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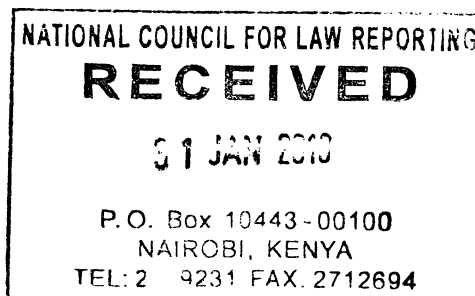
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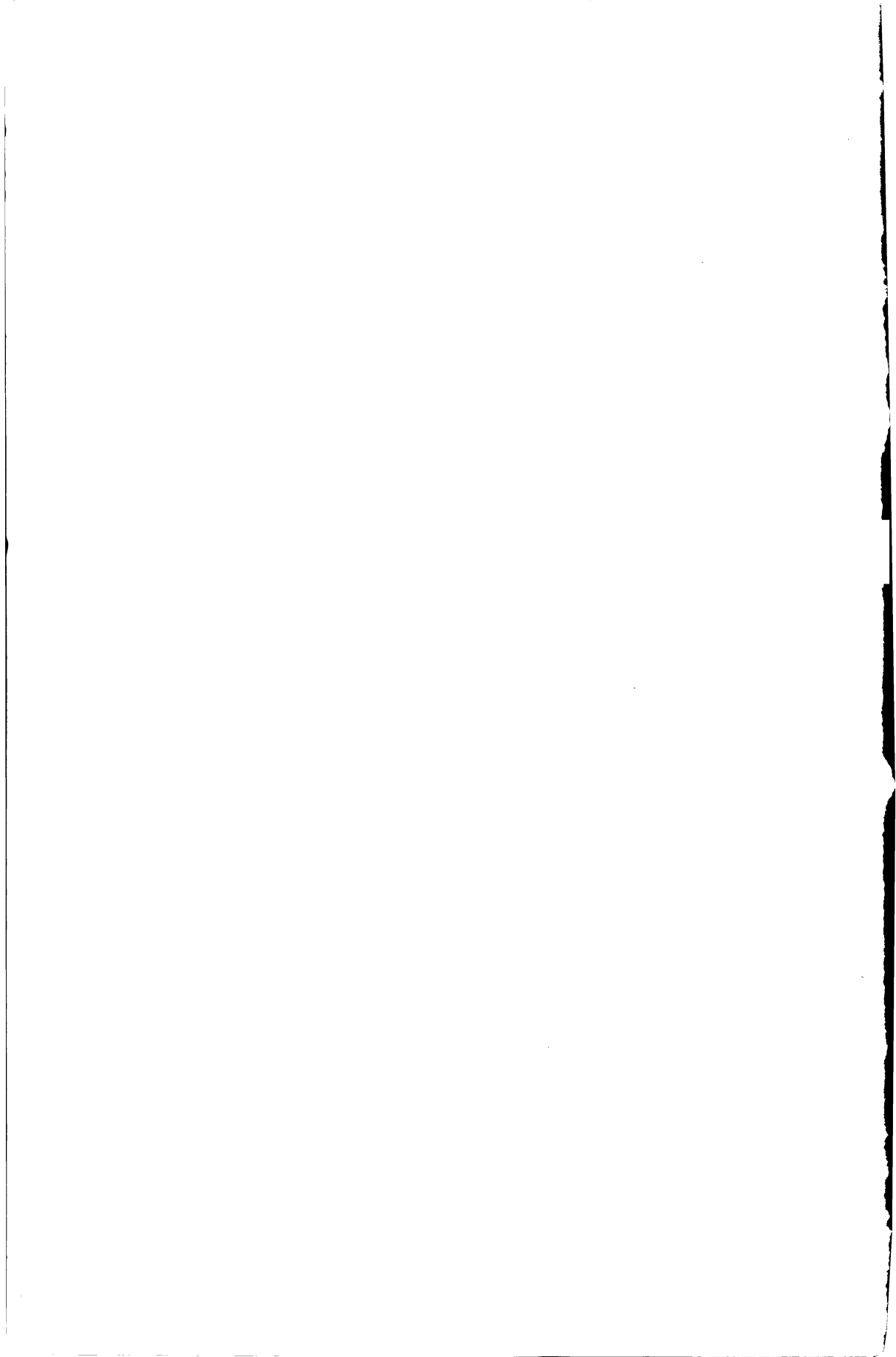
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FOOD SECURITY BILL, 2017**A Bill for**

AN ACT of Parliament to give effect to Article 43(1)(c) of the Constitution on the freedom from hunger and the right to adequate food of acceptable quality; Article 53(1)(c) of the Constitution on the right of every child to basic nutrition and Article 21 of the Constitution on the implementation of rights and fundamental freedoms under the Constitution; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. This Act may be cited as the Food Security Act, 2017 and shall come into operation on such a date as the Cabinet Secretary may, by notice in the Gazette, appoint not being more than six months after its publication and different dates may be appointed for different provisions.

Short title.

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

Interpretation.

“access” in relation to food means the physical, economic and social access by a person or households to food through production, purchase or through programmes implemented by the State to ensure that the right of every person who is otherwise unable to procure food, is actualised;

“adequate food” means the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture;

“at risk persons” are food-poor persons who do not have a competent social support system and by reason of infancy, pregnancy, advanced years, infirmity or any other reason determined by the Authority from time to time cannot produce or purchase essential food items and commodities in adequate quantity and quality;

“Authority” means the Food Security Authority established under section 11;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to food security;

“competent social support system” refers to familial or other relationships implying legal duties;

“designated agricultural commodity” means any agricultural food commodity designated as essential for the food security of the country by the Cabinet Secretary in consultation with the Authority;

“essential foodstuffs and commodities” include maize, beans, wheat, rice, meat, milk, sugar, cooking fat or oil, paraffin and any other commodity as designated by the Cabinet Secretary in consultation with the Authority;

