



TRANSITION AUTHORITY

Quarterly Report

October - December

2014



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Quarterly Report of the Transition Authority on the progress in the implementation of the Transition to Devolved System of Government

(Pursuant to Section 7 and 25 of the TDGA, 2012)

The Transition Authority
Quarterly Report (October-December 2014)
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Acronyms and Abbreviations

CASB	County Assembly Service Board
CEC	County Executive Committee
CIC	Commission for the Implementation of the Constitution
CIDP	County Integrated Development Plan
CRA	Commission for Revenue Allocation
CTCs	County Transition Coordinators
FACT	Functional Analysis Competency Team
FASTs	Functional Analysis Steering Team
ICRSD	International Centre for Research in sustainable Development
IFMIS	Integrated Financial Management Information System
IPPD	Integrated Personnel Payroll Data
KNICE	Kenya National Integrated Civic Education
LAs	Local Authorities
MDAs	Ministries Departments and Agencies
MTP	Medium Term Programmes
TA	Transition Authority
TDGA	Transition to Devolved Government Act
TIPS	Transition Implementation Plans
UNDP	United Nations Development Programme

Chairman's Statement



The Transition Authority (TA) continued to facilitate and coordinate the transition to a devolved system of government in Kenya. In line with the TDGA, the Authority consulted with relevant government Ministries, Departments and Agencies (MDAs), constitutional and independent offices and where possible partnered with development partners and non-state actors to ensure smooth transition to devolved system of governance. During the period under review, the Authority

focused on a number of activities, key among them inventory verification and transfer of assets and liabilities; unbundling of functions; conceptualising and procurement of consultants for costing of functions; rationalisation and deployment of public officers, finalisation of the amendments of the Urban Areas and Cities Act (UACA) 2011 as well as manual & curriculum development for civic education.

While the progress TA made towards facilitating and coordinating the transition process is evident, the Authority however was faced with a number of challenges. Top among them is inadequate financing and the placement of its vote under the Ministry of Devolution and Planning, despite having made several requests for an independent vote.

Every quarter we request for funds from the Ministry of Devolution and Planning, which has caused delays in programmes implementation due to bureaucracy. In auditing of assets and liabilities we need first to resolve aspects that have been warehoused before they are transferred to the correct entity. Yet this requires the use of expertise like forensic auditors, surveyors thus the need for more funding.

The delay by government departments to develop and submit service norms and standards has affected service delivery as they are required for guiding

optimal service delivery and staffing. As a result, the counties have haphazardly recruited against the provisions of Article 235 of the Constitution.

The Constitution requires the National Government to align all policies, legal frameworks and regulations to the new dispensation. The delay has affected analysis and transfer of functions of human resource, pensions and staff benefits, classification of the urban areas and cities, and service delivery in general. Besides, lack of civic education and public participation framework has contributed to low citizen engagement.

The calls for the disbandment of the TA during the period, undermined the constitutional, legal, image and authority of the Authority. Consequently, TA was denied resources, independence, information and collaboration, derailing the transition process. Also, there have been numerous litigation attempts concerning the transfer of functions, assets and liabilities, human resources, and service delivery. There are various court cases in the health and roads sectors.

Despite the challenges posed, the Authority has accomplished substantive milestones, as it were, which have far-reaching effects especially on the

management and operationalisation of the counties. It will continue to fast-track the implementation of its mandate placing priority on key activities such as comprehensive audit and transfer of assets and liabilities, costing of functions to inform allocation of resources to the devolved functions and rationalization and deployment of staff.

Finally, I appeal to all stakeholders at both the National and County governments to support TA's efforts in delivering seamless transition to devolved government.



KINUTHIA WAMWANGI
CHAIRMAN

Message from the CEO/Secretary



I am delighted to present to you the Transition Authority Quarterly Report for fourth quarter of 2014. This report sets out to showcase the work that has been undertaken by the Transition Authority, while at the same time highlighting the operational challenges and opportunities that have been faced during the period under review.

The Transition Authority continues to conquer barriers in delivering on its mandate to facilitate and coordinate the transition to a devolved system of

government in line with the TDGA. Each quarter, the Authority continues to set high targets internally and has progressively achieved great results to benefit Kenyans in the 47 counties.

Building on the progress made in the previous quarter, the Authority sought to optimize delivery on its mandate, by focusing on critical activities as set out in our Strategic Plan. I am pleased to report that these efforts continue to bear fruit as the Authority has been able to effectively execute critical transition tasks including verifying the inventories and the transfer of assets and liabilities; unbundling and transfer of functions; conceptualisation and procurement of consultants for costing of functions and making amendments on the Urban Areas and Cities Act (UACA) 2011.

Similarly, the Transition Authority, working closely with the Ministry of Devolution and Planning, Kenya Institute of Curriculum Development (KICD) and the Civil Society, has successfully completed the development of the Civic Education Curriculum and training manual; which will go a long way in enlightening members of the public on governance and further enhance public participation in the devolution process. Public participation is a key

prerequisite for successful transition to a fully devolved system of government.

As we have previously reported however, the Transition Authority continues to face a myriad of challenges key among them being the lack of adequate funding to sustain its optimal operations. It is unfortunate that this problem continues to hamper the effective delivery and has made it difficult for the Authority to smoothly run operations. It is our sincere wish that our line ministry as well as development partners give us the necessary support to be able to effectively deliver on our mandate.

But despite these challenges, I am happy to report that the TA continue to work with undying diligence to deliver desirable results. We are keen on leveraging opportunities that arise from time to time. Strategically, the Authority has designed and adopted working framework that continue to provide guidance in the execution of its mandate. We also continue to draw lessons from successful models around the world and strive to benchmark with international best practices.

Through working partnerships with our development partners, notably the United Nations Development program (UNDP), the TA continues to build capacity through trainings and inter - agency collaborations to enable us achieve effective results.

As I conclude, I wish to reiterate that strategic collaborations remain the major drivers of the TA's success as we have seen up to this day. I wish therefore to take this opportunity to sincerely thank the UNDP, for being an indispensable partner in this transition journey. UNDP has been a reliable partner and has offered unyielding support to us for the benefit of the Kenyan population.

Lastly, I would like to urge all our stakeholders, including partners and the government, to continue supporting our activities so we can collectively achieve success in the transition process.



STEPHEN K. MAKORI
SECRETARY/CEO

1.0 Introduction

The Transition Authority (TA) is a statutory body mandated to facilitate and coordinate the transition to a devolved system of government in Kenya. The Authority's broader mandate is contained in the provisions of Section 15 of the Sixth Schedule of the Constitution of Kenya 2010. The TA was established in June 2012 vide the Transition to the Devolved Government Act (TDGA) of 2012, and is expected to complete its functions not later than 2016.

Section 7 of the TDGA provides for the specific functions of the Transition Authority, which are to be implemented in consultation and in partnership with government Ministries, Departments and Agencies (MDAs); constitutional and independent offices and especially the Commission on the Implementation of the Constitution (CIC), the Commission on Revenue Allocation (CRA), Office of the Auditor General and office of the Controller of Budget as well as development partners and non- state actors.

The TA delivers its mandate through operational and oversight committees both of which are supported by a secretariat. These committees are charged with the core task of implementing the mandate of the TA. The committees include the Functional Analysis and Competency; Planning, Budgeting and Finance; Capacity and Capability Development; Assets and Liabilities; Civic Education; and Legal and Intergovernmental Relations. The Oversight Committees, on the other hand, ensure the good governance of the resources allocated to the TA, and are comprised of the Audit, Finance and Administration, and Human Resource.

At the County level, the Authority has a team of County Transition Coordinators who coordinate activities in the 47 counties.

During this Quarter, the Authority focused on the following activities:

Inventory, verification and transfer of assets and liabilities

- Unbundling of functions
- Conceptualising and procurement of consultants for costing of functions
- Rationalisation and deployment of public officers through the CARPs
- Finalisation of the amendments of the UACA 2011 and Classification of urban areas and cities.
- Manual and curriculum development of Civic Education

The detailed account of activities and progress made is presented in the next section.

2.0 Progress on Implementation of the TA Mandate

The progress made is reported under the following sub-mandates

- Functional Analysis and Competency Assignment
- Management, Audit and Transfer of Public Assets and Liabilities
- Capacity and Capability Development.
- Facilitation of Civic Education
- Planning, Budgeting and Finance.
- Legal and Intergovernmental Relations

2.1 Functional Analysis and Competency Assignment

The following activities were undertaken in regard to functional analysis and competency assignment mandate.

2.1.1 Costing of Functions

The Transition Authority continued with its quest to deliver its mandate of determining the resource requirements to perform each of the functions in line with the Fourth Schedule to the Constitution. In this regard, the Authority, in collaboration with the Commission on Revenue Allocation (CRA), advertised for the procurement of consultancy to undertake the costing of functions for five sectors namely; Agriculture, Livestock and Fisheries; Health; Environment, Water and Natural Resources; Transport and Infrastructure; and Foreign Affairs. The advert was facilitated by UNPD, which is the procuring entity, and was placed in newspapers, websites of TA, UNDP and CRA on 15th October, 2014. Consultants came on board before the end of November, 2014.

2.1.2 Unbundling of Regional Development Authorities Functions

The Constitution of Kenya (CoK) 2010 through provisions of Article 186 classifies the functions assigned to each level of government as exclusive, concurrent or residual. The functions listed under the Fourth Schedule to the Constitution are generally broad, concurrent and non-specific hence the need to specify more explicitly the activities over which each level of government is to be responsible for. This process requires Ministries, Departments and Agencies (MDAs) to provide clear definition of each of their functional category.

Pursuant to Section 7 of the TDGA 2012, the -functions of the Regional Development Authorities (RDAs) had been retained to allow the phased transfer of the functions as provided for under the Fourth Schedule to the Constitution to the national and county governments. It is against this backdrop that the Transition Authority engaged the Regional Development Authorities to analyse their functions by holding a five-day working retreat from 27th-31st October, 2014 at Mombasa Beach Hotel.

The overall objective was to carry out a comprehensive analysis and assignment of the functions of the Regional Development Authorities with a view to: provide clarity on the unbundled devolved functions being performed by RDAs; provide information on the quantum of resources being used currently on the delivery of services attached to the function; inform the transfer of functions of the RDAs between the two levels of government and to provide clear recommendations on transition mechanisms and frameworks of involving county governments in RDAs devolved functions cutting across counties.

After successful deliberations on unbundling and assignment of the RDAs functions, the following recommendations were made:

- That the Regional Development Authorities submit a comprehensive analysis of their activities assigned to either level of government with the respective budget lines by 15th November, 2014.
- That each RDA provides a list of the ongoing projects, nature, financier, expected time frame for completion and the amount of money allocated to it.
- That the RDAs align themselves to the new dispensation for better service delivery.
- That the RDAs share the relevant bills/legislations with TA for comments.
- The RDAs and TA undertake more stakeholder engagements on their functions

The table below provides a detailed analysis of the functions of the RDAs.

