

**SPECIAL ISSUE**

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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2023**

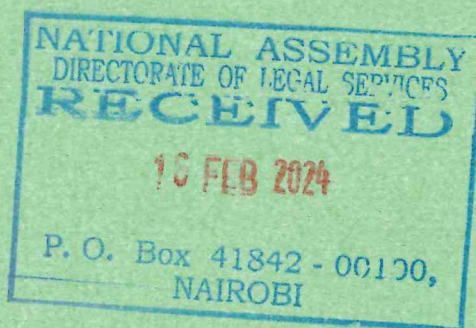
**NAIROBI, 24th November, 2023**

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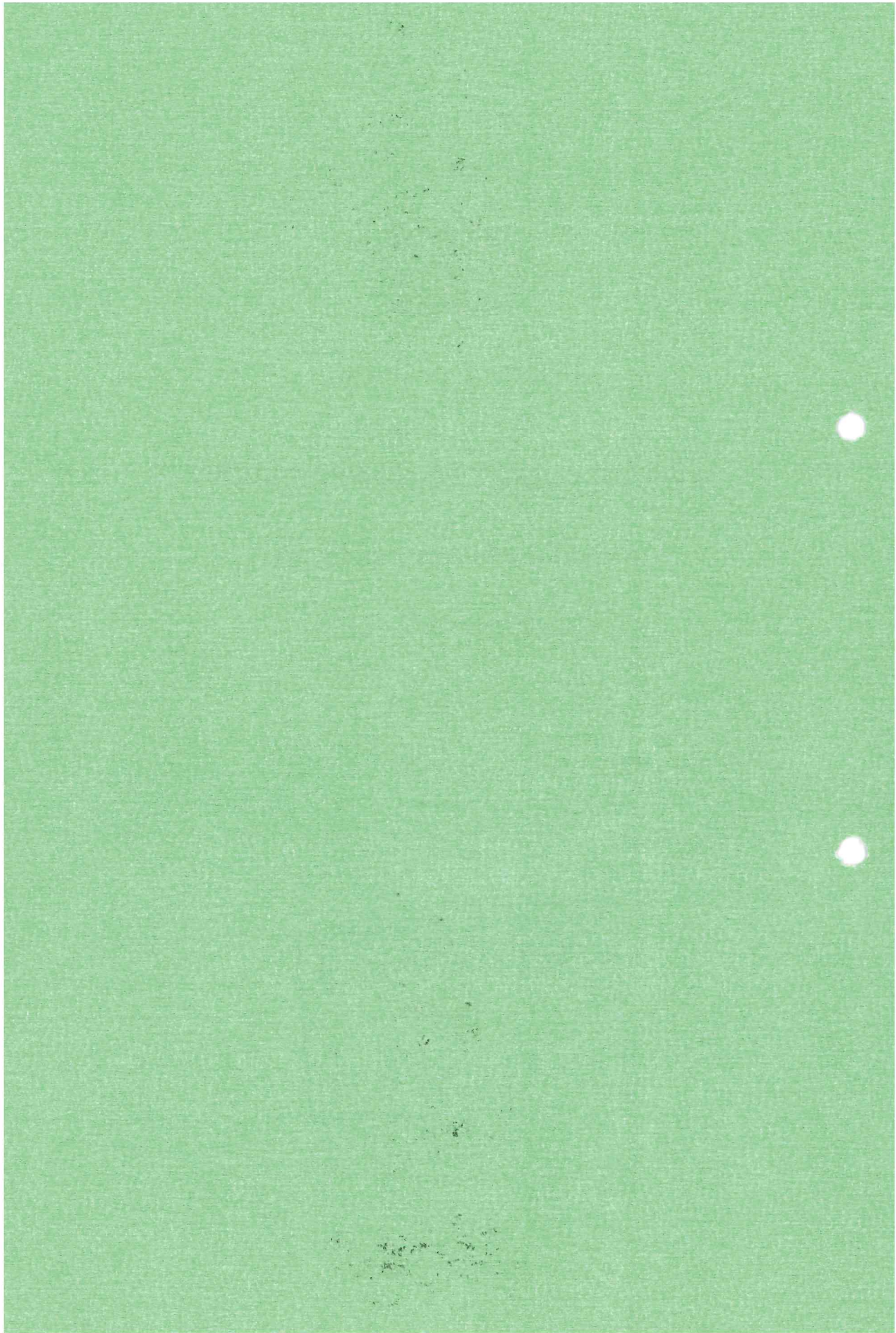
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## **THE KENYA NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT BILL, 2023**

