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**Report  
of the  
Steering Committee on the  
Implementation of the Building  
Bridges to a United Kenya Taskforce  
Report**

**ANNEX E: DRAFT BILLS**

**October, 2020**

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## **INTRODUCTION**

The Steering Committee drafted the following twelve bills. Other bills required to give effect to some of the proposed constitutional changes will be drafted. These bills are as follows:

1. The Prompt Payment Bill, 2020
2. The Public Finance Laws (Amendment) Bill, 2020
3. Micro and Small Enterprises (Amendment) Bill, 2020
4. Election Laws (Amendment) Bill, 2020
5. National Economic and Social Council Bill, 2020
6. The Devolution Laws (Amendment) Bill, 2020
7. The Public Fundraising Bill, 2020
8. The Public Participation Bill, 2020
9. The Ethics and Integrity Laws (Amendment) Bill, 2020
10. The Anti-Corruption and Economic Crimes (Amendment) Bill, 2020
11. Health (Amendment) Bill, 2020
12. The Statute Law (Miscellaneous Amendment) Bill, 2020

Sample checklist for the responsibilities of Accounting Officers in Government entities.

A sample checklist for the responsibilities of Accounting Officers in the National Government is attached to this annex report for awareness creation and administrative interventions.



# 1. THE PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2020

## THE PUBLIC FINANCE LAWS (AMENDMENT) BILL, 2020

### A Bill for

AN ACT of Parliament to make various amendments to the law relating to public finances and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

### PART I - PRELIMINARY

Short title.

1. This Act may be cited as the Public Finance Laws (Amendment) Act, 2020.

### PART II - PUBLIC FINANCE MANAGEMENT ACT

Insertion of new section 6A in No. 18 of 2012.

2. The Public Finance Management Act is amended by inserting the following new section immediately after section 6—

6A. (1) An agreement for the borrowing of money under this Act shall not have effect unless the borrowing is authorised by this Act or any other written law.

Unauthorised borrowing agreements are invalid.

(2) In this section, “borrowing” includes obtaining an advance on overdraft.

Amendment of section 7 of No. 18 of 2012.

3. The Public Finance Management Act is amended in section 7 by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) co-ordinate the discussion and review of the Budget Policy Statement and budget estimates by the departmental committees of the National Assembly, and make recommendations to the National Assembly taking into account the recommendations of the departmental committees.”

Insertion of new section 7A in No. 18 of 2012.

4. The Public Finance Management Act is amended by inserting the following new section immediately after section 7—

7A. (1) The departmental committees of the National Assembly shall consider the budgets of the respective national government entities falling under them, and may recommend for the revision of the estimates as they may deem necessary.

Responsibilities of departmental committees.

(2) Upon recommendation by a departmental committee under subsection (1), a national government entity may revise its budget estimates to accord with the recommendation.

(3) Once a departmental committee of the National Assembly has considered the budget estimates of a national government entity falling under it, and has recommended revision of the budget, it shall notify the budget committee accordingly.

Insertion of new section 18A in No. 18 of 2012.

5. The Public Finance Management Act is amended by inserting the following new section immediately after section 18—

Appropriation of Equalisation Fund.

18A. The Cabinet Secretary shall ensure that the Appropriation Bill prepared pursuant to Article 221(6) of the Constitution provides for appropriation of funds in the Equalisation Fund.

Insertion of new sections in No. 18 of 2012.

6. The Public Finance Management Act is amended by inserting the following new sections immediately after section 24—

Establishment of the County Assemblies Fund.

24A. (1) There is established a fund to be known as the County Assemblies Fund.

(2) There shall be paid into the Fund the monies appropriated for county assemblies.

(3) Once appropriated, monies budgeted for use by county assemblies shall be paid directly from the Fund and into the accounts of the respective county assemblies.

(4) The Cabinet Secretary shall make regulations for the better carrying into effect the provisions of this section.

(5) Notwithstanding the generality of subsection (2), the regulations may provide for—

- (a) procedures and systems for proper and effective management of the monies and property of the Fund; and
- (b) the manner of superintending the expenditure of the monies of the Fund to ensure that the monies are applied for the intended purpose and properly accounted for.

Deletion and substitution of section 67 of No. 18 of 2012.

7. The Public Finance Management Act is amended by deleting section 67 and substituting therefor the following new section—

Accounting officers.

67. (1) There shall be an accounting officer for every national government entity and every constitutional commission and independent office.

(2) The accounting officer contemplated in subsection (1) shall—

- (a) in the case of a government ministry or department, be the Principal Secretary;
- (b) in the case of a state corporation, be the chief executive officer of the corporation;
- (c) in the case of a constitutional commission or independent office, be designated by the commission or office in accordance with the guidelines and standards prescribed by the Treasury.

(3) The Treasury may, in circumstances other than those contemplated in subsection (2), designate, in

writing, a person to be an accounting officer for a national government entity or institution, with prior consultation with the entity or institution, and shall ensure that the guidelines or standards developed by Treasury have been complied with.

(4) The Treasury may, at any time, withdraw the designation as an accounting officer made pursuant to subsection (3).

Insertion of new sections in No. 18 of 2012.

8. The Public Finance Management Act is amended by inserting the following new section immediately after section 74—

Offences by a public officer or accounting officer.

74A. (1) A public officer or accounting officer shall not—

- (a) deposit public money in any account other than an official account;
- (b) withdraw money from an official account except as authorised by any written law;
- (c) misapply public money or improperly dispose of, or improperly use, public money.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding seven years.

(3) In this section, “money” includes cheques and similar instruments.

Amendment of section 83 of No. 18 of 2012.

9. Section 83 of the Public Finance Management Act is amended—

(a) by inserting the following new subsection immediately after subsection (2)—

“(2A) The accounting officer shall, within seven days of the preparation of the report, submit the report prepared under subsection (1) to the Cabinet Secretary responsible for the entity for approval”;

(b) in subsection (3), by deleting the phrase “the Cabinet Secretary responsible for the entity and”.

### **PART III - PUBLIC PROCUREMENT AND ASSET DISPOSAL**

Insertion of new section 3A in No. 33 of 2015.

10. The Public Procurement and Asset Disposal Act, 2015 is amended by inserting the following new section immediately after section 3—

Duties of procuring entities.

3A. A procuring entity shall—

- (a) conduct procurement in accordance with this Act and the regulations made thereunder;
- (b) plan and document requirements for procurement;
- (c) obtain authorisation from the accounting officer for procurement;
- (d) carry out due diligence on prospective bidders;

- (e) define procurement needs by compiling a statement of requirements which includes a correct and complete description of the goods, services or infrastructure and the statement of requirements shall be included in the invitation documents, evaluation process and contracts;
- (f) identify the appropriate standard bid documents to be used by the entity and suppliers or potential bidders;
- (g) clearly state the methodology and criteria to be used in the evaluation of bids and the determination of the best evaluated bid;
- (h) provide procurement information as may be prescribed;
- (i) ensure that all communications with bidders and suppliers are in writing;
- (j) to the extent possible, use information and communication technology to implement any of the procurement methods in this Act; and
- (k) keep confidential the information that comes into its possession relating to procurement proceedings.

Insertion of new section 4A in No. 33 of 2015.

11. The Public Procurement and Asset Disposal Act, 2015 is amended by inserting the following new section immediately after section 4—

Procedure for government to government contracting.

4A. (1) Notwithstanding section 4(2)(f) of this Act, an agreement for a government to government contracting shall be laid before the National Assembly for approval before signing.

(2) The relevant committee of the National Assembly shall consider the agreement and make a report to the House, and in doing so, shall ensure public participation in accordance with the laid down procedures of the House.

(3) The National Assembly may approve the agreement with or without reservation.

Amendment of section 44 of No. 33 of 2015.

12. Section 44 of the Public Procurement and Asset Disposal Act, 2015 is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (c)—

- “(ca) ensure that procurement of goods, works and services of the public entity are done in accordance and with strict adherence with the procurement plan prepared under paragraph (c);
- (cb) ensure, prior to undertaking any procurement, that money is available for payment of goods or services being procured;
- (cc) ensure that goods and services procured by the entity are paid for within sixty days from the date of delivery of those goods or the rendering of those services.”



Amendment of section 53 of No. 33 of 2015.

13. Section 53 of the Public Procurement and Asset Disposal Act, 2015 is amended by inserting the following new subsection immediately after subsection (9)—

“(9A) An accounting officer who knowingly—

- (a) commences any procurement process without having money for payment of goods or services being procured;
- (b) commences any procurement process without a procurement plan;
- (c) disregard the procurement plan during procurement, commits an offence .”

Insertion of new section 58A in No. 33 of 2015.

14. The Public Procurement and Asset Disposal Act, 2015 is amended by inserting the following new section immediately after section 58—

Open contracting.

58A. (1) During procurement, a public entity shall be guided by, and give full effect to, the principle of open contracting.

(2) A public entity shall, at least fourteen days, but not later than twenty-eight days, from the conclusion of the tender process, upload in its website, all the tender documents made in respect of a particular bid.

(3) In this section, “open contracting” refers to the timely and pro-active disclosure and publication of documents and data related to public contracting, from the awarding process to the monitoring and evaluation of contract implementation.

#### **PART IV - PUBLIC AUDIT ACT**

Amendment of section 16 of No. 34 of 2015.

15. The Public Audit Act, 2015 is amended by deleting section 17 and substituting therefor the following new section—

Staff.

17. (1) The Auditor-General shall, pursuant to Article 252(1)(c) of the Constitution, employ its own staff through a competitive and transparent process on such terms and conditions as the Auditor-General may, in consultation with the Salaries and Remuneration Commission, determine.

(2) The recruitment and appointment of staff under this section shall take cognisance of regional, ethnic and gender balance including equal opportunities to persons with disabilities and marginalized groups and shall comply with the values and principles contemplated in Articles 10 and 232 of the Constitution.

Deletion of section 18 of No. 34 of 2015.

16. The Public Audit Act, 2015 is amended by deleting section 18.

## PART V - CONTROLLER OF BUDGET ACT

Insertion of new section 5A in No. 26 of 2016.

17. The Controller of Budget Act, 2016 is amended by inserting the following new section immediately after section 5—

Inspection of on-going projects.


5A. (1) Before approving a withdrawal from a public fund pursuant to Article 228(4) of the Constitution for an on-going project, the Controller of Budget shall cause an inspection of the project to be carried out in order to ascertain whether funds previously appropriated for the project have been prudently utilized for the intended purpose as per the approved budget.

(2) No additional money shall be released for an on-going project unless the Controller of Budget is satisfied that the money previously appropriated for the same project has been applied for the intended purposes.

Insertion of new section 10A in No. 26 of 2016.

18. The Controller of Budget Act, 2016 is amended by inserting the following new section immediately after section 10—

Use of media in publicizing of reports.

10A. Where the Controller of Budget makes use of national or local media to publicise the reports under this Act, he or she shall take into consideration the following factors—  #IKUWEiKUWE Updates COPY

- (a) the general nature of the report or document;
- (b) how and where it has been published and how it may be accessed and read by members of the public;
- (c) the need to widely circulate a summarized version of the report either in English or Kiswahili;
- (d) accessibility of the document at public libraries or offices of State Organs and public entities; and
- (e) any other forum that the Controller of Budget may consider appropriate.

## PART VI – MISCELLANEOUS AMMENDMENTS

Amendment of section 15 of No. 33 of 1995.

19. The Higher Education Loans Board Act is amended in section 15 by deleting subsection (1) and substituting therefor the following new subsections—

“(1) A loanee shall be required, subject to and in accordance with this Act or any regulations made thereunder, not earlier than four years from the date of completion of his or her studies, or such other later period as the Board decides to recall its loan—

- (a) to inform the Board of his or her contact address;
- (b) subject to subsection (1A), to begin repayment of his or her loan together with any interest accrued thereon;
- (c) if he is in formal employment, to authorize his employer to deduct the loan repayment and to remit it to the Board in such manner as the Board may direct.

“(1A) A loanee without a source of income, and whose loan is due for repayment under this Act, shall not be liable to pay interest on the loan until such time that the loanee shall start earning an income.

“(1B) An exemption to pay interest on a loan granted under subsection (1A) shall not apply unless the loanee has made a written application to the Board for exemption.

“(1C) The Board shall not uphold its approval unreasonably to an application by a loanee for exemption to pay interest under subsection (1A).

“(1D) The Board shall periodically review the exemptions granted under subsection (1A) in order to determine the suitability of applicants to continue enjoying those exemptions.”

Insertion of  
new section  
24A in No. 55  
of 2012.

20. The Micro and Small Enterprises Act, 2012 is amended by inserting the following new section immediately after section 24—

Tax exemption to  
youth-owned  
enterprises.

24A. (1) A youth-owned micro or small enterprise registered under this Act shall be exempt from payment of income tax for a period of seven years from the date of registration under this Act.

(2) The Cabinet Secretary shall make regulations for the better carrying into effect the provisions of this Act.

(3) In this section, “youth” has the meaning assigned to it under Article 260 of the Constitution.

## **MEMORANDUM OF OBJECTS AND REASONS**

The Bill seeks to make various amendments to various finance-related laws, which do not merit the publication of separate Bills and consolidating them into one omnibus Bill.

The Bill contains amendments to the following statutes—

### **The Public Finance Management Act, 2012 (No. 18 of 2012)**

The Bill seeks to amend the Act to invalidate an agreement for the borrowing of money unless the borrowing is authorised under the Act or by any other written law. It further amends the Act regarding the functions of the budget committee of the National Assembly, to require the committee to coordinate the discussion and review of the Budget Policy Statement and budget estimates by the departmental committees of the National Assembly, and make recommendations to the Assembly taking into account the recommendations of those departmental committees.

It further amends the Act to provide for the responsibilities of departmental committees of the National Assembly in considering budget estimates. It requires the committees to consider the budgets of the respective national government entities falling under them, and if the committee revises the estimates, it should notify the relevant entity accordingly and advise the entity to align its budget to accord with the revision.

It amends the Act to obligate the Cabinet Secretary for finance to ensure that the annual Appropriation Bill prepared pursuant to Article 221(6) of the Constitution provides for appropriation of funds in the Equalisation Fund.

It further amends the Act to provide for the establishment of the County Assemblies, similar to the Parliamentary Fund into which shall be paid monies appropriated for county assemblies.

It amends the Act to provide for accounting officers of various bodies, and to specifically designate specific office holders who shall become accounting officers for their respective institutions.

It amends the Act to provide for offences relating to the handling of public moneys by public officers or accounting officers, and liability arising out of loss of public money.

### **The Public Procurement and Asset Disposal Act, 2015 (No. 33 of 2015)**

The Bill seeks to amend the Act to lay out in considerable detail the duties of a procuring entity which includes, inter alia, undertaking of due diligence on prospective bidders.

It further seeks to amend the Act to obligate accounting officers to ensure that procurement of goods, works and services of the public entity are done in accordance and with strict adherence with the approved procurement plans, and that money is available for payment of goods or services being procured, and for prompt payment of those goods and services. It makes it an offence for an accounting officer to procure goods or services without a procurement plan, or in disregard of that plan.

It amends the Act to promote the principle of open contracting during procurement.

### **The Public Audit Act, 2015 (No. 34 of 2015)**

The Bill seeks to amend the Act to empower the Auditor-General to recruit its own staff as required, and to delete from the Act provisions which were invalidated by the High Court.

**The Controller of Budget Act, 2016 (No. 26 of 2016)**

The Bill amends the Act to require the Controller of Budget to carry out due diligence on an ongoing project, to ascertain whether money previously approved for the project has been utilized prudently, before the Controller authorizes release of more funds for the project.

It further amends the Act to provide for the publicizing of reports by the Controller of Budget in a simplified form and manner which is accessible to as many people as possible.

**The Higher Education Loans Board Act, 1995 (No. 33 of 1995)**

The Bill amends the Act to give loanees a grace period of four years from the date of completion of their studies, before they can commence repayment of loans advanced to them. Further, it amends the Act to exempt loanees without a source of income, upon application to the Board, from paying interest on the loans advanced to them, till such time that the loanees shall start earning an income.

**The Micro and Small Enterprises Act, 2012 (No. 55 of 2012)**

The Bill seeks to amend the Act to give youth-owned enterprises a seven-years tax break, and empowers the Cabinet Secretary to make regulations to give effect to this requirement.

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

Dated the 30th June, 2020

## 2. THE PROMPT PAYMENT BILL, 2020

### THE PROMPT PAYMENT BILL, 2020 ARRANGEMENT OF CLAUSES

#### *Clause*

- 1 - Short title.
- 2 - Application.
- 3 - Interpretation.
- 4 - Prompt settlement of invoices.
- 5 - Act to apply in timelines in supply contract.
- 6 - Offence and penalty.
- 7 - Establishment of the Tribunal.
- 8 - Sittings of the Tribunal.
- 9 - Tenure of members of Tribunal.
- 10 - Disqualification.
- 11 - Resignation of members of the Tribunal.
- 12 - Vacancy in the office of chairperson or member of the Tribunal.
- 13 - General principles.
- 14 - Quorum.
- 15 - Tribunal may seek technical advice.
- 16 - Power to review own decision.
- 17 - Enforcement of decisions.
- 18 - Appeals.
- 19 - Oath of office.
- 20 - Regulations.

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## **THE PROMPT PAYMENT BILL, 2020**

### **A Bill for**

**AN ACT of Parliament to make provision for the prompt payments to suppliers of goods and services, resolution of disputes over invoices for public supplies, promote business and commerce through efficiency, transparency, accountability and public confidence in public accounting processes**

**ENACTED** by the Parliament of Kenya, as follows—

- Short title.                    1. This Act may be cited as the Prompt Payment Act, 2020.
- Application.                    2. This Act shall apply to all public procurement undertaken in accordance with the Public Procurement and Asset Disposal Act.
- Interpretation.                3. In this Act, unless the context otherwise requires—
- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for finance;
- “invoice” means an invoice which is prepared and presented to a public procuring entity in accordance with the requirements that have been specified by the entity for submission of invoices;
- “public entity” has the meaning assigned to it under section 2 of the Public Procurement and Asset Disposal Act, 2015;
- “supplier” means any person who supplies goods or services to any public procurement entity under this Act; and
- “Tribunal” means the Public Invoices Settlement Tribunal established under section 6;

Prompt settlement of invoices.

4. (1) An invoice for goods or services procured shall, unless another date of payment is provided in a supply contract, be honoured and settled within sixty days of submission by the supplier.

(2) Any query to an invoice shall be raised and communicated to the supplier of goods or services in writing within ten days of the presentation of the invoice.

(3) A supplier of goods or service shall provide responses to an invoice query within ten days after receipt of communication from the public procuring entity.

(4) All queries to an invoice shall be resolved and communicated to the supplier of goods or services within five days from the date of receipt of the response from the supplier and a decision not to honour and settle an invoice shall be made before the expiry of the said five-day period.

(5) Every public procuring entity shall establish an internal appeals system to review all decisions made not to honour an invoice.

(6) A supplier in respect of whom a decision not to pay has been communicated shall be entitled to an internal appeal mechanism to review the decision not to honour an invoice.

(7) Once a supplier seeks recourse to the internal appeal mechanism for the review of a decision, the timelines stipulated in this section shall stop running until the internal appellate process is concluded.

(8) All internal appeal mechanism decisions shall be reached within ten days from the day they are submitted by the supplier for review.

Act to apply in timelines in supply contract.

5. If a supply contract has prescribed a date for the payment of goods or services, the timelines prescribed in section 4 shall apply, with respect to those goods or services, from the date the invoice falls due for payment .

Offence and penalty.

6. (1) A person who directly or indirectly, fails to comply or obstructs another person from complying or induce or attempt to induce another person not to comply with the provisions of this Act, commits an offence.

(2) In determining, for the purposes of subsection (1), whether there is obstruction or inducement, it shall be sufficient if there is failure to approve or disapprove payment within the time stipulated.

(3) A person who commits an offence under this Act shall be liable on conviction to imprisonment for a term not exceeding seven years or a fine not exceeding five hundred thousand shillings, or both.



Establishment of the Tribunal.

7. (1) There is established a Tribunal to be known as the Public Invoices Settlement Tribunal to hear appeals from any decisions made by internal appeals mechanisms of every public authority not to pay an invoice.

(2) The Tribunal shall consist of—

- (a) a chairperson with the qualifications of a Judge of the High Court of Kenya, nominated by the Judicial Service Commission;
- (b) a certified procurement and supply practitioner of not less than ten years' experience nominated by the Kenya Institute of Supplies Management;
- (c) an advocate of not less than seven years' experience nominated by the Law Society of Kenya;
- (d) an accountant of not less than ten years' experience nominated by the Institute of Certified Public Accountants of Kenya; and
- (e) one person with experience in financial management.

(3) The members of the Tribunal shall elect a Vice-Chairperson amongst themselves and the Chairperson and the Vice-Chairperson shall be persons of the opposite gender.

(4) All appointments to the Tribunal shall be by name and by Gazette Notice issued by the Cabinet Secretary.

Sittings of the Tribunal.

8. (1) The Tribunal shall sit at such times and in such places as it may appoint.