Table 1: RDAs Functional Analysis

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Function 21; General principles of land planning and the co-ordination of planning by the counties.</p>	<p>Function 1: To plan for the development of the area and initiate project activities identified from such planning generally through the Government</p>	<ul style="list-style-type: none"> • Mobilisation and sensitisation of stakeholders on issues of planning in the basin. • Preparation of integrated strategic plans for the basin • Integrated project feasibility studies and designs within the basin. • Resource mobilisation and implementation of specific integrated projects • Monitoring and evaluation 	<ul style="list-style-type: none"> • Mobilisation and sensitisation are done across all the counties covered by the RDAs to secure concurrence on scope of planning. • The integrated strategic plans are based on management of basin-based resources. • RDAs will monitor all activities including those undertaken by other development agencies to ensure that they achieve intended goals and objectives.

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Function 21; General principles of land planning and the co-ordination of planning by the counties</p> <p>Function 2: The use of international waters and water resources</p>	<p>Function 2: To develop an up-to-date long-range development plan for the area</p> <p>Function 13: To liaise with the relevant authorities as necessary in the exploration and development of the extensive fishing and marine activities in Kenya, especially in the exclusive economic zone.</p>	<ul style="list-style-type: none"> • Mobilisation and sensitisation of stakeholders on issues of planning in the basin • Preparation of Integrated Regional Development Master plans (IRDMP) • Baseline surveys and data collection • Resource Mapping and planning, including establishment of resources data centres • Stakeholder consultative and investment forums • Capacity building and training • Monitoring and evaluation • Resource mapping of the marine ecosystems resources • Carry out feasibility studies for the exploitation of the marine resources • Investment forums and resource mobilisation • Implementation of specific projects, e.g. fishing and value-addition through construction of infrastructure. 	<p>Mobilisation and sensitisation are done across all the counties covered by the RDAs to secure concurrence on scope of the Integrated Regional Development Master Plan (IRDMP) planning and processes. The IRDMP is focused on identification of basin-based resources of economic importance and investment opportunities. The IRDMP is implemented by various stakeholders in the area covered by RDAs, while the RDAs are to carry out monitoring and evaluation.</p> <p>Currently the role of exploitation of marine resources is not assigned to any government, hence it is assumed to belong to the National Government.</p>

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Part 1 (9) National economic policy and planning.</p> <p>Part 1 (22) Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular:</p> <p>(c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and</p> <p>(d) energy policy.</p>	<p>Function 3: To initiate such studies, and carry out such surveys, of the area as may be considered necessary by the Government or the Authority, and to assess alternative demands within the area on the natural resources thereof, and to initiate, operate or implement such projects as may be necessary to exploit those natural resources including agriculture (both irrigated and rain-fed), forestry, wildlife and tourism industries, electric power generation, mining and fishing, and to recommend economic priorities.</p>	<ul style="list-style-type: none"> • Undertaking pre-feasibility and feasibility studies on natural resource uses in the basins. • Initiate implementation of the integrated projects. • Undertaking surveys and resource mapping 	<p>The feasibility studies are integrated in nature and are for the basin and involve many counties, .eg. Munyu Multi-purpose Dam study involving Makueni, Kiambu and Machakos counties; Chalbi Integrated Study involving Wajir and Marsabit Counties by ENNDA</p> <p>Data collected is for integrated development that cuts across counties.</p> <p>Implementation of study must be integrated in nature, e.g., integrated food processing in CDA, integrated fruit and vegetable processing in LBDA, Masinga and Kiambere multipurpose dams for energy, irrigation, flood control, domestic water, tourism, fishing etc</p> <p>Resource mapping for the entire basinland use by LBDA and ICRAF, Gums and resins mapping within basin by KEFRI and ENNDA. Data is multi-sectoral and integrated. The data supports government policy decisions & interventions</p>

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Part 1 (21) General principles of land planning and the co-ordination of planning by the counties.</p> <p>Part 2 (8) County planning and development, including: (a) statistics; (b) land survey and mapping;</p> <p>Part 2 (10) Implementation of specific National Government policies on natural resources and environmental conservation, including: (a) soil and water conservation; and (b) forestry</p>	<p>Function 4: To co-ordinate the various studies of schemes within the area such that human, water, animal, land and other resources are utilised to the best advantage and to monitor the design and execution of planned projects within the area;</p>	<ul style="list-style-type: none"> • Prepare and coordinate development guidelines (to conform to land uses necessary to protect the basin). • Undertake monitoring of designs and execution of integrated projects within the basin • Dissemination of studies' reports within the basin to stakeholders. 	<ul style="list-style-type: none"> • The guidelines will compliment development initiatives in the basin and catchment area cutting across counties. For example, Tana Delta Irrigation Scheme in Tana River, Kimira Oluch Irrigation Scheme. • Monitoring to ensure that implementation is as per the study recommendations • Use the regional offices to engage the investors within counties
<p>Part 1 (2) The use of international waters and water resource</p>	<p>Function 13: To liaise with the relevant authorities as necessary in the exploration and development of the extensive fishing and marine activities in Kenya, especially in the exclusive economic zone.</p>	<ul style="list-style-type: none"> • Identification of and engagement with the relevant authorities in exploration and development of marine activities within the exclusive economic zone • Relevant RDAs to participate in meetings organised by respective agencies in the management of international waters • Coordination of the development of fishing and marine activities in the exclusive economic zone • Monitoring of developments within the exclusive economic zones • The RDA to play a role in ensuring agreements and other arrangements of implementing agreements in international waters 	<p>The waters cut across countries and regions</p>

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Function 21: General principles of land planning and the co-ordination of planning by the counties</p> <p>Function 22: Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular: (a) fishing, hunting and gathering; (b) protection of animals and wildlife; (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and (d) energy policy.</p>	<p>To identify, collect, collate and correlate all such data related to the use of the water and other resources and also economic and related activities within the area as may be necessary for the efficient forward planning</p>	<ul style="list-style-type: none"> • Resource mapping • Development of Resource Data Center on Development Indicators in the Basin • Undertake Thematic research/ Studies on natural resources, in collaboration with institutions of higher learning. • Knowledge and technology transfer • Data and information Sharing • Formulation of Integrated Regional Master plan • Monitoring the impact of resource utilisation. 	<p>Resource mapping is a holistic activity Data collected is for integrated development that cuts across counties. Data is not sector specific. Data supports government t strategic policy interventions.</p>

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
Function 33: Public investment	To maintain a liaison between the Government, the private sector and other interested agencies in the matter of the development of the area with a view to limiting the duplication of effort and to ensuring the best use of the available technical resources.	<ul style="list-style-type: none"> • Stakeholders' profiling and analysis • Carry out baseline surveys, pre-feasibility and feasibility studies on opportunities in in the river basins • Dissemination of investment opportunities within the basin to potential investors development partners, County governments and other stakeholders • Profiling and periodic dissemination of development initiatives in the region; to avoid duplication of efforts • Facilitate development, compliance and implementation of MoUs and other protocol agreements for implementation of integrated development programmes • Identification of multilateral, bilateral and private-public partnership (PPP), funding opportunities through local and international forums on integrated development opportunities. 	<ul style="list-style-type: none"> • Feasibility studies undertaken and projects ready • Implementation of programmes will compliment development initiative across river basin and catchment area cutting across counties. • Development partners engaged in implementing the multi purposes project–high grand falls for TARDA, Magwagwa , Mwache • Profiling development initiatives will avoid duplication, while implementation of multipurpose programmes will contribute to sustainability of RDAs.

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Function 2: The use of international waters and water resources</p> <p>Part 1 (21) General principles of land planning and the co-ordination of planning by the counties.</p> <p>Part 1 (22) Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular: (a) fishing, hunting and gathering; (b) protection of animals and wildlife; (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and (d) energy policy.</p>	<p>To monitor the operations and provide technical reports on the operations of any agreement or other arrangements between Kenya and other states relating to the use of the waters of Lake Victoria or River Nile.</p> <p>Function 11 To examine the hydrological and ecological effects of the development programmes and evaluate how they affect the economic activities of the persons dependent on river environment.</p>	<p>Relevant RDA to participate in meetings organised by respective agencies in the management of international waters</p> <p>The RDA to play a role in ensuring agreements and other arrangements of implementing agreements in international waters</p> <p>Capacity building and training for specific projects/programmes, resource mapping</p> <p>Data collection, analysis collation, and use for specific projects/programmes and resource mapping</p> <p>Development of data collection / resource centres and repository activities</p> <p>River basin studies for socio-economic development - river profile studies in all RDAs</p> <p>Catchment and water towers management interventions, e.g. Mwache, Kimira-Oluch, Upper Turkwel, Cherangany watershed, Mau, Mt Elgon, Taita hills Monitoring & Evaluation</p>	<p>The waters cut across countries and regions.</p> <p><i>This function is covered within the data repository centres where through hydrological data collection and GIS analysis, RDAs provide the framework and advisory for evaluating impacts on the use of basin resources and future development.</i></p> <p>Resource centres developed at CDA, LBDA, Kerio Vallyeny Development Authority (KVDA), ENSDA, TARDA, ENNDA</p>

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Part 1 (9) National economic policy and planning. Part 1 (22) Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular: (a) fishing, hunting and gathering; (b) protection of animals and wildlife; (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and (d) energy policy. Part 2 (10) Implementation of specific National Government policies on natural resources and environmental conservation, including: (a) soil and water conservation; and (b) forestry.</p>	<p>Function 12 To consider all aspects of the development of the area and its effects on the rivers inflow and outflow.</p>	<p>Formulation of integrated projects and programmes Implementation of integrated projects and programmes - Turkwel, Kiambere, Mwache, Sondu-Miriu, Magwagwa and Arror</p> <p>Development of sustainable strategies in environmental protection/ conservation - physical, biological and socio-cultural measures Climate change mitigation measures, e.g. river basin floods control measures, drought control measures river basin regulation and transfer measures</p>	<p>All RDAs have comprehensive programmes of conservation and protection of catchment areas, river banks, and water bodies.e.g. Mau Forest catchment and ecosystems programme under ENSDA and LBDA, Cherangany Hills and ecosystems conservation by LBDA and KVDA; upper Turkwel / Suam conservation programme, Aberdares - Mount Kenya ecosystems conservation by ENSDA, TARDA and ENNDA, the Marine Ecosystem by Coast Development Authority (CDA); and Mount Elgon Ecosystem by LBDA and KVDA.</p>

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>Part 1 (2) The use of international waters and water resources.</p> <p>Part 1 (22) Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular: (a) fishing, hunting and gathering; (b) protection of animals and wildlife; (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and (d) energy policy.</p> <p>Part 1 (32) Capacity building and technical assistance to the counties.</p>	<p>Function 13: To liaise with the relevant authorities as necessary in the exploration and development of the extensive fishing and marine activities in Kenya, especially in the exclusive economic zone.</p>	<ul style="list-style-type: none"> • Capacity building and empowerment of communities on programmes and projects - sustainable fishing, value-addition, marketing, provision of modern equipments, etc • Promotion of alternative livelihoods sources for inhabitants / communities • Development and implementation of integrated coastal/shoreline zone management policy • Mapping of coastal and marine/ lake resources in collaboration with relevant stakeholders/institutions, e.g. research institutions - Kenya Wildlife Service (KWS), Kenya Marine and Fisheries Research Institute (KMFRI) and NGOs • Study and collection of data on shoreline changes, e.g. collaboration with University of Dar es Salaam Institute of Marine Sciences. 	