### **A Bill for**

**AN ACT of Parliament to provide for the establishment, roles and functions of the Kenya National Council for Population and Development, for the establishment of the Board of the Council and for connected purposes**

ENACTED by the Parliament of Kenya as follows—

### **PART I—PRELIMINARY**

1. This Act may be cited as the Kenya National Council for Population and Development Act, 2023. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

“Board” means the Board of the Council constituted under section 7;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to population and development;

“Council” means the Kenya National Council for Population and Development established under section 4;

“Director-General ” means the Director-General of the Council appointed under section 16;

“population” means the total number of persons inhabiting in a defined geographical area;

“population issues” means issues that relate to, arise from, or influence reproduction, mortality and migration and other issues that relate to population; and

“population programme” means interventions and projects addressing reproduction, mortality and migration.

3. In fulfilling its mandate, the Council shall act in accordance with the relevant values and principles set out in the Constitution and any other written law. Guiding principles.



## **PART II—ESTABLISHMENT, COMPOSITION AND ADMINISTRATION OF THE COUNCIL**

4. (1) There is established the Kenya National Council for Population and Development which shall be a body corporate with perpetual succession and a common seal.

Establishment of  
the Council.

(2) The Council shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing or lending money;
- (d) entering into contracts; and
- (e) doing or performing such other things or acts necessary for the proper performance of its functions and which may be lawfully done or be performed by a body corporate.

(3) The Council shall be the successor in title to the National Council for Population and Development established under the National Council for Population and Development Order, 2004, which shall cease to have effect immediately upon the commencement of this Act.

L.N 120/2004

(4) The transitional provisions set out in Part V shall have effect upon the commencement of this Act.

5. The objectives of the Council shall be to—

Objectives of the  
Council.

- (a) act as the focal point on matters relating to population and development in the country;
- (b) develop a national population policy; and
- (c) co-ordinate the implementation of population and development activities being carried out by various stakeholders in Kenya.

6. The Council shall—

Functions of the  
Council.

- (a) carry out research and analysis on population issues;
- (b) develop policies, plans and publications relating to population and development;



- (c) identify and advise national and county governments on population issues that may not be adequately or appropriately addressed;
- (d) provide leadership and effective co-ordination and supervision for population programmes;
- (e) establish standards for population programmes in the country;
- (f) monitor and assess the impact of population programmes in the country and make recommendations arising from such assessments;
- (g) create public awareness and mobilize support for population and development programmes in the country;
- (h) undertake advocacy activities to support population issues including family planning;
- (i) mobilize resources for implementation of population programmes; and
- (j) perform any other function for the better carrying out of the purposes of the Act.

7. (1) The management of the Council shall vest in a Board which shall consist of—

Board of the  
Council.

- (a) a non-executive chairperson appointed by the President;
- (b) two independent members, with expertise in population studies, demography or gender, appointed by the Cabinet Secretary in an open and competitive manner provided that not more than one person shall be appointed from one category;
- (c) the Principal Secretary in the Ministry for the time responsible for population and development or his or her representative;
- (d) the Principal Secretary in the Ministry for the time being responsible for finance or his or her representative;
- (e) the Attorney General or his or her representative;
- (f) the Director General of Health;



- (g) the Director General of Basic Education;
- (h) three persons nominated by the joint forum of religious organizations consisting of secretary generals of the Supreme Council of Kenyan Muslims, Kenya Conference of Catholic Bishops, National Christian Churches of Kenya and Evangelical Alliance, provided that not more than one shall be appointed from one organization; and
- (i) the Director General of the Council.

(2) The Director General of the Council shall be an *ex-officio* member of the Board with no voting rights.

(3) Every appointment to the Board under subsection (1) (a)(b) and (h) shall be by name and by notice in the *Gazette*.

**8.** (1) The functions of the Board shall be to—

Functions of the Board.

- (a) determine and oversee the overall strategy and policies of the Council;
- (b) provide strategic direction, leadership and oversight to the Secretariat;
- (c) approve the organizational structure of the Council;
- (d) approve the annual budget of the Council; and
- (e) monitor the Council's performance and ensure sustainability.

(2) The Board may collaborate with such other bodies within or outside Kenya as it may consider desirable or appropriate in furtherance of the purpose for which the Council is established.

