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MACHAKOS COUNTY BILLS, 2023

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MACHAKOS COUNTY INSPECTORATE SERVICE BILL, 2023**A Bill for—**

AN ACT of the Machakos County Assembly to create an enabling environment for the exercise of the functions of the County Government under Part 2 of the Fourth Schedule of the Constitution; to provide for the enforcement of Machakos County laws, to establish the Machakos County Inspectorate Service and for connected purposes

ENACTED by the County Assembly of Machakos, as follows—

PART I—PRELIMINARY**Short title**

1. This Act may be cited as the Machakos County Inspectorate Service Act, 2023.

Interpretation

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

“Board” means the Machakos County Public Service Board established under section 57 of the County Governments Act, 2012;

“County” means Machakos County;

“County assembly” means the County Assembly of Machakos;

“County Government” means the County Government of Machakos;

“County Officer” includes any officer employed, directly or indirectly, by the Board or by the County Government through appointment or election;

“Chief Officer” means the Chief Officer responsible for matters relating to the enforcement of County laws;

“Department” means the Department responsible for matters relating to the enforcement of County laws;

“Director” means the person appointed as such under section 7;

“Disciplinary Committee” means the Machakos County Inspectorate Disciplinary Committee established under section 39;

“Executive Committee Member” means the Executive Committee Member responsible for matters relating to the Inspectorate;

“Gazette” means the *Kenya Gazette* or County Gazette;

“Governor” means the Governor of Machakos;

“Inspectorate” means the Machakos County Inspectorate Service established by section 5;

“Inspectorate Officer” means an Officer of the Service appointed to serve as such in the Inspectorate;

“premises” includes—

- (a) commercial buildings;
- (b) drains;
- (c) houses, flats, rooms, bungalows, or maisonettes belonging to or rented for residential purposes by the County Government;
- (d) land;
- (e) open places, covered or enclosed, whether maintained or not under statutory authority, of any place within the limits of the County;
- (f) railway carriage or other conveyances and tents;
- (g) structures of any kind;
- (h) vans; and

“Service” means the Machakos County Inspectorate Service established under section 5.

Objects and Purpose

3. The objects and purpose of this Act are to—
- (a) establish a mechanism for the enforcement of County laws;
 - (b) create an enabling environment for the exercise of the functions of the County Government under Part 2 of the Fourth Schedule of the Constitution;
 - (c) support National Government law enforcement agencies in performing their functions relating to County laws;
 - (d) set out a framework within which the County government will contribute to the protection of the rights of its residents as regards its functions;
 - (e) put in place structures for the management of enforcement services in the County; and
 - (f) make provision for the responsible, judicious, effective conduct of enforcement officers in their work.

Standards of Services

4. In the exercise of the power and performance of the functions conferred by this Act and in attaining the objects and purpose of this Act, the Service shall, among other things—

- (a) have the technical, infrastructural, and administrative competence to ensure that the requirements of the service are fulfilled;
- (b) adopt quality service as a core principle;
- (c) be guided in their activities by the relevant provisions of the Constitution and any other written law; and
- (d) be an institution of exemplary service delivery and technical competence by applying and promoting such other values as the service may by regulations, prescribe.

PART II –THE INSPECTORATE SERVICE**Establishment of the Service**

5. (1) There is established, the Machakos County Inspectorate Service.

(2) The Inspectorate shall be a department within the County Public Service.

(3) The Inspectorate shall consist of such number of officers as may be determined by the Board.

(4) The ranks of the Inspectorate shall consist of—

(a) commissioned officers including the—

- (i) Director who shall be the head of the Service;
- (ii) two Deputy Directors who shall deputize the Director;
- (iii) Chief Inspectors in charge of the Sub-counties; and
- (iv) Inspectors who shall deputize the Chief Inspectors.

(b) non-commissioned officers including—

- (i) senior sergeant;
- (ii) sergeant;
- (iii) corporal; and
- (iv) constable.

Functions of the Service

6. The Functions of the Inspectorate Service are to—
- (a) ensure the enforcement of County laws;
 - (b) prevent the violation of County laws;
 - (c) protect and guard County Government property including public utilities;
 - (d) respond to complaints relating to the violation of County laws;
 - (e) assist National Government law enforcement agencies in the apprehension of violators of County laws;
 - (f) collaborate with National Government law enforcement agencies in the investigation of violations of County laws;
 - (g) assist national government law enforcement agencies in the maintenance of law and order in the County; and
 - (h) perform any other functions assigned under this Act or any other law.

