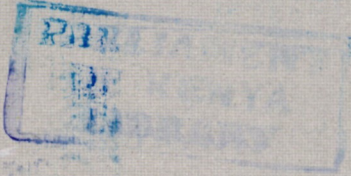




Paper lead

17/6/2014



# QUARTERLY REPORT

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April 2013 to June 2013



# **Quarterly Report**

**for the period**

## **April to June 2013**

Quarterly Report of the Transition Authority on the Progress in the Implementation of the Transition to the Devolved System of Government (Pursuant to Section 7 and 25 of the Transition to Devolved Government Act, 2012)



*The Transition Authority Quarterly Report April to June,2013*  
*Quarterly Report April to June, 2013 ©The Transition Authority*

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*Quarterly Report, April to June, 2013*

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# MESSAGE FROM THE CHAIRMAN



This quarter saw the continuation of devolving governance structures and services to the new county governments. A critical undertaking during this period was the capacity building exercise, increased activity in unbundling of functions and county assessments.

Capacity building was primarily in the form of induction workshops for the newly elected and appointed county leaders. Featuring prominently was the Conference for Governors and Speakers together with their deputies and TA County Coordinators that was held in Nairobi. Thereafter, similar induction forums were carried out in collaboration with the national government and development partners. These included inductions for Women Representatives to the National Assembly, Members of the County Assemblies, chairpersons of County Assembly Budget Committees, among others.

The process of unbundling of functions went on. Consultative forums were held with the Council of Governors Task Force and relevant Ministries, Departments and Agencies. The procedure and criteria to be used for transfer of functions was also published, thereby paving way for counties to formally apply for all the remaining functions as provided for under the fourth Schedule of the Constitution of Kenya, 2010. A rapid assessment of the existing capacity of counties to take up functions was also undertaken.

The next quarter will see increased activity in the transfer of functions and the issuance of more guidelines and advisories particularly in respect of human resource and assets. I, therefore, expect that we shall make significant progress in getting the counties to perform as fully functioning units.

A handwritten signature in black ink, appearing to read 'Kinuthia Wamwangi'.

**KINUTHIA WAMWANGI**  
**CHAIRMAN**

## MESSAGE FROM THE CEO/SECRETARY



The past quarter featured a good number of activities aimed at capacitating both the Transition Authority and the devolved governments.

Nationally, TA focused on building capacity and providing support to the County Transition Teams. This was done in order to enable the teams to assist the counties

in ensuring that services to the citizens went on uninterrupted during the critical “change-over” period. That is the switch from the centralised to the devolved system of government. The teams were able to accomplish this task and were further involved in helping the new county governments to prepare their initial plans and budgets.

Internally, the Authority made significant strides in increasing its human resource and infrastructural capacity. During this period, Programme Officers and Research Officers were recruited and orientated. The Authority also secured and moved into new offices at Extelecoms House on Haile Selassie Avenue. TA now occupies three floors in the building and renovations are ongoing. This increased capacity will provide a new and positive dimension in the way we manage our tasks and provide services during the transition period.

As a result of the foregoing, I am extremely confident that our investment in staff and infrastructure will pay dividends in the immediate future by way of an improvement in the efficiency and effectiveness in the services that we provide. I therefore look forward to the new quarter with increased optimism in our capability to carry out our mandate successfully.

**STEPHEN MAKORI**  
**SECRETARY/CEO**



## EXECUTIVE SUMMARY

During this period, major milestones in the transition process were achieved. Key among them is that county governments and the National Government embarked on the process of unbundling of functions as per the Fourth Schedule to the Constitution. Realistic costing of functions also commenced in a few sectors. It is imperative that all sectors are covered under the exercise.

The findings from the County Readiness Assessment exercise indicate that counties are yet to enact legislations related to the devolved functions. This could be attributed to capacity gaps and it is, therefore, important that the capacity of county assemblies and the county executives be enhanced to enable them come up with the requisite legislations for improved service delivery.

Treasuries are in place in all the counties. Integrated Financial Management Information Systems (IFMIS), Integrated Personnel Payroll Data (IPPD) systems, transparent procurement processes and internal audit teams are required in the counties. From the county readiness assessment, less than half of the counties have functioning IFMIS. This, therefore, calls for capacity building and network connectivity to be improved.

During the period under review, TA engaged and got immense support from several development partners. Unwavering support was received from the UNDP who managed the basket fund. Other partners include UN Habitat and the Westminster Foundation, among others. We wish to thank them because their support enabled TA achieve its mandate.



**STEPHEN MAKORI**  
**SECRETARY/CEO**



# CHAPTER 1

## 1.0 INTRODUCTION

The Transition Authority (TA), is a statutory body whose mandate is to facilitate and coordinate the transition to a devolved system of government in Kenya, as per the Transition to Devolved Government Act, 2012 and the provisions under Section 15 of the Sixth Schedule to the Constitution.

The Authority's transition period is in two phases. Phase One started in June, 2012 to March 4, 2013 and Phase Two, started on March 4, 2013 and will end in March 2016.

This report covers the last quarter of Financial Year 2012/2013, which also marks the beginning of Phase Two. The activities for Phase Two of the Authority as stated in the Fourth Schedule of the Transition to Devolved Government Act, 2012 include:

- a) Completion of outstanding activities from Phase One.
- b) Overseeing the transfer of functions from the national government to the county governments.



- c) Facilitating the county governments in the performance of their functions.
- d) Any other activities that may be necessary to enable county governments carry out their functions.

The report, therefore, outlines the progress made through TA's thematic committees in the transfer of functions to the county government, the challenges experienced, recommendations to address any emerging concerns and the way forward in the implementation of the transition process.

In this quarter, TA focused on the facilitation of Counties and the National Government in their preparation for the implementation of their transition plans, refurbishment of the identified interim offices, induction of the interim clerks to the assemblies in preparation for election of the speakers, finalization of the criteria for the application and transfer of functions and monitoring and guiding the development of Transition Implementation Plans.

In summary, TA realized the following outputs:

- The Transition Authority is fully operationilised with adequate staff, budget and offices.
- A functional analysis framework and relevant tools (templates and guidelines) has been developed and is under application, initial functions for transfer to the Counties have been gazetted and quick readiness assessments have been undertaken in all the counties to establish county preparedness for functions transfer.
- TA has been able to review, prepare and publicize a number of regulations and guidelines relevant to the transition process including:County Public Finance Management Transition Act, County Assembly Standing Orders, budget guidelines, procedure for election of county speakers , Assumption of

Office for the Governor regulations, and Regulations under the County Government Act.

