

## **THE ASSUMPTION OF THE OFFICE OF PRESIDENT BILL, 2012**

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## **THE ASSUMPTION OF THE OFFICE OF PRESIDENT BILL, 2012**

**A Bill for AN ACT of Parliament to provide for the procedure and ceremony for the assumption of the Office of President by the President-elect, in accordance with Article 141 of the Constitution and for connected purposes**

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

### **PART I—PRELIMINARY**

#### **Short title and commencement.**

1. (1) This Act may be cited as the Assumption of the Office of President Act, 2012 and shall come into force upon the announcement of the date of the first elections under the Constitution.

#### **Interpretation.**

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

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to internal security;

"certificate of inauguration" means a certificate signed by the President upon being sworn in;

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"Committee" means the Assumption of the Office of President Committee established under section 5;

"facilities" include an office, furniture, office machines and equipment, a house and a vehicle;

"President-elect" means the person elected as President under Article 139 or 140 of the Constitution and who has not assumed office under Article 141(3) of the Constitution;

"public officer" has the meaning assigned to it under Article 260 of the Constitution.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression—

- (a) "Cabinet Secretary" shall be construed to mean "Minister";
- (b) "Principal Secretary" shall be construed to mean "Permanent Secretary"; and
- (c) "Secretary to the Cabinet" shall be construed to mean the "Permanent Secretary, Secretary to the Cabinet and the Head of Public Service".

### **Application.**

3. The provisions of this Act shall apply —

- (a) to the assumption of the Office of President by a President - elect; and
- (b) with necessary , modification, to the assumption of the Office of President by the Deputy President or the Speaker of the National Assembly under Article 146 (2) of the Constitution.

### **Guiding principles.**

4. In the performance of the functions and exercise of powers under the Constitution and this Act, the Committee shall act in accordance with Article 141 of the Constitution and be guided by the values and principles set out in Article 10 of the Constitution.

## **PART II - ESTABLISHMENT OF ASSUMPTION OF THE OFFICE OF PRESIDENT COMMITTEE**

### **Establishment of the Assumption of the Office of President Committee.**

5. (1) There is established a committee to be known as the Assumption of the Office of President Committee.

(2) The Committee shall be an ad hoc committee and shall consist of —

- (a) the Secretary to the Cabinet who shall be the chairperson;
- (b) the Attorney - General;
- (c) the Principal Secretary in the ministry responsible for matters relating to internal security;
- (d) the Principal Secretary in the ministry responsible for matters relating to finance;

- (e) the Principal Secretary in the ministry responsible for matters relating to foreign affairs;
  - (f) the Principal Secretary in the ministry responsible for matters relating to information and communication;
  - (g) the Principal Secretary in the Ministry for the time being responsible for matters relating to constitutional affairs;
  - (h) the Chief of the Kenya Defence Forces;
  - (i) the Director - General of the National Intelligence Service;
  - (j) the Inspector - General of the National Police Service;
  - (k) the person in charge of the administration of the affairs of State House;
  - (l) the Clerk of the National Assembly;
  - (m) the Chief Registrar of the Judiciary;
  - (n) three persons nominated by the President -elect;
  - (o) clerk of the Senate; and
  - (p) Secretary to the Intergovernmental Relations Secretariat, appointed under the law relating to intergovernmental relations.
- (2) For the purposes of the assumption of office of the President elected during the first general elections under the Constitution, the members of the committee referred to under paragraphs (o) and (p) shall not constitute the membership of the Committee.
- (3) The chairperson of the Committee shall convene the first meeting of the Committee at least thirty days before the date of the general elections.
- (4) The members of the Committee shall, at the first meeting of the Committee, elect from among their number, a secretary who shall be responsible for taking minutes and keeping the records of the Committee.
- (5) A vacancy in the membership of the Committee shall not affect the decisions of the Committee.
- (6) The quorum for the conduct of the business at a meeting of the Committee shall be two thirds of all the members of the Committee.

