

NO. 2 OF 2012

THE INTERGOVERNMENTAL RELATIONS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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THE TRANSFER OF LIBRARY FUNCTIONS

[Legal Notice 142 of 2019]

PURSUANT to section 15 of the Sixth Schedule to the Constitution as read with section 12 (b) of the Intergovernmental Relations Act, 2012, and further to Legal Notices Nos. 16 and 137 to 183 of 2013 and Legal Notice No. 2 of 2016, the Intergovernmental Relations Technical Committee (IGRTC) approves the delineation of library functions and distribution of libraries between the National Government and County Governments as specified in the First and Second Schedule respectively, with effect from the 1st July, 2019.

FIRST SCHEDULE

DELINEATION OF LIBRARY FUNCTIONS

	Functions of the National Government	S/No.	Functions of the County Governments
1.	(a) Develop national library policy, legislation and set norms and standards for the library sector. (b) Capacity building and technical assistance to the county governments.	1.	(a) Implementation of the library policy, legislation, standards and norms. (b) Identification of needs for training and development for capacity building.
2.	Equip, develop, manage and maintain the National Libraries.	2.	Equip, develop, manage and maintain the county libraries as well as provide information service responsive to the needs of the communities.
3.	Acquire, preserve and maintain a collection of Library resources including books published within and outside Kenya and such other materials and sources of knowledge necessary for a comprehensive national bibliography.	3.	Establish a center for books, to promote a culture of reading, writing, and publishing in local languages, information and advice, advocacy, book development and easy access to books for all through collection, development and distribution

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			of information materials.
4.	Liaise with other government agencies to ensure compliance by publishers with the Books and Newspapers Act, Cap 111.	4.	Provide the communities with a variety of information materials, programs and services through stocking approved learning resources for formal and informal education.
5.	Carry out and promote research in the development of libraries and related services.	5.	Establish a local collection section in each library holding the respective community's resources, history, people, customs and traditions to promote the culture of indigenous knowledge and languages.
6.	Promote reading for knowledge, information and enjoyment through the stimulation of public interest in books and participation in campaigns for the eradication of illiteracy.	6.	Carry out sensitization in counties to promote learning.
7.	Administering international standard numbers for books, serials, music.	7.	Provide a conducive learning environment, stimulate and promote public interest in reading books and multimedia for information, knowledge and enjoyment.
8.	Publish the Kenya National Bibliography and the Kenya	8.	Promote ICT In accessing and disseminating information.

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	Periodicals Directory.		
9.	Establish the national webcat to publish catalogues for all libraries.	9.	Provide lending, inter-library loans, outreach, specialized and home-bound services.
10.	Provide a national library reference and referral service	10.	Provide advisory and a county library reference and referral services
11.	To perform any other function necessary for the attainment of the objectives of the Kenya National Library Act, Cap. 225	11.	Liaise with national library, county libraries and other relevant institutions to enhance information sharing.

SECOND SCHEDULE

DISTRIBUTION OF LIBRARIES

PART A – Distribution of national libraries under the National Government

S/No.	Branch
1.	Kenya National Library Services facilities at the Headquarters offices, Nairobi
2.	Buru Buru Branch Library
3.	Nakuru Branch Library

PART B – Distribution of libraries under the county governments

S/No.	Branches
	001. MOMBASA COUNTY
1	Mombasa Branch Library
	002. KWALE COUNTY
2	Kwale Branch Library
	003. KILIFI COUNTY
3	Dzitsoni Branch Library
4	Malindi Branch Library
5	Kilifi Branch Library
	006. TAITA TAVETA
6	Wundanyi Branch Library
7	Werugha Branch Library
	007. GARISSA COUNTY
8	Garissa Branch Library
9	Masalani Branch Library
10	Mbalambala Branch Library
	008. WAJIR COUNTY
11	Wajir Branch Library

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12	Habaswein Branch Library
13	Bute Branch Library
14	Griftu Branch Library
15	Tarbaj Branch Library
	009. MANDERA COUNTY
16	Mandera Branch Library
	010. MARSABITCOUNTY
17	Moyale Branch Library
	011. ISIOLO COUNTY
18	Isiolo Branch Library
	012. MERU COUNTY
19	Gatimbi Branch Library
20	Mikumbune Branch Library
21	Meru Branch Library
22	Timau Branch Library
	014. EMBU COUNTY
23	Embu Branch Library
	015. KITUI COUNTY
24	Mwingi Branch Library
	017. MAKUENI COUNTY
25	Kinyambu Branch Library
26	Kithasyu Branch Library
27	Mutyambua Branch Library
	018. NYANDARUA COUNTY
28	Olkalou Branch Library
	019. NYERI COUNTY
29	Karatina Branch Library
30	Munyu Branch Library
31	Nyeri Branch Library
32	Chinga Branch Library
	021. MURANG'A COUNTY
33	Kangema Branch Library
34	Murang'a Branch Library
	022. KIAMBU COUNTY
35	Thika Branch Library
	027. UASIN
	GISHU COUNTY
36	Eldoret Branch Library
	028. ELGEYO MARAKWET COUNTY
37	Lagam Branch Library
	029. NANDI COUTY
38	Kapsabet Branch Library
	030. BARINGO COUNTY
39	Kabamet Branch Library
40	Meisori marigat Branch Library
	031. LAIKIPIA COUNTY
41	Laikipia Branch Library
42	Rumuruti Branch Library
	032. NAKURU COUNTY
43	Gilgil Branch Library
44	Naivasha Branch Library

