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ASSUMPTION OF THE OFFICE OF PRESIDENT COMMITTEE

**REPORT TO PARLIAMENT IN ACCORDANCE WITH
SECTION 19 OF THE ASSUMPTION OF
OFFICE OF PRESIDENT ACT, 2012**



8TH MAY 2013



OFFICE OF THE PRESIDENT

PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF THE PUBLIC SERVICE

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Ref. No. **OP/CAB/26/4A**
and date

8th May, 2013

20.....



LETTER OF TRANSMITTAL

Mr. Justin Bundi, CBS
Clerk
National Assembly
NAIROBI

Dear *Justin*

TRANSMITTAL LETTER: ASSUMPTION OF THE OFFICE OF PRESIDENT COMMITTEE REPORT

Pursuant to Article 141 of the Constitution of Kenya and the Assumption of the Office of President Act, 2012 which established a Committee to manage the transition and transfer of power following a presidential election, the Committee was accordingly constituted on 21st January, 2013 following the declaration of Presidential vacancies in the office of the President and announcement by the Independent Electoral and Boundaries Commission (IEBC) that elections would be held on 4th March, 2013. The Head of the Public Service Mr. Francis T. Kimemia, EGH constituted the Assumption of Office of President Committee comprising the following members:-

- Prof. Githu Muigai, EGH, MP - Attorney General.
- Mr. E. Mutea Iringo, CBS - Permanent Secretary, Ministry of State for Provincial Administration and Internal Security.

- Gen Julius W. Karangi, EGH - Chief of Kenya Defence Forces.
- Mr. David Kimaiyo, CBS - Inspector-General, National Police Service.
- Mrs. Gladys B. Shollei, CBS - Chief Registrar, Judiciary.
- Mr. Stephen K. Kirogo, EBS - Principal Administrative Secretary/ Assistant Secretary to the Cabinet.
- Mr. Joseph K. Kinyua, CBS - Permanent Secretary, National Treasury.
- Mr. Thuita Mwangi, CBS - Permanent Secretary, Ministry of Foreign Affairs.
- Dr. Bitange Ndemo, CBS - Permanent Secretary, Ministry of Information and Communications.
- Mr. Gichira Kibara, CBS - Permanent Secretary, Ministry of Justice National Cohesion and Constitutional Affairs.
- Prof. Karega Mutahi, CBS - Permanent Secretary, Ministry of Local Government.
- Ms. Leah Adda Gwiyo, CBS - Permanent Secretary, Ministry of Culture and National Heritage.
- Mr. Justin Bundi - Clerk of the National Assembly.
- Mr. James Mwachala - Under Secretary, State House.
- Mr. Bruce Odhiambo - Representing the President Elect.
- Ms. Anne Waiguru - Representing the President Elect.
- Mr. Njee Muturi - Representing the President Elect.
- Mr. Reuben Maiyo - Representing the Deputy President Elect.

The work and activities carried out by this committee was the first of its kind in Kenya. This was the first time that the assumption of office of a

President and hand over of power was conducted in accordance with a specific legislation containing detailed guidelines. As a result the Committee faced the challenge of lack of precedent or benchmark in the country on which to base its activities.

The above challenge notwithstanding the Committee successfully ensured a smooth transition of power. Another challenge faced by the Committee was working within important timelines based on five (5) possible Presidential election outcome scenarios as envisaged under the Constitution, the scenarios anticipated situations where:

1. Only one candidate is nominated, Article 138(8) of the Constitution - the President elect would be sworn in on February, 26th March 2013.
2. A First Round win and no petition, Article 138(4) (a) and (b) - the President elect would be sworn in on Tuesday, 26th March 2013.
3. A petition is filed and dismissed, Article 140 (1)(2) - the President elect would be sworn in on Tuesday 9th April 2013.
4. A run off, the swearing in would be Tuesday 30th April, 2013. Finally
5. A petition is filed and is successful, the swearing in would be 18th June 2013.

In our situation a petition was filed and heard, **(Scenario 3)** and finally decided on 30th March 2013. Following this the Swearing in was therefore to take place on 9th April 2013. Immediately after the Supreme Court ruling the Committee went full throttle with organization of the Swearing in.

Article 141 of the Constitution of Kenya, 2010 and Section 19 of the Assumption of the Office of President Act 2012 require preparation of a report on activities of the Assumption of Office of President Committee, and submission of the Report by the Committee to Parliament. This report is therefore submitted in accordance with these legal provisions.

In submitting this report, the Committee is grateful for assistance and Cooperation of the following that enabled it to fulfill its mandate. H.E. Hon. Mwai Kibaki, CGH the outgoing President at the time of tenure of this committee for his advise and support, H.E. Hon. Uhuru Kenyatta, the incoming President who was available to the Committee for consultation, The Clerk, National Assembly and Senate, National Treasury for availing funds, Permanent Secretaries and Government departments that directly

and indirectly participated in the activities, the Clergy, media, private individuals and the Kenyan public for making it possible for the Committee to succeed.

Yours *Sincerely*

Francis

**FRANCIS T. KIMEMIA, EGH
PERMANENT SECRETARY, SECRETARY TO THE
CABINET AND HEAD OF THE PUBLIC SERVICE**

CHAIRMAN, ASSUMPTION OF THE OFFICE OF PRESIDENT COMMITTEE

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LIST OF ABBREVIATIONS AND ACCRONMYS

CBS	-	Chief of the Burning Spear
CGH	-	Chief of the Golden Heart
IEBC	-	Independent Electoral and Boundaries Commission
JKIA	-	Jomo Kenyatta International Airport
KICC	-	Kenyatta International Conference Centre
VIPs	-	Very Important Persons
VVIPs	-	Very Very Important Persons

EXECUTIVE SUMMARY

This report is prepared pursuant of Article 141 of the Constitution of Kenya, 2010 and Section 19 of the Assumption of the Office of President Act, 2012. It outlines the activities of the Adhoc Committee set up with the mandate of managing the transition process, and the challenges encountered in discharging its mandate. For purpose of execution the Committee formed sub-committees which were tasked with specific activities as follows:

1. **The Security/Protocol and Logistic Committee:** This sub committee was responsible for identification of a suitable venue, invitation of foreign dignitaries, the invitations to local and general public, transportation of delegates from Counties to Nairobi, and organization of the match past parade by the KDF as well as the state luncheon.
2. **Entertainment sub-committee:** This sub committee was tasked with the identification, transportation, auditioning and vetting of entertainment groups, recording of music, rehearsals and presentation by dance groups during the ceremony.
3. **Legal sub-committee:** This sub committee identified and elaborated on the legal provisions governing the Assumption of Office of President, developed road maps and procedures for handing over/taking over, prepared briefs to the incumbent President-Elect and also identified possible obstacles to the process of assumption of office.
4. **Budget sub Committee:** This sub committee was tasked to prepare a budget for the process and disburse funds to the sub-committees under the chairmanship of Permanent Secretary, Treasury.

Media Briefings

To continuously update the public on the preparations for the swearing in, the committee held weekly media briefings where progress and other relevant information was reported. This was useful in keeping the public informed on the work of the Committee.

Recommendations

In discharging its mandate the Committee encountered a number of challenges. At the time of commencement of its work, regulations had not been promulgated as required by Section 22 of the Assumption of Office of President Act 2012. These regulations could have guided the Committee in its functions. To this end, the Committee makes the following recommendations whose implementation is necessary for better and more articulate Swearing-in of future Presidents:

1. **Constitutional legal issues:** During the currency of the committee, several Constitutional legal gaps were identified. The first challenge was an election starting afresh following the death of any candidate or their deputy. This would have the effect of prolonging the election. This would complicate an already tricky situation due to the temporary incumbency of the Presidency, with limited powers. The second major challenge is when the election is considered to have been concluded and when the president-elect should constitute the structure of the Government. The Committee recommends that the Attorney General initiates steps to address these Constitutional challenges to overcome uncertainty arising from lack of clarity on the issues.

2. **Budget:** During an election year parliament should allocate funds for Assumption of office of president activities to avoid financing of these activities from the Contingency Fund and on an Adhoc basis.
3. **Briefings for President elect:** the law requires briefing on matters of national importance to the President-Elect. Entitlement of the two before swearing in should be clearly specified in the Act.
4. A thorough Audit/Review of the Assumption of Office of President Act, 2012 is also recommended.
5. Finally the Committee recommends the selection of a high level taskforce to be constituted immediately to draft regulations in accordance with Section 22 of the Act. This step will resolve many of the challenges lighted in this report.

REPORT ON THE ACTIVITIES AND SWEARING IN CEREMONY OF THE FOURTH PRESIDENT OF KENYA

INTRODUCTION

The committee was established through the Assumption of office of the President Act, 2012 to ensure the smooth transfer of power from the outgoing President to the Incoming as enshrined in the Constitution of Kenya, 2010. The Act makes it mandatory for the Committee to submit a report of its activities to Parliament. This report therefore gives an account of the activities undertaken in pursuance of the objectives of the Act on assumption of the office of the president.

1.1 Objectives of the Report

- To appraise the Parliament on the activities of Assumption of Office of the President Committee as provided for under Article 141 of the Constitution 2010 and the Assumption of the Office Act 2012, Section 19.
- To provide detailed activities/events of the Committee that precedes the swearing-in ceremony at Kasarani Sports Centre.
- To seek Parliament's support in provision of budgeting support to the Committee as well as necessary amendments to the Act.
- To make necessary recommendations towards strengthening the work of the Committee.

1.2 Terms of Reference

- Organize security for all presidential candidates and running mates during the campaign period.
- To make appropriate security arrangements for the President-Elect and Deputy President-Elect upon declaration of the presidential election results.

- To organize security for invited local and international guests.
- Identify a suitable venue to host the inauguration ceremony
- Identification and invitation of foreign dignitaries in consultation with the Committee.
- To print and distribute invitation cards, car stickers, official badges and official programme.
- To construct the main VIP dais, organize for sitting arrangements.
- To organize for transport for invited guests from various designated points.
- Organize military parade/guard of honour.

2.0 BACKGROUND INFORMATION

This report is prepared Pursuant to Section 19 of the Assumption of the Office of the President Act 2012. The Act provides for:-

- The procedure and ceremony for the Assumption of Office of the President by the President-Elect in accordance with Article 141 of the Constitution.
- The transition process from the outgoing President to the President-Elect.
- Section 5, of the Act creates the Assumption of the Office of the President Committee (Ad-hoc Committee) under the Chairmanship of the Secretary to the Cabinet.

2.1 Mandate of the Committee:-

In order to achieve its objectives the committee was guided by the following mandate:

- Facilitate the smooth handing over of power by the outgoing President to the President-Elect.

- Prepare a program for the swearing-in ceremony.
- Organize security for :-
- The Presidential and Deputy Presidential candidates.
- The President-Elect and the Deputy President-Elect upon declaration of the results by the Independent Elections and Boundaries Commission.
- Co-ordinate the briefing of the President-Elect by public officers from various Ministries/Departments.
- Organize for the necessary facilities and personnel for the president-elect.
- Facilitate communication between the out-going President and the President-Elect.
- Facilitate briefing on security to the President-Elect and
- To carry out any other activity necessary for the performance of its functions under the Act and Perform any other function in pursuance of any other written law.

3.0 SUB-COMMITTEES MANDATE AND ACTIVITIES

In order to effectively exercise its mandate, the Committee established four (4) sub-committees headed by the relevant Permanent Secretaries/Accounting Officers (**Appendix 1**). The sub-committees established were:

- Security/protocol/logistics
- Budget
- Entertainment, and
- Legal.

The sub-committees reported to the main Committee on the progress of assigned tasks for deliberations, and approval.

The Committee tasked the sub-committees to draw their Terms of Reference, budget and workplan based on the activities assigned. The Committee also critically examined the important timeliness based on five (5) scenarios on the possible swearing-in dates in respect to the Presidential elections in accordance with the Constitution. The following possible swearing in of the President-Elect scenarios were established as probable: **(Appendix 2)**

- Tuesday, 26th February 2013, if only one candidate is nominated.
- Tuesday, 26th March 2013, if there is a clear winner in round one and there is no petition.
- Tuesday, 9th April 2013, if there is a petition filed against the president-Elect and it is dismissed. This is actually what obtained in the Presidential Election of 2013 and the President –Elect was sworn in on the material day.
- Tuesday, 30th April 2013, in case there was a run-off following the first round of elections and there is no clear winner.
- Tuesday, 18th June 2013, in case a petition is filed and its successful.

In order to ensure everything went as planned the Committee developed an implementation checklist/plan to guide in its operations. **(Appendix 3)**

3.1 Security/Protocol/Logistics Sub-Committee

This Sub-Committee was charged with three major responsibilities: Security, protocol matters and logistics.

3.2 Budget Sub-Committee

While the Assumption of Office of President Committee had many activities to undertake as part of its mandate, there was however no dedicated budget provided for the Committee. The committee had therefore to resort to Ad hoc

arrangements with the Treasury for funding of the Inauguration ceremony and other side activities related to this event.

Initially the Committee had requested the Treasury for a total of **KShs.404,141,920** to finance its activities but the Treasury was only able to provide **Shs.178,969,105** leaving some unpaid bills. Although not all the amount had been released by the Swearing-in date. The Treasury has factored these amounts in the revised budget.

- The committee however greatly appreciates the support by the Treasury since out of the funding that was received, the inauguration went on successfully.
- The Budget Sub-Committee under the chairmanship of the Permanent Secretary, Treasury was able within very strict timelines to provide the necessary resources for the Swearing-in. **(Appendix 4)**

3.3 Entertainment Sub-Committee

The sub-committee was tasked with responsibility of:-

- Identification, transportation, auditioning and vetting of entertainment groups/persons. **(Appendix 5)**.
- Recording of music.
- Rehearsals/Presentation of the dance groups/choirs/popular artists to perform during the swearing-in ceremony.

The Sub-Committee organized for entertainment at the following venues:

- The arrival and departure at JKIA – entertainment of foreign dignitaries on arrival and departure.
- The main venue, Kasarani Sports Complex on 9th April, 2013 during the swearing-in ceremony.

- At State House during the State Luncheon.

The Committee decided to have all the performance pre-recorded to ensure good quality of the music. The pre-recording of the performance and video production took six days at Johari Studio from 28th – 3rd April, 2013.

The entertainment groups/dancers comprised of traditional dancers, popular artistes, choirs and gospel singers. The identified groups conducted a dress rehearsal at Kasarani prior to the performance on 9th April 2013.

3.4 Legal Sub-Committee

The sub-committee tasked with responsibility of:-

- Identify and elaborate on the legal provisions of governing the Assumption of the President's office,
- Develop legal guidelines and procedures including roadmap for the handing over process by the outgoing President to the President elect.
- Prepare legal briefs to the President and the President elect.
- Identify the possible legal challenges and obstacles to the Assumption of the office of President (**Appendix 6**).

The Committee convened its first meeting on 21st January 2013 and resolved to be guided by:

- The Constitution and relevant legal framework;
- The past experiences;
- Media briefing on regular basis;
- The adherence to protocol and procedures, and
- Emphasis on the need to execute the ceremony in an orderly and organized manner.

3.5 The Inauguration Venue (Moi Sports Complex)

The Committee identified Moi International Sports Complex, Kasarani as an ideal venue to host the inauguration based on the following criteria:

- Adequate capacity to host large number of expected guests and public
- Appropriate in terms of crowd control
- Security consideration for guests and public
- Ample parking space for vehicles
- Traffic management and free movement of vehicles and *wananchi*

The Kasarani Sports Complex fits into the criteria as it can sit 60,000 people.

The Committee constructed a VIP dais with a capacity to accommodate 5,000 guests. Part of the dais was reserved for VVIPs section approximately 250 guests.

(Appendix 7).

The Government Reception Officer designated various sitting areas for various categories of invited local and foreign guests. The foreign delegations were originally restricted to four persons for every Head of State and or Government. In addition, the GRO deployed 120 ushers to guide guests as appropriate.

The sitting arrangements at the VIPs section on 9th April 2013 at Kasarani was disrespected by a section of VIPs. Some invited VIPs declined to occupy seats reserved for them and forcefully took up other guest's seats. Equally, some foreign guests turned up with a large delegation than expected. The end result was overcrowding witnessed at the VIP section.

However, all Heads of State and Government sat comfortably in their designated area and witnessed the occasion in a dignified manner.

3.6 Security

The security responsibility was executed by the National Police Service throughout the country before, during and after the General Elections. The notable activities included but not limited to: provision of security to all presidential and running mates, the traffic management, securing of the inauguration venue and gathering of intelligence.

During the inauguration ceremony on 9th April 2013 the National Police Service deployed over four thousand (4,000) security officers at Moi Sports Complex, Kasarani and the surrounding. In addition, over seven hundred (700) traffic police officers were deployed to ensure free flow of motor vehicles and guide public attending the ceremony.

The security was deployed to man various gates at Kasarani to ensure that all guests were screened.

Foreign dignitaries were equally provided with adequate security from the airport to the inauguration venue and back.

3.7 Traffic Management

The Committee designated four parking areas under the direction of the Traffic Police Officers.

- Parking area I was reserved for Heads of States and/or Governments convoys.
- Parking area II was reserved for Service Commanders and all VIPs who were ferried into the venue using buses.
- Parking area III was reserved for Diplomatic corps and foreign delegations.
- Main stadium parking areas were reserved for all other invited guests.

- Vehicles designated and printed an “**Essential Services**” stickers were allowed access to areas where they were required.

3.8 Protocol

The Committee in consultation with the Ministry of Foreign Affairs and the President-Elect invited fifty two (52) Heads of States and Governments and key Pan-African personalities. The criteria for invitation was based on Regional Economic groupings and strategic partnerships. The chair(s) for these groupings represented particular membership(s).

The invitation letters to foreign dignitaries were signed on 31st March 2013, a day after the Supreme Court had determined the Presidential Election Petition.

Despite the late dispatch of the invitation letters to foreign dignitaries, the inauguration ceremony was attended by Heads of States and Governments, three (3) Prime Ministers and four (4) Vice-Presidents. **(Appendix 8)**

3.9 Inauguration Programme

The Committee prepared a programme pursuant to Section 6(f) of the Act. The activities in the programme were designed with strict timelines. The Committee printed 20,000 copies which were distributed at Kasarani on the inauguration day **(Appendix 9)**.

The Committee also facilitated the printing of speeches for the immediate former President, H.E. Mwai Kibaki, CGH and for H.E. the President, Hon. Uhuru Kenyatta, CGH. Government Reception Office distributed 5,000 copies at the Kasarani Sports Complex.

3.10 Logistics

As a way of managing movement to Moi International Sports Centre and in order to reduce congestion on the roads and manage the parking space at the venue, the Committee organized for pool transport to ferry invited guests. The invited guests were picked from the following designated points:

- Members of Parliament – Parliament building
- Senate – KICC building
- Permanent Secretaries/Accounting Officers – Harambee House
- High Court and Court of Appeal Judges – Supreme Court
- Chairpersons and Members of Constitutional Offices – Comesa Grounds
- Ministers and Assistant Ministers – Parliament Buildings
- Governors/County Representatives – KICC Grounds

3.11 Military Parade

The Kenya Defence Forces conducted a parade and Guard of Honour in accordance with the requirements of the ceremony. As part of the parade the retiring President, H. E. Mwai Kibaki, CGH inspected his last Guard of Honour as the Commander-In-Chief of the Kenya Defence Forces, while the Newly Sworn-in President marched off the Guard of Honour.

3.12 State Luncheon

As part of the Swearing –in-Ceremony a State Luncheon was organized where the Committee hosted 2,500 guests at State House, Nairobi. The luncheon was attended by both local and invited foreign dignitaries. H.E. Hon. Jakaya Kikwete, CGH, the President of the United Republic of Tanzania spoke on behalf of the invited foreign guests. **(Appendix 10)** and gave a vote of thanks.

3.13 Media Briefings

For purposes of keeping the public abreast of the preparations of the swearing in of the 4th President periodic media briefings were conducted, where the Chairman of the Committee, the Chief Registrar Judiciary, Inspector General of the Police and Permanent Secretary, Ministry of Information and Communications would give brief reports on the progress on preparations. Through the Media Briefs the public was made aware of the work of the Assumption of the Office of President Committee, details of the Swearing in and all other activities organized to go with the ceremony.

The briefings were significant in that there was a good public buy in process and organization of the swearing in activities and the final ceremony.

4.0 CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

In spite of the challenges encountered, especially the Limited time available for the preparations which was only Eight (8) days including a weekend the committee was able to manage the entire transition ceremony in accordance with the Constitution of Kenya, 2010 and all other relevant laws. A summary of the challenges encountered and recommendations arising out of the experiences are listed below:

4.2 Recommendations

- **Constitutional and legal issues:** During the work of the committee, a number of Constitutional legal gaps were identified, these include:
 - A new election following death of one of the candidates or their running mates. This was seen as a major hindrance as it would prolong the election with the uncertainty brought by the temporary incumbency of the Presidency, No Parliament or

Cabinet. The question as to when the election is considered to have been concluded; and

- When the president-elect should form the Government is another challenge.