- In collaboration with the Ministry of Devolution and Planning, county development profiles have been prepared for all the 47 counties and draft guidelines for the preparation of the Integrated County Development Plans.
  - The Authority has facilitated and ensured civic education on devolution is commenced and coordinated through the development and dissemination of civic education materials.
  - On existing assets and liabilities of government, other public entities and local authorities, TA has prepared a criteria for transfer of assets and liabilities, procured an Asset Management Information System software and put in place a technical committee comprising of CIC, CRA, Ministry of Lands, PPOA, National Land Commission and Ethics and Anti-Corruption Commission to handle issues on assets and liabilities.
  - The authority has developed a national capacity building framework and conducted inductions for County Interim Transition Teams, governors, deputy governors and Speakers and Members of the County Assemblies, to enable them undertake their mandate effectively.







## CHAPTER 2

### 2.0 PROGRESS MADE UNDER EACH OPERATIONAL COMMITTEE

The Authority implements its mandate through four main operational committees, namely:

- Functional Analysis and Competency Assignment Committee.
- Legal and Intergovernmental Relations Committee.
- Capacity and Capability Development Committee.
- Planning, Budgeting and Finance Committee.

Various oversight committees oversee the implementation of the decisions made by the operational committees.

## 2.1 The Functional Analysis & Competency Assignment Committee

The progress made by the Transition Authority through this thematic area in the quarter under review is outlined below.

### i) **Transfer of Functions**

In conformity with the Constitution, the Authority compiled a list of functions that had not been initially transferred in March 2013. A notice was placed in the dailies on April 24, 2013 to allow for public participation. A draft gazette notice of this list of functions was done and sent to the Attorney General for gazettment on June 21, 2013 for all the functions transferable by July 1, 2013, but with a disclaimer on the prevailing state of affairs of the counties regarding their readiness and capacity to uptake the functions

### ii) **Operationalization of FAST**

The Functional Assignment Steering Team (FAST), which is the apex organ in the harmonization and review of the draft Sectoral papers on functional assignment was launched on May 16, 2013 at KICC. Several Non-State Actors, among them CLARION, TISA, APSEA, IBP and DEGONSA confirmed their acceptance to be members of the FAST.

### iii) **Costing of functions**

Realistic costing to determine resources required for each of the functions allocated to either level of government commenced. This was done through the engagement of consultants who have since costed the functions of two key sectors – health and agriculture. The final reports are expected in July.

#### a) **Development of Legislation related to various functions**

The findings of the County Readiness Assessment exercise revealed that the counties had not enacted legislations



related to the devolved functions. The counties were, therefore, advised to update or review the existing national legislations and former local authority by-laws for adoption and application during the transition period.

**b) Frameworks for Service Delivery**

The County Readiness Assessment also revealed that no county had established its own service delivery framework. However, the assessment indicated that health services, agriculture, education, livestock, public works and water had clear national service delivery frameworks at the county level, which the counties can adopt before they build their own capacity. Unfortunately, these frameworks are neither in tandem with the new structure of devolution nor aligned to either national or county governments.

**c) Establishment of administrative units**

The assessment confirmed that the county executives and the county assemblies were successfully inaugurated. The remaining main challenge was the establishment of administrative units that are crucial in service delivery and representation of the people in the new political dispensation.

From the counties assessed, about 85% have nominated their County Executive Committees (CEC), 78% of those nominated have been vetted while 55% of those nominated and vetted have been approved.

For the County Assembly Service Board (CASB), 76% of the counties have nominated the ASB members, while 55% of these have been vetted and 47% of those vetted have been approved.

In addition, 64% of the County Public Service Boards (CPSB) have been nominated, while 38% of these have been vetted and 28% approved.



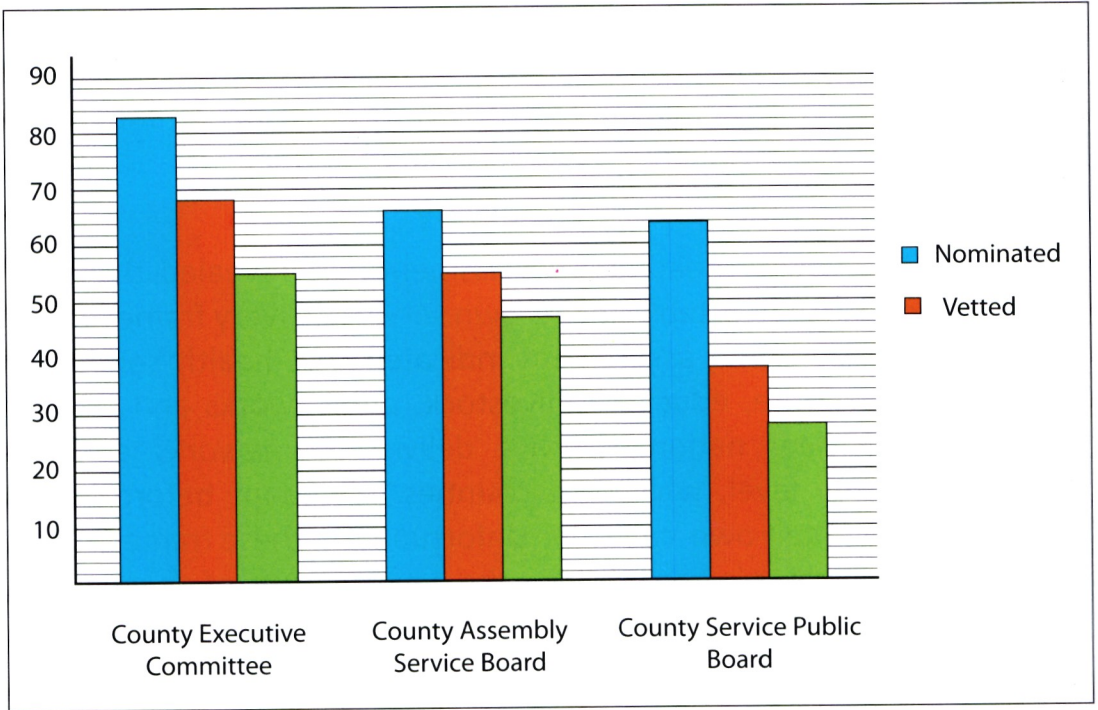


Figure 1: Percentages of Established Administrative Structures and Executive Functions

#### d) Existence of Financial Management Systems

All the counties have their treasuries in place and have prepared their budgets. 28% of the budgets have been debated and approved. Establishment of an Integrated Financial Management Information System (IFMIS), an Integrated Personnel Payroll Data (IPPD) system, a transparent procurement process and an internal audit team of the highest integrity is a prerequisite for each county. From the assessment done, 26% of the counties have their IFMIS functioning, 60% have their IPPD functioning and 50% have a procurement team. This is illustrated in Figure 2.

The challenge facing many of these counties is equipping these units with the right staff and the right numbers.

