

QUARTERLY REPORT



January 2013 to March 2013



Quarterly Report for the period January to March, 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 January to March,2013

Quarterly Report January to March, 2013 ©The Transition Authority

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Quarterly Report January to March, 2013

Table of contents

Message from the chairman	ii
Message from the CEO/Secretary	iii
Executive Summary	iv
Chapter 1: Introduction	1
Chapter 2: Progress made under each operational committee	7
Chapter 3: Progress made under each oversight committee	19
Chapter 4: Summary of achievements	23
Chapter 5: Status on the transfer of functions	25
Chapter 6: Challenges and recommendations	27
Chapter 7: Projected activities for the next quarter	29
Chapter 8: Conclusion	31
Annexes	32

MESSAGE FROM THE CHAIRMAN



The period under review (January to March 4th, 2013) has been extremely tumultuous with a series of groundbreaking milestones recorded on the path to devolution. This period is especially notable due to the fact that it signaled the end of Phase One of the transition to a devolved system of government and ushered in the longer Phase Two.

During this period, the Authority gazetted the initial functions to be transferred prior to the general elections through Legal Notice No. 16 of 2013, as provided for under Section 23 of the Transition to Devolved Government Act (TDGA), 2012. The Authority also hosted a gubernatorial candidates conference whose theme was Transformational Leadership, with the aim of instilling ideal leadership and management practices in the aspiring leaders. Following the general elections on March 4th, the new county governments and the attendant leadership came into place with crucial assistance from the Transition Authority.

The Authority ensured that the process of creating county governments was seamless and uninterrupted through a variety of operational mechanisms that had been put in place early enough. For instance, Interim County Transition Teams had been recruited, inducted and deployed to all the 47 counties and were ready to receive and inaugurate the new county executives and legislatures.

In the next quarter, we shall be fully submerged in Phase Two, which is envisioned to be completed within a three-year period.

It is my expectation that we shall make big strides in attaining the objectives for Phase Two over the next quarter. I therefore look forward to giving an even more detailed and positive reporting for the period.

KINUTHIA WAMWANGI

A handwritten signature in black ink, appearing to read 'Kinuthia Wamwangi', written in a cursive style.

CHAIRMAN

MESSAGE FROM THE CEO/SECRETARY



During the period under review, which also coincided with the end of Phase one of the transition process, the Transition Authority was able to perform all the functions expected of it during Phase One of the transition from a centralized to a decentralized and devolved system of government.

A critical activity during the period under review was the recruitment, induction and deployment of Interim County Transition Teams (CTTs) and permanent County Transition Coordinators (CTCs) to the counties. As a result, service delivery at the county level went on uninterrupted following the general elections.

The Authority ensured that all the instruments and equipment required to operationalize the new county governments was in place. This included Assumption of Office Guidelines, oaths and oath books, locations as well as judges and magistrates to administer the swearing in of governors.

For the county assemblies, model standing orders were developed and equipment including maces, oath books and gowns were deployed to all the counties. Speaker's rules and a book on the mandate and procedures of county governments were also published.

Now that the county governments are in place, I anticipate yet another eventful next quarter where TA will undertake its mandate and ensure that devolution is fully entrenched at the county level. I also look forward to reporting about our ongoing activities and sharing the many successes I expect as we fully embrace devolution.

STEPHEN MAKORI

A handwritten signature in black ink, appearing to be 'S. Makori', written in a cursive style with a long horizontal stroke at the end.

SECRETARY/CEO

EXECUTIVE SUMMARY

The January to March Quarter of 2013 covered the end of Phase One as well as the beginning of Phase Two of the transition period, since elections were held on March 4 2013. Most of the activities undertaken during this Quarter concentrated on monitoring and facilitation of county governments to operationalize them.

In partnership with the World Bank, TA engaged experts to undertake the costing of functions that were formerly executed by the local authorities. This was aimed at arriving at the actual costing of the gazetted functions.

An asset register for county governments and the National Government to safeguard public assets was developed. An information system was acquired. In addition, in collaboration with Kenya National Audit Office (KENAO), updating of an integrated national and county assets register is ongoing.

In collaboration with the Public Service Commission, draft policy guidelines on the sensitive issue of staff harmonization and deployment to both levels of government were prepared.

In order to operationalize TA, additional staff was recruited, this is mainly the secretariat, to provide support for the thematic areas.

Despite the many successes, the Authority has faced numerous challenges. Key among them is the limited financial resources and the challenge of meeting the high expectation of the elected leaders in the various counties in terms of opening of accounts, disbursement of the funds and provision of adequate offices.