(2) Subject to subsection (3), the proceedings of the Tribunal shall be open to the public.

(3) The hearings of the Tribunal shall be closed to the public where a dispute emanates from procurement of classified items by a national security organ.

Tenure of members of Tribunal.

9. (1) The Chairperson of the Tribunal shall serve for a term of four years which may be renewed for a further and final term of four years.

(2) A member of the Tribunal shall serve for a term of three years which may be renewed for a further and final term of three years.

(3) A member of the Tribunal shall serve on a part-time basis.

Disqualification.

10. A person shall not be appointed as the Chairperson or member of the Tribunal if the person—

- (a) is of unsound mind;
- (b) is an undischarged bankrupt;
- (c) is convicted of a felony; or
- (d) has been removed from any office for gross violation of the Constitution or any other written law.

Resignation of members of the Tribunal.

11. (1) A member of the Tribunal may resign from office by a written notice addressed to the Cabinet Secretary.

(2) A resignation shall be effective upon being received by the Cabinet Secretary.

Vacancy in the office of chairperson or member of the Tribunal.

12. (1) The office of the chairperson or member of the Tribunal shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the appointing authority;
- (c) is convicted of a felony;
- (d) completes their term of office;
- (e) is absent from three consecutive meetings of the Tribunal without good cause; or
- (f) is removed from office on any of the following grounds—
  - (i) gross violation of the Constitution or any other written law;
  - (ii) gross misconduct or misbehavior;
  - (iii) inability to perform functions of the office arising out of physical or mental infirmity;
  - (iv) incompetence or neglect of duty; or
  - (v) bankruptcy.

(2) A vacancy under this section shall be filled within one month from the date of occurrence.

General principles.

13. Subject to this Act or any other law, the Tribunal when seized of a matter—

- (a) conducts its proceedings with the minimum formality;
- (b) hears and determine the matter expeditiously;
- (c) is not be bound by the rules of evidence and procedure;
- (d) undertakes investigation of fact if the Tribunal is of the opinion that such investigation is necessary for the ends of justice; and
- (e) promotes commerce, good governance and equity.

Quorum.

14. (1) The Chairperson of the Tribunal shall preside at all sittings of the Tribunal at which the Chairperson is present and in the absence of the Chairperson, the Vice–Chairperson shall preside.

(2) The quorum of the Tribunal shall be three members including the chairperson or the person presiding, as the case may be.

Tribunal may seek technical advice.	<p>15. (1) The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings.</p> <p>(2) A person whose advice is sought under subsection (1) shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.</p>
Power to review own decision.	<p>16. The Tribunal may, on its own motion or upon application by an aggrieved party, review its decision.</p>
Enforcement of decisions.	<p>17. (1) A decision of the Tribunal shall be enforced by an accounting officer of a public entity to whom it is directed.</p> <p>(2) The Tribunal may make such recommendations on appropriate reforms to the systems of a procuring entity as it may consider necessary.</p>
Appeals.	<p>18. A party who is dissatisfied with the decision of the Tribunal may appeal to the High Court within fourteen days of the date of the decision.</p>
Oath of office.	<p>19. Members of the Tribunal shall, on appointment, subscribe to the oath or affirmation of office set out in the Schedule.</p>
Regulations.	<p>20. (1) The Cabinet Secretary shall make regulations generally for the better carrying into effect the provisions of this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), regulations may provide for—</p> <ul style="list-style-type: none"> <li>(a) guidelines on the establishment of internal appeals mechanisms in public entities;</li> <li>(b) the rules and procedures of the Tribunal.</li> </ul>

**SCHEDULE** (s. 19)

**OATH/AFFIRMATION**

I..... do swear/affirm that I will well and truly serve the Republic of Kenya in the office of chairperson/member of the Public Invoices Settlement Tribunal, and that I will do justice in accordance with the Constitution of Kenya as by law established, and in accordance with the laws of the Republic without fear or favour, affection or ill will. So help me God.

## MEMORANDUM OF OBJECTS AND REASONS

This Bill provides a legal framework for the prompt payment of invoices for goods and services procured by public entities. It seeks to address the issue of delayed payment for goods and services procured by public entities, which impact negatively on the suppliers of those goods and services.

**Clause 2** applies the Bill, if enacted into an Act, to all public procurement under the Public Procurement and Asset Disposal Act.

**Clause 4** provides for settlement of invoices for the supply of goods and services within thirty days of submission of the invoice. Any query on an invoice should be communicated to the supplier in writing ten days from the date of presentation of the invoice. Every public procuring entity is required to establish an internal appeals system to review all decisions made not to honour an invoice.

**Clause 5** applies the provisions of the Bill to payment of invoices for which payment dates are stipulated in supply contract, so that, once the invoices falls due for payment, the timelines contemplated in the Bill takes effect.

**Clause 6** provides makes failure to make prompt payments for goods and services procured by a public entity an offence. **Clause 7** establishes the Public Invoices Settlement Tribunal to hear appeals from any decisions made by internal appeals mechanisms of every public entity declining to pay an invoice, while **clause 8** provides for the sittings of the Tribunal.

**Clauses 9 and 10** is on the tenure of the chairperson and members of the Tribunal and their disqualification. **Clause 11** provides for the manner in which a vacancy occurs in the office of chairperson or member of the Tribunal.

**Clause 13** provides for the general principles which guides the operations of the Tribunal while **clause 14** prescribes the quorum of the sittings of the Tribunal. **Clause 15** permits the Tribunal to seek technical advice in the performance of its functions, while **clause 16** empowers the Tribunal to review its own decisions when necessary.

**Clause 17** provides for the enforcement of decisions of the Tribunal, while **clause 18** provides for appeals to the High Court from the decisions of the Tribunal.

**Clause 19** prescribes the oath of office to be taken by the chairperson and members of the Tribunal before they assume office, while **clause 20** provides for the making of regulations by the Cabinet Secretary for the better carrying into force the provisions of the Bill once enacted.

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

Dated the 30th June, 2020

### 3. MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL, 2020

#### MICRO AND SMALL ENTERPRISES (AMENDMENT) BILL, 2020

##### A Bill for

AN ACT of Parliament to amend the Micro and Small Enterprises Act, 2012; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

- |  |  |
|--|--|
| Short title                                      | 1. This Act may be cited as Micro and Small Enterprises (Amendment) Bill, 2020   |
| Amendment of section 30 of No. 55 of 2012        | <p>2. Section 30 of the Micro and Small Enterprises Act, 2012, herein referred to as the Principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—</p> <p>(1) The Authority shall consist of—</p> <ul style="list-style-type: none"><li>(a) a Chairperson who shall be competitively recruited and appointed by the President;</li><li>(b) the Principal Secretary responsible for innovation and youth affairs;</li><li>(c) the Principal Secretary responsible for trade and industrialisation or a representative appointed in writing;</li><li>(d) the Principal Secretary responsible for Finance or a representative appointed in writing; and</li><li>(e) five persons appointed by the Cabinet Secretary, who shall have demonstrable experience in business management or entrepreneurship.</li></ul> |
| Insertion of a new section 28A of No. 55 of 2012 | <p>3. The principal Act is amended by inserting the following new subsection immediately after section 28—</p> <p>Registration of enterprises owned by youth women or persons with disability</p> <p>28A (1) An enterprise may be registered as an enterprise owned by youth, women or persons with disabilities for purposes of accessing government procurement opportunities reserved for youth, women and persons with disabilities where the enterprise —</p> <ul style="list-style-type: none"><li>(a) is a legal entity duly recognised by law;</li><li>(b) has at least seventy percent membership of youth, women or persons with disabilities;</li><li>(c) has a leadership of one hundred percent youth, women and persons with disabilities, respectively;</li></ul>   |

(d) has an annual turnover of less than five million shillings;

(e) does not have in its membership, a public officer;

(f) has fulfilled its tax obligations;

(2) A person, who is eligible under (1) may apply for registration to the Registrar.

Consideration of application

28B. The Registrar shall, within seven days of receiving an application under section 28A consider the application and any further information provided by the applicant and may—

(a) register an enterprise as one owned by youth, women or persons with disabilities; and

(b) reject the application with reasons.

Certificate of registration

28C. Upon registering an enterprise, the Registrar shall issue a certificate of registration in the prescribed form.

Amendment of section 31 of No. 55 of 2012

4. The principal Act is amended by deleting section 31 and substituting therefor the following new section—

“31. The functions of the Authority shall be to—

(a) promote the formation, survival and growth of new businesses, through provision of technical advice, counselling and facilitating access to credit during the early stages of development;

(b) facilitate enterprises owned by youth, women and persons with disabilities to participate in government procurement;

(c) formulate and review policies and programs for micro and small enterprises;

(d) monitor and evaluate the implementation of existing policies and programmes related to, or affecting, micro and small enterprises and advise the Government on appropriate policies and course of action to be taken;

(e) coordinate, harmonize and facilitate the integration of various public and private sector activities, programmes and development plans relating to micro and small enterprises;

(f) promote and facilitate research, product development and patenting in the micro and small enterprises sector;

(g) mobilize resources for the development of micro and small enterprise sector;

(h) promote access to markets by micro and small enterprises;

(i) promote innovation and development of products by micro and small enterprises;

(j) formulate capacity building programmes for micro and small enterprises;

- (k) facilitate technology development, acquisition and transfer by micro and small enterprises;
- (l) develop mechanisms, tools and programs for collection of comprehensive data disaggregated by sex, region and age among others, in collaboration with key stakeholders, to enable proper planning for the, micro and small enterprises sector; and
- (m) perform any other function as may be assigned to it by this Act or any other written law.”

Insertion of a new section 46A of No. 55 of 2012

5. The principal Act is amended by inserting the following new subsection immediately after section 46—

Establishment of business incubation centres	<p>46A(1) The Authority may establish such number of business incubation centres as may be necessary purposes of nurturing businesses in the early stages of development by—</p> <ul style="list-style-type: none"> <li>(a) offering business advice to potential entrepreneurs to overcome barriers related to early stages of business development;</li> <li>(b) assisting potential entrepreneurs in the registration of their businesses with the relevant government agencies;</li> <li>(c) facilitating potential entrepreneurs to access credit and any other financial services necessary to support the enterprise; and</li> <li>(d) providing a platform for mentoring, coaching, exchange of ideas and interaction between potential entrepreneurs.</li> </ul>
Duration of incubation	<p>46B. A potential entrepreneur registered as a member of the Business Incubation Centre shall receive the services of the centre until a milestone agreed upon between the Centre and the potential entrepreneur is reached.</p>

## MEMORANDUM OF OBJECTS AND REASONS

The Micro and Small Enterprises (Amendment) Bill, 2020 proposes to amend the Micro and Small Enterprises Act to assign the Micro and Small Enterprises Authority obligation of the facilitating enterprises owned by youth, women and persons with disabilities to participate in government procurement opportunities.

Access to Government Procurement Opportunities to youth, women and persons with disabilities is founded on the Constitutional principles on the fair equitable, transparent and cost-effective public procurement of goods and services and Article 55 on affirmative action.

In addition, the Bill Obligates the Micro and Small Enterprises Authority to establish business incubation centres in Kenya for purposes of supporting potential entrepreneurs to overcome barriers associated with early stages of business development.

The Bill is structured as follows—

**Clause 1** of the Bill provides for the short title.

**Clause 2** of the Bill proposes to amend section 30 of the Act by reviewing the composition of the Authority.

**Clause 3** of the Bill proposes to introduce a new section 28A to provide for the registration of an enterprise owned by youth, women, or persons with disabilities, for purposes of accessing government procurement opportunities.

**Clause 4** proposes to amend section 31 of the Act to introduce additional functions of the Authority in relation to promoting the formation, survival and growth of new businesses, through provision of technical advice, counselling and facilitating access to credit during the early stages of development and facilitating enterprises owned by youth, women and persons with disabilities to participate in government procurement;

**Clause 5** provides for the establishment and purpose of business incubation centres

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not provide for the power of the Cabinet Secretary to make Regulations for the better carrying into effect of the provisions. The Bill does not limit fundamental rights and freedoms.

### **Statement that the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

### **Statement that the Bill is a Money Bill within the meaning of Article 114 of the Constitution**

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

Dated the 30th June, 2020



#### 4. ELECTION LAWS AMENDMENTS

##### ELECTION LAWS (AMENDMENT) BILL, 2020

##### A Bill for —

AN ACT of Parliament to amend various laws relating to elections, and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

Short title                    1. This Act may be cited as the Election Laws (Amendment) Act, 2020.

##### PART I— ELECTIONS ACT, 2011

Amendment of Section 2 of No.24 of 2011                    2. The Elections Act, 2011 is amended in section 2 by—  
(a) deleting the definition of “voter” and substituting therefor the following definition—

“voter” means a person who—

(a) meets the requirements of Article 83 of the Constitution;

(b) has applied for registration as voter in the prescribed manner; and

(c) on consideration of his or her application by the Commission, has been included in a current Register of Voters.

(b) inserting the following new definitions in their proper alphabetical sequence —

“election monitor” means a person accredited by the Commission pursuant to section 42E(4)(a) to observe an election process and draw the attention of an election officer, to any observed violation of the Constitution, electoral laws or international commitments concerning the electoral process;

“election observer” means a person accredited by the Commission pursuant to section 42B(4)(a) to gather information on the electoral process and make an informed judgement on the credibility, legitimacy and transparency of the electoral process based on provisions of the Constitution, electoral laws or international commitments concerning the electoral process;

“election timetable” means a timetable for an election published by the Commission pursuant to section 12A;

No. 24 of 2019

“personal data” has the same meaning assigned to it under the Data Protection Act;

Insertion of new section                    3. The Elections Act, 2011 is amended by inserting the following new section immediately after Section 2—

2A of No.  
24 of 2011

Application

**2A.** This Act applies to —

- (a) planning and implementation of an election or a referendum;
- (b) education of voters;
- (c) recruitment, appointment and training of elections officers;
- (d) testing and trial of electoral equipment;
- (e) registration of voters;
- (f) nomination of candidates for election;
- (g) voting, counting, tallying and declaration of election results; and
- (h) resolution of dispute arising out of an election or referendum.

Insertion of  
new section  
3A, 3B and  
3C of No.  
24 of 2011

4. The Elections Act, is amended by inserting the following new immediately after section 3 as follows—

Eligibility for  
registration as  
a voter

**3A.** Pursuant to Article 83 of the Constitution, a person is eligible for registration as a voter if the person—

- (a) is a citizen of Kenya;
- (b) has attained the age of eighteen years;
- (c) upon attaining the age of eighteen years, been issued with a document of identity issued by the State;
- (d) is of sound mind;
- (e) has not been convicted of an election offence during the preceding five years; and
- (f) has not been previously registered as a voter.

Application  
for  
registration as  
a voter

**3B.** Any person who, is eligible for registration as a voter pursuant to section 3A may, apply to the Commission for registration—

- (a) in the prescribed manner; and
- (b) accompanied by proof of the document of identity issued by the State.

Registration  
as a voter

**3C.** Where the Commission is satisfied that a person's application for registration complies with the provisions of the Constitution and this Act, the Commission shall, register that person as

a voter by making the requisite entries in the Register of Voters.

Amendment of section 5 of No. 24 of 2011

5. Section 5 of the Elections Act, 2011 is amended—
- (a) in sub-section 1(a) by deleting the word “sixty” appearing immediately after the words “commencement of the” and substituting therefor the words “one hundred and twenty”
  - (b) by deleting subsection (3),
  - (c) by deleting subsection (4) and
  - (d) by deleting subsection (5)

Amendment of section 6A of No. 24 of 2011

6. Section 6A of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection 3(b)
- 
- 3(c) The Register of Voters published pursuant to subsection 3(b) shall omit the full details of a voter’s national identification or passport registration number.

Amendment of section 8A of No. 24 of 2011

7. Section 8A of the Elections Act, 2011 is amended deleting subsection (2) and substituting therefor the following section—
- (2) The National Registration Bureau established pursuant to the Registration of Persons Act, shall make available to the Commission, information held by it in the national population register for the purpose of the conduct of an audit under subsection (1).

Cap 107

Insertion of new section 8B and 8C of No. 24 of 2011

8. The Elections Act, 2011 is amended by inserting the following new sections immediately after Section 8A—
- Protection of personal data
- 8B. (1) The Commission shall, process personal data disclosed by a citizen, during registration as a voter or the voting process, in accordance with the law relating to data protection.
- (a) Despite the generality of sub-section (1), the Commission shall not collect, record, structure, store, adapt, alter, transmit, disseminate, erase, or destroy, a citizen’s biometric data, or data revealing the citizen’s ethnicity, place of residence, telephone number or email address—
  - (2) for any other purpose other than the purpose authorised by this Act;
  - (3) in a manner that is incompatible with the Data Protection Act.

No. 24 of  
2019

Access to the  
Register of  
Voters

8C (1) A person, including a political party, may, at least sixty days before the date of a general election, request the Commission, for a copy of the Register of Voters, or a segment of the register, in writing.

(2) The Commission shall, within seven days of a request under (1) and upon payment of such fees as may be prescribed, issue the applicant with a version of the register which omits the full details of a voter's national identification or passport registration number.

Insertion of  
new section  
12A of No.  
24 of 2011

9. The Elections Act, 2011 is amended by inserting the following new section immediately after section 12—

Publication  
of election  
timetable

12A. (1) The Commission shall, at least eighteen months to a general election, compile and publish an election timetable specifying, the activities to be undertaken during the electoral cycle, the duration of each activity and final day for each activity.

(2) Despite subsection (1), the election timetable shall include the duration and final day of —

(a) development and publication of regulations on election campaign financing;

(b) publication of an election results management framework;

(c) procurement of electoral equipment and other electoral material, in line with the law relating to public procurement;

(d) accreditation of election observers, monitors and media institutions;

(e) recruitment, training and deployment of voter registration personnel and election officers;

(f) testing, trial distribution of electoral equipment;

(g) registration of voters;

(h) inspection, verification and audit of the Register of Voters;

(i) education of voters;

(j) nomination of candidates for an election;

- (k) registration of agents;
  - (l) election campaigning;
  - (m) counting, tallying, declaration and publication of election results;
  - (n) resolution of disputes arising out of the election; and
  - (o) any other matter authorised by the Constitution or this Act.
- (3) The Commission may amend the election timetable by notice in the *Gazette*

Amendment  
of section  
13 of No. 24  
of 2011

10. Section 13 of the Elections Act is amended—

- (a) in subsection 1 by deleting the word “ninety” appearing immediately after the words “at least” and substituting therefor the words “one hundred and twenty”;
- (b) Inserting the following new subsection immediately after subsection (1)—

(1A) A political party shall nominate candidates for an election in manner that is —

- (a) democratic, free and fair;
- (b) inclusive and participatory and affords equal opportunities for all eligible candidates including women, persons with disability, youth and minorities;
- (c) open, transparent and accountable;
- (d) credible; and
- (e) peaceful”

(1B) A registered member of a political party may, at least thirty days before the date of the nomination, object to the selection of a person as an aspiring candidate for the nomination, on the grounds that—

- (c) the aspiring candidate is not a registered member of the political party;
- (d) the aspiring candidate is not qualified to be elected to the office to which the nomination relates; or
- (e) the nomination of the aspirant does not comply with the Constitution or this Act.

(1C) A political party shall hear and determine an objection under (1B) as soon as reasonably practicable but not later than fifteen days to the date of the nomination.

(1D) A person aggrieved by the decision of the political party may refer the dispute to the Political Parties Dispute Tribunal.

(1) Deleting subsection 2A

Insertion of a new section 13A of No. 24 of 2011

11. The Elections Act, 2011 is amended by inserting the following new subsection immediately after section 13—

Resolution of party nomination disputes

13A. (1) A political party shall establish a mechanism for resolution of disputes arising out of the nomination of its candidates for an election, that is expeditious, efficient, lawful, reasonable transparent and procedurally fair.

(a) A political party shall hear and determine disputes arising out of the nomination of its candidates for an election as soon as reasonably practicable, but not later than sixty days, from the date of the nomination.

(2) Where a person is required to exhaust alternative dispute resolution mechanisms to resolve a party nomination dispute before resorting to judicial proceedings, no proceedings may be lodged before a court of law unless the alternative dispute resolution mechanisms have been exhausted.

Amendment of section of 28 of No. 24 of 2011

12. Section 28 of the Elections Act, 2011 is amended in subsection 1(a) by deleting the words “one hundred and twenty” appearing immediately after the words “at least” and substituting therefor the words “one hundred and fifty”.

Amendment of section 30 of No. 24 of 2011

13. Section 30 of the Elections Act is amended, by inserting the following new subsection immediately after subsection (3A)

—  
3B. Upon appointment of its agents, a political party or independent candidate shall, at least fourteen days to an election, submit a list of the proposed agents to the Commission.

3C. The list submitted under 3B, shall be accompanied by an undertaking by each proposed agent, to abide by the Electoral Code of Conduct set out in the Second Schedule.

3D. The Commission shall, on receipt of the list of the proposed agents, and on verification of undertaking under 3C, issue each agent with a document of identification as soon as reasonably practicable, but not later than forty- eight hours to an election.

