

The Intergovernmental Relations Act, 2011

THE INTERGOVERNMENTAL RELATIONS BILL, 2011

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**SCHEDULE – PROVISIONS ON THE CONDUCT OF THE MEETINGS OF
THE INTERGOVERNMENTAL STRUCTURES**

The Intergovernmental Relations Act, 2011

A Bill for

An Act of Parliament to establish a framework for intergovernmental consultation and co-operation and to establish mechanisms for dispute resolution 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 Intergovernmental Relations Act, 2011 and shall come into operation on the date of its publication upon the final announcement of all the results of the first elections held under the Constitution.

Interpretation

2. In this Act, unless the context otherwise requires-

“Council of County Governors” means the Council of County Governors established under section 9;

“levels of government” means the national and county levels of government.

“National and County Government Coordinating Council” means the National and County Government Coordinating Council established under section 5;

“Tribunal” means the Intergovernmental Disputes Resolution Tribunal established under section 29;

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Objects and purposes of
the Act

3. The objects and purposes of this Act are to-
- (a) provide a framework for intergovernmental consultation and cooperation;
 - (b) establish institutional structures and mechanisms for intergovernmental relations;
 - (c) provide a framework for inclusive consideration of any matter that affects the relations between the levels of government; and
 - (d) provide mechanisms for the resolution of intergovernmental disputes where they arise.

Principles and objects
of intergovernmental
relations

4. (1) The intergovernmental structures established in this Act shall observe the following principles-
- (a) sovereignty of the people as provided for in Article 1 of the Constitution;
 - (b) inclusive and participatory governance;
 - (c) respect for the functional and institutional integrity of the levels of government;
 - (d) respect for the constitutional status of the levels of government and the institutions of government established in either level of government; and
 - (e) consultation and cooperation.
- (2) The objects of intergovernmental relations are to-
- (a) facilitate the realization of the objects and principles of devolution provided for under Articles 174 and 175 of the Constitution;
 - (b) facilitate cooperation and consultation between the national and the county governments as envisaged by Articles 6 and 189 of the Constitution;

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- (c) facilitate the provision of adequate support to county governments to enable them perform their functions as envisaged by Article 190 of the Constitution;
- (d) promote and ensure national cohesion and national unity;
- (e) provide a forum for co-ordinating governments policies, legislation and functions;
- (f) provide a forum for dispute resolution;
- (g) provide a forum for efficient sharing and full disclosure of all necessary data and information;
- (h) ensure and facilitate the use of appropriate information and communication technologies by the two levels of Government;
- (i) provide a forum for capacity building;
- (j) promote accountability and oversight between the two levels of government;
- (k) ensure the participation of the people at all levels of government and accountability to the people; and
- (l) promote and maintain fair procedures and administrative actions in the functioning and operations of the two levels of government.

- (3) The principles and objects provided in this section shall bind-
 - (a) the national and county governments;
 - (b) the intergovernmental structures established under this Act or in any other written law;
 - (c) the Tribunal and
 - (d) all other dispute resolution bodies and institutions established under this Act or in any other written law.

PART II - ESTABLISHMENT OF INTERGOVERNMENTAL

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STRUCTURES

National and County Government Coordinating Council

Establishment of the
National and County
Coordinating Council

5. (1) There is established a National and County Government Coordinating Council which shall consist of-

- (a) the President who shall be the chairperson of the Council;
- and
- (b) the governors of the forty seven counties.

(2) The vice-chairperson of the Council shall be one of the governors who shall be elected by the governors and who shall serve for a non-renewable term of one year.

Functions of the
National and County
Government
Coordinating Council

6. (1) The National and County Government Coordinating Council shall provide a forum for-

- (a) consultation and cooperation between the national and county governments;
- (b) coordination and harmonization of the development and implementation of government policies;
- (c) promoting and ensuring national cohesion and unity;
- (d) resolution of disputes between the national and county governments and between counties within the framework provided under this Act;
- (e) considering matters of national interest;
- (f) supporting county governments in–
 - (i) the implementation of national policy and legislation in the counties;
 - (ii) the co-ordination and alignment of priorities, objectives and strategies across national and county governments;