STEPHEN MAKORI



CEO/SECRETARY



CHAPTER 1

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 (TDGA), 2012, and the provisions under Section 15 of the Sixth Schedule to the Constitution. The transition period is in two phases: one starting from June, 2012 to 4th March 2013 and Phase 2 which started on March 4, 2013 and will go on up to March 2016.

The First Quarter of 2013 covered the end of Phase One and also marked the beginning of Phase Two of the transition period given that the elections were held on 4th March 2013. Most of the activities during this Quarter concentrated on the monitoring and facilitation of county governments to ensure that they get started. This was done by putting in place and facilitating the county interim teams that helped coordinate transition activities in the counties. These activities included refurbishment of the identified interim county offices, induction of the interim clerks to the county assemblies in preparation for election of the speakers, coordination with the County

Commissioners on the swearing in of the governors, finalization of the criteria for the application and transfer of functions, and monitoring and guiding the development of Transition Implementation Plans (TIPs).

Towards the end of the reporting period, the Authority conducted a workshop for gubernatorial candidates in an effort to prepare them to take up their respective roles in the counties.



The Auditor General, Mr. Edward Ouko addressing the participants of the Naivasha Gubernatorial Conference.

1.1 Mandate

The Transition Authority's core mandate is to ***“facilitate the realization of a devolved system of government through effective and efficient coordination of the transition process”***.

1.2 Functions of the Authority

The following are the functions of The Transition Authority:

1. Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule to the Constitution, to the national and county governments.
2. Determine the resource requirements for each of the functions.
3. Develop a framework for the comprehensive and effective transfer of functions as provided for under Section 15 of the Sixth Schedule to the Constitution.
4. Coordinate with the relevant State organ or public entity in order to:
 - i. Facilitate the development of the budget for county governments during Phase One of the transition period.
 - ii. Establish the status of ongoing reform processes, development programmes and projects and make recommendations on the management, reallocation or transfer to either level of government during the transition period.
 - iii. Ensure the successful transition to the devolved system of government.
5. Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities.
6. Make recommendations for the effective management of assets of the national and county governments.
7. Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period.
8. Pursuant to Section 15 (2) (b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments, including:

- i. Such criteria as may be necessary to guide the transfer of functions to county governments.
 - ii. The criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities.
9. Carry out an audit of the existing human resource of the government and local authorities.
10. Assess the capacity needs of national and county governments.
11. 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.
12. Coordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively.
13. Advise on the effective and efficient rationalization and deployment of the human resource to either level of government.
14. Submit monthly reports to the Commission for the Implementation of the Constitution (CIC) and the Commission on Revenue Allocation (CRA) on the progress in the implementation of the transition to the devolved system of government.
15. Perform any other function as may be assigned by national legislation.



CHAPTER 2

PROGRESS MADE UNDER EACH OPERATIONAL COMMITTEE

2.1 The Functional Analysis and Competency Assignment Committee

The highlight of the Functional Analysis and Competency Assignment (FACA) Committee was the hosting of a one-week workshop for all the 175 local authorities at the Great Rift Valley Lodge in Naivasha from 7th to 13th January 2013. The main objective of this workshop was to deliberate and assist the various local authorities in identifying the functions that need immediate transfer to the county governments after the first elections under the new Constitution.

Additionally, TA aimed at helping the local authorities to appropriately cost the said functions.

All the local authorities were able to discuss their functions and present them in a plenary session alongside their respective budgets. This ultimately helped the Transition Authority in compiling the list of initial functions for gazettelement ahead of the March 2013 elections.

The workshop also provided an opportunity for TA to respond to some of the concerns raised by the participants. Most of these were questions of clarity regarding the functional analysis and competency assignment process as well as questions regarding job security for workers in the dissolved local authorities.

During the workshop, the Transition Authority was able to secure the requisite information and the participants got an opportunity to have their queries addressed.



The TA Chairman, Mr. Kinuthia Wamwangi and his team pose for a photo with a section of the over 400 Chief Officers during the Functional Analysis and Costing Workshop for Local Authorities in Naivasha.

Post-2013 Election Function Transfer

Having successfully identified and published in the Kenya gazette the initial functions to be taken up by the County Governments immediately after the elections, the focus of the committee shifted to the analysis of functions that were up for phased transfer.

To this end, the following activities were undertaken:

a) Identification of Functional Assignment Steering Team (FAST) Members.