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
	<p>Function 14: To monitor the operations and provide technical reports on the operations of any agreement or other arrangements between Kenya and other states relating to the use of the waters of Lake Victoria or of the River Nile.</p>	<ul style="list-style-type: none"> • Abstraction/damming of water upstream for H.E.P, water supply, irrigation purpose • preparation of status technical reports on the resources • support in negotiations between riparian states on sustainable use of the waters • Capacity building and empowerment of communities on programmes and projects - sustainable fishing, value-addition, marketing and provision of modern equipments, etc • International waters and rivers management and regulation (Kenyan Nile basin, trans-boundary lakes & rivers resource management). 	<p>LBDA participates in technical meetings related to the Nile & East African Community issues.</p>
<p>21. General principles of land planning and the co-ordination of planning by the counties.</p>	<p><u>FUNCTION 5</u> To cause and effect a programme of both monitoring and evaluating the performance of projects within the area so as to improve such performance and establish responsibility thereof and to improve future planning.</p>	<p>Preparation of work plans Implementation of work plans Supervision of project activities Preparation of reports - review, analysis, evaluation and generation of a database Performance contract evaluation and review - midterm & final reviews and evaluation</p> <p>RDAs participate and support County monitoring and evaluation (M&E) committees RDAs participate and support inter-ministerial M&E committees Routine project audits by various institutions/management - e.g. management, Board of Directors, Kenya National Audit Office (KENAO) e.t.c</p>	<p>All these apply to programmes being implemented drawn from the master plans, strategic plans, county integrated development plans, annual work plans, performance targets form project proposals, special program e.g the national rain water harvesting and climate change adaptation programmes</p>

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular:</p> <p>(a) fishing, hunting and gathering;</p> <p>(b) protection of animals and wildlife;</p> <p>(c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and</p> <p>(d) energy policy.</p> <p>21. General principles of land planning and the co-ordination of planning by the counties.</p>	<p>FUNCTION 6</p> <p>To co-ordinate the present abstraction and use of natural resources, especially water, within the area and to set up an effective monitoring of abstraction and usage.</p>	<ul style="list-style-type: none"> • Feasibility studies to create resource base data. • Establishment of monitoring mechanisms by setting up river gauging stations, weather stations, dam monitoring, period forest cover census, development of forest management plans. • Formulation of natural resources management policies. • Coordination of monitoring and evaluation oversight organs at national, intergovernmental, departmental, interdepartmental and international at both planning and implementation stages. • Enhancing stakeholder participation at various levels (national, regional, county and community) through stakeholders fora • Capacity building and empowerment, e.g. to WRUAs (Water Resource Users Associations), CFAS (Community Forest Associations) and CIGs (Community Interest Groups) • Technology transfer on aspects of development, processing and marketing of natural resources • Implementation of land acquisition and resettlement programmes. • Implementation of resource-based sharing charters • Collaborative research and development on specific thematic areas. • Research findings dissemination mechanism through community trainings. 	<ul style="list-style-type: none"> • Data collected from the feasibility studies and monitoring will guide both short & long-term integrated development within the basin • Formulation of natural resources management policies involves participation of all stakeholders and covers all natural resources within the basin • Coordination of monitoring and evaluation oversight organs • RDAs undertake capacity building, technology transfer and empowerment of common groups for integrated development. • • Land acquisition involves relocation and compensation • Sharing of benefits accruing from the investment projects between the RDAs, counties and the affected communities. • Undertake applied research development in the basin

Function as per CoK	Function as per the RDAs Acts	Components of the functions	Remarks
<p>2. The use of international waters and water resources.</p> <p>Part 1 (22) Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular:</p> <p>(a) fishing, hunting and gathering; (b) protection of animals and wildlife (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams;</p> <p>Part 1 (24) Disaster management.</p> <p>Part 1 (32) Capacity building and technical assistance to the counties.</p> <p>Part 1 (33) Public investment.</p> <p>Part 1 (2) The use of international waters and water resources.</p> <p>Residual Functions</p>	<p>FUNCTION 13 To liaise with the relevant authorities as necessary in the exploration and marine activities in Kenya, especially in the exclusive economic zone.</p> <p>Function 7: To initiate and effect the construction of any works deemed necessary for the protection and utilisation of the water and soils of the area;</p> <p>Function 14: To monitor the operations and provide technical reports on the operations of any agreement or other arrangements between Kenya and other states relating to the use of the waters of Lake Victoria or River Nile.</p> <p>Function 8: To cause and effect the construction of any works deemed necessary for the protection and utilisation of the water and soils of the area.</p>	<ul style="list-style-type: none"> • Capacity building and empowerment of fishermen along the coastal water • Collaborative research • Development of Integrated Coastal Zone Management Policy • Development of resource utilisation charters • Study and collection of data on shoreline changes • Mapping of coastal and marine resources • Acquisition of specialised equipment for use in the exclusive economic zone. • Acquisition of assets for value-addition, irrigation and water supply infrastructure. • Identify, design, construct and manage large multipurpose dams; • Identify, design and construct, flood control structures including dykes and check dams; • Identification, development and protection of trans-county aquifers and springs: • Identify, design and develop integrated irrigation infrastructures • Construction of dams and water pans • Development of water intakes and supply system • Development of soil conservation structures including terracing, cut-off drains and trenches. • Monitoring and providing technical reports on the operations of any agreement or other arrangements between Kenya and other states relating to the use of the waters of Lake Victoria or of the River Nile. 	<ul style="list-style-type: none"> • CDA initiates, coordinates and undertakes all these activities in the region. • Environmental conservation is the responsibility of both levels of government since environmental effects and impacts have no boundaries. • International water agreements and treaties are national government functions. • Electricity generation

The table below shows the agreed format to be submitted on the final unbundling, transfers and costing of functions of the RDAs.

Function as per CoK	Function as per the RDAs Act	Components of the functions	Assigned Level of Government			Projects/ programmes	Budget		Time Frame	Source of funds (GOK/ DONOR)	Remarks
			Natioal	County	Concurrent		Planned Cost	Allocation for 2014/15			

2.2.3 Intergovernmental Sectoral Consultative Fora

The TA participated in the Intergovernmental Sectoral Consultative Fora held on 12th November, 2014, at the Kenya School of Government, Nairobi.

Article 6 (2) of the CoK, 2010 provides that “the governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.” Subsequently, Section 13 (2) of the Intergovernmental Relations Act No. 2 of 2012 enables the Cabinet Secretary responsible for intergovernmental relations to convene consultative fora on sectoral issues of common interest to the National and County governments. Towards this end and in view of the growing number of concerns between the two levels of government, the Ministry of Devolution and Planning launched the third and final sectoral consultative forum on 12th November, 2014. This forum brought on board four (4) sectors: Education, Science and Technology; Sports, Culture and the Arts; Labour, Social Security and services; and Mining.

The following were the emerging issues and areas of concern from the sectors for requisite guidance by the TA.

a) Labour Social Security and Services

Alignment of existing Acts of Parliament and policies with the Constitution of Kenya 2010 especially laws governing children issues.

- **Registration of groups** - members complained that registration of groups should be devolved to counties.
- **Lack of public participation framework** - members of county governments complained that they lack the framework for public participation engagement, hence recommended that the Ministry of Labour together with Devolution and Planning initiate the enactment of Public Participation Bill.
- **Workmanship compensation** - counties complained that they lacked guidelines on workmanship compensation, hence the need for the Ministry of Labour in collaboration with Devolution and Planning to take lead in building their capacity.
- **Harmonisation of unions** - it was established that several unions operate within county governments with overlapping mandates, hence creating confusion leading to many employee unrests. Therefore, it was recommended that criteria for amalgamating them be formulated.
- **Lack of children officers in counties** - members complained that the number of children officers at the county is insufficient, hence the need to devolve the function to allow counties to handle it adequately.
- **Outstanding wages arising from the previous collective bargaining agreements for former local authority workers** should be addressed by the National Government through the Ministry of Labour. It is important for the county governments to start from a clean slate.
- **Lack of Labour Officers** - in particular, the county government of Wajir requested for Labour officers to be posted. The ministries of Labour and Devolution and Planning to take up the matter.
- **Lower absorption rate of the devolved funds including the Uwezo and Women funds** - This is occasioned

by lack of certificates among registered groups. The ministry responsible for the registration and issuance of the certificates to respective institutions to enhance the exercise to enable the groups access the available funds.

- The need for the Ministry of Labour to approve various social programmes proposed by the counties to compliment the National Government. Such programmes may include funds transfers to the elderly, Youth and Uwezo funds, among others.
- Vocational training centres - it was proposed that these institutions be fully devolved to enable counties inject in more resources since they are poorly funded.
- Leave allowances for County Executive Committee Members - Members requested for guidelines on the payment of leave allowances for CEC members. The Ministry of Devolution and Planning to take up the matter in consultation with the Ministry of National Treasury.
- Harmonisation of remuneration job groups. Members noted that big disparities exist in remuneration and allowances for the employees of former Local Authorities and other employees in the counties. The Ministry of Labour to take up the matter in consultation with the relevant institutions.

b) Sports, Culture and the Arts

Sports

There is need to review the Sports Policy and Sports Act 2013 to align them with the Constitution of Kenya 2010. The contentious issues include:

- Relationship between county governments and sports federations/ association and the development of sports facilities.
- The search and development of talents in sports activities be undertaken collaboratively including people with disabilities (PWDs) between the respective sectors both in the counties and National Government.
- Need for capacity building for sports personnel in both levels of government and the funding of international sports competitions. Both levels of government need to be involved for enhanced transparency and accountability.