	033. NAROK COUNTY
45	Lelechonik Branch
	Library
46	Narok Branch Library
	035. KERICHO COUNTY
47	Kericho Branch Library
	036. BOMET COUNTY
48	Silibwet Branch Library
	037. KAKAMEGA COUNTY
49	Kakamega Branch Library
50	Lusumu Branch Library
	039. BUNGOMA COUNTY
51	Kimilili Branch Library
	041. SIAAYA COUNTY
52	Nyilima Branch Library
53	Rambula Branch Library
54	Ukwala Branch Library
	042. KISUMU COUNTY
55	Kisumu Branch Library
56	Dr. Robert Ouko memorial Branch Library
	044. MIGORI COUNTY
57	Awendo Branch
	Library
	045. KISII COUNTY
58	Kisii Branch Library
	047. NAIROBI CITY COUNTY
59	Kibera Branch Library

Notes:

1. The distribution of libraries outlined under part B of the Second Schedule shall be transferred on the effective date of this legal notice.

2. The Kenya National Library Services shall:

(a) Retain the staff emoluments and other benefits for their employees engaged before the effective date of this Legal Notice up to the 30th June, 2020.

b) Retain the operations and maintenance budget for the libraries distributed under the Part B of the Second Schedule up to the 30th June, 2020.

3. For the avoidance of doubt, the staff payroll and other emoluments and the operations and maintenance budgets outlined under Note one and Note two respectively shall be transferred to the respective County Governments with effect from the 1st July, 2020.

THE DELINEATION OF DISASTER MANAGEMENT FUNCTION

[Legal Notice 86 of 2021]

PURSUANT to section 15 of the Sixth Schedule to the Constitution as read together with section 12 (b) of the Intergovernmental Relations Act (Cap. 265F), and further to Legal Notices Nos. 16 and 137 to 183 of 2013, the Intergovernmental Relations Technical Committee delineates the disaster management function between the National Government and County Governments in the manner specified in the Schedule.

S/No	Functions of the National Government	Schedule S/No	Functions of the County Governments
1.	Disaster Prevention 1. (a) Development of the National Disaster Prevention Policy. (b) Implementation of National Disaster Policy. (c) Capacity building and technical assistance to county governments on disaster prevention. (d) Conducting National disaster risk assessments or analyses. (e) Establishing national disaster early warning sector based systems. (f) Communicate early warning disaster information to counties. (g) Carry out national civic education and awareness creation to stakeholders. (h) Development of national norms, standards and guidelines on risk prevention.		Disaster Prevention (a) Alignment of county disaster prevention policy with national policy. (b) Implementation of county disaster prevention policy. (c) Capacity building and technical assistance to communities on disaster prevention. (d) Conducting county disaster risk assessments or analysis. (e) Establishing or cascading national disaster early warning sector based systems to county. (f) Communicate early warning disaster information to communities. (g) Carry out civic education and awareness to local stakeholders and communities. (h) Alignment or cascading of national norms, standards and

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	<p>(i) Institute sector specific disasters risk pre-emptive measures based on alert levels at the national level.</p> <p>(j) Implementation of National norms, Standards and guidelines on disaster risk prevention.</p> <p>(k) Provision of civic education on disaster risk prevention and management to counties and stakeholders.</p> <p>(l) Enforcing public participation and awareness creation in disaster risk prevention management.</p> <p>(m) Establishment of strong national institutional structures for disaster risk management.</p> <p>(n) Coordination of risk management activities between the national and county government.</p>	<p>guidelines on risk prevention.</p> <p>(i) Institute sector specific disaster risk pre-emptive measures based on alert levels at the county level.</p> <p>(j) Implementation of county specific norms, standards and guidelines on disaster risk prevention.</p> <p>(k) Provision of civic education on disaster risk prevention at county level.</p> <p>(l) Enforcing public participation and awareness in disaster risk prevention at county level.</p> <p>(m) Establishment of strong institutional structures for disaster risk management at county level.</p> <p>(n) Coordination of risk management activities in counties.</p>
2.	<p>Disaster Preparedness</p> <p>(a) Development and implementation of policies, norms and standards for disaster preparedness.</p> <p>(b) Resource mobilization for national disaster risk preparedness, resilience, buildings and climate</p>	<p>Disaster Preparedness</p> <p>(a) Domestication and implantation of national policies norms and standards in disaster preparedness.</p> <p>(b) Resource mobilization for disaster risk preparedness resilience building and climate</p>

change adaptation strategies.

(c) Capacity building and technical assistance to county governments.

(d) Development of national resilience and climate change adaptation strategies.

(e) Implementation of national resilience and climate change adaptation strategies.

(f) Civic education, awareness creation and public participation in disaster risk preparedness at national level.

(g) Development of national climate change resilience building programmes.

(h) Development of national guidelines for disaster preparedness drills and simulation exercises.

(i) Development of national sector specific standards operating procedures for disaster.

