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TANA RIVER COUNTY BILLS, 2019

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THE TANA RIVER COUNTY INSPECTORATE SERVICE BILL, 2019

A Bill for

AN ACT of the County Assembly of Tana River to establish the Tana River County Inspectorate Service and provide for its organization, functions, and powers and for connected purpose

ENACTED by the County Assembly of Tana River, as follows—

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Tana River County Inspectorate Service Act, 2019 and shall come into force fourteen days after publication in the *gazette*.

Interpretation

2. In this Act unless the context otherwise provides—

“Animal” includes domestic animals, wild animals and poultry;

“Arrest” means the act of apprehending a person for suspected of commission of an offence or by the action of Legal authority;

“Board” means the Tana River County Public Service Board established by section 57 of the County Government Act, 2012;

“Compliance enforcement” includes action taken to establish compliance of any requirement by a county law or, enforcing compliance of county laws and pursuing punishment for committing an offence under a county law;

“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matter relating to the Inspectorate;

“County Secretary” means a person for the time being appointed as the County Secretary of Tana River County;

“Court” means a Court having a competent jurisdiction;

“Director” means a person for the time being in charge of the Inspectorate appointed under section 6 of this Act;

“Inspectorate” means the Tana River County Inspectorate established by section 4 of this Act;

“Inspectorate Officer” means an officer appointed to serve as an inspection officer in the Inspectorate;

“Premise” means any building or structure where a regulated activity is undertaken or is about to be undertaken but does not include residential houses;

“Regulated activity” means any activity, trade or business whose undertaking, a county law requires obtaining of a license, permit, approval or payment of service fee, by or to designated county department;

“Designated County Department” means the department responsible for licensing, issuing, collecting services fee or approving an activity;

“Reasonable time” means any period of time between six o’clock in the forenoon and six o’clock in the afternoon of any day of the week;

“Vessel” includes motor vehicles, motorbikes, bicycles or any other motorized or non motorised vessels.

Object of Act

3. The objects of this Act are to—

- (a) give effect to the provisions of the Article 183 of the constitution that require the County Executive Committee to implement county legislation and to implement within the county, national legislation to the extent that the legislation so requires;
- (b) give effect to the provisions of Article 189 (1) (b) of the Constitution that require the county government to assist, support and as appropriate, implement legislation of the national government; and
- (c) establish by law, pursuant to Article 185 (2) of the Constitution, an inspections mechanism so as to ensure the effective performance and exercise of the powers conferred on the county government under Part 2 of the Fourth Schedule of the Constitution.
- (d) to provide for institutional framework for the enforcement of the County laws; and
- (e) to regulate the actions of the Inspectorate Officers.

PART II — THE INSPECTORATE SERVICE

Establishment of the Inspectorate Service

4. (1) There is hereby established a service to be known as the Tana River County Inspectorate Service.

(2) The Inspectorate shall be a department within the County Public Service and shall be under the overall and the independent command of the Chief Inspector.

(3) The Inspectorate shall consist of such maximum number of officers as shall be determined from time to time by the County Public Service.

Functions of the Inspectorate Service

5. (1) The function of the Inspectorate shall be to—

- (a) ensuring adherence to County legislation;
- (b) carry out inspections within Tana River County to ensure compliance with set standards in respect of the functions of the County Government as specified under Part 2 of the Fourth Schedule to the Constitution;
- (c) regulate and control traffic on County roads and keep order and prevent obstructions in the county public places;
- (d) provide security services to the county Government properties;
- (e) inspection for compliance with trade licenses and permits;
- (f) enforcement of barrier cess and royalties;
- (g) prevention of crime in the County;
- (h) perform any other duties that may be prescribed by this Act or any other written law from time to time.

(2) In addition to the matters listed in sub-section 1, the Inspectorate shall be responsible for compliance enforcement of any other matter that it may be required to do so by any other written law or as directed by any department in the County Government.

(3) The Inspectorate shall be deployed in Tana River County for the performance of the functions specified in this Act or any other Law.