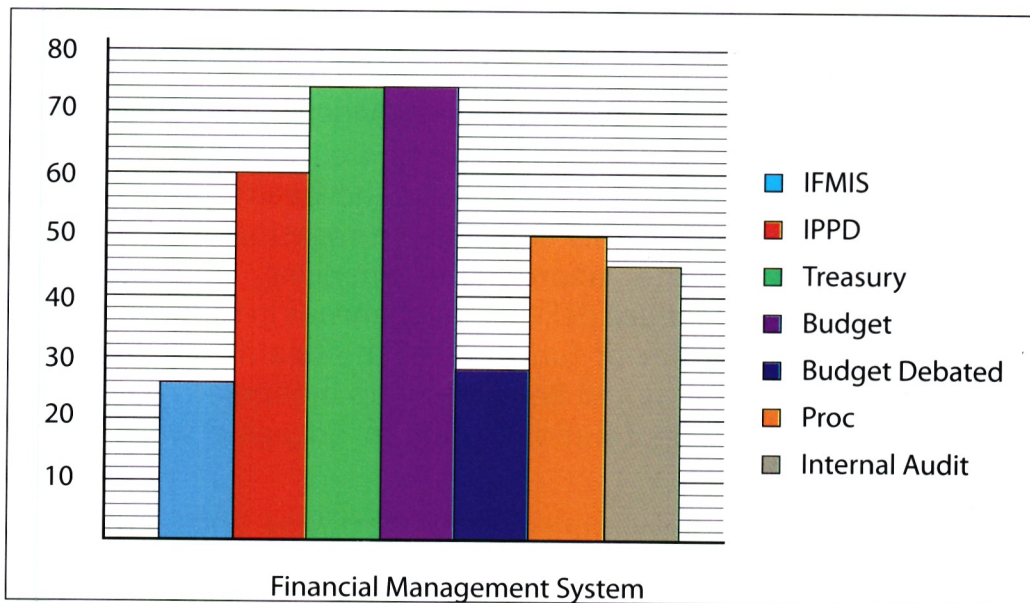


Figure 2: Percentages of Basic Financial Management Systems in Place in the 47 Counties

### e) Infrastructure and Systems

Analysis of the status of infrastructure reveals that majority of counties are in dire need of adequate offices to house members of their County Executive Committees, County Public Service Boards and other county staff.

Since Counties are in formative stages, they are yet to make arrangements for further decentralization and determine which services will be taken to sub-counties, wards and village units. Out of 47 counties, only 9 have made arrangements for further decentralization which translates to 20% of the counties as indicated in figure 2 below.

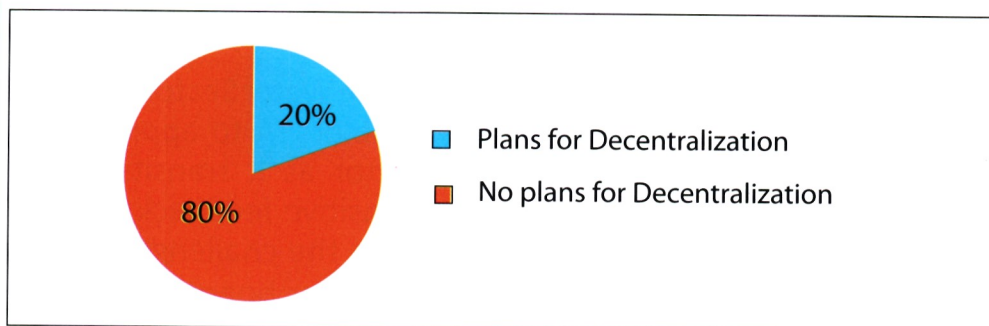


Figure 3: Arrangement for further decentralization



#### iv) **Consultative Meetings with MDAs and other Stakeholders**

TA held a consultative meeting with Provincial General Hospitals as well as High Volume Hospitals as well as governors from the affected counties. CIC, CRA and the health professionals were also invited to this consultative meeting. The meeting deliberated on the appropriate financing, management, governance and service delivery mechanisms in light of possible unstagged transfer of functions in the health sector. It was agreed that there should be a follow-up meeting to deliberate further on possible solutions prior to engaging with all the Governors.

The meeting was convened on 20th- 21st May, 2013. Proposals that had been generated in the previous forum were shared by participants. A decision was reached to the effect that funding for these hospitals be anchored in the Annual Division of Revenue Bill.

An advisory meeting to brief CIC and CRA on the extent of county preparedness, based on the set criteria to inform the transfer of functions in compliance with the Constitution of Kenya, 2010, and the Transition to Devolved Government Act, 2012 and to deliberate on the implications of the Summit directive on unstagged transfer of functions was held. The Functional Analysis and Competency Assignment Committee presented its findings on the County Readiness Report and shared its position that the counties are not ready to uptake the functions. Therefore, transferring these functions would create discontinuity of service delivery. Both CIC and CRA affirmed TA's position that it shall retain fidelity to the Constitution and guide the process of transfer of functions as provided by Transition to Devolved Government Act, 2012.

The FACA Committee participated in the Water Sector devolution meeting at Panafric Hotel. This enabled TA to appreciate the challenges being faced by the sector as it transits into the new devolved structures. A lot of positive feedback and much needed information was obtained on the challenges of assets ownership, the composition of the water boards and the role of the regulatory bodies in this sector, among others.

## v) Transition Implementation Plans

The Committee continued its committed engagement with MDAs on its role of facilitating the development and implementation of TIPs. Key to note here is the challenge of the MDAs not following the agreed format and guidelines, thus making it very difficult for the FACA Committee to make informed decisions and give advice on the way forward. The Committee plans to engage the MDAs afresh and carry out an intensive programme on the finalization of the Sectoral Policy papers, costing and the Transition Implementation Plans.

## Conclusion

It is quite clear that there has been a worrying non-conformity to the guidelines for the preparation of TIPs by the MDAs. In addition, the feedback from MDAs has been inadequate and inconsistent to the agreed format thus making it very difficult for TA to make informed decisions as well as give advice on the way forward. Due to the lack of information from the Treasury and Line Ministries, TA is having a hard time to come up with the realistic costing and effective transfer of functions between the two levels of government. This has raised a lot of political pressure from stakeholders with regard to transfer of functions to county government.

TA will, therefore, fast track the operationalization of FACTs to enhance the production of harmonized Transition Implementation Plans and sectoral functional analysis papers. To solicit political goodwill, the Authority will arrange for a meeting with Cabinet Secretaries and Principal Secretaries to re-engage further on TIPs.



## 2.2 Legal and Intergovernmental Relations Committee

During the period under review, the TA made great strides towards ensuring that the legal and intergovernmental relations aspects of its mandate are accomplished. This created an environment that facilitated a smooth transition within a supportive legal environment.