**9.** The Board shall have all the powers necessary for the proper performance of the functions of the Council and in particular, the Board shall have powers to—

Powers of the Board.

- (a) control, supervise and administer the assets of the Council in such manner as best promotes the purposes for which the Council is established;
- (b) enter into association with such other bodies or organizations within or outside Kenya as it may



consider desirable or appropriate in furtherance of the purposes for which the Council is established;

- (c) appoint, train, discipline and remove members of staff of the Council;
- (d) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Council; and
- (e) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom.

10. (1) The office of the chairperson or a member shall become vacant if the holder —

Vacancy in the Board.

- (a) dies;
- (b) is absent from three consecutive meetings of the Board without reasonable cause;
- (c) resigns from office by notice in writing addressed to the appointing authority;
- (d) is unable to perform the functions of the office arising out of physical or mental infirmity;
- (e) is negligent or incompetent in the performance of his or her duties;
- (f) is adjudged or otherwise declared bankrupt under any law in force in Kenya;
- (g) violates Chapter Six of the Constitution; or
- (h) is convicted of a criminal offence and sentenced to imprisonment for a term of not less than six months.

(2) If a vacancy arises under subsection (1), the Director-General shall notify the appointing authority of the vacancy within seven days and whenever the vacancy arises in the membership of the Board, the appointing authority shall within thirty days appoint another person to hold the office for a term of three years.

11. A member appointed under section 7 (1)(a)(b) and (h) shall serve for a term of three years and shall be eligible for re-appointment for one further term.

Tenure of office.



**12.** (1) The Board shall establish an Audit Committee and such other committees as it may deem necessary for the performance of its functions.

Committees.

(2) The Board may, with the approval of the Cabinet Secretary, co-opt into the membership of committees established under sub section (1) other persons whose knowledge and skills are found necessary for the performance of the functions of the Board.

(3) The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers of the Board or the performance of any of the functions or duties of the Board.

**13.** The Chairperson, members of the Board and staff of the Council shall be paid such remuneration or allowances as the Public Service Commission may, on the advice of the Salaries and Remuneration Commission, determine.

Remuneration.

**14.** (1) The business and affairs of the Board shall be conducted in accordance with the Schedule.

Meetings of the Board.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

**15.** The Board may, by resolution either generally or in any particular case, delegate to a committee of the Board, or to any member, officer, employee or agent of the Council, the exercise of any powers or the performance of any of the functions or duties the Council is authorized to exercise or perform under this Act.

Delegation by the Board.

**16.** (1) There shall be a Director-General of the Council who shall be competitively recruited and appointed by the Board on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

Director-General.

(2) The Director-General shall be the chief executive officer of the Council.

(3) The Director-General shall —

(a) be responsible for the day-to-day operations of the organization;



- (b) provide leadership to senior management and staff;
- (c) prepare the annual budgets and establish proper internal controls;
- (d) be responsible for the execution and communication of the Board's strategies, decisions and policies;
- (e) develop and recommend to the Board the annual business plans for the organization;
- (f) ensure that the organization has an effective management structure including succession plans;
- (g) ensure that all Board papers are accurately written, are relevant and are availed to the Board members in good time;
- (h) serve as the link between the Board and the management;
- (i) be responsible for the achievement of the objectives of the organization;
- (j) put in place effective administrative structures, processes and systems;
- (k) provide regular, thorough and prompt communication to the Board on key technical, financial and administrative matters; and
- (l) be responsible for stakeholder management and the enhancement of the corporate image of the organization.

17.(1) A person is qualified for appointment as Director-General, if such person—

Qualifications for appointment of Director-General.

- (a) holds a minimum of a master's degree in population and development studies or any other field relevant to the mandate of the Council, from a university recognized in Kenya;
- (b) has at least ten years' experience in the management of a public or private institution; and
- (c) satisfies the requirements of Chapter Six of the Constitution.



**18.** (1) The Director-General may be removed from office by the Board if the Director General—

Removal of  
Director-General.

- (a) is incapacitated by physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a member of the Council;
- (b) is declared bankrupt;
- (c) is guilty of gross misconduct;
- (d) does not perform his or her duties as provided under this Act;
- (e) is convicted of a criminal offence and sentenced to imprisonment;
- (f) is absent for more than four consecutive Board meetings without prior consent from the chairperson, or is not in Kenya for more than six consecutive months; or
- (g) violates chapter Six of the Constitution.