Officers of the Inspectorate

7. (1) The Director and Deputy Director shall be competitively recruited by the Board and appointed by the Governor upon approval by the County Assembly.

(2) A person qualifies for appointment as the Director of the Service if that person possesses the following qualifications—

- (a) a degree in any of the following disciplines from a recognized university—
 - (i) law;
 - (ii) security management;
 - (iii) public administration;
 - (iv) criminology;
 - (v) economics;
 - (vi) sociology; or
 - (vii) psychology.
- (b) has at least ten years working experience in the public service;
- (c) has served in the service in the rank of a Chief Inspector;
- (d) meets the requirements of Chapter Six of the Constitution; and

(e) experience at a senior position in the Police Service shall be an added advantage.

(3) A person qualifies for appointment as a Deputy Director of the Service if that person possesses the following qualifications—

(a) a degree in any of the following disciplines from a recognized university—

- (i) law;
- (ii) security management;
- (iii) public administration;
- (iv) criminology;
- (v) economics;
- (vi) sociology; or
- (vii) psychology.

(b) has at least five years working experience in the public service;

(c) has served in the Service in the rank of a Chief Inspector;

(d) meets the requirements of Chapter Six of the Constitution; and

(e) experience at a senior position in the Police Service shall be an added advantage.

(4) All other officers of the Inspectorate shall be competitively recruited by the Board on such terms and conditions as it may determine.

(5) The Director and Deputy Directors shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

Removal from office

8. (1) The Director and the Deputy Directors may be removed from office on any of the following grounds—

- (a) incompetence;
- (b) gross misconduct;
- (c) abuse of office;
- (d) gross violation of the Constitution or any other law;
- (e) inability to perform the functions of the office due to physical or mental incapacity;
- (f) being convicted of an offence; or

(g) bankruptcy.

(2) Any person may, in writing, petition to the Board for the removal of the Director or the Deputy Director.

(3) The Board shall consider the petition under sub-section (2) and make recommendations to the County Assembly.

(4) In considering a petition under sub-section (3), the Board shall afford the Director or the Deputy Director an opportunity to defend themselves either in person or through a legal representative.

Vacancy of office

9. (1) The office of the Director or Deputy Director becomes vacant when the holder—

- (a) resigns, by notice in writing, addressed to the Board;
- (b) is removed from the office in accordance with this Act; or
- (c) dies.

(2) Within three months of the occurrence of a vacancy under sub-section (1), the Board shall recruit another person to fill the vacancy.

Functions and powers of the Director

10. The functions and powers of the Director are to—

- (a) oversee the general management of the Inspectorate Service;
- (b) ensure the effective and efficient day-to-day administration and operation of the Service;
- (c) prepare budgetary estimates and develop a policing plan before the end of each financial year, setting out the priorities and objectives of the Service and justifications thereof;
- (d) determine the distribution and deployment of Inspectorate Officers;
- (e) ensure the implementation of policy and operational direction of the Service;
- (f) determine the establishment, maintenance and jurisdiction of Inspectorate stations, posts, outposts, unites and unit bases;
- (g) oversee the establishment and management of Inspectorate training institutions and programmes for Inspectorate recruits and other Officers;
- (h) ensure cooperation and collaboration of the Service with the National Police Service and other relevant national institutions;

- (i) promote co-operation with other inter-county agencies; and
- (j) perform any other function necessary for the meeting of the objectives of this Act.

Functions and powers of the Deputy Director

- 11.** The functions and powers of the Deputy Director are to—
- (a) be the principal assistant to the Director;
 - (b) oversee the implementation of County laws and policies;
 - (c) co-ordinate enforcement operations in the County;
 - (d) monitor and assess the performance of Inspectorate Officers;
 - (e) recommend training and training programs for the Inspectorate Officers;
 - (f) extend professional knowledge and specialized experience to the Service;
 - (g) prepare a training curriculum and program for Inspectorate Officers;
 - (h) head the Inspectorate Training programme; and
 - (i) co-ordinate any other operations of the Service as may be directed from time to time.

Limitation of fundamental rights and freedoms of Inspectorate Officers

12. (1) Subject to this section, an Inspectorate Officer is entitled to all rights set out in the Constitution.

(2) Subject to Article 24, 25 and 35 of the Constitution, the rights and fundamental freedoms of an Inspectorate officer may be limited for purposes, in the manner and to the extent set out by law.

(3) A limitation of a right or fundamental freedom under subsection (2) shall be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and shall be limited only for purposes of ensuring—

- (a) the protection of classified information;
- (b) the security and safety of Inspectorate Officers;
- (c) the independence and integrity of the Inspectorate; and
- (d) the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others.