“eligibility criteria index” means the index formulated by the Authority in accordance with the Second Schedule and applied by the county food security committees to determine the levels of access to food by potential food poor persons and their eligibility for the food distribution programme or the food subsidy programme;

“emergency food assistance” refers to food provided to both food-poor persons and non-food-poor persons during times of severe food shortage occasioned by disasters;

“family support programme” means the initiatives put in place by the national and county governments to raise the capacity of food poor persons, households and communities to attain the capacity to access food by themselves through production or purchase;

“food distribution infrastructure” refers to the entire complement of individuals, agencies, institutions, organisations, centres and such other organs as the county food security committee will designate from time to time to implement the food distribution programme and the food subsidy programme in the county;

“food distribution programme” refers to the programme established by the Authority and the county food security committees for the benefit of at risk persons;

“food of acceptable quality” means food whose value of quality is determined as fit for consumption based on the criteria of food safety, nutrition content and standards set by the relevant certification agencies under the Kenyan law or by written law or based on international standards adopted by, or applicable to Kenya under Article 2(5) and (6) of the Constitution;

“food production” means an activity or process of producing, preparing, processing, making, preserving, packing or repackaging and or changing the form of food;

“food security” means a situation where all people, at all times have regular and permanent physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life;

“food subsidy programme” refers to the programme established by the Authority and the county food security committees for the benefit of persons with limited capability as determined by the Authority and county food security committees;

“food” means everything that originates from biological sources and water, whether processed or not, which is designated as an eatable or beverage for human consumption, including food additive materials, food raw material and other materials used in the process of preparation, processing and or the making of an eatable or beverage;

“food eligibility card” means the card issued to at risk persons and persons with limited capability by a county food security committee to authenticate their eligibility for the food distribution programme and the food subsidy programme;

“food-poor persons” means persons, including vulnerable persons, who cannot through their own or any other means produce or purchase essential food items and commodities in adequate quantity and quality for short or extended periods of time;

“freedom from hunger” means a situation where all persons have access to a level of food, capable of meeting the recommended minimum dietary requirements as the Authority may prescribe;

“malnutrition” means poor nutritional status caused by nutritional deficiency or excess;

“minimum amount of food” means the amount of food required to meet the minimum nutritional needs of an individual, according to age, sex, occupation and health status, provided in-kind, in equivalent monetary value, vouchers or other prescribed form;

“persons with limited capability” means a food poor person who in spite of having a competent social support system are unable to produce or purchase essential food items and commodities in adequate quantities and quality for short or extended periods of time;

“right to food” means the right of every person to have regular, permanent and free access, at all times, either directly or by means of financial purchases, to quantitatively and qualitatively adequate, sufficient and safe food, corresponding to his or her cultural traditions and which ensures a physical and mental, individual or collective fulfilling and dignified life free of fear of hunger or under nutrition;

“vulnerable persons” include infants, children, school going children, pregnant and nursing mothers, the elderly, internally displaced persons, people with disabilities, sick persons with chronic diseases such as HIV/AIDS, victims of conflict, rural people in precarious livelihood situations, marginalised populations in urban areas, groups at risk of social marginalisation and discrimination and any other group that may be identified from time to time.

3. The object and purposes of this Act are—

- (a) to provide a framework that promotes the realisation of the right to freedom from hunger and access to food of acceptable quality as a fundamental human right;
- (b) to provide a framework that promotes the elimination and prevention of discrimination of marginalized groups in the access and distribution of food;

Object and purposes.

- (c) to provide a framework that promotes food production, self sustenance and food security in relation to all persons in Kenya;
- (d) to provide a framework and mechanisms for the coordinated implementation of the national policy, programmes and plans on food security by the county governments;
- (e) to provide a mechanism for ensuring that food poor persons access food at all times in adequate quantities and quality through the implementation of State sponsored programmes.
- (f) to provide for the establishment of institutions that will advance co-operative governance and procedures for co-ordinating food security functions exercised by the State;
- (g) to provide a framework for the planning, budgeting and implementation of the national policy on food security and nutrition using a rights based approach and to ensure the participation of rights holders and the accountability of duty bearers;
- (h) to guarantee the integration of the needs of vulnerable persons in food and nutrition strategies;
- (i) to ensure that food is treated as a national strategic resource;
- (j) to ensure that emergency situations that threaten mass access to food are anticipated, mitigated and addressed with equity and speed; and
- (k) to provide for a cross-sectoral networking platform comprising all relevant ministries, agencies and actors concerned with the production, storage, and sale of food for purposes connected to ensuring access to food by all Kenyans at all times.

4. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles in addition to the national

Guiding
principles

values and principles set out under Article 10 of the Constitution—

- (a) universality, non-discrimination and equity in the access to adequate food;
- (b) preservation of the freedom and dignity of every human being;
- (c) accountability of duty bearers and transparency in the food sector particularly emergency food aid;
- (d) coordinated public participation in the formulation, implementation, monitoring and control of policies and plans related to food and nutrition security in every sector of government;
- (e) integrity and accountability in the determination of the food poor status of persons taking into account any other assistance they are eligible for including development funds or assistance from the government targeting specific categories of persons including women and the youth for the improvement of their general wellbeing;
- (f) empowerment and capacity building as a means of facilitating the attainment of the right to food;
- (g) targeted empowerment and capacity building initiatives for both at risk persons and persons with limited capability through the application of state sponsored programmes in order to enable those receiving assistance produce or purchase their own food in the shortest time possible;
- (h) transparency in the implementation of programmes and activities relating to food security and the allocation and utilization of public and private resources;
- (i) availability and access to timely and reliable information through the establishment of a simple, fair and accessible procedure enabling a person to seek information relevant to the enjoyment of the right to food; and

- (j) ensure that interventions are based on objective information and methods, and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the public management and social audit and that that the needs of the population are taken into account.

PART II—THE RIGHT TO FOOD

5. (1) under Article 43(1)(c) of the Constitution, every person has the right to be free from hunger and to have adequate food of an acceptable quality.

Right to food.