(j) Implementation of national disaster preparedness sector specific

change adaptation strategies in the county.

(c) Capacity building and technical assistance to the local communities in disaster preparedness.

(d) Domestication of national resilience and climate change adaptation strategies to the county.

(e) Implementation of county specific strategies for resilience and climate change adaptation.

(f) Civic education, creation awareness and public participation in disaster risk preparedness at county level.

(g) Domesticating of national climate change resilience building programmes at the county.

(h) Domestication of national guidelines for disaster preparedness drills and simulation exercises at the county.

(i) Domestication of national disaster preparedness sector specific standard operating procedures to the county.

(j) Implementation of county specific

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standards operating procedures.

(k) Monitoring and evaluation of national disaster preparedness policies and guidelines.

(l) Development and implementation of national disaster preparedness contingency plans.

(m) Consolidation of national data on disaster risk preparedness.

(n) Carrying out national research on disaster risk management.

(o) Conduction national drills and simulation exercises to enhance disaster preparedness.

(p) Develop guidelines for declaration of national disaster emergency preparedness.

(q) Develop a national disaster communication strategy for information sharing between the national and county government during emergencies.

sectoral disaster preparedness

standard operating procedures.

(k) Monitoring and evaluation of county specific disaster preparedness policies and guidelines.

(l) Domestication and implementation of national disaster preparedness contingency plans at the county level including prepositioning of supplies.

(m) Data collection on county disaster risk preparedness.

(n) Participation in research on disaster risk management.

(o) Conducting county drills and simulation exercises to enhance disaster preparedness.

(p) Domestication of national guidelines for declaration of county disaster emergency preparedness.

(q) Develop a county disaster communication strategy for information sharing between county government, stakeholders and community.

Disaster Response

(a) Capacity building and technical assistance

3. Disaster Response 3.
(a) Capacity building and technical assistance

to counties on disaster response.
 (b) Conduct rapid assessments to understand national vulnerability levels.
 (c) National government to declare national emergency.
 (d) Activate plans for national emergency responses.
 (e) Implementation of the information sharing mechanism between the national and county governments.
 (f) Strategic coordination of disaster response.
 (g) Consolidate response initiatives reports from counties.
 (h) Consolidate county disaster needs assessments.
 (i) Coordination of management of food and non-food relief.
 (j) Development of national sector standard disaster operating procedures.
 (k) Implementation of national sector standard disaster response operating procedures.
 (l) Communication of national disaster response interventions to international

to communities on disaster response.
 (b) Conduct rapid assessments to understand county vulnerability levels.
 (c) County governments to declare county emergency.
 (d) Activate plans for county emergency plans.
 (e) Implementation of the information sharing mechanism between the national and county governments.
 (f) Coordinate disaster response through multi-sectoral approach and cross-county.
 (g) Reporting on response initiatives during emergencies in the counties.
 (h) Updating disaster needs assessment.
 (i) Management of food and non-food relief at county level.
 (j) Development of county specific disaster response standard operating procedures.
 (k) Implementation of national and county standard disaster response operating procedures.
 (l) Communication of disaster response standard operating procedures.

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	and national stakeholders.	
4.	Disaster Recovery 4. (a) Development and Implementation of national recovery plans and programs. (b) Capacity building and technical assistance to counties on disaster recovery. (c) Consolidate post disaster needs assessments from counties. (d) Consolidate county monitoring, evaluation and lessons learnt report . (e) Mounting national public participation in recovery programs. (f) National resource mobilization for disaster risk recovery. (g) Develop national guidelines for post disaster needs assessments. (h) Enforce national guidelines for post disaster needs assessment.	Disaster Recovery (a) Implementation of county recovery plans and programs. (b) Capacity building and technical assistance to communities on disaster recovery. (c) Conduct post disaster needs assessment in the county. (d) Conduct monitoring, evaluation and developing lessons learnt report. (e) Mounting county public participation in recovery programs. (f) County resource mobilization for disaster risk recovery. (g) Domestication of national guidelines for post disaster needs assessment in county. (h) Implement national guidelines for post disaster needs assessment.

NOTE:

1. The delineation is guided by the National Disaster Risk Management Policy, specifically the levels of disasters as shown in the matrix below.
2. Disaster occurrence and effects are sector specific and the responsibility for managing sector related disaster risks is guided by the functional assignment of both levels of government as specified in the Fourth Schedule to the Constitution.
3. The responsibility for managing disaster risks which are specific to the function assigned to the National Government

- lies with the National Government. Examples of this are transport, national public works etc.
4. The responsibility for managing disaster risks which are specific to function assigned to the counties lies with County Governments. For example, health, livestock etc. unless such disasters simultaneously occur across several counties or are beyond the capacity of the counties.
 5. A disaster that is within the functions assigned to County Governments under Fourth Schedule and is within level 1 or 2 is the responsibility of the county government.
 6. A disaster that is within the functions assigned to County Governments under the Fourth Schedule of Constitution and is within level 3, the national government shall provide the necessary leadership and intervention in consultation with the respective county government. However, the functional responsibility remains with the level of government to which it is assigned as per the Fourth Schedule to the Constitution.
 7. A disaster that is within the exclusive functions assigned to the National Government under the Fourth Schedule of the Constitution, and falls under levels 1-4, shall be the responsibility of the National Government.