The progress made during this quarter is outlined below:

### i) **Streamlining of the Gazettment process by County Governments**

Following consultations with the Government Printer, the Kenya Law Reform Commission, the Senate and the Office of the Attorney General, the Transition Authority facilitated the streamlining of the procedure to be followed during gazettment by counties.

- It was agreed that the Government Printer would have a desk dedicated to printing the County Gazette and that the County Gazette would be published every Tuesday, while the Kenya Gazette would continue to be published every Friday as has been the practice.
- The Office of the Attorney General and the Kenya Law Reform Commission undertook to assist the counties in ensuring that the documents to be gazetted were in line with existing legislation.
- TA has assisted several counties in the gazettment process as most of them are in the process of gazetting their County Executive Committee members, County Assembly Service Board members and County Public Service Board members even as vetting continues for the remaining counties.

### ii) **Budget Oversight Training for Women Representatives**

Together with the Society for International Development and the Canadian Parliamentary Centre, the Legal and Intergovernmental Relations Committee organized a training



workshop for Women Representatives on the budget oversight role. Issues to do with gender have been engrained in our Constitution with the establishment of the two thirds gender rule in public offices as well as the creation of Women Representatives in the National Assembly.

As we mainstream gender issues in our current dispensation, it is also important to focus on gender based budgeting. Management of public finances should also be approached from the gender perspective.

The workshop was, therefore, important as it sensitized the Women Representatives on the importance of budget oversight and gender sensitive Public Finance Management.

### **iii) County Salary Structure**

In consultations with the Public Service Commission and the Ministry of State for Public Service, TA participated in the preparation of a proposed salary structure for the county government officers as established in the County Governments Act, 2012 and the Urban Areas and Cities Act.

The proposed salary structures were then forwarded to the Salaries and Remuneration Commission by the Transition Authority as a guide to assist the SRC to recommend salaries accordingly. Currently, some counties have put in place their payroll systems, while some are still in the process of doing so.

### **iv) Recruitment of Interim Legal Officers**

In order to assist the counties dispense with their legislative and legal function in general, the Authority intended to finalize the identification and deployment of Interim Legal Officers to the counties. Following an intervention by the Office of the Attorney General, however, this process was temporarily suspended to enable the stakeholders to develop a comprehensive approach to the issue.

Due to inadequate budgetary allocation for the Financial Year 2013-2014, TA was forced to review this exercise. As opposed to identification and deployment of Interim Legal Officers, TA

will now organize for training on legislative drafting for legal officers already situated in the counties. The Committee plans to collaborate with the Office of the Attorney General as well as the Kenya Law Reform Commission in doing this.

**vi) Joint boards established under the Local Government Act**

The Ministry of Trade sought advice on the fate of the Joint Trade Boards following the repeal of the Local Governments Act, under which these Boards were established. TA advised the Ministry of Trade accordingly on the need to restructure these Boards so as to bring them in line with the devolved system of government.

**vii) Management of complaints on the transfer of public assets**

The Authority has handled various complaints relating to irregular transfer of assets, including:

- Land occupied by the Ntulili Community in Meru County.
- Indian Bazaar Government Estate in Kiambu County.
- Complaint relating to BARAGWI/RAIMU/490/PLOT 66 in Kirinyaga County by Mr. Nahashon Nyaga.
- Muranga County alleging irregular dealings with NGINGA/SAMAR/BLOCK 2, which he alleges belongs to him.

The above complaints have been forwarded to the relevant investigating bodies such as the National Land Commission and EACC.

**viii) Legal representation of TA in Court**

The Authority continued to ensure that it is adequately represented in all court matters involving the organization. Ensuring competent representation in court cases protects the integrity of the Transition Authority as well as the transition process as all the lawsuits revolve around the transition process. The cases range from matters relating to the management of public assets during the transition process, election petitions as well as issues affecting county staff during the transition process.



The Legal and Intergovernmental Relations Committee has ensured that the Authority is adequately represented in all matters in which it has been sued. Most of these cases are still ongoing while some have been successfully concluded.

**ix) Status of court cases involving the defunct local authorities**

The Transition Authority began discussions with the Office of the Attorney General with the aim of determining which entity should take over the court cases involving the former local authorities. The major concern was liabilities arising out of decrees of a court of law and moneys owed arising from the said decrees.

Kajiado County, Trans Nzoia County as well as other counties have requested guidance on how to handle court cases involving the former local authorities.

Discussions with the Office of the Attorney General are ongoing and a legal advisory will be issued to the counties in July 2013.

**x) Advising on the welfare of county government staff**

The Kenya County Government Workers Union wrote to the Transition Authority raising various challenges faced by county government staff, for instance, irregular disciplinary action taken against the seconded staff. TA gave advice on the complaints raised, quoting the relevant sections of the County Governments Act, 2012 in relation to the welfare of seconded staff in the counties. The Authority further forwarded the matter to the Public Service Commission so as to enable PSC to take it up and ensure that public officers seconded to the counties are not treated unfairly.

**xi) Advisory on County Executive Committee members**

The Transition Authority published an advisory in the local dailies on the legal requirements pertaining to the number of County Executive Committee members per county. This was issued pursuant to the fact that it had emerged that some counties had appointed County Executive Committee members exceeding the number permitted under the Constitution.



All the 47 counties have appointed or are in the process of appointing their County Executive Committee members, County Public Service Board members and County Assembly Service Board members.

**xii) Meetings and Workshops Attended**

The TA was represented in the following workshops and meetings:

- A workshop organized by an organization known as 'Christian Aid' to deliberate on the devolution process. TA made a presentation on the role of TA and the achievements made towards facilitating and coordinating the smooth transition to a devolved system of government.
- A workshop organized by NEPAD with a view to develop mechanisms of creating a peer review mechanism at the county level so as to assist Kenya as a whole to meet its obligations under the African Peer Review Mechanism.
- A meeting with UNICEF on the TA/UNICEF MOU. This was aimed at streamlining the joint activities of UNICEF and TA so as to better coordinate the devolution process by the two actors.

## 2.3 Planning, Budgeting and Finance Committee

During the period under review, the Committee was involved in the following activities:

### i) Development of County Profiles

The Constitution of Kenya, 2010 created a two tier system of governance, a national government and 47 devolved county governments, that requires a paradigm shift in development planning. Article 220(2)(a) of the Constitution states that national legislation shall prescribe the structure of development plans and budgets. As stipulated in the Constitution, “Integrated Development Planning” will govern the preparation of national annual budgets and those of the counties and that no public funds will be appropriated without a planning framework as stipulated in the County Governments Act, 2012. In addition, all planning is expected to be inspired by the Kenya Vision 2030 and be aligned to the second Medium Term Plan of Kenya Vision 2030. Section 1(i) of the Fourth Schedule to the Transition to Devolved Government Act, 2012 requires the Transition Authority to “facilitate the preparation of county profiles, to ensure that the profiles of counties are produced, published and publicized”.