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- (iii) capacity building; and
- (iv) any other matters that affect the interests of the Republic;
- (g) consideration of issues referred to the Council by a Citizens' Participation Forum;
- (h) consideration of-
 - (i) reports from other intergovernmental forums on matters affecting national interest; and
 - (ii) other reports dealing with the performance of counties;
- (i) discussing the performance of the national and county levels of government in the execution of their functions and initiating preventive or corrective action where necessary;
- (j) oversight where a function or power has been transferred from one government to another;
- (k) recommending incentives for counties which undertake joint projects;
- (l) classification of urban areas and recommendation of conferment of city status in accordance with the Urban Areas and Cities Act;
- (m) approving national development plans;
- (n) receiving and discussing progress reports on the implementation of national and county development plans;
- (o) approving reports recommending intervention in and suspension of county governments; and
- (p) performing any other function that may be conferred by this Act or by any other legislation.

(2) The National and County Government Coordinating Council may establish sectoral working groups or committees for the better carrying out its functions.

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Meetings of the
National and County
Government
Coordinating Council

7. (1) The National and County Government Coordinating Council shall meet at least twice a year.

(2) The Council shall have joint secretaries, being-

(a) the cabinet secretary responsible for devolved government;
and

(b) one of the executive committee members of the forty-seven counties who shall be nominated by the Council of County Governors.

(3) The joint secretaries shall provide the necessary administrative and technical support to the Council.

(4) The Schedule shall apply to the meetings of the Council.

Reports by the National
and County
Government Co-
ordinating Council

8. (1) The National and County Government Coordinating Council shall submit an annual report to Parliament.

(2) Notwithstanding subsection (1), Parliament may, at any time, request for information from the Council on a particular matter.

Council of County Governors

Establishment of
Council of County
Governors

9. There is established a Council of County Governors which shall comprise the governors of each of the forty-seven counties.

(2) The Council of County Governors shall elect a chairperson from amongst its members.

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Functions of the
Council of County
Governors

(3) The chairperson of the Council of County Governors shall serve for a non-renewable term of one year.

10. The Council of County Governors shall provide a forum for-
- (a) consultation between county governments;
 - (b) discussing the performance of the counties in the execution of their functions and initiating preventive or corrective action where necessary;
 - (c) consideration of matters of interest to county governments;
 - (d) coordination of county governments in—
 - (i) the implementation of national policy and legislation in the counties;
 - (ii) the alignment of priorities, objectives and strategies across national and county governments;
 - (iii) any other matters of strategic importance that affect national interests ;
 - (e) facilitating the resolution of disputes between the national and county governments and between counties within the framework provided under this Act;
 - (f) assessment of the performance of the counties;
 - (g) capacity building;
 - (h) oversight where a function or power has been transferred to the county governments;
 - (i) overseeing the entering into and implementation of inter-county agreements on inter-county projects;
 - (j) consideration of issues referred to the Council by a Citizens' Participation Forum;
 - (k) considering-
 - (i) reports from other intergovernmental forums on matters affecting national and county interests; and

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(ii) other reports dealing with the performance of counties;
and

(1) performing any other function that may be conferred by this Act or by any other legislation.

(2) The Council of County Governors may establish sectoral working groups or committees for the better carrying out its functions.

Meetings of the Council
of County Governors

11. (1) The Council of County Governors shall meet at least once in every quarter.

(2) The executive committee of the chairperson of the Council of County Governors shall provide the necessary administrative and technical support to the Council.

(3) The Schedule shall apply to the meetings of the Council.

Reports by the Council
of County Governors

12. (1) The Council of County Governors shall submit an annual report to the National and County Government Coordinating Council and submit copies to Parliament and to the respective county assemblies.

(2) Notwithstanding sub-section (1), Parliament may, at any time, request for a report or information from the Council of County Governors on a particular matter.

Other Intergovernmental Structures

Other

13. The national or county levels of government may establish an

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intergovernmental structures inter-governmental structure not provided for in this Act or in any other legislation where such a structure is necessary for the achievement of the objects and principles of devolution provided in Articles 174 and 175 of the Constitution and the achievement of the objects and purposes of this Act.