To address these two challenges the Committee recommends that the Attorney General immediately initiates steps to put in place regulations as provided for by the Assumption of the Office of President Act 2012 owing to the hardships encountered to have in place a budget.

- **Budget:** It is proposed that during an election year parliament should allocate funds for Assumption of office of president activities to avoid financing of these activities from the Contingency Fund and on an Ad Hoc basis.
- **Provision of information by public officers to President elect:** While the Law requires that a President-elect be briefed on matters of national importance the Act should be amended to specify the extent and level of information that can be given to the President –elect. This is vital given that in the event of an election Petition leading to annulment of an election matters such as National Security would be highly compromised.
- A thorough Audit/Review of the Assumption of Office of President Act, 2012 is recommended to identify areas that create obstacles to successful Assumption of the Office of President in days to come.
- **Regulations:** To address a number of the issues arising from the difficulties experienced by the Committee due to apparent ambiguity in the Act. The committee recommends a high level taskforce to be constituted immediately to draft regulations in accordance with section 22 of the Act.

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5.0 APPENDICES

1. Appendix 1 - Sub-Committees – Reports.
2. Appendix 2 - Power Point Presentation: Assumption of the Office of President Act, 2012.
3. Appendix 3 - Implementation Checklist/Plan Matrix.
4. Appendix 4 - Budget.
5. Appendix 5 - Entertainment Groups/Choirs/Popular Artistes.
6. Appendix 6 - Legal Interpretation of Constitutional and Other Issues Assumption of the Office of the President Act, 2012.
7. Appendix 7 - Organization of sitting arrangements for VIPs, VVIPs and Invited Guests.
8. Appendix 8 - List of Invited Invitations to Foreign and Local Dignitaries.
9. Appendix 9 - Official Program for 9th April, 2013.
6. Appendix 10 - Luncheon at State House.
7. Appendix 11 - Photo Album - Photographs of the Ceremony.

APPENDIX: 1

Sub-Committees Reports

SUB-COMMITTEES AND MEMBERS

1. SECURITY/PROTOCOL/LOGISTICS SUB-COMMITTEE

MEMBERS

1. PS – Ministry of State for Provincial Administration and Internal Security - (Chair)
2. PS, Ministry of State for Immigration and Registration of Persons
3. PS, Ministry of Foreign Affairs
4. The Chief of Kenya Defence Forces
5. Inspector General, Kenya Police Service
6. The Comptroller, State House
7. The Principal Administrative Secretary
8. The Director-General NSIS
9. The Chief Registrar, The Judiciary

2. BUDGET SUB-COMMITTEE

MEMBERS

1. PS, Ministry of Finance - (Chair)
2. PS, Internal Security
3. PS, Ministry of National Heritage and Culture
4. The Attorney General
5. The Clerk, National Assembly
6. The Principal Administrative Secretary
7. Comptroller, State House

3. THE LEGAL SUB-COMMITTEE

MEMBERS

1. The Attorney-General – (Chair)
2. PS, Ministry of Justice, National Cohesion & Constitutional Affairs
3. The Clerk, National Assembly
4. The Chief Registrar, the Judiciary
5. PS, Ministry of Local Government Authorities
6. Principal Administrative Secretary

4. ENTERTAINMENT SUB-COMMITTEE

MEMBERS

1. PS, Ministry of Culture and National Heritage (Chair)
2. Ps, Ministry of State of Provincial Administration & Internal Security
3. PS, Ministry of Information & Communication
4. Principal Administrative Secretary
5. Comptroller, State House

FINAL REPORT OF ACTIVITIES UNDERTAKEN BY THE SECURITY, PROTOCOL AND LOGISTICS DURING PREPARATIONS FOR THE PRESIDENTIAL INAUGURATION CEREMONY AT KASARANI

This subcommittee was mandated to plan for all matters related to Security, Protocol and Logistics for the Presidential inauguration ceremony. The subcommittee comprised members from; Office of the President, Judiciary, Military, National Police Service, National Intelligence Service, Ministries of Foreign Affairs, Immigration and Registration of Persons, and Public works.

The following achievements were recorded;

1. Security arrangements

The sub-committee made proper arrangements that took care of the following;

- i. Security for local and foreign dignitaries
- ii. Security at Kasarani Sports Complex and the route to State House
- iii. Security surveillance in the entire City of Nairobi and its environs
- iv. Elaborate Traffic arrangements along all the routes
- v. Accreditation of all persons involved in the preparations at Kasarani

2. Protocol arrangements

- The Ministry of Foreign Affairs made the necessary protocol and invitation arrangements for International guests. Among those who attended were heads of African States, dignitaries from EAC, IGAD, ECOWAS, Gulf Cooperation Council, SADC, Arab League, ASEAN, EU and other Foreign Luminaries.

- On local guests, the subcommittee facilitated the travel and subsistence of 100 delegates per county to attend the event through the County Commissioners.
- A State Luncheon at State House befitting the occasion was organized.
- Cards were produced and distributed by the office of the government receptionist

3. Logistics

- An appropriate dais was prepared for the dignitaries
- Judiciary prepared the Presidential Installation Podium
- A Military parade and ceremonies befitting the event were organized.
- Executive buses were provided to ferry the VIPs to Kasarani and back from designated areas
- We provide open air screens within the main stadium, the Gymnasium and warm up areas for members of the public who did not get space in the main stadium.

4. Expenditure returns

The subcommittee was allocated resources by treasury which were expended and accounted for specific ministries and departments. The following is the summary of expenses incurred by the ministry of State for Provincial Administration and Internal Security.

NO	ITEM	FIRM	QUANTITY	AMOUNT (KSHS)
1.	Purchase, testing and commissioning of baggage scanners	ABCOS	8 pieces	63,360,000.00
2.	Purchase of walk through scanners	ABCOS	15pieces	21,600,000.00

3.	Purchase of Battery Back-UP	ABCOS	8pieces	1,152,000.00
4.	Purchase of traffic lights set for Scanners	ABCOS	8pieces	396,000.00
5.	Purchase of Battery Back-UP for Walk through detectors	ABCOS	15pieces	120,000.00
6.	Purchase of Security Mirrors	ABCOS	20No.	488,592.00
7.	Hire of assorted chairs, decorations, portable toilets and pedestals	Wonder Joy Party World		3,972,420.00
8.	Purchase of Mineral Water (Cartons) at Kasarani	Wonder Joy Party World	8,000 pieces	278,400.00
9.	Hire of Red Carpets for VIP Dias	Wonder Joy Party World		812,000.00
10.	Printing Services (cards, and programme for Kasarani and State House	Government Press		9,014,360.00
11.	Cost of transport and subsistence allowance for county delegates			39,607,000.00
Total Kshs.				140,800,772.00

NB: Other departments will submit their returns separately.

THE CHAIRMAN

SUB COMMITTEE ON SECURITY, PROTOCOL AND LOGISTICS

9th May 2013

APPENDIX: 2

**Power Point Presentation:
Assumption of the Office of the
President Act, 2012**

**Presentation
to the Assumption of the Office
of President Committee.
Office of the President, Nairobi.**

Important timelines

1. Results are declared within 7 days after the presidential election.
2. Petitions are filed within 7 days after declaration of results.
3. If a petition is filed, the Supreme Court hears and gives a determination within 14 days.
4. A run-off is held within 30 days and is between number 1 and 2.
5. If an election is cancelled, a fresh election is held within 60 days.
6. The President-elect is sworn in the first Tuesday following the 14th day if no petition has been filed or the 7th day following the date on which the Court renders a decision.

Scenario 1; Election is cancelled

- Article 138 (8)
- A presidential election shall be cancelled and a new election held if –
 - (a) No person has been nominated.
 - (b) A candidate for election as president or deputy president dies before the scheduled election date.
 - (c) A candidate who would have been entitled to be declared elected dies on or before being declared elected.
- A new election shall be held within 60 days.

Scenario 2; Only one Candidate nominated

- Article 138 (1) and Article 141(2) (a)
- If only one Candidate is nominated, that candidate shall be declared elected if no petition is filed under Article 140.
- The Candidate will be sworn as president on Tuesday, 26th February 2013.

Scenario 3; First Round Win and no petition

- Article 138 (4) (a) and (b)

- A candidate shall be declared elected if the candidate receives:-
 - (a) More than half the votes cast in the election,
 - (b) at least 25 percent of the votes cast in each of more than half of the counties.

Scenario 3 cont...

- Article 138 (10) gives IEBC 7 days to declare the result of the election.
- If there is no petition within 7 days, the President elect will be sworn in on the first Tuesday after being declared winner.
- In this case the President elect will be sworn-in on Tuesday, 26th March 2013.

Scenario 4; Petition is filed and Dismissed

- Article 140 (1) and (2)
- A person having filed a petition under (1) and the same is dismissed under (2) by the Supreme Court.
- In this case the President will be sworn-in on Tuesday, 16th April 2013.
- (Note the determination by the Supreme Court is due on 8th April and it is not practicable to hold swearing in on 9th April).

Scenario 5; Run-off

- Article 138(5)
- If no Candidate receives more than half of the votes cast in the election and at least 25% of the votes cast in each of more than half of the counties a fresh election shall be held within 30 days.
- In this case the run-off will be between number 1 and 2 and the candidate who receives the most votes in the fresh election will be declared elected as president.
- Swearing in will be on Tuesday, 30th April 2013.

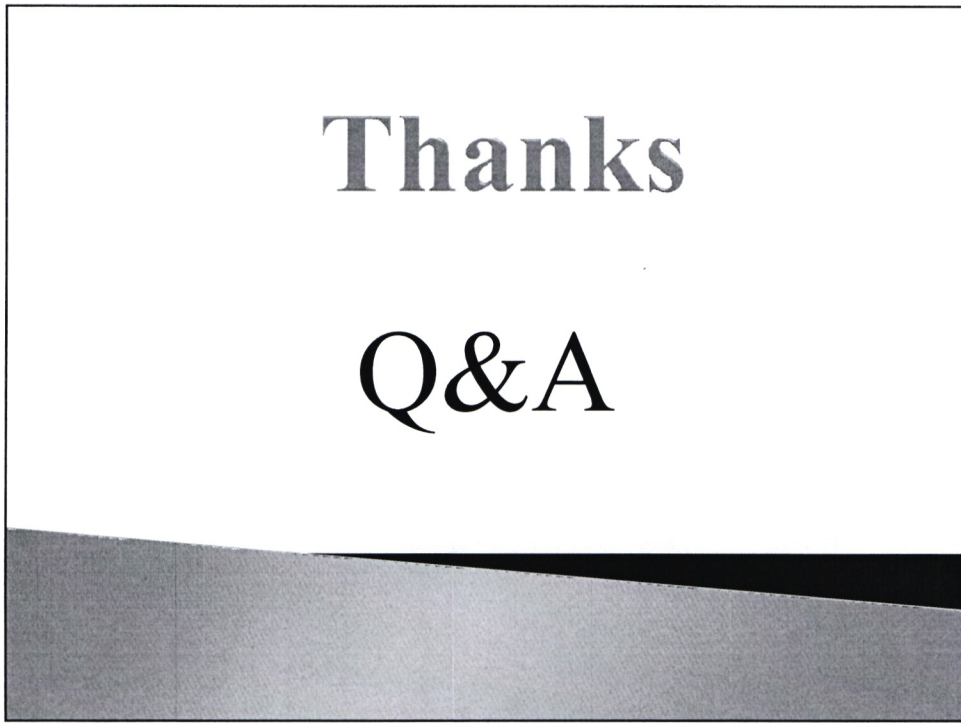
Scenario 6; Petition is successful

- Article 140 (3)
- The Supreme Court declares the election of President-elect to be invalid, a fresh election shall be held within sixty days after the determination.
- In this scenario, swearing in will be held on 18th, June 2013.

Conclusion and summary

Possible swearing in dates;

- Tuesday, 26th February 2013. (Only one Candidate nominated)
- Tuesday, 26th March 2013. (First Round Win and no petition)
- Tuesday, 16th April 2013. (Petition is filed and Dismissed)
- Tuesday 30th April 2013. (Run-off)
- Tuesday, 18th, June 2013. (Petition filed and is successful)



APPENDIX : 3

Implementation Checklist/Plan Matrix

ACTIVITIES CHECKLIST – 5/4/2012

	OBJECTIVE	RESPONSIBLE PERSON	ACTIVITIES
1.	Have a comprehensive Operation Plan/Orders	Inspector-General	<ul style="list-style-type: none"> • Prepare a security operation order <ul style="list-style-type: none"> - Identify areas to be covered - Identify units/formation to be deployed where/when? • Foreign V.I.P. escort in liaison with Chief Protocol Officer • Road traffic management • Crowd control along the major routes/venue and City Centre • Develop an operation order • Provision of security to President-Elect/Deputy President • Conduct rehearsal drills
2.	Programme for military parade	Chief of Defence Forces (CDF)	<ul style="list-style-type: none"> • Identify military units/formation to take part in the parade • Parade rehearsal • Guard of honour • National Anthem • Military march pass • 21 gun salute • Hosting/lowering of the presidential standard flag • Handing over the sword and presidential standard flag to President-Elect • Handing over Presidential flag to the outgoing President • Lap of honour around the stadium with new President in ceremonial land rover
3.	Preparation of venue for swearing-in ceremony	Security/Logistics/Protocol	<ul style="list-style-type: none"> • Prepare badges/invitation cards • Identify entry gates for various invited guests • Prepare sitting arrangements for guests/VIPs • Prepare dais • Prepare holding VIP rooms/area • Painting/marketing of the facility • General cleanliness in and around the venue • Security/safety of the venue • Marking of seats/chairs • Sound system equipments • Security screening of people/visitors entering the venue
4.	Swearing-in Programme	Chief Registrar/Judiciary	<ul style="list-style-type: none"> • Programme and Swearing-in instruments ready
5.	Invitation of foreign dignitaries	Ministry of Foreign Affairs	<ul style="list-style-type: none"> • List of invited foreign guests • Confirm attendance/arrival time

			<ul style="list-style-type: none"> • Hotel bookings and reservations • Provisions of transport and logistical support to guests • Identify Escorts of Honour • Confirm departure programme
6.	State Luncheon	Security/Protocol/Logistic	<ul style="list-style-type: none"> • Invitations • Entertainment for guests in liaison with Entertainment Committee • Organize for sitting arrangements
7.	Entertainment	Entertainment Committee	<ul style="list-style-type: none"> • Dancers/performing artistes • Vet/audition of the groups • Rehearsal sessions • Organize for transport and accommodation • Kitting of choirs • Identify areas where/when activities are expected to be performed
8.	Leal Sub-Committee	Swearing-in Programme in place	
9.	Budget Sub-	<ul style="list-style-type: none"> • All Sub-Committees 	
10.	Compilation of final report and submit to Parliament	All Sub-Committees	

APPENDIX : 4

BUDGET

BUDGET FOR THE ASSUMPTION OF OFFICE OF THE PRESIDENT
ACTIVITIES- KSHS.178,969,105

This Office was allocated Kshs.100 million under the Printed Estimates for 2012/13 Financial Year under Head 0001 – Cabinet Office Headquarters Item 2210805 – National Celebrations. Additional funds totaling Kshs.78,969,105 were approved vide Treasury letter NO.CONF/MOF.118/18/04/B/78 of 4th April, 2013 enhancing the total allocation for the activities to Kshs.178,969,105. These funds were distributed and used by the various sub-committees charged for identified activities. The Sub committees undertaking the activities and which utilized the funds are as in the following matrix.

Subcommittee	Purpose	Allocation KShs
Security/Logistics/ Protocol Committee	<ul style="list-style-type: none"> • State Luncheon, • Invitation of Foreign Dignitaries • Preparation of roads/field markings, • Invitation and facilitation of Local delegates • Printing of cards/programme 	128,700,405
Entertainment Committee	<ul style="list-style-type: none"> • Identification , transportation, auditioning, vetting, pre-recording, rehearsal and performance of traditional dancers from 7 counties and Nairobi • Choir performances 	16,336,000
Legal Subcommittee	<ul style="list-style-type: none"> • Swearing-in instruments 	7,280,000
Other expenses Under Cabinet Office	<ul style="list-style-type: none"> • Medical Insurance for President Elect, • Farewell party for outgoing President 	26,652,700
	TOTAL	178,969,105

APPENDIX : 5

Entertainment - Groups/Choirs and Popular Artistes

NO.	NAME OF ARTISTE	ITEM OF PERFORMANCE
1.	Roughtone/ Tuvuke Choir/ National Youth Orchestra	Amani Kenya
2.	Kenya Boys Choir	Kenya
3.	Kavi Pratt	Hater Raid, Party Blazers Medley
4.	G-Kon	Ni Kujitoka
5.	Abbas	Chapaa, Tokelezea Medley
6.	Sarakasi Dancers	Flute Song
7.	Madtraxx	Get Down, Skamaress Medley
8.	Ally B	Ziki La Nazi, Mari Medley
9.	Ringtone	Talanta, Jubilation Medley
10.	Jaguar	Vuka Border, Kigeugeu Medley
11.	V-sita& Elsie	Pamoja (Jubilee Anthem)
12.	Rufftone Nairobi Orchestra &Tuvuke Youth Initiative	Mwikulu, TsinyangaTsiwere, Mungu Baba Medley
13.	Sauti Sol	Soma Kijana, Money Lover Medley
14.	Daddy Ownen	Coupe De Cale, System yaKapungala, Mbona Medley
15.	Emmy Kosgei	Wololo, Ategisin, TaunetLelel
Pre-Swearing In		
16.	Thomas Wesonga and NHIF Choir, KengekengeOrutu	Tushangilie Kenya

17.	State House Choir	
Post Swearing In		
18.	The Moipei Quartet	My land is Kenya
19.	Jemima Thiongo	Gospel Song – 'Akisema Amekubariki Hakuna Atakaye Zuia'

Traditional Music Groups to Represent the Counties and Showcase the Face of Kenya

NO	NAME OF GROUP	COUNTY AND REGION	ITEM OF PERFORMANCE
1.	Gargar Express Cultural Dancers	North Eastern region	Diso Dance (Somali)
2.	Bomas of Kenya Dance Troupe	Nairobi region	Isuru Dance of the Kuria Community
3.	KaganKochia Dancers	Nyanza Region	Ramogi Dance of the Luo Community
4.	BandariNgoma	Coastal Region	Sengenya Dance (Mijikenda Community)
5.	ImachinaIlesi Cultural Dancers	Western Kenya Region	Isukuti Dance of the Luhya Community
6.	H. H Swamibapa Pipe Band	Nairobi Region	Oriental Music played on Bagpipes
7.	KiangaiMwomboko Dancers	Central Kenya Region	Mwomboko Dance

8.	Narok High School	Rift Valley Region	Maasai Dance
9.	Karamani/ Chuka Dancers	Eastern Kenya Region	Mwinjiro Dance of the Ameru

Performances during arrivals and departures ceremonies for heads of states and governments

- A number of Heads of States and Governments attended the swearing ceremony of the president elect.
- The invited heads of states and Governments arrived on two different days.
- The Entertainment subcommittee prepared and presented five (5) groups of traditional dancers that performed each day during arrival and departure ceremonies.
- Groups from Nairobi were used for arrival and departure ceremonies to cut down on the cost of transport and accommodation.
- The groups worked with Music officers for two days to realize quality and standards of performance.

Arrival Ceremonies Day 1: 8th April 2013

NO	COUNTY AND REGION	ITEM OF PERFORMANCE
1.	Bomas of Kenya	Isuru Dance of the Kuria Community
2.	Sister Club	Nubian Dance Dholuka
3.	Torkochkaa	Kalenjin Dance
4.	Hambanera Dancers	Borana Dance
5.	Tarumbeta Africa	Senganya

**Arrival Ceremonies Day 2: And Departure Ceremonies Day 1
9th April 2013**

NO	NAME OF GROUP	ITEM OF PERFORMANCE
1.	Waza Africa	Sengeny Dance
2.	Jirani Women Group	Dodo of the Luo
3.	Kuza Africa	
4.	UtamaduniNgoma	Isukuti
5.	Thika Municipal Dance Troupe	Agikuyu Dance

Departure Ceremonies Day 2- 10th April 2013

NO	NAME OF GROUP	ITEM OF PERFORMANCE
1.	Bomas of Kenya	Miiri Dance
2.	Nyota Africa	Ramogi Dance
3.	Ruhia Dancers	Ruhia
4.	SanaaUtamaduni	
5.	Machakos Municipal Dance Troupe	

APPENDIX: 6

**Legal Interpretation of Constitutional
and Other Issues From:
Assumption of the Office of the President Act,
2012**

THE FINAL REPORT ON ISSUES ARISING FROM IMPLEMENTATION OF THE ASSUMPTION OF THE OFFICE OF PRESIDENT ACT

I. INTRODUCTION

(a) Terms of Reference

We have considered the issues highlighted in the letter of the Honourable Attorney General dated 21st February, 2013 and the annexed document titled "Draft Terms of Reference".