Director of Inspectorate

6. There shall be a Director appointed by the Governor with the approval of the County Assembly.

Powers and functions of the Director

7. The Director shall be the head of the Inspectorate and shall be responsible for—

- (a) the day-to-day operations of the Inspectorate;
- (b) the property and business of the Inspectorate; and
- (c) the administration, organization and control of the officers and staff of the Inspectorate.

Qualifications of a Director

8. A person shall qualify to be appointed as Director if that person—

- (a) is a citizen of Kenya;
- (b) satisfies the provisions of Chapter Six of the Constitution;
- (c) holds a degree from a University recognized in Kenya; and
- (d) has at least five years relevant experience at senior management level.

PART III—APPOINTMENT, DEPLOYMENT AND RANKING OF OFFICERS

9. The Board shall, in consultation with the member of the county executive committee, competitively recruit and appoint officers of the Inspectorate.

10. (1) The recruitment and composition of the Inspectorate shall, so as far as is reasonable practicable—

- (a) uphold the principle that not more than two-thirds of the appointments shall be of the same gender;
- (b) reflect the regional and ethnic diversity of the county; and
- (c) ensure equity of opportunity amongst all the Wards in the County.

(2) The Director may issue administrative orders, to be called County Inspectorate Administrative Orders, not inconsistent with the Constitution, this Act or any regulations made thereunder, for the general control, direction and information of the County Inspectorate.

(3) The Director may in consultation with the County Secretary establish Inspectorate stations at all decentralized units as it considers fit for the better performance of its functions.

11. The Board and the Chief Inspector shall develop the various ranks of officers in the Inspectorate and shall publish the ranks in the *Gazette*.

12. (1) The County Assembly shall allocate adequate funds to enable the Inspectorate to perform its functions and budget for the Inspectorate shall be a separate vote.

(2) The Chief Inspector shall ensure that every inspectorate post, outposts and unit is allocated sufficient funds to finance its activities.

13. An Inspectorate officer shall upon being enlisted, make and sign before an officer authorized by Law to administer oaths or before the Chief Inspector, in English or Swahili and such manner as the officer may declare to most binding on his conscience, the oath or the affirmation set out in the First Schedule.

14. (1) No member of the Inspectorate shall engage in any trade, business or employment, if the trade, business or employment is in conflict of interest with the performance of the inspectorate officer's duties.

(2) For the avoidance of doubt, the Law on anti-corruption, the Public Officers Ethics Act 2003, the Leadership and integrity Act and other relevant laws shall apply to members of the Inspectorate.

PART IV—DISCIPLINE OF OFFICERS

15. (1) There is established an internal disciplinary committee that shall be responsible for maintaining discipline in the Inspectorate.

(2) The Committee shall comprise of—

(a) the Chairperson who shall be the Chief Officer in charge of the Inspectorate;

(b) three persons from the Inspectorate chosen by the County Executive Committee Member;

(c) the County Attorney or any other officer designated by him, ^{her} and

(d) a representative from the Board.

(3) In appointing members of the committee, the county executive committee member shall ensure that not more than two thirds of the members are of the same gender.

(4) At any disciplinary proceedings, an officer shall be at liberty to be represented by an advocate of their own choice.

16. (1) The Disciplinary Committee shall have power to—

- (a) receive and investigate a complaint regarding an inspectorate officer;
- (b) summon and interrogate witnesses;
- (c) call for or require the production of documents for examination;
- (d) recommend the appropriate disciplinary action against an officer to the Board.

(2) The disciplinary actions the Committee may recommend include;

- (a) interdiction of an officer;
- (b) suspension;
- (c) dismissal;
- (d) demotion; or
- (e) transfer to another inspectorate unit within the County.

17. (1) Any officer aggrieved by the decision of the Disciplinary Committee may appeal to the High Court.

(2) No further appeal may lie from the decision of the High Court in exercise of its appellate jurisdiction as relates to any act of commission or omission by the Committee.