Insertion of new section 30B, 30C and 30D of No. 24 of 2011

14. The Elections Act, 2011 is amended by inserting the following new section immediately after section 30A—

Rights of agents

30B. An agent appointed pursuant to section 30 shall have the right to —

- (a) be trained on the voting process and the agent's role in an election;
- (b) receive copies of any official documents, issued by an election officer, provided electronic copies of official documents shall be sufficient, and
- (c) the protection of the law while lawfully carrying out his or her duties as an agent

Responsibilities of an agent

30C. An agent shall—

- (a) remain within the polling station at all times while lawfully carrying out their duties, subject to restrictions that may be issued by the Commission;
- (b) obey such instructions as may be issued by an election officer;
- (c) append his or her signature on such official documents as may be issued by an election officer;
- (d) observe all proceedings within the polling station, except the marking of ballots by voters;
- (e) wear the prescribed identification issued by the Commission, at all times while at the polling station; and
- (f) record any occurrences in the polling station;

Duty to remain within the polling station

30D. (1) An agent, who, wishes to leave the polling station at any time before the tallying, announcement and declaration of the election results, shall notify the election officer.

(2) An agent who leaves the polling station at any time before the tallying, announcement and declaration of election the results, without notifying the election officer, commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one month or to both.

Amendment of section 33 of No.24 of 2011

15. Section 33 of the Elections Act, 2011 is amended in subsection 1(a) by deleting the words “three months” and substituting therefor the words “four months”.

Amendment  
of section  
34 of No.  
24 of 2011

16. Section 34 of the Elections Act, 2011 is amended by inserting the following new subsection immediately after subsection 1—

1A. A political party shall elect members for party list seats specified in subsection (1) in a manner that is —

- (a) democratic, free and fair;
- (b) inclusive and provides equal opportunities for all eligible candidates particularly, women, persons with disability, youth and minorities
- (c) participatory;
- (d) open, transparent and accountable;
- (e) credible; and
- (f) peaceful”

Insertion of  
new section  
34A

17. The Elections Act, 2011 is amended by inserting the following new section immediately after section 34—

filling of special  
seats reserved for  
persons with  
disabilities

34A (1). Registered members of a political party, living disability, shall select candidates to fill the special seats reserved for persons with disability under to Article 97(1)(c), 98(1)(b) and 177(1)(c) of the Constitution.

(2) The procedure for selecting the candidates to fill the seats referred to in (1) shall be in line with the constitution of the political party

Insertion of  
new section  
37A, 37B,  
37C and  
37D of No.  
24 of 2011

18. The Elections Act, 2011 is amended by inserting the following new section immediately after section 37—

Appointment of  
an election  
officer

37A. (1) The Commission shall at least ninety days to a general election, appoint such number of election officers as the Commission may consider necessary, through a competitive, open and transparent manner.

(2) Despite subsection (1), the Commission shall appoint—

- (a) presiding officers in respect of every polling station;
  - (b) a constituency returning officers in respect of every constituency; and
  - (c) a county returning officer in respect of every county.
- (a) A person may not be appointed as an election officer under this Act unless that person has signed an undertaking in the prescribed form to be bound by—



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- a. the Electoral Code; and
- b. a declaration of secrecy.

Qualification for appointment

37B. (1) A person shall be eligible for appointment as an election officer under this Act if that person—

- (3) is a citizen of Kenya;
- (4) satisfies any educational and professional requirements prescribed by the Commission; and
- (5) meets the requirements under Chapter six of the Constitution

(2) A person is disqualified from appointment as an elections officer if that person —

- (a) has, at any time within the five years immediately preceding the date of election, been convicted of an election offence;
  - (b) has at any time in the preceding five years contested in an election;
  - (c) is an agent for a candidate in an election to which the application relates; or
  - (d) holds office in a registered political party
- (a) In appointing election officers pursuant to this section, the Commission shall offer first preference to persons who, at the time of appointment, do not hold public office.

Responsibilities of an election officer

37C. An election officer shall perform such functions as may be conferred on the officer by the Constitution, this Act or Regulations under this Act

Removal of an election officer

37D. An election officer may be removed from office only on grounds of—

- (a) serious violation of the Constitution or of this Act;
- (b) non-compliance with Chapter Six of the Constitution;
- (c) inability to perform the functions of office arising from mental or physical incapacity;
- (d) bankruptcy;
- (e) incompetence

19. Section 39 of the Elections Act, 2011 is amended by —

(a) deleting subsection (1A) and substituting therefor the following subsection—

(1A). A presiding officer appointed pursuant to section 37A(2)(a) of this Act shall be responsible for—

(a) counting, announcing and declaring, in the prescribed form, the final results for the election of the President, county Governor, Senator, member of the National Assembly, county women representative to the National Assembly and member of the county assembly; in respect of a polling station.

(b) submitting, in the prescribed format, the final results from the polling station to the respective constituency returning officer.

(1AA) A constituency returning officers appointed pursuant to section 37A(2)(b) of this Act shall be responsible for,—

(a) tallying, announcing and declaring in the prescribed form, the results from each polling station in a constituency for the election of the President, county Governor, Senator, member of the National Assembly county women representative to the National Assembly; and member of the county assembly;

(b) submitting, in the prescribed form, the collated results for the election of the president to the national tallying centre and the collated results for the election of the county Governor, Senator and county women representative to the National Assembly and member of the county assembly to the respective county returning officer.

(b) deleting subsection (1B) and substituting therefor the following subsection—

1B. A county returning officer appointed pursuant to section 37A(2)(c) shall be responsible for—

(2) tallying, announcing and declaring, in the prescribed form, the results from the constituencies in the county for purposes of the election of the county Governor, Senator, member of the National Assembly, county women representative to the National Assembly; and member of the county assembly.

(c) Inserting the following subsections immediately after subsection 1B

“1C. The form filled out for the declaration of results at the polling station shall be the primary election form and all other forms subsequent to it shall be tallies of the final results declared at the polling station.”

“1D. An election officer shall transmit the results of an election to the constituency tallying centre and national tallying centre, in the manner prescribed by the Commission, and using such forms issued and certified by the Commission ”

(d) deleting subsection (1E)

(e) deleting subsection (1F)

(f) deleting subsection (1G)

Amendment of section 42 of No. 24 of 2011

20. The Elections Act, 2011 is amended by deleting section 42 and substituting therefor the following section—

“ 42. The Commission shall at any election accredit—

(a) a registered media institution;

(b) a person as a media representative or

(c) any person to report on an election.”

Insertion of a new section 42A, 42B and 42C of No. 24 of 2011

21. The Elections Act is amended by inserting the following new section immediately after section 42—

Accreditation of election observers

42A. The Commission may accredit a person to observe the electoral process or activities of the polling day, where such accreditation is likely to provide an impartial and accurate assessment of the electoral process.

Application for accreditation

for 42B. (1) A person may apply to the Commission for accreditation to observe an election, in writing.

(4) A person applying for accreditation under this section shall—

(a) state the objectives of the observation.

(b) declare any conflict of interest that may impede the impartial observation of the election process.

(5) In considering an application for accreditation under subsection (1), the Commission shall—

(a) assess the suitability of the applicant in accordance with the existing laws; and

(b) determine whether the applicant is likely to observe the election impartially and independently.

(6) The Commission may, upon consideration of an application for accreditation submitted pursuant to subsection (1) —

(a) accredit the applicant as an election observer on such terms as the Commission may prescribe; or

(b) reject the application.

(7) Where the Commission accredits an applicant pursuant to subsection (4)(a), the Commission shall —

(a) enter the applicant's name in the register of persons accredited as election observers; and

(b) issue a certificate or form of identification in the applicant's name stating the period and other conditions of accreditation;

(8) Where the Commission rejects an application for accreditation, the Commission shall inform the applicant of its reasons in writing.

Obligations of an election observer

42C. A person accredited as an observer under this Act shall —

(c) abide by the code of conduct and guidelines for election observers, as may be issued from time to time;

(d) report all observations and findings, impartially, accurately and transparently;

(e) comprehensively review the election, considering all relevant circumstances;

(f) obtain, where reasonable to do so, relevant certified copies of documents used during the election;

(g) provide the Commission with copies of any written information or statements produced by the observer;

(h) obey all lawful instructions issued by election officers;

(i) avoid announcing election results or providing any information about the electoral process without the authorisation of the Commission; and

(j) wear the prescribed identification issued by the Commission, at all

times while at the polling station or tallying centre.

revocation  
of accreditation

of 42D.(1) The Commission may revoke an accreditation granted under this section, where the person accredited, is in breach of —

- (a) this Act or regulations made there under;
- (b) the code of conduct or guidelines for election observers; or
- (c) any other the condition of accreditation set by the Commission.

(2) Where the Commission revokes an accreditation issued pursuant to this Act, the Commission shall give the reasons for the revocation in writing.

Accreditation  
of election monitors

of 42E.(1) A person may apply to the Commission for accreditation to monitor an election, in writing.

(2) A person applying for accreditation pursuant to this section shall—

- (a) state the objectives of the monitoring process.
- (b) declare any conflict of interest that may impede the impartial monitoring of the election process.

(3) In considering an application for accreditation under subsection (1), the Commission shall—

- (a) determine whether the applicant is likely promote conditions conducive to a free and fair election; and
- (b) determine whether the applicant is likely to monitor the election impartially and independently of any registered party or candidate contesting that election; and
- (c) collaborate with any other government agency, where necessary, to determine the suitability of the applicant.

(4) The Commission may, upon consideration of an application for accreditation submitted pursuant to subsection (1) —

- (a) accredit the applicant as an election monitor on such terms as the Commission may prescribe; or

- (b) reject the application.
- (5) Where the Commission accredits an applicant pursuant to subsection (4)(a), the Commission shall —
  - (a) enter the applicant’s name in the register of persons accredited as election monitors; and
  - (b) issue a certificate or form of identification in the applicant’s name stating the period and other conditions of accreditation;
- (6) Where the Commission rejects an application for accreditation, the Commission shall inform the applicant of its reasons in writing.

Obligations of an election monitor 42F. A person accredited as an election monitor under this Act shall —

- (a) abide by the code of conduct and guidelines for election monitors may be issued from time to time;
- (b) obey such instructions as may be issued by an election officer;
- (c) observe all proceedings within the polling station or tallying centre, except the marking of ballots by voters;
- (d) draw the attention of the election officer to any observed violation of election laws or electoral procedures , in a manner that does not interfere with the electoral process;
- (e) wear the prescribed identification issued by the Commission, at all times while at the polling station or tallying centre; and

Revocation of accreditation 42G. (1) The Commission may revoke an accreditation granted under this section, where the person accredited is in breach of—

- (3) this Act or regulations made there under;
- (4) the code of conduct or guidelines for election monitors; or

(5) any other the condition of accreditation.

(2) Where the Commission revokes an accreditation issued pursuant to this Act, the Commission shall give the reasons for the revocation in writing.

Amendment  
of section  
45 of No. 24  
of 2011

22. The Elections Act, 2011 is amended by section 45 and substituting therefore the following section—

45(1) A member of Parliament may be recalled by—

- (a) the electorate in a constituency or county; or
- (b) the political party that nominated the member to Parliament, before the end of the term of the relevant House of Parliament.

(2) A member of Parliament elected pursuant to Article 97(1)(a) or 98 (1)(a) may be recalled by the electorate in a constituency or county on any of the following grounds —

- (a) gross violation of the Constitution or any other written law;
- (b) incompetence;
- (c) gross misconduct
- (d) if convicted of an offence punishable by imprisonment for a term of at least six months;

(3) A member of Parliament nominated pursuant to Articles 97(1)(b) or 98(1)(b), (c) or (d) may be recalled by the political party that nominated the member to Parliament, on any of the following grounds —

- (a) gross violation of the Constitution or any other written law;
- (b) incompetence;
- (c) gross misconduct
- (d) if convicted of an offence punishable by imprisonment for a term of at least six months;
- (e) insubordination of the governing body of the political party that nominated the member to Parliament;
- (f) advancing the interests, ethos and policies of another political party

(4) A recall under this section shall only be initiated eighteen months after the election of the member of Parliament and not later than twelve months immediately preceding the next general election.

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

Amendment  
of section

23. Section 46 of the Elections Act, 2011 is amended by —

- (a) deleting subsection (1)(b)(ii); and

46 of No. 24  
of 2011

(b) deleting subsection (1)(c)

Amendment  
of section  
48 of No. 24  
of 2011

24. The Elections Act, 2011 is amended by deleting section 48

## **PART II— POLITICAL PARTIES ACT, 2011**

Amendment  
of Section 2  
of No. 11 of  
2011

25. Section 2 of the Political Parties Act, 2011 is amended by inserting the following new definitions in their proper alphabetical sequence—

“Appeals Committee means the Committee established pursuant to section 38E(1);

“Dispute Resolution Committee” means the Committee established pursuant to section 38A(1).

Amendment  
of section  
25 of No. 11  
of 2011

26. Section 25 of the Political Parties Act, 2011 is amended by deleting subsection (1) and substituting therefor the following subsection—

“(1) The Fund shall be distributed as follows—

(a) fifty per cent of the Fund proportionately by reference to the total number of seats secured by each political party in the preceding general election;

(b) fifteen per cent of the Fund proportionately by reference to the number women candidates elected in the preceding general election;

(c) fifteen per cent of Fund proportionately by reference number of candidates representing the youth, elected in the preceding general election;

(d) fifteen per cent of Fund proportionately by reference to the number candidates, being persons with disability, elected in the preceding general election; and

(e) five per cent for the administration expenses of the Fund”

Insertion of  
new  
sections  
38A, 38B,  
38C and  
38D of No.  
11 of 2011

27. The Political Parties Act, 2011 is amended by inserting the following new sections immediately after section 38 —

Establishment of  
Dispute  
Resolution  
Committee

38A. (1) There is established for every political party, a Dispute Resolution Committee, which shall be situate at the branch office of the political party.

(2) The Dispute Resolution Committee shall comprise of not less than three and not more than nine members.



	(2) The Committee may decentralise its services to any further extent possible.
Qualifications for membership	<p>38B. A person shall be qualified to be a member of the Committee if that person—</p> <ul style="list-style-type: none"> <li>(6) is a registered member of the political party;</li> <li>(7) has demonstrable experience in leadership or management; and</li> <li>(8) meets the requirements of Chapter Six of the Constitution</li> </ul>
Functions of the Committee	<p>38C. The Committee shall be responsible for hearing and determining, at the first instance—</p> <ul style="list-style-type: none"> <li>(a) disputes between members of a political party;</li> <li>(b) disputes between a member of a political party and a political party;</li> <li>(c) disputes between political parties;</li> <li>(d) disputes between an independent candidate and a political party;</li> <li>(e) disputes between coalition partners; and</li> <li>(f) disputes arising out of the process of nomination of candidates for an election</li> </ul>
Initiation of the dispute	<p>38D. (1) A dispute under sections 38C (a), (b) (c) (d) and (f) shall be initiated at the Committee established at a branch office of the political party.</p> <ul style="list-style-type: none"> <li>(a) A dispute under section 38(e) shall be initiated at the Appeals Committee established at the head office of the political party. <ul style="list-style-type: none"> <li>(a) The Committee established at a branch office shall resolve a dispute referred to it as soon as reasonably practicable, but not later than fourteen days from the date of the dispute.</li> <li>(b) The Registrar may, by regulations, prescribe the procedure of initiating a dispute before Committee.</li> </ul> </li> </ul>
Establishment of Appeals Committee	<p>38E. (1) There is established for every political party, an Appeals Committee, which shall be situate at the head office of the political party.</p>

(2) The Appeals Committee shall comprise of not less than three and not more than five members

Appeals

38F. (1) Where a dispute initiated at the branch office pursuant to section 38D fails to be resolved, the dispute shall be referred to the Appeals Committee.

(3) The Appeals Committee shall resolve a dispute referred to it as soon as reasonably practicable, but not later than seven days from the date of the Appeal.

(4) A person aggrieved by the decision Appeals Committee may refer the dispute to Political Parties Dispute Tribunal, established in pursuant to section 39.

28. Section 40 of No.11 of 2011 is amended by deleting subsection (1) and substituting therefor—

“The Tribunal has jurisdiction to hear and determine appeals from the Appeals Committee on—

Amendment of section 41 of No. 11 of 2011

29. Section 41 of the Political Parties Act, 2011 is amended in subsection (1) by deleting the words “three months” appearing immediately after the words “period of” and substituting therefore the words “two months”.

### **PART III— INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT, 2011**

Amendment of section 2 of No. 9 of 2011

30. The Independent Electoral and Boundaries Commission Act, 2011 is amended in section 2 by deleting the words “or the vice-chairperson or a member of the Commission when discharging the functions of the Chairperson” appearing immediately after the word “Constitution” in the definition of the word “Chairperson”.

Amendment of section 7A of No. 9 of 2011

31. Section 7A of the Independent Electoral and Boundaries Commission Act, 2011, is amended by deleting—

- (a) subsection (4)
- (b) subsection, (5) and
- (c) subsection (6).

Amendment of section 10 of No. 9 of 2011

32. Section 10 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting subsection (4) and substituting therefor—

“(4) The secretary shall hold office for a term of three years, and shall be eligible for re-appointment for one further term.”

Amendment of section 18 of No. 9 of 2011

33. Section 18 of the Independent Electoral and Boundaries Commission Act, 2011 is amended by deleting subsection (1) and substituting therefor—

“(1) There is established the Independent Electoral and Boundaries Commission Fund which shall be administered by the accounting officer of the Commission.”

Insertion of new section 25A of No. 9 of 2011

34. The Independent Electoral and Boundaries Commission Act, 2011 is amended by inserting the following new section immediately after section 25—

Cost of an election

25A. (1) In designing, preparing and conducting an election, the Commission shall ensure that the cost of administering the election is reasonable and resources allocated for purposes of the election are utilised in a prudent manner.

(2) The Commission shall within six months of a general election submit a report on the cost of the election to Parliament.

Amendment of section 27 of No. 9 of 2011

35. Section 27 of the Independent Electoral and Boundaries Commission Act, 2011 is amended —

(a) by deleting subsection (1) and substituting therefor the following subsection—

“(1) The Commission shall make information relating to its mandate and the electoral process available on its website and in a manner that facilitates the right of access to information”

(b) by inserting the following new subsection immediately after subsection(1)—

“(IA) The information referred to in subsection (1) shall include—

- (a) The organisational structure of the Commission;
- (b) The Commission’s strategic plan;
- (c) procedure for the recruitment of both permanent and temporary staff and their conditions of service;
- (d) code of conduct for employees;
- (e) budget and sources of funding for the Commission;
- (f) procurement policy, processes and award of contracts;
- (g) annual report, including audited accounts;
- (h) the Register of Voters; and
- (i) the electoral cycle activities and timelines”

#### **PART IV— ELECTION CAMPAIGN FINANCING ACT, 2013**

Amendment of section 2 of No. 42 of 2013

36. Section 2 of the Election Campaign Financing Act, 2013 is amended by deleting the definition of “campaign period” and substituting therefor the following definition—

“ campaign financing period” means, in the case of a general election, the period commencing after the nomination of parties and candidates, ending two days before polling”.

Amendment of section 18 of No. 42 of 2013

37. Section 18 of the Election Campaign Financing Act, 2013 is amended by inserting the following new subsection immediately after subsection (1) —

(1A) In determining the spending limits under this section, the Commission shall give consideration to the remuneration and benefits expected from the office to which the limit relates.

#### **PART V— ELECTION OFFENCES ACT, 2016**

Insertion of new section 2A of No. 37 of 2016

38. The Election Offences Act, 2016 is amended by inserting the following new section immediately after section 2—

Application	2A. This Act applies to offences committed during— <ul style="list-style-type: none"><li>(a) planning and implementation of elections and referenda;</li><li>(b) education of voters;</li><li>(c) recruitment, appointment and training of elections officers;</li><li>(d) testing and trial of electoral equipment;</li><li>(e) registration of voters;</li><li>(f) nomination of candidates for election;</li><li>(g) campaigning for elections; and</li><li>(h) voting, counting, tallying and declaration of election results.</li></ul>
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Insertion of section 4A of No. 37 of 2016

39. The Election Offences Act, 2016 is amended by inserting the following new subsection immediately after section 4—

Offence relating to transfer of voters	4A. A person who, offers material incentives, uses trick, deception, threats, force, violence or any other unlawful means, for the purposes inducing or compelling a person to register as a voter in a specific electoral area, or transfer their registration to an electoral area other than the one the voter is registered in, commits an offence and is liable on conviction to a fine not exceeding four million shillings or to imprisonment for a term not exceeding twelve years or to both.
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Amendment  
of section 9  
of No. 37 of  
2016

40. Section 9 of the Election Offences Act, 2016 is amended in subsection (1) by inserting the words “a nomination process or” immediately after the words “during”.

Insertion of  
section 9A  
of No. 37 of  
2016

41. The Election Offences Act, 2016 is amended by inserting the following new subsection immediately after section 9—

Prohibition of  
harassment

9A. A person who, harasses, intimidates, coerces, or threatens to cause physical harm to a candidate, commits an offence and is liable, on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six years or to both.

