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NATIONAL GOVERNMENT CO-ORDINATION ACT

NO. 1 OF 2013

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NATIONAL GOVERNMENT CO-ORDINATION ACT

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NO. 1 OF 2013

NATIONAL GOVERNMENT CO-ORDINATION ACT

[Date of assent: 14th January, 2013.]

[Date of commencement: See Section 1.]

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

[Act No. 1 of 2013.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the National Government Co-ordination Act, 2013 and shall come into force upon the announcement of the results of the first general elections under the Constitution.

2. Interpretation

(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, this Act 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”.

3. Object of the Act

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.

4. Guiding principles

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.

5. Accessibility of national government service

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 pursuant to Article 6(3) of the Constitution.

6. Powers of the President and Governor remain unaffected

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

7. Powers of the President in co-ordination of national government functions

(1) Pursuant to Articles 131(1)(b) and 132(3)(b) of the Constitution, the President may, for purposes of directing and co-ordinating 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.

8. The Office of the President

(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.

9. The Cabinet

(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.

10. Individual and collective responsibility of the Cabinet Secretaries

(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.

11. Cabinet office

(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.

12. Principal Secretaries

(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.

13. Powers of the President to establish committees

(1) The President shall establish such committees of Principal Secretaries and such other committees or mechanisms 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) The President, through the Cabinet Secretary, may decentralize, to the extent necessary, the mechanisms or committees referred to under subsection (1).

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

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

(5) 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.

14. Service delivery co-ordination units

(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 (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

15. Recruitment and appointment of the national government administrative officers

(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 co-ordinate 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 deputy county commissioner in respect of every sub-county;
- (c) an assistant county commissioner in respect of every ward;
- (d) a chief in respect of every location;
- (e) an assistant chief in respect of every sub-location; and
- (f) any other national government administrative officer in respect of a service delivery unit established under section 14.

16. Powers of a national government administrative officer

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.

17. Functions of national government administrative officers

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.

18. Scheme of service for administrative officers

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

PART IV – COLLABORATION AND DISPUTE RESOLUTION
BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS
ON ISSUES OF APPARENT CONCURRENT MANDATE

19. Constitution of mediation team

(1) Where a dispute arises as to the mandate or powers of any of the officers, or roles of respective officers of the county governments and those of the national Government, a mediation team shall be constituted to deal with the dispute.

(2) The mediation team constituted under subsection (1) shall consist of two eminent persons appointed by the Governor and two eminent persons appointed by the Cabinet Secretary for the time being responsible for national government co-ordination.

(3) The mediation team shall be guided by the constitutional principles and the respective constitutional mandates of each respective government.

(4) The mediation team shall undertake and finalize its task within a period of fourteen days.

(5) Should the mediation team fail to resolve the dispute within the stipulated time, the matter may be referred to the Summit under the Inter-Governmental Relations Act, 2012 (No. 2 of 2012) for resolution.

PART V – MISCELLANEOUS PROVISIONS

20. Savings and transfer of staff

(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.

21. Transfer of assets, etc

All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or 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 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.

22. Protection from personal liability

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.

23. Regulations

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

24. Amendment to Act No. 17 of 2012

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.”

25. Repeal of No. 3 of 2009

The Offices of Minister Act, 2009 is repealed.