**Functions and powers of the Committee.**

6. (1)The functions of the Committee shall be to—

- (a) facilitate the handing over process by the outgoing President to the President-elect;
  - (b) organise for the security of the President-elect;
  - (c) organise for the necessary facilities and personnel for the President-elect;
  - (d) co-ordinate the briefings of the President-elect by relevant public officers;
  - (e) facilitate communication between the outgoing President and the President-elect;
  - (f) prepare the programme and organise for the swearing in ceremony; and
  - (g) carry out any other activity necessary for the performance of its functions under this Act and perform any other function assigned to it under any other written law.
- (2) The Committee shall have all powers necessary for the execution of its functions under the Constitution, this Act and any other written law.

**Sub-committees of the Committee.**

7. (1) The Committee may from time to time, establish sub-committees for the better carrying out of its functions under this Act.

(2) The Committee may co-opt into the membership of a sub- committee established under subsection (1), persons whose knowledge and skills are considered necessary for the functions of the Committee.

**Procedures of the Committee.**

8. Except as otherwise provided in this Act, the Procedures of the Committee may determine its own procedure.

**PART III — ARRANGEMENTS FOR ASSUMPTION OF OFFICE BY THE  
PRESIDENT-ELECT**

**Security detail NO. 24 of 2011**

9. Upon the declaration of the final results of a presidential election by the Commission under Article 138 of the Constitution and section 39 of the Elections Act, the Committee shall ensure that the President-elect and Deputy President-elect are accorded adequate security.

**Security briefing.**

10. The Committee shall ensure that the President-elect under section 8 receives security briefings from the respective national security organs.

**Public officers to provide required information.**

**11.** (1) The President-elect shall, in consultation with the Committee, carry out such preparations as may be necessary for the purpose of assuming office.

(2) The President – elect may, in carrying out preparations under subsection (1), request for information from a public officer as the President-elect may consider necessary.

(3) A public officer from whom information is requested under subsection (2) shall provide the information within a reasonable time.

(4) A public officer who fails to comply with the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

## **PART IV— THE SWEARING-IN CEREMONY**

### **Swearing –in ceremony.**

**12.** (1) The swearing in of the President - elect shall be conducted in a public ceremony held in the capital city in accordance with Article 141 of the Constitution.

(2) The Committee shall publish, by notice in the Gazette, the date and place for the conduct of the swearing-in ceremony.

(3) The day on which the President-elect is sworn in shall be a public holiday.

### **Taking of oath and signing of certificate of inauguration.**

**13.** (1) The President-elect shall, during the swearing in ceremony, take and subscribe the oath or affirmation of allegiance and the oath or affirmation for the execution of the functions of office in accordance with Article 141 of the Constitution.

(2) The oath or affirmation under subsection (1) shall be administered to the President-elect by the Chief Registrar before the Chief Justice or in the absence of the Chief Justice, the Deputy Chief Justice not earlier than 10.00 am and not later than 2.00 pm.

(3) Upon taking or subscribing to the oath or affirmation under subsection (1), the President shall sign a certificate of inauguration in the presence of the Chief Justice or, in the absence of the Chief Justice, the Deputy Chief Justice.

### **Handing over of instruments of power and authority.**

**14.** (1) Upon signing the certificate of inauguration, the outgoing President shall hand over to the President the following instruments of power and authority—

(a) a sword; and

(b) the Constitution.

(2) The provisions of this section shall not apply where the incumbent is re-elected into office.

### **Swearing in of the Deputy President-elect.**

**15.** The Deputy President-elect shall take and subscribe the oath or affirmation of allegiance and oath or affirmation for the execution of the functions of office in accordance with Article 148 of the Constitution.

### **Inauguration speech.**

**16.** The President shall, upon the swearing in of the Deputy President elect, give an inauguration speech to the nation.

## **PART V — MISCELLANEOUS PROVISIONS**

### **Security.**

**17.** The Inspector-General of the National Police Service shall ensure the provision of adequate security during the conduct of the swearing in ceremony.