(3) The right to appeal does not bar any person from applying for judicial review against the decision of the Committee.

PART V—DUTIES AND POWERS OF OFFICERS

18. An Inspectorate officer shall obey and execute all lawful orders in respect of the execution of the duties of office which he may from time to time receive from his superiors in the Inspectorate and may—

- (a) at any reasonable time, enter any place in which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of the Act;
- (b) apprehend any person who is in breach of any law or standards that is within the jurisdiction of the Inspectorate and for whose apprehension sufficient ground exists.

Stoppage

19. (1) An Inspectorate officer on duty may stop any person whom the officer witnesses doing any unlawful act or thing or finds in possession of any

unlawful thing, or suspects of doing any unlawful act or thing or being in possession of anything for which a permit, license, or certificate or pass is required under any written law and has no such permit, license or certificate.

(2) A person who fails to produce a license, permit, certificate or pass within forty-eight hours when called upon to do so, may be arrested without a warrant unless he gives his name and address and otherwise satisfies the officer that he will duly answer any summons or any other proceedings which may issue or be taken against him or her.

(3) An Inspectorate officer who abuses the powers under this section commits an offence.

Power to arrest without a warrant

20. Subject to Article 49 of the Constitution, an Inspectorate officer may without a warrant, arrest a person—

- (a) who is accused by another person of breaching any law within his enforcement jurisdiction in any case in which the inspectorate officer believes upon reasonable ground that such breach has been committed;
- (b) who obstructs an Inspectorate officer while in the execution of duty;
- (c) Who commits a breach of the peace in the presence of the Inspectorate officer;
- (d) in whose possession is found anything which may reasonably be suspected of having committed an offence with reference to that thing;
- (e) whom the Inspectorate officer suspects upon reasonable grounds of having committed or being about to commit a breach of county law; or
- (f) whom the inspectorate officer has reasonable cause to believe a warrant of arrest has been issued.

21. (1) An arrest by an Inspectorate officer, whether with or without a warrant, shall be subject to the rules contained in this section with respect to the arrest and detention.

(2) In the performance of the functions and exercise of the powers of arrest and detention set out in the Constitution and this Act or any other law, an Inspectorate officer shall carry out an arrest and detention only as provided for in law.

(3) An inspectorate officer shall accord an arrested or detained person all the rights set out under Article 49, 50 and 51 of the Constitution.

(4) Every arrested person shall as soon as practically possible but in any event not more than three hours after arrest be produced in Court or handed over to the police station in the jurisdiction within which the offence has been committed to be dealt with in accordance with the law.

(5) An Inspectorate officer who contravenes the provisions of this section shall be personally guilty of a disciplinary offence and may be tried for a criminal offence.

22. An Inspectorate officer shall perform the functions and exercise the powers conferred by the Constitution and this Act by use of non-violent means.

23. (1) An Inspectorate officer may not enter a dwelling place except with the consent of the occupant or upon reasonable suspicion of the commission of an offence and the entry is necessary for the enforcement of the provisions of this Act.

(2) The time of such entry shall be between six O'clock in the forenoon and six O'clock in the afternoon of any day of the week.

(3) An Inspectorate officer who exercises the powers conferred under this section shall—

- (a) identify himself or herself beforehand;
- (b) record the action;
- (c) record the items taken; and
- (d) make a report regarding such exercise and make it available for the superior.

24. An Inspectorate officer who carried out an inspection under this Act shall make a preliminary report immediately upon completion of the inspection in a format prescribed by the County Executive Committee Member, a copy of which shall be retained in premises.

25. (1) No person shall obstruct or hinder, or knowingly make a false or misleading statement to an Inspectorate officer who is carrying out duties under this Act.

(2) A person who contravenes sub-section (1) commits an offence.

26. (1) During an inspection under this Act, an Inspectorate officer may, in addition to the avenues provided for in this Act, seize anything by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

(2) The Inspectorate officer may direct that anything seized be kept or stored in the place where it was seized or that it be removed to another place.