**LEVELS OF CONCURRENT DISASTER RESPONSIBILITIES
ASSIGNED TO THE NATIONAL AND COUNTY GOVERNMENT**

- | | |
|---------|---|
| Level 1 | Localized emergency events dealt within the regular operating mode of the protective, emergency and health services in Villages, Wards and Sub-County |
| Level 2 | Emergency events that overwhelm the capacity of the resources in Sub- County, but which do not overwhelm the capacity of the County resources to respond and recover |
| Level 3 | Emergency events that overwhelm a County and require mobilizing national resources to respond and recover |
| Level 4 | Emergency events that overwhelm the existing National response capacity, thus prompting the President to seek Regional/International assistance to support the country in response and recovery |
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THE DELINEATION OF THE COOPERATIVE FUNCTION

[Legal Notice 85 of 2021]

PURSUANT to section 15 of the Sixth Schedule to the Constitution as read together with section 12(b) of the Intergovernmental Relations Act, 2012 (Cap. 265F), and further to Article 186(1) and the Fourth Schedule to the Constitution, Legal Notice No. of 137 to 183 of 9th August 2013 and the Summit Directives, the Intergovernmental Relations Technical Committee delineates the cooperative function between the National Government and County Governments in the manner specified in the Schedule.

S/No.	ACTIVITY	Schedule	
		NATIONAL GOVERNMENT	RESPECTIVE COUNTY GOVERNMENTS
1.	Policy, legal framework, norms and standards.	(a) Formulation of the National policy and legal framework for the development and growth of the co-operative sector in consultation with county governments. (b) Development of National Co-operative norms and standards in consultation with county governments. (c) Review of the policy, norms and standards in consultation with county governments. (d) Development of national regulation for the operations of cooperatives sector in consultation with county governments. (e) Licensing cooperatives that are Deposit taking Savings and Credit Cooperatives (SACCOs) for	(a) Implementation of National Co- operative Development Policy (b) Formulation of county specific legislation and regulation in line with the national policy but specific to individual county needs. (c) Enforcement of Co- operative norms and standards. (d) Licensing operations of all co-operatives societies.

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		the purpose of operating FOSA.	
2.	Registration of Cooperatives.	<p>(a) Registration of all co-operatives.</p> <p>(b) Development and maintenance of National Cooperative register and database.</p> <p>(c) Liquidation of cooperatives upon recommendations from the county governments.</p> <p>(d) Filing of annual returns.</p>	<p>(a) Processing of application documents for registration.</p> <p>(b) Provisional registration (where necessary) of primary co-operatives and unions.</p> <p>(c) Cancellation of provisionally registration.</p> <p>(d) Development and maintenance of County Co-operative registers and database.</p> <p>(e) Recommendation for liquidations.</p> <p>(f) Enforcement on filing of returns.</p> <p>(g) Promotion of all cooperatives.</p> <p>(h) Pre-Co-operative training.</p>
3.	Professional Cooperative services	<p>(a) Setting Co-operative accounting and auditing standards.</p> <p>(b) Registration of Co-operative Auditors and Audited Accounts</p> <p>(c) Regulation of Cooperative professional Services.</p>	<p>(a) Provision of audit and other professional services.</p> <p>(b) Enforcing audit requirements and standards.</p> <p>(c) Receiving and maintaining audited accounts from primary cooperatives.</p>
4.	Investigations (Inquiries and inspections).	<p>(a) Apex, National Cooperative Organizations (National Cooperative Organisations Savings and Credit Co-operative (NACOs)) (Federations),</p>	<p>(a) Inspection and Inquiries into affairs of primary cooperatives and Unions National Cooperative Organisations Savings and Credit Cooperative (NACOs).</p>

		deposit taking SACCOs, and Diaspora Co-ops. (b) Inspection and Inquiries into affairs of cooperatives referred to the national Government and primary co- operatives by the county governments. (c) Investigation of all co-operatives on criminal offenses (DCI, EACC).	
5.	Periodical returns Non Remittances/ Annual.	<p>(a) Issuance of Agency notices for:</p> <p>i. The Apex body ii. The Deposit Taking SACCOs iii. The National Cooperative Organisations Savings and Credit Cooperative (NACOs); iv. Diaspora Cooperatives. (b) Enforcement of Agency notices for:</p> <p>i. The Apex body; ii. The Deposit Taking SACCOs; iii. The National Cooperative Organisations Savings and Credit Cooperative (NACOs); iv. Diaspora Cooperatives;</p>	<p>(a) Issuance of Agency notices for:</p> <p>i. Primary and Secondary Cooperatives ii. Unions (b) Enforcement of Agency notices for;</p> <p>i. Primary and Secondary Cooperatives. ii. Unions. (c) Issuance of Demand notices for compliance. (d) Enforcement of monthly Non- remittances returns. (e) Monitoring of non-remittances.</p>
6.	Advisory Services.	<p>Offer advisory services to:</p> <p>(a) The Apex body; (b) The Deposit Taking SACCOs; (c) The National Co-operative</p>	<p>Offer advisory services to:</p> <p>(a) All Primary and Secondary Cooperatives and Unions:</p>