This was to facilitate the implementation of the activities of the Functional Analysis and Competency Assignment Committee.

The Committee suggested that the following Civil Society Organizations be incorporated into FAST; CLARION (over 200 NGOs), TISA (15 NGOs), APSEA (34 Professional Organizations), HENNET (89 NGOs dealing with health related issues) and ICPAK (Regulatory body for accountants). The above names were forwarded to the Coordination and Harmonization Committee. This was a key requirement because the approval process and the FACA activities have to be participatory. The Coordination and Harmonization Committee approved these names. Thereafter, Letters of Appointment were sent at the end of March 2013. Launching of the FAST will most likely happen before the end of April 2013.

b) Transition Implementation Plans (TIPs) by Government MDAs.

This activity was undertaken in compliance with Section 16 of the Transition to Devolved Government Act, 2012. Further to the communication from CIC regarding the submission of TIPs by MDAs as stipulated in Section 16 of Transition to Devolved Government Act, 2012, the deadline for submission was moved from 31st January to 5th February, 2013. Very few MDAs submitted their TIPs. In addition, the few that did submit did not fully comply with provided guidelines. To this end, TA provided the necessary support to ensure full compliance.

The Transition Implementation Plans (TIPs) of the MDAs are expected to contribute to the county governments TIPs, hence, the significance of this exercise.

TA had to engage with various MDAs as they developed and finalized their TIPs. These included, the Ministry of Public Health and Sanitation, KEMRI as well as the LAPTRUST. The relevant Committee reviewed the TIPs and officially communicated any noted inadequacies to the MDAs.

c) Actual costing of the functions and input into the 2013/14 budget process.

TA engaged experts to undertake the costing of gazetted functions, which were formerly being performed by local authorities. Specifically, the Transition Authority partnered with the World Bank to ensure the success of this endeavour. The Terms of References for the consultants were reviewed to ensure that TA obtained comprehensive information.

d) Modalities for the phased transfer of functions to the County Governments.

In compliance with the Constitution and TDGA, 2012, which require that there be a phased transfer of functions according to an individual county's readiness and capacity, TA held constructive consultations with the National Treasury and other stakeholders in a bid to establish concrete modalities.

The National Treasury also called for a meeting on the same to discuss whether these functions will be transferred at the start of the financial year, quarterly or biannually to avert challenges to the budget process that could otherwise arise due to numerous requests for transfers. Through this Committee, TA has been able to prepare a criterion that is ready for publication for the benefit of the public and application by county governments. The criterion is based on the new Constitution and the relevant pieces of legislation. It was developed with the assistance of TA's legal personnel.

e) Funding of the already gazetted functions.

The law provides that funds should follow functions. TA engaged the Ministry of Local Government, LATF Board and the Treasury on the modalities of disbursement of the last batch of the 16% of LATF due in April.

TA's Legal Committee also gave direction on the matter which influenced the Committees' advice to the LATF Board on the way forward. There are a few things that still need to be ironed out and the necessary follow-up is being undertaken.

vi) Engagement with MDAs on sectoral policy papers.

The Committee has been giving support to MDAs through presentations, one to one discussions at our offices and numerous other forums. These engagements have been intensified in the recent past as TA endeavours to obtain all the requisite information.

vii) Capacity Building for governors and county government officials.

This was in a bid to ensure that the new officers understand how the new system of governance works. The Committee contributed in the development of FAQs for the Governor's Guidebook by reviewing the questions under functional analysis and transfer.

viii) Identification of functions for transfer to the county governments by the end of June 2013.

The law provides that during the post-2013 elections period, there be phased transfer of functions guided by a set criterion. TA has identified functions that can be transferred by the end of June, 2013. However, counties will be required to apply for such transfer and if TA is satisfied that the county in question has met the criteria, the transfer of functions will be authorized.

There are still some concerns regarding the capacity of the counties to uptake some of the functions in the short-term. However, since applications will be evaluated individually, transfers will be implemented on a case by case basis.

2.2 Legal and Intergovernmental Relations Committee

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

The critical work undertaken by this thematic area included the following:

i) Technical Committee on the Transfer of Assets and Liabilities.

The Legal and Intergovernmental Relations Committee finalized and gazetted the regulations on the transfer of assets and liabilities.

The regulations establish a technical committee that shall be responsible for determining applications for transfer of assets and liabilities.

The technical committee is now operational and has started dispensing with applications for transfer of assets.

ii) Development of legislation by county governments.