## MEMORANDUM OF OBJECTS AND REASONS

The Election Laws (Amendment) Bill, 2020 (the Bill) seeks to make amendments to various election related laws, to deliver an electoral system that is transparent, accountable, democratic and promotes the will of the people.

The Bill contains amendments to the following statutes—

### **1. Elections Act, 2011 (No. 24 of 2011)**

**Clause 1-2** provides for short title, commencement and interpretation.

**Clause 4** of the introduces a new section 3A to set out the criteria for eligibility for registration as a voter to bring further clarity to Article 83 of the Constitution.

**Clause 5** of the Bill proposes limit registration of voters at least one hundred and twenty days to an election to afford adequate time to the Independent Electoral and Boundaries Commission (Commission) to verify and audit the information contained in the register of voters.

**Clause 6** of the Bill obligates the Independent Electoral Boundaries Commission to omit the full details of voter's national identification and passport registration details during publication of the voter register, to enhance privacy of data disclosed by citizens during voter registration and the voting process.

**Clause 9** of the Bill obligates the Commission to publish an elections timetable in the *Gazette*, at least eighteen months to an election. The election timetable should specify the activities to be undertaken during the electoral cycle, the duration of each activity and the final day of each activity. This is aimed at facilitating effective planning and budgeting of the elections.

**Clause 10** of the Bill proposes to extend the duration of conducting nominations by political parties from the current ninety days to at least one hundred and twenty days to an election. This is aimed at allocating additional time to political parties to resolve disputes arising out of the nomination exercise.

**Clause 13-14** of the Bill spells out the procedure for registration of agents as well as their rights and responsibilities during an election. This is in recognition of the pivotal role played by candidate agents in promoting free and fair elections.

**Clause 17** establishes guiding principles for selection of candidates for party list seats.

**Clause 18** provides for the procedure for filling of special seats reserved for persons with disability.

**Clause 19** of the Bill provides that for the procedure and appointment of presiding officers, returning officers and other election officers through an open, transparent and competitive process.

**Clause 20** provides for the announcement, tallying, declaration and announcement of election results.

**Clause 21** of the Bill provides for the procedure for accreditation of election monitors and observers including the grounds and procedure for revocation of election monitors and observers.

**Clause 22-24** provides for the grounds and procedure for recall of elected and nominated members of Parliament.

## **2. Political Parties Act, 2011 (No. 11 of 2011)**

The Bill proposes amendments to the Political Parties Act, 2011 by redistributing the Political Parties Fund to promote the Constitutional rights under *Article 27 on equality* and freedom from discrimination.

**Clause 26-27** obligates every political party to establish an Internal Dispute Resolution Committee with a defined membership, for purposes of resolving disputes within a political party, including disputes arising out of the nomination process.

## **3. Independent Electoral and Boundaries Commission, 2011 (No. 9 of 2011)**

The Bill proposes to amend the Independent Electoral and Boundaries Commission, 2011 by reviewing the definition of “chairperson” to remove reference to ‘vice- chairperson’ and to limit the holder of the office of the chairperson to be a person appointed in line with Article 250(2). This is in light of the decision of the court in Katiba Institute and 3 others v Attorney-General and 2 others [2018] eKLR, where the Court found that only a person who holds the qualifications of a Chairperson set out in section 6A of the Act and who is appointed in accordance with the Constitution may be appointed as a Chairperson of the Commission.

**Clause 32** brings further clarity on the term of office of the Secretary to the Commission.

**Clause 34** obligates the Commission to apply resources allocated to it for purposes of an election in a prudent and responsible manner. In addition, the Commission is obligated to report to Parliament, within six months of a general election, on the cost of the election.

**Clause 35** obligates the Commission to publish information relating to the electoral process and the mandate of the Commission in a manner that promotes the right to access to information.

## **4. Election Campaign Financing Act, 2013 (No. 42 of 2013)**

The Bill proposes amendments to the Election Campaign Financing Act, 2013 by defining the term ‘campaign financing period’ and obligating the Commission to give consideration to the remuneration and benefits expected from the electoral office to which the limit relates, when prescribing the spending limits that a candidate, political party or referendum committee may spend during an expenditure period.

### **Election Offences Act, 2016 (No. 37 of 2016)**

The Bill proposes to amend the Election Offences Act, 2016, to clarify on the application of the Act to offences committed during the pre-election period and post election period.

**Clause 39** prohibits any person from offering material incentives, tricking, deceiving or using violence in order to induce or compel a voter to transfer their registration from one electoral area to another.

**Clause 41** of the Bill prohibits harassment and use of violence against candidates, during an election period.

## **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not provide for the power of the Cabinet Secretary to make Regulations for the better carrying into effect of the provisions. The Bill does not limit fundamental rights and freedoms.

**Statement that the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

**Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 30th June, 2020.



**6. NATIONAL ECONOMIC AND SOCIAL COUNCIL BILL, 2020**

**NATIONAL ECONOMIC AND SOCIAL COUNCIL BILL, 2020**

**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I—PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Objects of the Act.

**PART II—ESTABLISHMENT OF THE NATIONAL ECONOMIC AND SOCIAL COUNCIL**

4. Establishment of the Council.
5. Functions of the Council.
6. Secretary of the Council.
7. Secretariat of the Council.

**PART III—FINANCIAL PROVISIONS**

8. Source of Funds.
9. Application of the Funds of the Council.
10. Financial Year.
11. Annual Estimates.
12. Accounts and Audit.

**PART IV—MISCELLANEOUS PROVISIONS**

13. Savings and Transition Provisions.
14. Annual report.
15. Regulations

## **THE NATIONAL ECONOMIC AND SOCIAL COUNCIL BILL, 2020**

### **A Bill for**

**AN ACT** of Parliament to establish the national economic and social council; to provide for its governance, functions and administration; and for connected purposes.

**ENACTED** by the Parliament of Kenya as follows—

### **PART I—PRELIMINARY**

- |                               |   |
|-------------------------------|---|
| Short title and commencement. | 1. This Act may be cited as the National Economic and Social Council Act, 2020 and shall come into force immediately after the next general elections.  |
| Interpretation.               | 2. In this Act—<br>“Cabinet Minister” means the cabinet minister for the time being responsible for matters relating to planning;<br>“Council” means the National Economic and Social Council established in section 5;<br>“Secretary” means the Secretary of the Council established appointed under section 7 of this Act; and<br>“Summit” means the national and county government co-ordination Summit established under section 7 of the Inter-governmental Relations Act, 2012. |
| No. 2 of 2012                 |   |
| Object of the Act.            | 3. The object of this Act is to—<br>(a) provide for the establishment, composition and functions of the National Economic and Social Council;<br>(b) provide for the development and co-ordination of the national development policy by the Council; and<br>(c) provide for the establishment, functions and staffing of the secretariat of the Council.   |

### **PART II— ESTABLISHMENT OF THE NATIONAL ECONOMIC AND SOCIAL COUNCIL**

- |                               |   |
|-------------------------------|---|
| Establishment of the Council. | 4. (1) There is established the National Economic and Social Council.<br><br>(2) The Council shall comprise of—<br>(a) the Prime Minister who shall be the Chairperson;<br>(b) the Cabinet Minister responsible for matters relating to planning; |
|-------------------------------|---|

- (c) the Cabinet Minister responsible for matters relating to internal security;
- (d) other Cabinet Ministers as the President may appoint;
- (e) the Governor of the Central Bank of Kenya;
- (f) the Attorney General;
- (g) one representative of the county governors; and
- (h) such other persons as may be appointed by the President having regard to their knowledge and experience in the relevant areas and roles pertaining to economic, social, environmental and planning.

(3) The President shall within three months of election into office appoint the Secretary to the Council who shall in consultation with the Prime Minister, set the agenda for the first meeting of the Council.

(3) The Council may co-opt for a defined period of time, any other expert to bring in specialized expertise on any relevant area of knowledge or skill.

(4) The Council may appoint such committees as it may consider necessary for the better performance of its functions.

(5) The co-opted experts in subsection (3) shall only serve the Council through the committees established under subsection (4).

(6) The Council shall report to the President and stand dissolved six months prior to every general election.

Functions of the Council.

5. (1) The Council shall advise the President and the Summit on the national development policy and strategy.
  - (2) The Council shall, where a new President is sworn in and within six months, review the manifesto of the President's party in order to—
    - (a) determine its alignment to the national development policy; and
    - (b) facilitate the inclusion of the manifesto into the short and medium-term plans for the time being in place.
  - (3) The Council shall—
    - (a) spearhead the identification of Kenya's socio-economic development priorities;
    - (b) study and make strategic analyses of macro-economic and structural reform options;

- (c) be responsible for the coordination and development of the national development policy which shall—
  - (i) cover a period of not less than twenty years forward from the financial year in which it is adopted by Parliament; and
  - (ii) be updated and revised at least once every five years.;
- (d) in consultation with the President, prepare five-year development plans based on the national development policy.
- (e) develop and recommend to the Cabinet co-ordinated policies that will promote social equity, economic growth, create employment and reduce poverty and inequality;
- (f) formulate and review short-term and medium-term national development plans in consultation with county governments; and
- (g) evaluate the effectiveness of Government socio-economic policies, programs and activities.

(4) In undertaking its functions under this Act, the Council may—

- (a) propose strategies to ensure the even development of counties for the effective utilization of available resources;
- (b) propose strategies for the effective utilization of the private sector and civil society capacities through collaboration, engagement and networking; and
- (c) formulate and propose strategies to ensure that the comprehensive development plans and strategies including consequential policies and programmes are effectively carried out.

Secretary of the Council.

6. (1) There shall be a Secretary of the Council who shall be appointed by the President on the advice of the Public Service Commission.

(2) The Secretary shall hold office for the duration of the term of each Council.

(3) The Secretary of the Council shall be responsible for—

- (a) the day-to-day administration and management of the affairs of the Council; and
- (b) supervision of the staff of the Council.

Secretariat of the Council.

7. There is established a Secretariat of the Council which shall—

- (a) provide appropriate background briefing to the Council;
- (b) prepare the Council's reports and disseminate the information deemed relevant to the Council;
- (c) undertake research and liaise with research institutions in order to gather relevant information necessary for the performance of the functions of the Council; and
- (d) provide any other administrative and secretarial assistance to the Council.

### **PART III — FINANCIAL PROVISIONS**

- Source of funds. 8. The funds of the Council shall consist of—
- (a) such monies as may be appropriated by the Parliament;
  - (b) grants, gifts, donations, loans or other endowments given to the Council; §
  - (c) such funds as may vest in or accrue to the Council in the course of the exercise of its powers or the performance of its functions under this Act; and
  - (d) moneys from any other lawful source accruing to the Council.
- Application of the funds of the Council. 9. The Council may use the funding to—
- (a) defray the expenses incurred in the planning, processes in accordance with this Act;
  - (b) analysis of information collected from implementing agencies;
  - (c) research and development;
  - (d) funding of training and capacity building;
  - (e) meeting the expenses incurred in providing services under this Act; and
  - (f) meet the expenses of the operations of the Council as approved by Parliament.
- Financial year. 10. The financial year of the Council shall be the period of twelve months commencing on the first of July and ending on the thirtieth June of the subsequent year.
- Annual estimates. 11. (1) At least three months before the commencement of each financial year the Secretary shall cause to be prepared estimates of the revenue and expenditure of the Council for that financial year.
- (2) The annual estimates shall make provision for all estimated expenditure of the Council for the financial year concerned, and in particular shall provide for—
- (a) the expenses stipulated in section 11;
  - (b) the payment of salaries, allowances and other charges in respect of the staff of the Council;
  - (c) the payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Council;
  - (d) the proper maintenance of the assets of the Council;
  - (e) the maintenance, repair and replacement of the equipment and other property of the Council;
  - (f) the funding of training, research and development activities of the Council;

(g) the funding of future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Council may think fit; and

(h) any other expenditure necessary for the purposes of this Act.

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

Accounts and Audit. 12. (1) The Secretary shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Council.

(2) Within a period of three months after the end of each financial year, the Council shall submit to the Auditor-General the accounts of the Council in respect of that year together with a—

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

(b) statement of the assets and liabilities of the Council on the last day of that financial year.

(3) The annual accounts of the Council shall be prepared, audited and reported upon in accordance with the provisions the Article 226 and 229 of the Constitution and the law relating to public audit.

#### **PART IV— MISCELLANEOUS PROVISIONS**

Savings and Transition provisions. 13. (1) The Kenya Vision 2030 shall, upon coming into force of this Act—

(a) be audited by the Council to determine its status and align it with the principle of devolution; and

(b) be adopted as the national development policy for the period of its duration.

(2) The Council shall be the successor of the National Economic and Social Council immediately before the commencement of this Act, and upon such commencement the provisions set out in this section shall apply.

(3) Any person who immediately before the commencement of this Act is deployed by the Public Service Commission or otherwise engaged by the Government to serve the former Council shall upon the commencement be so deemed to be deployed to serve the Council.

(4) Despite subsection (3), all the employees of the Government who were serving at the former Council shall upon the

commencement of this Act be given an option to elect to serve in the Council or be redeployed in the Public Service within a period of two years.

(4) All the funds, assets and other property movable or immovable, which immediately before the commencement of this Act were held by the Government for the former Council shall upon such commencement be deemed to be so held for the Council established under this Act.

(5) The annual estimates approved for the former Council in respect of the financial year in which this Act comes into operation shall be deemed to be the annual estimates of the Council for the remainder of the financial year.

(6) In this section, “former Council” means the National Economic and Social Council existing immediately before the commencement of this Act.

Annual report.

14. (1) The Council shall, not later than three months after the end of each financial year, submit to the Prime Minister an annual report covering the activities and the operations of the Council under this Act during the immediately preceding year.

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

- (a) the financial statements of the Council;
- (b) a description of the activities of the Council;
- (c) statistical information as the Secretary may consider appropriate relating to the functions of the Council;
- (d) the impact of the exercise of the mandate or functions of the Council;
- (e) the challenges, if any, faced in the implementation of the Act; and
- (f) any other matter relating to the functions of the Council that the Secretary considers necessary.

(3) The Council shall publish and publicize the annual report in such manner as the Council may determine.

(4) The Prime Minister shall, within one month after the receipt of the annual report submit the report to the National Assembly together with a statement of the views of the Prime Minister on the performance of the Council during the year to which the report relates.

(5) The Council shall submit to the Prime Minister any other report that the Prime Minister may in writing, request.

Regulations.

15. The Cabinet Minister may, in consultation with the Council, make regulations prescribing—

- (a) regulations relating to the framework for planning for the two levels of government;
- (b) norms and standards for planning;
- (c) conduct of socio-economic impact assessment of public programmes; and
- (d) any matter that may be required to be prescribed under this Act.



## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of the Bill is to provide a legislative framework for the establishment of the National Economic and Social Council and to provide for the Council's role in coordinating and developing the national development policy.

**Part I** of the Bill provides for the preliminary matters including the short title, and the objects of the Act.

**Part II** of the Bill provides for the establishment of the National Economic and Social Council which shall comprise of the Prime Minister, six Cabinet Ministers, the Attorney General, the Governor of the Central Bank of Kenya, a representative of the county governors and such other persons as may be appointed by the President to provide knowledge and experience in the key sectors of economics, social, environment and planning. The Part further provides for the functions of the Council which include the coordination and development of the national development policy, medium term and short term development plans and facilitation of an effective implementation of the policy and plans. Lastly, the Part provides for the Secretary of the Council who shall be appointed by the President and serve for the duration of each Council.

**Part III** of the Bill provides for the financing mechanism of the Council which includes, the annual appropriations by Parliament, grants and loans and any monies that may accrue to the Council in the course of performance of its functions and provision of services in accordance with the Act. The Part also provides for the annual budgeting, reporting and auditing processes applicable to the Authority to be in accordance with existing legislation.

**Part IV** of the Bill provides for miscellaneous matters which include the savings and transition provisions, the annual report and the regulation making powers of the Cabinet Secretary.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

### **Statement on how the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110(1)(a) of the Constitution in that it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

### **Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 30th June 2020

## 7. THE DEVOLUTION LAWS AMENDMENTS

### THE DEVOLUTION LAWS (AMENDMENT) BILL, 2020

#### A Bill for

AN ACT of Parliament to make various amendments to the laws relating to devolution and for connected purposes

ENACTED by Parliament of Kenya, as follows—

#### PART I—PRELIMINARY

Short title. 1. This Act may be cited as the Devolution Laws (Amendment) Act, 2020.

#### PART II—COUNTY GOVERNMENTS

Amendment of section 6A of No. 11 of 2012. 2. Section 6A of the County Governments Act, in this part referred to as the “principal Act”, is amended in subsection (2) by deleting the phrase “by a resolution supported by at least two-thirds of the members of the County Assembly and with the approval of Parliament” and substituting therefor the phrase “in accordance with this Part”;

Insertion of new sections 6B, 6C, 6D, 6E and 6F in No. 11 of 2012. 3. The principal Act is amended by inserting a new section immediately after section 6A—

Proposal to transfer a county headquarter. 6B. (1) A proposal to transfer a county headquarter, from the physical location specified in the Third Schedule, to any other location within the boundaries of the county government may be initiated by—

- (a) the county executive or a citizen, in accordance with section 88(2) of the Act; or
- (b) a referendum as provided for under section 90.

(2) Where a proposal to transfer a county headquarter is initiated in accordance with subsection (1)(a), the county governor shall, within thirty days of receipt of the petition and in writing, constitute a Steering Committee to provide guidance on the proposal.

(3) The Steering Committee shall comprise of—

- (a) the county executive committee member responsible for—
- (b) county planning and development, who shall be the secretary and finance;
- (c) the County Attorney;

- (d) two persons, representing the residents of the county, who shall be registered to vote in the county; and
- (e) the chief officer responsible for county planning, who shall provide secretarial services.

(4) The Steering Committee shall within thirty days of appointment, prepare and submit to the county executive committee, a detailed proposal for the transfer of the county headquarter, which shall include—

- (a) the proposed new location of the county headquarters;
- (b) the projected expenditure to be incurred as a result of the transfer;
- (c) the economic viability of the transfer;
- (d) how the transfer will aid the realisation of the objectives of county government;
- (e) how the transfer will impact the fiscal position of the county government;
- (f) how the transfer will impact the social well-being of the residents of the county;
- (g) the anticipated environmental impacts of the transfer and proposed mitigation measures, prepared in accordance with the Environmental Management and Co-ordination Act 2003;
- (h) the most effective means of undertaking the transfer; and
- (i) a proposed framework for conducting public participation on the matter.

Cap. 387

(5) The county executive committee shall upon receiving the detailed proposal, consider and either—

- (a) approve it; or
- (b) reject it.

Public consultation on a proposal to transfer a county headquarter

6C. (1) Where the Steering Committee approves the detailed proposal, it shall invite members of the public to make submissions on the proposal.

(2) The Steering Committee shall—

- (a) hold public meetings to explain the rationale and effects of the proposed transfer;
- (b) notify the public of the dates and venue of the public meetings on the transfer through locally accessible means and in at least two newspapers of country wide circulation;
- (c) state where copies of the detailed proposal to transfer the county headquarter may be obtained;
- (d) ensure that persons likely to be most affected by the proposed transfer have an adequate opportunity to share their views on the transfer; and
- (e) record the proceedings of the meetings.

(3) The steering committee shall, within thirty days of the public consultations, prepare and submit a report of the outcome of the consultations, to the county executive committee.

(4) Where the members of the public approve the proposal to transfer the county headquarter, the county governor, shall present the detailed proposal and any other document before the County Assembly within fourteen days of such approval, in accordance with section 6A of the Act.

(5) Where the members of the public reject the proposal for transfer, the steering committee shall, upon submission of the report under subsection (3), stand dissolved.

Consideration by the county assembly.

6D. (1) A proposal laid before the County Assembly under section 6(c) shall be transmitted to the Clerk and accompanied by—

- (a) a detailed assessment of the costs and benefits of the proposed transfer;
- (b) a detailed plan of how the transfer will be undertaken;
- (c) an environmental impact study of the transfer, prepared in accordance with existing legislation;
- (d) a report of the outcome of the public participation, indicating—
- (e) who was consulted;
- (f) the period within which the consultations were undertaken;

- (g) the responses received from the public; and
- (h) an analysis of the outcome of the consultations.

(2) The County Assembly, in carrying out scrutiny of a proposal for transfer of a county headquarter shall be guided by the principles and objects of devolved governance and shall, in particular consider whether—

- (a) the proposed location of county headquarter will ensure equitable access to public services;
- (b) the transfer is financially viable;
- (c) the transfer will facilitate social, economic and political development and integration of the county;
- (d) the county government has put in place sufficient measures to undertake the transfer; and
- (e) there was sufficient public consultations to inform the transfer.

(3) The County Assembly may conduct further public consultation on the proposal through an appropriate mechanism, in accordance with its Standing Orders.