Culture

The following were the contentious issues:

- Custody of ancient and historic monuments between national and county governments to be upheld and need for the sustainability of community cultural centres available in counties.ii) Involvement of county government in planning of national cultural festivals and registration of cultural groups.
- There is need for the improvement of communication channels between the National Government and county officers. Information communicated through the office of the Governor reaches them late and therefore not appropriate. The Ministry of Devolution and Planning to take up the matter with relevant institutions.

Arts

The following were the contentious functional areas:

- Identification of arts talent
- Capacity building of upcoming artists
- Fundraising and financial support to artists
- Creation of platforms for artists to showcase their talents

c) Mining

The Mining Bill was extensively discussed and members expressed concerns that the Bill in its current form does not reflect the aspirations of the county governments. The views forwarded for consideration have not been incorporated. Concerns were raised how mining activities will face challenges if county governments are not involved. The members proposed that the Bill be put on hold till exhaustive consultation and inclusivity is done. The Ministry of Devolution and Planning to take up the matter together with the Ministry of Mining.

The following were identified as some of the contentious clauses that require more consultation before the Bill is assented to:

- Benefits sharing formula
- Classification of minerals
- Issuance of mining Licences
- Governance structure
- Acquisition of land where minerals are located

2.2 Management, Transfer and Audit of Public Assets and Liabilities

The Transition to Devolved Government Act, 2012 in Section 7 (2) (e), (f), (g) & (h) (ii) enumerates the functions of TA in relation to management, audit and transfer of public assets and liabilities during the transition period as shown below:

- Prepare and validate an inventory of all the existing assets and liabilities of Government, other public entities and defunct local authorities;
- Make recommendations for the effective management of assets of the National and County governments;
- Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transition period;
- Develop the criteria to determine the transfer of previously shared assets and liabilities of the Government and defunct local authorities.
- The functions as enumerated above have been broken down into activities and are listed in Sections 1 (a), (b), (c), (d), (n), (o) & (p) of the Fourth Schedule to the TDGA, 2012 as shown below:
- Audit assets and liabilities of the Government, to establish the assets, debts and liabilities of the Government;
- Audit assets and liabilities of defunct local authorities, to establish the assets, debts and liabilities of each defunct local authority;
- Audit defunct local authority infrastructure in the counties to establish the number and functionality of plant and equipment in defunct local authorities;
- Audit the Government infrastructure in the counties to establish the number and functionality of plant and equipment for the purpose of vesting them to either level of government;
- Provide for a mechanism for the transfer of Government net assets and liabilities to National and County governments;
- Provide mechanism for the transfer of assets and liabilities, which may include vetting the transfer of assets during the transition period;
- Provide a mechanism that will secure assets and liabilities held by the defunct local authorities.
- During the months of October, November & December 2014, TA was able to achieve the following:
- Audit of All Public Assets and Liabilities
- Mobilising of the County Sub-Committees of assets and liabilities

Mobilisation of the County Sub-Committees in all the forty seven (47) counties has been finalised and they are now operational. The staff that form the County Sub-Committees are from the following ministries/ organisations:

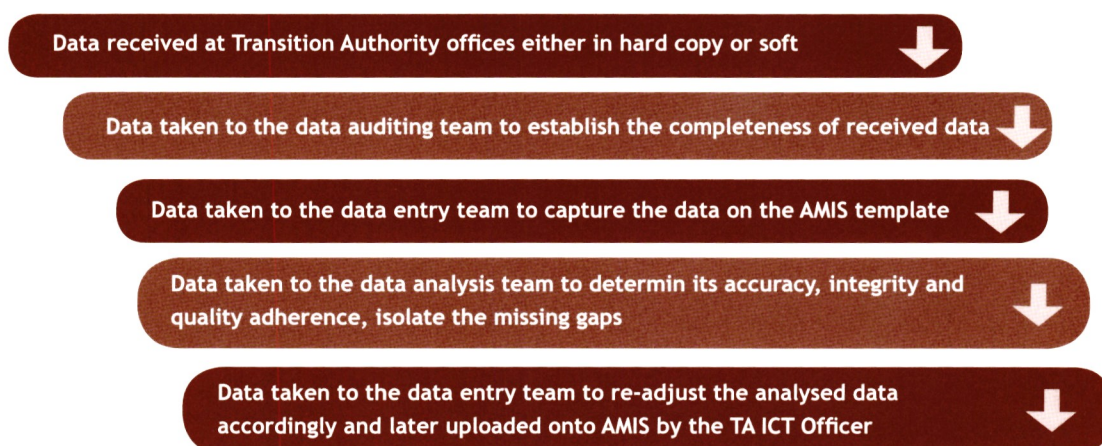
- Transition Authority
- Office of the Auditor-General (OAG)
- Ministry of Devolution and Planning
- The National Treasury - Internal Audit department
- Ministry of Land, Housing and Urban Development
- Ministry of Interior and Coordination of National Government
- National Land Commission
- County Executive Member - Finance
- County Executive Member - Land
- County Secretary
- County Internal Auditor
- Clerks of the County Assembly
- Controller of Budget
- Civil Society representative

Desk top verification of data on assets and liabilities of the defunct local authorities held by TA
The TA together with OAG carried out the desk top verification of data on defunct local authorities that entailed the following:

- Establishing defunct local authorities that submitted data to TA
- The data was captured in the Assets Management Information System (AMIS) template
- Analysis of the data to determine gaps that needed to be filled.
- Based on this activity the TA together with OAG determined what needs to be done in every defunct local authority in order to develop a comprehensive inventory.
- Analysis of additional data from pilot study

The additional data from the pilot study was analysed to further determine the missing gaps in the twelve (12) counties. This was done to harmonise all available data in TA in readiness for the nation-wide exercise.

Process of handling data on assets and liabilities at TA:



Development of guidelines for the County Sub-Committees

As one of the deliverables of the pilot study the guidelines for the County Sub Committees were developed to be used by all the forty-seven (47) County Sub Committees in executing their mandate (see Appendix III).

Training of all the Forty-Seven (47) County Sub Committees

The TA together with OAG conducted training of the County Sub-Committees on verification of inventory of assets and liabilities of the defunct local authorities in two phases - 1st to 3rd October, 2014 & 6th to 8th October, 2014 at the Kenya Institute of Curriculum Development, Nairobi. Officials of the Nairobi City County, which was not able to attend the two trainings, were later trained on 22nd October, 2014 at the Kenya School of Monetary Studies, Nairobi.

Progress report of nation-wide exercise to prepare and verify an inventory of assets and liabilities of all the defunct local authorities

The following is a summary of the progress from the County Sub-Committees as at 31st October, 2014:

Targets achieved:

- County Sub-Committees held their meetings and also met with the senior members of the county governments and county commissioners;
- The County Sub-Committees developed work plans and budgets that were presented to the county governments for facilitation;
- The County Sub-Committees divided themselves into smaller groups to achieve the intended objective efficiently and effectively;
- The County Sub-Committees collected and verified data on assets and liabilities of some of the defunct local authorities;
- Some counties have publicised the activity in the daily newspapers, e.g. Mombasa, Laikipia, Homa Bay and Embu.

Support

Some of the County Sub-Committees received support in terms of providing lunch, perdiems, fuel, vehicles and drivers for the exercise from the county governments.

Challenges faced by the County Sub-Committees:

- Competing activities between Capacity Assessment and Rationalisation of the Public Service (CARPS) and verification of assets and liabilities of the defunct local authorities;
- Delayed disbursement of meal allowance for the County Sub-Committees;
- Some County Sub-Committees are yet to get any support from either the county governments and the county commissioners;
- The need for incidentals to take care of stationary, air time, tea and snacks etc.;
- Inconsistency by some members in attending the meetings.

Nation-wide exercise to prepare and verify an inventory of assets and liabilities of all the defunct local authorities.

After pilot study and the training of all County Sub-Committees, the nation-wide exercise of verifying of assets and liabilities of all the one hundred and seventy five (175) defunct local authorities was rolled out on October 13, 2014, with initial phase to take sixteen (16) days. The output would be a comprehensive inventory of assets and liabilities of all the defunct local authorities, with aspects that need to be interrogated/warehoused for each defunct local authority clearly enumerated for the next phase that would involve the use

of surveyors and forensic auditors etc. The initial deadline was reviewed to December 31, 2014. All the county reports are currently being received for review during a work retreat.

Development of documents to be used to procure consultants to resolve the warehoused aspects
The following draft documents that are to be used to engage consultants to resolve the warehoused aspects have been prepared:

- Expression of Interest
- Terms of Reference
- Request for Proposal
- It's envisaged that the request for expression of interest will be published in the print media in January, 2015, to commence the process of engaging special skills (consultants) to resolve the warehoused aspects.
- Transfer of Public Assets and Liabilities
- Approval for disposal of boarded/obsolete public assets (government motor vehicles, animals etc.) was granted by TA to the following public entities:
- Export Processing Zones Authority
- Ministry of Interior and Coordination of National Government
- Kenya Medical and Training Centre
- Pwani University
- Communication Authority of Kenya

Advisories/ Public Notices on Securing, Management, Audit and Transfer of Public Assets and Liabilities
The Authority issued an advisory/public notice on verification of assets and liabilities of the defunct local authorities on December 1, 2014, in the daily newspapers. This advisory/public notice outlined the procedure to be followed by all creditors to lodge their claims to TA; it also cautioned against transfer of public assets and liabilities without seeking the authority of TA as provided for in the TDGA, 2012 (advisory attached).

Challenges and Way Forward

Funding

The engagement of consultants to resolve the warehoused aspects (validating the inventory of assets and liabilities of the defunct local authorities) require additional financing . A tentative budget to that effect has been prepared and shared with the National Treasury to seek additional funding during the supplementary budget.

Time lost

There was time lost as the sixty (60) days work plan stagnated at the beginning of the financial year 2014/2015 due to late release of the exchequer and the delays by MoDP in releasing TA funds due to internal reorganisation at the Ministry.

The mitigation measure would be to either provide for the current team to work beyond normal working hours or the number of staff involved in this exercise to be increased. The TA also communicated to IBEC vide a letter requesting for additional time due to the challenges that the exercise is facing.

2.3 Capacity and Capability Development

Section 7 (2) (m) of the Transition to Devolved Government Act, 2012 mandates TA to advise on the effective and efficient rationalisation and deployment of human resource to either level of government.

2.3.1 Capacity Assessment and Rationalisation Programme

At a national coordinating summit held on 19th June 2013, a joint Capacity Assessment and Rationalisation of the Public Service (CARPS) was agreed upon.

The overall objective of the CARPS Programme is to ensure that government functions are properly structured and staffed to facilitate transformation of the public service for efficient and effective service delivery by the national and county governments. Indeed, the policy and strategic imperative of the CARPS are derived from the stipulations in both the Vision 2013 and Constitution of Kenya (CoK) 2010 that the public service must be transformed.