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		Organisations Savings and Credit Cooperative (NACOs); (d) Diaspora Co-operatives; (e) Filing of elections returns.	(b) Supervisory services (Extension); (c) Overseeing elections; (d) Risk assessment and management.
7.	Capacity Building.	(a) Carrying out capacity building to the county Governments (b) Capacity building for Co-operatives (c) Formulation and regulation of cooperative education and training standards; (d) Training of Apex, National Cooperative Organisations Savings and Credit Co-operative (NACOs), The Deposit Taking SACCOs and Diaspora Co-operatives	(a) Training of all Primary and Secondary Co-operatives and Unions (b) Capacity building for Co-operatives (c) Anchoring Cooperative learning centers within existing County learning institutions (d) Providing co-operative advisory services (e) Supporting and strengthening growth, revival and restructuring programmes;
8.	Co-operative Education Research and development.	(a) Identification of priority areas for research (b) Carrying out research (c) Supporting co-operative research, development and data collection (d) Building research capacity for counties	(a) Supporting co-operative research, development and data collection in counties (b) Supporting and facilitating field research
9.	Co-operative Ethics and Governance	(a) Promotion of good governance and ethics in all Co-operatives (b) Development of prudential	(a) Promotion of good governance in the management of the co-operative societies; (b) Enforcement of prudential norms and standards

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		standards for co-operatives	(c) enforcement of code of conduct
		(c) Development of Code of conduct for co-operatives	
10.	Co-operative ventures, innovations and partnerships.	(a) Promoting public private partnerships, joint ventures and facilitate regional and international co-operative relations (b) Developing and maintaining intergovernmental relations in the cooperative sector;	(a) Promoting public private partnerships, joint ventures and facilitate regional and international cooperative relations (b) Promoting cooperative ventures and innovations for co-operative societies (c) Facilitating collaboration and linkages between cooperatives and stakeholders for the benefit of the movement
11.	Dispute resolution in cooperative sector.	(a) Developing ADR regulations for the sector (b) Undertaking Alternative Dispute Resolutions (ADR) for disputes from: i. The Apex body; ii. The Deposit Taking SACCOs; iii. The National Cooperative Organisations Savings and Credit Cooperative (NACOs); iv. Diaspora Cooperatives. (d) Handling disputes referred to them by county governments where Alternative Dispute Resolution as failed.	(a) Undertaking Alternative Dispute Resolutions (ADR) for disputes from Primary and Secondary Cooperatives and Unions. (b) Building the capacity for cooperatives to handle internal disputes

NOTE:

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National Government Functions

- (a) Formulation of national policies.
- (b) Formulation of national legislation.
- (c) Capacity building to county governments.
- (d) Setting of national norms and standards.

County Governments' Functions

- (a) Formulation of county specific policies in line with the national policy.
 - (b) Formulation of county specific legislation.
 - (c) Enforcement of national norms and standards.
 - (d) Professional services to the cooperatives.
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THE INTERGOVERNMENTAL RELATIONS (ALTERNATIVE DISPUTE RESOLUTION) REGULATIONS

ARRANGEMENT OF REGULATIONS

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Regulation

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3. Objects and purpose of the Regulations
4. Guiding principles
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SCHEDULES

SCHEDULE —

FORMS

THE INTERGOVERNMENTAL RELATIONS (ALTERNATIVE DISPUTE RESOLUTION) REGULATIONS

[Legal Notice 4 of 2022]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Intergovernmental Relations (Alternative Dispute Resolution) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Intergovernmental Relations Act (Cap. 265F);

"alternative dispute resolution mechanisms" means any method of resolving disputes instead of litigation that is used by the parties to resolve an issue in controversy or any dispute and may include negotiation, conciliation, mediation, traditional dispute resolution or arbitration;

"alternative dispute resolution practitioner" means an individual appointed to assist, guide or determine an intergovernmental dispute;

"award" means the final decision of an arbitrator, in an intergovernmental dispute;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to intergovernmental relations;

"Council" means the Council of County Governors established under section 19 of the Act;

"dispute" means an intergovernmental dispute as defined under section 30 of the Act;

"intergovernmental forum" means any intergovernmental forum and includes such forum as may be established pursuant to section 13(2) or 38(2)(e) of the Act;

"line ministry" means the ministry for the time being responsible for a sector within which an issue in controversy or dispute has emerged;

"recognised institution" means a registered institution that trains, accredits or validates alternative dispute resolution practitioners upon attaining the requisite standards;

"Summit" means the National and County Government Coordinating Summit established under section 7 of the Act;

"Technical Committee" means the Intergovernmental Relations Technical Committee established under section 11 of the Act;

"traditional body" means an institution recognised by the parties or registered within the Republic of Kenya as an authority with respect to traditional knowledge and cultural practices relating to any ethnic community; and

"traditional dispute resolution mechanism" means an intergovernmental dispute resolution process carried out by a traditional body.

3. Objects and purpose of the Regulations

The objects and purposes of these Regulations are to—

- (a) enable parties to a dispute exhaust the alternative dispute resolution mechanisms provided under these Regulations before resorting to judicial proceedings;

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- (b) promote and ensure effective, efficient and amicable resolution of intergovernmental disputes as contemplated under Article 189(3) and (4) of the Constitution;
- (c) facilitate and promote intergovernmental consultation and cooperation as contemplated under Article 6(2) of the Constitution; and
- (d) foster mutual trust and good faith between the national government and a county government or amongst county governments.