(2) For the enjoyment of the right to adequate food and freedom from hunger, the national and county governments shall—

- (a) respect, protect and fulfil the human right to food and guarantee mechanisms for its enforcement;
- (b) ensure the availability, accessibility, adaptability and acceptability of food for all in Kenya by making provision for access to production resources, income and support and maintaining an enabling environment in which households can attain adequate access to food and nutrition through their own efforts;
- (c) promote the production of diverse crops and foods and put in place measures including irrigation schemes, water harvesting schemes and other programmes that ensure the availability of adequate food for all;
- (d) put in place mechanisms that ensure the availability of farm inputs and implements and other mechanisms of food production in order to facilitate food production;
- (e) ensure physical access to food that meets the minimum dietary needs of persons or communities suffering from or threatened with starvation;
- (f) put in place adequate infrastructure to facilitate access and circulation of food particularly in areas affected by food insecurity;

- (g) formulate and implement the family support programme and other appropriate programmes targeting—
 - (i) food poor persons, households and communities for the greater enhancement of their ability to produce or purchase essential food items and commodities in adequate quantities and quality; and
 - (ii) at risk persons and persons with limited capability for the purpose of building their capacity to access food on their own through interventions that mitigate the factors that cause them to be food poor;
- (h) put in place measures to ensure the availability and accessibility of food for individuals, groups and communities caught up in food emergencies and humanitarian disasters;
- (i) protect individuals, groups and communities from encroachment or interference by any person to the access to food;
- (j) take all reasonable measures to ensure that food resources and sources of food production are protected from destruction and are sustained for future use;
- (k) monitor and evaluate strategies and programmes for the realization of the right to be free from hunger and the right to adequate food;
- (l) provide an opportunity for the public to develop their understanding, skills and capacity necessary for achieving equitable and effective participation in the formulation, implementation and monitoring of any policies, strategies or programme interventions aimed at realizing food and nutrition security; and
- (m) guarantee transparency and accountability in the design and implementation of programmes and interventions by ensuring that such programmes and interventions on food security are based on objective information and methods and that they are regularly monitored and assessed.

6. (1) The national and county governments shall promote the physical and economic access to adequate food of acceptable quality.

Obligations of the National and county governments with respect to the right to food.

(2) In ensuring that the national government fulfils its obligations under subsection (1), the Authority shall—

- (a) take measures to ensure the right to adequate food can be realised;**
- (b) adopt a comprehensive national strategy and plan of action and policies to promote the realisation of right to adequate food;**
- (c) advise and collaborate with the relevant agencies and public entities on matters relating to—**
 - (i) domestic production of diverse foods including the cultivation of traditional crops and the accessibility of food to persons in areas affected by food insecurity;**
 - (ii) production of diverse foods including the cultivation of traditional crops and that such food is accessible to person in areas affected by food security; and**
 - (iii) establishment of programmes that ensure that farmers have adequate farm inputs and supplements to carry out food production;**
- (d) promote a food nutrition culture that reappraises local knowledge and makes it possible to develop food best practices;**
- (e) create, in consultation with the relevant county executive committee member and the Cabinet Secretary responsible for trade, appropriate areas for setting up local and regional food markets;**
- (f) ensure that precautionary measures are taken to mitigate emergencies in relation to the unavailability of food;**
- (g) promote investment in infrastructure to facilitate the movement of foods within local areas and to areas that suffer from a food shortages;**

- (h) promote the circulation of and access to timely market information by farmers;
- (i) implement, in collaboration with the relevant agencies and public entities, programmes for the support and protection of small scale farmers including the provision of subsidies;
- (j) adopt sustainable food security measures to graduate food poor persons to persons who can participate in food production and distribution; and
- (k) facilitate access to resources and means of production and promotion of effective utilization of resources for maximum food production.

7. (1) The National and county governments shall ensure that the minimum dietary needs of persons who cannot access food and basic nutrition for survival are met.

Obligation relating to freedom from hunger.

(2) the national government shall under subsection (1)—

- (a) adopt appropriate policies and action plans that promote food security;
- (b) enhance preparedness to respond to food emergencies and to ensure provision for designated individuals and groups by establishment of the institutional framework contemplated in this Act; and
- (c) adopt culturally-sensitive responses in ensuring that all persons are free from hunger.

(3) For purposes of subsection (1), eligibility of a vulnerable person for assistance shall be determined using a probability of an acute diminished access to food at level of consumption, due to environmental, social or economic risks and reduced capacity to cope with such risks.

(4) The Authority may make regulations setting out the criteria for the identification of eligible persons for the effective implementation of this Act.

8. (1) The National and county governments shall promote childhood nutrition.

Child
nutrition.

(2) The National and county governments shall collaborate with stakeholders to establish and implement programmes, including school feeding programmes, that promote child nutrition and food security taking into consideration the interests of vulnerable and marginalized children.

9. (1) Every woman has the right to adequate food during pregnancy and lactation.

Pregnant and
lactating
women

(2) The Cabinet Secretary responsible for health shall, in consultation with the Authority—

- (a) put in place measures to ensure that the special nutrition needs of pregnant and nursing women who are food poor are met and that assist mothers to provide adequate care for their infants;
- (b) promote measures to ensure that pregnant and nursing women have access to information about their nutrition needs and those of their children;
- (c) establish programmes, health interventions and monitoring and support systems that promote the health and nutrition of pregnant and lactating women;
- (d) promote and protect the right of infants to breast milk and to appropriate weaning foods after six months of age and adopt appropriate measures to ensure the enjoyment of the right to food for infants; and
- (e) adopt measures to provide for food and nutrition needs of orphaned and vulnerable infants.

10. (1) The National and county governments shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Prohibition of
discrimination.

(2) Notwithstanding subsection (1), the National and county governments may take such action as they may consider necessary to remedy past effects of discrimination against a person or group of persons and promote equality of opportunities with regard to the right to food.

(3) Any action taken by the National and county governments under subsection (2) shall not be considered to constitute discrimination as contemplated under subsection (1).