(4) Where the County Assembly by a two-thirds majority adopts a resolution for the transfer of the county headquarter, the Clerk of the County Assembly shall within fourteen days notify the Clerk of the Senate of the approval.

(5) Where the Assembly rejects the proposal to transfer the county headquarter, the Clerk of the County Assembly shall, within fourteen days of the rejection, notify the county governor.

Consideration by the Senate.

6E. (1) The procedure for consideration by a county assembly of a proposal to transfer a county headquarter provided for in section 6D shall, with necessary modification, apply to the procedure for consideration of a proposal that is presented to the Senate.

(2) The Clerk of the Senate shall, within seven days of the approval or rejection of the proposal to transfer a county headquarter, inform the county governor of the decision.

(3) The Senate may, despite subsection (1) approve the transfer of a county headquarter, subject to such conditions as it may deem appropriate.

Publication. 6F. The county governor shall, within seven days of receipt of the decision by the Senate, notify the public by a notice in the Gazette, in the case of an approval of the proposal to transfer a county headquarters.

Amendment of section 24 of No. 11 of 2012. 8. Section 24 of the principal Act is amended in subsection (5) by deleting the words “two-thirds of” and substituting thereof the words “a majority of all the”.

Amendment to section 32 of No. 11 of 2012. 9. Section 32 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection—  
“(3) The governor shall assign to the deputy governor—  
(a) a portfolio as a member of the county executive committee; and  
(b) any other responsibility in the county government.”

Amendment of section 102 of No. 11 of 2012. 10. The principal Act is amended in section 102 by inserting the following new subsection immediately after paragraph (i)—  
“(j) consider and adopt the wards as the basis and foundational unit for development planning .”

Amendment of section 103 of No. 11 of 2012. 11. Section 103 of the principal Act is amended in paragraph (a) by deleting the phrase “and sub-county” and substituting therefor the phrase “sub-county and ward”.

Amendment of section 104 of No. 11 of 2012. 12. Section 104 of the principal Act is amended in subsection (5) by inserting the phrase “and ward” immediately after the phrase “all sub-county”.

Amendment of section 107 of No. 11 of 2012. 13. Section 107 of the principal Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (d)—  
“(e) ward development plans.”

### **PART III—INTERGOVERNMENTAL RELATIONS**

Amendment of section 3 of No. 2 of 2012. 14. The Intergovernmental Relations Act, 2020 in this Part referred to as the “principal Act”, is amended in section 3 by—  
(a) deleting the word “and” at the end of paragraph (e);  
(b) inserting the word “and” immediately after paragraph (f); and  
(c) inserting the following new paragraph immediately after paragraph (f)—

“(g) provide mechanisms for the performance of concurrent functions.”

Amendment of section 6 of No. 2 of 2012.

15. The principal Act is amended in section 6 by inserting the following new paragraph immediately after paragraph (c)—

“(d) performance of concurrent functions.”

Amendment of section 7 of No. 2 of 2012.

16. The principal Act is amended in section 7(2) by—

(a) inserting the word “or in the absence of a governor, the deputy governor” immediately after the word “counties” in paragraph (b);

(b) inserting the following new paragraph immediately after paragraph (b)—

“(c) such other members as may be co-opted by the Summit.”

Insertion of new section 23 A into No. 2 of 2012.

17. The principal Act is amended by inserting the following new section immediately after section 23—

County associations and partnerships

**23A.** (1) Three or more county governments may by notice in the *Gazette* by the Cabinet Secretary, enter into a framework for the establishment of county associations or partnerships.

(2) The Cabinet Secretary shall by Regulations approved by the Senate, prescribe the form in which the structures contemplated under subsection (1) may be established, managed and governed.

Amendment of section 38 of No. 2 of 2012.

18. Section 38 of the principal Act is amended in subsection (1) by deleting the word “Summit” and substituting therefor the word “Council”.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of objects and reasons**

The principal object of this Bill is to amend the County Governments Act, 2012 and the Intergovernmental Relations Act, 2012, to align various provisions of the Act following multiple court decisions on matters relating to devolution and to incorporate lessons learnt in the implementation of the Acts.

The structure of the Bill is as follows:

**Clause 1** provides the short title.

**Clause 2** of the Bill propose to amend section 6A of the County Government's Act to provide for the manner and process to be followed in the transfer of the headquarters of a county government.

**Clause 3** provides for the facilitative and consultative process of transferring the county headquarters.

**Clause 4** of the Bill proposes to amend section 24 of the County Governments Act to require a majority vote in the county assembly in the case of the county governor refusing to assent to a Bill after its passing in the county assembly

**Clause 5** of the Bill proposes to amend section 32 of the County Governments Act to require the Governor to assign to the Deputy Governor a County Executive Committee portfolio.

**Clauses 7, 8, 9 and 10** of the Bill proposes to amend sections 102,103,104 and 107 of the County Government's Act to provide for consideration of the ward as the lowest unit of development planning in the counties.

**Clause 12** of the Bill proposes to amend section 3 of the Intergovernmental Relations Act to include in the objects and purposes of the Act, a provision on the performance of concurrent functions.

**Clause 13** of the Bill proposes to amend section 6 of the Intergovernmental Relations Act to provide for the inclusion of performance of concurrent functions as one of the areas in which the principles and objects of the Act provided in sections 3, 4 and 5 shall apply to.

**Clause 14** of the Bill proposes to amend section 7 of the Intergovernmental Relations Act to provide that the deputy governor shall in the absence of the county governor, represent the county government in the Summit. The clause also provides for the co-option by the Summit, of anyone it may require to attend any of its sittings.

**Clause 15** of the Bill proposes to amend the Intergovernmental Relations Act to provide for the coming together of two or more county governments into associations and partnerships for the purpose of development. It further provides that the Cabinet Secretary shall provide an overarching regulatory regime for the associations and partnerships.

**Clause 16** of the Bill proposes to amend section 38 of the Intergovernmental Relations Act to provide that Regulations will be made by the Cabinet Secretary in consultation with the Council.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**



The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

**Statement on how the Bill concerns county governments**

This Bill concerns county governments in terms of Article 110(1) (a) of the Constitution.

**Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 15th July, 2020.

## **8. THE PUBLIC PARTICIPATION BILL, 2020**

### **THE PUBLIC PARTICIPATION BILL, 2020**

#### **ARRANGEMENT OF CLAUSES**

*Clause*

#### **PART I—PRELIMINARY**

1. Short Title.
2. Interpretation.
3. Objects of this Act.
4. Guiding Principles.
5. Application.

#### **PART II—PROCEDURE FOR PUBLIC PARTICIPATION**

6. Consideration to be made by a responsible authority.
7. Statement of proposal.
8. Summary of information.
9. Public participation process.
10. Public participation process report.
11. Submission and publication of the report.
12. Forwarding of reports from responsible authorities in a county government.
13. Public Participation Registry.
14. Registrar.

#### **PART III—MISCELLANEOUS PROVISIONS**

15. Annual report.
16. Disclosure of information.
17. Regulations.

# THE PUBLIC PARTICIPATION BILL, 2020

## A Bill for

**AN ACT** of Parliament to give effect to the constitutional principles of democracy, governance and participation of the people under Articles 1(2), 10(2), 35, 69(1)(d), 118, 174(c) and (d), 184(1)(c), 196, 201(a) and 232(1)(d) of the Constitution; to provide a uniform procedure for conducting public participation; and for connected purposes

**ENACTED** by the Parliament of Kenya, as follows—

### PART I—PRELIMINARY

- Short title. 1. This Act may be cited as the Public Participation Act, 2020.
- Interpretation. 2. In this Act, unless the context otherwise requires—
- “affected person” means a community, organisation or member of the public who would be affected by or have an interest in a decision;
- “Attorney General” means the Attorney-General appointed under Article 156 of the Constitution; and
- “responsible authority” means a person or institution, whether public or private, that may in the exercise of any of its powers or functions be required to conduct a public participation exercise.
- Objects of this Act. 3. The object of this Act is to enhance, promote and facilitate public participation in the governance processes and in particular to—
- (a) give effect to the principles of public participation provided for in Articles 1(2), 10(2), 33(1)(a), 35, 69(1)(d), 118, 174(c) and (d), 184(1)(c), 196, 201(a) and 232(1)(d) of the Constitution;
  - (b) promote democracy, transparency and accountability in decision making;
  - (c) provide a uniform and well-structured framework for public entities and private bodies to conduct public participation;
  - (d) promote the understanding of governance processes and community ownership of public decisions;
  - (e) provide a framework to facilitate public education on the right to public participation as provided for in the Constitution and this Act; and
  - (f) establish the public participation registry and the public participation registrar.

- Guiding principles.
4. Public participation in governance processes shall be guided by the following principles—
- (a) the affected person has a right to be consulted and involved in the decision making process;
  - (b) provision of effective mechanisms for the involvement of the affected person;
  - (c) equitable access to information to the affected person to enable their meaningful participation;
  - (d) development of appropriate feedback mechanisms;
  - (e) consideration of the submitted views in the decision making process; and
  - (f) recognition of the needs and interests of all participants, including the decision makers.
- Application.
5. This Act applies to a responsible authority, whenever required in the performance of any of its functions to conduct public participation.

## **PART II—PROCEDURE FOR PUBLIC PARTICIPATION**

- Considerations to be made by a responsible authority.
6. (1) Where a responsible authority is required to undertake public participation, the responsible authority shall ensure that—
- (a) reasonable access to relevant information on the matter is available and the format it is available in is appropriate to the preferences and needs of the affected person;
  - (b) reasonable opportunity is availed to an affected person and that they are encouraged to present their views on the matter;
  - (c) clear information regarding the purpose of the consultation and the scope of the decisions to be taken following the consideration of views are presented;
  - (d) the views presented are received and given fair consideration; and
  - (e) persons who present views have access to a clear record or description of relevant decisions made by the responsible authority and explanatory material relating to the decision, which may include reports relating to the matter that was considered before the decision was made.
- (2) Without prejudice to the requirements provided for under subsection (1), the responsible authority shall exercise its

discretion on the appropriateness of any approach necessary to satisfy the constitutional and legal obligations relating to public participation.

- Statement of proposal.
7. A responsible authority shall, before subjecting a matter to public participation,—
- (a) identify all reasonably practicable options for the achievement of the objectives of a decision;
  - (b) assess the options in terms of their advantages and disadvantages; and
  - (c) prepare a statement of proposal detailing the rationale for the adopted option.

- Summary information.
- of 8. (1) A responsible authority may, after preparing a statement of proposal, prepare a summary of the information contained in the statement of proposal where—
- (a) the authority considers on reasonable grounds that it is necessary to enable public understanding of the proposal;
  - (b) the statement of proposal has highly technical or specialized information;
  - (c) the statement of proposal is in a language that the affected persons do not understand; or
  - (d) it is necessary to allow for efficiency and effectiveness of the public participation process.
- (2) A summary of the information contained in a statement of proposal must—
- (a) be a fair representation of the major matters in the statement of proposal;
  - (b) be in an appropriate form as determined by the responsible authority depending on the affected persons;
  - (c) indicate where the statement of proposal is available; and
  - (d) state the period within which affected persons may present their views to the responsible authority.

- Public participation process.
9. (1) When conducting a public participation exercise, a responsible authority shall—

- (a) prepare and adopt a statement of proposal and a summary of the information to be contained in the statement of proposal, where applicable;
- (b) determine through a mapping process, the affected persons to be consulted;
- (c) ensure that the following is publicly available:
  - (i) the statement of proposal;
  - (ii) a description of how the authority will provide affected persons with an opportunity to present their views to the authority; and
  - (iii) a statement of the period within which views on the proposal may be provided to the authority, the period being not less than thirty days from the date the statement is issued;
- (d) make the summary of the information contained in the statement of proposal or the statement of proposal, if a summary is not prepared, as widely available as is reasonably practicable as a basis for consultation;
- (e) provide an opportunity for persons to present their views to the authority in a manner that allows interaction between the person and the authority, or any representative to whom an appropriate delegation has been made; and
- (f) ensure that any person who wishes to present his or her views to the authority or its representative is given an opportunity to do so; and is informed about how and when they may take up the opportunity.

(2) For the purpose of, but without limiting sub-section (1)(d), a responsible authority may allow any person to present his or her views to the authority through audio link, audio-visual link or any other accessible electronic means.

Public participation  
process report.

10. At the end of a public participation process, a responsible authority shall prepare a detailed report on—
- (a) the mapping process applied to determine the affected persons;
  - (b) the affected persons who were consulted, together with a signed attendance register containing any such information as may be prescribed;
  - (c) the contents provided in the proposal and the summary of information;

- (d) the format and forum in which the affected persons used to express their views and opinions on the matter;
- (e) the duration of time allocated to the affected persons to give their views and opinions on the matter; and
- (f) the report of the considerations given to the views and expressions of the persons likely to be affected by or to have an interest in the matter.

Submission and publication of the report.

11. A responsible authority shall, after preparation of the report—

- (a) submit a certified copy of the report to—
  - (i) the Registrar, in the case of a responsible authority in the national government; or
  - (ii) the County Attorney, in the case of a responsible authority in a county government;
- (b) comply with any corrective directions given by either the Registrar or the County Attorney to bring the public participation process described in the report into compliance with constitutional and legislative requirements;
- (c) publish the report in the responsible authority’s website; and
- (d) make the report accessible to the general public in accordance with the legislation relating to access to information.

Forwarding of reports from responsible authorities in a county government.

12. (1) A County Attorney shall, where a responsible authority in the county government submits a public participation report that complies with the provisions of this Act,—

- (a) forward the report to the Registrar within thirty days;
- (b) prepare quarterly consolidated reports of public participation in the county, in a form to be prescribed; and
- (c) forward the quarterly consolidated reports to the Registrar.

(2) The Registrar may where necessary, and within thirty days of receipt of a public participation report under this section, review and recommend to the County Attorney, corrective measures to be undertaken to bring a public participation process by a responsible authority in a county government into compliance with this Act or the Constitution.

Public Participation  
Registry.

13. (1) There shall be a Public Participation Registry within the Office of the Attorney General which shall be a department responsible for matters relating to public participation.

(2) The Registry shall—

- (a) be the repository of all public participation reports in Kenya;
- (b) contain a record of all reports in such manner as may be prescribed; and
- (c) be applicable to any other function as may be determined by the Attorney General or any existing legislation.

Registrar.

14. (1) The Registry shall be headed by the Registrar of Public Participation who shall be appointed by the Attorney General in consultation with the Public Service Commission.

(2) The appointment in subsection (1) shall be conducted through an open and competitive process.

(3) The office of the Registrar shall be an office in the public service.

(4) A person shall be qualified to be appointed as Registrar if such person has knowledge and experience in matters relating to public participation, registry management or any other relevant field, as may be determined by the Attorney General, in consultation with the Public Service Commission.

(5) The Registrar shall—

(a) maintain a record of the—

- (i) public participation reports from the responsible authorities in the national government;
- (ii) public participation reports from the responsible authorities in the county government; and
- (iii) recommendations and observations from the public participation reports it receives;

(b) monitor the implementation of this Act;

(c) inform and encourage public and private entities of their obligations relating to public participation;



- (d) advise the general public on their rights in relation to public participation;
- (e) maintain a website of the public participation reports submitted to it;
- (f) certify for purposes of any policy, legislative or regulatory process that public participation has been conducted in accordance with this Act and the Constitution;
- (g) make recommendations to responsible authorities on measures to be undertaken to ensure compliance with this Act in any public participation exercise;
- (h) conduct capacity building for responsible authorities;
- (i) require any person that is subject to this Act to provide explanations, information or assistance in person or in writing;
- (j) respond to inquiries from public entities on any public participation exercise; and
- (k) perform such other functions as may be prescribed by the Attorney General.

### **PART III—MISCELLANEOUS PROVISIONS**

Annual Report.

15. (1) The Registrar shall, at the end of every financial year, prepare an annual report.

(2) The Registrar shall submit the annual report to the Attorney General for submission to Parliament within three months after the end of the year to which it relates.

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

- (a) a description of the activities and programs by the Registrar;
- (b) an analysis of the public participation processes conducted by responsible authorities from both levels of government;
- (c) statistical information that the Registrar may consider appropriate relating to its functions;
- (d) recommendations made by the Registrar to responsible authorities and the action taken;

- (e) the impact of public participation in the realization of rights enshrined in the Constitution;
- (f) any impediments to the achievements of the objects of this Act; and
- (g) any other information relating to its functions that the Registrar may consider necessary.

(4) The annual report shall be published and publicized in such other manner as the Registrar, in consultation with the Attorney General may determine.

Disclosure of information

16. (1) Subject to Article 35 of the Constitution, the Registrar shall publish and publicize any important information within its mandate affecting the nation.

(2) A request for information by any citizen shall be—

(a) addressed to the Registrar; and

(b) dealt with in accordance with Article 35 of the Constitution and the law relating to access to information.

Regulations.

17. (1) The Attorney General may, in consultation with the Registrar, make regulations generally for giving effect to the provisions of this Act, and for prescribing anything required or necessary to be prescribed under this Act.

(2) For the purposes of Article 94(6) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Attorney General to make regulations for better carrying into effect the provisions of this Act; and

(2) the authority of the Attorney General to make regulations will be limited to bringing into effect the provisions of this Act.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of the Bill is to provide a framework for an effective public participation framework. The Constitution of Kenya 2010, ushered in a new system of governance that places the people at the centre of governance. Accordingly, all public processes ranging from policy making, legislative process and ultimate decision making require the participation of the people of Kenya. This Bill therefore provides a standardised mechanism to facilitate an effective and coordinated public participation process in both levels of government that includes the introduction of the Registrar of the Public Participation Registry under the Office of the Attorney General. Further, the Bill provides for the role of the County Attorney in the public participation process in the county government and requires reports on any such exercise to be regularly shared and archived with the Registrar.

**Part I** of the Bill provides for the preliminary matters including the short title, objects of the Act and the guiding principles for any public participation process in the country.

**Part II** of the Bill provides for the procedure for public participation and specifically requires a responsible authority, being any public or private institution that is required by law to conduct public participation to prepare a statement of proposal that would be the basis of any public participation exercise. The statement of proposal provides for the key matters that a member of the public would be required to give their opinion on. The Part also provides for how an interested person is to be aided in accessing and giving their views on the proposal and also provides for the public participation registry and registrar, with a requirement that a responsible authority files the public participation report with the the registry, upon conclusion of a public participation n exercise.

**Part III** of the Bill provides for the Registry's reporting framework to Parliament, which includes the submission to the Attorney General a consolidated report on all public participation exercises filed with the Registry within the preceding year. Further, the part provides for the general Regulation making authority that is vested with the Attorney General, in consultation with the Public Participation Registrar.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

### **Statement on how the Bill concerns county governments**

The Bill seeks to provide a national framework for public participation, which is a Constitutional requirement at all levels of government. The Bill therefore concerns county governments in terms of Articles 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out on the Fourth Schedule to the Constitution.

### **Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 30th June 2020

## 9. THE ETHICS AND INTEGRITY LAWS AMENDMENTS

### THE ETHICS AND INTEGRITY LAWS (AMENDMENT) BILL, 2020

#### A Bill for

AN ACT of Parliament to amend laws relating to ethics and integrity in Kenya and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

- Short title      1. This Act may be cited as the Ethics and Integrity Laws (Amendment) Act, 2020.

#### LEADERSHIP AND INTEGRITY ACT, 2012

- Amendment to section 2 of No. 19 of 2012.      2. Section 2 of the Leadership and Integrity Act, 2012 is amended by inserting the following new definition in its proper alphabetical sequence—
- “Declaration”** means the Public Personal Wealth, Interests and Financial Declaration for state officers under section 12B of this Act;

- Insertion of a new section to No. 19 of 2012.      3. The Leadership and Integrity Act, 2012 is amended by inserting the following new section immediately after section 12A—
- Public Personal Wealth, Interests and Financial Declaration

12B. (1) Every state officer shall, in a prescribed manner, submit to the Commission a Public Personal, Wealth, Interests, and Financial Declaration—

- (a) within thirty days of being appointed or elected and sworn-in as a state officer;
- (b) Annually at such a time as may be prescribed by the Commission; or
- (c) Within thirty days of ceasing to be a state officer.

(2) The date for—

- (a) an initial declaration shall be within thirty days of the date the State officer's appointment;
- (b) an annual declaration shall be the first day of November; and
- (c) the final declaration shall be the date the State officer ceases to be a State officer.

(3) The declaration period for—

- (a) an initial declaration shall be the twelve months preceding the initial declaration;
- (b) the annual declaration shall be from 1st November to 31st October the date preceding the current statement date; and
- (c) the final declaration shall be from the statement date of the last declaration to the date the State officer ceases to hold the State office.

(4) The Commission may require a State officer to submit a declaration at any other time.

(5) The Commission shall provide the declaration forms free of charge to state officers seeking to make a declaration under this section.

(6) The state officer shall ensure that the information contained in the declaration is correct.

(7) The Commission shall keep the information collected under this section for five years from the date of the declaration, after which the information shall be destroyed.

(8) Subject to Article 35 of the Constitution, the Commission shall keep information obtain under this section as confidential unless such non-disclosure prejudicial to public interest.