### **Succession generally.**

**18.** The day to day functioning of the government before and during the assumption of office by the President-elect shall be subject to the constitutional provisions regarding transition and succession of institutions, offices, assets and liabilities.

### **Reports of the Committee.**

**19. (1)** The Committee shall, within a period of three months from the date of the swearing in of the President-elect, cause to be prepared a report on the affairs of the Committee.

(2) The Committee shall submit to Parliament the report prepared under subsection (1).

(3) The report shall contain, in respect to the assumption of office by the President-elect under this Act—

(a) the financial statements of the Committee;

(b) a description of the activities of the Committee;

(c) such other statistical information as the Committee considers appropriate relating to its mandate; and

(d) any other information relating to its functions that the Committee considers necessary.

(4) The Committee shall cause the report to be published in the Gazette and in such other manner as the Committee may determine.

### **Management of information and records.**

**20.** (1) The Committee shall publish and publicize all important information within its mandate affecting the nation.

(2) A request for information in the public interest by a citizen—

(a) shall be addressed to the chairperson or such other person as the Committee may for that purpose designate;

(b) may be subject to the payment of a reasonable fee in instances where the Committee incurs an expense in providing the information; and

(b) may be subject to confidentiality requirements of the Committee.

(3) Subject to Article 35 of the Constitution, the Committee may decline to give information to an applicant where —

(a) the disclosure of such information is undesirable in public interest;

(b) the information requested is at a deliberative stage by the Committee;

(c) failure of payment of the prescribed fee; or (d) failure of the applicant to satisfy confidentiality requirements by the Commission.

(4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section.

(5) Every member and staff assigned to the Committee shall sign a confidentiality agreement.

### **Amendment of Cap.110.**

**21.** The Public Holidays Act is amended in section 2 by inserting the following new subsection immediately after subsection (4)-

"(5) The day in any year during which a President-elect is sworn in shall be a public holiday."

### **Regulations.**

**22.** The Cabinet Secretary may, in consultation with the Committee, make regulations for the better carrying into effect of the provisions of this Act.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to operationalize the provisions of Article 141 of the Constitution on the procedure and ceremony for the assumption of the Office of President. It achieves this by making provisions on the requisite arrangements for assumption of office by the President-elect including the establishment of the Assumption of the Office of President Committee and providing for the procedure for assumption of the Office of President by the President-elect.

**PART I** — provides for the preliminary provisions, the short title, the interpretation of terms used in the Bill and the application of the Act.

**PART II** — provides for arrangements to be made for assumption of office by the President-elect, including the requirement for State and public officers to brief the President-elect and the provision of necessary temporary facilities including office space for the President-elect.

**PART III** — provides for the establishment, composition, functions and powers of the Assumption of the Office of President Committee.

**PART IV**— provides for the swearing in ceremony to be conducted in the capital city in accordance with the Constitution. It provides that the day the swearing in of the President elect shall be a public holiday. It also provides for the signing of the certificate of inauguration by the President and the handing over the instruments of power and authority by the outgoing President to the President. This Part also provides for the swearing in of the Deputy President-elect.

**PART IV** —sets out a number of miscellaneous and supplementary provisions. These include the provision of adequate security during the conduct of the swearing in ceremony, the amendment of the Public Holidays Act as well as the powers of the Cabinet Secretary to make regulations under the Act.

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

Dated the 22nd June, 2012.

MOHAMED YUSUF HAJI,

*Acting Minister of State for Provincial*

*Administration and Internal Security.*

Section 2 of the Public Holidays Act which it is proposed to amend-

### **Public Holidays**

**2.** (1) The days specified in Part I of the Schedule shall in every year be kept as public holidays.

(2) The days specified in Part II of the Schedule shall, in addition to the days specified in Part I thereof, in every year be public holidays for all persons belonging to the Islamic faith.

(3) The days specified in Part III of the Schedule shall, in addition to the days specified in Part I thereof, in every year be public holidays for all persons belonging to the Hindu faith.

(4) The day in any year during which a general election is held following the dissolution of Parliament shall be a public holiday.