Several Acts of Parliament are in place to provide the legal framework for the implementation of Article 220(2)(a). They include the Transition to Devolved Government Act, 2012, The Urban Areas and Cities Act, 2011 and the County Governments Act, 2012, among others. However, Integrated Development Planning which by law should guide county budgeting, project funding, monitoring and evaluation was initiated and draft guidelines prepared. The guidelines are intended to assist county governments in the preparation of their first Integrated Development Plans (IDPs).

In collaboration with the Ministry of Devolution and Planning, county development profiles have been prepared for all the 47 counties.

County governments were issued with the draft county profiles in soft copies to enable them undertake the budgeting process as required by the Public Finance Management Act, 2012. So far, all the profiles have been proof read and are with the Government Printer.

The draft guidelines for the preparation of the Integrated County Development Plans have been prepared through a consultative process involving the physical planners, economists, surveyors and urban planners. These guidelines have been circulated to the stakeholders for comments and once finalized, counties will embark on the exercise of finalizing their plans as stipulated in the County Governments Act, 2012.

## **ii) Classification of Urban Areas and Cities**

Part II of the Urban Areas and Cities Act, 2011, provides for general classification of urban areas and cities. Section 4 states that an area may be classified as an urban area or city if it satisfies the criteria set out in sections 5(1), 9(3), and 10(3) of the Act for cities, municipalities and townships respectively. Section 54 (1) of the Act provides that,

*“during the transition period assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under this Act, and shall be classified accordingly”*

Pursuant to Section 54(1) of the Act, the Authority commenced the collection of data concerning fulfillment of the following two criteria:

- a) Capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule.
- b) That the county has demonstratable capacity to generate sufficient revenue to sustain its operation.

Data on (a) above has been collected for all the 47 counties. On (b) above, TA requested for data for the last three years revenue sources and expenditure by the defunct local authorities. The data was analyzed as it streamed in. For further analysis, a technical team was constituted to complete the task.



From the 2009 Population and Housing Census, 251 centers were enumerated as urban areas. Based only on the resident population as per the census, the technical team categorized urban areas as shown in the table below.

| Category       | Previous Number | Future Number | Comment   |
|----------------|-----------------|---------------|---|
| Cities         | 1               | 3             | Although Kisumu does not qualify Parliament declared it to be a city. |
| Municipalities | 43              | 2             | Nakuru and Eldoret  |
| Townships      | 55              | 130           |   |
| Unclassified   | 116             | 80            |   |

From the analysis, based on resident population only, all municipalities except Nakuru and Eldoret will become townships except Karatina, which will be declassified. Some former townships such as Makueni will also be declassified. In addition, some 38 previously unclassified urban areas qualify to be upgraded to townships since they meet the population criteria threshold. They include Ngong, Awasi, Kakuma, Wundanyi, Kitengela, Mtwapa, Isiolo, Juja, Ongata Rongai, Moyale, Gilgil, Rhamu, Wanguru, Elwak, Njoro, Moi's Bridge, Lokichogio, Takaba, Awendo, Lamu, Chwele, Kiserian, Hola, Usenge, Madogo, Marsabit, Masalani, Butere, Msambweni, Kiminini, Maimahiu, Loitoktok, Lumakanda, Matunda, Watamu, and Githunguri. However, it is not possible to classify the initially "unclassified" urban centres based on their revenue collection potential.

Based on the data on the ability to provide services, many of the urban areas do not offer all the required services for them to qualify to become townships, although they qualify based on the resident population criterion.

The technical team further considered the recommendations made by the Task Force on Devolved Government (TFDG), which proposed that

*“the resident population thresholds for cities, municipalities and towns shall be: provide services to a population of at least 250,000 and above for cities, 75,000 – 249,999 for municipalities and 10,000 – 74,999 for towns respectively should be taken into consideration.”*

This led to the classification of five urban areas as cities (Nairobi, Mombasa, Kisumu, Nakuru and Eldoret), thirty six as municipalities and eighty-four as towns. The other criteria set out in the Act could not be met by the urban areas and cities to warrant classification.

## Conclusion

Among the criteria for classification of urban areas and cities is the existence of urban or city integrated development plans which are to be prepared by county governments. TA has just prepared draft guidelines for the preparation of Integrated Development Plans, which is also a requirement to undertake the necessary classifications. The Committee is faced with the challenge of lack of analysts to assist in the assessment of urban areas and cities and would like to appeal to the Ministry of Devolution and Planning.

From the criteria set out in sections 5, 9 and 10 of the Urban Areas and Cities Act, 2011 the following recommendations are proposed:

- Apart from population classification threshold and demonstratable revenue generation capacity, there is need to pursue other criteria like the Gross Domestic Product and Gross Domestic Product Per Capita for the economic potential in the urban areas and cities, if feasible.
- It is important to consider issues of metropolitan areas as classification goes underway, since there are towns or municipalities that are shared by more than one county.
- It is recommended that consultants be sought to conduct proper financial audit to ascertain the actual revenue potential for the urban areas and cities. UN-HABITAT would be willing to partner with TA to undertake this.
- Since not all towns would meet the range of services listed under the First Schedule to the Urban Areas and Cities Act, 2011, it is recommended that weighting of services be done, since some services would be important but not critical to facilitate classification of urban areas.
- The Committee also plans to assist county governments in establishing County Planning Units as required by the County Government Act, 2012 and to also assist in capacity building for those units.



- Finally, it is recommended that the Urban Areas and Cities Act of 2011, be reviewed to incorporate the recommendations indicated above, among others.

### **iii) County Budgeting and Finance**

TA facilitated the budgeting process of the county governments during Phase One of the transition period. In line with the County Governments Public Finance Management Transition Act, 2013, TA deployed interim County Principal Officers (Finance) and County Heads of Treasury (Accounting) to all the Counties. TA organized a capacity building training workshop for the interim officers in collaboration with the then Ministry of Finance, Commission on Revenue Allocation, CIC, Controller of Budget and the IFMIS Department.

During the training workshop, the officers were taken through budget preparation and provided with a template prepared by the Authority in collaboration with the National Treasury, to guide in county budget preparation. Other documents provided to assist in the budget preparation process include:

- The Transition County Allocation Act 2012.
- All the relevant devolution laws.
- Copies of each respective report on the County Public Consultation on the Medium Term Expenditure Framework Budget Proposals for Financial Year 2013/14.
- As a result, the county governments' capacities to undertake the budget preparation were enhanced.

### **iv) Opening and Operation of Bank Accounts**

The Authority, in collaboration with the then Ministry of Finance, Controller of Budget, Commission on Revenue Allocation, Office of the Auditor General and the Central Bank of Kenya participated in formulation and preparation of the guidelines on opening and operation of bank accounts for county governments.