(9) The Commission shall make regulations for the implementation of this section within ninety days after the commencement of this Act.

#### Access to Declarations

12C. (1) Upon payment of the prescribed fee, the Commission shall, facilitate access by any member of the public to the contents of a declaration or clarification made by a State officer under section 12B.

(2) Subject to Article 31 of the Constitution, subsection (1) shall only apply if the Commission deems that the information requested by the member of the public is of a justifiable cause.

(3) Subject to subsection (1), a person shall make a written request to the Commission stating the information that person is seeking and reasons as to why the information is required.

(4) Any public entity seeking access to the information contained in a declaration made by a State officer, for purposes of discharging its mandate, shall satisfy the conditions set out in subsection (1), (2) and (3).

(5) Prior to the Commission making an affirmative decision under this section, it shall grant the opportunity to the affected State officer to make representations on the matter.

(6) The Commission shall keep a register of the requests made and action taken, including the notification of the request made to the concerned State officer.

#### Custody of Declarations and retention of information

12D. (1) The Commission shall receive, maintain, verify, analyze and store every Declaration submitted by a State officer.

(2) For purposes of subsection (1), the Commission may exercise all those functions or delegate some of the functions to various public entity or authorized officers or other designated agents.

(3) The information referred to under sub-section (3) may be stored electronically or in any other form, as the Commission may consider appropriate.

#### Unexplained income or assets

12E. (1) Where the Commission has reasonable grounds to believe that a State Officer has submitted a Declaration containing information on unexplained income or assets, the Commission shall notify the Anti-Corruption and Economic Crimes Commission which shall commence investigation and

proceedings in accordance with the provisions of the Anti-Corruption and Economic Crimes Act, 2003

(2) The Commission may commence proceedings under this section against a person where—

- (a) a declaration is made by a State officer in respect of himself or herself or any person under this Act;
- (b) after a due diligence, the Commission is sufficiently satisfied that the person has unexplained income or assets; and
- (c) the person has, been afforded a reasonable opportunity to explain the disproportion between the income or assets concerned and his or her declared sources of income or assets and the Commission is not satisfied that an adequate explanation of that disproportion has been given.

(3) Whenever the Commission or public entity makes an inquiry or institutes an inquiry into a matter touching on the declaration of a particular State officer, the requested institution shall be obliged to provide the requested information.

Notification of failure to declare

12F. (1) Where a State officer has failed to submit a Declaration or a clarification under this Act, the Commission, in appropriate cases, shall notify the relevant public entity or the authorized officer.

(2) Upon receiving a notification under subsection (1), the public entity or the authorized officer, as the case may be, shall institute disciplinary proceedings against the concerned State officer.

(3) The Commission subject to the Constitution and this Act, have the duty to —

- (a) receive Declarations
- (b) received allegations or notifications of breach of the Code from members of the public; and
- (c) Inquire into any alleged breach of the Code.

Offences relating to declarations

12G. (1) A person who—

- (a) submits a Declaration or clarification, which contains information that he or she knows or ought to know is false or misleading; or
- (b) maliciously destroys information collected under this Part,

commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

(2) A person who—

- (4) fails to submit a Declaration or a clarification as required under this Act; or
- (5) is late in submitting a Declaration or a clarification,

Commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

(3) Subsection (2) shall not apply unless the person—

(a) has been given notice of not less than thirty days to explain such failure to submit or lateness in making a declaration or clarification; and

(b) has not provided sufficient reason for such failure to make the declaration or clarification.

Amendment to section 17 of No. 19 of 2012.

4. The Leadership and Integrity Act, 2012 is amended by deleting section 17 and substituting therefore the following new section—

Participation in tenders

17. (1) A public officer shall not, directly or indirectly, participate in a tender for the supply of goods or services to any public entity.

(2) In this section ‘participate in a tender for supply of goods and services’ includes a State officer using a spouse, a child, a business associate or a company that he or she holds shares.

(3) A public officer who contravenes the provision of this section commits an offence.

Amendment to section 18 of No. 19 of 2012.

5. Section 18 of the Leadership and Integrity Act, 2012 is amended—

(a) in subsection (2) by deleting the words ‘in a way that reflects adversely on that State officer’s integrity, impartiality or interferes with the performance of the official duties’ appearing immediately after the word ‘funds’

(b) by inserting the following new subsections immediately after subsection (2)—

(3) A State Officer may make a donation to a charitable organization registered or exempt from registration under the Societies Act, Cap 108 or the Non-governmental Organizations Co-ordination Act, 1990.

(4) A state officer who makes a donation under subsection (3) shall declare the source of the contribution to the Commission in a prescribed manner.

(5) Where a State Officer intends to make monetary contributions, under subsection (2), exceeding fifty thousand shillings he shall remit the contribution through electronic means.

(6) A State Officer who contravenes the provision of this section commits an offence and shall, be liable on conviction—

(a) to a fine not exceeding one million shillings; or

(b) to imprisonment for a term not exceeding one year; and

(c) be declared unfit to hold public office.

Insertion of a new section to No. 19 of 2012.

6. The Leadership and Integrity Act, 2012 is amended by inserting the following new sections immediately after section 50—

Safeguarding of information

50A. (1) Subject to the Constitution Article 35 of the Constitution or any other written law, every officer of a public entity or the Commission shall ensure

that confidential or secret information or documents entrusted to his or her care are adequately protected from improper or inadvertent disclosure.

(2) Any officer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both

Divulging information acquired under this Act

50B. A person who, without lawful excuse, divulges information acquired in the course of acting under this Act is commits an offence and is liable, on conviction, to a fine not exceeding five years.

Amendment to section 51 of No. 19 of 2012.

7. Section 51 of the Leadership and Integrity Act, 2012 is amended in subsection (2) by deleting the words ‘Cabinet Secretary’ and substituting therefor the words ‘ Clerk of the National Assembly’.

### **PUBLIC OFFICER ETHICS ACT (NO. 4 OF 2003)**

Amendment to section 2 of No. 4 of 2003.

8. Section 2 of the Public Officer Ethics Act, 2003 is amended by deleting the definition of the word “Public Officer” and substituting therefor the following new definition—

“public officer” has the meaning assigned to it under Article 260 of the Constitution’

Amendment to section 13 of No. 4 of 2003.

9. The Public Officer Ethics Act, 2003 is amended by deleting section 13 and substituting therefor the following new section—

Public collection

**13.** (1) A Public officer shall not solicit for contributions from the public for a public purpose unless the President has, by notice in the *Gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law.

(2) A State officer shall not participate in a public collection of funds in a way that reflects adversely on that State officer’s integrity, impartiality or interferes with the performance of the official duties.

(3) A Public Officer may make a donation to a charitable organization registered or exempt from registration under the Societies Act, Cap 108 or the Non-governmental Organizations Co-ordination Act, 1990.

(4) A Public Officer who makes a donation under subsection (3) shall declare the source of the contribution to the Commission in a prescribed manner.

(5) Where a Public Officer intends to make monetary contributions, under subsection (2), exceeding fifty thousand shillings, he shall remit the contribution through electronic means.

(6) A Public Officer who contravenes the provision of this section commits an offence and shall, be liable on conviction—

(a) to a fine not exceeding one million shillings; or



- (b) to imprisonment for a term not exceeding one year; and
- (c) be declared unfit to hold public office.

Amendment to section 28 of No. 4 of 2003.

10. Section 28 of the Public Officer Ethics Act, 2003 is amended—

- (a) in subsection (1) by deleting the word ‘shall’ appearing after the word ‘Commission’ and substituting therefor the words ‘may amend the declaration or’; and
- (b) by inserting the following new subsection immediately after subsection (2)—

(3) No further amendments to the declaration shall be allowed after one months of submitting the declaration.

Insertion of a new section to No. 4 of 2003.

11. The Public Officer Ethics act, 2003 is amended by inserting the following new section immediately after section 31—

Electronic platform

31A. Every Responsible Commission shall develop and maintain an electronic platform for submission, retention, storage, archiving and access of declarations of income assets and liabilities and clarifications.”

## **MEMORANDUM OF OBJECTS AND REASONS**

The Ethics and Integrity Amendment Bill, 2020 seeks to make amendments to various statutes relating to ethic and integrity.

The Bill contains proposed amendments to the following statutes—

**Clause 1** provides for the short title of the Bill.

### **LEADERSHIP AND INTEGRITY ACT (NO. 19 OF 2012)**

**Clause 2** of the Bill proposes to define the word declaration.

**Clause 3** of the Bill proposes to provide for Public Personal, Wealth and Financial Declaration for state officers to ensure state officer make declaration on income, assets and liabilities before, during and after leaving office.

**Clause 4** of the Bill proposes to prohibit state officers and public officers by themselves or through proxies from engaging in business with a public entity. It further introduces an offence and penalty for those who contravene the provision.

**Clause 5** of the Bill proposes to bar state offices from participating in public collections and gives them a leeway to give contributions to registered charitable organizations or non-governmental organizations.

**Clause 6** of the Bill proposes to provide for safeguarding information issued to the Commission under this Act and criminalizing divulging the information without proper reason and procedure.

**Clause 7** of the Bill proposes to provide that a petition of an alleged violation of Chapter Six of the Constitution should be submitted to the appointing Authority.

### **PUBLIC OFFICER ETHICS ACT (NO. 4 OF 2003)**

**Clause 8** of the Bill proposes to amend the definition of the Public officer to align it with the Constitution.

**Clause 9** of the Bill proposes to bar public offices from participating in public collections and gives them a leeway to give contributions to registered charitable organizations or non-governmental organizations.

**Clause 10** of the Bill amends the Act to provide for room for public officers to amend declaration as well as limit the period for making amendments to six months.

**Clause 11** of the Bill provides for electronic platform for submission, retention, storage, archiving and accessing of declarations.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not provide for the power of the Cabinet Secretary to make Regulations for the better carrying into effect of the provisions. The Bill does not limit fundamental rights and freedoms.

**Statement that the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

**Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 30th June, 2020.

**10. THE ANTI-CORRUPTION AND ECONOMIC CRIMES (AMENDMENT) BILL,  
2020**

**A Bill for**

**AN ACT** of Parliament to amend the Anti-Corruption and Economic Crimes Act, 2003

**ENACTED** by the Parliament of Kenya, as follows—

- Short title            1. This Act may be cited as the Anti-Corruption and Economic Crimes (Amendment) Act, 2020.
- Amendment to section 2 of No. 3 of 2003.            2. Section 2 of the Anti-Corruption and Economic Crimes Act, 2003, hereinafter referred to the Principal Act, is amended —
- (a) by deleting the definition of the word ‘Advisory Board’;
  - (b) by deleting the definition of the word ‘Assistant Director’;
  - (c) by deleting the definition of the word ‘Minister’
  - (d) in the definition of the word ‘investigator’ by deleting the word ‘Director’ and substituting therefor the word ‘Chairperson’
  - (e) in the definition of the word ‘Minister’ by deleting the words ‘integrity issues’ and substituting therefor the words ‘matters relating to corruption and economic crime’
  - (f) by inserting the following new definition in its proper alphabetical sequence—
    - “person” has the meaning assigned to it under Article 260 of the Constitution;
    - “whistle blower” means a person who makes a report to the Commission or the law enforcement agencies on acts of corruption or economic crimes.
- Amendment to section 48 of No. 3 of 2003.            3. The Principal Act is amended in section 48—
- (a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—
    - ‘(a) imprisonment for life; and’
  - (b) in subsection (2)—
    - (i) in paragraph (a) by deleting the word ‘two’ appearing immediately after the phrase ‘equal to’ and substituting therefor with the word ‘three’; and
    - (ii) in paragraph (b) by deleting the word ‘two’ appearing immediately after the phrase ‘equal to’ and substituting therefor with the word ‘three’.
- Insertion of a new section to No. 3 of 2003.            4. The Principal Act is amended by inserting the following new section immediately after section 48—
- Sentencing hearing
- 48A. (1) A court may receive and consider submissions from—
- a) any person public entity or state office that may be a victim of the offence; and

b) the Commission, at any time after it convicts, but before it sentences, an offender.

(2) The Commission shall submit on the impact of the actions of the offender to the society and recommend punishment for the offence as it deems appropriate.

Cap 75.

(3) The provisions of Part IXA of the Criminal Procedure Code, Cap 75 shall apply to this section with necessary modifications.

Insertion of a new section to No. 3 of 2003.

5. The Principal Act is amended by inserting the following new sections immediately after section 50—

Concealment of corruption

50A. (1) Any person who—

- a) aids or abets, or is accessory to any act of corruption or economic crime;
- b) knowing that any person intends to commit treason, does not give information thereof with all reasonable dispatch to the Commission, magistrate or an officer in charge of a police station, or use other reasonable endeavors to prevent the commission of the offence.

is guilty of an offence and is liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years, or to both.

(2) In this section ‘accessory’ has the meaning assigned to it under section 396 of the Penal Code.

Duty to report

50B. (1) Every person has a duty to report to the Commission any matter, knowledge or suspicion of instances of corruption or economic crime.

(2) A person who, despite being aware of or suspicious of the commission of an offence under this Act, fails to report the act to the Commission commits an offence and shall be liable on conviction to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding five years, or to both.

Insertion of a new section to No. 3 of 2003.

6. The Principal Act is amended by inserting the following new section immediately after section 65—

Protection of whistle blowers

65A. The Commission shall make regulations prescribing—

- 6) the procedure for disclosing information on corrupt conduct and economic crimes;
- 7) protection of whistleblowers identity;
- 8) incentive programs to encourage whistleblowing, including monetary awards; and
- 9) designated persons or institutions which may receive disclosures from whistle blowers.

## MEMORANDUM OF OBJECTS AND REASONS

The Anti-Corruption and Economic Crimes (Amendment) Bill, 2020 seeks to amend the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

The Bill contains proposed amendments to the following statutes—

**Clause 1** provides for the short title of the Bill.

**Clause 2** of the Bill proposes to delete the definition of the words ‘Advisory Board’ and Assistant Director’ as they principal provisions have been repealed.

**Clause 3** of the Bill enhances penalty for economic crimes and corruption offences.

**Clause 4** of the Bill provides for the procedure of sentencing hearing in economic crime and corruption matters.

**Clause 5** of the Bill proposes to introduce the offence of concealment of corruption and provides for duty to report any knowledge or suspicion of instances of corruption or economic crimes.

**Clause 6** of the Bill gives the Cabinet Secretary power to make regulations on protection of whistleblowers.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not provide for the power of the Cabinet Secretary to make Regulations for the better carrying into effect of the provisions. The Bill does not limit fundamental rights and freedoms.

### **Statement that the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

### **Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 30th June, 2020.

## 11. HEALTH (AMENDMENT) BILL, 2020

### HEALTH (AMENDMENT) BILL, 2020

#### A Bill for

AN ACT of Parliament to amend the Health Act to establish the Health Services Commission; to provide for its composition, functions, qualifications and procedure for appointment of the members, and for connected purposes

ENACTED by Parliament of Kenya, as follows—

#### PART I—PRELIMINARY

- |   |    |   |
|---|----|---|
| Short title                               | 1. | This Act may be cited as the Health (Amendment) Act, 2020   |
| Amendment of section 2 of No. 21 of 2017. | 2. | <p>The Health Act, 2017, herein referred to as the Principal Act, is amended in section 2 by inserting the following new definitions in their proper alphabetical sequence —</p> <p>“Commission” means the National Health Services Commission established under section 25A;</p> <p>“inter-country transfer” means the movement of a health care worker, under the employ of the National Government, from one country to another with change of pay point;</p> <p>“inter-county transfer” means the movement of a health care worker, under the employ of a county government, from one county government to another with change of pay point;</p> <p>“Secretary” means the Secretary of the Commission appointed under section 25K ; and</p> <p>“Summit” means the National and County Government Co-ordinating Summit established under section 7 of the Intergovernmental Relations Act;</p> |
| No. 2 of 2012.                            | 3. | The Principal Act is amended by inserting the following new part immediately after Part III—  |

#### PART IIIA — ESTABLISHMENT OF THE NATIONAL HEALTH SERVICES COMMISSION

- |                                  |   |
|----------------------------------|---|
| Establishment of the Commission. | 25A. (1) There is established the National Health Services Commission.  |
|                                  | (2) The Commission 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;                          |

- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Composition of the Commission.

25B. The Commission shall comprise of—

- (a) the Cabinet Secretary for the time being responsible for matters related to Health, who shall be the Chairperson;
- (b) two representatives nominated by County Governors;
- (c) one person nominated by the Public Service Commission;
- (d) one representative nominated by health regulatory bodies established under an Act of parliament;
- (e) one representative nominated by trade unions of healthcare workers registered under the Labour Relations Act;
- (f) one representative of faith based organizations involved in health care;
- (g) two persons with expertise and knowledge in matters related to human resource management in healthcare; competitively recruited and appointed by the Cabinet Secretary;
- (h) The Chief Executive Officer who shall be an *ex officio* member and Secretary to the Commission

No. 14 of 2007.

Functions of the Commission.

25C. The functions of the Commission shall be to—

- (a) make recommendations to the National Government on national policies for management of health care workers;
- (b) monitor implementation of national policies for management of health care workers by County Governments and recommend appropriate action
- (c) set and regularly review norms and standards on—
- (d) training of health care workers;
- (e) recruitment of health care workers;



- (f) welfare, career development and schemes of service for health care workers;
- (g) inter-country and inter-county transfer of health care workers;
- (h) transfer of health workers from one level of government to the other; and
- (i) national distribution of highly skilled health care workers;
- (j) Subject to Article 234(2)(i) of the Constitution, facilitate resolution disputes between employers and health care workers in public service both at the national and county levels;
- (k) accredit health institutions and
- (l) perform any other function that may be assigned to it under this Act or any other written law.

Powers of the Commission.

25D.(1) The Commission shall have all powers incidental to and necessary for the effective discharge of its functions under the Constitution, this Act and any other written law.

(2) Despite sub-section (1) the Commission shall have the power to—

- (a) summon any person to appear before it for the purpose of giving evidence or providing information
- (b) compel the production of documents; and
- (c) recommend appropriate action to be taken against State officers or public officers for non-compliance with the national standards prescribed by the Commission.

Qualifications for appointment as member.

25E. (1) A person shall be qualified for appointment as a member of the Commission under section 25B(g) if that person—

- (a) holds a postgraduate degree from a University recognized in Kenya;
- (b) has knowledge and experience of not less than ten years in matters related to human resource management in healthcare ;
- (c) has a distinguished career in his or her respective field; and
- (d) meets the requirements of Chapter Six of the Constitution.

Term of Office.	25F. The members of the Commission shall appointed pursuant to section 25B (g) shall hold office for a single term of five years and shall not be eligible for re-appointment.
Removal from office.	<p>25H. A member of the Commission appointed pursuant to section 25B(g) may be removed on any of the following grounds —</p> <ul style="list-style-type: none"> <li>(a) violation of the Constitution or any other written law;</li> <li>(b) inability to perform functions of the office arising out of physical or mental infirmity;</li> <li>(c) incompetence or neglect of duty;</li> <li>(d) bankruptcy; or</li> <li>(e) conviction of an offence whose term of imprisonment is more than six months.</li> </ul>
Vacancy.	<p>25I. The office of a member appointed pursuant to section 25B(g) shall become vacant if the holder—</p> <ul style="list-style-type: none"> <li>1. dies;</li> <li>2. resigns from office, by a notice in writing addressed to the Cabinet Secretary;</li> <li>3. is absent from three consecutive meetings of the Commission without good cause; or</li> <li>4. is removed from office in accordance with section 25H</li> </ul>
Secretary to the commission.	<p>25K. (1) The Commission shall, through an open, transparent and competitive recruitment process appoint a suitably qualified person to be the Secretary to the Commission.</p> <p>(2)A person shall be qualified for appointment as Secretary to the Commission if that person—</p> <ul style="list-style-type: none"> <li>(a) is a citizen of Kenya;</li> <li>(b) holds a degree from a university recognized in Kenya;</li> <li>(c) has knowledge and experience of not less than ten years in any of the following fields—</li> <li>(d) law;</li> <li>(e) public administration; or</li> <li>(f) human resource management in healthcare;</li> </ul> <p>(3)The Secretary shall perform such duties as may be assigned to him by the Commission and shall serve on such terms and conditions as the Commission may determine.</p>

(4)The secretary shall hold office for a term of three years, and shall be eligible for re-appointment for one further term.

Staff of the Commission. 25L. The Commission may recruit such number of staff as may be necessary for the effective performance of the functions of the Commission.

Committees of the Commission. 25M. (1) The Commission may establish committees for the effective discharge of its functions.

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

(3) Any person co-opted into the Commission under subsection (2) may attend the meetings of the Commission and participate in its deliberation, but shall have no voting rights.

Protection from personal liability. 25N. Nothing done by a member of the Commission or by any person working under the instructions of the Commission shall, if done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

### **PART IIIB —FINANCIAL PROVISIONS**

Funds of the Commission. 25O. The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for purposes of the Commission;
- (b) any grants, gifts, donations or other endowments given to the Commission;
- (c) such funds as may vest in or accrue to the Commission in the performance of its functions under this Act or under any other written law.
- (d) Any funds donated or lent to, or gift made to the Commission shall be disclosed to the National Assembly and made public before use.