PART III—ESTABLISHMENT OF THE FOOD SECURITY AUTHORITY

11. (1) There is established an Authority to be known as the Food Security Authority.

Establishment
of the
Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and 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 and lending money;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

12. (1) The functions of the Authority shall be to—

Functions of
the Authority.

- (a) formulate strategies, plans and programmes to facilitate the realization of the right to food taking into consideration the rights of vulnerable and marginalized persons;
- (b) appraise and review the levels of access to food by all Kenyans in terms of quantity and quality and liaise with county food security committees and relevant agencies in ensuring optimal access to food;

- (c) collaborate with the necessary entities and stakeholders in the establishment of appropriate mechanisms that ensure access by poor persons to adequate food in both quantity and quality;
 - (d) promote measures to improve security and access to land and water resources and the optimum and sustainable utilization of these resources;
 - (e) monitor the issuance and administration of the food eligibility card to eligible Kenyans by the county food security committees to ensure that food poor persons access food with ease and in a timely manner;
 - (f) monitor the implementation of the food distribution programme and the food subsidy programme by the county food security committees;
 - (g) identify food insecure counties and develop affirmative action measures for ensuring that food security is realized in the identified counties;
 - (h) monitor and evaluate the implementation of policies, plans and strategies on food security and nutrition in Kenya and provide feedback to all county food security committees, relevant ministries, agencies and actors concerned with food production, storage and sale for their further action; and
 - (i) in consultation with the Cabinet Secretary responsible for disaster management, carry out emergency response and mitigation programmes including, where appropriate, food distribution and feeding programmes in the case of a food emergency or where residents are affected by malnutrition.
- (2) In performing its functions under subsection (1), the Authority shall—
- (a) collaborate with the relevant public entities—

- (i) to put in place measures to address factors that hinder the realization of the right to food and freedom from hunger; and
 - (ii) to ensure that their economic and social programmes and activities do not negatively affect the human right to food;
- (b) collaborate with the committees and relevant state and private agencies to carry out activities that result in the increase and improvement of agricultural production and the availability, access, utilization and stability of food among women and smallholder farmers in order to decrease poverty and hunger, improve health and achieve household food and nutrition security;
- (c) collaborate with the relevant ministries responsible for matters that relate to land in the formulation and implementation of strategies that promote agriculture and land reforms for the purpose of enhancing food security;
- (d) strengthen the networking and coordination of relevant sectoral and integrated databases on food security and nutrition data by the relevant agencies;
- (e) promote research, nutrition surveillance, data collection, analysis and the sharing and dissemination of information on food security;
- (f) formulate in collaboration with the county food security committees, an eligibility criteria index;
- (g) liaise with the National Social Assistance Authority established under the Social Assistance Act and such other entities as it considers necessary for the implementation of economic and social programmes and activities that promote the right to adequate food and freedom from hunger;
- (h) create an e-platform to facilitate the linkages amongst the county food security committees and between the Authority and the committees;

- (n) collaborate with the county food security committees in assisting households affected by emergencies to restore lost livelihoods assets, capital and means of food production through emergency programmes linked to long-term initiatives;
- (o) promote diversification and the use of alternative methods of agriculture and livestock systems and the production of diverse food crops to mitigate against drought and other climatic conditions that negatively impact food production; and
- (p) perform such other functions for the better implementation of this Act or as may be conferred on it under any other written law.

13. (1) The headquarters of the Authority shall be in Nairobi.

Headquarters
of the
Authority.

(2) The Authority may establish such other offices anywhere in Kenya as it may consider necessary for the discharge of its functions under this Act.

PART IV—MANAGEMENT OF THE AUTHORITY

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

Board of the
Authority.

- (a) a chairperson appointed by the President with the approval of Parliament;
- (b) the Principal Secretary responsible for matters relating to agriculture or the designated representative;
- (c) the Principal Secretary responsible for matters relating to livestock or the designated representative;
- (d) the Principal Secretary responsible for matters relating to finance or the designated representative;
- (e) the Principal Secretary responsible for matters relating to the co-ordination of national government or the designated representative;

(f) the chairperson of the National Social Assistance Authority appointed under section 5(1) of the Social Assistance Act or the designated representative;

No. 24 of 2013.

(g) one person nominated by the National Drought Management Authority established under paragraph 3 of the National Drought Management Authority Order, 2011;

L.N. No. 171 of 2011.

(h) two persons nominated by the Non-Governmental Organisations Co-ordination Board established under section 3 of the Non-Governmental Organisations Co-ordination Act from amongst non-governmental organizations which support efforts towards the achievement of food security;

(i) two persons nominated by the Council of County Governors; and

(j) the Director General who shall be an ex-officio member, the secretary to the Board and the chief executive officer of the Authority.

(2) The persons nominated under subsection (1)(g), (h) and (i) shall be appointed by the Cabinet Secretary by notice in the Gazette.

(3) A person shall be qualified for nomination and appointment under subsection (1) (g), (h) and (i) if such person has knowledge and experience in matters relating to food security and nutrition.

(4) The designated representatives of the members referred to under subsection (1)(b), (c), (d) and (e) shall have authority to exercise the powers and functions of the designating authority in relation to matters before the Board.

15. A person shall be qualified for appointment as the chairperson of the Board if that person—

Qualifications for appointment.

(a) holds a degree from a university recognised in Kenya;

(b) has knowledge and experience in matters related to food security; and

(c) has knowledge and experience in matters relating to —

- (i) agriculture or livestock;
- (ii) land and agrarian reforms;
- (iii) public health;
- (iv) public administration; or
- (v) economics, sociology, disaster management or such other relevant knowledge and experience as may be considered necessary; and

(d) meets the requirements of Chapter Six of the Constitution.

16. The chairperson shall hold office for a term of four years and shall be eligible for reappointment for one further term.

Tenure of office.

17. There shall be paid to the members of the Board such remuneration, fees or allowances as the Cabinet Secretary shall, in consultation with the Salaries and Remuneration Commission, shall determine.

Remuneration of the Board.