(2) Before removal under subsection (1), the Director-General—

- (a) may be suspended from office by the Board;
- (b) shall be informed in writing of the reasons for the intended removal; and
- (c) shall be given an opportunity to put in a defence against any such allegation.

**19.** (1) The Board shall competitively recruit a suitably qualified person, in terms of the law governing the practice of public secretaries in Kenya, to serve as the Corporation Secretary of the Council.

Corporation  
Secretary.

(2) The Corporation Secretary shall be the Secretary to the Board.

(3) The Corporation Secretary shall be responsible for arranging the business of the Board, Board meetings, the keeping of records of the Board meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

**20.** (1) The Board shall employ such staff, officers or agents of the Council as may be necessary for the performance of the functions of the Council under this Act.

Staff of the  
Council.



(2) The staff of the Council shall be paid such remuneration or allowances as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

### **PART III—FINANCIAL PROVISIONS**

**21.** The funds of the Council shall consist of—

Funds of the Council.

- (a) monies appropriated by the National Assembly for the purposes of the Council;
- (b) monies or assets as may accrue to, or vest in the Council in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) any gifts, grants and other donations as may be made to the Council; and
- (d) monies from any other lawful source accruing to the Council.

**22.** The financial year of the Council shall be the period of twelve months ending on the thirtieth day of June in each year.

Financial Year.

**23.** (1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue, including projected revenues to be generated from commercial activities, and expenditure of the Council for that financial year.

Annual estimates.

(2) The annual estimates shall make provision for all the estimated expenditure of the Council for the financial year concerned, and in particular, shall provide for the—

- (a) payment of salaries, allowances and other charges in respect of the Board members and the staff of the Council;
- (b) operations of the functions of the Council;
- (c) proper maintenance, repair, and replacement of equipment and other movable and immovable property of the Council;
- (d) payment of pensions, gratuities and other charges in respect of retirement benefits for the staff of the Council; and



- (e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may consider appropriate.

(3) The Board shall approve the annual estimates before the commencement of the financial year to which they relate and once approved the annual estimates shall be submitted to the Cabinet Secretary for approval:

Provided that once approved, the sum provided in the estimates shall not be increased without the prior consent of the Board.

(4) The Council shall not incur expenditure except in accordance with the annual estimates approved under sub section (3) or pursuant to an authorization of the Board given with the prior written approval of the Cabinet Secretary.

**24.** (1) The Board shall cause to be kept proper books of accounts of income, expenditure, assets and liabilities of the Council.

Accounts and  
Audit.

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Council together with—

- (a) a statement of the financial performance during the year; and
- (b) a statement of the financial position and any other relevant statements of the Council as at the last day of the year.

(3) The accounts of the Council shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

No. 34 of 2015.

**25.** (1) The Council may invest any of its funds in securities which the Board may, from time to time, approve for that purpose in accordance with guidelines made by the National Treasury.

Investment of  
funds.

(2) The Council may deposit, with such bank as the National Treasury may approve from time to time, any



monies not immediately required for the purposes of the Council.

**26.** (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Council for the immediately preceding year.

Annual reports.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly within three months of the day the Assembly next sits after the report is presented to him or her.

#### **PART IV—GENERAL PROVISIONS**

**27.** (1) The official seal of the Council shall be in the form determined by the Board and shall be kept by the Director-General.

Seal of the Council.

(2) The official seal shall, when affixed to a document and duly authenticated, be judicially and officially noticed and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The common seal of the Council shall be authenticated by the signature of the Corporation Secretary.

(4) Any instrument or contract which, if executed or entered into by a person other than a body corporate would not require to be under seal may be executed or entered into on behalf of the Council by the Director-General or any person generally or specifically authorized by the Board for that purpose.

**28.** No matter or thing done by the Chairperson or any other member of the Board or any officer, employee or agent of the Council shall, if the matter or thing is done bona fide for the purpose of executing any provisions of this Act, render the Chairperson, member, officer, employee, agent or any person acting under the direction of those persons personally liable for any action, claim or demand.

Protection from personal liability.

**29.** The Council may—

Consultancy.

(a) engage persons or organizations with specialized knowledge and skills in different areas where



necessary for the Council to discharge its functions; and

(b) offer consultancy services to other institutions.

**30.** (1) A notice or documents shall be served on the Council by delivering them at the office of the Director General.

Service of documents.

(2) The office of the Director-General shall serve documents or notice to other institutions as need arises.

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

Regulations.