The exercise is supposed to establish the existing staff at both levels of government and make recommendations on optimal staffing levels based on aligned structures. Ultimately, the exercise will facilitate redeployment and transfer of staff within and between counties and between counties and the National Government.

Achievements

The exercise will inform measures necessary to ensure efficient organisational structure of the public service for smooth service delivery. The exercise will make recommendations on optimal staffing levels based on aligned structures. Ultimately, the exercise will facilitate redeployment and transfer of staff within and between counties and between counties and the National Government.

Challenges

There was not enough time for civic education to prepare participants on the exercise and, as a result, some counties went to court to challenge the exercise and the court ruling is yet to be made.

Some areas experienced uncoordinated capacity building, leading to misunderstanding of the purpose of the whole exercise.

Further, there was delay in the formulation of enabling policies, legislation and norms and standards on human resource management by the National Government.

2.3.2 Development of a Mechanism for the Closure and Transfer of Public Records

One of the objects of the Transition to Devolved Government Act, 2012, which established Transition Authority, is to provide a mechanism for closure and transfer of public records.

Following the repeal of the Local Government Act (Cap 265) and the abolition of the provincial and district structures, it is deemed necessary that all records previously held by these institutions/local authorities be closed and transferred to the relevant record keeping units and agencies to preserve these records.

Towards developing a mechanism for closure and transfer of public records, the Authority is implementing this mandate through an inter-agency stakeholder institutional framework.

In November, the Authority in consultation with stakeholders prepared a schedule of activities to be undertaken between January and June 2015 under this mandate.

The activities begin with a survey to map public records and restructure record keeping systems in the county governments and will involve officers from Transition Authority, the Kenya National Archives and Documentation Service, the Public Service Commission, the Ethics and Anti-Corruption Commission and the National Treasury.

2.3.4 Status of Youth Polytechnics (YPs)

During the reorganisation of the National Government, the Executive Order No. 2 of 2013 placed the Youth Polytechnics function under the State Department of Science and Technology in the Ministry of Education, Science and Technology (MOEST).

However, although the function was placed under MOEST, the operational funds for field services were under the Ministry of Devolution and Planning.

The transfer of the payroll for the field Services from the Ministry of Devolution and Planning to the Ministry of Education, Science and Technology without budgetary allocation by the latter caused challenges in payment of salaries. By end of December 2014, a total of 590 Youth Polytechnic instructors working in the counties had not been paid their salaries since September 2014. As a result of this anomaly, a number of challenges have emerged:

- Although the bulk of the YPs function is devolved, the National Government still retains the roles of policy development, curriculum development and review, quality assurance, instructor management, administration of YPs grants, registration of YPs, research and development, training, examinations and capacity building, among others. Hence the retention of staff at the headquarters of the MOEST to be in charge of these activities.
- There are a number of human resource management issues that require attention.
- Payroll management anomalies have been cited in a number of counties.

2.3.5 Devolved Contracted Staff Under ESP

Between May and November 2014, 2000 (two thousand) Youth Polytechnic instructors were engaged on a three-year contract under the Economic Stimulus and Poverty Alleviation Programme (ESP). The instructors were engaged through the Directorate of Youth Training in the former Ministry of Youth Affairs and Sports. By 2014, when the contracts for the first batch of the instructors were nearing expiry, only 1,866 instructors were still in service, the rest having left for various reasons including resignation.

Emerging issues

So far, the National Treasury has not committed itself to paying the salaries of these staff if the programme is to be sustained.

If the National Treasury does not provide budgetary allocation for the officers' personal emoluments if absorbed by the counties, the counties would individually have to budget for them.

During the CARPS programme, it emerged that some counties had absorbed some cadres of ESP staff especially the health workers and even YP instructors. However, other counties have not committed themselves on absorption. Instead, they are recruiting fresh staff to fill the huge gaps in YP training.

Although the financial allocation is available up to June 2015, the contracts for some of them are expiring in November 2014 and unless they are extended and or renewed there will be no basis for paying the staff.

Recommendations

At a meeting held on 2nd December 2014 involving the Council of Governors, Ministry of Education, Science and Technology (MOEST), Ministry of Devolution and Planning, Transition Authority (TA), the Directorate of Public Service Management, the County Public Service Forum and the Public Service Commission, the parties agreed on the following:

- That the county governments make arrangements to pay the permanent and pensionable YP staff totalling to 590 across the counties with effect from September 2014 and per Integrated Payroll & Personnel *Database* (IPPD) data forwarded by the MOEST since the budget for their personnel emolument was transferred to the counties as part of County Allocation of Revenue Act 2013 after verification of their details;
- That MOEST in consultation with PSC and the National Treasury extend the contracts for 1,274 instructors whose contracts expired in November 2014 up to 30th June, 2015 to bridge the shortfall of qualified teaching staff in youth polytechnics;
- That the county governments make budgetary provisions to absorb the ESP staff on permanent and pensionable terms in the next financial year on expiry of the ESP programme;
- That the MOEST expedite the payment of service gratuity for the 1,274 whose contracts have expired; and
- That the MOEST release to the counties funds for capitation for YP trainees and for instructors employed by YP Board of Governors as conditional grants to the counties.

2.3.6 Meeting of the Technical Committee on Establishment of the County Pension Scheme

The committee met on 18th November 2014 to deliberate on the Retirement Bill 2014 by the Senate and resolved that the Bill did not provide a comprehensive framework for addressing the unique needs of different categories of staff in the county governments. Further, it did not address the disparity in the rate of contribution that should be made by the employers against the employees. There was also no transitional clause to provide a mechanism for transfer of local government and national government staff to the new arrangement or for the closure of both funds;

The meeting recommended that the Senate adopts the report of the Technical Committee appointed by the Council of Governors and recommended that the committee proposes a Bill that will merge the two schemes and establish an umbrella scheme in line with its earlier recommendations.

The meeting further recommended that the Transition Authority, in consultation with relevant stakeholders, issue guidelines on how the staff will transit to the new scheme.

2.4 Facilitation and Coordination of Civic Education

Vide section 1 (g) in the Fourth Schedule of the Transition to Devolved Government Act 2012, the Transition Authority is mandated to facilitate civic education, to ensure civic education on devolution is commenced and coordinated. The CGA states that the purpose of civic education is to have an informed citizenry that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding and ownership of the Constitution.

During the period under review, the Authority continued with deepening processes. The progress made per output is provided here below.

2.4.1 Coordinating Civic Education

The Authority has continued to coordinate actors through its Civic Education Committee and provided leadership in the related activity implementation. The committee membership comprises Ministry of Devolution and Planning, Office of the Attorney General and Department of Justice, Uraia Trust, UNDP, Amkeni WaKenya, Commission for the Implementation of the Constitution and recently co-opted Council of Governors. Through the committee, reports from institutions on civic education activities are received and occasionally joint actions implemented.

2.4.2 Framework for Civic Education Developed

The Authority facilitated development of the Terms of Reference for the civic education framework through an inter-agency framework. The agencies who participated in the development include Ministry of Devolution and Planning, Office of the Attorney General and Department of Justice, Commission of the Implementation of the Constitution, Council of Governors, Uraia Trust, UNDP and Amkeni WaKenya. Given that a framework is a policy which is the role of the National Government, the Authority forwarded the TOR to the Ministry of Devolution and Planning in November 2014 for necessary action. The Ministry of Devolution and Planning is in the process of procuring and sourcing for a consultant to develop the framework.

2.4.3 Framework for Public Participation

The Authority undertook to advocate the development of public participation framework with the National Government. The Office of the Attorney General and Department of Justice started the process. The process was rather slow and no progress was noted during the period under review. Nonetheless, The Authority participated in the development of Public Participation Guidelines initiated by the Ministry of Devolution and Planning. The output of the workshop was a proposed structure on the guidelines for public participation where a small committee was selected to provide content. This will be followed with a validation workshop in January, 2015.

2.4.4 Curriculum for Civic Education and Training Manual

The Authority, Ministry Devolution and Planning, Council of Governor, Department of Justice and Uraia Trust in conjunction with the Kenya Institute of Curriculum Development (KICD) completed development of the Training Manual for the Civic Education Curriculum on Devolution and Public Participation. The draft curriculum has been shared with Commission for the Implementation of the Constitution (CIC) to ensure it complies with the letter and spirit of the Constitution. The curriculum has been revised to include CIC responses and is ready for publishing. To standardise the delivery of the curriculum, the Authority facilitated the development of a training manual with technical assistance from KICD. The manual has been subjected to stakeholder review, which included county governments, relevant National Government stakeholders and constitutional commissions and independent offices. The training manual is being updated to take into consideration the feedback received from the stakeholders.

2.4.5 Civic Education Commenced

The Authority used opportunistic events to deliver civic education to the public and other stakeholders. These included workshops and conferences and during county visits. During the design phase of Capacity Assessment and Rationalisation of Public Service programme, the Authority ran presenter mentions in Kenya Broadcasting Corporation radio asking public servants to turn up for the biometric human resource audit exercise.

2.4.6 Stakeholder Engagements

The Authority continued to engage with stakeholders in implementation of the civic education function. Key among them were the Council of Governors, which will support the TA in coordinating civic education activities, and Tangaza College, which organised a social Transformation conference discussing devolution where TA was among the panelists.

2.5 Challenges and Way forward

- Inadequate resource allocation for civic education has resulted in minimal activities being implemented by various stakeholders. Primary responsibility for civic education lies with the Ministry of Devolution and Planning, the Office of the Attorney General and Department of Justice and County Governments. Ultimate impact will be ignorant citizens who cannot not be able to exercise their sovereign power and hold leaders and institutions accountable. The national and county governments need to allocate more resources and give civic education a priority as part of their functions. TA on its part will continue to advocate for this and facilitate civic education activities within its mandate.
- Lack of national policy framework is affecting implementation and coordination of civic education. Ministry of Devolution and Planning and the Office of the Attorney General and Department of Justice need to fast-track development of the framework. County governments on their part should legislate on the institutional framework as provided by section 101 of County Government Act, 2012.

Projected activities

- Finalisation, printing and launching of civic education curriculum and training manual.
- Conduct pilot civic education training using the curriculum.
- Facilitate training of trainers for the curriculum.
- Roll out of civic education in the counties and nationally using various strategies including the mass media.
- Development of information, education and communication materials
- Advocating for development of national and county policy and legal framework for civic education

2.5 Planning Budgeting And Finance

The thematic area of Planning, Budgeting and Finance mandate in the Transition Authority includes undertaking an assessment and classification of urban areas and cities as required by Section 54 of the Urban Areas and Cities Act, 2011, assisting counties in establishing monitoring and evaluation systems and in identification and enhancement of revenue sources, including devolved funds and other previous Local Authority transfer funds in order to make or recommend more mechanisms for resource mobilisation and utilisation.