In order to ensure that the county governments have sufficient capacity to carry out their legislative function, this Committee engaged the Kenya Law Reform Commission, together with the Office of the Attorney General in an effort to chart the way forward, in building the legislative capacity of the county governments.

This exercise is ongoing and the committee will continue to engage the relevant stakeholders so as to ensure that the county governments have adequate capacity to carry out their legislative function.

iii) Drafting of Interim Standing Orders to be used by county assemblies.

The Committee engaged drafters from the National Assembly to

draft interim standing orders to be used by county assemblies. The interim standing orders were modeled on the standing orders of the National Assembly. The standing orders were necessary as they are the rules that govern the conduct of business in the county assembly.

iv) Facilitated the Gazettement of initial functions for transfer.

The Committee facilitated the gazettement of the functions that may be transferred immediately after the first elections under the new Constitution. This was done pursuant to Section 23 of the Transition to Devolved Government Act.

v) Purchase of Statutes for Counties.

The Committee procured copies of the following key pieces of legislation to be used by the counties:

- a) The Constitution of Kenya, 2010.
- b) The Transition to Devolved Government Act, 2012.
- c) The County Governments Act, 2012.
- d) Urban Areas and Cities Act, 2011.
- e) Public Finance Management Act, 2012.
- f) First sitting of county assembly members.

In collaboration with the Independent Electoral and Boundaries Commission (IEBC), as well as the Judiciary, the Committee oversaw the successful first sitting of County Assembly Members on March 22, 2013.

vii) Election of County Assembly Speakers.

The Committee oversaw the drafting of the gazette notice announcing vacancies in the office of the county assembly speaker for all counties. Nomination forms for county assembly speakers were also prepared.

viii) Guide on conduct in the precincts of county assemblies.

The guide on the conduct in the precincts of the county assemblies was seen as a key document in ensuring order in the assemblies. The Committee, therefore, engaged a consultant with vast experience in parliamentary matters to prepare the

document that would assist the county assemblies to maintain order in the House. The guide contains:

- a) Speaker's rules on conduct of assembly members.
- b) Speaker's rules and regulations on conduct of the public.
- c) Speaker's rules for general etiquette.
- d) Ethics, code of conduct and standards.
- e) First sitting of county assemblies.

In order to ensure a successful first sitting of county assemblies as created under the Constitution of Kenya, 2010, the Legal and Intergovernmental Committee ensured that the interim clerks were trained in what was required of them during the first sitting of County Assembly Members.

Further, the Committee facilitated the election of the county assembly speakers in all the 47 counties. The Transition Authority collaborated with the Judiciary and the interim clerks so as to ensure that the swearing in of the county assembly members as well as the election of the speakers was a success.

x) Assumption of Office of Governors.

Guidelines on Assumption of Office of the Governor were gazetted as Legal Notice No. 47 of 2013 and this facilitated the preparations for the assumption of office of the governors. Pursuant to the guidelines, Assumption of Office Committees were set up in all the counties. These committees organized and oversaw the successful swearing in of all the 47 governors on March 27, 2013.

A coordinating committee within the Transition Authority was also established to coordinate the swearing in ceremonies for governors across the country and to address any issues arising from the same.

xi) Recruitment of county legal officers

The Transition Authority, in consultation with the Kenya Law Reform Commission and the Office of the Attorney General has initiated the process of recruiting interim county legal officers. The Interim County Legal Officers will be pooled from serving public officers. Under the guidance of the Kenya Law Reform Commission, the interim legal officers will spearhead law reform and development at the county level.

The interim county legal officers will also assist the county governments with general legal advice.

xii) Guidebook on Mandate and Procedures of County Governments

The Legal Committee spearheaded the publication of a guidebook on the mandate and procedures of county governments. The book provides key information that will assist county governments execute their mandate. It also provides guidance on the various procedures at the county level, for instance, with regards to law making, budgeting, public finance management and other important procedures that are key to the success of the county governments.

2.3 Planning, Budgeting and Finance Committee

In the period under review, the committee was involved in the following main activities:

a) **County Medium Term Plans and Development Profiles**

In collaboration with the Ministry of State for Planning, National Development and Vision 2030, county development profiles were prepared for all the 47 counties.

Between February 10 and March 2, 2013, the Ministry organized workshops in Nyeri and Nakuru simultaneously for editing and formatting of the profiles an exercise in which TA was involved. The Nyeri Workshop was for the 23 counties in the former Central, Coast, Eastern, Nairobi and North Eastern provinces. The Nakuru Workshop covered 24 counties in the former Nyanza, Rift Valley and Western provinces.

