions;
  - (d) any other activity that may be necessary to enable county governments carry out their functions.
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