2.5.1 Classification of urban areas and cities

The draft amendments to the Urban Areas and Cities Act, 2011, were validated in a forum. The key objective of the forum was to get stakeholders endorsement of the proposed amendments and inputs, if any, before the amendments are finalised. Also, in line with the constitutional provisions on governance and decision-making process, the forum is an avenue to encourage all stakeholders to participate in the debate over the issues affecting them and the amendments to the Urban Areas and Cities Act, 2011 in one such area.

After the forum, comments from the stakeholders were further analysed by the technical committee and forwarded to the legislative drafter for incorporation into the Draft Bill.

The draft amendments to the *Urban Areas and Cities (Amendment) Bill, 2014* were forwarded to the Cabinet Secretary for the Ministry of Land, Housing and Urban Development for necessary action. The ministry acknowledged and even proposed further amendments including introducing a new amendment to create Urban Areas and Cities Fund (UACF) to finance urbanisation and urban development.

With support from the Civil Society Urban Development Programme, the Transition Authority organised a sensitisation workshop for all County Executive Committee Members responsible for urban development. In the process, the counties also sent their attorneys and legal advisers to the sensitisation meeting. The workshop was chaired by the chairman of the Committee of Governors for Urban Development and some of the committee.

Other participants included representatives of the Local Urban Forums from selected county governments, officers from the Ministry of Lands, Housing and Urban Development, Ministry of Devolution and Planning and State law Office.

Participants discussed and shared experiences and initiatives on urban governance and management with a particular focus on better understanding of the proposed amendments to the Urban Areas and Cities Act 2011. The workshop also served to bring into focus follow-up activities/issues that require joint and concerted effort such as:

- Improved processes of dialogue to facilitate awareness on the proposed amendments to the Urban Areas and Cities Act. This process should aim to engage with the national and county governments, Cabinet, public and all other constitutionally recognised structures responsible for urban development.
- Improved capacity building for better understanding of the science behind urban governance and management and increased attention on adaptation of policy by the primary stakeholders.
- Improved use and dissemination of evidence 'best practice' on the impacts of urban development interventions.
- The key objective of the workshop was therefore to sensitise the CECs on the proposed amendments to the Urban Areas and Cities Act, 2011 and the regulations to the Act.
- The draft amendments were also presented to the governors in a pre-Summit meeting.

2.5.2 Technical support

The harmonisation of the reports on the fiduciary mock review for the selected counties under the technical support and capacity building for fiscal decentralisation - the Institute of Certified Public Accountants Kenya report and the Kenya Governance Strategic Execution Support (KEGOSES) - was done.

2.5.3 Analysis of the fiduciary mock reviews report

The review focused on the critical areas of financial management and non- financial areas that have the potential of impairing financial management arrangements. They include (i) Strategic plan issues (ii) Planning and budgeting (iii) accounting systems (iv) transaction reviews (v) internal control (vi) effectiveness of management oversight functions (vii) institutional risk management framework (viii) social accountability structures (ix) staffing and capacity needs assessment (x) corruption prevention mechanisms (xi) funds flow arrangements (xii) procurement arrangements (xiii) financial reporting (xiv) external auditing and (xv) value for money considerations.

The fiduciary mock reviews were also to provide first-hand information on the current status of transition to devolved governments and further inform on the possible gaps and challenges that might require urgent intervention.

2.5.4 General findings/emerging issues from the fiduciary mock reviews

Accounting and Accountability

All the counties reviewed did not operate exchequer cash books or use the approved official and miscellaneous receipt books for collection and accounting for revenues. Most of the counties were operating through 'county imprest bank accounts' which circumvented the County Revenue Fund Accounts system. The Integrated Financial Management Information System (IFMIS) is partially rolled out in the counties (only cashbook and payable modules). A number of other critical modules such as budgeting, procurement, fixed assets, general ledger, payroll, debt management and tax/fiscal modules are not fully operational. As a result, IFMIS is yet to become a useful tool for county budgeting, accounting, procurement and financial reporting. There is need also to include project accounting and reporting module.

Donor-funded projects also lack a standard/effective computerised accounting, procurement and financial reporting package.

In some of the counties reviewed, there were cases of concealment of imprest advances which was done by raising payment vouchers rather than imprest warrants, unauthorised payments, unauthorised or unclear contract prices and variations, unauthorised overpayments to service suppliers and unsupported or inadequately supported payments.

Budgeting Coordination and Monitoring

The counties reviewed experience budget constraints including inadequate and untimely flow of funds. Procurement plans had not been prepared. This meant that annual budgets were not based on approved procurement plans and work plans for inclusion in the printed estimates. As a result, performance monitoring is difficult. There is also weak or inadequate performance monitoring and coordination of county activities as well as slow setting up of county departments and other administrative structures to guide the budgeting process.

Internal Control, Staffing and Oversight

There is chronic understaffing and high staff turnover, especially by those who were on secondment from the National Government. Due to high staff turnover and lack of sustainable staff training programmes there is limited knowledge of government disbursement/procurement procedures. The internal audit coverage is inadequate despite the existence of an internal audit function in all implementing county departments.

Procurement and Value for Money.

Many activities in the counties reviewed had issues related to non-compliance with procurement regulations; poor procurement documentation; non-competitive procurement through single sourcing; different procurement procedures for the same activity and material amounts in procurement of goods and services being done on cash basis.

Non-compliance with Timelines and Legislation

High incidences of non-compliance with timelines, existing legislation, regulations and guidelines were observed. These included: late submission of monthly and quarterly reports, audit reports, financial statements, payment of poorly supported expenditures, failure to prepare procurement plans and adhere to procurement regulations and guidelines.

Other Emerging Issues

Other issues noted include poor records management and filing systems and lack of coordination of information flow.

General Recommendations and Way Forward

- The National Treasury should fast-track the rollout of IFMIS, and ensure all modules are operational, including the budget, accounting, procurement, financial, and reporting modules and networking the counties to ensure smooth operation of the system.
- The County Treasuries should be restructured and their capacities enhanced or strengthened to conduct quality control reviews, establish performance monitoring units, develop an operations manual to define services standards and timelines for service delivery at every stage of the fund flow process;
- Implementation guidelines on institutional risk management policy framework (IRMPF) should be developed at the county level, including the strengthening of audit committee oversight functions, social accountability structures and appropriate anti-corruption safeguards;
- The National Treasury in consultation with the Ministry of Devolution and Planning should ensure that there is effective performance monitoring units in the counties,
- The internal audit should adopt risk-based approach and ensure adequate project coverage in their annual work plans. Also, internal audit should conduct - semi-annual 100% post payment vouching of all payment vouchers, periodical returns, and procurement contracts, and issue a report to accounting officers and audit committees within two months.

2.5.5 Policy Issues During the County Mock Audit

From the mock reviews, there was lack of, or delays in formulating, clear policies and legal frameworks for counties to develop strategic plans, work plans, procurement and cash flow plans. This has resulted

in poor execution of county mandates. Without key priorities, counties could not ensure the most effective use of resources. There is also lack of a synchronised policy between counties and the ministries of National Government on how and when to post and recall officers and assignment of responsibilities.

There was lack clear organisation structure and reporting levels leading to the officers developing their own reporting levels, resulting in poor reporting arrangements both for seconded and county staff. With a weak structure, there is conflict over who will perform the task and when it will get done. Conflict also arises when people seek to exert control within the organisation where they may not have the authority.

There is non-compliance with the use the approved official accountable and non-accountable standard documents like receipt books for collection and accounting for revenues, payment vouchers, cashbooks, vote-books, imprest warrants and registers as well as collection and continuity control sheets. In some instances the documents in use were not procured from the Government Printers, which is the institution mandated to print accountable documents. There were no continuity control measures in the serial numbering and accountability of receipt books.

Assets Management

From the reviews, there is failure to institute prudent asset management policies and programmes. Asset registers were not updated, assets were neither coded nor tagged and no officer was assigned the function to manage asset registers. Handing over records were not available.

Cash Management

From the reviews, there is failure to practice prudent cash management policies. Substantial cash were in imprest and held at hand. There is also the misconception that Government financial regulations and procedures and treasury instructions are not applicable at the counties.

From the reviews, there were substantial ineligible expenditures. This is further exacerbated by the fact counties had not put in place transparent mechanisms to receive, review, evaluate and process financial documents submitted from sub-units and sections, resulting in questioning the authenticity, validity and integrity of the documents submitted from sub-units and sections to account for expenditures and receipt. Payments are poorly supported; levels of authorisation were not clearly defined, for instance name of the checker, authoriser and approver.

The process of initiating, processing and executing payment in the Local authority integrated financial operations management system (LAIFOMSI) were inconsistent because there are cases where payment vouchers and warrants were authorised by one person and in some cases executed without appropriate supporting documents.

Regarding the legislature, the County Assembly lacked adequate staff in the accounts section. This was evidenced by lack of internal checks and balances within the system, thus resulting in inaccurate bank reconciliations statements and poor maintenance of the cashbook.

Planning

No county prepared procurement plans. The annual budgets were not based on approved annual procurement

plans and work plans for inclusion in the annual printed estimates. This makes performance monitoring difficult to achieve.

Sectoral plans, spatial plans, cities and urban areas plans were yet to be prepared

Accounting and Accountability Issues

- Poor keeping of cash books and vote books. In all the Counties, vote books and cash books are posted and balanced at the end of the month, instead of daily.
- The County Treasuries lacked the main cash books for the day-to-day operations.
- Bank reconciliation statements did not conform to the conventional format and generally accepted accounting principles.
- Cash book for revenue collections account that could be used for the purpose of reconciliation and debt management are not up-to-date.
- Substantial ineligible expenditures.
- Accounting Weaknesses

The counties reviewed lack comprehensive Chart of Accounts (CoA) to capture relevant details consistently, or deliberate avoidance to charge correct accounts. Payments were charged to wrong accounts. This would result in misreporting in the final accounts.

All counties reviewed did not operate exchequer cash books and deposits and withdrawals from the County Revenue Funds were neither recorded nor reconciled and reports were neither accurate nor reliable where counties without exchequer cash books produced periodical reports to the Controller.

Poor Administration and Management of Imprest

There is lack of enforcement of policies on imprests and advances resulting to issuance of imprests to persons who had not surrendered outstanding ones. Hence, there are cases of multiple holders of un-surrendered imprests contrary to the provisions of the Public Finance Management (PFM) Act 2012.

Procurement and Value for Money Issues

Many activities had serious procurement-related issues such as: (i) general non-compliance with procurement regulations (ii) poor procurement documentation (iii) non-competitive procurements through single-sourcing (iv) different procurement procedures within the same activity (v) material amounts in procurement of goods and services being done on cash basis (vi) long procurement procedures adversely affecting costs.

