

**THE NATIONAL GOVERNMENT CO-ORDINATION BILL, 2012**

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**THE NATIONAL GOVERNMENT CO-ORDINATION BILL, 2012**

**A Bill for**

**AN ACT of Parliament to establish an administrative and institutional framework for co-ordination of national government functions at the national and county levels of governance; to give effect to Articles 131(1) (b) and 132 (3) (b) of the Constitution 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 Government Co-ordination Act, 2012 and shall come into force upon the announcement of the results of the first general elections under the Constitution.

Interpretation.

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

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to the co-ordination of national government functions;

“county” means any one of the counties into which the territory of Kenya is divided as specified in the First Schedule to the Constitution;

“national government administrative officer” means an officer recruited and appointed as such under section 15;

“national government function” means a function assigned by the Constitution or any other law to the executive arm of government;

“Principal Secretary” means a Principal Secretary appointed under Article 155 of the Constitution.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean “Minister”.

- Object of the Act.                    3. The object of this Act is to—
- (a) facilitate the exercise of executive authority pursuant to Articles 131(1)(b) and 132 (3) (b) and (c) of the Constitution;
  - (b) provide for the effective co-ordination and administration of the national government functions prescribed in the Constitution, this Act or any other written law; and
  - (c) provide for the establishment of an administrative and institutional framework at the national, county and decentralised units to ensure access to national government services in all parts of the Republic.
- Guiding principles.                    4. In fulfilling its mandate, the national government shall act in accordance with the national values and principles of the Constitution in particular, those set out in Articles 10, 189, 201(d) and 232.
- Accessibility of national government service.                    5. The national government shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.
- Powers of the President and Governor remain unaffected.                    6. Nothing in this Act shall be construed to—
- (a) limit the powers of the President under Articles 131(1) (b) and 132 (3) (b) and (4) (a) of the Constitution;
  - (b) affect the co-ordination of county government functions as provided for under the Constitution or any other written law; or
  - (c) limit the powers of the county governor as conferred under the Constitution or any other written law.

**PART II—NATIONAL GOVERNMENT CO-ORDINATION FRAMEWORK**

- Powers of the President in co-ordination of national government functions.                    7. (1) Pursuant to Articles 131 (1)(b) and 132 (3) (b) of the Constitution, the President may, for purposes of directing and coordinating the functions of the national government departments—
- (a) assign, through the respective Cabinet Secretary the responsibility of discharging any function of the national

executive to any person in accordance with the Constitution, this Act or any other written law; and

(b) require a person, to whom responsibility is assigned under paragraph (a) to prepare and submit a report on any matter.

(2) Without prejudice to subsection (1), the President shall use the following framework for the co-ordination of the national executive functions—

(a) the Office of the President;

(b) the Cabinet;

(c) the Cabinet office; and

(d) the co-ordination committees as may be necessary.

The Office of  
the President.

**8.** (1) Pursuant to Article 132(3)(b) of the Constitution, the President shall be responsible for the co-ordination of functions of Ministries, State and government departments.

(2) For purposes of co-ordination of national government functions under the Constitution, this Act or any other written law, the Office of the President shall have such number of National Government Administrative Officers as shall be necessary for the effective and efficient co-ordination of national government functions.

The Cabinet.

**9.** (1) Pursuant to Articles 153 of the Constitution, the Cabinet shall coordinate the functions of the national government at the national level.

(2) The Cabinet Secretaries shall be accountable individually and collectively, to the President for the exercise of their powers and the performance of their functions.

(3) A Cabinet Secretary shall be responsible for policy formulation and guidance and, where required, implementation of the policy in respect of the respective Ministry, State departments or agencies under him or her.

(4) A Cabinet secretary shall be the link between the State department and the President or Parliament as the case may be.

Individual and collective responsibility of the Cabinet Secretaries.

**10.** (1) Each Cabinet Secretary shall be responsible for the functions assigned to him or her by the President, the Constitution, this Act, or any other written law.