(4) A limitation of a right or fundamental freedom under this section shall relate to—

- (a) the right to privacy to the extent of allowing—
 - (i) a person's home or property to be searched;
 - (ii) possession to be seized;
 - (iii) information relating to a person's family or private affairs to be required or revealed; or
 - (iv) the privacy of a person's communications to be investigated.
- (b) the freedom of expression to the extent of limiting the freedom to impart information for Inspectorate Officers;
- (c) the right to access to information to the extent of protecting the Inspectorate from—
 - (i) demands to furnish persons with information; and
 - (ii) publicizing information affecting the County or, where applicable, the nation;
- (d) the freedom of association to the extent of limiting the right of Inspectorate Officers from joining or participating in the activities of any kind of association other than those authorized under this Act;
- (e) the right to assemble, demonstrate, picket and petition public authorities to the extent of ensuring discipline in the Inspectorate; and
- (f) the right to fair labour relations to the extent of prohibiting Inspectorate Officers from joining and participating in the activities of a trade union and going on strike.

(5) This section does not affect the right of Inspectorate Officers to vote in general elections.

PART III – RECRUITMENT AND TRAINING OF INSPECTORATE OFFICERS

Recruitment of Inspectorate Officers

13. (1) In consultation with the Director, the Board shall recruit officers of the Service.

(2) In recruiting officers of the Service, the Board shall have regard to gender balance and equal representation across the County.

(3) The Director shall issue a certificate of appointment to every Inspectorate Officer and shall be carried at all times and produced on demand.

Qualifications of the Inspectorate Officers

14. Inspectorate Officers prohibited from conflict of interest, persons appointed as Inspectorate Officers shall possess such minimum qualification as may be prescribed by the Board.

Inspectorate Officers prohibited from conflict of interest

15. No Inspectorate Officer 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.

Training programmes

16. The County shall establish and develop Inspectorate Service training programmes for the Inspectorate Officers.

Training of Inspectorate Officers

17. The Executive Committee Member shall, in consultation with the Service—

- (a) develop an Inspectorate Training Policy;
- (b) approve the training curriculum of the Service;
- (c) oversee the implementation of the Inspectorate Training Policy; and
- (d) regulate and review the inspectorate training curriculum to ensure its relevance.

PART IV—POWERS AND DUTIES OF THE INSPECTORATE OFFICERS

Notices

18. Any notice required to be served shall be deemed to have been so served upon a person if it is—

- (a) served upon the individual in person;
- (b) served upon an owner of the subject premises; or
- (c) placed in a conspicuous place on premises, structure or building owned or occupied by the person.

Power to arrest

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19. An Inspectorate Officer may arrest with or without a warrant any person and deliver to the custody of a police officer, without delay, subject to the Constitution, the Criminal Procedure Code and any other law, if such person—

- (a) contravenes the County laws;
- (b) commits a cognizable offence;
- (c) obstructs or assaults—
 - (i) an Inspectorate Officer, in execution of lawful duties, or
 - (ii) any other County Officer, lawfully performing their duties within the County;
- (d) aids another person in commission of any offence in contravention of County laws; or
- (e) is found in possession of anything which may reasonably be suspected to be stolen property or who may reasonably be suspected to have committed an offence with reference to that property.

Power to seize and hold a thing

20. An Inspectorate Officer may seize and hold in an Inspectorate yard; motorized and non-motorized vehicles, vessels, animals, goods or any other thing which such an Officer believes to have been used in the contravention of County laws.

Power of entry

21. (1) An Inspectorate Officer may, in the performance of a duty under this Act or other County law—

- (a) enter any premises in which a regulated activity is undertaken and examine or make enquiries to determine whether this Act or other applicable County law is complied with;
- (b) require the production of, inspect, examine a licence, register, record or other document relating to a regulated activity; or
- (c) carry out periodic inspections of premises in which a regulated activity is ordinarily carried out to ensure compliance with this Act or other applicable County law is complied with; or

- (d) with the written approval of the Director—
- (i) order the immediate closure of any premises which is likely to cause harm contrary to this Act or any other County law;
 - (ii) issue a written notice to require the owner or operator of premises to implement a remedial measure; or
 - (iii) issue a notice requiring the owner or operator of premises to cease any unlawful activities; or
 - (iv) issue a notice requiring the owner or operator of premises to take appropriate remedial measures, including the installation of new plant and machinery within such time as may be contained in the notice.