In his letter dated 21st February, 2013 the Honourable Attorney General highlighted several issues that may present constitutional, legal and administrative challenges in the enforcement of the Assumption of the Office of President Act (the Act). The following issues were specifically mentioned in the said letter.

- 1. At what point will the architecture of the new Government be decided:- is it after President has announced his nominees for various Cabinet positions or after the nominees have been approved by Parliament?*
- 2. The Constitution seems to recognize the existence of both "Ministries" separate from "departments" in Article 132(3)(b) and Article 155(2). How will the new ministries be designated? Whether as "Ministries" or "departments"?*
- 3. At what point will the Public Service Commission ("PSC") invite applications for the position of Principal Secretary as mandated by Article 155(3) (a) of the Constitution:- Will this be before the President announces the structure of his Government or after the nominees have been approved by Parliament?;*
- 4. At what point will the new structure of Government be deemed to be in place, thereby triggering the reorganization of Government departments, transfer of staff and reassignment of Government facilities:- Will this be immediately after the President announces his government or after Parliament approval?;*

5. *Who is to manage the Ministries/departments in the period between when the President determines the structure of his Government and the confirmation of his nominees for positions of Principal Secretary and Cabinet Secretary by Parliament?;*
6. *What is to happen to current permanent Secretaries who may not wish to apply for the positions of Principal Secretary:- Will they be retired from the service or redeployed with the public service?;*
7. *While the Constitution makes express provision for the appointment of a Secretary to the Cabinet under Article 154 no provision has been made for a Head of Public Service i.e. the coordinator of the management of the various Government Ministries/departments/Commissions:- who is to perform this function especially from the time critical period between the departure of the Permanent Secretaries and the assumption of office of the Principal Secretaries and Cabinet Secretaries?;*

The above issues were further elucidated and expanded in the Draft Terms of Reference annexed to the Hon. Attorney General's letter aforementioned. Therefore as a result of the substantial overlap of the issues in the letter dated 21st February, 2013 and the Draft Terms of Reference, in this Report we have drawn up the issues from our reference materials and we have rearranged and discussed them to achieve coherence and flow of the analysis and reasoning. It should be noted that the Final Report has been concluded after the General Election was held on 4th March, 2013 and Hon. Uhuru Kenyatta's declaration as President-elect. In the premises, this factor is borne in mind in discussing some of the issues specified in our Terms of Reference.

(b) The Rules and Mode of Interpretation of the Constitution in this Report

Article 259 of the Constitution provides guidance on how to interpret the new Constitution and we have faithfully endeavoured to do so in this Report. For ease of reference, Clauses (1) and (3) of Article 259 provides as follows:

(1) This Constitution shall be interpreted in a manner that –

a) promotes its purposes, values and principles;

b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;

c) *permits the development of the law; and*

d) *contributes to good governance.*

(3) *Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking and, therefore, among other things -*

a) *a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office;*

b) *any reference in this Constitution to a State or other public office or officer, or a person holding such an office, includes a reference to the persons acting in or otherwise performing the functions of the office at any particular time;*

c) *a reference in this Constitution to an office, State organ or locality named in this Constitution shall be read with any formal alteration necessary to make it applicable in the circumstances; and*

d) *a reference in this Constitution to an office, body or organization is, if the office, body or organization has ceased to exist, a reference to its successor or to the equivalent office, body or organization.*

Finally, we have adopted the rules of interpretation upheld in recent the Judgement of a five-judge Bench of the High Court in the case of **International Centre for Policy and Conflict & 5 Others vs. The Hon. Attorney-General & 4 Others** Petition Numbers 552 of 2012 as Consolidated with Petitions Numbers 554 of 2012, 573 of 2012 and 579 of 2012. In paragraphs 78-81 of the Judgement the learned Judges held as follows on the interpretation of the Constitution.

79. *In Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] eKLR, the Court stated that;*

“In interpreting the Constitution, the letter and the spirit of the supreme law must be respected. Various provisions of the Constitution must be read together in order to get a proper interpretation. In the Ugandan case of

Tinyefuza v Attorney General Constitutional Appeal NO. 1 of 1997, the court held as follows: 'The entire Constitution has [to] be read as an integrated whole and no one particular provision destroying the other but each sustaining the other. This is the rule of harmony, rule of completeness and exhaustiveness and the rule of paramountancy (sic) of the written Constitution.'

80. A similar principle was enunciated by the United States Supreme Court in *Smith Dakota v North Carolina* 192 U.S. 268 [1940]. The court stated:

'It is an elementary rule of Constitutional construction that no one provision of the Constitution is to be segregated from the others and to be considered alone but that all the provisions bearing upon a particular subject are to be brought into view and to be interpreted as to effectuate the great purpose of the instrument.'

81. In *Ndynabo v Attorney General* [2001] 2 E.A. 485 the court held as follows:

'The Constitution is a living instrument, having a soul and consciousness of its own it must be construed in line with the lofty purpose for which its makers framed it... A timorous and unimaginative exercise of the judicial power of Constitutional interpretation leaves the Constitution a stale and sterile document'."

We are confident that on the basis of the foregoing this opinion is based on a fair, correct and objective interpretation of the Constitution and other relevant laws.

II. REVIEW OF THE CONSTITUTIONAL AND LEGAL PROVISIONS GOVERNING THE ELECTION, SWEARING IN AND ASSUMPTION OF OFFICE OF THE PRESIDENT

Besides the Constitution of Kenya, the laws governing the election, swearing in and assumption of office of the President are found in the Elections Act, 2011 (Act No. 24 of 2011) and the Assumption of Office of President Act, 2012 (Act No. 21 of 2012). We

propose to discuss the key provisions and practical implications of the said laws herein below.

1) The Constitution of Kenya

Chapter Nine of the Constitution concerns the Executive and specifically Articles 136 – 140 deals with election of the President.

Article 136 of the Constitution provides, inter-alia, that election of the President shall be held on the same day as a general election of Member of Parliament, being the second Tuesday in August, in every fifth year or upon a vacancy arising in the office of president in the manner set out in Article 146 of the Constitution.

It is noteworthy that the first general election under the new Constitution was held on 4th Mach, 2013 pursuant to the Sixth Schedule of the Constitution and the decision of the High Court in the case of **John HarunMwau & 3 Others vs. The Hon. Attorney General & 2 Others Nairobi High Court Petition No. 65, 123 and 185 of 2011**. However the second general election will be held on the second Tuesday in August, 2017 being the fifth year from 4th March, 2013.

Article 137 sets out the qualifications and disqualifications for election as president. Under Article 137(1)(b) in order to qualify for nomination as a presidential candidate, a person must be qualified to stand for election as a Member of Parliament. The qualifications and disqualifications for election as a member of parliament are set out in Article 99. Article 99(2)(4) provides that a person is disqualified from being elected a member of parliament if the persons is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six.

The above provision is worth noting because it is the basis of legal challenges to the nomination of Hon. Uhuru Kenyatta and Hon. William Ruto to contest for the President and Deputy President positions. In the wake of the election of the duo to those offices there is a high likelihood that the same issue may once again be lodged in the Supreme Court.

Article 138 of the Constitution deals with the procedure at presidential election. The relevant provisions are contained in Article 138(4) – (7) and they read as follows:-

(4) A candidate shall be declared elected as President if the candidate receives –

(a) More than half of all the votes cast in the election; and

(b) At least twenty-five per cent of the votes cast in each of more than half of the counties.

(5) If no candidate is elected, a fresh election shall be held within thirty days after the previous election and in that fresh election the only candidates shall be –

(a) the candidate, or the candidates, who received the greatest number of votes; and

(b) the candidate, or the candidates, who received the second greatest number of votes.

(6) If more than one candidate receives the greatest number of votes, clause (5)(b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5)(a).

(7) The candidate who receives the most votes in the fresh election shall be declared elected as President.

In view of the declaration by the Independent Electoral and Boundaries Commission (IEBC) that Hon. Uhuru Kenyatta is the President-elect following the presidential election held on 4th March, 2013, the significance of Article 138 of the Constitution will now turn on the fate of any petition filed in the Supreme Court to challenge the election of the President elect. If the Supreme Court nullifies the election of the President elect then a fresh election shall be held within sixty days after the determination. In the event that the Supreme Court dismisses such a petition then the President elect shall be sworn in on the first Tuesday following the seventh day following the date on which the Court renders a decision declaring the election to be invalid.

2) The Elections Act, 2011

By dint of Article 82 of the Constitution Parliament is enjoined to enact legislation on elections to provide, inter-alia, for the conduct of elections and referenda and the regulation and efficient supervision of elections and referenda, including the nomination of candidates for elections.

Pursuant to the said provision, in August, 2011 Parliament enacted The Elections Act, 2011 (Act No. 24 of 2011) to provide, inter-alia, for the conduct of elections to the office of the President, the National Assembly, the Senate, County Governor and County Assembly. Part III of the Elections Act (Sections 13 – 44) concerns elections from nomination of candidates to determination and declaration of results to use of technology in elections.

Part VII (Sections 74 – 87) provides for election disputes resolution. Section 74 provides for dispute resolution by the Commission such as disputes relating to or arising from nominations. Sections 75 to 87 of the Elections Act deals with election petitions other than presidential election petitions.

It should, therefore, be noted that Presidential Election Petitions are provided for in the Supreme Court (Presidential Election Petition) Rules, 2013 published vide Legal Notice No. 15 made under Section 31 of the Supreme Court Act, 2011 (No. 7 of 2011). Section 109 of the Elections Act empowers the Commission to make regulations generally for the better carrying out of the purposes and provisions of the Act including the procedures of voting. Pursuant to Section 109 the Commission vide a Special Issue of the Kenya Gazette dated 2nd November, 2012 published Legal Notice No. 128 on The Elections (General) Regulations, 2012 to provide for matters ranging from appointment of Returning Officers and other staff to the Counting of Votes and Declaration of Results.

Pursuant to the same powers the Commission vide a Special Issue of the Kenya Gazette published Legal Notice No. 139 on the Rules of Procedure on Settlement of Disputes to govern adjudication of nomination disputes.

3) The Assumption of the Office of President Act, 2012 (No. 21 of 2012)

Article 141 of the Constitution provides for assumption of office of President and Clause 4 thereof requires Parliament to enact legislation to provide for the procedure and ceremony for the swearing in of a president-elect.

Pursuant to Article 141 of the Constitution in August, 2012 Parliament enacted the Assumption of the Office of President Act (No. 2 of 2012) to provide for the procedure and ceremony for the assumption of the office of the President by the President-elect. Section 5 of the Act provides for establishment of an *ad hoc* committee to be known as the Assumption of the Office of President Committee. Section 6(1) of the Act provides that the functions and powers of the Committee shall be to:-

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

It is important to note that Section 18 of the Act provides as follows:-

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

Section 22 of the Act empowers the Cabinet Secretaries in consultation with the Committee, to make regulations for the better carrying into effect of the provision of the Act.

III. THE EXERCISE OF EXECUTIVE POWER DURING THE TRANSITION PERIOD BETWEEN THE ELECTIONS AND THE ASSUMPTION OF OFFICE

The Government in power on 4th March, 2013 when the first general election under the new Constitution was held was the Grand Coalition Government. Section 3 of the Sixth Schedule of the Constitution provides for the legal basis of the Executive after promulgation of the Constitution as follows:-

- (1) Until Parliament passes the Act anticipated in Articles 15 and 18, Section 93 of the former Constitution continues to apply.*
- (2) Sections 30 to 40, 43 to 46 and 48 to 58 of the former Constitution, the provisions of the former Constitution concerning the executive, and the National Accord and Reconciliation Act, 2008 (No. 4 of 2008) shall continue to operate until the first general elections held under this Constitution, but the provisions of this Constitution concerning the system of elections, eligibility for election and the electoral process shall apply to that election.*
- (3) Until the National Police Service Commission referred to in Article 246 is established, section 108(2) of the former Constitution applies to appointments, discipline and the removal of persons from office in the National Police Service.*

There is one more reason for this view namely Section 12 of the Sixth Schedule of the Constitution which provides as follows:-

- (1) The persons occupying the offices of President and Prime Minister immediately before the effective date shall continue to serve as President and Prime Minister respectively, in accordance with the former Constitution and the National Accord and Reconciliation Act, 2008 until the first general elections held under this Constitution, unless they vacate office in terms of the former Constitution and the Accord.*

(2) The persons occupying the offices of Vice-President and Deputy Prime Minister or holding a position in the Cabinet or as an Assistant Minister immediately before the effective date shall continue to serve in accordance with the former Constitution until the first general elections held under this Constitution unless they vacate or are removed from office in accordance with the former Constitution and the National Accord and Reconciliation Act, 2008.

(3) A person who was elected President before the effective date is not eligible to stand for election as President under this Constitution.

Reading Section 12 of the Sixth Schedule together with Articles 134 and 142 of the Constitution leads to the invariable conclusion that the President's term of office under the former Constitution and when the elections are held and the only reason why he continues in office until the swearing in of the new Constitution is because Articles 134 and 142 of the new Constitution allows him to do so. Conversely, the term of the Prime Minister, Cabinet Ministers and Assistant Ministers and when the first general election is held unless the Constitution otherwise permits them to continue.

As advanced to above Cabinet Minister and Assistant Ministers remain in office because under the former Constitution they were an integral part of the Executive authority which rested in the President. Thus without an express provision the Prime Minister's term ends upon holding of the first general election and he can only remain office until the president-elect is sworn-in only in his capacity as a minister.

Given that Section 12 of the Act states, inter-alia, that the Grand Coalition Government shall remain in office until the first general elections held under the new Constitution, two questions arise:-

- When do the 'general elections' end for the purpose of Section 3(2) of the Sixth Schedule: is it on 11th March, 2013 when results must be announced or after the presidential elections are concluded?
- How is this to be reconciled with Section 2 which provides for the suspension of Articles 129-155 until the 'parliamentary elections' are held?

Let us begin with Section 2 of the Sixth Schedule of the Constitution which, inter-alia, provides for the suspension of Chapter Nine of the Constitution on the Executive until the final announcement of all results of the first elections for Parliament under the new Constitution. On the other hand Section 3(2) of the Constitution provides, inter-alia, that the Executive appointed under the former Constitution and the National Accord and Reconciliation Act shall remain in office until the first general election under the new Constitution are held. Hence there is an apparent conflict between Sections 2 and 3(2) of the Sixth Schedule in relation to the term of the Grand Coalition Government. Specifically, does its term – on the one hand – expire upon holding of the first general election on 4th March, 2013 or upon the swearing-in of the President-elect? On the other hand, does the Grand Coalition Government cease to exist on 11th March, 2013 when the results of the presidential election must be announced or after the presidential elections are concluded? There are two views on this matter due to that apparent conflict.

The first view arises from Section 2 of the Sixth Schedule and it simply holds that when the IEBC announces (we believe by publication in the Gazette) all the results of the first elections for Parliament, the tenure of the Grand Coalition Government will come to an end unless the Constitution otherwise provides. The justification for this view is fairly easy.

When Chapter Nine of the Constitution comes into force on the date that the IEBC will Gazette all the results of the first elections, Articles 129-158 of the Constitution will all come into force. By dint of Articles 134 and 142 of the Constitution President Kibaki will automatically begin to exercise the presidential powers under the new Constitution until the President-elect is sworn-in.

Considering now that under Section 17 of the former Constitution executive authority of the Kenya Government was vested in the President and the role of Cabinet was to aid and advise the President in the government of Kenya, it follows necessarily that the extension of his tenure as the Executive implies the extension of his cabinet appointed under the old Constitution until the President-elect is sworn-in.

The additional justification of this view is that when President Kibaki becomes the temporary incumbent pursuant to Article 134 of the Constitution he will exercise executive authority of the Government with the assistance of his Cabinet because a

president elected under the new Constitution will serve as a temporary incumbent together with his cabinet.

The practical implication of this view is that whereas Articles 134 and 142 of the Constitution extend the term of President Kibaki until the President-elect is sworn-in there is no provision in the Constitution or any other law that extends the term of the Prime Minister until the swearing-in of the President elect. Accordingly, the Prime Minister can only remain in office exclusively as a member of cabinet until the swearing in of the President-elect and in the meantime he cannot exercise the powers of the Prime Minister under the National Accord and Reconciliation Act, 2008.

The second view is based on Article 3(2) of the Sixth Schedule and it concludes that the President, the Prime Minister, the Deputy Prime Ministers and other members of the Cabinet shall remain in office until the President-elect is sworn in. Proponents of this view read the words "until the first general elections held under this Constitution" to mean until the conclusion of County, Parliamentary and Presidential elections and especially the latter. In other words, the phrase "holding of elections" is interpreted as reference to a process that begins with casting of ballot papers until the confirmation of declaration of a president-elect. Accordingly, until the declaration of a president-elect is confirmed the first general elections would not have been fully held and therefore the Grand Coalition Government will remain in office.

It bears noting that there is no provision in the main text of the Constitution that supports this view. However, it can be persuasively argued that by dint of Section 13 of the Sixth Schedule, on 27th August, 2010 (Promulgation Day) the President and all State officers took and subscribed the respective oath of allegiance to the Constitution and so the Grand Coalition Government remains in office under the new Constitution until the President-elect is sworn in.

In view of the foregoing and irrespective of the views that one subscribes to the constitutional provisions governing the exercise of executive power during the transition period between the elections and the assumption of office are – subject to Article 134 – as follows:-

- i) Article 137 – authority of the President as Head of State and Government, executor of executive authority, Commander-in-Chief of the Kenya Defence Forces, chairperson of the National Security Council and acts as a symbol of national unity.
- ii) Article 132(1) – The incumbent President Kibaki may have to address the opening of the Parliament elected on 4th March, 2013.
- iii) The National Accord and Reconciliation Act read together with Articles 152 and 153 of the new Constitution concerning the composition and operations of the Cabinet.

IV. CONSTITUTIONAL AND LEGAL ISSUES RELATING TO THE SWEARING-IN OF THE NATIONAL ASSEMBLY AND SENATE AND ELECTION OF THE RESPECTIVE SPEAKERS

A. SWEARING-IN OF MPS AND ELECTION OF SPEAKERS

The General Election was held on 4th March, 2013 in accordance with Section 9 of the Sixth Schedule of the Constitution.

Pursuant to Regulation 87(4)(b) of the Elections (General) Regulations 2012, the Commission (IEBC) shall in the case of elections other than presidential elections, publish a notice in the Gazette, which may form part of a composite notice, showing the names of the persons elected as Members of Parliament during the General Election held on 4th March, 2013.

Under Article 126(2) of the Constitution, the President shall appoint the place and date of first sitting of the House by notice in the Gazette. Article 126(2) reads as follows:-

Whenever a new House is elected, the President, by notice in the Gazette, shall appoint the place and date for the first sitting of the new House, which shall be not more than thirty days after the election.

Given that the new House was elected on 4th March, 2013, it follows that the first sitting of the new House must take place by 3rd April, 2013. The actual date for the said sitting should be determined by the President in consultation with the Clerk of the National Assembly and the Senate. It is also instructive to note the said first sitting shall be summoned by President Mwai Kibaki following the decision of the CORD Coalition Presidential candidate Hon. Raila Odinga to contest in the Supreme Court the declaration of Hon. Uhuru Kenyatta as the President-elect.

The respective Clerk of the National Assembly and the Senate shall appoint the date during which Members of Parliament shall be sworn-in in accordance with Article 74 of the Constitution. The said date shall be the first sitting of the new House in accordance with Standing Order No. 3 which provides as follows:-

3. *On the first sitting of a new House pursuant to the President's notification under Article 126(2) of the Constitution, the Clerk shall –*

(a) read the notification of the President as published in the Gazette;

(b) Lay a list of the names of the persons elected as Members of the Table of the House; and

(c) Administer the Oath or Affirmation of Office provided for in Third Schedule to the Constitution to all members present in the House in the order set out in paragraph (2).

(2) The Clerk shall administer the Oath or Affirmation of Office to Members in alphabetical order using the following order of precedence –

(a) Members with the longest cumulative period of service in the House;

(b) Members with the longest cumulative period of service in the National Assembly and the Senate;

(c) Longest cumulative period of service in the Senate;

(d) All other Members.