(2) Collective responsibility of the Cabinet referred to under Article 153 (2) of the Constitution means that all decisions of the Cabinet are binding on all Cabinet Secretaries.

(3) All Cabinet Secretaries shall share responsibility for the decisions of the Cabinet.

(4) All Cabinet Secretaries shall support the decisions made by the Cabinet.

(5) A Cabinet Secretary shall not publicly disagree or denounce a decision of the Cabinet.

Cabinet office.

**11.** (1) The Cabinet office referred to under Article 154(3)(a) of the Constitution shall be headed by the Secretary to the Cabinet.

(2) In the discharge of the functions of the Cabinet, the Cabinet office shall offer secretariat and support services to the Cabinet.

(3) The Public Service Commission shall recruit and appoint such number of public officers as the Secretary to the Cabinet may require for the effective and efficient discharge of the functions of the office.

(4) The Cabinet office shall perform such other functions as may be assigned to it by the President or the Cabinet.

Principal Secretaries.

**12.** (1) Pursuant to Article 155(2) of the Constitution, each Principal Secretary shall be responsible for the administration of a State department.

(2) Pursuant to Article 155 (3) of the Constitution, the President may appoint such number of Principal Secretaries as may be necessary for the effective discharge of the national government functions.

Powers of the President to establish Committees.

**13.** (1) The President shall establish such committees of Principal Secretaries as may be necessary for the effective co-ordination of the national government functions under the Constitution, this Act or any other written law.

(2) In addition to the committees established under subsection (1), the President may establish such other committees or mechanisms as may be necessary.

(3) The President may decentralize, to the extent necessary the mechanisms or committees referred to under subsection (2).

(4) The Cabinet Secretary may, with the approval of the President, make regulations to give effect to this section.

(5) The President may assign such functions, as he or she considered necessary to the committees established under this section.

(6) The committees established under this section shall have all the necessary powers for the proper performance of their functions under this Act or any other written law.

Service delivery co-ordination units.

**14.** (1) The Cabinet Secretary may, with the approval of the President and by a notice in the Gazette, establish national government service delivery co-ordination units.

(2) In establishing the national government service delivery co-ordination units, the Cabinet Secretary shall accord and respect the county government decentralised units established under section 48 of the County Government Act, 2012.

No. 17 of 2012.

(3) Where a county government has not decentralised its units pursuant to section 48(1)(e) of the County Government Act, 2012, the national government may, where necessary, establish its own service delivery co-ordination units for purposes of co-ordination of national government functions.

(4) For purposes of this section, the locations and sub-locations in existence immediately before the commencement of this Act shall continue to exist as national government service delivery units.

(5) The national government service delivery co-ordination units

established under this section shall be headed by national government administrative officers appointed under section 15.

**PART III—APPOINTMENT, ROLES AND RESPONSIBILITIES OF NATIONAL GOVERNMENT ADMINISTRATIVE OFFICERS**

Recruitment and appointment of the national government administrative officers.

**15.** (1) In accordance with the national government functions under the Constitution, this Act or any other written law, the Public Service Commission shall, in consultation with the Cabinet Secretary, recruit and appoint national government administrative officers to coordinate national government functions and to perform such other functions as may be assigned to them under this Act or any other law.

(2) Pursuant to subsection (1), the Public Service Commission shall appoint—

- (a) a county commissioner in respect of every county;
- (b) a sub-county commissioner in respect of every sub-county;
- (c) a ward coordinator in respect of every ward;
- (d) a chief in respect of every location; and
- (e) an assistant chief in respect of every sub-location.

Powers of a national government administrative officer.

**16.** Subject to the Constitution, this Act or any other written law, a national government administrative officer appointed under this Act shall have all the powers necessary for the proper performance of the functions under this Act or any other written law.

Functions of national government administrative officers.

**17.** Subject to the Constitution, this Act or any other written law, a national government administrative officer appointed under section 15, shall be responsible for the co-ordination of national government functions as set out in the Constitution, this Act and any other written law at the county level and other decentralised units as far as may be necessary.

Scheme of service for administrative officers.