As much as a lot of effort was put in editing the documents, the exercise was not completed because of the following:

- i) Some county profiles were in an incorrect format and required additional input from the authors.

- ii) The Kenya National Bureau of Statistics had not completed extrapolations of population data for projection purposes and production of maps for counties.

It is expected that once the Kenya National Bureau of Statistics provides all the vital statistics and funds are availed for an editing and formatting workshop, all the county profiles should be printed .

b) Classification Of Urban Areas And Cities

To ensure compliance with Section 54 (1) of the Urban Areas and Cities Act, 2011, the Authority commenced collection of data concerning fulfillment of the following two criteria by counties:

- i) has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule; and
- ii) has demonstrable capacity to generate sufficient revenue to sustain its operation;

Data on (i) above is being collected. On (ii) above, TA has requested data on the last three years revenue sources and expenditure by the defunct local authorities. For further analysis of the data a technical team will be constituted to complete the assignment.

2.4 Capacity and Capability Development Committee

During the period under review, the Capacity and Capability Development Committee undertook the following activities:

i) **Capacity Building.**

During the months of February and March, the Committee undertook the following activities:

- Recruited a capacity building consultant to develop a National Capacity Building Framework for TA. The consultant has commenced work.
- Facilitated the disbursement of funds for the County Assembly swearing in ceremony as well as for the speakers and governors inauguration ceremony.
- Identified, recruited, inducted and deployed Interim County Transition Teams to all the 47 Counties.

Accomplishing these activities has enabled the county governments to start off without unmanageable bottlenecks.

ii) **Assets and liabilities.**

The Committee had developed an asset register for assets of the county and national government to safeguard the public assets. An information system has been acquired and updating of an integrated national and county assets register is ongoing in collaboration with Kenya National Audit Office (KENAO).

iii) **Harmonization and deployment of staff.**

The draft policy guidelines on rationalization and placement of staff to both levels of government, prepared in collaboration with the Public Service Commission, was finalized and adopted by the stakeholders. It is now awaiting an official launch by PSC.

iv) **County infrastructure.**

TA disbursed Kshs 2 million each to all the 47 counties for basic refurbishment of county offices and another Ksh. 2 million each for purchase of Hansard equipment. The criterion for disbursement of infrastructure funds to the counties has also been developed and is being applied.



CHAPTER 3

PROGRESS MADE UNDER EACH OVERSIGHT COMMITTEE

3.1 Human Resource Committee

During the period under review, the Human Resource Committee undertook the following activities:

i) Interim teams

The Human Resource Committee focused on ensuring that the interim teams that were hired and trained were placed in all counties and had reported to work. With guidance from the Ministry of State for Public Service, the Committee approved the extraneous allowances to be paid to these interim teams.

The Committee is finalizing on the personal details of the interim teams and some of them have started receiving their extraneous allowances.

ii) **Recruitment of program officers and research officers**

The Committee outsourced the services of a recruitment firm to assist in finalizing the recruitment of program officers and research officers. These vacancies had been advertised in December, 2012. It is expected that these officers shall be in office in the next quarter.

iii) **Additional staff**

The Committee assessed the current seconded staff and made its recommendations. A letter was prepared to the Ministry of State for Public Service to second staff to fill specific establishment gaps.

3.2 Finance and Administration Committee

To ensure that the Transition Authority's operations are adequately and efficiently facilitated, the Committee undertook various activities during the period under review. These are summarized below.

i) Procurement

Various procurements requisitions were approved and facilitated by the Committee. These include procurement of vehicles for TA members which was approved by Treasury during the month of February.

ii) Work Plan and Budget 2013/2014

The Committee organized for a retreat on 18th to 22nd March, 2013, to prepare the work plan and budget for the Transition Authority. This was presented to members for further input before approval by the board.

iii) ICT Equipment

This is an ongoing activity as the Committee undertakes to ensure that members and staff are facilitated with adequate working tools. Currently, Ipads and additional computers are being procured.

iv) Office Space

This has continued to be a challenge for the Authority. The TA identified alternative office space at the Extelecoms House. The Ministry of Housing is assisting in partitioning these offices in preparation for occupation.

3.3 Audit Committee

During the period under review, the audit committee was involved in the following organizational activities:

1. **Assessment and audit of County Infrastructure**

Audit Committee members were part of teams that went out to all 47 Counties to assess and audit infrastructure that was in the different counties in readiness for setting up County Executive and County Assembly offices. The teams were able to identify suitable headquarters for county offices and also identified infrastructure needs of each county. This exercise contributed to the smooth process of swearing in the elected leaders.