18. The office of the chairperson of the Board shall become vacant if the chairperson—

Vacation of office.

- (a) is unable to perform the functions of the chairperson's office by reason of mental or physical infirmity;
- (b) is otherwise unable or unfit to continue serving as the chairperson of the Board;
- (c) is adjudged bankrupt;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is absent, without reasonable cause, from three consecutive meetings of the Board;
- (f) resigns in writing addressed to the President;
- (g) fails to declare the chairperson's interest in any matter being considered or to be considered by the Board; or
- (h) dies.

19. The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

Powers of the Board.

- (a) enter into contracts;
- (b) manage, control and administer its assets in such manner and for such purposes as best promote the purpose for which the Authority is established;
- (c) determine the provisions to be made for its capital and recurrent expenditure and for the reserves of the Authority;
- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open such bank accounts for its funds as may be necessary; and
- (g) invest any funds of the Authority not immediately required for its purposes.

20. (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

Committees of the Board.

(2) The Board may co-opt any person to sit on any committee established under subsection (1), whose knowledge and skills are found necessary for the performance of the functions of the Board.

21. 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 Authority, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Delegation by the Board.

22. (1) The Board shall conduct its affairs in accordance with the provisions of the First Schedule.

Conduct of
business and
affairs of the
Board.

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

23. (1) There shall be a Director-General of the Authority who shall be competitively recruited and appointed by the Board, on such terms and conditions as the Board shall determine.

Director-
General.

(2) A person shall not be qualified for appointment as a Director-General under subsection (1) unless that person—

- (a) holds a masters degree from a university recognized in Kenya; and
- (b) has knowledge and at least ten years experience in the food sector.

(3) The Director-General shall be an ex-officio member of the Board and shall have no right to vote at any meeting of the Board.

24. The Director-General shall be appointed for a term of five years and shall be eligible for re-appointment for one further term.

Tenure of
office of
Director-
General.

25. (1) The Director-General shall be the chief executive officer of the Authority and secretary to the Board.

Functions of
the Director
General.

(2) In exercise of the Director-General's functions under this Act, the Director-General shall, subject to the direction of the Board—

- (a) be responsible for the day-to-day management of the Authority;
- (b) manage the funds, property and affairs of the Authority;
- (c) be responsible for the management of the staff of the Authority;
- (d) oversee and coordinate the implementation of the policies, programmes and objectives of the Authority;
- (e) administer the funds provided for the implementation of the food distribution

programme and the food subsidy programme both at the national and county levels;

- (f) cause to be prepared for the approval of the Board—
- (i) the strategic plan and annual plan of the Authority; and
- (ii) the annual budget and audited accounts of the Authority; and
- (g) perform such other duties as may be assigned to him or her by the Board.

26. The Board may terminate the appointment of the Director-General in accordance with the Director-General's terms and conditions of service for—

Removal of
Director
General.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify removal from office under the terms and conditions of service.

27. (1) The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act.

Staff of the
Authority.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

28. (1) The common seal of the Authority shall be kept in the custody of the Director-General or such other person as the Board may direct, and shall not be used except upon the order of the Board.

Common seal
of the
Authority.

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

(3) The seal of the Authority shall be authenticated by the signature of the Director-General and the chairperson of the Board or in the absence of either person, such other member of the Board who shall be designated by the Board for that purpose

29. (1) No matter or thing done by an officer or an employee of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority, render the officer or employee so acting, personally liable for any action, claim or demand.

Protection from personal liability.

(2) Subsection (1) shall not relieve the Authority from liability to pay compensation or damages to any person for any injury to that person, or other loss caused by the exercise of any power conferred by this Act or any other written law or by the failure of any works of the Authority.

PART V—THE SECRETARIAT

30. (1) There shall be a secretariat to the Authority which shall consist of—

The Secretariat.

- (a) the Director-General who shall be the head of the secretariat; and
- (b) such other persons as the Board shall determine for the proper performance of the functions of the secretariat under this Act.

(2) The persons under subsection (1)(b) shall be competitively recruited and appointed by the Board on such terms and conditions as the Board shall, in consultation with the Salaries and Remuneration Commission determine.

(3) The persons appointed under subsection (1)(b) shall possess such knowledge and experience as shall be determined by the Board.

31. The functions of the Secretariat shall be to—

Functions of the Secretariat.

- (a) provide technical and administrative services to the Board;
- (b) implement the decisions, strategies, programmes and policies of the Board;
- (c) recommend proposals and offer advice to the Board for the formulation of and

implementation of programmes by the Authority;

- (d) on behalf of the Authority, establish and maintain relationships with international, national and local institutions on food security;
- (e) coordinate and monitor the implementation of programmes and plans by county governments on food security;
- (f) make arrangements for periodical evaluation of the policies and programmes in relation to the objects and functions of the Authority; and
- (g) perform such other functions as may be assigned to it by the Authority.

PART VI—COUNTY FOOD SECURITY COMMITTEES

32. (1) There is established in each county, a county food security committee which shall consist of—

- (a) a person with knowledge and experience in matters relating to food security appointed by the county governor and who shall be the chairperson to the committee;
- (b) the county executive committee member responsible for matters relating to agriculture who shall be the secretary to the committee;
- (c) the county executive committee member responsible for matters relating to livestock;
- (d) the county executive committee member responsible for matters relating to social services;
- (e) the county commissioner or a designated representative of the commissioner;
- (f) two persons of the opposite gender, with knowledge and experience in matters relating to food security within the county appointed by the county governor; and
- (g) two persons of the opposite gender, appointed by the county governor to represent such

Establishment
of county food
security
committees.

special interests within the county as the governor shall determine.

(2) A person shall be qualified for appointment under subsection (1)(a), (d) and (e) if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) has knowledge and experience in matters related to food security; and
- (c) has a working knowledge in any of the following fields —
 - (i) land and agrarian reforms;
 - (ii) public health;
 - (iii) sociology; or
 - (iv) statistics; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The persons appointed under subsection (1)(a), (d) and (e) shall be competitively recruited by the county public service and appointed by the county governor with the approval of the county assembly.