(3) Unless authorized by an officer, no person shall remove, alter or interfere in any manner with any other thing seized.

(4) Any person from whom thing was seized may, within thirty days after the date of seizure, apply to Court for an order of restoration, and shall sent notice containing the prescribed information to the relevant department within the prescribed time and in the prescribed manner.

27. (1) The Court may order that the thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that—

(a) the applicant is entitled to possession of the thing seized; and

(b) the thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

(2) Where upon hearing an application made under sub-section (1) the court is satisfied that the applicant is entitled to possession of the thing seized but is not satisfied with respect to the matter is mentioned in paragraph (b) of sub-section (1), the court may order that the thing seized be restored to the applicant on the expiration of seven days from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before time.

PART VI — OFFENCES

28. (1) It shall be unlawful for an Inspectorate officer to subject any person to torture or other cruel, inhuman or degrading treatment.

(2) An Inspectorate officer who subjects a person to torture commits a criminal offence and shall be liable on conviction to imprisonment of not more than seven years.

(3) An Inspectorate officer who subjects a person to cruel, inhuman or degrading treatment commits a criminal offence and is liable on conviction for not more than seven years.

29. (1) A person other than an Inspectorate officer who, without the written authority of the Chief Inspector—

- (a) put on or assumes, either in whole or in part, the uniform, name, designation or description of designation, resembling or intended to resemble the uniform, name or designation of an Inspectorate officer; or
- (b) in any way pretends to be an Inspectorate officer for any purpose which he would not by law be entitled to do of his own authority, commits an offence and shall be liable on conviction to a fine not exceeding one million shillings or to a term of imprisonment not exceeding ten years or both.

(2) Notwithstanding subsection (1) a person may, with the approval of the Chief Inspectorate use inspector uniform.

30. Any person who—

- (a) assaults, resist or willfully obstructs an Inspectorate officer in the due execution of the inspectorate officer's duties;
- (b) assaults, resist or willfully obstructs any person acting in aid of the Inspectorate officer;
- (c) attacks an animal belonging to the Inspectorate; or
- (d) intentionally or recklessly, destroys inspector property,

Commits an offence and shall be liable in conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for term not exceeding one year or to both.

31. A person who contravenes the provisions of this Act for which no penalty is specified or fails to comply with any order or directions given under this Act, shall be punishable with a fine not exceeding fifty thousand shillings.

PART VII—PROVISIONS ON DELEGATED POWERS

32. The Member of County Executive Committee may, upon recommendation by the Chief Inspector and the prior approval of the County Assembly make rules for the purpose of carrying out the provisions of this Act.

FIRST SCHEDULE s. 13

**OATH/AFFIRMATION OF THE OFFICE OF INSPECTORATE
OFFICER**

I..... having been appointed as an Inspectorate Officer under the Tana River County Inspectorate Service Act, 2018, do solemnly (swear/declare and affirm) that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic, as well as the laws of the County, as legislated by the County Assembly; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, or prejudice. (SO HELP ME GOD).

Sworn/declared by the said

Before me thisday of.....

.....

MEMORANDUM OF OBJECT AND REASONS

The principal object of this Bill is to establish the Tana River County Inspectorate Service and to provide for its organization, functions, and powers and for connected purpose.

This Bill will enable the County Government of Tana River to establish the County Court. This will in turn boost revenue collection from court fees and fines. It should be remembered that Article 187 of the Constitution requires the County Executive Committee to implement county legislation and to implement within the county, national legislation to the extent that the legislation so requires.

Further, Article 189 (1) (b) of the Constitution requires the county government to assist, support and as appropriate, implement legislation of the national government. Lastly, Article 185 (2) of the Constitution mandates Counties to form an inspections mechanism so as to ensure the effective performance and exercise of the powers conferred on the county government under Part 2 of the Fourth Schedule of the Constitution.

Dated the 9th February, 2019.

IBRAHIM SALAH ADOMOW,
Leader of Majority Party.