Remuneration and allowances. 25P. A member of the Commission shall be paid such remuneration or allowances as the Remuneration Review Council shall determine.

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Updates COPY

Annual estimates.

25Q. (1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

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

- (a) payment of remuneration in respect of the members and staff of the Commission;
- (b) payment of pensions, gratuities and other charges in respect of benefits which are payable out of the funds of the Commission;
- (c) maintenance of the buildings and grounds of the Commission;
- (d) funding of training, research and development of activities of the Commission; and
- (e) creation of such funds to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Commission may think fit.

(3) The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be tabled in Parliament.

Financial year of the Commission.

25R. The financial year of the Commission shall be—

- (a) the period beginning on the day on which this Act comes into operation and ending on the following thirtieth June; and
- (b) the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

Accounts and Audits.

25S. (1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

No. 12 of 2003.

(2) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the Public Audit Act, 2003.

Reports of the Commission.

25T (1). The Commission shall, at the end of each financial year cause an annual report to be prepared.

(2)The Commission shall submit the annual report to the Summit, Parliament and County Assembles three months after the end of the year to which it relates.

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

- (a) the financial statements of the Commission;
- (b) a description of the activities of the Commission;
- (c) the level compliance with national standards for management of health care workers, by county governments;
- (d) any recommendations made by the Commission to State departments, County Governments or any person and the action taken;
- (e) the impact of the exercise of any of its mandate or function;
- (f) any impediments to the achievements of the objects and functions under the Constitution, this Act or any written law;
- (g) any other information relating to its functions that the Commission considers necessary.

(4)The Commission shall cause the annual report to be published and the report shall be publicized in such manner as the Commission may determine.

### **PART III C – MISCELLANEOUS PROVISIONS**

Offences. 25U. A person who knowingly and willfully, disobeys an order or recommendation of the Commission commits an offence and is liable, on conviction, to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding seven years, or to both.

Regulations. 25V. The Cabinet Secretary may, in consultation with the Commission may make regulations for the better carrying out of this Act.

## **MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to amend the Health Act, 2017 to establish a National Health Services Commission which will be responsible for setting national standards for management of health care workers.

The Bill is structured as follows—

**Clause 1—2** contains the short title of the Bill, interpretation of terms as used in the Bill and the objects of the Bill.

### **PART IIIA — ESTABLISHMENT OF THE NATIONAL HEALTH SERVICES COMMISSION**

This part contains provision on powers, composition, term of office and qualification of members of the Commission. It also contains the provisions on the functions, procedure of nomination and appointment of the members of the Commission and provisions on the secretary of the Commission.

### **PART IIIB — FINANCIAL PROVISIONS**

It contains provision on the funds of the Commission, remuneration and allowances of the members of the Commission. It further provides for the financial year of the Commission and the requirement for the accounts, audit and annual reports.

### **PART IIIC – MISCELLANEOUS PROVISIONS**

It further provides for offences and provisions on regulations

#### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

#### **Statement on how the Bill concerns county governments.**

The Bill does concern county governments in terms of Article 110(1)(a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

#### **Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.**

The Bill is not a Money Bill within the meaning of Article 114 of the Constitution.

Dated the 30th June, 2020

## 12. THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2020

### A Bill for

AN ACT of Parliament to make various amendments to statute law

ENACTED by the Parliament of Kenya, as follows—

- |                            |   |
|----------------------------|---|
| Short title.               | 1. This Act may be cited as the Statute Law (Miscellaneous Amendment) Act, 2020.  |
| Amendment of written laws. | 2. The several laws specified in the first column of schedule hereto are amended in the provisions specified in the second column thereof, in a manner respectively specified in the third column |

### SCHEDULE

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
Interpretation and General provisions Act, Cap. 2.	s. 3	Delete the definition of ‘Cabinet Secretary’ and substitute therefor with the following new definition—  “‘Cabinet Minister’ means as person appointed as Cabinet Minister of the Government of Kenya under the Constitution;’  Delete the definition of “the Cabinet Secretary” and substitute therefor the following new definition—  “‘the Cabinet Minister’ means the Cabinet Minister for the time being responsible for the matter in question, or the President where executive authority is retained by him:’
Judicial Service Act, No.1 of 2011.	s. 18 (1)(b)	Delete the words ‘local authority’ appearing immediately after the phrase ‘of a’ and substitute therefor the words ‘county assembly’
	s. 34	Insert the following new paragraph immediately after paragraph (j)—  ‘(ja) the Chairperson of the Anti-Corruption and Economic Crimes Commission, or his or her representative appointed in writing;  (jb) the Chairperson of the Ethics and Integrity Commission, or his or her representative appointed in writing;’

National Intelligence Service Act, No. 28 of 2012.

s. 2

Delete the definition of the term ‘vetttable position’ and substitute therefor the following new definition—

“vetttable position” means a public office or any position in a public entity or in either level of government that requires the holder of the position to—

- (a) be responsible for management of public money or resources;
- (b) have, in the performance of his or her official duties, access to sensitive or classified information or any other position as may be required under any written law.

Mutual Legal Assistance Act, No. 36 of 2011.

s.2

In the definition of the word ‘Competent Authority’ insert the words ‘prosecutorial or judicial authority established by law’ immediately after the words ‘any criminal investigation agency established by law.’

s. 3

Delete section 3 and substitute therefor the following new section—

Scope of application

- (3) The forms of international assistance set out in this statute shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind Kenya, where such provisions are non-existent or do not suffice, the provisions of this law.

s. 4

Delete section 4 and substitute therefor the following new section—

Limitations with respect to scope of application

Nothing in this Act shall be construed as prohibiting, nullifying or negating offence-specific agreements for mutual legal assistance negotiated or entered into between Kenya and the requesting State or between specialized competent agencies in Kenya and in the requesting State.

Commission on Administrative Justice Act, No. 23 of 2011.

New

Insert the following new sections immediately after subsection 42—

Enforcement of recommendation of the commission

42A. (1) A recommendation of the Commission, shall be recognized as binding and, upon application in



writing to the High Court, shall be enforced subject to this section.

(2) The Chief Justice shall issue Rules on the enforcement of the recommendation of the Commission under this section.

s. 44

Insert the words 'and may declare the person ineligible to hold public office' immediately after the word 'authority'.

## MEMORANDUM OF OBJECTS AND REASONS

The Statute Law (Miscellaneous Amendment) Bill, 2020 is in keeping with the practice of making various amendment which do not merit the publication of separate Bills and consolidating them into one Bill.

The Bill contains amendments to the following statutes—

### **Interpretation and General Provisions Act (Cap.2)**

The Bill proposes to amend the Interpretation and General Provisions Act (Cap. 2) to harmonies the definition of ‘Cabinet Minister’ with the proposed Constitutional Amendment.

### **Judicial Service Act, No.1 of 2011**

The Bill proposes to amend the Judicial Service Act, 2011 to harmonize with the proposed amendments of the Constitution on the Secretary of the Commission.

### **National Intelligence Service Act, No. 28 of 2012**

The Bill proposes to amend the National Intelligence Service Act, 2012 to expand the definition of vettable position to ensure the Service vets all applicants to public offices for purposes of providing background checks.

### **Mutual Legal Assistance Act, No. 36 of 2011**

The Bill proposes to amend the Mutual Legal Assistance Act, 2011 in section 2 to harmonize the list of mainstream competent authorities with the provisions of section 7(2) of the Act. It further proposes to amend section 3 for clarity purposes and to harmonize with Article 2(6) of the Constitution of Kenya and section 4 to provides for clear legal basis for innovative ways of direct cooperation between competent authorities.

### **Commission on Administrative Justice, No. 23 of 2011**

The Bill proposes to amend the Commission on administrative Justice Act, to provide that after having concluded an investigation or inquiry and found a Public officer guilty of gross violation of the constitution or the law, the Commission to be able to make a recommendation that such an officer is unfit to hold public office. It further proposes to enforce the Court of Appeal Ruling in No. 141 of 2015 where the Court held that the recommendation of the Commission has force of Law and are binding.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not provide for the power of the Cabinet Secretary to make Regulations for the better carrying into effect of the provisions. The Bill does not limit fundamental rights and freedoms.

### **Statement that the Bill concerns county governments**

The Bill does not concern county governments in terms of Article 110 (1) (a) of the Constitution as it does not affect the functions and powers of County Government set out in the Fourth Schedule.

### **Statement that the Bill is a Money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 30<sup>th</sup> June, 2020.

## ADDENDUM

### CHECKLIST FOR NATIONAL GOVERNMENT ACCOUNTING OFFICERS

The following is a sample checklist for the responsibilities of Accounting Officers in the government entities which is attached for awareness creation and administrative interventions

#### RESPONSIBILITIES OF ACCOUNTING OFFICERS IN GOVERNMENT ENTITIES

*Responsibility*

*Statutory source*

##### THE PUBLIC FINANCE MANAGEMENT ACT

- 
- |       |   |               |
|-------|---|---------------|
| 1.    | <ul style="list-style-type: none"><li>• Prepare a report for each quarter of the financial year in respect of the entity. Section 83</li><li>• In preparing a quarterly report for a National Government entity, the Accounting Officer shall ensure that the report: contains information on the financial and non-financial performance of the entity; and is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.</li><li>• Not later than fifteen days after the end of each quarter, the Accounting Officer shall submit the quarterly report to the Cabinet Secretary responsible for the entity and the National Treasury.</li><li>• The Cabinet Secretary responsible for an entity shall forward a copy of the report to the Cabinet Secretary and Controller of Budget.</li><li>• Not later than forty-five days after the end of each quarter, the National Treasury shall: consolidate the quarterly reports and submit them to the National Assembly with copies of the reports to the Controller of Budget, Auditor General and the Commission on Revenue Allocation; and publish and publicise the reports.</li><li>• In the case of an entity that is a state corporation, the Accounting Officer for the corporation shall submit the quarterly report to the Cabinet Secretary responsible for the corporation who shall, upon approving it, forward a copy to the Cabinet Secretary.</li></ul> | Section 83    |
| <hr/> |   |               |
| 2.    | Be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the Accounting Officer are used in a way that is:   | Section 68(1) |

lawful and authorised; and  
effective, efficient, economical and transparent.

- 
3. An Accounting Officer shall: Section 68(2)
- ensure that all expenditure made by the entity is lawful, authorised, effective, efficient, economical and transparent;
  - ensure that the entity keeps financial and accounting records that comply with this Act;
  - ensure that all financial and accounting records the entity keeps in any form, including in electronic form, are adequately protected and backed up;
  - ensure that all contracts entered into by the entity are lawful and are complied with;
  - ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance;
  - bring any matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly if, in the Accounting Officer's opinion, a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is not lawful, authorised, effective, efficient, economical and transparent;
  - prepare a strategic plan for the entity in conformity with the medium-term fiscal framework and fiscal policy objectives of the National Government;
  - prepare estimates of expenditure and revenues of the entity in conformity with the strategic plan referred to in paragraph (g);
  - submit the estimates of a public entity which is not a state corporation to the Cabinet Secretary;
  - submit the estimates of a public entity which is a state corporation to the Cabinet Secretary responsible for that state corporation who, after approving it, shall forward it to the Cabinet Secretary;
  - prepare annual financial statements for each financial year within three months after the end of the financial year, and submit them to the Controller of Budget and the Auditor General for audit, and in the case of a National Government entity, forward a copy to the National Treasury;
  - take appropriate measures to resolve any issues arising from audit which may remain outstanding;
  - provide information on any fraud, losses or any violation of subsection (1) and explanation for the actions taken to prevent a similar problem in future;
  - provide the National Treasury and any other office, where relevant, with any information it may require fulfilling its functions under this Act; and

in case of a National Government entity, carry out such other functions as may be specified by the Cabinet Secretary.

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**PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015**

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6. All Accounting Officers shall ensure that all Public Officers under their control have access to copies of these Regulations and the Public Officers shall ensure they are fully conversant with the contents of these Regulations. Regulation 5
- 
7. To maintain financial discipline as required by the Act and the Regulations. Regulation 10
- 
8. A statement by the Accounting officer of every National Government entity in its annual financial report on compliance of the entity with these Regulations as provided in section 81 of the Act. Regulation 17(1)
- 
9. Where the entity is not fully compliant with the Regulations, the Accounting Officer of that entity shall identify the reasons for non-compliance and indicate the steps being taken to become compliant. Regulation 17(2)
- 
10. Accounting Officers shall, in accordance with Article of 226(2) of the Constitution and section 68(1) of the Act, be accountable to the National Assembly: Regulation 23(1)
- (a) for management of their department's public finances, including whether sufficient resources have been allocated to a particular programme;
  - (b) for ensuring the most effective means of achieving desired programme outcomes are used;
  - (c) for maintaining effective systems of internal control and the measures taken to ensure that they are effective;
  - (d) for measures taken to prepare the financial reports that reflect a true and fair financial position of the entity;
  - (e) for implementation of the recommendations of Parliament arising from the reports by the Auditor General and the Controller of Budget.
- 
11. In addition to the responsibilities of Accounting Officers provided for in the Act, an Accounting Officer designated under the Constitution, the Act or any other Act, shall: Regulation 23(2)
- (a) comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided for by legislation;
  - (b) where he or she reasonably believes that unauthorised or irregular expenditure has occurred, immediately report, in writing, particulars of the expenditure to the relevant authority with a copy

to the National Treasury;

(c) before transferring any funds to an entity within or outside Government, ensure that there is a written assurance from the entity that it shall implement effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;

(d) enforce compliance with any prescribed conditions if the respective Government entity gives financial assistance to any other entity or person in accordance with the law;

(e) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, where policy proposals affecting the Accounting Officer's responsibilities are considered, and where necessary, bring those considerations to the attention of the relevant authority;

(f) promptly consult and seek the prior views of the National Treasury on economic viability and financial implications on any new entity which a state department or state organ intends to establish or in the establishment of which it took the initiative;

(g) not commit National Government entities to any liability for which money has not been appropriated provided that expenditure for projects or programmes implemented beyond one financial year is provided for in the subsequent financial years; and

(h) comply with, and ensure compliance by National Government entities with, the provisions of the Act and these Regulations.

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- |       |   |                           |
|-------|---|---------------------------|
| 12.   | An Accounting Officer of a National Government entity may delegate to a Public Officer, in writing, any of the Accounting Officer's powers or functions under the Act or these Regulations. However, delegation of power does not take away the responsibility of the accountability from the Accounting Officer.   | Regulations 24(1) and (4) |
| <hr/> |   |                           |
| 13.   | An Accounting Officer who finds it necessary to authorise a Public Officer in another Ministry or County Government to incur official expenditure on his or her behalf shall maintain a register of all Authority to Incur Expenditure Holders designated under the Act. The Accounting Officer shall however remain responsible for any expenditure incurred as a result of that delegation. | Regulations 25(4) and (5) |
| <hr/> |   |                           |
| 14.   | Ensure that the draft estimates relating to her or his department are prepared in conformity with the Constitution, the Act and these Regulations.  | Regulation 31(1)          |
| <hr/> |   |                           |
| 15.   | The Accounting Officer is responsible, in particular, for ensuring that:<br><br>(a) all services which can be reasonably foreseen are included in the estimates and that they are within the capacity of her or his   | Regulation 31(2)          |

- National Government entity during the financial year;
- (b) the estimates have been prepared are complete and accurate as possible;
- (c) the estimates have been framed with regard to economy and efficiency;
- (d) the requisite authority has been obtained, where necessary, before provision is made in the estimates; and
- (e) the estimates are submitted to the National Treasury in the manner and format to be issued by the Cabinet Secretary.

- 
16. Cause any proposed budget estimates to be examined and reported on by the internal audit unit of that National Government entity. Regulation 35(1)
- 
17. Take into account any recommendations made in respect thereto before submitting estimates to the National Treasury. Regulation 35(2)
- 
18. Make necessary entries in their books in respect of the amount of the vote on account approved. Regulation 38(2)
- 
19. As regards supplementary budgets, within the guidelines of the supplementary budget circular and in conformity with budget guidelines issued by the Cabinet Secretary, prepare revised budget estimates in the format to be issued by the Cabinet Secretary. Regulation 40(1)
- 
20. Prior to incurring any expenditure under Regulation (1), seek the approval of the National Treasury. Regulation 40(2)
- 
21. Seek supplementary budget if the expenditure cannot be met by budget reallocation under section 43 of the Act. Regulation 40(5)
- 
22. sign financial statements thereby making himself or herself responsible for their correctness; Regulation 43
- ensure that public funds entrusted to his or her care are properly safeguarded and are applied for purposes for only which they were intended and appropriated by the National Assembly;
- ensure all appropriations-in-aid due to the National Government entity are collected and properly accounted for in accordance with the relevant laws, rules and regulations;
- manage control and ensure that policies are carried out efficiently and wastage of public funds is eliminated; and
- ensure each National Government entity has an audit committee in place.
- 
23. Provide the National Treasury with an annual cashflow plan as a requisition for funds needed for that financial year. Regulation 44(1)
- 
24. The annual cashflow plans prepared by Accounting Officers shall Regulation 44(3)

be broken down into three-month periods on a rolling basis and shall be adjusted to reflect any implementation realities in consultation with the National Treasury.

- 
25. As far as possible, quarterly cashflow projections prepared by the Accounting Officers shall be supported by a procurement plan approved in accordance with the Public Procurement and Disposal Act (No. 3 of 2005). Regulation 44(4)
- 
26. Inform his or her responsible Cabinet Secretary immediately of any circumstances that are likely to affect materially the budgetary results either through revenue and expenditure or other receipts and payments of the National Government entity. Regulation 47(1)
- 
27. Inform his or her responsible Cabinet Secretary of actions taken to mitigate any budget variations. Regulation 47(2)
- 
28. Authorise reallocation of funds within programmes or sub-votes, provided that: Regulation 48(1)
- this does not affect the total voted provision;
- the provisions in the budget of the programme or sub-vote from within which the funds are to be transferred are unlikely to be utilised
- reallocation is in accordance with donor conditions in the case of reallocation impacting on donor-funded expenditure;
- the reallocation does not affect the voted provisions from wage to non-wage expenditure or from capital to recurrent expenditure; and
- allocations earmarked by the National Treasury for a specific purpose may not be used for other purposes, except with Treasury's approval.
- 
29. Keep a register of all budgetary reallocations and use it to prepare a report of all reallocations to the National Treasury not later than the tenth day of each month and the report shall state measures taken by the Accounting Officer to mitigate against future reallocations. This report shall state the impact that the reallocations may have had on programme objectives, planned program outputs and outcomes. Regulations 48(2) and (3)
- 
30. For purposes of accessing the contingencies fund in accordance with section 21 of the Act, an Accounting Officer shall first identify resources within his or her vote through identification of savings for reallocation before applying for financing from the Contingencies Fund. Regulation 50(1)
- 
31. If an Accounting Officer is satisfied that there are no savings within his or her vote and the need meets the criteria set under section 21 of the Act and paragraph (1) for purposes of the Contingencies Fund, the Accounting Officer shall: Regulation 50(2)
- (a) give reasons why he or she believes the need meets the criteria



under section 21 of the Act;

(b) issue a certificate, countersigned by the Cabinet Secretary of that entity, confirming that the need meets the criteria under section 21 of the Act and paragraph (1); and

(c) submit the request to the Cabinet Secretary for consideration.

- 
32. Make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Disposal Act, 2005 (No. 3 of 2005) and the Regulations made thereunder. Regulation 51(3)
- 
33. Approve any changes to procurement plan during the year in consultation with the Cabinet Secretary of the entity. Regulation 51(5)
- 
34. Issue AIE's to field officers not later than the fifteenth day of each quarter for Accounting Officers whose votes cover field programmes and projects. Regulation 52(1)(e)
- 
35. Cause records to be kept in such a form as shall clarify at any time, in respect of each of his or her votes: Regulation 52(1)(j)
- the total amount of expenditure sanctioned for service of the year;
- the amount of the expenditure charged; and
- any further known liabilities in respect of the year.
- 
36. Not authorise payment to be made out of funds earmarked for specific activities for purposes other than those activities except as provided for in the Act and the Regulations. Regulation 54(1)
- 
37. Not later than the tenth day of each month submit a monthly financial and non-financial budgetary report in the format to be issued by the Cabinet Secretary relating to the activities of his or her National Government entity for the preceding month to the National Treasury with copies to the Controller of Budget and the Auditor General. Regulations 55 (1) and (2)
- The contents of the report shall include:
- (a) actual revenues, including appropriations in aid;
- (b) expenditures classified in economic classification as follows:
- compensation to employees;
- use of goods and services;
- transfer to other levels of Government;
- capital expenditure;
- (c) pending payments with an age of over ninety days;
- (d) projection of expected expenditure and revenue collection for the remainder of the financial year;
- (e) when necessary, an explanation of any material variances; and

(f) a summary of the steps that are to be taken to ensure that the projected expenditure and revenue remain within budget.