2. **Monitoring the Conduct of Interviews For County Interim Staff**

In order to ensure smooth transition into the new system of devolved governments, Transition Authority deployed county interim staff to all 47 counties and also employed 47 County transition coordinators. This exercise ensured that there was no vacuum during the transition period and that there was continued service delivery to the public.

Audit committee members were part of teams that were set up to ensure that the interviews were conducted in a free, fair and transparent manner. The team also ensured that all regulations regarding hiring were fulfilled including complying with the gender rule requirements, consideration of persons with disabilities, meritocracy and compliance with Chapter 6 of the Constitution on Leadership and Integrity.



CHAPTER 4

SUMMARY OF ACHIEVEMENTS

The Transition Authority has made substantive progress, given the limited time frame, resources and the transitional challenges experienced. To date, the following outputs have been realized:

- a) The Transition Authority is operational with members, staff and operational equipment both at the national and county level.
- b) Functional competency analysis and assignment has been undertaken resulting in the production of templates and guidelines for functional analysis, costing and unbundling of functions.
- c) Regulations and administrative guidelines including county assembly standing orders, budget guidelines, procedure for elections of county assembly speakers, guidelines for assumption of office for the governor as well as a template for Transition Implementation Plans have been developed and gazetted.
- d) Civic education materials on the transition to a devolved system of government, which include a booklet on FAQs, manual for

sensitization of public servants and informercials, have been developed and disseminated.

- e) A Memorandum of Understanding with development partners and Non State Actors has been developed.
- f) An assets and liabilities audit is in progress. The criteria for transfer of assets and liabilities has been developed, baseline data collected, Assets Management Information System Software has been procured and a technical committee to address issues of assets and liabilities is in place and operational.
- g) An audit of the human resource in the national and county government has been initiated.



CHAPTER 5

STATUS ON THE TRANSFER OF FUNCTIONS

During the period under review, the only transfer of functions that was implemented was the initial list which was duly gazetted a month ahead of the March 4th, general elections.

Understandably, the period immediately after the elections was politically too fluid to allow for any meaningful functions transfer efforts.

As the country awaited the dispensation of the Presidential Election Petition by the Supreme Court, TA continued with induction plans for the newly elected county leaders in order to help them settle down quickly and start setting up the requisite systems and structures that would eventually allow them to apply for additional functions as outlined in Part Two of the Fourth Schedule to the Constitution of Kenya (CoK) 2010.



From left to Right, Mr. Bakari Omara (member TA), Mrs. Angeline Hongo (Vice Chairperson TA) and Mr. Kinuthia Wamwangi (Chairman TA) during one of the workshops organised by TA.



TA members in a group photo with the participants of a workshop on function allocation to counties and review of devolution laws held at Enashipai Resort and Spa in Naivasha.



CHAPTER 6

CHALLENGES AND RECOMMENDATIONS

	CHALLENGES	RECOMMENDATIONS
1.	Slow response by MDAs on the Transition Implementation Plans, submission of required reports and information.	Follow-up letter from the Chairman TA, for better response time in the submission of the TIPs and required information.
2.	Time constraint, especially the effect of the post-election settlement lags, which is bound to slow down engagements with some of the State stakeholders.	More careful planning and persuasion of key stakeholders to participate in making the process move forward.

3.	Slow take-off in the classification of urban areas and cities due to lack of urban or city Integrated Development Plans which are to be prepared by the county governments.	Until the Integrated Development Plans are prepared, the Transition Authority will not be able to undertake the necessary classifications.
4.	Meeting the high expectation of the elected leaders in the various counties in terms of opening of accounts, disbursement of the funds and provision of adequate offices.	Intensive monitoring and guidance of the interim staff especially the Chief Financial Officers to fast track the process.
5.	Due to a court order, only 43 county profiles will be printed and publicized. However, the Kenya National Bureau of Statistics has to rework the population projections which need to be incorporated in each of the 43 county profiles after which the profiles will be formatted and printed. Profiles for the remaining four counties will be prepared but cannot be published or publicized until the court appeal has been heard and determined.	The Ministry for Planning and the Kenya National Bureau of Statistics sought the advice of the Attorney General with regard to the court order. In a letter of January 3, 2013, the Attorney General's interpretation of the court orders is that, there exists no prohibition of release or dissemination of any other information arising out of the 2009 census except for the population projections for the eight constituencies. His considered opinion is that KNBS can release data or analysis arising out of the census for other constituencies but retain the population projection for the eight constituencies.