(2) An Inspectorate officer who is authorized in writing by the Service, may forcefully enter into any County licensed premises, vehicle, or vessel if the owner or occupier of such, unreasonably denies entry to that Inspectorate officer or other officer of the Service.

(3) The owner or operator of premises may reopen premises closed down under this section with the written approval by the Director.

Power to inspect

22. (1) An Inspectorate Officer may at any reasonable time enter into any premises and inspect or ascertain whether permits, licenses, record, floor plans or any other licensing instruments are valid and approved in accordance with the applicable law.

(2) An Inspectorate Officer who carries out an inspection under this Act shall make a preliminary report immediately upon completion of the inspection in a prescribed format, a copy of which shall be retained in the premises.

(3) The power under sub-section (1) shall be exercised in accordance with the Finance Act or other County law.

Seizure during inspection

23. (1) Where an Inspectorate officer has reasonable grounds to suspect that any property has been, or is being used to carry out regulated activity contrary to this Act or other County law, the Inspectorate officer may make an ex parte application to the relevant court for an order to seize that property and for any other order.

(2) Despite sub-section (1), where it is not reasonably practical, having regard to the urgency of the situation, to obtain a warrant, the Inspectorate Officer may seize the property without a warrant.

(3) The Inspectorate Officer who seizes property under this section shall take a full inventory of such property at the time of such seizure.

(4) An Inspectorate Officer may direct that property seized under this section be kept or stored in the place where it was seized or that it be removed to another place.

(5) Unless authorized by the Officer, no person shall remove, alter or interfere in any manner with any of the items seized.

(6) Where an Inspection officer seizes property under this section, the Inspection Officer shall within forty-eight (48) hours of such seizure, file a report with the relevant court and apply for an order for the detention of the property.

(7) If the forty-eight (48) hours under sub-section (5) end outside the ordinary court hours, or on a day that is not an ordinary court day, the Inspectorate Officer shall report the seizure on the next court day.

(8) An order for the detention of property made under sub-section (1) shall be valid for sixty (60) days and may, on application by the Inspectorate Officer.

(9) Where a relevant court makes a detention order in respect of perishable property, the court may authorize the Inspectorate to dispose of such property.

Order for restoration

24. A court may order that property seized under section 21 be restored to the owner if, on hearing the application, the court is satisfied that—

- (a) there are no longer any reasonable grounds to continue holding the property;
- (b) within six (6) months of the detention order, no proceedings are instituted in court for the offence in respect of which the property was seized; or
- (c) the seized property is not required as evidence in any proceedings in respect of an offence under this Act.

Power to supervise

25. An Inspectorate Officer may supervise any revenue collection by revenue officers in accordance with the Finance Act and ensure that such revenue is duly collected and remitted to the lawfully authorized person.

Power to evict

26. An Inspectorate Officer who finds or has a reason to believe that a person has committed an offence in any public place, may evict such person in accordance with this Act or any other County law.

Power to impound Vessel

27. (1) Where an Inspectorate Officer reasonably believes that a vessel is parked or controlled in a manner that is contrary to County law, without payment of the prescribed parking fees, the Officer may impound the vessel by clamping or towing the vessel to the nearest Inspectorate facility.

(2) The power to impound shall be exercised in accordance with any relevant national and County law.

Power to control traffic

28. An Inspectorate Officer may control and regulate traffic within the County in accordance with County laws.

Power to stop vehicles

29. (1) An Inspectorate Officer may stop a vehicle that is reasonably believed by that Officer, to be operated in contravention of County laws.

(2) Where it is necessary for the enforcement of County laws, an Inspectorate Officer may erect barriers across any roads, streets or any other public place.

(3) Any driver of a motor-vehicle who fails to stop at a barrier or who, upon being signaled by an Inspectorate Officer to stop, fails to stop commits an offence.

Identification of an Officer

30. (1) An Inspectorate Officer shall produce a Service identity document when requested to do so in the course of exercising the powers conferred under this Act.

(2) An Inspectorate Officer shall wear Inspectorate uniform embedded with distinctive identification to ensure visibility and recognition by members of the public.

Use of non-violent means

31. (1) An Inspectorate Officer shall perform the functions and exercise the powers conferred by the Constitution, this Act and any other law by use of non-violent means.

(2) An Inspectorate Officer may only use reasonable force in the performance of duty as a last resort and as is prescribed under the Fifth Schedule.

Reporting System

32. The Inspectorate Service shall establish a record-keeping and reporting system on compliance and enforcement action undertaken pursuant to this Act and the respective County legislations.

Exercise of powers in accordance with the law

33. (1) An Inspectorate Officer shall at all times, uphold law and order while on and off duty.