(4) In recruiting and appointing persons under subsection (1)(a), (d) and (e), the county public service and the governor shall have regard to the diversity within the county.

(5) The committee may co-opt such persons not exceeding two in number to sit in the committee, whose knowledge and skills are found necessary for the performance of the functions of the committee.

(6) A county government may establish a fund which shall be administered by the county food security committee and into which shall be paid at least ten percent or such other amount as may be agreed upon by the county government of the annual funds available to the county constituting contributions from both the national and county governments with respect to the implementation of the food distribution programme and

the food subsidy programme for the purposes of providing emergency food assistance.

33. (1) The functions of a county food security committee shall be to—

Functions of the county food security committee.

- (a) implement the food security policy and programmes in the county;
- (b) advise the Authority on technical issues related the implementation of different programmes on food security within the county;
- (c) collaborate with the Authority and agencies in the county in ensuring a coordinated approach in facilitating the access of food in the county;
- (d) serve as an early warning mechanism on impending food insecurity situations within the county and advise on mitigation measures to address the situation;
- (e) initiate, undertake and participate in the collection, preparation, production and dissemination of data and information on food security and nutrition in the county;
- (f) ensure the proper identification of food insecure areas appropriate programmes and eligible beneficiaries in relation to food security programmes and the correct application eligibility criteria;
- (g) ensure that food and nutrition security issues are incorporated in the programmes of the county and monitor the performance of the county in the implementation of the policies, programmes and plans on food and nutrition security issues;
- (h) determine the essential foodstuffs and commodities within the county for the purpose of implementing food distribution programmes and food subsidy programmes;
- (i) spearhead the formation and operationalization of food and nutrition committees at the sub-county and ward levels and in schools and health centres within the county;

- (j) coordinate activities of State organs, institutions, the private sector, non governmental organizations and community based organizations involved in food and nutrition programmes in the county;
- (k) establish and implement food distribution programmes and food subsidy programmes taking into account the peculiar circumstances of the respective county;
- (l) establish a competent food distribution infrastructure in the county to facilitate distribution of food and the implementation of food programmes in the county;
- (m) establish a mechanism for the disbursement of emergency food assistance in collaboration with the Authority; and
- (o) mobilise and sensitize the community on food and nutrition programmes and in collaboration with the relevant stakeholders and institutions in the area, conduct capacity building, education and information campaigns on food and nutrition security issues.

(2) The county food security committee shall, in the performance of its functions under subsection (1), decentralize its services to the lowest administrative unit within the county as it shall consider appropriate for the purpose of ensuring food security within the county.

(3) The county food security committees shall be under the control and direction of the county governor in the implementation of its functions in accordance with the policies of the Authority and shall collaborate with the Authority in the carrying out of its functions under subsection (1).

34. The provisions relating to the conduct of the affairs of the Board prescribed in the First Schedule shall apply with necessary modifications to the conduct of the affairs of the county food security committee.

Conduct of affairs of the county food security committees.

PART VII—FOOD INSECURITY AND INFORMATION MAPPING SYSTEMS

35. (1) The Authority shall in collaboration with the Ministries responsible for finance, disaster

Establishment of insecurity and

management, agriculture, livestock, meteorology, planning, national security and gender, establish food insecurity and information mapping systems to provide the information needed to develop and strengthen the capacity to respond to food emergencies.

information
mapping
systems.

(2) In performing its functions under subsection (1), the Authority shall—

- (a) support the development of disaster management plans in relation to food security by implementing organs;
- (b) establish a rights based early warning system and emergency preparedness strategies on food security and safety;
- (c) systematically undertake disaggregated analysis on the food insecurity, vulnerability and nutritional status of different groups in society, with particular attention to assessing any form of discrimination that may manifest itself in greater food insecurity and vulnerability to food insecurity, or in a higher prevalence of malnutrition among specific population groups;
- (d) develop and identify corrective measures for the purpose of addressing and preventing causes of food insecurity and malnutrition;
- (e) establish systems to ensure the feedback of information in such formats as it may consider appropriate on food security and nutrition to priority audiences at the national, county and community levels through the appropriate media;
- (f) establish risk management and vulnerability mapping systems;
- (g) establish and coordinate sector specific roles and mandates related to vulnerability and emergency response; and
- (h) undertake a food security baseline and impact assessment at all levels of governance to guide vulnerability and emergency response.

(3) In furtherance to subsection (2), the Cabinet Secretary responsible for the implementation of

programmes relating to persons with special needs shall, in consultation with the relevant State organs, provide to the Authority, information on vulnerability response mechanisms, including budget estimates to support vulnerable persons.

36. (1) In formulating and prior to the implementation of a proposal, policy, programme or project that may affect the realization of the right to food, the relevant State organ or concerned person shall carry out an impact assessment to identify, predict, evaluate and mitigate economic, social and other effects of such policy, programme or project.

Food impact
assessments.

(2) Where an existing written law requires the undertaking of an impact assessment prior to the implementation of a project or programme, the State organ or concerned person shall incorporate in that impact assessment, a food impact assessment in the manner prescribed by the Authority under subsection (4).

(3) The Authority shall cause to be undertaken an annual right to food impact assessment to identify the impact of policies, programmes and projects on the realisation of the right to food.

(4) The Authority shall determine the manner in which impact assessments under subsection (1) shall be undertaken including—

- (a) the screening of any proposal, policy, programme or project;
- (b) the undertaking of scoping exercises and examination of alternatives measures for the achievement of the same objectives;
- (c) the undertaking of the impact analysis;
- (d) the identification and implementation of mitigation measures; and
- (e) the undertaking of public consultation.

PART VIII—FINANCIAL PROVISIONS

37. (1) For the avoidance of doubt, nothing in this Act may be construed as providing for or dealing with—

- (a) taxes;

Non-money
Bill status.

- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.

(2) There may be established a fund which shall consist of monies specified under subsection (3).