Other issues relate to:

- Procurement from non-tax complaints companies;
- Construction works without Bill of Quantities
- Unaccounted Fuel Expenditure
- Failure to prepare and follow procurement and cash flow plans to guide the processes of procuring goods and requisitioning funding in the most prudent, economical and efficient manner.

Internal Control, Staffing and Oversight

There is weak or non-existent internal oversight functions including audit and finance committees. County departments did not have audit and finance committees. This was contrary to the PFM Act, 2012.

Weak or Non-existent Social Accountability Structures and Anti-corruption Safeguards

It was found that financial Management Reports (FMRs) were not presented for review. It was, therefore, not possible to review and provide assurance on their accuracy and completeness. It was not possible to provide for public reporting on county financial management and procurement activities, complaints reporting and handling, social monitoring and social audit. Counties did not have public notice boards and hotlines for information and reporting by the public.

Internal audit coverage is inadequate or non-existent despite the existence of an internal audit function in all implementing county departments. Counties had only one internal auditor, which was below the recommended minimum number of five. This resulted to low coverage and impact of county-based internal audit.

The counties also lack corruption/fraud prevention policies and strategies, and suffer weak institutional capacity within to deal with irregularities, corruption and fraud. There is no integrity committee in place nor integrity officers appointed. Risk surveys have not been undertaken, no suggestion boxes in place, no hotline telephone number in place to report on corruption issues and no training programme has been conducted.

It was found that there is lack of coordination between procurement committees, procurement officers and the accounting units. There are cases of payments above quotation and minutes approving the amounts are in place. This has resulted in substantial losses for the counties.

ICT

There are delays in installing and computerising operations. Some of the counties continued to operate financial and accounting systems that resulted in delays in the production of accurate and timely financial reports. There is also risk of loss of financial and accounting data and information when computerisation is completed and hence continuity may not be assured.

Counties either chose LAIFORM (defunct local authority system) or IFMIS (National Government), which creates inconsistencies. LAIFORMS was incapable of producing summary financial reports, e.g. quarterly reports, imprest status report.

IFMIS, being an internet-based system, had frequent interruption problems, leading to lack of a standard/effective computerised accounting, procurement and financial reporting packages. Some counties operated the two systems concurrently.

Revenue Control Weaknesses

There is lack of control in printing, issuance and use of revenue receipt books. The source documents, i.e. receipt books and collection control sheets for control of revenue collection and accounting were missing. Analysis of revenue collection reflected declining revenue amounts.

2.5.7 Consultative Forum For Fiduciary Mock Review Findings

To implement the resolutions made during the meeting by both the national Treasury and the Transition Authority, the 10 counties that participated in the fiduciary mock reviews were invited to a one-day workshop. The objective of the workshop was to discuss the mock audit findings with the ten counties. It was also to provide a forum for the counties to share experiences on the progress made in operationalisation of the fiscal function and make recommendations for sustained capacity building to the relevant institutions.

2.6 Legal and Intergovernmental Relations

The Legal and Intergovernmental function in the TA supports all the other committees in the day-to-day running of their activities. The committee is charged with advising, overseeing and coordinating the legal and intergovernmental aspects of the organisation's mandate.

2.6.1 Review, Policy and Legal Legislation on Transition Issues

Privatisation of Public Entities in a Devolved System of Governance

The Privatisation Act makes provision for the privatisation of public assets and operations including state corporations. The Privatization Commission, as established under the Act, is mandated, *inter alia*, to formulate, manage and implement the privatisation programme as well as to make and implement specific proposals for privatisation.

The current privatisation regime does not conform to the devolved system of governance. The Transition Authority, therefore, brought this to the attention of the relevant stakeholders such as the National Treasury, the Head of Public Service and the Council of Governors.

The importance of beginning the process of amending the Privatisation Act to align it with the devolved system of government was underscored. In the interim, the Transition Authority urged the National Government to ensure that there is wide consultation to ensure that assets that are not 'public investments' are not privatised by the National Government.

Further, it was also noted that there are currently no laws, regulations or policy direction from the National Government to guide the County Governments on the process of privatising county assets. The National Government was, therefore, also urged to provide policy direction in this regard.

Development of a Legislative Guide for National and County Governments

Following the realisation that there is need to guide the County Governments on the legislative process, the Kenya Law Reform together with the Transition Authority and other stakeholders came together in December 2014 and formed an inter-agency committee to steer the process of developing the legislative guide.

The inter-agency team will be chaired by the Kenya Law Reform Commission while the Transition Authority will be the secretary to the inter-agency Steering Committee. The guide will ensure that both levels of government are informed of the proper processes to be followed while developing legislation.

Review of the County Pension Scheme Bill

TA was called upon by the Senate to make a presentation on the County Pension Scheme Bill, which is currently

on the floor of the House. The objects of the Bill include *inter-alia*, to provide a defined contribution scheme for county employees, state officers in the counties and self-employed persons and to provide for the management and administration of the scheme and the establishment of a Board of Trustees.

TA took the view that the Bill was not appropriately drafted as it did not take into account several vital issues such as the closure of the current pension schemes, the management of assets and liabilities of the current schemes and disparity in amount of contributions to be made by different categories of employees, among others.

In view of this, TA recommend that the Senate adopt the report of a technical committee that had been formed earlier in the year to look into matters of pensions and which was mandated to propose a Bill that will merge the two schemes and establish an umbrella scheme in line with its earlier recommendations.

Comments on the Devolution Policy

The Ministry of Devolution and Planning organised a stakeholder's forum to deliberate on the revised devolution policy. The Authority participated in this process by drafting and forwarding to the ministry a raft of amendments to the draft policy. These amendments were geared towards ensuring that devolution is implemented as envisaged under the Constitution. The review was important as it afforded TA an opportunity to address some of the challenges that it has experienced in implementing provisions of the Constitution and various devolution laws.

Engagement with Relevant Commissions, Senate and National Assembly

Engagement with the Judiciary on its role in facilitating a smooth transition to devolved government

The Transition Authority was called upon by the Judiciary to give its insights on implementing county powers and functions. The Transition Authority, through a speech to the judges and magistrates who convened at the Judicial Training Institute stated that:

- The Judiciary must remain at the forefront in defining and demanding the highest standards of good governance, transparency and ethical behaviour. The Judiciary can support devolution by interpreting new governance structures and processes under the devolved system and supporting the implementation of high standards of integrity and accountability.
- There are legislative gaps particularly in regard to legal and intergovernmental relations and the implementation of county powers and functions. For instance, while the law is very clear on designation of functions in the Fourth Schedule, issues are likely to arise in relation to shared or concurrent functions between the two levels of government, or even in the sharing of assets and liabilities.
- Other gaps exist in the Urban Areas and Cities Act 2011 whereby drafters should have made reference to the National Urban Development Policy. In addition, consideration should have been made on how to handle the issue of towns or municipalities shared by more than one county and metropolitan areas that transverse multiple jurisdictions.
- Other new emerging challenges keep cropping up. For instance, the Capacity Assessment and Rationalisation of Public Service (CARPS) programme hit headwinds through an industrial action. The recent court ruling by the Kisumu High Court, which stopped biometric registration of workers in six counties (Kisumu, Kakamega, Bungoma, Busia, Trans Nzoia and Migori) following a case filed by the Kenya County Government Workers' Union means that the nation-wide programme faces an uphill task in rationalising human resource at both levels of government.
- It is anticipated that there are further landmines that will require judicial intervention, particularly in the transfer of functions, and the accompanying assets and liabilities.
- TA urged the Judiciary to always exercise judicial authority while keeping in mind the principles of Article 159 of the Constitution to make rulings and judgments that protect and safeguard the devolved system of governance.

Engagement with the Ministry of Foreign Affairs on Foreign Travel and Fiscal Responsibility

The Transition Authority played a big role in the above conference, which took place because there is an increasing concern over uncoordinated, duplicated and overlapping of foreign travel by Kenyan delegations both at the national and county government levels. Furthermore, there have been no mechanisms to ensure that such visits and tours are optimised in terms of frequency, number of participants, integration at various levels and optimum value from the outcome.

Several foreign countries, which are popular for such visits/tours, have expressed reservations on accepting proposals for benchmarking visits from Kenya. Furthermore, the conduct of certain delegations and frequency of visits has earned Kenya a negative image and adverse publicity.

There is, therefore, an urgent need to address the challenges arising from the engagement by all levels of Government in dealing with foreign travel and strengthening fiscal responsibility for such visits.

The objective of the workshop was:

- To create opportunity for consultation between the national and county governments on the challenges emanating from foreign travel.
- To deliberate on the implications of foreign travel on fiscal responsibility.
- To deliberate on measures to regulate and coordinate foreign travel.
- To consider measures for value optimisation of foreign travel.

2.6.3 Advisories

Guidance on the International Trade Aspect in the Ownership of Sugar Mills

As Agriculture is a devolved function, the Ministry of Agriculture sought to transfer various Government-owned sugar mills to the county governments. The Transition Authority, however, provided guidance by advising the Ministry of Agriculture to consult further on this issue so as to ensure that Kenya as a Member of the COMESA Free Trade Area complies with its international obligations in relation to Government ownership of sugar mills. As international trade is a National Government function, it was important to ensure that any transfer of sugar mills is done in accordance with Kenya's obligations under international law.

Advice to Siaya County on the Operation of Siaya Agricultural Training Centre

The Transition Authority is mandated under the Transition to Devolved Government Act to ensure that any transfer of public assets during the transition period is done in accordance with the law. Following complaints from the public of alleged transfer of assets of the Siaya Agricultural Training Centre, the TA advised the County Government on the procedure to be followed in the event they wished to transfer any of the ATC assets.

The procedure for the transfer of public assets as provided for under the TDGA ensures that assets are secured during the process of inventorising the assets and liabilities of both levels of government.

2.6.4 Court Cases

The Authority has encountered court cases which were either initiated by others and on its own motion to ensure smooth transition. The cases are enumerated here below:

The CARPS Case

In the previous month, the Kenya County Government Workers Union filed a case in court challenging the legality

of the ongoing CARPS programme. The petitioner obtained conservatory orders staying the biometric exercise in six counties on grounds that, *inter-alia*, the mandate to carry out the biometric exercise resides with the County Public Service Board and not any committee established under the institutional framework governing the CARPS programme. This case was against the Ministry of Devolution and Planning, Office of the Attorney General and the county governments of Kisumu , Kakamega, Bungoma, Busia, Trans-Nzoia and their public service boards.

The matter came up for hearing on the 4th of November 2014 at the High Court in Kisumu during which time TA sought to be enjoined in the matter as an interested party. This decision was informed by the fact that the Transition to Devolved Governments Act Section 7 mandates the TA to rationalise the public service - a process which forms the key objective of the CARPs programme. TA was successfully enjoined in the case and has prepared court documents defending the process.