(2) The powers, functions, and duties of Inspectorate Officers shall be carried out with due regard to the Constitution, the County law and any other law.

Oath of office

34. All Inspectorate Officers shall take and subscribe to the oath or affirmation set out in the Third Schedule.

PART V – DISCIPLINE

Governing law

35. Every Inspectorate Officer shall be subject to—

- (a) this Act or Regulations made under this Act;
- (b) the disciplinary procedures of the Service; and
- (c) the Code of Conduct; and
- (d) any other national or County law governing the Service.

Responsibilities of Inspectorate Officers

36. (1) Inspectorate Officers shall conduct themselves in an irreproachable manner that brings respect and trust to the office they hold while they are on duty and off duty.

(2) An Inspectorate Officer shall obey and execute all lawful orders in respect of the execution of the duties of office which the Officer receives from superior Inspectorate Officers and any other competent authority.

(3) Officers with command and supervisory responsibilities have the primary responsibility to uphold and enforce discipline within the Inspectorate Service.

(4) Senior Inspectorate Officers shall exercise command and disciplinary control over junior officers and shall be responsible for their conduct whether in action or omission.

(5) An Inspectorate Officer shall protect and maintain any public property placed under their care.

(6) An Inspectorate Officer shall use resources placed at their disposal in the course of duty in a responsible and lawful manner.

(7) An Inspectorate Officer shall respect and cultivate a cordial and respectable relationship with members of the public and shall readily provide assistance to them in deserving circumstances.

Offences against discipline

37. The offences against discipline are as prescribed under the Fourth Schedule.

Disciplining Officers

38. (1) Any Inspectorate Officer who commits an offence against discipline is liable to be punished by—

- (a) a reprimand;
- (b) an order of restitution;
- (c) stoppage of salary increments for a specified period of time but not exceeding one year;
- (d) stoppage of salary for a period not exceeding six (6) months;
- (e) reduction in rank;
- (f) suspension for a period not exceeding six (6) months;
- (g) transfer to another enforcement unit within the County;
- (h) dismissal from the Service; or
- (i) any combination of the punishments provided under this subsection.

(2) The Director shall keep a record of all the persons who commit disciplinary offences, the nature of offences, date of committing the offences and the punishments imposed.

(3) All disciplinary proceedings under this Part shall be in accordance with the Service disciplinary procedures as approved by the Board and shall comply with Article 47 of the Constitution.

Inspectorate Disciplinary Committee

39. (1) There is established the Inspectorate Disciplinary Committee.

(2) The Committee shall comprise of—

- (a) the Deputy Director in charge of Administration who shall be the Chairperson;
- (b) a representative of the County Attorney not below the level of a Director;
- (c) a representative of the County Department responsible for matters relating to the Inspectorate Service not below the level of a Director;
- (d) two (2) representatives of the County Public Service Board not below the level of a Director; and
- (e) two (2) Inspectorate officers not below the rank of Inspector.

(3) The Inspectorate Disciplinary Committee shall have power to—

- (a) receive and investigate disciplinary complaints against Inspectorate Officers;
- (b) summon and interrogate witnesses in a regarding a matter under investigation;
- (c) call for and require the production of any documents for examination; or
- (d) recommend the appropriate disciplinary action against an Inspectorate Officer to the Board.

(4) The Inspectorate Disciplinary Committee may recommend that any Inspectorate Officer who it finds liable for any disciplinary offence to be subjected to any of the disciplinary actions prescribed under section 38.

PART VI—FINANCIAL PROVISIONS

Financial year

40. The financial year of the Service shall be the period of twelve months commencing on the first day of July and ending on the thirtieth day of June in each year.

Sources of funds for the Service

- 41.** The funds of the Service shall consist of—
- (a) such moneys as may be appropriated by the County Assembly for purposes of the Service; and
 - (b) such monies as may be lawfully granted, donated or lent to the Service from any other source.

Annual estimates

42. (1) At least three months before the commencement of each financial year, the Director shall prepare and forward to the Chief Officer, estimates of the revenue and expenditure of the Service for that year in accordance with the provisions of the Public Finance Management Act, No. 18 of 2012 and the laws relating to public audit.

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

- (a) the payment of the salaries, allowances and other charges in respect of the Inspectorate officers and other staff of the Service;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits payable to staff of the Service;
- (c) the proper maintenance, repair and replacement of movable and immovable property of the Service;
- (d) the funding of operations, training, research and development of activities of the Service; and
- (e) the creation of such funds to meet future and contingent liabilities in respect of benefits, insurance or replacement of buildings, installations, equipment and in respect of such other matters as the Service may consider appropriate.