- (3) Pursuant to Article 74 of the Constitution, no person shall assume or perform any functions of the office of a Member before taking and subscribing to the Oath or Affirmation of Office provided for under paragraph (1).*
- (4) When the Clerk is administering the Oath or Affirmation of Office to Members and before the Clerk has administered the Oath or Affirmation of Office to the Speaker, any question arising in the House shall be determined by the Clerk who shall, during that period, exercise the powers of the Speaker.*
- (5) At any other time, the Oath or Affirmation of Office shall be administered by the Speaker immediately after Prayers.*
- (6) When a Member first attends to take his or her seat after the first sitting of the House, the Member shall, before taking his or her seat be escorted to the Table by two Members and be presented by them to the Speaker who shall then administer to the Member the Oath or Affirmation of Office.*
- (7) Notwithstanding Standing Order 31 (Hours of Sitting), on the day when the election of the Speaker is to be conducted after a general election the sitting of the House shall commence at 9.00 a.m.*

Similarly, the respective Clerk shall soon after the President publishes a notice in the Gazette pursuant to Article 126(2) of the Constitution gazette invitations of applicants for the positions of Speakers and Deputy Speakers of Parliament. The nomination of candidates for positions of Speakers and Deputy Speaker is governed by Standing Order No. 5 which provides as follows:-

- (1) Upon the President notifying the place and date for the first sitting of a new Assembly pursuant to Article 126(2) of the Constitution, the Clerk shall by notice in the Gazette notify that fact and invite interested persons to submit their nomination papers for election to the office of Speaker.*

- (2) *The names of candidates for election to the office of Speaker shall be entered upon nomination papers obtained from the Clerk and handed back to the Clerk, at least forty-eight hours before the time appointed at which the House is to meet to elect a Speaker.*
- (3) *The nomination papers of a candidate shall be accompanied by the names and signatures of twenty Members who support the candidate and a declaration by them that the candidate is qualified to be elected as a Member of Parliament under Article 99 of the Constitution and is willing to serve as Speaker of the National Assembly.*
- (4) *The Clerk shall maintain a register in which shall be shown the date and time when each candidate's nomination papers were received and shall ascertain that every such candidate for election to the office of Speaker is qualified to be elected as such under Article 106 of the Constitution.*
- (5) *Immediately upon the close of the nomination period provided for in paragraph (2), the Clerk shall –*
 - (a) *publicize and make available to all Members, a list showing all qualified candidates; and*
 - (b) *make available to all Members, copies of the curriculum vitae of the qualified candidates.*
- (6) *The Clerk shall, at least two hours before the meeting of the Assembly, prepare ballot papers upon which shall be shown the names of all candidates validly nominated under paragraph (5) of this Standing Order.*

Standing Order No. 6 provides, inter-alia, that the election of the Speaker shall be by secret ballot while Standing Order No. 7 provides as follows on the election threshold.

- (1) *A person shall not be elected as Speaker, unless supported in a ballot by the votes of two-thirds of all Members.*
- (2) *If no candidate is supported by the votes of two-thirds of all Members, the candidate or candidates who received the highest number of votes in the ballot referred to in paragraph (1) and the candidate or candidates who in that ballot received the next*

highest number of votes shall alone stand for election in a further ballot and the candidate who receives the highest number of votes in the further ballot shall be elected Speaker.

Standing Order No. 12 provides that immediately following the election of the Speaker the Clerk shall administer the Oath or Affirmation of Office to the Speaker in the presence of the assemble House. Standing Order No. 14 provides as follows on the Notification of opening of Parliament:-

- (1) Immediately after taking and subscribing to the Oath or Affirmation of Office under Standing Order 12 (Swearing in of the Speaker), the Speaker shall notify the Members of the place, date and time of the opening of Parliament.*
- (2) Following the notification by the Speaker under paragraph (1), the sitting of the House shall stand adjourned until the date and time of the opening of Parliament.*

Pursuant to Article 132(1)(a) of the Constitution the President shall address the opening of each newly elected Parliament. Standing Order No. 21 provides as follows on the President's address on opening of new Parliament.

- (1) The President shall address the opening of each newly elected Parliament.*
- (2) At the conclusion of the President's address, the sitting shall stand suspended or adjourned as the Speaker may direct until such time or to such day as may be specified by the Speaker.*

During the current transition from the Constitutional order under the former Constitution to the new constitutional dispensation, we are of the considered view that President MwaiKibaki shall address the opening of the newly elected Parliament. In the said address President Kibaki shall be at liberty to determine the contents of his speech except that he may – and ought not to – give an exposition of public policy.

We hasten to add that upon the swearing-in of the President-elect he shall inform the Speaker of the date and time that he will address a special sitting of Parliament pursuant to Article 132(1)(b) and Standing Order No. 22. We recommend that the

newly elected President should give the exposition of public policy during his Address on the Special sitting of Parliament.

B. THE PROCESSING OF GOVERNMENT BUSINESS IN PARLIAMENT

It is important at the outset to note the use of the term “**National Government**” in the Constitution. The Constitution does not define but it clearly defines it in contradiction with Devolved Government. Thus Article 6(2) of the Constitution provides as follows:-

The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

In practical terms Chapter Eight and Nine deals with the executive and legislative arms of the National Government, whilst Chapter Eleven on Devolved Government provides for executive and legislative arms of devolved governments. Instructively, judicial power was not devolved and so we shall have a unified court system to deal with national and county legislation.

In a parliamentary system of government the ruling majority in parliament and the Executive Government are one and the same.

A Presidential system can bring forth many configurations with one party being the Governing majority in Parliament and another being the Governing Executive since the President is elected independently and not by the Members of Parliament. Indeed it is even possible that the two chambers of a bi-cameral set-up (such as ours) have two different ruling majorities.

In the event, it is more appropriate to use the term “Executive” when dealing with the Executive branch in the National government.

What happens when a cabinet secretary wishes to propose and pass legislation?

Bills come to the floor of the Chamber either as individual Member proposal or one for which a Committee is in charge.

Bills are in “standard form” and must be published in the Gazette and thereafter follow the process as stipulated by statute (standing orders).

The actual process linking the executive branch and the legislature could be through the ink face of cabinet department and respective departmental committee. It is also conceivable that the executive links with individual members of parliament. The later scenarios’ would be adhoc and could lead to a less co-ordinated legislative agenda.

The office of Leader of Majority would play a key co-ordinating role especially when the Executive and Legislative/branches are controlled by the same ruling majority.

This office could and should be a clearing house for legislation through the chambers to which the various cabinet departments could channel proposals.

Another key player in the processing of business will be the Business Committee which sets the daily agenda of Parliament.

Whatever the method, i.e. individual Members, Department Committees, use of the Leader of Majority or the House Business Committee; it is imperative that a liaison office of legislature affairs be set up at the presidency or cabinet office to marshal and manage the flow of the President’s legislative agenda.

C. ASSENT OF BILLS

The Executive Branch has one of the most important tools of legislation in the form of the veto.

Whenever a bill is passed in Parliament, the respective Speaker shall refer the bill to the President for assent within Seven (7) days (Standing Order 153 and Article 115 of the Constitution). The President may have reservations and will communicate his reservations to Parliament which then must be dealt with, within 21 days.

Under Article 115 of the Constitution Parliament will need a super majority (in this case two thirds of all members of each chamber) to override the President’s veto, a tall Order!

V. THE ROAD MAP OF CRITICAL STEPS, PROCESSES AND PROCEDURES LEADING TO THE ASSUMPTION OF OFFICE BY THE NEW PRESIDENT:

The table below summarizes the issues envisaged under this head.

25 th February 2013	Preparation for elections Executive papers for housekeeping during period of temporary incumbency including cabinet responsibilities. Preparation for assumption of office.
4 th March 2013 (Article 138(4))	Elections Declaration of results for General Elections.
11 th March 2013	Gazetement by IEBC of the election results.
18 th March 2013 (Article 140)	Any petition to be filed in presidential election.
1 st April 2013	Determination of Petition on election of President by Supreme Court.
4 th April 2013 (Article 126(2))	End of 30 day period from date of election. Parliament should have had 1 st sitting called by the President.
10 th April 2013 (Article 138(5))	30 days period for run-off ends. Second round presidential elections should have been conducted.
17 th April 2013	7 day period for run-off results to be declared by IEBC ends.
24 th April 2013 (Article 140)	Date of filing petition on run-off ends
8 th May 2013	Supreme Court declares ruling on petition on election of President during the run-off.

VI. IMPORTANT TIMELINES AND THE POSSIBLE SCENARIOS TO THE ASSUMPTION OF THE OFFICE OF THE PRESIDENT

1. Results are declared within 7 days after presidential election.
2. Petitions are filed within 7 days after declaration of results.
3. If a petition is filed, the Supreme Court hears and gives a determination within 14 days.

4. A run-off is held within 30 days and is between number 1 and 2.
5. If an election is cancelled, a fresh election is held within 60 days.
6. The President-elect is sworn in the first Tuesday following the 14th day if no petition has been filed or the 78th day following the date on which the Court renders a decision.

SCENARIO 1; Election Is Cancelled

- Article 138 (8)
- A presidential election shall be cancelled and a new election held if –
 - a) No person has been nominated
 - b) A candidate for election as president or deputy president dies before the scheduled election date.
 - c) A candidate who would have been entitled to be declared elected dies on or before being declared elected.
- A new election shall be held within 60 days.

SCENARIO 2; Only one Candidate Nominated

- Article 138 (1) and Article 141 (2) (a)
- If only one Candidate is nominated, that candidate shall be declared elected if no petition is filed under Article 140.
- The Candidate will be sworn as president on Tuesday, 26th February, 2013.

SCENARIO 3; First Round Win and no Petition

- Article 138 (4) (a) and (b)
- A candidate shall be declared elected if the candidate receives:-
 - (a) More than half the votes cast in the election.
 - (b) At least 25 percent of the votes cast in each of more than half of the counties.
- Article 138 (10) gives IEBC 7 days to declare the result of the election.
- If there is no petition within 7 days, the President elect will be sworn in on the first Tuesday after being declared winner.
- In this case the President elect will be sworn-in on Tuesday, 26th March 2013.

SCENARIO 4; Petitions Filed and Dismissed

- Article 140 (1) and (2).
- A person having filed a petition under (1) and the same is dismissed under (2) by the Supreme Court.
- In this case the President will be sworn-in on Tuesday, 16th April 2013.
- (Note the determination by the Supreme Court is due on 8th April and it is not practicable to hold swearing in on 9th April).

SCENARIO 5; Run-off

- Article 138(5).
- If no Candidate receives more than half of the votes cast in the election and at least 25% of the votes cast in each of more than half of the counties a fresh election shall be held within 30 days.

- In this case the run-off will be between number 1 and 2 and the candidate who receives the most votes in the fresh election will be declared elected as president.
- Swearing in will be on Tuesday, 30th April 2013.

SCENARIO 6; Petition is Successful

- Article 140 (3).
- The Supreme Court declares the election of President-elect to be invalid, a fresh election shall be held within sixty days after the determination.
- In this scenario, swearing in will be held on 18th, June 2013.

CONCLUSION AND SUMMARY

Possible swearing in dates

- Tuesday, 26th February 2013. (Only one Candidate nominated)
- Tuesday, 26th March 2013. (First Round Win and no petition)
- Tuesday, 16th April 2013. (Petition is filed and Dismissed)
- Tuesday, 30th April 2013. (Run-off)
- Tuesday, 18th June 2013. (Petition filed and is successful)

VII. THE STATUS OF THE NATIONAL ACCORD AFTER 4TH MARCH, 2013

Section 8 of the National Accord and Reconciliation Act (No. 4 of 2008) provides that the “Act shall cease to apply upon dissolution of the 10thParliament, if the coalition is dissolved or a new Constitution is enacted whichever is earlier”.

On 27th August, 2010, the President promulgated the Constitution of Kenya, 2010. Section 3(2) of the Sixth Schedule of the Constitution provides as follows:-

The National Accord and Reconciliation Act (NO. 4 of 2008) shall continue to operate until the first general elections held under this Constitution.

The first general election under the new Constitution will be held on 4th March, 2013. However, the presidential elections shall not be concluded until after the election of the President elect is certified as final either by the IEBC or by the Supreme Court in the event of filing of presidential petition(s).

We are therefore of the considered view that pursuant to Section 3(2) of the Sixth Schedule of the Constitution, the National Accord and Reconciliation Act, 2008 shall cease to apply upon the swearing in of the new President.

In this regard, it should also be noted that by dint of Sections 3 and 12 of the Sixth Schedule of the Constitution, the Executive under the former Constitution and the National Accord and Reconciliation Act, 2008 (No. 4 of 2008) shall continue to operate until the first general elections under the new Constitution. Equally notable under Article 142 of the Constitution the incumbent President shall remain in office until the new President is sworn in. Accordingly, law and logic compel the conclusion that the President and the cabinet formed pursuant to the National Accord and Reconciliation Act should remain in office until the new President is sworn in.

VIII. THE LEGAL BASIS OF THE EXERCISE OF EXECUTIVE POWERS BETWEEN 4TH MARCH, 2013 AND ASSUMPTION OF OFFICE OF THE INCOMING PRESIDENT

Pursuant to Article 142(1) of the Constitution the incumbent President shall remain in office until the person next elected President in the general election scheduled for 4th March, 2013 is sworn in. In our considered view, after 4th March, 2013 the incumbent president is empowered to exercise all the powers vested in the President under the Constitution and other laws except the powers specifically excluded by Article 134(2) of the new Constitution. Article 134(2) provides as follows:-

(2) The powers referred to in clause (1) are -

a) the nomination or appointment of the judges of the superior courts;

- b) the nomination or appointment of any other public officer whom this Constitution or legislation requires the President to appoint;*
- c) the nomination or appointment or dismissal of Cabinet Secretaries and other State or Public officers;*
- d) the nomination or appointment or dismissal of a high Commissioner, ambassador, or diplomatic or consular representative;*
- e) the power of mercy; and*
- f) the authority to confer honours in the name of the people and the Republic.*

In real terms the incumbent President shall, subject to Article 134, continue to exercise the authority and discharge the functions set out in Articles 131 and 132 of the Constitution.

IX. THE STATUS OF CABINET BETWEEN 4TH MARCH, 2013 AND ASSUMPTION OF OFFICE OF PRESIDENT-ELECT

Until the new President is sworn in the Cabinet established under Article 152 of the Constitution will not come into existence. Accordingly, we are of the considered view that pending the swearing-in of the new President, the cabinet in office on 4th March, 2013 will remain in office. There are three main reasons for this view.

- a) Under Article 131(1)(b) of the Constitution the President exercises executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries. In the premises, the incumbent President will continue to exercise executive authority with eligible members of the Cabinet who were in office as of 4th March, 2013.
- b) By implication, Articles 131, 134 and 142 of the Constitution contemplates that the Executive in power (President and Cabinet) remains in office until the new President is sworn in. Accordingly, eligible members of the cabinet in

office on 4th March, 2013 can perform the functions of cabinet secretaries pending the swearing in of the new President.

- c) By convention or express legal provisions, in constitutional democracies the cabinet remains in office until the new President or Prime Minister assumes office. The justification for this reality in political theory on exercise of power is easy to understand. After all Lord Acton once said that power abhors a vacuum and so the executive powers must always repose in specific hands.

There is a final issue that arises in this analysis which can easily be cast as a question: How will the incumbent cabinet exercise its powers between 4th March, 2013 and the swearing in of the new President? By analogy of reasoning, during this transitional period the current ministers will be deemed as cabinet secretaries for all intents and powers and they will be entitled to exercise the authority and responsibility of cabinet secretaries under the new Constitution. Significantly, members of the current cabinet will have to observe and uphold the provisions of Article 153 of the Constitution which, inter-alia, enjoins cabinet members to attend before a committee of the National Assembly or the Senate and to provide Parliament with full and regular reports concerning matters under their control.

X. DETERMINATION OF THE ARCHITECTURE OF THE NEW GOVERNMENT

In our considered view the architecture of the new Government will be decided when the President announces *in writing* the number of Departments (see Article 135). We hold the view that approval of nominees by parliament is not an integral part of determination of the architecture of Government because Articles 131 read with 152 of the Constitution confers upon the President exclusive power to determine the architecture of Government.

XI. DESIGNATION OF MINISTRIES AND DEPARTMENTS

In our considered view the ministries under the new Constitution should be designated as state departments despite the usage of the word 'Ministries' in Article 132(3)(b) which we believe was occasioned by error. Clause 3(b) of Article 132 which sets out the

functions of the President provides that the President shall direct and co-ordinate the functions of ministries and government departments.

We believe that there is an error in this paragraph because in a presidential clear intention of system there are no ministries by State departments headed by Secretary to the Cabinet. For avoidance of doubt Article 155(2) provides that each State department shall be under the administration of a Principal Secretary.

In the premises the word "Ministry" in Article 132(3)(b) should be construed and deemed as reference to "State Department". Further the number of Principal Secretaries should be equal to the number of State Departments in view of Article 155(2) of the Constitution.

XII. APPLICATION FOR POSITIONS OF PRINCIPAL SECRETARIES

Under Article 155(3)(a) of the Constitution the responsibility of recommending persons for nomination as principal secretary vests in the Public Service Commission. To be sure, Article 155(3) reads as follows:-

(3) The President shall –

- a) nominate a person for appointment as Principal Secretary from among persons recommended by the Public Service Commission; and*
- b) with the approval of the National, appoint Principal Secretaries.*

In our view the following concerns and factors should be taken into account in the appointment of Principal Secretaries.

- i) The period of application for position of Principal Secretaries should remain open until after the new President determines in writing the structure of his government.

- ii) The Public Service Commission should recommend to the President a list of nominees that complies with values and principles of public service under Article 232 of the Constitution.
- iii) Bearing in mind the requirement of merit in appointment to public offices, it bears emphasis that the PSC list of nominees of persons recommended for appointment as Principal Secretaries should manifest professional diversity of nominees.
- iv) Upon the President picking or selecting a specified number of persons for nomination as Principal Secretaries, the list of nominees should be presented to Parliament for approval as a block.
- v) The nominees approved by the National Assembly shall each be appointed by the President as Principal Secretary to such State Department as the President may determine.

Finally it is important to note that under Article 155(3) of the Constitution the President is enjoined to nominate persons for appointment as Principal Secretary from the list of persons recommended by the Public Service Commission.

XIII. MANAGEMENT OF MINISTRIES/DEPARTMENTS PRIOR TO CONFIRMATION OF NOMINEES FOR POSITIONS OF PRINCIPAL SECRETARY AND CABINET SECRETARY BY PARLIAMENT

It is important to note that in the fullness of time Parliament may have to enact a law to provide for management of government business between the swearing in of the new President and approval of nominees for positions of Cabinet Secretary and Principal Secretary by Parliament.

Turning back to the transition following the first general election under the new Constitution our opinion and recommendations are as follows:-

- a) The President and Deputy President should be responsible for management of the Ministries prior to confirmation of nominees for positions of Cabinet

Secretaries by Parliament. We recommend that the President should immediately after determining the architecture of his government present the nominees to Parliament which should in turn prioritize the approval process. The positions that are most sensitive or critical such as defence, internal security, finance and foreign affairs could be given higher priority.

- b) As regards Principal Secretaries we are of the view that the current Permanent Secretaries should remain in office until the process of approval of nominees for positions of Principal Secretary is completed by Parliament.

XIV. THE FATE OF CURRENT PERMANENT SECRETARIES

Under Article 232 of the Constitution the current Permanent Secretaries will be eligible to apply for positions of Principal Secretaries once the PSC invites interested persons to apply for them. Accordingly, those who succeed will remain in the public service whilst those who fail will be deemed to have retired from service by operation of law.

XV. CREATION/ESTABLISHMENT AND OPERATIONALIZATION OF THE NEW STRUCTURE OF GOVERNMENT

As adverted to above, the architecture of the new Government will be determined when the President announces in writing the number of State Departments and probably specifies the government departments and agencies falling under each State Department. However, the determination of the architecture of the new Government will not automatically bring it into operation given the long and potentially protracted process of parliamentary approval of nominees. Similarly the issue of transition from the old constitutional dispensation to the new one will bring its own share of complications.

Clearly the establishment/creation and operationalization of the new structure of Government will trigger reorganization of Government departments, transfer of staff and reassignment of Government facilities. The question then arises: will this happen immediately after the President announces his Government or after Parliament approves the nominees of Cabinet Secretary and Principal Secretary positions?

Given that under Article 131(1)(a) of the Constitution the President exercises the executive authority of the Republic with the assistance of the Deputy President and Cabinet Secretaries, it will be important that as soon as the President determines the structure of government the list of nominees for appointment as Cabinet Secretaries should be forwarded to the National Assembly for approval.

After the appointment of Cabinet Secretaries, the President should then forward to the National Assembly for approval a list of nominees for appointment as Principal Secretaries. We reckon that after appointment of Cabinet Secretaries the process of reorganization and operationalization of the new structure of government can commence but that process should conclude after appointment of Principal Secretaries given that the process may entail reorganization of Government Departments, transfer of staff and reassignment of Government facilities.