Joint committees 14. The national or county levels of government may establish a joint committee with a specific mandate where such a committee is necessary for the achievement of the objects and principles of devolution provided in Articles 174 and 175 of the Constitution and the achievement of the objects and purposes of this Act.

Procedure of other structures and joint committees 15. (1) A structure established under section 13 and a joint committee established under section 14 shall-

- (a) apply and observe the principles and objects of intergovernmental relations set out in section 4; and
- (b) apply the provisions of the Schedule to the conduct of its meetings.

PART III –DISPUTE RESOLUTION MECHANISMS

Application of this Part 16. (1) This Part shall apply to the resolution of disputes arising-

- (a) between the national government and a county government;
- or
- (b) between county governments.

(2) In this Part, unless the context otherwise requires, “dispute” means an intergovernmental dispute.

Duty to avoid disputes 17. (1) The national and county governments shall take all

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reasonable measures to-

- (a) avoid disputes when exercising their statutory powers or performing their statutory functions;
- (b) resolve disputes amicably; and
- (c) apply and exhaust the mechanisms for alternative dispute resolution provided under this Act or by any other legislation before resorting to resolution by the Tribunal or by judicial proceedings.

Dispute resolution mechanisms

18. (1) An agreement between the national government and a county government or between county governments shall include a dispute resolution mechanism that is appropriate to the nature of the agreement and that provides for alternative dispute resolution mechanisms with judicial proceedings as a last resort.

(2) Where an agreement does not provide a dispute resolution mechanism or provides for one that does not accord with subsection (1), a dispute arising shall be dealt with within the framework under this Part.

Declaring a dispute as a formal dispute

19. (1) A government that is a party to a dispute with another government may declare the dispute a formal dispute by notifying the other party of such declaration in writing.

(2) Before declaring a formal dispute, a government shall, in good faith, make every reasonable effort and take all necessary steps to resolve the dispute, including-

- (a) the initiation of direct negotiations with the other party or negotiations through an intermediary;
- (b) where the negotiations under paragraph (a) fail, referral to the

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National and County Government Coordinating Council, to the Council of County Governors or to any other intergovernmental structure established under this Act, as may be appropriate; and

- (c) where the referral under paragraph (c) fails, referral to the relevant committee of the Senate.

Procedure after
declaring a formal
dispute

20. (1) Within twenty-one days of the declaration of a formal dispute, the parties to the dispute shall convene a meeting of the two parties or their designated representatives at which the parties or their representatives shall-

- (a) determine the nature of the dispute, including-
- (i) the precise issues that are in dispute; and
 - (ii) any material issues which are not in dispute;
- (b) identify the mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist them in settling the dispute, including a mechanism or procedure provided for in this Act, other legislation or in an agreement between the parties; and
- (c) agree on an appropriate mechanism or procedure for resolving the dispute, including mediation or arbitration.

(2) Where a mechanism or procedure is specifically provided for in legislation or in an agreement between the parties, the parties must make every reasonable effort to resolve the dispute in terms of such mechanism or procedure.

(3) If the parties to a dispute fail to convene a meeting in terms of sub-section (1), the meeting shall be convened and chaired by the cabinet secretary appointed by the President for that purpose.

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The Intergovernmental
Disputes Resolution
Tribunal

21. (1) There is established a tribunal to be known as the Intergovernmental Disputes Resolution Tribunal which shall consist of-

- (a) a chairperson who shall be a person qualified for appointment as a judge of the High Court and who shall be nominated by the Judicial Service Commission;
- (b) two advocates of the High Court of Kenya, one a man and one a woman, of not less than ten years standing nominated by the Law Society of Kenya; and
- (c) four persons, two men and two women, who possess demonstrated and extensive knowledge and expertise in the field of decentralization, and in particular in devolution, who shall be nominated by the National and County Government Coordinating Council through a competitive process.

(2) The members of the Tribunal shall be appointed by the President with the approval of Parliament.

(3) The principal office of the Tribunal shall be in the capital city but the Tribunal may hold its sittings in any place within the Republic.

(4) A member of the Tribunal shall serve for a term of five years renewable once.