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TA also supported individual counties to open a County Revenue Funds and a County Operations Account at the Central Bank of Kenya.

These accounts are to facilitate counties to be able to access funds to discharge their mandate.

TA facilitated the preparation and filing of county exchequer requisitions, approval from Controller of Budget and exchequer issues to the County Bank Accounts in Central Bank of Kenya. In order to support the initial operationalization of the county governments, TA disbursed an amount of Ksh 3.2 billion to the 47 counties for infrastructure development.

## 2.4 Capacity and Capability Development Committee

During the reporting Quarter, substantial progress was made on the completion of Phase One related activities. The following activities and outputs were realized.

### **i) Induction for governors and speakers of County Assemblies**

The Authority in consultation with other stakeholders organized a one week induction course for governors, deputy governors, speakers, deputy speakers and Transition Authority teams from the 47 counties which was held from April 1 to April 6, 2013 at the Great Rift Valley Lodge. The training focused on the roles, expectations and modalities of operating and interfacing between the various players involved in the devolution process.

### **ii) Induction for Members of County Assemblies**

The training of county representatives was undertaken in all the 47 counties. The training was decentralized and conducted at regional venues identified by the Interim County Assembly Clerks and County Transition Coordination across all counties. TA members attended and monitored the training. The training focused on the budget preparation and management modalities.

### **iii) County Infrastructure Development Support**

In April, the Authority, through the Capacity and Capability Development Committee disbursed the balance of Ksh. 2.89 billion to the counties for infrastructure development including the balance of 344, 833,380.00 for acquisition of the Hansard recording system for the County Assemblies. Each county was allocated Ksh. 61,592,200.00 for general non-residential infrastructure development.

In June, through the offices of the County Transition Coordinators,



reports on the accounting for usage of the funds were disbursed, including those for swearing in and Assumption of Office ceremonies for the Members of County Assemblies and governors, respectively. It transpired that for funds disbursed through the offices of the County Commissioners, some counties had challenges in getting appropriate documentation to account for the funds.

#### **iv) Assets and liabilities**

Following consultations with stakeholders, The Authority facilitated a meeting to discuss the management of assets and liabilities in the counties after the swearing in of the governors. It was agreed that TA should organize a retreat to discuss the modalities of auditing the assets and liabilities in the counties to ensure that public property was not mismanaged during the transition period.

The officers at the office of the Auditor General continued with the exercise of data entry of the report of the assets, liabilities and human resource of the former local authorities. This exercise had started in March when the Authority acquired the Asset Management Information System software. The exercise was completed for the 160 local authorities whose data had been received from the Ministry of Local Government. Data from line ministries like Ministry of Finance (inventory of government motor vehicles) and semi-autonomous government agencies like Teachers Service Commission was also captured in the system. After inputting the data that had far been received, the server was transferred from the offices of KENAO in Anniversary Towers to the TA offices in Extelecoms House, 5th floor. The vendor of the Assets Management Information System, M/s Business Connexion Limited formally handed over the software to the Authority with an elaborate demo to the TA management. During the demo, it was highlighted that the format of data capture, especially from the former local authorities required harmonization to ensure proper data management and generation of meaningful reports.

## **v) County Quick Readiness Assessment**

After TA publicized the functions that it was set to transfer to the counties by July 1, 2013, it was necessary that counties be facilitated to conduct a self-assessment to establish their capacity to oversee and supervise the delivery of services once the functions are transferred to them. In conjunction with CIC and CRA, TA facilitated all the 47 Counties in conducting a self-assessment of their readiness to perform the functions assigned to them, in accordance with the Fourth Schedule to the Constitution and in line with the criteria set out in Section 24 of the Transition to Devolved Government Act, 2012.

The assessment was conducted with the help of professional consultants hired by TA. The mandate of the consultants included moderating and guiding the county governments in management of the assessment manual and tools.

The exercise targeted all the 47 counties. By the end of May, 41 counties had been covered. Assessment in the remaining six counties (Mandera, Wajir, Kitui, Bomet, Muranga and Nairobi) had been postponed at the request of the governors. It was undertaken in June after the County Executive Committees had been appointed.

In the counties where the assessment was concluded, the major findings were that the capacity of all counties needed to be enhanced if they have to effectively assume the supervision of the functions transferred to them.

## **vi) Civic Education**

In conjunction with the Kenya National Integrated Civic Education (KNICE) programme, run by the Ministry of Justice, Constitutional Affairs and National Cohesion, the Transition Authority continued with the civic education programmes involving appearances in the electronic media, where matters of transition and devolution were espoused to the public. This was both on national television as well as radio. A total of 60 programmes were aired.



## **vii) National Capacity Building Framework**

The Authority engaged a specialist to facilitate the preparation of the National Capacity Building Framework. This framework is expected to coordinate the capacity building efforts for the national and county governments.

The specialist concluded the draft report and handed it over to the Authority in preparation for sharing with key stakeholders. Editing, formatting and design of the report commenced to facilitate stakeholder participation before adoption by the Transition Authority.



## CHAPTER 3

### 3.0 PROGRESS MADE UNDER EACH OVERSIGHT COMMITTEE

#### 3.1 Human Resource Committee

The major activity that was undertaken by this Committee in the period under review has been facilitation of County Governments. This was done in the following ways:

- a) Developed indents for County Transition Coordinators and recruitment of the same to facilitate establishment of the County Structures. Also developed Indents for Interim County Teams and recruitment of the same. Interim County Teams consist of Interim County Secretaries, Clerks, Principal Finance Officers, Accountants, Budget Officers, Auditors, ICT Officers, Supply Chain Management Officers, Head of Human Resource, Payroll Managers, Hansard Editors and Reporters and Sergeants at Arm.
- b) Facilitate payment of transfer and top-up allowances for the County Teams.



- c) Facilitate data capture of County Human Resource and customization of the same for IPPD System.
- d) Training County Payroll managers on IPPD system in readiness to embrace the system as opposed to LAIFOMS, and in readiness to be aligned with IFMIS (Integrated Financial Management System), which are the National Government's management systems.
- e) To facilitate TA's Mandate of provision of policy and operationalisation mechanism during the transition period for audit, verification and transfer of National and County Governments human resource; and Pension and other staff benefits of the employees of the Government and former Local Authorities; providing mechanisms for the harmonization and deployment of staff both levels of Government; The IPPD System has been initiated.
- f) The IPPD has been embraced as a tool to improve credibility of Human Resource Records and to enable the counties to have a similar and uniform payroll system.