XVI. THE CHALLENGE OF CO-ORDINATION OF MANAGEMENT OF VARIOUS GOVERNMENT DEPARTMENTS/COMMISSION DURING AND AFTER THE ASSUMPTION OF OFFICE BY THE PRESIDENT-ELECT

In our considered view the position of office of Head of Public Service under the constitutional dispensation of the former Constitution is administrative/political rather than a creature of the law. To be sure Section 22(2) of the former Constitution provides for a permanent secretary to the Office of the President. Bearing in mind that the President is Head of Government, we believe that is the precise reason why the Permanent Secretary to the office of the President is designated Head of Public Service in order to help the President to co-ordinate the management of government business. Again the PS to the office of the President serves as the secretary to the cabinet precisely because co-ordination of government business entails the work and decisions of the cabinet.

Admittedly the new Constitution does not establish the position of permanent secretary to the office of the President. However, it creates the office of Secretary to the Cabinet under Article 154. There are two ways to look at this: First the functions of the Secretary to the Cabinet set out in Article 154(3) are largely the same functions currently discharged by the Head of Public Service who is also the Secretary to the Cabinet. Thus

the Secretary to the Cabinet can be rightly deemed as the legal successor of the Permanent Secretary to the office of the President.

Secondly, in practical terms the function of the cabinet is to aid and advice the President in the government of Kenya although the new Constitution is silent on the functions of the Cabinet. In consideration, therefore, of the fact that the President remains the Head of Government as in the former Constitution, we are of the considered view that in determining the architecture of Government the new President will be acting lawfully if he or she vests in the Secretary to the Cabinet the roles and functions currently undertaken by the Head of Public Service.

Under Article 154 of the Constitution the President has the prerogative to nominate a person of his choice to be office of Secretary to the Cabinet. We strongly recommend that the first business of the new President should be to nominate the Secretary to the Cabinet so that within the shortest time possible Parliament can approve and thereafter the President appoints such nominee. Before the said parliamentary approval and appointment by the President, the current Head of Public Service should remain in office.

XVII. ON ESTABLISHMENT AND APPOINTMENT OF ADMINISTRATIVE OFFICERS AND STAFF OF THE OFFICE IN THE PRESIDENT UNDER THE NEW CONSTITUTION

Section 22(2) of the Former Constitution established the office of Permanent Secretary to the Office of the President who acted as the chief administrator and accounting officer. The new Constitution does not expressly establish an equivalent office despite the obvious practical need and justification.

Under Section 24 of the former Constitution, the power of constituting and abolishing offices for the Republic of Kenya, of making appointment to any such office and terminating any such appointments, vested in the President subject to the Constitution and any other law. On the other hand, Section 107 of the former Constitution vested in the Public Service Commission the power to appoint persons to hold or act in offices in the public service and in the service of local authorities. Thus under the previous constitutional dispensation, the power to constitute and abolish offices was vested in

the Constitution, Parliament or in the President. The role of the Public Service Commission was restricted to appointment of specified offices and discipline of public officers.

The new Constitution is a remarkable departure from the old constitutional order. The power to establish and abolish offices in the public service vests in the Public Service Commission alongside the power to appoint persons to hold or act in those offices, and to confirm appointments. This power is, however, shared with the President because the President may establish an office in the Public Service in accordance with the recommendation of the Public Service Commission. The Constitution does not however elaborate or specify the offices or categories of offices that the President may establish with the recommendation of the PSC. It is, however, safe to assume that the offices that the President may establish should be those that it is more appropriate for him rather than the PSC to establish.

Thus there are two sources/legal basis of the power to establish public offices. First, under Article 132(4)(a) the President may establish an office in the public service in accordance with the recommendation of the Public Service Commission. The said Article 132(4)(a) provides as follows:

Perform any other executive function provided for in this Constitution or in national legislation and, except as otherwise provided for in this Constitution, may establish an office in the public service in accordance with the recommendation of the Public Service Commission.

In our considered view, the above provision simply means that unless the Constitution provides the contrary, the President may establish an office in the public service in accordance with the recommendation of the Public Service Commission. Thus the principal or effective power to establish such office under this provision vests in the President but such establishment must be in accordance with the recommendation of the PSC. In practical terms, we envisage that where the President considers it necessary or deems it fit to establish an office in the public service he is empowered to do so in accordance with the recommendation of the PSC.

Secondly, under Article 234 of the Constitution empowers the Public Service Commission to, inter-alia, establish and abolish offices in the public service and appoint persons to hold or act in those offices and to confirm appointments. Article 234(4) of the Constitution provides as follows:-

The Commission shall not appoint a person under clause (2) to hold or act in any office on the personal staff of the President or a retired President, except with the consent of the President or retired President.

In our view, under Articles 132(4)(a) of the Constitution, the President may in accordance with the recommendation of the Public Service Commission establish the administrative offices in the Office of President. Under this framework, Special Advisers to the President on such matters as he deems fit may be appointed in order to enable the President to exercise his executive authority and perform the functions of his office. For starters we propose that the office of Chief Secretary be established by the Public Service Commission the holder of which shall be the chief administrator and accounting officer in the office of the President. Additionally such other administrative offices as may be necessary for the effective performance of the functions of the President should be established. The said provision may also be used to establish administrative offices in the office of the Deputy President to enable him to discharge the functions of his office.

Similarly, under Article 234(4) of the Constitution the President is empowered to submit to the PSC persons whom he intends to act in any office on the personal staff of the President. Such offices may range from high offices like Comptroller of State House, Press Secretary, Private Secretary, Presidential Legal Counsel on one hand to Cooks, Drivers, domestic and other subordinate offices, on the other hand.

XVIII. CHALLENGES/OBSTACLES TO THE ELECTION OF THE PRESIDENT

The substantive legal provisions governing presidential elections are contained in Article 136 – 141 (all inclusive). Specifically, Clause (4) – (7) of Article 138 of the Constitution provide as follows on the election of the President:-

138. (1) *If only one candidate for President is nominated, that candidate shall be declared elected.*

(2) *If two or more candidates for President are nominated, an election shall be held in each constituency.*

(3) *In a presidential election –*

a) all persons registered as voters for the purposes of parliamentary elections are entitled to vote;

b) the poll shall be taken by secret ballot on the day specified in Article 101(1) at the time, in the places and in the manner prescribed under an Act of Parliament; and

c) after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result.

(4) *A candidate shall be declared elected as President if the candidate receives –*

a) more than half of all the votes cast in the election; and

b) at least twenty-five per cent of the votes cast in each of more than half of the counties.

(5) *If no candidate is elected, a fresh election shall be held within thirty days after the previous election and in the fresh election the only candidates shall be –*

a) the candidate, or the candidates, who received the greatest number of votes; and

b) the candidate, or the candidates, who receive second greatest number of votes.

- (6) *If more than one candidate receives the greatest number of votes, clause (5) (b) shall not apply and the only candidates in the fresh election shall be those contemplated in clause (5) (a).*
- (7) *The candidate who receives the most votes in the fresh election shall be declared elected as President.*
- (8) *A presidential election shall be cancelled and a new election held if –*
- a) no person has been nominated as a candidate before the expiry of the period set for the delivery of nominations;*
 - b) A candidate for election as President or Deputy President dies on or before the scheduled election date; or*
 - c) A candidate who would have been entitled to be declared elected as President, dies before being declared elected as President.*
- (9) *A new presidential election under clause (8) shall be held within sixty days after the date set for the previous presidential election.*
- (10) *Within seven days after the presidential election, the chairperson of the Independent Electoral and Boundaries Commission shall –*
- a) Declare the result of the election; and*
 - b) Deliver a written notification of the result to the Chief Justice and the incumbent President.*

Historically, since 1992, presidential elections in Kenya have presented serious legal and political challenges/obstacles and all indication are that the elections of 4th March, 2013 will be no different. This is especially because the higher threshold for electing the president coupled with the nature and mode of determining presidential disputes prior to the swearing-in of the President-elect means that the period of presidential election may be significantly longer than usual. In our view a prolonged presidential election

period might heighten political anxiety especially where the results are strongly contested and this will compound and/or aggravate concerns of public order and peace.

In our analysis we wish to discuss the possible challenges/obstacles by dividing them into two themes namely legal and political.

A. LEGAL CHALLENGES/OBSTACLES TO THE ELECTION OF THE PRESIDENT

We state from the onset that given the increasingly litigious character of the Kenyan elites. It may not be easy to contemplate all the possible scenarios but we shall strive to identify the major ones that are most likely to arise. These challenges or obstacles range from pre-election matters to the possibility of nullification of the presidential outcome either in the first round or in the run-off.

1. Unresolved Issues of Qualification of Presidential Candidates to Vie for President and Deputy President Positions.

On 11th December, 2012 the Supreme Court delivered on Advisory Opinion which, inter-alia, held that the Supreme Court has jurisdiction to hear and determine disputes arising from the declaration of presidential election results by IEBC under Article 138(5) of the Constitution. Pursuant to the said decision and Article 163(8) of the Constitution in January, 2013 the Supreme Court gazetted Presidential Election (Election Petition) Rules, 2013 which, inter-alia, confers the Court jurisdiction to hear and determine disputes over qualification of presidential candidates and validity of the nomination of presidential candidates.

In this regard, it will be noted that on 15th February, 2013 a five-judge bench of the High Court in the case of **Petition Number 552 of 2012 as Consolidated with Petitions Numbers 554 of 2012, 573 of 2012 and 579 of 2012 International Centre for Policy And Conflict & 5 Others vs. The Hon. Honourable Attorney General & 4 Others** held inter-alia, that only the Supreme Court has jurisdiction to determine the legality of the qualifications and nominations of Jubilee Coalition candidates Hon. Uhuru Kenyatta and Hon. William Ruto. What this means is that there is a high likelihood that after

announcement of presidential results petition(s) similar to those before the High Court in the case aforementioned might be filed. Three serious issues arise in connection with such election petition(s) namely:-

- a) It is generally assumed by many people that the High Court decision on jurisdiction in the eligibility case against Uhuru and Ruto merely postponed the controversy until the outcome of the presidential elections. This view could well be erroneous on the Jurisdiction of the Supreme Court relating to the ICC Cases and eligibility may not be a given. We say this because under Article 88(4)(e) of the Constitution no dispute was filed to challenge the nomination of Uhuru and Ruto and so the question is likely to arise whether the Supreme Court would exercise jurisdiction in the absence of a decision by IEBC on their qualification. Whatever decision the Supreme Court makes it is likely to have far-reaching legal and political implications.
- b) There is a possibility that the Supreme Court might hold that Uhuru and Ruto were not qualified to be nominated or otherwise declare invalid their nomination. This will therefore raise two questions. First, whether the run-off can lawfully and democratically proceed between either the candidates ranked number 1 and 3 or 2 and 3 and how such a decision will be received by the supporters of Jubilee. Secondly, in the event that the elections are to be repeated, will it be a fresh or new election given that for all practical purposes the 4th March, 2013 would be valid save for the participation of Uhuru and Ruto.
- c) The final legal challenge concerns the decision by the Supreme Court to nullify Run-off results after Uhuru and Ruto have possibly been disqualified. Similarly, if an order of new election is made after Uhuru and Ruto have been disqualified then there would be serious legal challenges because it is not clear how the Jubilee Alliance would sponsor candidates in such an election.

2. The Impact of the Eleventh Parliament on the Presidential Election

According to Article 126(2) of the Constitution within 30 days after the election, the President, by notice in the Gazette, shall appoint the date and place for the first sitting

of the new Houses. In real terms, by 3rd April, 2013 the Eleventh Parliament must have its first sitting.

Instructively, Standing Order No. 204 provides, inter alia, that the Committee of Appointments shall be appointed within seven (7) days on assembly of a new House. In other words the said Committee must be in place by 10th April, 2013. By implication the official opening of the Parliament must take place by 9th April, 2013 at the very latest.

The significance of this observation is that in the event that a possible presidential run-off is preceded by an election petition the Eleventh Parliament will commence its official business long before the President-elect under the new Constitution is sworn-in. Thus Kenya will have political dispensation in which the Executive under the former Constitution remains in office after a new Parliament has been elected and commenced its work, pursuant to the new Constitution. Undoubtedly, this scenario will present serious legal challenges particularly if its members are inclined towards political assertiveness and hostility towards the Executive under the former Constitution.

In this regard, it should be noted that whereas Article 134 limits presidential powers during this transitional period described as period of temporary incumbency the exercise of all the other presidential powers might be challenged by members of the new Parliament.

B. POLITICAL CHALLENGES AND/OR OBSTACLES TO THE ELECTION OF THE PRESIDENT

Given the high political stakes that attend, the election of a president-especially under a presidential system of government – there are bound to be political challenges/obstacles that will heavily impact on the long process of presidential election under the new Constitution. The key challenges/obstacles foreseeable at the moment are as follows:-

1. Rigging Allegations Preceding the Run-Off

Under Article 138(5) of the Constitution a fresh election shall be held within thirty days after the previous election in the event that none of the presidential candidates receives

more than half of all the votes cast in the election and at least twenty-five per cent of the votes cast in each of more than half of the Counties. Courtesy of the Supreme Court's Advisory Opinion in Reference No. 2 of 2012, the results under Article 138(4) can be challenged through a petition in the Supreme Court. Bearing in mind the tendency of presidential candidates to peddle rigging allegations to explain away poor results the first or second ranked candidate may refuse to go for a run-off alleging rigging thereby raise political anxiety and possible challenges to law and order. Similarly, other presidential candidates might engage in political means and self-help actions to contest presidential election results.

2. Failure by the Losing Candidate in the Run-Off to Concede Defeat and Refusal to Challenge the Results in Court

This is the ultimate nightmare scenario as it calls to mind the aftermath of the 2007 general election which triggered post-election violence following rejection of the results and refusal to challenge them in Court. There are three reasons why such an eventuality is likely to cause extreme political prejudice. First, the Executive is handicapped by the status of temporary incumbency and will be politically weakened by election of many cabinet members as MPs, Governors or Senators.

Secondly, the election of a new parliament and commencement of its operations prior to swearing in of the new President will aggravate and compound the political atmosphere in the event of failure by the losing candidate in the run-off to concede defeat and refusal to challenge the results in Court. Thirdly, the advent of Devolved Governments in all the 47 Counties means that in Counties controlled by the party or alliance of the losing presidential candidate in the run-off, law and order may face severe strain in the event of failure to concede defeat and refusal to challenge the results in Court.

3. The Challenge Occasioned by Nullification of Results

The Supreme Court is empowered by the Constitution to nullify presidential election results in an appropriate case. Generally speaking nullification of election results constitutes an exceptional exercise of judicial powers. The reason for this is that as much as possible courts are likely to allow the outcome of an election to stand where

the results broadly express the will of the electorate. Indeed, in a democracy all organs of government are enjoined to respect outcomes of the democratic process hence the reluctance by courts to nullify electoral results.

However the exception does happen occasionally and therefore courts can and have nullified elections. In Kenya, presidential results have never been nullified by our Courts. Accordingly, it is safe to assume that if ever cause and reason were to arise for nullification of presidential election considerable political anxiety and riots may be likely consequences.

XIX. PRACTICAL RECOMMENDATIONS/PROPOSALS ON HOW IDENTIFIED CHALLENGES/OBSTACLES CAN BE ADDRESSED/OVERCOME

The legal challenges identified in this Report can only be addressed by the Courts particularly the Supreme Court. We are of the view that it would be pretentious on our part to recommend how the courts should deal with such problems. Similarly, unless and until specific challenges or legal actions are presented in court it would be speculative on our part to suggest how such challenges may be overcome.

However, having taken cognizance of the fact the General Elections held on 4th March, 2013 resulted in the declaration of a President-elect by the IEBC and having noted the general eagerness of Kenyans to move on and start implementation of the new Constitutional order under a Jubilee Coalition led Government, our considered view is that a decision by the Supreme Court to allow any petition would have serious political ramifications and cause considerable disruption of the socio-economic life of the nation which has largely been in abeyance since around September, 2012.

Finally, we wish to inform the Committee that there is no sufficient consensus on the status of the National Accord after the 4th March, 2013 general election. In the event of political contestation over this issue, more so in Parliament, there is a high likelihood that this matter could raise political anxiety in the country. This problem might be aggravated or compounded in the event of the Supreme Court nullifying the results of the 4th March, 2013 presidential election. Since the envisaged fresh election may not give us a first round winner and will still be open to legal challenge, the Committee

APPENDIX: 7

**Organization of Sitting Arrangements for
VIPS, VVIPS and Invited Guests**

**PROPOSED GUEST LIST FOR THE SWEARING-IN CEREMONY OF THE
FOURTH PRESIDENT AND COMMANDER-IN-CHIEF OF THE REPUBLIC OF
KENYA**

A. VVIP AREA	224
B. OUTGOING FIRST FAMILY	50
C. INCOMING FIRST FAMILY	300
D. DEPUTY PRESIDENT'S FAMILY	120
E. GOVERNORS	47
F. ASSISTANT MINISTERS	50
G. PERMANENT SECRETARIES/ACCOUNTING OFFICERS	60
H. INDEPENDENT COMMISSIONS AND OFFICES	150
I. MEMBERS OF PARLIAMENT	416
J. PARASTATAL CHAIRMEN AND CEOS	200
K. AMBASSADORS AND FOREIGN DELEGATIONS	400
L. PCs	7
M. JUDGES OF THE COURT OF APPEAL	118
N. RELIGIOUS LEADERS	50
O. MEMBERS OF POLITICAL PARTIES	300
P. COUNTY COMMISSIONERS	47
Q. COUNTY ASSEMBLY SPEAKERS	47
R. MAJOR-GENERALS AND DEFENCE ATTACHES	90
S. CIVIL SERVANTS	500
T. SENIOR UNIFORMED OFFICERS	50
U. COUNTY ASSEMBLY REPRESENTATIVES	1,450
V. PUBLIC UNIVERSITIES AND COLLEGES	140
W. NATIONAL ASSEMBLY STAFF	30
X. MEMBERS OF THE FIRST SENATE	7
Y. ASSORTED REQUESTS	900
TOTAL	<u>4,670</u>

APPENDIX: 8

Lists of Invited Foreign and Local Dignitaries

INVITATIONS FOR THE SWEARING-IN CEREMONY OF THE PRESIDENT-ELECT

- (1) Chairperson of the African Union Commission
- (2) Secretary-General of the Commonwealth
- (3) Administrator of UNDP
- (4) Secretary General of the Economic Community of Central African States (ECCSAS)
- (5) The Executive Secretary of SADC
- (6) The Secretary-General of COMESA
- (7) The Secretary-General of the Arab League
- (8) The Executive Secretary of IGAD
- (9) The Secretary-General of EAC
- (10) The President of ECOWAS
- (11) U.A.E. Foreign Affairs Minister
- (12) Hon. Mrs Sonia Gandhi
- (13) Mr. Jean Ping
- (14) Prof. Mohammad Yunis
- (15) Jendayi Fraser
- (16) Rev. Jesse Jackson
- (17) Mr. Thabo Mbeki
- (18) Mrs. Miria Kalule Obote
- (19) Mrs. Mariah Nyerere
- (20) Mrs. Rupiah Banda
- (21) Mama Tamanda Kadzarima
- (22) Hon. Mrs Rebecca Nyandeng De Mabior

**CONFIRMED LIST OF HEADS OF STATE AND GOVERNMENT & SPECIAL ENVOYS
FOR**

THE PRESIDENTIAL INAUGURATION

NOS.	NAME	POSITION	COUNTRY
1.	H.E. Mr. Hailemariam Desalegn	Prime Minister of the Federal Democratic Republic of Ethiopia and Chairman of African Union	Ethiopia
2.	H.E. Mr. Ismail Omar Guelleh	President of the Republic Djibouti	Djibouti
3.	H.E. Mr. Hassan Sheikh Mahmud	President of the Republic of Somali	Somalia
4.	H.E. Mr. Salva Kiir Mayardit	President of the Republic of South Sudan	South Sudan
5.	H.E. Mr. Yoweri Kaguta Museveni	The President of the Republic of Uganda (COMESA))	Uganda
6	H.E. Mr. Jakaya Mrisho Kikwete	President of the United Republic of <i>Tanzania</i>	Tanzania
7.	H.E. Robert Mugabe	President of the Republic of Zimbabwe	Zimbabwe
8.	H.E. Jacob Zuma	President of the Republic of South Africa	South Africa
9.	H.E. Paul Kagame	President of the Republic of Rwanda	Rwanda
10	H.E. Jonathan Goodluck	President of Nigeria	Nigeria
11	H.E. Ali Bongo Ondimba	President of Gabon	Gabon

12.	H.E. Joseph Kabila Kabange	President of the Democratic Republic of Congo	DRC
13.	H.E. Abdelilah Benkirane	Prime Minister of Morocco	Morocco
14.	H.E. Abdelmalek Sellal	Prime Minister of the People's Democratic Republic of Algeria	Algeria

**CONFIRMED LIST OF SPECIAL ENVOYS FOR
THE PRESIDENTIAL INAUGURATION.**

IOS.	NAME	POSITION	COUNTRY
1.	H.E. Dr. HishamKandil	Prime Minister of the Arab Republic of Egypt	Egypt
2.	H.E. Danny Faure	Vice President of the Republic of Seychelles	Seychelles
3.	H.E. Mr. Terence Sinunguruza	First Vice President of the Republic of Burundi	Burundi
4.	Rt. Hon. KhumboKachali	Vice President of the Republic of Malawi	Malawi
5.	Hon. D. Guy Scott	Vice President of the Republic of Zambia	Zambia
6.	Hon. Hanna Serwaah Tetteh	Minister for Foreign Affairs and Regional Integration	Ghana
7.	H.E. Dr. Shashi Tharoor	Minister of State for Human Resource Development and Special Envoy	India
8.	H.E. Suhail Mohamed Al Mazruouei	Minister for Energy	UAE
9.	H.E. Sindiso Ngwenya	Secretary General of COMESA	LUSAKA

APPENDIX: 9

Official Program for 9th April, 2013



REPUBLIC OF KENYA

PROGRAMME
for the
INAUGURATION

of

The Fourth President and
Commander-in-Chief of the Defence Forces of the Republic of Kenya

His Excellency
Hon. Uhuru Kenyatta, EGH

and

The Deputy President of the Republic of Kenya

Hon. William Samoei Ruto, EGH

before

Chief Justice Dr. Willy Mutunga, EGH

in the distinguished presence

of

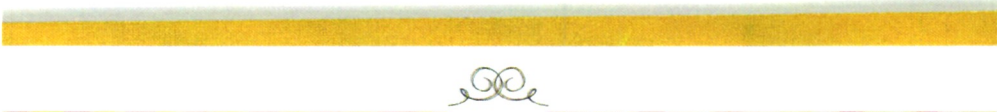
His Excellency the President
Hon. Mwai Kibaki, CGH

on

Tuesday, 9th April, 2013

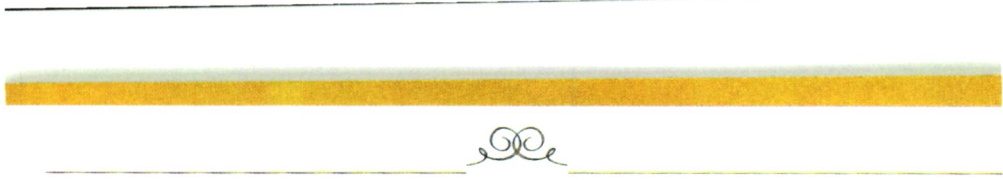
at 10.00 a.m.