4. Guiding principles

These Regulations shall be guided by the following principles—

- (a) prompt and amicable resolution of disputes before resorting to judicial proceedings;
- (b) prudent use of public funds in the resolution of intergovernmental disputes;
- (c) upholding the Constitutional principles of consultation and co-operation; and
- (d) compliance with the procedures, decisions and outcomes made through the dispute resolution processes under these Regulations.

5. Application of Regulations

(1) These Regulations shall apply to the resolution of disputes arising—

- (a) between the national government and a county government;
- (b) amongst county governments; or
- (c) out of an agreement between the national government and a county government or amongst county governments where—
 - (i) no dispute resolution mechanism is provided in the agreement; or
 - (ii) the agreement provides for a dispute resolution mechanism that does not accord with the provisions of section 32(2) of the Act.

(2) These Regulations shall apply to State organs and public offices in both levels of government, particularly—

- (a) ministries, departments and agencies within the national government; and
- (b) county governments, county departments and agencies within a county government.

PART II – PROCEDURE BEFORE FORMAL DECLARATION OF A DISPUTE

6. Procedure before formal declaration of a dispute

(1) Pursuant to section 33(1) of the Act, parties shall undertake all necessary measures to amicably resolve issues in controversy through consultation, conciliation or negotiation, before a dispute is formally declared.

(2) The measures envisaged under paragraph (1) may include—

- (a) direct negotiations between parties;
- (b) consultations with either—
 - (i) a constitutional commission or an independent office;
 - (ii) a line ministry or county department;
 - (iii) the Council;
 - (iv) an intergovernmental forum;
 - (v) a joint committee constituted pursuant to section 23 of the Act;
 - (vi) a traditional body; or
 - (vii) any other person or institution as the parties may agree to consult; or
- (c) conciliation through an intermediary agreed upon by the parties.

(3) With respect to any nature of dispute including boundaries and natural resource disputes, the parties shall consult the relevant statutory or constitutional body in accordance with the existing laws.

(4) The parties shall determine the procedure for conducting negotiations, conciliations or consultations provided under paragraph (2).

(5) Where parties resolve the issues in controversy pursuant to paragraphs (1) and (2), the parties shall, within seven days, enter into a written agreement stating—

- (a) the names of the parties;
- (b) the nature and particulars of the dispute, and in particular whether the dispute relates to—
 - (i) the assignment or implementation of functions;
 - (ii) a financial matter;
 - (iii) a written agreement between the parties;
 - (iv) a boundary;
 - (v) natural resource management; or
 - (vi) any other form of intergovernmental dispute; and
- (c) the resolution or outcome of the process under this regulation.

(6) The parties shall, within seven days of entering into an agreement as contemplated under paragraph (4), submit a copy of the agreement to the Cabinet Secretary, the Technical Committee and the Council for their information.

(7) Where parties fail to resolve the issues in controversy under this regulation, a party may, within seven days, issue and serve a notice of intention to declare a dispute in the form set out in the Schedule.

PART III – FORMAL DECLARATION OF A DISPUTE

7. Formal declaration of a dispute

(1) Within seven days of the expiry of the notice issued under regulation 6(6), a party may formally declare a dispute in the forms set out in the Schedule and accompanied by a summary of the dispute, to—

- (a) the Summit through the Technical Committee;
- (b) the Council where the dispute is amongst county governments; or
- (c) an intergovernmental structure established under the Act or any other written law.

(2) The declaration made under paragraph (1) shall be served on—

- (a) the parties to the intergovernmental dispute;
- (b) the line ministry; and
- (c) the Cabinet Secretary.

(3) Where a party fails to formally declare the dispute within seven days after the expiry of the time specified under regulation 6(6), the notice shall be deemed to have lapsed.

(4) Where the notice under paragraph (3) lapses, the party seeking to resolve the dispute shall issue a fresh notice under these Regulations.

8. Initial meeting

(1) Pursuant to section 34 (1) of the Act, the Summit, or the Council, or any other intergovernmental structure, to which the declaration was made shall, within twenty-one days of receipt of the notice of formal declaration of a dispute, convene an initial meeting between the parties or their designated representatives.

(2) The parties at the initial meeting convened under paragraph (1) shall—

- (a) determine any material issues that are not in dispute;
- (b) determine the precise issues in dispute;

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- (c) determine the nature of dispute including whether the dispute relates to—
 - (i) the assignment or implementation of functions;
 - (ii) a financial matter;
 - (iii) a written agreement between the parties;
 - (iv) a boundary;
 - (v) natural resource management; or
 - (vi) any other form of intergovernmental dispute; and
- (d) identify and agree on the appropriate alternative dispute resolution mechanism to be applied by the parties in settling the dispute, which may include—
 - (i) mediation;
 - (ii) traditional dispute resolution mechanisms; or
 - (iii) any other alternative dispute resolution mechanisms under other legislation.