(5) Notwithstanding sub-section (4), in order to ensure continuity in the functions of the Tribunal, the members of the first Tribunal established under this Act shall serve for the following respective terms-

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- (a) the chairperson shall serve for a term of four years;
- (b) the members under subsection (1)(b) shall serve for a period of three years; and
- (c) the members under subsection (1)(c) for a period of five years.

(6) For the avoidance of doubt, any renewal of the term of a member serving a term under subsection (5) shall be for a term of five years.

Proceedings of the
Tribunal

22. (1) The Tribunal shall apply the rules of evidence and procedure under the Evidence Act with the necessary modifications while ensuring that its proceedings do not give undue regard to procedural technicalities and shall, in its proceedings, promote alternative dispute resolution mechanisms.

(2) The Tribunal shall, upon receipt of a dispute under this Act referred to it by any party, inquire into the matter and make an award on the matter or give directions, make orders or make decisions as may be appropriate.

(3) The Tribunal shall communicate an award, directions, orders or decisions made under sub-section (2) to the parties to the dispute.

(4) The proceedings of the Tribunal shall be open to the public except where the Tribunal, for good cause, directs otherwise.

(5) Except as expressly provided in this Act or in Regulations made under this Act, the Tribunal shall regulate the conduct of its

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proceedings.

Powers of the Tribunal

23. The Tribunal may make orders for the purposes of-

- (a) securing the attendance of a person at any place where Tribunal is sitting;
- (b) discovery or production of any document concerning a matter that is before the Tribunal, or
- (c) doing anything that it may deem necessary in the performance of its functions.

Quorum of the Tribunal
for determination

24. (1) For the purposes of hearing and determining a matter under this Act, the chairperson and two members of the Tribunal shall constitute a quorum.

(2) A member of the Tribunal who has a direct interest in a matter which is the subject of the proceedings before the Tribunal shall, at the earliest opportunity, declare the interest and shall not take further part in those proceedings.

Appeals to the High
Court

25. (1) A person who is aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against the decision or order in the High Court.

(2) A decision or order of the Tribunal shall not be enforced until the thirty day period under sub-section (1) has lapsed.

(3) Upon hearing an appeal under this section, the High Court may-

- (a) confirm, set aside or vary the decision or order in question;
- (b) remit the proceedings to the Tribunal with instructions for

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further consideration in a manner specified by the High Court;

- (c) make such other orders as it may deem fit, including orders as to costs of the appeal or the earlier proceedings before the Tribunal.

Offence

26. (1) A person commits an offence if the person-

- (a) fails to attend a sitting of the Tribunal having been required to do so under section 23(a);
- (b) refuses to produce any article or document when lawfully required to do so by the Tribunal;
- (c) knowingly gives false evidence or information to the Tribunal; or
- (d) interrupts the proceedings of the Tribunal.

(2) A person who commits an offence under sub-section (1) is liable to a fine not exceeding two hundred thousand shillings or a term of imprisonment of six months or, or to both.

Advisory opinion of the Supreme Court

27. The national or county level of government may seek the advisory opinion of the Supreme Court on any matter concerning county government in terms of Article 163(6) of the Constitution.

Role of the Senate in dispute resolution

28. The Senate may, through its committees, facilitate the resolution of intergovernmental disputes.

PART IV - MISCELLANEOUS PROVISIONS

Reports by the county

29. The speaker of a county assembly shall submit an annual report

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assembly

on the business of the assembly to the National and County Government Coordinating Council and submit a copy to the Senate.

(2) The National and County Government Coordinating Council and the Senate shall communicate back to the county assembly on their observations and recommendations arising from the report submitted under sub-section (1).

Administrative and technical costs

30. (1) The administrative and technical costs of the structures and institutions established in this Act shall be provided for in the annual estimates of the revenue and expenditure of the national and county governments in the following manner-

- (a) the National and County Government Coordinating Council as a charge to the national government;
- (b) the Council of County Governors as a charge to the county governments;
- (c) the sectoral working groups established by the National and County Government Coordinating Council as a charge to the national government;
- (d) The sectoral working groups established by the Council of County Governors as a charge to the county governments; and
- (e) the Tribunal as a charge to the Judiciary Fund.

(2) The annual estimates of the national and county governments shall, in accordance with subsection (1), make provision for the administrative and technical costs of the structures and institutions established in this Act.