MOI INTERNATIONAL SPORTS CENTRE - KASARANI, NAIROBI



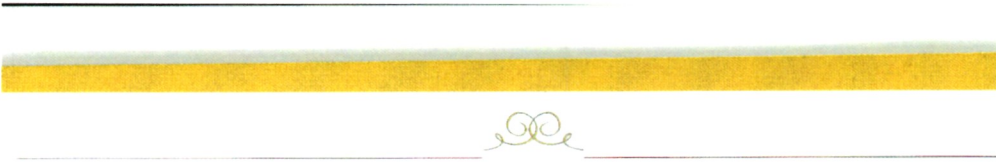
HIS EXCELLENCY HON. MWAI KIBAKI, CGH
PRESIDENT AND COMMANDER-IN-CHIEF
OF THE DEFENCE FORCES OF THE REPUBLIC OF KENYA





**HIS EXCELLENCY HON. UHURU KENYATTA, EGH
PRESIDENT-ELECT OF THE REPUBLIC OF KENYA**





HON. WILLIAM SAMOEI RUTO, EGH
DEPUTY PRESIDENT-ELECT OF THE REPUBLIC OF KENYA





GUESTS ARE REQUIRED TO STAND ON THE FOLLOWING OCCASIONS:

- (a.) When the National Anthem is played.
- (b.) During the arrival of the President-Elect and Heads of State and Government.
- (c.) Arrival of His Excellency the President -When His Excellency the President Hon. Mwai Kibaki, CGH, enters the Stadium until the end of the National Anthem.
- (d.) During the swearing-in -When the President-Elect takes the Oath of Allegiance and Oath of Due Execution of the Functions of Office.
- (e.) During the National Anthem up to the end of the **21-GUN SALUTE**.
- (f.) When the immediate former President, the President and visiting Heads of State and Government leave the Stadium.

Gentlemen are required to remove headgear and those in uniform to salute when the National Anthem is played.





<i>Serial</i>	<i>Time</i>	<i>Event</i>
1.	10.00 a.m.	All guests to be seated.
2.	10.30 a.m.	Arrival of Service Commanders.
3.	10.35 a.m.	The Chief of the Defence Forces, Gen. J. W. Karangi, EGH, CBS, DCO arrives.
4.	10.45 a.m.	The Chief Justice of the Republic of Kenya and the President of the Supreme Court, Hon. Willy Mutunga, D. Jur, SC, EGH, the Chief Registrar of the Judiciary, Mrs. Gladys Boss Shollei, CBS, and Supreme Court Judges arrive.
5.	11.00 a.m.	Cabinet Ministers, the former First Lady, Her Excellency Mama Ngina Kenyatta; former President, His Excellency Hon. Daniel T. arap Moi, CGH, the Vice-President, Hon. Kalonzo Musyoka, EGH, and the Prime Minister, Rt. Hon. Raila Amolo Odinga, EGH, arrive.





<i>Serial</i>	<i>Time</i>	<i>Event</i>
6.	11.15 a.m.	Arrival of invited Heads of State and Government.
7.	11.25 a.m.	Guard of Honour marches into position.
8.	11.35 a.m.	The Deputy President-Elect, Hon. William Samoei Ruto, EGH, accompanied by Mrs. Rachel Ruto arrives and is received by Mr. Francis Kimemia, EGH, CBS, Permanent Secretary, Secretary to the Cabinet, Head of Public Service and Chairman of the Assumption of the Office of President Committee.
9.	11.40 a.m.	The President-Elect, Hon. Uhuru Kenyatta, EGH, accompanied by Mrs. Margaret Kenyatta, arrives and is received by Mr. Francis Kimemia, EGH, CBS, Permanent Secretary, Secretary to the Cabinet, Head of Public Service and Chairman of the Assumption of the Office of President Committee.





Serial	Time	Event
10.	11.40 a.m.	His Excellency Hon. Mwai Kibaki, CGH, President and Commander-in-Chief of the Defence Forces of the Republic of Kenya accompanied by Her Excellency Mama Lucy Kibaki, EGH depart State House, Nairobi, for Moi International Sports Centre, Kasarani.
11.	11.50 a.m.	On arrival, His Excellency the President and Commander-in-Chief of the Defence Forces of the Republic of Kenya is received by the Chief of the Defence Forces, Gen. J. W. Karangi, EGH, CBS, DCO.
12.		His Excellency the President is escorted to the Ceremonial Land-Rover by Chief of the Defence Forces.
13.		His Excellency the President mounts the Ceremonial Dais.





<i>Serial</i>	<i>Time</i>	<i>Event</i>
14.		NATIONAL ANTHEM (1 stanza). EAC ANTHEM
15.		His Excellency the President, escorted by Chief of the Defence Forces, inspects the Guard of Honour.
16.		His Excellency the President proceeds to the VIP Dais.
17.		Prayers.
		ADMINISTRATION OF THE OATHS BY THE JUDICIARY TO THE PRESIDENT-ELECT
18.	12.00 Noon.	The Chief Registrar of the Judiciary, Mrs. Gladys Boss Shollei, CBS, takes her position at the Inauguration Dais.
19.		The Chief Registrar of the Judiciary invites the Chief Justice and President of the Supreme Court, Hon. Justice Willy Mutunga, D. Jur, SC, EGH,





Serial

Time

Event

to take his position at the Inauguration Dais.

20.

The Chief Justice introduces the President-Elect to the Nation and invites him to take his position at the Inauguration Dais.

21.

The Chief Registrar of the Judiciary invites Mrs. Margaret Kenyatta to take her position at the Inauguration Dais.

22.

The Chief Registrar Administers the Oath of Allegiance to the President-Elect before the Chief Justice.

23.

The Chief Registrar administers the Oath of Due Execution of the Functions of Office to the President-Elect before the Chief Justice.

24.

The Chief Registrar invites His





Serial

Time

Event

- Excellency Hon. Uhuru Kenyatta, EGH, to take his seat at the Inauguration Dais to sign the Oath of Allegiance and Due Execution of the Functions of Office before the Chief Justice.
25. The Chief Justice presents a set of the Oath of Allegiance and Oath of Due Execution of the Functions of Office to His Excellency the President Hon. Uhuru Kenyatta, EGH.
26. His Excellency the President Hon. Uhuru Kenyatta, EGH, receives from the Chief Justice the Certificate of Inauguration for his signature.
27. His Excellency Hon. Uhuru Kenyatta, EGH, receives the duly signed Certificate of Inauguration from the Chief Justice.





Serial

Time

Event

**HANDING OVER OF
INSTRUMENTS OF POWER AND
AUTHORITY**

28.

The Chief Justice invites His Excellency Hon. Mwai Kibaki, CGH, to come and handover the Instruments of Power to His Excellency the President Hon. Uhuru Kenyatta, EGH.

29.

His Excellency Hon. Mwai Kibaki, CGH, hands over Instruments of Power and Authority (*The Commander-in-Chief's Ceremonial Sword and the Constitution*) to His Excellency Hon. Uhuru Kenyatta, EGH, the President and Commander-in-Chief of the Defence Forces of the Republic of Kenya.

30.

Fanfare.





<i>Serial</i>	<i>Time</i>	<i>Event</i>
		ADMINISTRATION OF THE OATHS BY THE JUDICIARY TO THE DEPUTY PRESIDENT-ELECT

31.		The Chief Registrar of the Judiciary, Mrs. Gladys Boss Shollei, CBS, takes her position at the Inauguration Dais.
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32.		The Chief Registrar of the Judiciary invites the Chief Justice and President of the Supreme Court, Hon. Justice Willy Mutunga, D.Jur, SC, EGH, to take his position at the Inauguration Dais.
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33.		The Chief Justice introduces the Deputy President-Elect to the Nation and invites him to take his position at the Inauguration Dais.
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34.		The Chief Registrar of the Judiciary invites Mrs. Rachel Ruto to take her position at the Inauguration Dais.
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<i>Serial</i>	<i>Time</i>	<i>Event</i>
35.		The Chief Registrar Administers the Oath of Allegiance to the Deputy President-Elect before the Chief Justice.
36.		The Chief Registrar Administers the Oath of of Due Execution of the Functions of Office to the Deputy President-Elect before the Chief Justice.
37.		The Chief Registrar invites Hon. William Samoei Ruto, EGH to take his seat at the Inauguration Dais to sign the Oath of Allegiance and Oath of Due Execution of the Functions of Office before the Chief Justice.
38.		The Chief Justice presents a set of the Oath of Allegiance and Oath of Due Execution of the Functions of Office to the Deputy President, Hon. William Samoei Ruto, EGH.
39.		Fanfare.





<i>Serial</i>	<i>Time</i>	<i>Event</i>
40.		Photo Session <ul style="list-style-type: none">• His Excellency the President• Deputy President• His Excellency the President and Spouse• The Deputy President and Spouse• The Team joined by the outgoing President.
41.		The Chief Registrar requests the former President, Deputy, President and Chief Justice to retreat to the VIP Dais.
42.		The Chief of the Defence Forces, Gen. J. W. Karangi, EGH, CBS, DCO, invites His Excellency the President to take his position.
43.		21-Gun Salute.
44.		NATIONAL ANTHEM, 3 stanzas (Simultaneous raising of the Presidential Standard of





Serial

Time

Event

His Excellency the President and lowering of the Presidential Standard of the outgoing President.

45. His Excellency Hon. Mwai Kibaki, CGH, receives his Presidential Standard from Chief of the Defence Forces.

46. The Guard of Honour marches off.

47. Brief musical interlude.

SPEECHES

48. The master of ceremonies invites the Deputy President, Hon. William Samoei Ruto, EGH.

49. The Deputy President, Hon. William Samoei Ruto, EGH, invites the President of the Republic of Uganda and Chairman of EAC and IGAD to make his address.





<i>Serial</i>	<i>Time</i>	<i>Event</i>
50.		The President of Uganda, His Excellency Yoweri Kaguta Museveni makes his address.
51.		The Deputy President, Hon. William Samoei Ruto, EGH, invites the immediate former President of the Republic of Kenya to make his Valedictory Address.
52.		The immediate former President, His Excellency Hon. Mwai Kibaki, CGH, makes his valedictory Address.
53.		The Deputy President, Hon. William Samoei Ruto, EGH, makes brief remarks and invites His Excellency the President and Commander-in-Chief of the Defence Forces of the Republic of Kenya to give his Inauguration Speech to the Nation.





<i>Serial</i>	<i>Time</i>	<i>Event</i>
54.		His Excellency Hon. Uhuru Kenyatta, EGH, President and Commander-in-Chief of the Defence Forces of the Republic of Kenya gives his Inauguration Speech to the Nation.
55.		EAC ANTHEM NATIONAL ANTHEM
56.		His Excellency Hon. Mwai Kibaki, CGH, accompanied by Her Excellency Mama Lucy Kibaki, EGH depart the Stadium for State House.
57.		Lap of Honour by His Excellency the President.
58.		His Excellency the President Hon. Uhuru Kenyatta, EGH, accompanied by Her Excellency, the First Lady Mrs. Margaret Kenyatta depart the Stadium for State House.





Serial	Time	Event
59.		Heads of State and Government depart the Stadium for State House Nairobi.
60.		His Excellency Hon. Mwai Kibaki, CGH, and Her Excellency Mama Lucy Kibaki, EGH receive His Excellency the President Hon. Uhuru Kenyatta, EGH, and Her Excellency Mrs. Margaret Kenyatta at State House, Nairobi.
61.		Their Excellencies the President and First Lady welcome the visiting Heads of State and Government at State House Nairobi.
62.		State Luncheon. (See separate Programme)



APPENDIX: 10

Luncheon at State House

Programme

Serial	Time	Event
1.	2.30 p.m.	All invited guests shall have arrived and settled at the Luncheon Dome.
2.		His Excellency Hon. Mwai Kibaki, CGH and Her Excellency Mama Lucy Kibaki, EGH arrive at State House.
3.		His Excellency Hon. Uhuru Kenyatta, CGH, President and Commander in Chief of the Defence Forces of the Republic of Kenya and Her Excellency the First Lady Mrs. Margaret Kenyatta arrive at State House.
4.		Heads of State/Government arrive at State House.
5.		His Excellency Hon. Uhuru Kenyatta, CGH, President and Commander in Chief of the Defence Forces of the Republic of Kenya and His Excellency Hon. Mwai Kibaki, CGH meet Heads of State/Government.
6.		Group photo.
7.		The Presidential party proceeds to the Luncheon Dome

8. Anthems.
 - Kenya National Anthem.
 - East African Community Anthem.
9. Prayers.
10. Lunch
11. Remarks:
 - Deputy President Hon. William Samoei Ruto, EGH invites His Excellency Hon. Mwai Kibaki, CGH.
 - His Excellency Hon. Mwai Kibaki, CGH makes his address and invites His Excellency the President.
 - His Excellency Hon. Uhuru Kenyatta, CGH, President and Commander in Chief of the Defence Forces of the Republic of Kenya makes his address.
12. Vote of thanks by His Excellency Dr. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania.
13. Deputy President Hon. William Samoei Ruto, EGH proposes a Toast.
14. Anthems.
 - East African Community Anthem;

- Kenya National Anthem.

15. Departure procedures for Heads of State/
Government.
16. National Anthem.
17. Departure procedures for H.E. Hon. Mwai Kibaki,
CGH.
18. His Excellency Hon. Uhuru Kenyatta, CGH,
President and Commander in Chief of the
Defence Forces of the Republic of Kenya and
the First Lady Mrs. Margaret Kenyatta retire to the
Main House.
19. Other invited guests leave State House grounds.

APPENDIX: 11

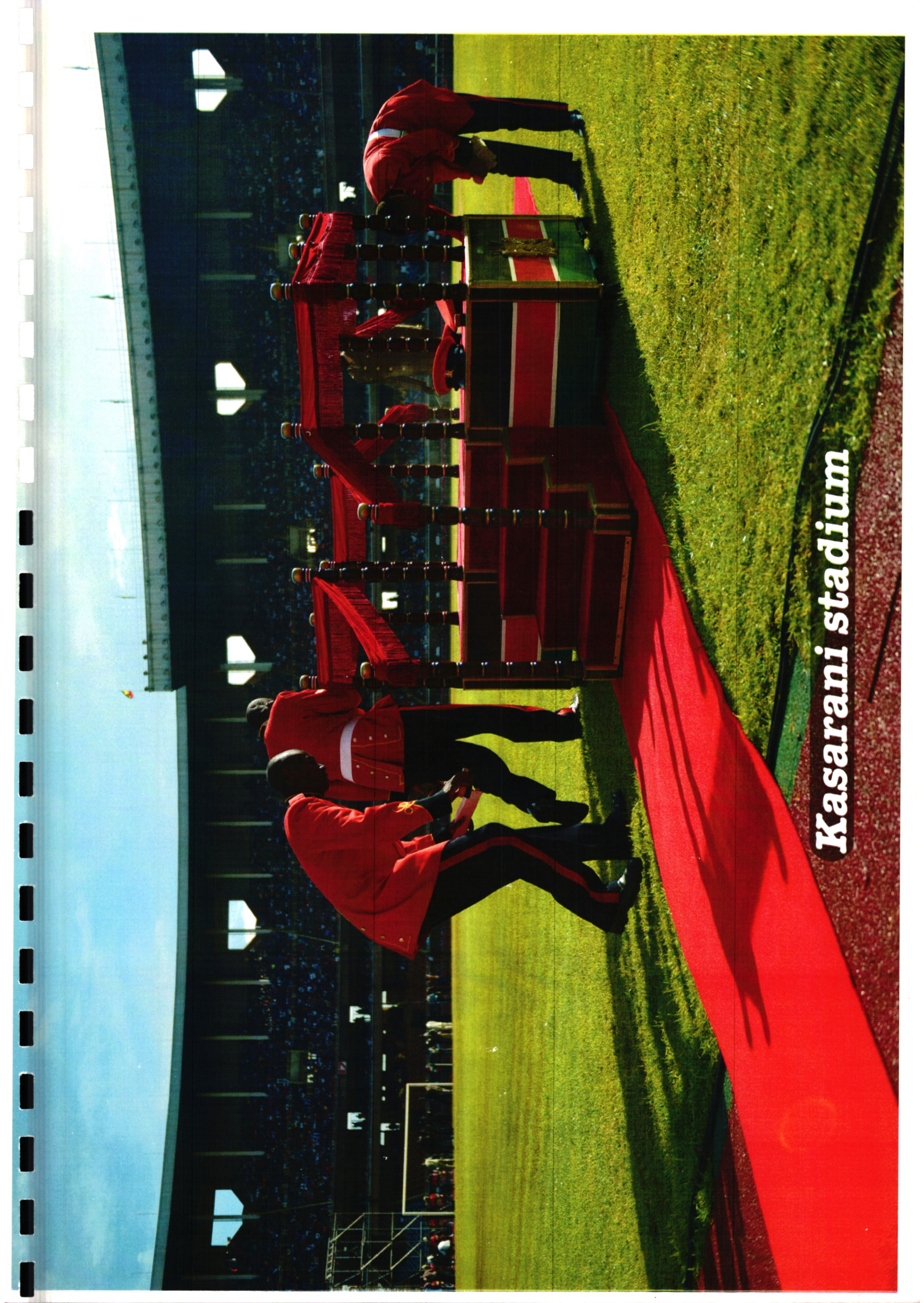
Photo Album – Photographs of the Ceremony