(3) The Director shall prepare and forward annual estimates to the Service in accordance with sub-section (1) and (2).

Accounts and audit

43. (1) The Director shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Service.

(2) The annual accounts of the Service shall be audited and reported in accordance with the law relating to public audit.

PART VII—OFFENCES

Impersonation of an Inspectorate Officer

44. (1) A person commits an offence who, not being an Inspectorate Officer or other officer of the Service—

- (a) puts on or assumes, either in whole or in part, the uniform, name, designation or description of an inspectorate officer, or a uniform, name or designation, resembling or intended to resemble the uniform, name or designation of an inspectorate officer; or
- (b) in any way impersonates an Inspectorate Officer.

(2) A person who is found guilty under sub-section (1) shall be liable on conviction to an imprisonment term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both.

Assault in execution of duty

45. (1) A person commits an offence who—

- (a) assaults, resists or wilfully obstructs an Inspectorate Officer in the execution of the inspectorate officer's duties;
- (b) assaults, resists or wilfully obstructs any person acting in aid of an Inspectorate Officer;
- (c) attacks an animal belonging to the service; or
- (d) intentionally or recklessly, destroys inspectorate property.

(2) A person who is found guilty under sub-section (1) shall be liable on conviction to an imprisonment term not exceeding seven months or to a fine not exceeding one hundred thousand shillings, or to both.

Obstruction of an Officer

46. A person who willfully resists arrested, obstructs or interferes with the duties of an Inspectorate Officer commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand shillings or to an imprisonment for a term not exceeding six (6) months or both.

Inspectorate Officer not to torture or assault

47. (1) An Inspectorate Officer shall not torture, assault or subject any person to cruel, inhuman and degrading treatment.

(2) An Inspectorate Officer who commits the acts described in subsection (1) commits an offence and is liable upon conviction to a term of imprisonment of not exceeding seven years.

General penalty

48. Any person who commits an offence under this Act for which no penalty is prescribed shall, upon conviction, be liable to a term of imprisonment not exceeding one year or to a fine not exceeding one hundred thousand shillings or to both.

PART VIII—MISCELLANEOUS PROVISIONS**Protection from personal liability**

49. (1) No legal action may be brought against any Inspectorate Officer or other persons appointed or authorized to perform any function under this Act in respect of any act done or omitted to be done by them in good faith and in exercise of or performance of any power, authority or duty conferred or imposed on them under this Act.

(2) Notwithstanding sub-section (1), an Inspectorate Officer shall be personally liable for any act or omission done or committed in the performance of the duties under this Act, having regard to the circumstances of the case, such act or omission is—

- (a) done or committed wilfully or dishonestly by such person;
- (b) due to the negligence of such person; or
- (c) done or omitted to be done by the person in contravention of this Act or any other written law.

Transition

50. All persons who, immediately before the commencement of this Act, were employed as Officers of the Inspectorate shall, upon the commencement of this Act, become Inspectorate Officers in accordance with this Act in corresponding ranks as the Board may designate.

Regulations

51. (1) The Executive Committee Member shall make Regulations for the better carrying into effect of this Act.

(2) Without prejudice to the generality of sub-section (1), regulations under this Act may provide for—

- (a) the Code of Conduct for Inspectorate Officers;
- (b) command structure of the Inspectorate Service;
- (c) Inspectorate Standing Orders;
- (d) establishment of Inspectorate stations, units, bases and yards;
- (e) the conduct of the affairs of the Service;

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- (f) procedures in the Service and its Committees;
 - (g) the management of the Inspectorate Training Programme;
 - (h) disciplinary process;
 - (i) prescribed forms;
 - (j) Inspectorate uniform; and
 - (k) any other matter necessary for the implementation of this Act.

FIRST SCHEDULE
STRUCTURE OF THE COUNTY INSPECTORATE SERVICE

(Section 5 (4))

DIRECTOR
DEPUTY DIRECTOR (ADMINISTRATION) DEPUTY DIRECTOR (OPERATIONS)
CHIEF INSPECTORS
INSPECTORS
SENIOR SERGENTS
SERGENTS
CORPORALS
CONSTABLES

SECOND SCHEDULE
OATH/AFFIRMATION OF OFFICE

(Section 34)

I, (FULL NAMES) do swear/ solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge, perform the functions and exercise the powers conferred upon me by virtue of this appointment without fear, favor, bias, affection, or prejudice.