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Regulations

31. (1) The cabinet secretary responsible for devolved government may, in consultation with the National and County Government Coordinating Council, make regulations generally for the better carrying out of the provisions of this Act.

(2) The cabinet secretary shall cause a draft of the Regulations proposed to be made in exercise of the power under sub-section (1) to be laid before the Senate for approval before gazettelement.

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SCHEDULE

[s. 7, 11 and 15]

**PROVISIONS ON THE CONDUCT OF THE MEETINGS OF THE
INTERGOVERNMENTAL STRUCTURES**

- Interpretation
1. In this Schedule, unless the context otherwise requires-
“body” means an intergovernmental structure established under this Act.
“meeting” means a meeting of any of the intergovernmental structures established under this Act.
- Convening of meetings
2. (1) The chairperson of a body shall-
- (a) determine the agenda of the meetings of the body including the date, time and venue of the meeting; and
 - (b) convene and chair its meetings.
- (2) In the absence of the chairperson at a meeting -
- (a) in the case of the National and County Government Coordinating Council, the meeting shall be chaired by the Vice Chairperson;;
 - (b) in the case of the other bodies, the members present shall elect one of their number to chair the meeting.
- Special meetings
3. The chairperson may, on the written requisition of one-third of the members of a body, convene a special meeting of the body.
- Notice of meetings
4. (1) Unless in the case of a special meeting, at least fourteen days written notice of a meeting of a body shall be issued to each member of the body.

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(2) In the case of a special meeting, the chairperson shall convene a meeting within seven days of receipt of the requisition for the special meeting.

- | | |
|---------------------------|---|
| Quorum | 5. The quorum for the conduct of the business of a meeting of a body shall be a majority of the total membership. |
| Decision making | 6. A decision of a body shall be made by the concurrence of a majority of the members present and voting. |
| Joint sittings of bodies | 7. A body may hold a joint sitting with any other body for the purpose of carrying out its mandate. |
| Attendance by non-members | 8. A body may invite a person who is not a member of the body to attend and participate at a sitting of the body but such person shall not be entitled to vote. |
| Committees | 9. A meeting of a body may establish standing or ad hoc committees charged with specific responsibilities. |
| Other procedures | 10. Except as provided in this Schedule, a body may regulate its own procedure. |

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MEMORANDUM OF OBJECTS AND REASONS

The Constitution of Kenya, 2010 establishes two levels of government: the national level and the county level. Article 6(2) of the Constitution recognizes that the two levels of government are distinct and inter-dependent. That provision, therefore, requires that the two levels of government conduct their mutual relations on the basis of consultation and cooperation.

Article 189 of the Constitution gives further details on the mechanisms for cooperation and consultation between the national and county governments and requires government, at each level to cooperate in the performance of its functions and the exercise of its powers and to assist, support and consult, as appropriate. Article 189 further requires that in any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided by national legislation.

This Bill therefore seeks to establish a framework for intergovernmental consultation and cooperation and to provide mechanisms for the resolution of intergovernmental disputes where they arise. The Bill is structured as follows-

1. Part I of the Bill provides for the objects and purposes of the Act and outlines the principles and objects of intergovernmental relations.
2. Part II of the Bill establishes the intergovernmental structures being: the National and County Government Coordinating Council and the Council of County Governors. The national and county governments are given the power to establish sectoral forums and other intergovernmental structures where such structures are necessary for the achievement of the principles and objects of devolution provided in Articles 174 and 175 of the Constitution and for the achievement of the objects and purposes of the Bill.

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3. Part III of the Bill provides for dispute resolution mechanisms with an emphasis on alternative dispute resolution mechanisms. The Intergovernmental Disputes Resolution Tribunal is established as a specialized Tribunal for the resolution of disputes between the national and county governments and between the county governments where alternative dispute resolution mechanisms are exhausted.
4. Part IV of the Bill makes provision for the administrative and technical costs of the Bill and provides for the making of Regulations.

The enactment of this Bill will occasion additional expenditure of public funds which are proposed to be provided for in the estimates of the national government or the county governments in the manner set out in clause 30 of the Bill.

Dated this day of 2011

Musalia Mudavadi,
Deputy Prime Minister and Minister for Local Government.