The Roads Case

The month of October also saw a new suit being filed in court by the Council of Governors against the Attorney General, the Ministry of Transport and other parties. This matter relates to the transfer of roads to counties and classifications of the said roads.

In the year 2013, TA gazzetted and transferred most of the functions under the fourth Schedule to the Constitution to the counties. However, the roads function was withheld because the Authority had reason to believe that the criteria set out under Section 24 of the TDGA had not been met by county governments. The county governments appealed this decision to the Senate, which determined the appeals and generated a report directing that the said roads be transferred.

As required by law, TA thereafter prepared a Gazette Notice to approve the transfer of the above-mentioned roads, which was submitted to the Attorney General's office for publishing. The National Assembly then wrote to the Attorney General's Office asking him to halt the gazettelement after to which the Attorney General complied and so it failed to proceed. This resulted in the institution of the suit.

Transition Authority sought to be enjoined in the matter and succeeded. On 22nd October 2014, it was directed by court that all parties to the suit seek to resolve the matter through an alternative dispute resolution mechanism as opposed to a judicial process. Pursuant to that order, parties held mediation meetings on two occasions. However, the meetings resulted in disagreement and therefore the matter has reverted to court for judicial determination. The Authority has played the role of an independent arbiter in this matter throughout the process with a view to ensuring that devolution is not disrupted and service delivery is not hampered.

The Salaries Case (SRC Vs TA)

The Authority initiated legal proceedings against the Salaries and Remuneration Commission. The case was necessitated by the directive by the Salaries and Remuneration Commission (SRC), which required the Authority to make reductions in the monthly salaries of its employees. The dispute resulted from a TA Board decision to adopt a salary structure which was guided by an advisory from the Ministry of State for Public Service as well as comparisons with similar independent offices due to the fact that the SRC had taken an inordinate amount of time in setting the salaries as required by law.

Belatedly, the SRC recommended a remuneration structure that was much lower than that contained in the employment contracts of the TA staff who by this time, had been in office for over one year and whose remuneration

was based on the structure approved by the TA Board. TA was aggrieved by this recommendation and sought the assistance of the courts in halting its implementation. The success of this suit is vital to the Authority as a reduction in salaries is likely to result in the institution of several industrial cases against TA by its employees and disruption of the work with negative effects on the process of transiting to devolved system of government.

2.7 Finance and Administration

The Finance and Administration Committee is an advisory body with no executive powers. Its broad function is to assist the Audit Committee and Transition Authority in ensuring that the Authority meets the highest standards of financial management and accountability in the use of its financial resources.

To achieve the above mandate, the committee put in place several measures during the period under review to ensure that the Authority's functions are facilitated. The progress made during the quarter is outlined below:

2.7.1 Budget Monitoring and Reporting

The implementation of the 2014/2015 financial year budget was monitored and evaluated. The TA's first half-year budget balance stood at Ksh16,732,022 and Ksh360,232,022 for the remaining half of the financial year. This implies that a total of Ksh327 million was spent towards achieving the Transition Authority mandate. This prudent management of the budget provision has been due to compliance to government austerity measures and institutional policy guidelines.

2.7.2 Evaluation of the Funds Transferred to the Counties for Infrastructure Development

The Transition Authority disbursed Ksh61 million to each county in the financial year 2013/2014. These resources were meant to be used by the county governments to set up offices and refurbish them. Overtime, the county governments have been accounting for the usage of these funds. A total of 11 counties have submitted their expenditure returns to TA; nine counties have partially accounted for the total amount and the remaining 27 counties have not accounted for funds transferred for infrastructural development.

To ascertain whether these funds were used for the intended purpose, the committee has planned for a physical verification of the projects undertaken in the next quarter. This activity is to be led by the Finance and Accounts department.

2.7.3 Procurement of goods and services

The Procurement Department ensured that goods and services required by the TA were timely procured and distributed within the organisation. The department also facilitated the thematic committees through timely procurement of conference facilities and professional services.

The department ensured adherence to the Public Procurement and Disposal Act, 2005, Public Procurement and Disposal Regulations, 2006 and other circulars for austerity measures from the National Treasury and the Ministry of Devolution and Planning.

3.0 Challenges

While we appreciate the progress we have made towards facilitating and coordinating the transition process, the Authority has been faced with a number of challenges as enumerated below:

3.1 Financial Constraints

During the 2012/2013 financial year, the Transition Authority was allocated a recurrent budget of Ksh758 million under vote 170. However, during the 2013/2014 financial year, the Authority was placed under the Ministry of Devolution and Planning and allocated a budget of Ksh660 million against a budget request of Ksh11.965 billion. Personnel emoluments over the period amounted to Ksh365 million, leaving only Ksh 295 million for operational expenses.

Under the **2014/2015 financial year**, TA requested for a total of Ksh4.24 billion in order to undertake all the planned activities as per the Transition to Devolved Government Act 2012. However, during the budget sector briefing, this amount was reviewed downwards as it could not be accommodated within the sector ceiling from the National Treasury for the transfers to semi-autonomous agencies under the Ministry of Devolution and Planning sub-sector which amounted to Ksh3.74 billion.

The sector, therefore, recommended that TA's budget request be revised to Ksh 1.64 billion to fit within the sector ceiling. However, TA was allocated only Ksh 300 million, but appealed to the National Assembly and this amount was raised by Ksh387 million to Ksh687 million under the printed estimates. This resulted in a deficit of Ksh953 million against the requested amount of Ksh 1.64 billion.

In addition, TA was not given an independent vote despite having made several requests on the same. Every quarter we are required to seek funds from the Ministry of Devolution and Planning. This process delays our programmes because of the bureaucracies involved.

We also faced bad reputation from our creditors and suppliers because when we process and make payments TA is not reflected as the one paying/being the source of the funds but the Devolution ministry. Therefore TA is NOT reflected as having paid our debtors.

The budget deficit is as analysed below

Year	Requested Budget Ksh (Millions)	Actual allocation Ksh (Millions)	Deficit Ksh (Millions)
2013/2013	Forming	758	
2013/2014	11,965	660	11,305
2014/2015	1,640	687	953

3.2 Audit of Assets and liabilities

The following are challenges TA faced in preparation of inventory, audit and transfer of public assets and liabilities:

- Resolving the aspects that have been warehoused before they are transferred to the correct entity to bear the responsibility or benefit thereof. Some of the warehoused issues include un-surveyed parcels of land that belonged to either level of government without ownership documents, actuarial deficits arising out of unremitted staff deductions to LAPTRUST etc that need to be resolved before the transfer or sharing is effected. This requires the use of expertise like forensic auditors; surveyors etc and require adequate funding.
- Costs associated with public participation on the developed mechanisms and criteria for transfer of assets and liabilities;
- Time that the TA is required to prepare and validate an inventory of all public assets and liabilities is also a challenge as is short considering there was time lost as the sixty (60) days work plan stagnated at the beginning of the financial year 2014/2015 due to late release of the exchequer and delays by MoDP in releasing TA funds due to internal reorganisation at the Ministry of Devolution and Planning;
- Slow response by some MDAs in submitting their inventories to TA even though the TA has continuously requested for this information (Appendix 13).
- Reluctance by some CEC members for Finance to take over the assets and liabilities from the former town clerks.

3.3 Nonexistence of Norms and Standards for Service Delivery

The delay in development and submission of service norms and standards by Government departments have affected service delivery as they are required for guiding optimal service delivery and staffing. As a result, the counties have haphazardly recruited against the provisions of Article 235 of the CoK, 2010.

3.4 Delays in Review of Policies and Legislative Frameworks

The National Government is expected by the Constitution to align all policies, legal frameworks and regulations to the new dispensation. The delay has affected the analysis and transfer of functions of human resource, pensions and staff benefits, classification of the urban areas and cities, and service delivery in general. In addition, lack of civic education and public participation framework has contributed to low citizen engagement.

3.5 Call for TA Disbandment

The call for the disbandment of the TA undermined the constitutional and legal mandate as well as image and authority of the TA. TA was denied resources, independence, information and collaboration and as a result transition process was derailed for one year.

3.6 Numerous Litigation and Judicial Proceedings

There have been numerous litigation attempts concerning the transfer of functions, assets and liabilities, human resources, and service delivery. The various court cases in the health and roads sector confirm this trend.

4.0 Way Forward

The following are some of the activities that TA is looking forward to undertake to achieve its mandate:

- Request for increased budgetary allocation to enable it to fulfill its mandate in relation to preparation of inventory, audit and transfer of public assets and liabilities as stipulated in the TDGA, 2012.
- The TA, together with Office of the Auditor-General, has formed teams that are expected to finalise the inventory of the defunct local authorities and then embark on MDAs where they will physically source for the data from the respective offices.
- TA is sensitizing CEC members for Finance in the counties to take over the assets. Some were reluctant based on misinformation, and they are currently being sensitised that taking over the assets and liabilities of the defunct local authorities doesn't mean that they are liable to paying the liabilities but, are holding the assets and liabilities in custody until they are verified, audited and transferred to the correct entity.
- TA requested for extension of time to come up with the inventory of assets and liabilities of the defunct local authorities to IBEC on or before December 31, 2014.
- TA to get independent experts/consortiums to audit the liabilities (including legal fees) owed by the defunct local authorities;
- TA to get certified actuaries or the Retirement Benefits Authority (RBA) to determine the actuarial deficits for LAPTRUST;
- TA to get to carry out public participation in the mechanism and criteria for transfer and/or sharing of assets and liabilities between the two levels of government as well the validated inventory of all public assets and liabilities.

5.0 Projected Activities for Next Quarter

During this phase, there are various activities that are scheduled to be undertaken and they include:

- Pilot audit programme for 13 counties planned for execution.
- Verification and transfer of assets and liabilities to the two levels of government.
- Rationalisation and deployment of staff between the two levels of government.
- Ensuring capacity building is undertaken in the two levels of government.
- Costing of all the government functions (both devolved and national government functions).
- Assessment and classification of urban areas and cities.
- Ensuring that civic education is sustained during the transition period.
- Facilitating resolution of transition-related conflicts amongst MDAs.

Conclusion

Despite the challenges posed by the call to disband TA via the proposed miscellaneous Bill, the Authority has accomplished substantive milestones and it is expected that the outputs of these activities will have a far-reaching impact especially on the management and operationalisation of the counties.

The Authority will continue to fast-track the establishment of administrative units, financial management systems, audit of human resources and implementation of devolved functions in the counties. Key activities such as audit of assets and liabilities and costing of functions will be prioritised.

TRANSITION AUTHORITY

Quarterly Report

October - December

2014

The Transition Authority

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