(3) The parties shall, at the conclusion of the initial meeting, enter into a written and signed agreement detailing—

- (a) the names of the parties;
- (b) the designated representatives of the parties;
- (c) the nature of the dispute;
- (d) any material issues that are not in dispute;
- (e) the precise issues in dispute;
- (f) the dispute resolution mechanism agreed to;
- (g) the date of commencement of the dispute resolution process;
- (h) the venue and logistics with respect to conduct of the dispute resolution process; and
- (i) their commitment to the obligations of the parties under these Regulations.

(4) Where parties fail to agree on an alternative dispute resolution mechanism, the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made shall, within seven days and in writing, identify an appropriate mechanism specified under Part IV of these Regulations.

9. Interim measures and conservatory orders

(1) The Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made, may give directions on any interim measures to be undertaken by either of the parties, pending the final determination of the dispute.

(2) Without prejudice to the generality of paragraph (1), a party to a dispute may seek conservatory orders from the Court at any time pending the final determination of the dispute.

PART IV – ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

10. Mediation

(1) Where the parties agree to refer the dispute to mediation, the parties shall, within seven days of the initial meeting, identify and agree on an accredited mediator to be appointed by either the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made.

(2) Where the Parties do not agree on a mediator, the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made shall, within seven days of the initial meeting and in writing, request a recognized institution to appoint a mediator.

(3) The mediator shall commence the mediation proceedings within fourteen days of appointment.

(4) The mediator shall assist the parties to resolve the dispute within fourteen days from the date of commencement of the mediation proceedings.

(5) The Parties may extend the mediation proceedings for a period not exceeding seven days.

(6) Except as otherwise provided in these Regulations, the mediator and the parties shall determine their own procedure.

(7) The mediator and the parties may, in determining the procedure under paragraph (6), adopt the existing rules or procedure of a recognized mediation institution.

(8) Where the dispute is resolved under this regulation, the mediator shall, within seven days of determination of the dispute, submit—

(a) a written and signed agreement where parties reach a settlement; or

(b) a report on the outcome where the parties did not reach a settlement,

to the Summit through the Technical Committee, the Council the intergovernmental structure to which the declaration was made.

(9) Where a party fails to comply with the agreement reached under paragraph (8), the aggrieved party may within ninety days of the determination of the dispute, apply to the High Court that the settlement be adopted as a judgment or order of the Court.

11. Traditional dispute resolution

(1) Where parties agree to refer the dispute to a traditional dispute resolution mechanism, the parties shall, within seven days of the initial meeting and in writing, identify and agree on a traditional body to be appointed by the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made.

(2) Where the parties fail to agree on a traditional body, the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made shall, within seven days of the initial meeting and in writing, identify and appoint a suitable traditional body.

(3) The traditional body appointed under this regulation shall commence the dispute resolution process within fourteen days of appointment.

(4) The traditional body shall assist the parties to resolve the dispute within twenty-one days from the date of commencement of the proceedings.

(5) The parties may extend the proceedings for a period not exceeding seven days.

(6) Except as otherwise provided in these Regulations, the traditional body and the parties shall determine their own procedure.

(7) The traditional body shall conduct the process in conformity with the provisions of Article 159 (3) of the Constitution.

(8) Where the dispute is resolved under this regulation, the traditional body shall submit to the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made, the outcome of the dispute resolution process, and any other document that may be necessary.

(9) Where a party fails to comply with the agreement reached under paragraph (8), the aggrieved party may within ninety days of the determination of the dispute, apply to the High Court that the settlement be adopted as a judgment or order of the Court.

12. Arbitration

(1) Where the parties agree to refer the dispute to arbitration, the parties shall within seven days of the initial meeting, identify and agree on an accredited arbitrator to be appointed by the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made.

(2) Where the Parties fail to agree on an arbitrator, the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was

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made shall, within seven days of the initial meeting and in writing, request a recognized institution to appoint an arbitrator.

(3) The arbitrator shall commence the arbitration proceedings within fourteen days of appointment.

(4) The arbitrator shall hear and determine the dispute referred to arbitration within thirty days of the date of commencement of the arbitration proceedings.

(5) The Parties may extend the arbitration proceedings for a period not exceeding fifteen days.

(6) The Arbitration Act (Cap. 49) and the arbitration rules of the institution selected by the parties shall apply to the arbitration process provided under this regulation.

(7) Where the dispute is resolved under this regulation, the arbitrator shall, within seven days, submit the arbitral award to the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made.

13. Mechanisms under other legislation

(1) Where parties agree to resolve the dispute through mechanisms established under other legislation, the parties shall make every reasonable effort to resolve the dispute through the alternative dispute resolution mechanism or procedure under that legislation.

(2) Where the parties agree to resolve the dispute pursuant to paragraph (1), the Summit through the Technical Committee, the Council or the intergovernmental structure to which the declaration was made shall, within seven days of the initial meeting and in writing, notify the relevant body responsible for the mechanism established under that legislation.

(3) The body under paragraph (2) shall—

- (a) hear and determine the dispute in accordance with its own procedure; and
- (b) within seven days of the determination and in writing, communicate the outcome to the Summit or the Council, through the Technical Committee, or the intergovernmental structure to which the declaration was submitted.

(4) Where a party fails to comply with the determination reached under this regulation, the aggrieved party may within ninety days of the determination of the dispute, apply to the High Court that the determination be adopted as a judgment or order of the Court.