## **PART V—TRANSITIONAL PROVISIONS**

**32.** On the commencement date of this Act, all funds, assets and other property which immediately before such date were vested in the National Council for Population and Development shall, by virtue of this section, vest in the Council subject to all interests, liabilities, obligations and trusts affecting the property.

Transfer of assets and liabilities.

**33.** (1) On the commencement of this Act—

Employees of the Council.

(a) all persons who were employed by the National Council for Population and Development immediately before the commencement of this Act, shall continue in the employment of the Council;

(b) the terms and conditions, including the salary, on which a person referred to in paragraph (a) was employed immediately before the commencement of this Act, shall be no less favorable than those that applied to that person's office immediately before the commencement of this Act; and

(c) there shall be no break in the employment of such persons as a result of this Act coming into force.

(2) Nothing in this Act affects the pension rights of any person referred to in subsection (1).



**SCHEDULE**

(s.14)

**PROVISIONS AS TO THE CONDUCT OF BUSINESS  
AND AFFAIRS OF THE BOARD**

1. (1) The Board shall meet at least four times in every financial year and not more than three months shall elapse between the date of one meeting and the date of the next meeting.

Meetings of the Board.

(2) A meeting of the Board shall be held on such date and at such time as the Board shall decide or, in the absence of such decision or on any occasion on which the chairperson in consultation with the Director General shall decide that a meeting is necessary, on a date and at a time determined by the chairperson.

(3) The chairperson shall upon receipt of an application of at least five members, convene a special meeting of the Board.

(4) Unless three-quarters of the total membership of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(5) The quorum for the conduct of business at a meeting of the Board shall be five including the chairperson or the person presiding.

(6) The chairperson shall preside at every meeting of the Board and in the absence of the chairperson, the members present shall elect one of their members who shall, with respect to that meeting and the business transacted at the meeting, have all the powers of the chairperson.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(8) Subject to paragraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.



(9) The members may appoint committees from among themselves or otherwise, to carry out such general or special functions as may be specified by the Board.

2. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Disclosure of interest by Board members.

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specifically authorized by the Board for that purpose.

Execution of instruments.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.



## **MEMORANDUM OF OBJECTS AND REASONS**

The principal objective of this Bill is to anchor the National Council for Population and Development in law through an Act of parliament. The Council is currently established under Legal Notice No. 120 of 2004. As currently constituted, the Council is unable to prescribe regulations and standards for effective monitoring and co-ordination of population programmes as it is established through an Executive Order. Further to this, other population co-ordinating bodies in the region are established through statute due to international obligations. In addition and pursuant to section 21 of the Statutory Instruments Act, that provides for the life of a statutory instrument as ten years, it is imperative that the Council be established through an Act of Parliament.

**Part I (Clauses 1-3)** of the Bill contains the preliminary matters including the interpretation of terms used and the guiding principles.

**Part II (Clauses 4-20)** of the Bill provides for the establishment, composition and administration of the Council. Clause 4 provides for the establishment of the Council and makes it a body corporate. Clause 5 provides for the objectives of the Council while clause 6 sets out the functions of the Council which includes to carry out research and analysis on population issues. Clause 7 establishes the Board of the Council while clauses 8 and 9 provide for the functions and powers of the Board respectively. Clause 11 provides for the tenure of office of Board members. Clause 16 establishes the office of the Director General who shall be competitively recruited. The clause also provides for the functions of the Director General. Clauses 17 and 18 provide for the criteria for the appointment and removal from office of the Director General.

**Part III (Clauses 21-26)** of the Bill provides for financial provisions. Clause 21 provides for the funds of the Council and clause 22 provides for the financial year of the Council. Clause 24 makes provision for accounts and audit of the funds of the Council.

**Part IV (Clauses 27-31)** of the Bill sets out the general provisions. Clause 27 provides for the seal of the Council and clause 30 for the service of documents. Clause 31 empowers the Cabinet Secretary to make Regulations.

**Part V (Clauses 32-33)** of the Bill contains the transitional provisions relating to the assets and liabilities and staff of the National Council for Population and Development

**The Schedule** sets out the provisions relating to the conduct of business and affairs of the Board.



**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

Clause 31 of the Bill delegates regulation making powers to the Cabinet Secretary. The Bill does not limit fundamental rights and freedoms.

**Statement on whether the Bill concerns county governments**

This Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it affects the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds to be provided for through annual estimates

Dated the 14th November, 2023.

KIMANI ICHUNG'WAH,  
*Leader of the Majority Party.*