## 3.2 Finance, Budgeting and Accounting

In the period under review, the Committee realized the following outputs:

- i) Prepared the 2013/2014 Programme Based Budget (PBB) in line with Treasury guidelines on the Medium Term Expenditure Framework and presented the same to TA members for approval. It is worth to note that the budget is to cater for the following mandates as provided by the Transition to Devolved Government Act, 2012:
  - a) Payment for Personal Emoluments (staff salaries and allowances)
  - b) To enable TA fulfill its mandate to audit assets and liabilities of the government, prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities, TA will make recommendations for the effective management of assets of the national and county governments and also provide mechanisms for the transfer of assets, which may include vetting the transfer of assets during the transitional period.
  - c) TA is also mandated to carry out an audit of the existing human resource of the government and local authorities to establish the number of staff by cadre, grades, gender, age and qualification both at the National and County Governments.
  - d) To assess the capacity needs and recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions.
  - e) Carry out an analysis of functions and competency assignment and ensure plans for distribution of functions and competency is published.
  - f) To facilitate civic education on devolution.



- ii) Reviewed and monitored expenditure trends and advised management on availability of funds and ensured that expenditures are within available budgetary provisions.
- iii) Gathering financial information, analyzing it and preparing financial reports.
- iv) Prepared 2012-2013 supplementary estimates where reallocations are on priority expenditure areas.
- v) Preparation of monthly bank reconciliation statements.

## 3.3 Audit Committee

During the period under review, the Audit Committee was involved in the following activities:

### i) **Audit Review of Accounts, Finance and Procurement Departments**

The internal audit unit carried out a review of cash management and procurement during the month of April and May, 2013. The Audit report was tabled at the TA Audit Committee meetings held on 6th and 10th May, 2013. The objectives of the audit were to evaluate internal controls put in place by management and make recommendations on weaknesses observed. Gaps identified and recommendations to strengthen internal controls aimed at improvement of service delivery by the Accounts, Finance and Procurement departments were put in place. The recommendations included:

- Strict adherence to financial and procurement regulations that have been put in place.
- Proper and updated records.
- Compliance with authorization and accounting procedures.
- Stock taking exercise to ascertain and document all TA assets.
- Deployment of more staff in the accounts and procurement departments.



## ii) **Internal Audit Policy and Procedures Manual**

The Audit Committee has developed a Draft Internal Audit Policy and Procedures Manual for the Transition Authority. The manual will sensitize staff on the purpose, authority, general responsibility and scope of work of the Internal Audit Function, consistent with the Internal Auditing Standards. The draft manual is to be presented to the TA Chairman and Members for review.



## CHAPTER 4

### 4.0 CHALLENGES AND RECOMMENDATIONS

Some challenges were experienced during the period under review. These are discussed below.

#### **1. Scanty feedback from MDA's**

TA noted that there was significant non-conformity to the TIPs guidelines. The feedback from MDAs was inadequate and inconsistent with the agreed format thus making it very difficult to make an informed decision and to give advice on the way forward. Unbundling and costing of functions has been delayed due to the lack of information from the Treasury and line ministries concerned. This indifference by MDAs also continues to hamper the preparation of Integrated Development Plans, which is a prerequisite of the classification of Urban Areas and Cities.

#### **2. Audit function**

The Interim County Internal Auditors deployed by the Transition Authority and who happen to be secretaries of their respective County



Audit Committees have not been trained on ensuring accountability of funds disbursed to the counties. This has made it difficult for the TA head office to handle audit of the various counties given the fact that there are only two auditors. Training of the county auditors and employment of auditors is urgently required to enable the effective implementation of this function.

### **3. Financial Management Systems**

The Authority experienced challenges due to inadequate funding and delays in release of the finances hence disrupting normal payment processes, lack of service delivery charter, inadequate working tools, office space and staff.

#### **Recommendation**

To address these challenges, the Authority will provide adequate office space to ensure installation of IFMIS and linking it with GPAY to reduce the time taken when capturing payment data. The Authority will also strengthen the finance and accounts departments as well as the internal audit functions to enhance monitoring and audit of all TA funded expenditure returns from the counties.





# CHAPTER 5

## 5.0 PROJECTED ACTIVITIES FOR THE NEXT QUARTER

| COMMITTEE  | ACTIVITIES  |
|--|---|
| <p>Functional Analysis and Competency Assignment</p> | <ul style="list-style-type: none"> <li>a) Facilitate and Assist the MDAs to develop Transition Implementations Plans by providing them with technical support.</li> <li>b) Assist MDAs in further unbundling and costing of functions for transfer in the next Financial Year. TA is planning to hold technical working sessions with MDAs in order to obtain as much information as possible for the purpose of unbundling and costing of functions.</li> <li>c) Hold a Retreat for the FAST members to review, harmonize and finalize Transition Implementation Plans and Sectoral Functional Analysis Papers developed by a number of ministries in the public sector, in the formulation and finalization of the Different Sectoral Policy Papers and Transition Implementation Plans.</li> <li>d) Facilitate a workshop for the presentation and discussion of the functional analysis and costing report by consultants.</li> </ul> |



|  |  |
|--|--|
| <p>Planning, Budgeting and Finance</p> | <ul style="list-style-type: none"> <li>i) TA plans to assist counties in the preparation of County Integrated Development Plans, Urban Areas and Cities Integrated Development Plans, County Spatial Plans and Strategic Plans. Other planned activities include:</li> <li>ii) Finalization of the assessment and classification of urban areas and cities as required by Section 54 of the Urban Areas and Cities Act, 2011.</li> <li>iii) Assisting counties in establishing monitoring and evaluation systems.</li> <li>iv) Assisting counties in identification of revenue sources, including devolved funds and other previous Local Authority Transfer Funds in order to consider, if need be, recommending other mechanisms for utilization and resource mobilization.</li> </ul> |
| <p>Audit</p>                           | <p>The TA Board has directed the head of internal audit to prepare a training program that will focus mainly on ethics and good governance as well as role and functions of the Audit Committee.</p>   |





## CHAPTER 6

### 6.0 CONCLUSION

The Transition Authority is determined and committed to ensuring a seamless transition to the devolved system of government as it undertakes its Phase Two activities. While a few hiccups may be expected due to the complexity of its mandate, high expectations from the public and elected leaders and the multiplicity of stakeholders in the transition process, the Authority has put in place an implementation strategy that ensures rapid response to emerging issues in the transition process.

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# ANNEX



## **THE STATUS OF TRANSITION TO DEVOLVED GOVERNMENT IN ACCORDANCE WITH THE CONSTITUTION AND THE TRANSITION TO DEVOLVED GOVERNMENT ACT 2012**

This press statement is issued jointly by:

- (a) The Commission for the Implementation of the Constitution (CIC);
- (b) Commission on Revenue Allocation (CRA);
- (c) Public Service Commission (PSC); and
- (d) The Transition Authority (TA).

Section 15 (2) (d) of the Constitution of Kenya 2010 mandates CIC to monitor the implementation of the devolved system of government efficiently. The effective implementation of an effective system of government requires collaboration and consultation between CIC, CRA, PSC and the Transition Authority.