14. Referral to the Summit

(1) Where a dispute fails to be resolved in accordance with the mechanisms provided under these Regulations, a party may in writing and within fourteen days of such failure, notify the Summit through the Technical Committee in accordance with section 34(3) of the Act.

(2) The Summit shall, within fourteen days, convene a meeting between the parties in an effort to resolve the dispute and may recommend an appropriate course of action for the resolution of the dispute.

(3) Upon determination of the dispute under this regulation, the Technical Committee shall, within thirty days and pursuant to section 12 of the Act, prepare a report on the resolution of the Summit and submit the report to the parties and the Cabinet Secretary.

15. Duty to exhaust alternative dispute resolutions mechanism

(1) Subject to section 31 of the Act, a party that has exhausted any of the mechanisms specified under Part IV of these Regulations shall not be precluded from instituting judicial proceedings.

(2) Where all efforts of resolving the dispute under these Regulations fail, a party may institute judicial proceedings as provided under section 35 of the Act.

PART V – MISCELLANEOUS PROVISIONS

16. Obligation of parties

A party to an intergovernmental dispute shall-

- (a) comply with the procedures set out in these Regulations;
- (b) promptly respond to requests for information;
- (c) not institute parallel proceedings in respect of the same subject matter pending the determination of the dispute;
- (d) take all necessary measures to ensure that the provision of services in respect of the subject matter in dispute is not adversely affected;
- (e) ensure that the subject matter in dispute is preserved; and
- (f) take all necessary measures to ensure that the dispute is not escalated.

17. Interested parties

(1) Where a person, other than the parties involved in the Interested parties, dispute, has an interest in the subject matter of the dispute instituted under these Regulations, the person may apply to the alternative dispute resolution practitioner handling the matter to be enjoined.

(2) Upon receipt of the application under paragraph (1), alternative dispute resolution practitioner shall make a determination and communicate to the applicant before the next sitting.

18. Non-disclosure and confidentiality

(1) A party or any person involved in any dispute resolution process under these Regulations shall not disclose, without authorisation in writing from the parties and the body in charge of the dispute resolution process, any information relating to the dispute before its determination.

(2) A party to a dispute or any person involved in a dispute resolution process shall sign a confidentiality agreement at the initial meeting.

19. Costs

(1) Unless otherwise agreed, each party to an alternative dispute resolution mechanism shall bear its costs.

(2) The costs and expenses of the dispute resolution process shall be shared equally by the parties, and may include—

- (a) the fees of the alternative dispute resolution practitioner;
- (b) the costs of the venue;
- (c) the charges incidental to the alternative dispute resolution process; and
- (d) any costs in respect of an expert witness.

(3) For purposes of paragraph (2)(d), the alternative dispute resolution practitioner shall consult the parties before inviting an expert witness.

(4) In assessing the costs of the alternative dispute resolution process adopted, the parties shall apply the prevailing fee guidelines of the recognized institution.

20. Reporting

The Technical Committee shall compile a report on the disputes determined under these Regulations which report shall form part of the quarterly report submitted to the Summit and the Council pursuant to section 14 of the Act.

21. Guidelines

The Cabinet Secretary may, in consultation with the Council and the Technical Committee, issue Guidelines for the better carrying out of the provisions of these Regulations.

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SCHEDULE

FORMS

(r. 7(8))

NOTICE OF INTENTION TO DECLARE AN INTERGOVERNMENTAL DISPUTE BETWEEN

AND

To :

(name)

(address)

Take notice that (*insert name*)
 being a party to the negotiations/consultations of the issues arising out
 of (state the precise issue in controversy), and
 having failed to reach an amicable settlement, we intend to declare a dispute
 between (Party A) and
 (Party B)

Take Further Notice THAT we will formally declare a dispute within Seven Days
 of the receipt of this notice, unless the following steps/measures are under taken

- (a)
 (b)
 (c)

Dated at this day of 20

Name

Designation

Signature

SEALED WITH THE COMMON SEAL OF

(r. 8(1))

INTERGOVERNMENTAL DISPUTE DECLARATION FORM BETWEEN

AND

To:

..... (name)*

..... (address)

DECLARATION OF A DISPUTE

Take Notice that following the lapse of the Notice of intention to declare a
 dispute dated the (date of the notice) and upon failure
 to amicably resolve the issues in controversy, we
 (Party A) hereby formally declare a dispute between (Party
 A) and (Party B) in relation to (the nature of
 dispute)

The parties have in compliance with the provisions of the Intergovernmental
 Relations Act (Cap. 265F) and the Intergovernmental (Alternative Dispute
 Resolution) Regulations, 2018 held the requisite consultations/negotiations/
 conciliations.

Take further notice that the Technical Committee/Council/Intergovernmental Structure to which the declaration is made, shall within 21 Days of receipt of this Notice of formal declaration convene an initial meeting between the parties in accordance the Intergovernmental (Alternative Dispute Resolution) Regulations, 2018.

Dated at this day of 20

Name

Designation

Signature

SEALED WITH THE COMMON SEAL OF

*NOTE:

To be served upon

(a) the relevant parties;

(b) the line ministry;

(c) the Cabinet Secretary.