(3) Any expenses that may be occasioned in the implementation of this Act shall be provided from –

- (a) such gifts, grants or donations as may be given;
- (b) such monies as may, in the future, be provided by the National Assembly for defraying the expenses incurred in the implementation of this Act; and
- (c) such other monies that may lawfully accrue in the discharge of the functions under this Act, not being monies accruing pursuant to Article 114 of the Constitution.

38. (1) The Authority may invest its funds in any securities which for the time being trustees may by law invest in trust funds, or in any other securities which the Cabinet Secretary may, from time to time, approve for that purpose.

Investment of funds of the Authority.

(2) The Authority may place on deposit with such a bank as it may determine, any moneys not immediately required for the purposes of the Authority.

39. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

40. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

Annual estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year concerned.

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

41. The Board shall, within a period of three months after the end of each financial year, submit—

Annual report.

(a) to the Auditor-General, the accounts of the Authority in respect of that year together with—

(i) a statement of the income and expenditure of the Authority during that year; and

(ii) a statement of the assets and liabilities of the Authority on the last day of that financial year; and

(b) to the Cabinet Secretary, an annual report in respect of that year containing—

(i) the accounts of the Authority and statements referred to under paragraph (a);

(ii) the Authority's performance indicators and any other related information;

(iii) a report on the operations of the Authority during that year; and

(iv) such other information as the Cabinet Secretary may request.

42. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.

Accounts and audit.

(2) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2015.

No.12 of 2003.

PART IX—MISCELLANEOUS PROVISIONS

43. A person shall not act in a manner which—

(a) is incompatible with or affects the enjoyment of the right to food under this Act;

(b) affects the right of another person to nutritional food;

Prohibition against the infringement of the right to food.

- (c) would affect the production of food that is safe for consumption or the right of another person to nutritious safe food; or
- (d) impedes the implementation of activities carried out for the implementation of food security under this Act.

44. A person who diverts funds or food meant for the food distribution programme or the food subsidy programme to a person other than its intended beneficiary at any point along the food distribution chain commits an offence and shall, on conviction, be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding eight years or to both.

Offences related to diverting food meant for the food distribution or subsidy programme

45. A person who procures any food, commodities or services in relation to a food distribution programme or food subsidy programme in a manner contrary to any written law on procurement commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding eight years or to both.

Offences related to the procurement of food items or services

46. A person who administers the eligibility criteria index in a manner other than that prescribed under this Act commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to a term of imprisonment of three years or to both.

Offences related to the administration of the eligibility criteria index.

47. A person who fraudulently acquires, issues, or otherwise uses the food eligibility card commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to a term of imprisonment of one year or to both.

Offences relating to the issuance and use of the food eligibility card.

48. A person who is convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding three million shillings, or to imprisonment for a term not exceeding five years, or to both.

General penalty.

49. The Authority shall, in promoting public awareness and participation in the advancement of food security—

Public participation in the advancement of food

- (a) develop the human resources in the field of food through education and training activities, especially the small scale businesses; security.
- (b) stimulate and increase the participation of the community in the human resources development activities, improving the capability of the small-scale businesses, extension services in the field of food and diversification of food;
- (c) stimulate and direct the participation of professional associations and organizations in the field of food production;
- (d) stimulate and support the activities of technological research and or development in the field of food ;
- (e) disseminate the knowledge and extension services in the field of agriculture and food production; promote the international cooperation in the field of food in accordance with the national interest;
- (f) stimulate and increase the activities of food diversification of food consumed by the community, and the stabilization of the traditional food quality; and
- (g) promote public awareness on the advancement of food security.

PART X—PROVISIONS ON DELEGATED LEGISLATION

50. (1) The Cabinet Secretary, in consultation with the Authority, may make regulations generally for the better carrying out of the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations—

- (a) for the management of food aid and food emergencies;
- (b) to provide a framework for the collaboration and the monitoring, by the Authority, of the activities of the county food security

- committees and a mechanism for ensuring transparency and accountability under this Act;
- (c) for the procedures and mechanisms for consulting the public on food and nutrition security issues, including public hearings and meetings at all levels of government;
 - (d) the conduct of sensitization programmes and the publication and dissemination of information under this Act;
 - (e) for the conduct of food emergency programmes under this Act;
 - (f) for charges and fees to be paid to the Authority in the performance of its duties under this Act; and
 - (g) to provide for the required minimum amount of food including the quantity of food or its monetary value, needed to prevent and address hunger and for a person to be free from hunger.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the power of the Authority to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
 - (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to regulations made under this Act.

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2013.

FIRST SCHEDULE (s. 22, 35)

PROVISIONS RELATING TO MEETINGS OF THE BOARD OF THE AUTHORITY

1. The Board of the Authority shall meet at least once in every three months to conduct the business of the Board of Authority.

2. The chairperson may on an own motion, or upon request by a member, call a special meeting of the Board of the Authority at any time, where he or she considers it

expedient for the transaction of the business of the Board of the Authority.

3. Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of the Authority shall be given to every member of the Board of the Authority by the secretary.

4. The quorum at a meeting of the Board of the Authority shall be half (maybe the quorum can be one third) of the members or such greater number (the quorum for an important matter can be two thirds of the members of the board) as may be determined by the Board of the Authority in respect of an important matter.

5. The chairperson shall preside at the meetings of the Board of the Authority and in the absence the chairperson, the vice-chairperson or a member of the Board of the Authority elected by the members present from among their number shall preside.

6. The matters of the Board of the Authority shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

7. The proceedings of the Board of the Authority shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

8. At the first meeting of the Board of Authority, the members shall elect a vice-chairperson, not being an *ex-officio* member, from among its members.