Article 216 (1) of the Constitution requires CRA to make recommendations to Parliament concerning the basis for the equitable sharing of revenue raised by the national government between the national and county governments and among the county governments. In addition, CRA will also make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by the Constitution and national legislation.

The management of human resources is a critical requisite for effective implementation of a devolved system of government. The Public Service Commission plays a critical role in the identification and secondment of interim staff on recommendation by the TA to facilitate effective and un-interrupted service delivery by county governments in the transition period.

In addition to the foregoing, the Transition Authority has the following mandate in accordance with Section 7 of the Transition to Devolved Government Act 2012; Facilitate, co-ordinate and make recommendations on various activities relating to transition to devolved system of government.

These activities include:-

- a. Analysis and phased transfer of functions in accordance with section 7 (a) of the Transition to Devolved Government Act 2012;
- b. Coordinate and facilitate the development of county budgets during the first phase of transition to devolved government;
- c. Rationalization, deployment and audit of the necessary human resource to county governments;
- d. Preparation and validation of inventory of all existing assets and liabilities of central government and local governments and make recommendations for their effective management during the transition period;
- e. Assess the capacity needs of national and county governments;



- f. Recommend measures to ensure that county governments have adequate capacity during the transition period.

The following functions are not exhaustive of the activities contemplated to facilitate effective devolution.

### **Objective of the Statement**

This statement is jointly made in recognition of: (a). the fundamental right to information in accordance with Article 35 of the Constitution Kenya ; and (b) the national values and principles set out in Article 10 of the Constitution including good governance, openness, transparency, democracy and participation of the people of Kenya.

CIC, CRA, PSC and TA wish to inform the people of Kenya on the status of preparedness of the transition to devolved government in relation to specific transition activities.

To date, the following activities have been undertaken in accordance with the Transition to Devolved Government Act, 2012 to facilitate the transition to devolved government:

#### **1. Legislative Framework**

- a. All necessary legislation required to implement the devolved system of government have been enacted. These include the County Government Act 2012, Transition to Devolved Government Act, 2012, Urban Areas and Cities Act, 2011, Intergovernmental Relations Act, 2012, Public Finance Management Act, 2012, Transition County Allocation of Revenue Act, 2012, Transition County Appropriation Act, 2013 and County Government Public Finance Management Transition Act, 2013.
- b. The Transition to County Allocation Revenue Act, 2012 which provides for the horizontal sharing of revenue between the respective governments is already in place. The Transition County Appropriations Act, 2013 to authorize the issuance of a sum of money out of the relevant County Revenue Fund and its application towards the service of the year ending on the 30th June, 2013 is also in place.

#### **2. Administrative Procedures**

- a. The guidelines for the recruitment of the members of the County Service Boards and the election of the Speaker of the National Assembly and the Senate have been developed;
- b. Interim standing orders for use by the County assemblies are in the process of publication;
- c. Publication of guidelines and principles of the exercise of the Executive Authority has been finalized.

### **3. Financial Capacity of County Governments**

- a. A sum of KShs. 9.8 Billion will be disbursed to County governments with immediate effect to cover expenses relating to personnel emoluments and administrative costs of both executive and county assemblies.
- b. The Local Authority Transfer Fund (LATF) appropriated for the financial year 2012/13 shall be directed to county revenue accounts through an advisory and shall be applied to meet the cost of service delivery by County governments, pending budgetary estimates and allocations for the financial year next following;
- c. County Governments will be expected to raise revenue from among other sources, property rates, entertainment taxes and any other tax in accordance with Article 209 (3) of the Constitution to fund county activities. Revenue currently raised by local authorities will be directed to county revenue accounts and be managed by the County governments.
- d. The interim county treasurers that are scheduled to take office in the course of this week, will among other roles, facilitate the opening of county revenue accounts and county operational account by 4th March 2013;
- e. The County treasurers in consultation with treasurers of the local authorities in respective counties will also (a) close existing local authority accounts and (b) transfer any monies in those accounts to the newly opened county treasuries.

### **4. Infrastructure**

We wish to confirm that offices and assembly halls for both the County Executive and the County Assemblies have been identified and are ready for occupation in each of the 47 counties;

### **5. Assets**

- a. Recommendations have been made on the criteria to determine the transfer of previously shared assets and liabilities of government and local authorities; An asset register is in the process of being developed by the Auditor General in consultation with the TA. An interim register will be ready by 20th March for sharing with governors and other interested parties.
- b. As part of the process, an indepth and comprehensive audit of central and local government assets will also be carried out. The register will be used to track and verify all assets owned and liabilities incurred by each state organ and public entity before the general elections, for purposes of accountability.

### **6. Assumption of Office by Governors**

- a. Guidelines on the assumption of office by governors have been finalized and published.
- b. Arrangements for the assumption of office by each Governor have been finalized.
- c. Arrangements for the administration of oaths of office for state officers at county level have been completed.



## 7. Human Resource Capacity

The requisite human resource has been identified and seconded to the Counties albeit on an interim basis in accordance with section 138 of the County Governments Act, 2012, section 57 of the Urban Areas and Cities Act, 2011 and section of 138 (1) of the Co-ordination of the National Government Act, 2013. In addition, the TA also confirms that Interim Transition Teams have been identified and seconded to the counties. These teams will assist the county governments carry out their functions as the counties prepare in the interim period.

The interim officials have been inducted and will be issued with letters of release by PSC.

## 8. Transfer of Functions

- a. The functions that may be immediately transferred to the County governments after the elections have already been gazette.
- b. Other functions to be devolved will be gazetted for effective rollout from 1st July 2013.

## WORK IN PROGRESS

### 9. Policy Framework

The national policies on the basis of which the performance of devolved functions shall be guided are yet to be finalized and adopted. Similarly, the formulation of regulations and administrative procedures to supplement the respective statutes is underway and is expected to be finalized for approval by the next Parliament.

### Conclusion

We recognize that the activities mentioned above are by no means exhaustive. They are singled out because they are fundamental to the realization of effective devolution. A lot has been done, in the run up to the establishment of county governments soon after the general election scheduled for 4th March 2013.

CIC, CRA and TA undertake to regularly inform the people of Kenya on the progress and additional activities hereafter undertaken towards full devolution of power, functions/ services and their pertinent resources.

The transition process involves all state and non-state actors and indeed the people of Kenya, whose public participation is imperative as contemplated in article 10 of the Constitution. Your unwavering support and meaningful engagement will go a long way in ensuring successful implementation of the devolved system of government in particular and the Constitution in general. Finally, we wish to remind the people of Kenya that the successful and effective realization of devolution will depend largely on the quality of leaders we elect as governors, senators, county representatives, women representatives, members of the national assembly and the president.





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