**18.** The Cabinet Secretary shall, on the recommendation of the Public Service Commission, prescribe a scheme of service for national government administrative officers.

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

Savings and transfer of staff.

**19.** (1) Subject to this Act, a public officer who immediately before the commencement of this Act was serving as a chief, assistant chief or an administrative officer shall be deemed to be a national government administrative officer appointed under this Act.

(2) Subject to this Act, a person who immediately before the commencement of this Act was serving as an employee of the system of government known as provincial administration shall be redeployed in the public service.

Transfer of assets etc. No. 1 of 2012, 6 of 2012.

**20.** Subject to the Transition to Devolved Government Act, 2012, the Land Act, 2012 and any written law, all property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested, acquired, incurred or entered into on behalf of the system of administration commonly known as the provincial administration, shall upon the commencement of this Act, vest in the national government or county government to the same extent as they were enforceable by or against the system of administration commonly known as provincial administration before the commencement of the Act.

Protection from personal liability.

**21.** Nothing done by a public officer appointed under this Act shall, if done in good faith for the purpose of executing the functions of the office, render such officer personally liable for any action, claim or demand.

Regulations.

**22.** The Cabinet Secretary may with the approval of the President, make regulations for the better carrying into effect of the purposes of this Act.

Amendment to Act No. 17 of 2012.

**23.** Section 138 of the County Government Act, 2012 is amended by inserting the following new subsection immediately after subsection (7) —

“(7) The provisions of subsection (1) shall not apply to a public officer serving in a county government and performing national government functions under the Constitution or any written law.”



**MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to operationalize the provisions of Articles 131(1)(b) and 132(3)(b) of the Constitution on the co-ordination of national government functions at the national and county levels of government by the President. It achieves this by providing for a framework through which the President is to coordinate the national government functions as well as the establishment of service delivery co-ordination units to facilitate access of national government services at the lowest units of decentralization.

**PART I** — provides for the preliminary provisions, the short title, the interpretation of terms used in the Bill and the objects of the Act. This part also outlines the principles that are to guide in the implementation of this Act and imposes an obligation on the national government to ensure that its services are accessible in all parts of the Republic.

**PART II** — outlines the framework for the co-ordination of national government functions. It outlines the powers of the President in the co-ordination of national government functions and provides for the office of the President, the Cabinet, Cabinet office and such other co-ordination committees as may be necessary to carry out this function. This part empowers the President to establish committees of Principal Secretaries and such other committees and mechanisms and also empowers the Cabinet Secretary, in consultation with the President, to establish service delivery co-ordination units for the purpose of coordinating national government functions.

**PART III** — provides for the appointment of national government administrative officers by the Public Service Commission in consultation with the Cabinet Secretary. This Part also specifies their functions and powers in the co-ordination of national government functions.

**PART IV** — sets out miscellaneous and transitional provisions in relation to administrative officers and the assets held by the national government on behalf of the provincial administration. It provides for the saving of existing administrative officers and redeployment of officers serving in the provincial administration. It also provides for consequential amendment to the County Government Act, 2012, to enable the redeployment of administration officers under this Act in the national government as well as the powers of the Cabinet Secretary to make regulations under the Act.

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

Dated.....2012.

**KATOO OLE METITO,**  
**Minister of State for Provincial**  
**Administration and Internal Security.**

*Section 138 of the County Government Act No. 17 of 2012 which it is proposed to amend*

**138.**(1) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is serving in a county on the date of the constitution of that county government shall be deemed to be in the service of the county government on secondment from national government with their terms of service as at that date and—

- (a) the officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage; and
- (b) the officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal; and
- (c) the officer's terms and conditions of service may be altered to their advantage.

(2) Every public officer holding or acting in a public office to which the Commission had appointed the officer as at the date of the establishment of the county government shall discharge those duties in relation to the relevant functions of the county government or national government as the case may be.

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

(4) The provision under subsection (2) shall not preclude—

- (a) the County Public Service Board or other lawful authority from promoting or appointing the officer to another public office in the county; or
- (b) re-deployment by the relevant lawful authority.

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

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