9. Subject to the provisions of this Schedule, the Board of the Authority may determine its own procedure and the procedure for any committee of the Board of the Authority and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

SECOND SCHEDULE

(s.2)

PROVISIONS RELATING TO THE ELIGIBILITY CRITERIA INDEX

In developing the eligibility criteria index, the Authority shall be guided by the following considerations—

- (a) non-discrimination of food poor persons;
- (b) preservation of the human dignity of persons during the process of administering the eligibility criteria index;
- (c) the need to determine with accuracy the status of persons as food poor or otherwise in order to ensure relevant and timely assistance to all deserving persons;
- (d) provision for at risk persons; persons with limited capability and emergency cases and the varying degrees of assistance required by each category of persons;
- (e) the inclusion of relevant and responsive parameters in the index to enable accurate determination of the food poor status of respective persons;
- (f) the simplicity of the index to allow for the officer administering the index to use it effectively and for the person to whom it is being administered to understand the process;
- (g) the flexibility and adaptability of the index to allow for its use in the diverse circumstances found in the different counties in Kenya;
- (h) the ease with which the index will be administered to diverse persons across the counties of Kenya;
- (i) geographical and cultural sensitivity and appropriateness of any programme, plan or intervention;
- (j) the inclusion of a periodic re-evaluation mechanism to review the need for holders of food eligibility cards to continue to hold them;
- (k) the inclusion of all relevant factors that pertain to the status of at risk persons and persons with limited capability insofar as determination of their food poor status is concerned;
- (l) the existence of other development initiatives and funds in the county to assist the inhabitants to improve their general wellbeing and the extent to which persons eligible for the food poor status avail themselves of such benefits;

- (m) relevant provisions regarding the operationalization of such other food assistance mechanisms contained in international and regional instruments; and
- (n) adherence to the principles of participation, accountability, non-discrimination, transparency and empowerment.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill proposes to give effect to Article 43(1) (c) of the Constitution on freedom from hunger and the right to adequate food of acceptable quality.

Article 43 of the constitution establishes the right *“to be free from hunger, and to have adequate food of acceptable quality”*. Under Article 21(3), all State organs and all public officers have a duty to address needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.

The need for this legislative framework is based on the requirement by the National and county governments to put in place measures and mechanisms to address food insecurity and ensure that the right to food for all is realised.

This Bill provides a framework and mechanism for the National and county governments to fulfil their obligations in relation to food security.

1. Overview of the Bill

Part I of the Bill sets out the objects and purposes of the Bill and the principles that are to guide the counties and other actors in the implementation of this Bill. This part incorporates the national values and principles under Article 10 of the Constitution. It also underscores the need for capacity building as a means of achieving the right to food for all Kenyans.

Part II of the Bill elaborates on the right to food as articulated under Article 43 of the Constitution. It also confers various obligations on the National and county governments in ensuring that freedom from hunger and the right to adequate food of acceptable quality is realised.

This Part also makes specific recognition of the right by children to food by and confers an obligation on the National and county governments to implement school feeding programmes.

This part also proposes that the National and County governments shall to the extent of their constitutional mandate promote the physical and economic access to adequate food of acceptable quality.

Under this part, the National and County governments are mandated to ensure that the minimum dietary needs of persons who cannot through their own means and for reasons beyond their control access food and basic nutrition for survival, are met.

It also makes provision for the right to adequate food by a woman during pregnancy and lactation.

Part III of the Bill provides for the establishment of Food Security Authority as a body corporate. This part provides for the functions of the Authority to include—

- (a) formulation of policies, programmes and strategies for implementation by county governments and the establishment of monitoring and evaluation mechanisms to determine the suitability of interventions put in place to ensure food security; and
- (b) to monitor and evaluate the implementation of policies, plans and strategies on food security and nutrition in Kenya and provide feedback to all county food security committees, relevant ministries, agencies and actors concerned with food production, storage and sale for their further action among its other functions.

Part IV provides for the composition of the Board of the Authority to be involved in the management of the Authority. It also provides for the recruitment and appointment of the Director-General of the Authority who shall be the chief executive officer and responsible for the daily administration of the Authority.

Part V provides for the establishment of the Secretariat to be headed by the Director-General and which is responsible for providing technical and administrative services to the Board and ensuring that its decisions, strategies, programmes and policies are implemented.

Part VI of the Bill provides for the establishment of county food security committees whose role is to ensure the implementation, by the county government, of food security programmes in the county and provide a mechanism through which the food security situation monitored, any threats to food security are detected early and appropriate interventions are put in place to avert such threats.

This part also provides for decentralisation of county food security committee services to the lowest administrative unit within a county. The county food security committee is to be under the control and direction of a county governor.

Part VII provides for the establishment of a food insecurity and information mapping system to serve as an early warning system, facilitate the development of disaster management plans and emergency preparedness strategies and provide a basis for the identification of the appropriate corrective measures for the purpose of addressing and preventing causes of food insecurity. It also provides for the formulation

of food impact assessments prior to the implementation of any policies or programmes on food insecurity.

Part VII sets out the financial provisions. It also provides for the establishment of a Food Security Fund, the preparation and submission of annual estimates and the annual plan of the Authority to the relevant Cabinet Secretary and the keeping of proper books and records of account.

Part IX of the Bill contains provisions of a general nature including actions which affect food security and which constitute offences and imposes an obligation on the Authority to promote public awareness and public participation in advancing food security.

Part X provides for the formulation of particularised regulations by the Cabinet Secretary for the better implementation of this Act

2. Statement on how the Bill concerns County Governments

The Bill imposes obligations on the county governments to put in place mechanisms to implement policies and programmes necessary to realise the right to food in the counties. It also provides for the establishment of county food security committees as one of the mechanisms of ensuring that the relevant policies, strategies and programmes are implemented in the counties.

The committees also serve as a monitoring mechanism with respect to such implementation and act as a source of information on food security in the county which in turn ensures that county specific interventions are adopted and implemented for the purpose of ensuring food security within the county.

Such interventions cut across a number of sectors including agriculture, health, trade and environmental conservation which fall within the ambit of county governments under the Fourth Schedule to the Constitution.

The Bill is therefore a Bill concerning county governments in terms of Article 110 (1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 6th December, 2017.

KIPCHUMBA MURKOMEN,
Senate Majority Leader.