CHAPTER 7

PROJECTED ACTIVITIES FOR THE NEXT QUARTER

COMMITTEE	ACTIVITIES
<p>Functional Analysis and Competency Assignment</p>	<p>i) Formal appointment of FASTs and their subsequent launch. This is to facilitate the finalization and approval of the Sectoral policy papers.</p> <p>The FACA committee also plans to hold meetings with the various ministries with the aim of identifying the functions for transfer (in the short-term) and their corresponding costs and also to assist MDAs in further unbundling and costing of functions for transfer in the next financial year. Additionally, TA will have deliberations on the engagement of consultants, additional technical staff and logistical support for the intended activities. The committee will also seek to work closely with the Ministry of Finance to ensure more clarity on the functions and costs of functions for possible transfer as from 1st July, 2013.</p>

	<p>ii) Recruitment of addition human resources for the Committee</p> <p>To complete the recruitment of the FACA Committee staff and enhance efficiency in the implementation of the committee’s activities. Recruit a Program Officer and two Research officers. Engage additional consultants with specific skills in FACA and costing.</p> <p>iii) Completion of MDAs Transition Implementation Plans</p> <p>This is in compliance with the Section 16 of TDGA 2012 and also to assist in the development of County Transition Plans. To this end, TA has engaged more CSOs to assist MDAs in further unbundling of functions and the development of TIPs by recruiting them as members of FACTs and FASTs. The FACA committee will also be contributing to the development of TA’s Three-year Strategic Plan. This is aimed at giving an overall strategic direction to TA’s projects and programmes. Members of FACA will be actively involved in the process.</p>
<p>Planning, Budgeting and Finance Committee</p>	<p>The Committee plans to recommend establishment of a Technical Committee consisting of planning experts and related professionals to undertake assessment of urban areas awaiting preparation of urban integrated plans and required plans as per the Urban Areas and Cities Act 2011. 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.</p>



CHAPTER 8

CONCLUSION

The Transition Authority is determined and committed to ensuring a seamless transition to the devolved system of government as it purges into the Phase Two.

While a few hiccups may be expected due to the complexity of our task and the multiplicity of stakeholders, the TA has ensured rapid response teams made up of our members and staff are in place to quickly attend to these issues as and when they arise.

ANNEXES

ANNEX 1: LEGAL NOTICE NO. 45 OF 2013

THE TRANSITION TO DEVOLVED GOVERNMENT ACT (No. 1 of 2012)

IN EXERCISE of the powers conferred by section 36 of the Transition to Devolved Government Act, 2012 the Authority, in consultation with the Cabinet Secretary makes the following Regulations:—

THE TRANSITION TO DEVOLVED GOVERNMENT (TRANSFER OF ASSETS AND LIABILITIES) REGULATIONS, 2013

Citation.

1. These Regulations may be cited as the Transition to Devolved Government (Transfer of Assets and Liabilities) Regulations, 2013-

Interpretation. -

2. In these Regulations, unless the context otherwise requires —
“Act” means the Transition to Devolved Government Act, 2012;-
“asset” means a thing whether tangible or intangible owned by public entity;-
“Committee” means the technical committee established under regulation 4 of these Regulations;-
“market value” means the price of an asset in an open and competitive market;-
“public entity” includes a national government entity, county government entity, a State organ, public office or a local authority;-
“public participation” means the involvement of the public in the decision making process; and-
“transfer” means the handing over of legal possession or control of an asset or liability.-

Establishment of Technical Committee.-

3. There is established a committee to be known as the Technical Committee of the Authority-

Membership of the Committee-

4. (1) The Committee shall consist of—
 - (a) two members of the Authority;-
 - (b) the Principal Secretary for the time being responsible for matters relating to devolution;-
 - (c) the Principal Secretary for the time being responsible for matters relating to finance;-
 - (d) the Principal Secretary for the time being responsible for matters relating to land;-
 - (e) the Chairperson of the Revenue Allocation Commission;-
 - (f) the Chairperson of the Commission for Implementation of the Constitution;-
 - (g) the Attorney-General;-
 - (h) the Chairperson of the National Lands Commission;-
 - (i) the Chairperson of the Ethics and Anti-Corruption Commission;
 - (j) the Director-General of the Public Procurement Authority;
 - (k) the Auditor General; and
 - (l) two persons, who shall not be public officers and shall be appointed by the Authority.
- (2) The members of the Committee under sub-paragraphs (b) to (k) of paragraph (1) may designate an officer from their respective State department to represent them.
- (3) The Authority may co-opt any other members into the Committee as may be necessary.