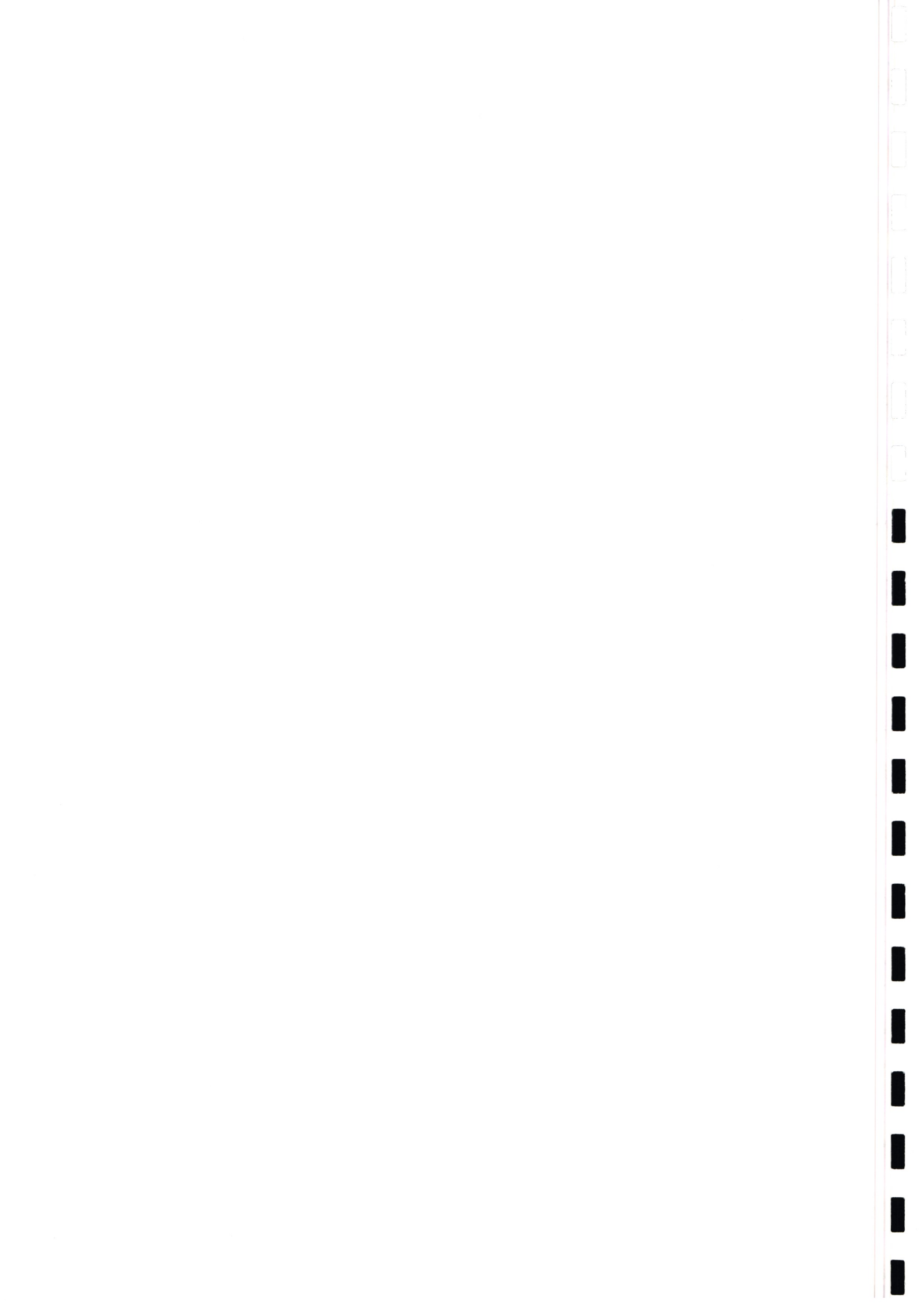
An aerial photograph of Kasarani Stadium, showing a large green field in the foreground, a massive crowd of spectators in the stands, and a clear blue sky with several birds flying. The stadium's architecture features a prominent white and red facade. The image is presented as a scan of a film strip, with sprocket holes visible along the left edge.