- 
38. Conclude contracts imposing financial obligations in excess of one year only if: Regulation 56 (2)
- (a) the Accounting Officer discloses all finalised and signed contracts by the beginning of a financial year;
  - (b) they are budgeted for before new projects are budgeted by the Accounting Officer of the National Government entity; and
  - (c) the Accounting Officers secure the resources required in line with the financing requirements set out in the contracts.
- 
39. Be personally responsible for ensuring that: Regulation 64(1)
- (a) adequate safeguards exist and are applied for the prompt collection of, and proper accounting for, all National Government revenue and other public monies relating to their Ministries, Departments or Agencies;
  - (b) adequate measures, including legal action where appropriate, are taken to obtain payment;
  - (c) official receipts are issued for all monies paid to Government of Kenya.
- 
40. Report any difficulty experienced in collecting revenues and the circumstances of such difficulty to the Cabinet Secretary without delay. Regulation 64(2)
- 
41. Take disciplinary measures in line with the relevant legislation against a Public Officer who contravenes the provisions of Regulation 64(2) which states that all public monies collected by a receiver of revenue or collector of revenue or collected and retained by a National Government entity, shall be paid into the designated bank accounts of the National Government and shall not be used by any Public Officer in any manner between the time of their receipts and payment into the bank except as provided by law. Regulation 64(5)
- 
42. Prepare a quarterly report not later than the fifteenth day after the end of the quarter to be submitted to the National Treasury with a copy to the Auditor General. The quarterly report shall include: Regulation 65
- (a) a statement of receipts and disbursements in such form as the Public Sector Accounting Standards Board may determine;
  - (b) a statement of arrears of revenue which shall be classified by financial year; and
  - (c) reasons for material differences between approved estimates and the actual revenue collected.
- The report shall also contain the following details in respect of each waiver or variation:
- (a) the full name of each person benefiting from the waiver or

- variation;
- (b) the amount of tax, fee or charge affected by the waiver or variation;
- (c) the year to which the waiver or variation relates;
- (d) the reasons for the waiver or variation; and
- (e) the law in terms of which the waiver or variation was granted.
- 
43. When finalising budgets, and with approval from the National Treasury, review the rates, scales or tariffs of fees and charges that are not fixed by any law, and that relate to revenue accruing to the Consolidated Fund. Regulation 66
- 
44. In identification and designing of projects funded by development partners, disclose the areas covered and amounts allocated which shall be determined by objective criteria and as far as possible on need-based formula which may include geographical area, population and poverty index. Regulation 72(3)
- 
45. Ensure all grants and donations shall be appropriated by National Assembly before commencement of disbursements. Regulation 72(4)
- 
46. Where authorisation to start has been granted for projects implemented through grants, donations and sponsorships, the Accounting Officer shall ensure public disclosure to the intended beneficiaries within thirty days of the allocation and disbursement of the grants. Regulation 73(1)
- 
47. After disbursement of grants for projects implemented through grants, donations and sponsorships, the Accounting Officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the grant. Regulation 73(2)
- 
48. In respect of all monies received by way of grants and donations, an Accounting Officer of a National Government entity shall: Regulation 74(6)
- (a) cause to be kept and maintained proper books of accounts and records in respect of all projects and donations;
- (b) ensure that whenever projects are completed, the project assets including buildings, plant, vehicles, furniture, fittings and equipment are properly recorded and handed over to the Accounting Officer in accordance with the financing agreement;
- (c) where no timeframe is provided for the project, ensure that the assets are handed over within three months from the date of the closure of the project; and
- (d) in the absence of any instructions to the contrary, ensure that any unexpended balance standing in the credit of the project account is paid into the Consolidated Fund.
- 
49. Compile and maintain a record showing all receipts, disbursements and actual expenditure on a monthly basis in respect of every Regulation 77

project and subproject and shall:

- (a) make monthly interim financial returns;
- (b) make quarterly financial management returns; and
- (c) submit a summary of the records for each quarter and year to the division responsible for external resources in the National Treasury not later than fifteen days after the end of every quarter.

- 
50. No Accounting Officer may open a bank account for the deposit, custody or withdrawal of public monies or other monies for which he or she is responsible in his or her official capacity or for the transaction of official banking business. Regulation 82
- 
51. Adhering to the guiding principles for cash management which are: Regulation 83(2)
- assessing the cash inflows and outflows expected at any one time;
  - ensuring payments, including transfers to other levels of Government and National Government entities are made when due for efficient, effective and economical programme delivery and the Government's normal terms for account;
  - avoiding accumulation of idle balances;
  - using short-term borrowing only when it is necessary;
  - avoiding prepayments for goods or services unless required by the contractual arrangements with the supplier;
  - accepting discounts to effect early payment only when the payment has been included in the monthly cashflow estimates provided to the National Treasury;
  - pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the Government are collected and banked promptly;
  - recognising the time value of money and managing inventories to the minimum level necessary for efficient and effective programme delivery, and selling surplus or under-utilised assets.
- 
52. Not later than 31 January each year, surrender to the National Exchequer Account unexpended voted money or excess Appropriations-in-Aid, as confirmed by Auditor General in the audit report. Regulation 84
- 
53. Designate all signatories in respect of cheques, electronic payments and fund transfers, and authorise any changes in such signatories. Regulation 85(3)
- 
54. By 30 September of each year, provide the National Treasury with an updated list of bank accounts held by the National Government entity. The said list shall include the following information: Regulations 87(3) and (4)
- (a) name of the bank where the account is held;

- (b) name of the bank account;
- (c) type of bank account;
- (d) signatories of the bank account;
- (e) date on which the bank account was opened;
- (f) the bank account number;
- (g) purpose of the bank account, if different from the main operational bank account of the Government entity;
- (h) the bank account balances as at 30 June each year; and
- (i) the reference number and date of the National Treasury letter granting approval for opening and operating the bank account.

- 
55. Ensure that adequate arrangements are made to protect both cash and staff for cash in transit. Such measures shall include the following: Regulation 89
- safe or strong rooms and restricted access to the cash handling locations;
  - police or armed security escorts;
  - the security bags locked to the vehicle; and
  - suitable transport and variation of movement, times and routes.
- 
56. Ensure bank account reconciliations are completed for each bank account held by that Accounting Officer every month, and submit a bank reconciliation statement not later than the tenth of the subsequent month to the National Treasury with a copy to the Auditor General. Regulation 90(1)
- 
57. Ensure any discrepancies noted during the bank reconciliation exercise are investigated immediately and appropriate action taken, including updating the relevant cash books. Regulation 90 (3)
- 
58. With respect to managing imprest transactions, approve the establishment of an imprest facility including the maximum amount for the specific purpose of that facility. Regulation 92
- 
59. Before issuing temporary imprests, the Accounting Officer shall ensure that: Regulation 93(4)
- the main objective of the journey cannot be achieved by other cheaper means;
  - the applicant has no outstanding imprests;
  - the applicant has been recorded in the imprest register, including the amount applied for;
  - adequate funds are available against the relevant items of expenditure to meet the proposed expenditure.
- 
60. In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take Regulation 93(6)

immediate action to recover the full amount from the salary of the defaulting officer with interest at the prevailing Central Bank Rate. If the Accounting Officer does not recover the temporary imprest from the defaulting officer as provided for in this regulation the Accounting Officer commits an offence as provided for under the Act.

- |     |   |                           |
|-----|---|---------------------------|
| 61. | In order to effectively and efficiently manage and control the issue of temporary imprests, an Accounting Officer or AIE holder shall ensure that no second imprest is issued to any officer before the first imprest is surrendered or recovered in full from his or her salary. If the Accounting Officer or AIE Holder fails to comply with the provisions of paragraph (8), he or she commits an offence as provided for under the Act.   | Regulations 93(8) and (9) |
| 62. | If an imprest is to be recovered from any Public Officer by instalments, the Accounting Officer shall personally authorise such recovery and such monies shall no longer be an imprest but an unauthorised advance from Government Funds, and in addition to the interest charged under Regulation 93(6), the Accounting Officer shall take appropriate disciplinary action against the officer concerned for the abuse of the imprest.   | Regulation 93(10)         |
| 63. | Keep in all offices concerned with receiving cash or making payments a cash book showing the receipts and payments and shall maintain such other books and registers as may be necessary for the proper maintenance and production of the accounts of the vote for which he or she is responsible.  | Regulation 100            |
| 64. | Prepare the financial statements in a form that complies with the relevant accounting standards prescribed by the Public Sector Accounting Standards Board, not later than three months after the end of the financial year, and submit them to the Auditor General with a copy to the County Treasury, the Controller of Budget and the National Treasury.   | Regulation 101 (4)        |
| 65. | <p>Only classify expenditure as confidential expenditure, if the expenditure:</p> <ul style="list-style-type: none"> <li>is likely to prejudice the security, defence or international relations of the Government of the Republic of Kenya;</li> <li>is likely to involve the disclosure of confidential deliberations or decisions of the Cabinet or of a committee of the Cabinet;</li> <li>is likely to divulge any confidential information communicated in confidence by the National Government to a County Government or by a County Government to the National Government and which would prejudice national security or relations between the two levels of Government;</li> <li>would unfairly prejudice the commercial interests of anybody or person; and</li> <li>likely, for any other reason, to form the basis for a claim by a</li> </ul> | Regulation 101(6) and (7) |

foreign state or persons on the National Government or County Government in a judicial proceeding.

The Accounting Officer shall be required under a closed-door session, and is permitted, to disclose to a special or joint committee of Parliament and the President information or any other document on the nature of confidential expenditure under this Regulation.

- 
66. Take reasonable precautions to guard against damage, destruction of or falsification of any financial record required to be kept by the provisions of the Act and these Regulations. Regulation 102(2)
- 
67. Satisfy himself or herself that where an alteration of a financial record requires the authorisation, approval and/or deletion of any transaction or data, whether electronic or manual by any means other than in writing, that there is sufficient audit trail which shall identify the person who approved the transaction. Regulation 102(3)
- 
68. Personally authorise or designate an officer to authorise journal entries prepared for all adjustments before posting them in a financial record. Regulation 103(1)
- 
69. Where it is necessary to account for revenue and expenditure transactions in a clearing or suspense account, the Accounting Officer shall ensure that:
- amounts included in clearing or suspense accounts are cleared and correctly allocated to the relevant cost centres on a monthly basis;
- monthly reconciliations are performed to confirm the balance of each account; and
- reports on uncleared items are prepared on a monthly basis and submitted to the National Treasury. Regulation 107(2)
- 
70. Institute appropriate access controls needed to minimise breaches of information confidentiality, data integrity and loss of business continuity. Regulation 110(1)
- 
71. Raise those concerns in writing to the Cabinet Secretary if instructed by his or her Cabinet Secretary to make payment which for any reasons the Accounting Officer has concerns. In the event that the Cabinet Secretary approves in writing for the processing of the payment despite the concerns raised by the Accounting Officer under Regulation 114(1), the Accounting Officer shall obey the instructions without further responsibility. Upon payment, the Accounting Officer may proceed as provided for under section 68(3) of the Act, and may send a copy of the report to the Auditor General. Regulation 114(1)
- 
72. Approve, in advance, all purchases of goods, works and services from suppliers, including capital investments, and ensure such procurement complies with the provisions prescribed in the Public Procurement and Disposals Act, 2005 (No. 3 of 2005) and the Regulation 115(1)

Regulations made thereunder.

- 
73. Prepare, every year, a procurement plan to form the basis for procurement activities undertaken by the Government entity in the fiscal year. Regulation 115(2)
- 
74. Keep his or her stock of accountable documents under lock and key, issuing them in accordance with the daily needs of the service, and keeping an accurate up-to-date record of their use by means of continuity control sheets. Regulation 118(2)
- 
75. Ensure that the personnel cost of all appointees, as well as promotion and salary increases, can be met within the budgetary allocation voted for the National Government entity. Regulation 120(3)
- 
76. At least once every month certify the correctness of the payroll. Regulation 121(3)
- 
77. Disclose, as footnotes to the financial statements of the National Government entity, the remuneration of all members of a commission or committee. Regulation 123(2)
- 
78. The Accounting Officer may only authorise salary advances for Public Officers under him or her to be paid if there exists a budgetary provision in his or her vote. Regulation 126(1)
- 
79. The Accounting Officer of a State or County Department may under no circumstances enter into finance leases (non-operating lease) without the approval of the relevant National Treasury. Regulation 128(3)
- 
80. With regard to the transferring of conditional or unconditional allocations to a County Government in accordance with an Act of Parliament, monitor and evaluate the financial and non-financial performance of programmes fully or partially funded by the allocation, and submit to the National Treasury:
- (a) a quarterly report within 30 days after the end of each quarter;
  - (b) an annual report within three months after the end of the financial year;
  - (c) the attendant conditions of any conditional grant to a County Accounting Officers.
- The reports referred to above shall include information that:
- indicates the total amount of funds transferred to each County Government;
  - indicates the amount of funds withheld or stopped from any County Government, the reason for withholding or stopping and the action taken by the National Government Accounting Officer and the County Government Accounting Officer to deal with the matters that necessitated the withholding or the stoppage of the transfer
  - indicates any reductions or additions of conditional or



unconditional allocations to County Governments authorised by the National Treasury

indicates the funds, if any, spent by the National Government Accounting Officer on the administration of the transfer to the Counties; and

may be required under the relevant law or framework governing the transfer by the National Treasury.

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81. A County Government Accounting Officer: Regulation 131
- shall be responsible for ensuring compliance with requirements of the relevant law and frameworks governing the management of conditional and unconditional transfers from the National Government
- shall ensure all transfers from the National Government are included separately in the County Government's Appropriation Bill
- shall monitor and evaluate the financial and non-financial performance of programmes funded by a conditional and unconditional transfer from the National Government and prepare and submit to the relevant national Accounting Officer:
- a quarterly report within 15 days after the end of each quarter in a format prescribed by the Public Sector Accounting Standards Board;
  - an annual report within two months after the end of each financial year in a format prescribed by the Public Sector Accounting Standards Board;
- the reports submitted under this regulation shall specify:
- actual transfers received by the County Government from the National Government;
  - actual expenditure incurred in respect of the transfer;
  - any reallocations authorised by the relevant national Accounting Officer;
  - to what extent the County Government complied with the provisions of the Act, these Regulations and met the conditions provided for in the relevant framework of such a transfer;
  - the steps taken to deal with non-compliance with any of the provisions of the Act and these Regulations or the conditions provided for in the relevant frameworks of such a transfer;
  - the extent to which the objectives and outputs of the transfer were achieved;
  - any other information as may be specified in the relevant framework for that transfer and any other information Accounting Officer may determine.
- 
82. Put in place efficient and effective systems to monitor and report on non-financial performance for his or her National Government Regulation 136(3)

entity's individual programmes and projects based on the prescribed format under Regulation 136(1) and (2) and submit a report to the Cabinet Secretary responsible for planning with a copy to the Auditor General.

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83. (1) As regards Appropriation accounts, provide footnotes to the annual financial statements prepared and submitted to the Auditor General pursuant to section 81 of the Act. Regulation 137(2)
- (2) The footnotes to the financial statements referred to under paragraph (1) of this regulation, shall at the minimum include:
- (a) the details of Appropriation-in-Aid;
  - (b) excess Appropriation-in-Aid, if any;
  - (c) reasons for material differences between approved estimates and actual expenditure, or actual collection of Appropriation-in-Aid;
  - (d) losses and write-offs;
  - (e) nugatory and similar payments, compensation and ex-gratia payments;
  - (f) arrears of Appropriation-in-Aid and Appropriation- in-Aid abandoned; and
  - (g) advances appropriately analysed, including imprests.
- 
84. Disclose in the annual financial and non-financial report a list of special funds or state corporations controlled by National Government entity. Regulation 138
- 
85. Take full responsibility and ensure that proper control systems exist for assets and that: Regulation 139(1)
- (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse;
  - (b) movement and conditions of assets can be tracked; and
  - (c) stock levels are at an optimum and economical level.
- 
86. Be responsible for the proper custody, care and use of Government inventories under their control, including imported goods in vessels awaiting discharge and in customs warehouses awaiting clearance. Regulation 140(1)
- 
87. Be responsible for the general management of Government inventories held within that National Government entity. Regulation 140(2)
- 
88. In consultation with a technical department review, at least annually when finalising the budget, all fees, charges, rates tariffs or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management. Regulation 140(7)
- 
89. Be responsible for maintaining a register of assets under his or her Regulation 143(1)

control or possession as prescribed by the relevant laws.

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90. When a loss as defined in this regulation is discovered, investigate the circumstances of the loss: Regulation 146
- (a) to ascertain the extent and amount of the loss; or
  - (b) to determine whether control or operational arrangements need to be improved in order to prevent the occurrence of similar losses in the National Government entity; or
  - (c) to determine whether any offence or other fault of a Public Officer has been revealed by the loss.
- 
91. Cause an investigation to be conducted into every reported case of loss, and where the Accounting Officer of that entity is implicated in the loss, the Cabinet Secretary shall be the appropriate authority to cause an investigation to be conducted. Regulation 150(1)
- 
92. Maintain a register of all losses incurred by his or her National Government entity and attach a list of all losses incurred during that year to the financial statements submitted to the Auditor General for audit with a copy to the National Treasury. Regulation 153
- 
93. Only write off losses if he or of she is satisfied that: Regulation 157(1)
- (a) all reasonable steps have been taken to recover the losses and the loss is irrecoverable; or
  - (b) he or she is convinced that:
    - recovery of the loss would be uneconomical;
    - it would be to the advantage of the state to effect a settlement of its claim or to waive the claim.
- 
94. Ensure that the organisational structure of the internal audit unit facilitates: Regulation 162(2)
- (a) the entity to accomplish its internal audit responsibilities;
  - (b) the internal auditor with sufficient authority to promote independence and to ensure broad audit coverage, adequate consideration of internal audit reports;
  - (c) appropriate action to be taken on internal audit recommendations; and
  - (d) the internal auditor to be independent of the programmes, operations and activities he or she audits to ensure the impartiality and credibility of the internal audit work undertaken.
- 
95. Ensure that the National Government entity develops: Regulation 165
- risk management strategies, which include fraud prevention mechanism; and
  - a system of risk management and internal control that builds robust business operations.

96. Be responsible for the implementation of the recommendations made in the audit reports and develop a response and action plan which he or she shall submit to the Chairperson of the audit committee within fourteen days. Regulation 172(1)
- 
97. Ensure that the audit committee is adequately funded and supported. Regulation 174(8)
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98. The Accounting Officer of a National or County Government entity shall not be a member of the audit committee, but shall attend a meeting of the audit committee by the invitation of the chairperson of the committee. Regulation 176(1)
- 
99. The Accounting Officer shall: Regulation 182
- provide capacity-building to all public National Government entity audit committees;
  - provide policies and guidelines on audit committees;
  - monitor the effectiveness of audit committees; and
  - provide periodic updates of Audit committee activities through the website.
- 
100. Apply, through the National Treasury, for utilisation of the credit purchase facility in the prescribed manner as set out in the loan instrument where development partners have opted to give loans through credit purchase or commodity loan arrangements, for the purposes of budgeting and accounting. Regulation 190(b)
- 
101. For the purposes of debt management operations and loan administration, the Accounting Officers of a National Government entity shall be responsible for the following: Regulation 205
- preparing project proposals and submitting them for approval to the National Treasury;
  - where authorisation has been granted for the project to start, the Accounting Officer shall ensure public disclosure to intended beneficiaries within thirty days of the allocation and disbursement of the loan;
  - after disbursement of loans, the loan recipient's Accounting Officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the loan;
  - ensuring that during the project identification and design, the intended beneficiaries are involved through the public participatory approach to planning through public forums to enhance leadership, ownership, social accountability and sustainability of the project;
  - preparing expected disbursements profiles;
  - submitting loan disbursement claims for approval by the National Treasury;

making comments on draft loan agreement from the National Treasury;

participating in all consultations and negotiations of any loan agreements for projects and programmes under their jurisdiction; and

implementing, monitoring and evaluating, in close collaboration with the National Government entity responsible for National Planning, all projects and programmes within their jurisdiction.

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102. (1) Pursuant to section 83(6) of the Act, prepare and submit Regulation 220 quarterly financial and non-financial statements within 15 days after the end of each quarter to the Cabinet Secretary responsible for the National Government entity with a copy to the National Treasury and the Auditor General.

(2) The quarterly reports prepared under paragraph (1) shall be in the format gazetted by the Cabinet Secretary and shall include information on—:

revenue, including funding from grants;

expenditure;

borrowing, including guarantees issued by the National Government and any outstanding loan arrears; and

amount of profit or loss of the public entity for the quarter.

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103. Prepare and submit annual financial and non-financial statements Regulation 221 in the format gazetted by the Cabinet Secretary within three months to the Auditor General with copies to the responsible Cabinet Secretary and the National Treasury. The annual financial and non-financial statements referred to under Regulation 221(1) shall be prepared:

in compliance with the International Financial Reporting Standards and as prescribed by the Public Sector Accounting Standard Board from time to time; and

the annual financial statements must be approved by the governing body.

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