(SO HELP ME GOD).

Sworn/declared by the said.....
(Name) (Signature)

Before me
(Commissioner for Oaths)

Thisday of20.....

OATH/AFFIRMATION OF SECRECY

I....., (FULL NAMES) do hereby swear/ solemnly affirm that I will not, without due authority, disclose or make known to any person any information acquired by me by reason of the duties performed by me on behalf or under the direction of the Inspectorate Service or by reason of any office or employment held by me pursuant to the Machakos County Inspectorate Service Act. (SO HELP ME GOD)

Sworn/declared by the said.....
(Name) (Signature)

Before me
(Commissioner for Oaths)

Thisday of20.....

THIRD SCHEDULE
OFFENCES AGAINST DISCIPLINE
(Sections 37)

It shall be an offence against discipline for any Inspectorate Officer to—

- (a) unlawfully strike, or use or threaten violence against any Inspectorate Officer,
- (b) use any threatening, obscene, abusive or insulting language, word act in any form to any person;
- (c) use threatening or insubordinate or disrespectful language, word, act or demeanor to any person;
- (d) cause disturbance in any premises of the service;
- (e) be drunk while on duty;
- (f) drink intoxicating liquor or psychotropic substances or drugs, or smoke in uniform when actively engaged on duty in a public place;
- (g) wilfully disobey any lawful command or order;
- (h) be absent from work without leave;
- (i) sleep while on duty;
- (j) leave the place of duty before being regularly relieved;
- (k) resist lawful arrest;
- (l) negligently allow any suspect committed to their charge or who is under their guard;
- (m) without reasonable cause, fail to attend at any parade, instruction class or court or any other duty;
- (n) sell, pawn, lose by neglect, make away with or willfully or negligently damage, or fail to report any loss or damage to, uniform or other article of personal issue or any vehicle or other property committed to their charge belonging to the County or for which the County is responsible;
- (o) be in improper possession of any public or private property;
- (p) commit any act of plunder or wanton destruction of any property;
- (q) be negligent in the performance of duty;
- (r) appear on duty untidy or dirty in clothing or equipment;

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- (s) make or sign any false statement in any document or official record;
 - (t) without proper authority, disclose or convey any information concerning any investigation or other service matter;
 - (u) malingering, or feign any disease or infirmity;
 - (v) without proper authority demands or exacts from any person any carriage, porterage or provisions;
 - (w) commit an act which amounts to corruption under any law in force in Kenya; or
 - (x) make any false statements upon joining the Service;

FOURTH SCHEDULE
CONDITIONS AS TO USE OF FORCE

(Section 31)

1. An Inspectorate Officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result.
2. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the Constitution and the Standing Orders.
3. When the use of force results in injuries —
 - (a) the Inspectorate Officer present shall provide medical assistance immediately and unless there are good reasons, failing to do so shall be a criminal offence; and
 - (b) shall notify relatives or close friends of the injured or affected persons and report the matter to the nearest police station.
4. An Inspectorate Officer who uses any form of force shall immediately, report to the officer superior explaining the circumstances that necessitated the use of force and the supervisor shall judge the rightfulness and decide on the next step, subject to these regulations.
5. It shall be a disciplinary offence for an Inspectorate Officer to fail to report in accordance with these regulations.
6. An Inspectorate Officer shall not tamper or otherwise damage any evidence from the scene of the act.
7. An Inspectorate Officer in uniform shall at all times affix a nametag or identifiable Service number in a clearly visible part of the uniform.

FIFTH SCHEDULE
CODE OF CONDUCT

(Section 35)

1. An Inspectorate Officer shall, in the implementation of this Act or any other law—

- (a) not discriminate against any person;
- (b) respect all persons and their traditions, beliefs and lifestyles if they are compatible with the rule of law;
- (c) exercise fairness, self-control and tolerance; and
- (d) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of the Service.

2. In the exercise of duties in the Service, an Inspectorate Officer shall—

- (a) treat all persons with respect;
- (b) uphold human rights and fundamental freedoms of all persons according to the Constitution;
- (c) take into consideration special needs of marginalized groups;
- (d) avoid conduct that brings disrepute to the Service;
- (e) not bully, abuse, harass or victimise any person;
- (f) not intimidate any person who is the subject to any enforcement action, a complaint or any other person that the officer of the service interacts with in exercise of their duty.

3. An Inspectorate Officer shall—

- (a) not disclose information obtained in the exercise of the officer's duties without lawful authority;
- (b) exercise powers of search or entry only when it is lawful, necessary and proportionate to do so;
- (c) not gather, retain, use or disclose information or data relating to any person for personal benefit.