Kasarani Stadium

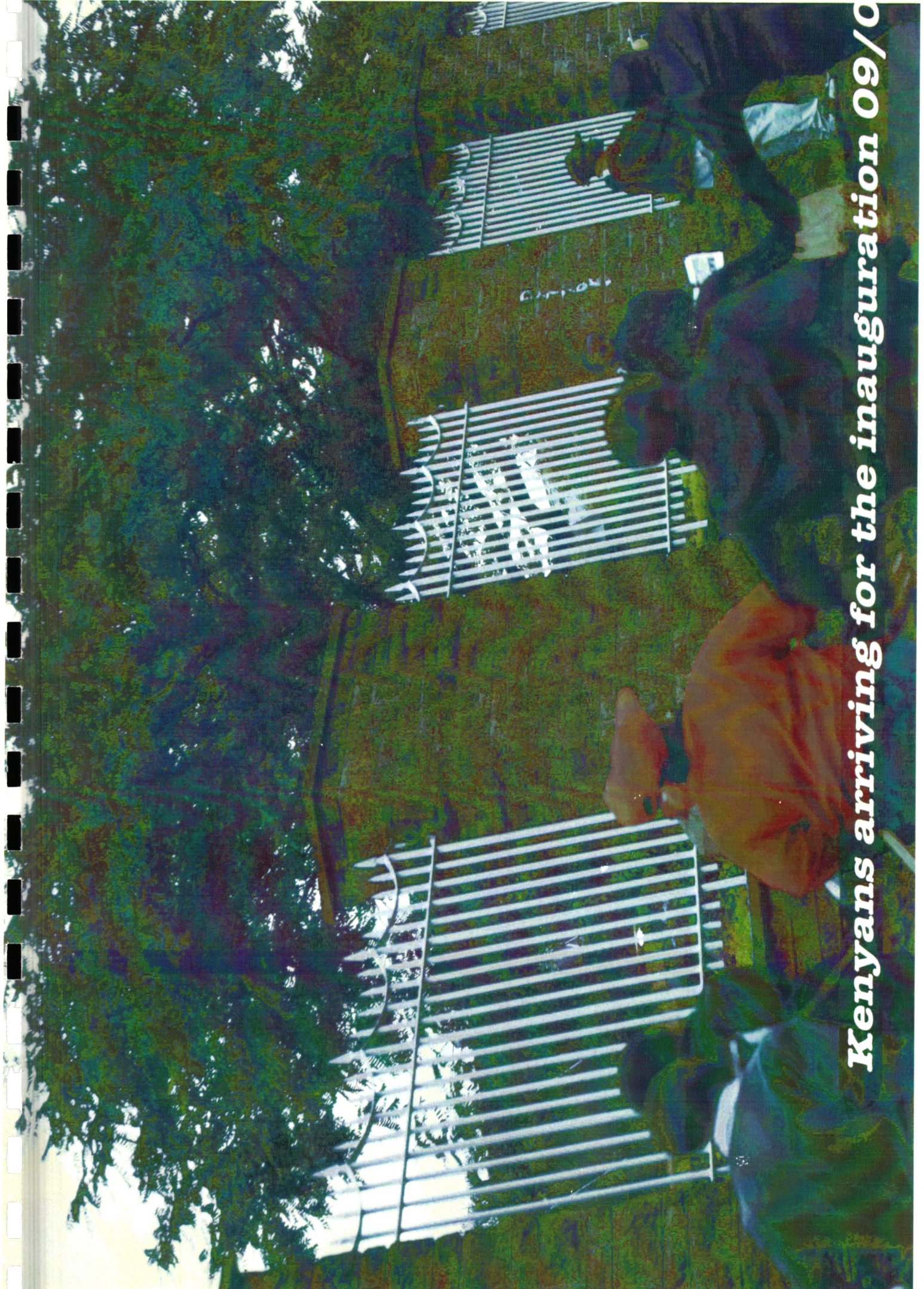


Kasarani stadium





Kenyans arriving for the inauguration 09/0

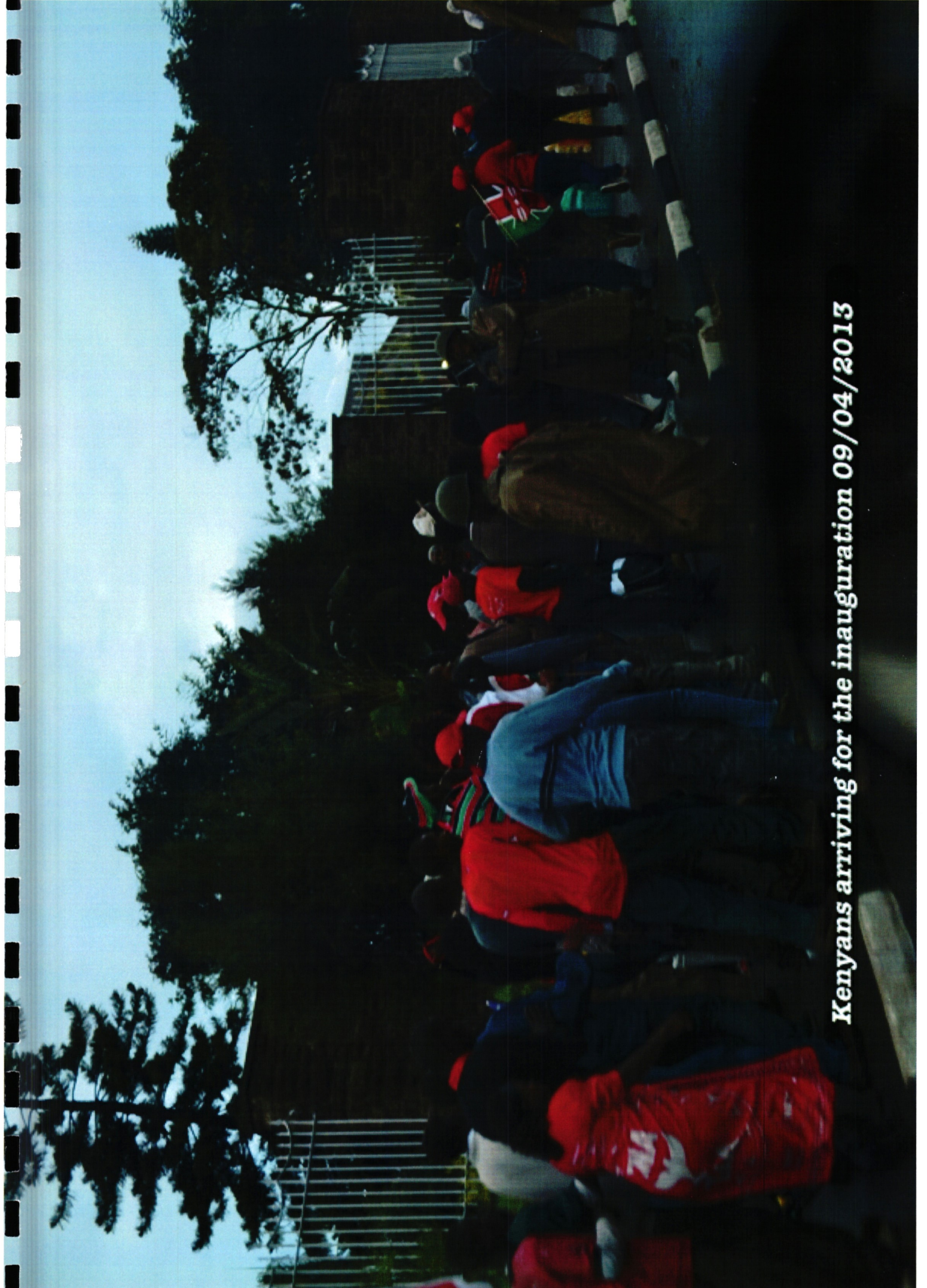




Kenyans arriving for the inauguration 09/04/2013







Kenyans arriving for the inauguration 09/04/2013






General public in jubilation






General public in jubilation





General public in jubilation

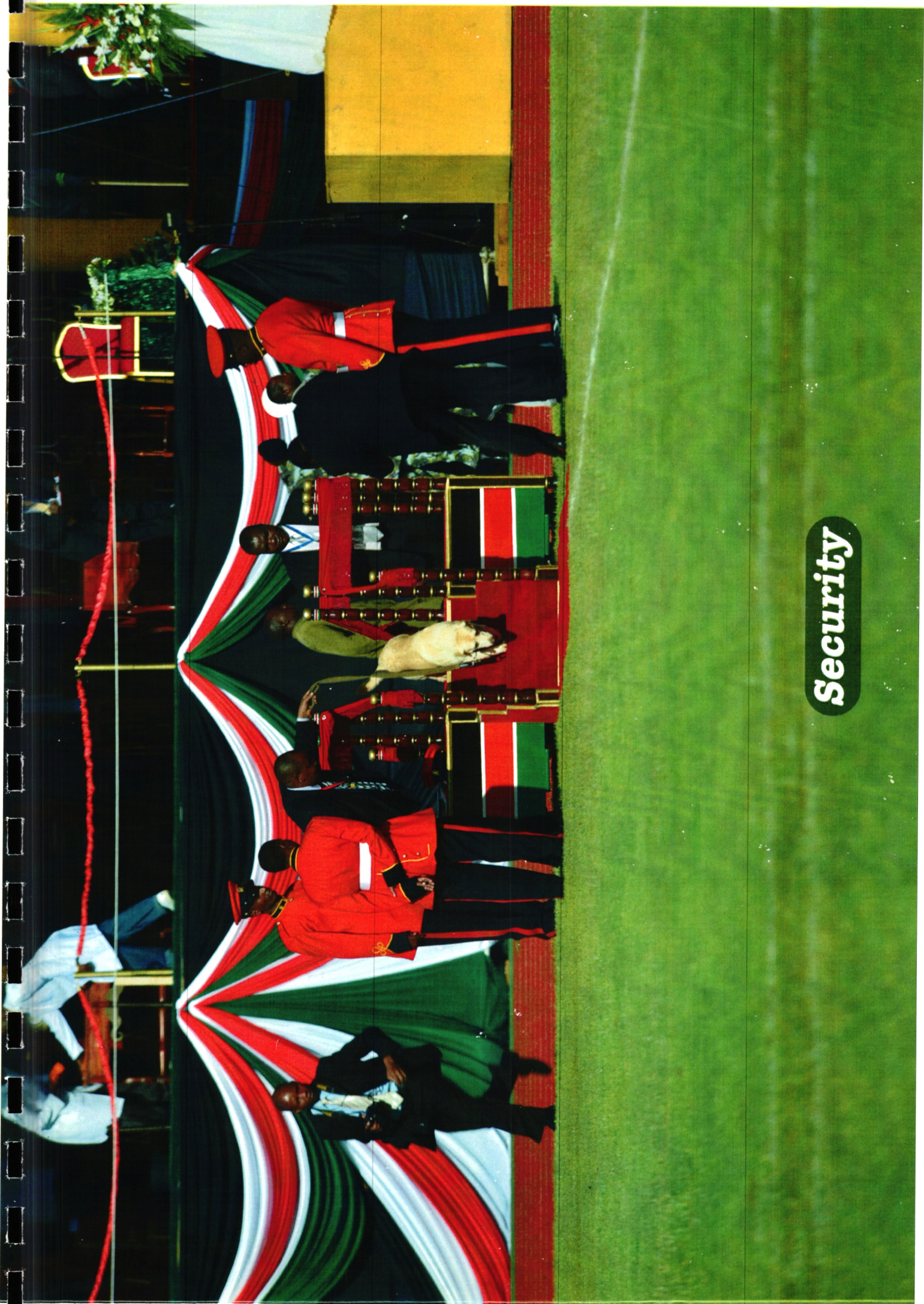




General public in jubilation



Security







Entertainment

EMERSON





Entertainment



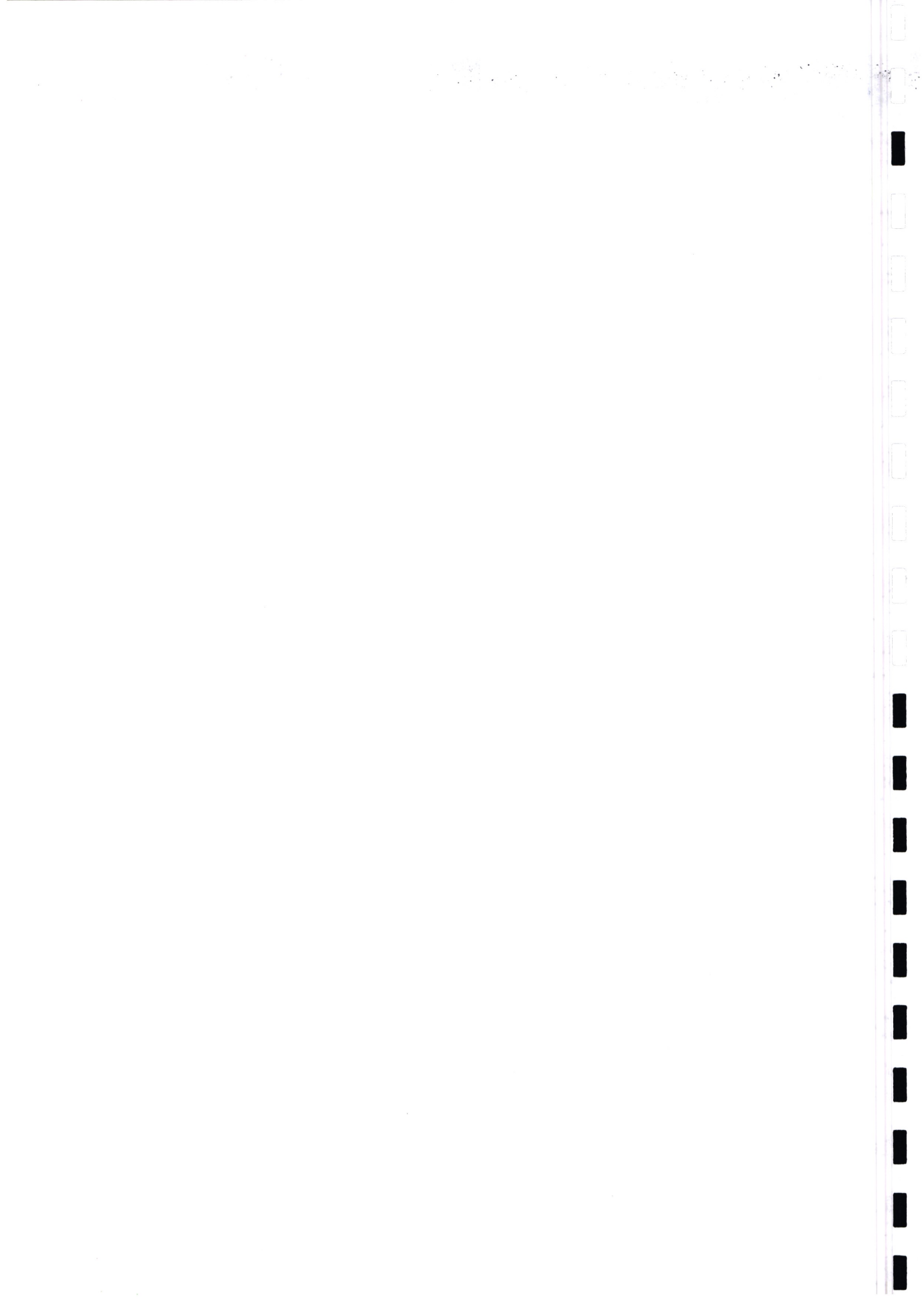


Entertainment



foreign dignitaries arriving







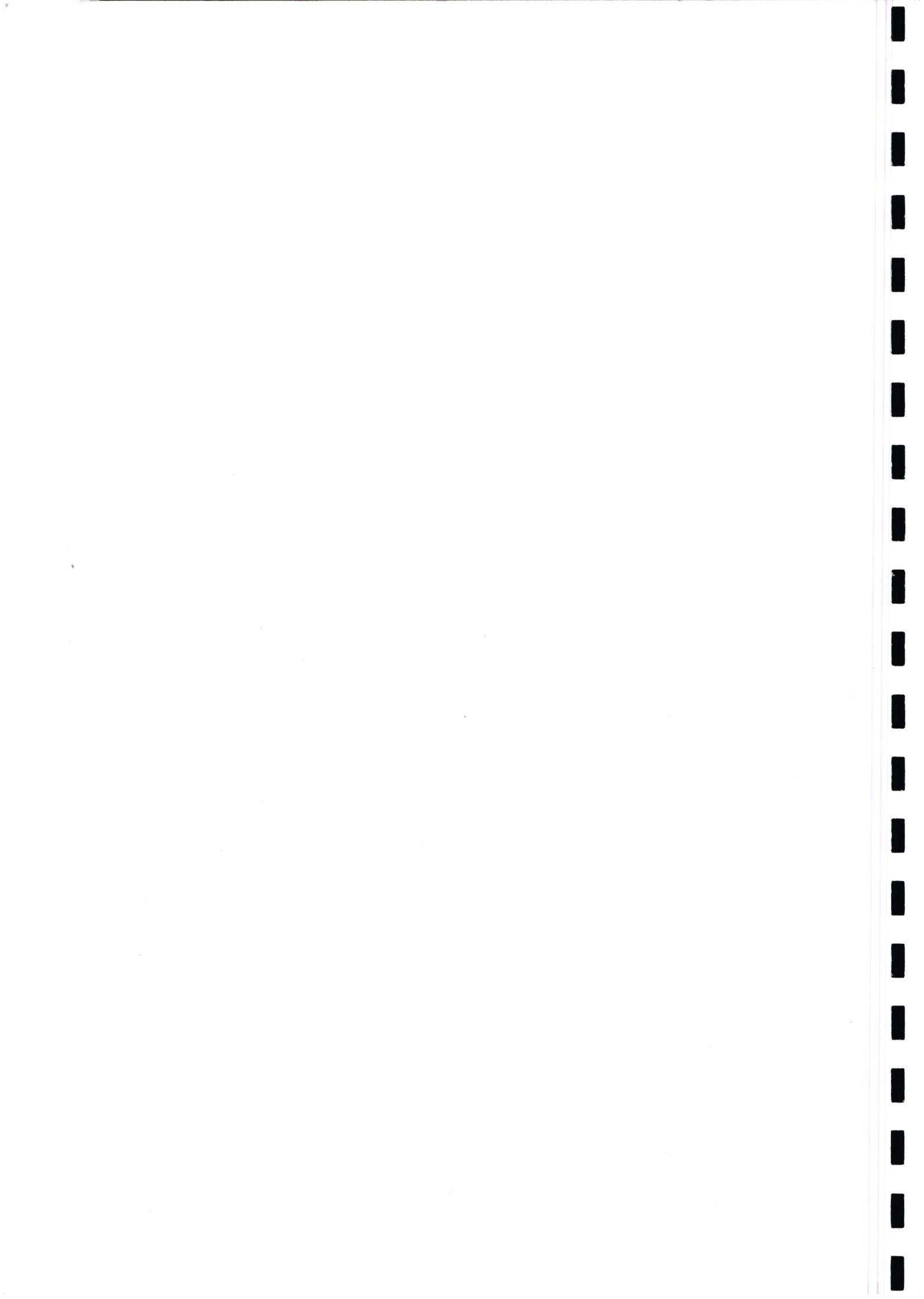
foreign dignitaries arriving

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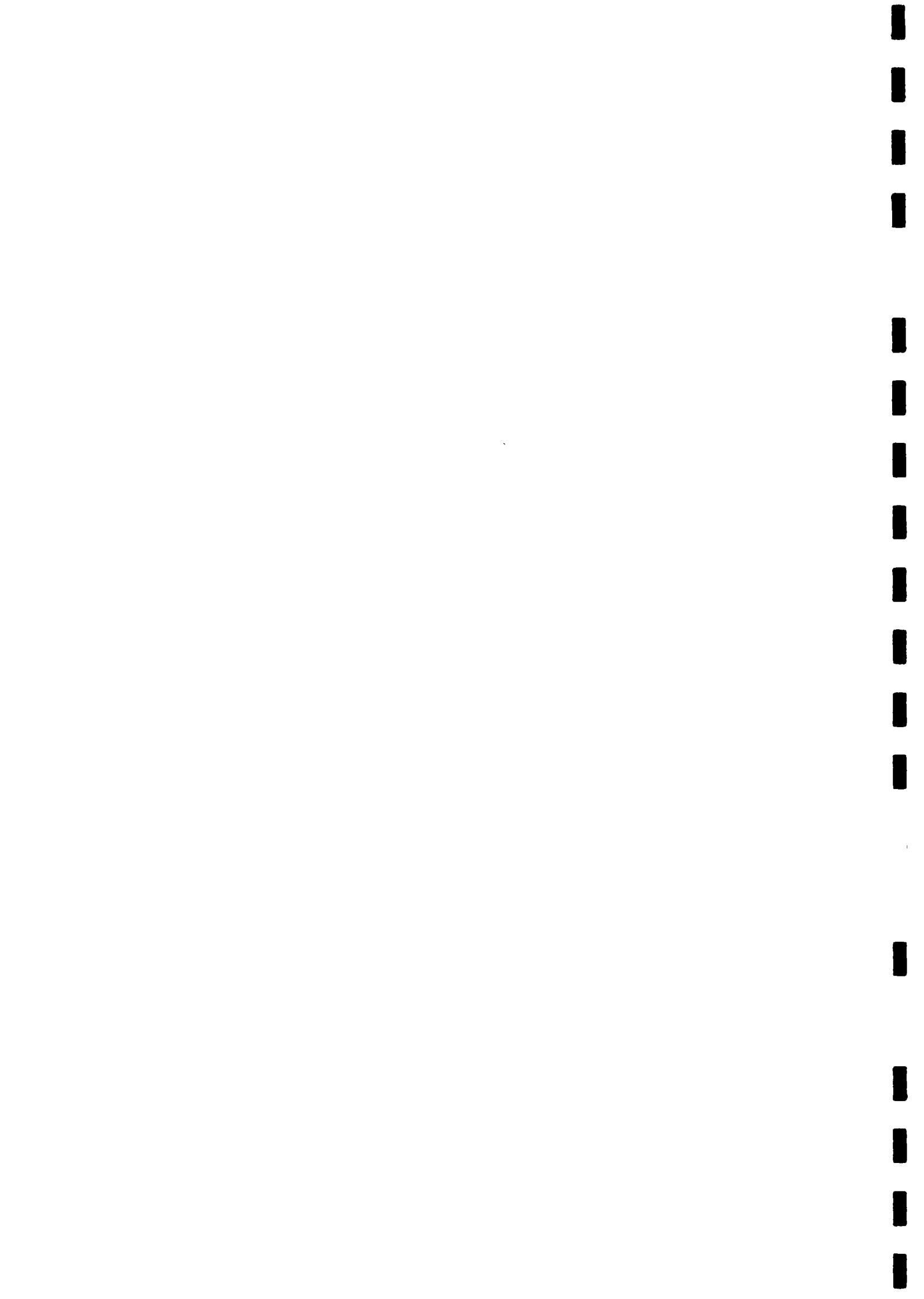
foreign dignitaries arriving







Local dignitaries arriving






Local dignitaries arriving



Dignitaries







Dignitaries



Dignitaries



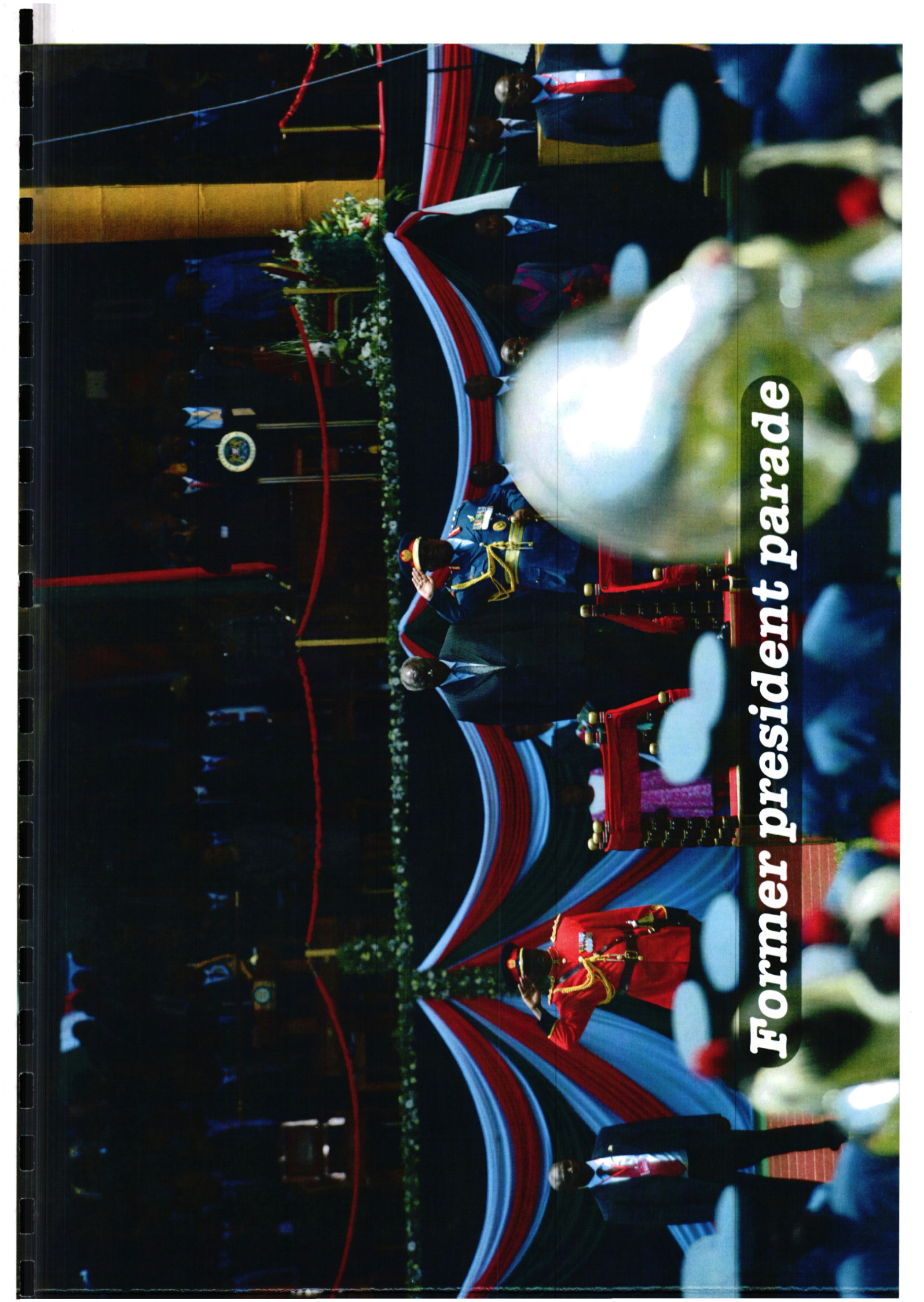




Kenya defence forces



Former president parade





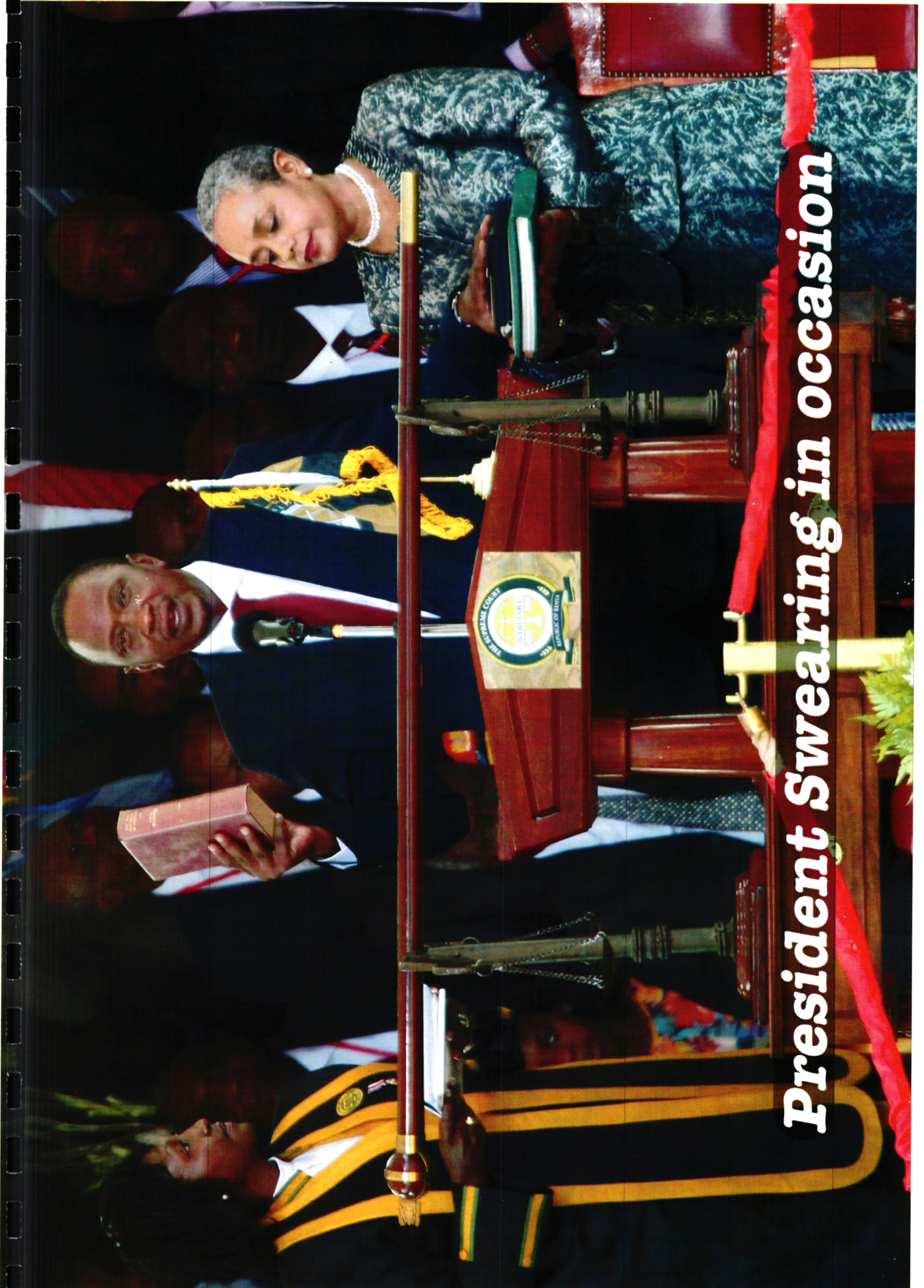


Former president parade



president parade





President Swearing in occasion





Deputy President Swearing in occasion





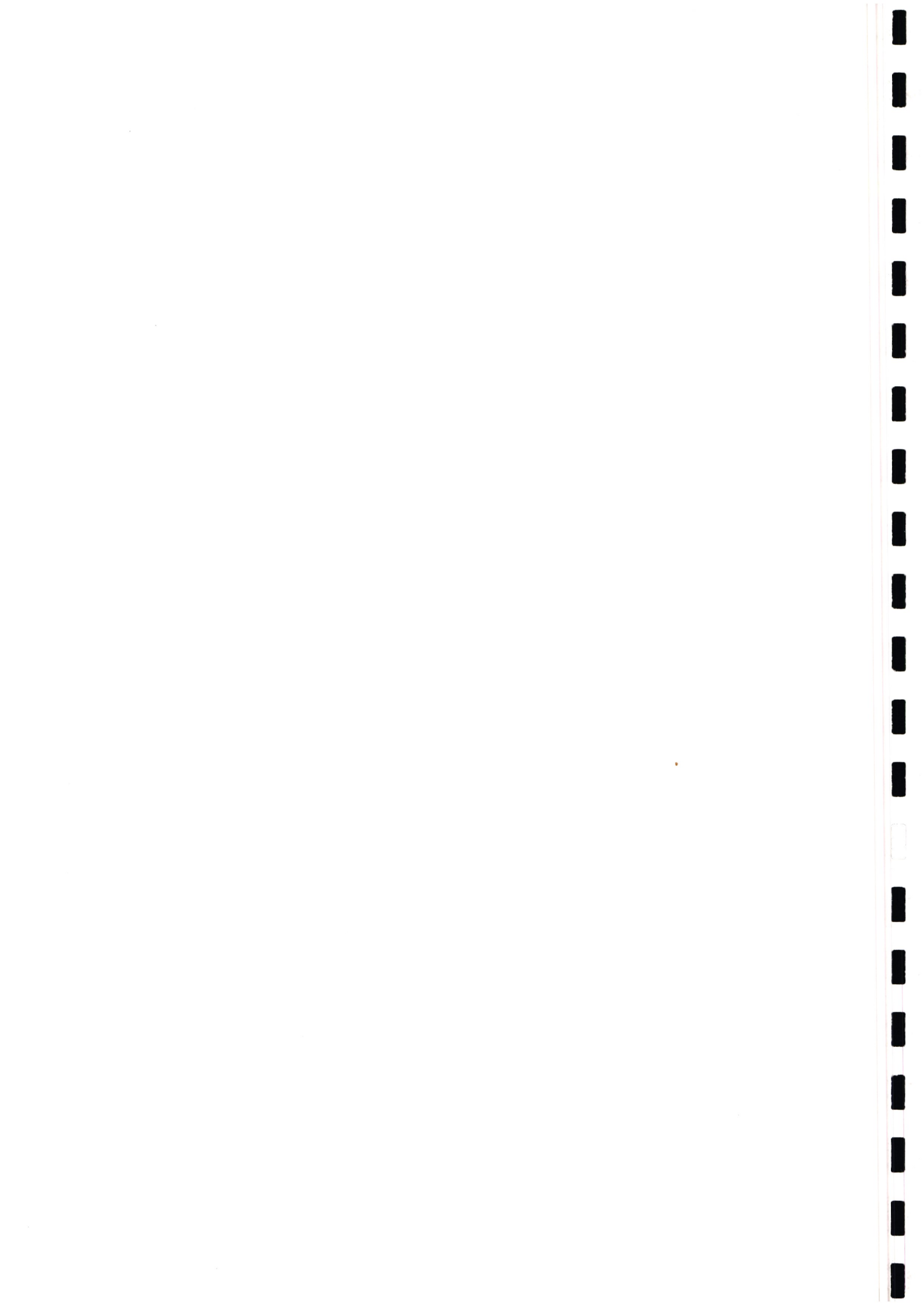
Handing over





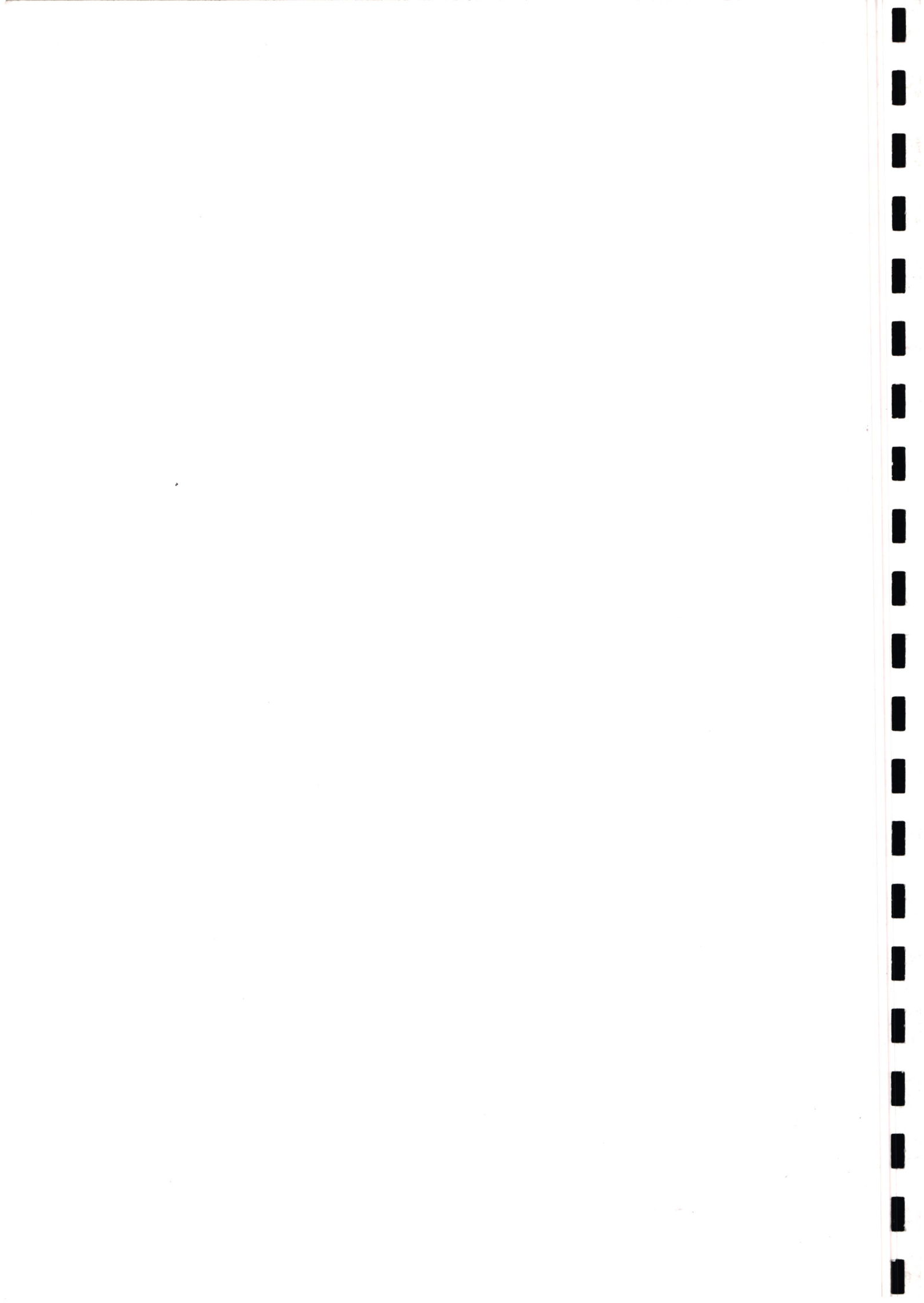


Handing over



Handing over





State house luncheon





State house luncheon