Functions of the Committee.

6. The functions of the Committee shall be to—
 - (a) facilitate an audit of public assets and liabilities and to advise the Authority;
 - (b) prepare , validate and submit an inventory of public assets and liabilities to the Authority;

- (c) advise the Authority on the transfer of shared assets and liabilities; and
- (d) recommend to the Authority the review or reversal of irregular transfer of assets and liabilities by public entities during the transition period.

Powers of the Committee.

7. The Committee shall have the delegated powers of the Authority to—
 - (a) gather relevant information, including the requisition of reports, records, documents or any information from any source, including State departments or public entities;
 - (b) compel the production of any information required for the performance of its functions as and when necessary;
 - (c) interview any person, groups or members of organizations or institutions;
 - (d) hold inquiries and investigations for the purposes of performing its functions under this Act;
 - (e) make recommendations and facilitate the distribution of assets to the national and county governments; and
 - (f) undertake any activity necessary to effectively carry out its functions.

Audit of public assets and liabilities.

8.
 - (1) The Authority may engage a qualified person or firm to carry out the audit of assets and liabilities in public entities.
 - (2) A person or firm engaged to carry out the audit of assets and liabilities shall prepare and submit the inventory of the public assets and liabilities to the Authority.
 - (3) The Authority shall publish an inventory of all public assets and liabilities in the Gazette.

Application to transfer a public asset or liability.

9. (1) A public entity shall make an application, to transfer a public asset or liability, to the Authority in the Form set out in the Schedule to these Regulations.
- (2) An application under this regulation shall be accompanied by the following additional information—
 - (a) information that there has been public participation in making the decision to transfer the asset or liability;
 - (b) a summary of the comments received from the public under sub-paragraph (a);
 - (c) the value of the asset to be transferred;
 - (d) the value for which the asset is proposed to be transferred;
 - (e) an independent valuation of the asset, by a registered professional;
 - (f) a statement of the original purpose for which the asset or liability was acquired;
 - (g) the implication of the proposed transfer of the asset or liability; and
 - (h) information on how the public entity has complied with legal requirements for transfer of public assets and liabilities.

Instances where an application may be considered for approval.

10. (1) Subject to section (8), the Authority may approve the transfer of an asset or liability, where—
 - (a) the Court has made an order for the transfer of the asset or liability;
 - (b) there is a legal charge or mortgage over the asset and the person to whom the asset is being transferred has followed due legal process; or
 - (c) the transfer is in public interest.
- (2) The Authority shall not approve an application to transfer a public asset or liability where the obligation arose during the transition period.

Review or reversal of irregular transfer.

11. (1) A person may petition the Authority to review or reverse an irregular transfer of a public asset or liability.
- (2) A petition under this regulation shall be made in writing and shall state, as far as possible, all the details regarding the transfer of the asset or liability.
- (3) The Authority shall carry out preliminary investigations to ascertain whether there were any irregularities in the transfer of the asset or liability.
- (4) The Authority shall provide a copy of the petition to the public entity and may request the public entity to respond to the petition, in writing.
- (5) Where after investigations the Authority determines that the transfer was irregular, the Authority shall review or reverse the transfer and shall—
 - (a) notify the petitioner of its decision, in writing; and
 - (b) publish the decision in the Gazette.
- (7) Where the Authority acts on its own motion, the same procedure shall apply with necessary modification.

SCHEDULE

FORM (r.8(1))

APPLICATION TO TRANSFER PUBLIC ASSET OR LIABILITY

Name of applicant.....

P.O Box.....

Tel.....

1. Description of Asset or Liability to be transferred (registration number, location and other relevant details).
2. Value of the asset or liability as at date of proposed transfer (attach valuation report).

3. Evidence of ownership of the property.
4. Date and value of asset on acquisition.
5. Name of the entity to which transfer is being made.
6. If there exists a contractual obligation attached to the asset or liability. (attach all documentation relating to the contract)
7. Justification or reason for the transfer of asset or liability.

***Where necessary please attach supporting documents.**

Application made by:

Name.....

Designation.....

Signature.....

Official Stamp

Date

FOR OFFICIAL USE ONLY

Approved

Not Approved

Reasons for approval or disapproval

Made on the 12th February, 2013.

KINUTHIA WAMWANGI,

Chairman.