4. An Inspectorate Officer shall not—

- (a) use their position or office to improperly secure for themselves or any other person, an advantage or disadvantage; and
- (b) use the resources of the Service for personal gain.

5. An Inspectorate Officer shall, in undertaking an enforcement action, give the affected person the reasons for the enforcement action.

6. An Inspectorate Officer shall report any conduct by another officer, which the officer of the Service reasonably believes involves a failure to comply with this code of conduct in accordance with the reporting mechanisms established within the Inspectorate Service.

- (a) an Inspectorate Officer shall declare and register any personal interest in a matter in accordance with the Leadership and Integrity Act.
- (b) an officer of the Service with a personal interest in any matter shall—
 - (i) not exercise enforcement functions in relation to that matter but shall bring the matter to the attention of the Director; and
 - (ii) not seek to improperly influence a decision about the matter.

7. An Inspectorate Officer shall—

- (a) keep accurate records of any enforcement action undertaken by the officer as required within the Inspectorate Service;
- (b) not make any false, misleading or inaccurate oral or written statements or entry in any record or document made, kept or required for enforcement purposes;
- (c) intentionally omit to make any oral or written statement or entry in any record or document; and
- (d) alter, deface, erase, conceal or destroy any record or document kept or made in connection with any enforcement activity.

8. (a) enforcement actions or investigations by Inspectorate Officers shall be based on reasonable suspicion of an actual or possible offence or crime; and

- (b) an officer of the Service shall follow the principle that everyone who is subject of an enforcement action or investigation is presumed innocent until found guilty by a court of law.

9. An Inspectorate Officer shall take every reasonable step to protect the health and safety of persons who have been put in legal custody and shall take immediate action to secure medical assistance for such persons where required.

10. (1) An officer who breaches this Code of Conduct shall be subject to the disciplinary procedures of the Inspectorate Service.

(2) Where a breach of this code constitutes an offence under this Act or any other law, the officer shall be liable to prosecution and punishment under the relevant law.

MEMORANDUM OF OBJECTS AND REASONS

The principal purpose and objective of this Bill is to create an enabling environment for the exercise of the functions of the County Government under Part 2 of the Fourth Schedule of the Constitution; to provide for the enforcement of Machakos County laws, to establish the Machakos County Inspectorate Service and for connected purposes

The structure of the Bill is as follows—

PART I—(Clauses 1-4) of the Bill contains preliminary provisions. These include short title, interpretation, objects and purpose and standards of service.

PART II—(Clauses 5-12) of the Bill makes provisions concerning the Inspectorate Service. This includes the establishment of the Machakos County Inspectorate Service, functions of the Service, officers of the Inspectorate, removal from office, vacancy of office, functions and powers of the Director, functions and powers of the Deputy Directors and limitation of fundamental rights and freedoms of Inspectorate Officers.

PART III—(Clauses 13-17) of the Bill is about the recruitment and training of Inspectorate Officers and provides for their recruitment, qualifications and training programmes. It also makes provision for the prohibition of conflict of interest.

PART IV—(Clauses 18-34) of the Bill provides for the powers and duties of Inspectorate Officers. These include notices, power to arrest, seize and hold things, entry, inspect, seizure during inspection, order for restoration, supervise, evict, impound a vessel, control traffic and power to stop vehicles. It also makes provision for the identification of Inspectorate Officers, the use of non-violent means, reporting system, the exercise of powers according to the law and oath of office.

PART V—(Clauses 35-39) of the Bill is about discipline and is about the governing law, responsibilities of Inspectorate Officers, offenses against discipline and Inspectorate Disciplinary Committee.

PART VI—(Clauses 40-43) of the Bill is about the financial provisions and contains clauses on the financial year, sources of funds of the Service, annual estimates and accounts and audit.

PART VII—(Clauses 44-48) of the Bill contains provisions on offences including impersonation of an Inspectorate Officer, assault in execution of duties, obstruction of an officer, Inspectorate Officer not to torture of assault and a general penalty.

PART VIII—(Clauses 49-51) of the Bill has Miscellaneous provisions including the protection against personal liability, transition and the power of the Executive Committee Member to make Regulations.

The enactment of this Bill shall occasion additional expenditure of public funds to be provided through the estimates. This Bill is not a money Bill within the meaning of section 21 of the County Governments Act, No. 17 of 2012. This Bill does not limit any fundamental rights and freedoms.

Dated the 23rd May, 2023.

JUDAS M. NDAWA,
Member of the County Assembly.

