

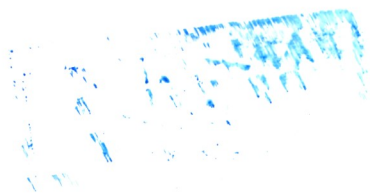


TRANSITION AUTHORITY

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Transition to Devolved System of Government in Kenya (2012-2016)

The End-Term Report





**Transition to Devolved System
of Government in Kenya
(2012-2016)**

The End-Term Report

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THE TRANSITION AUTHORITY
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FOREWORD

I feel privileged to present to Kenyans the Transition Authority End-Term Report, which reviews the transition period with emphasis on activities of the Transition Authority (TA) and resultant outputs. During the period July 2012 to March 2016, TA's priority areas included transfer of functions to the county governments, audit of human resources of the national government and the defunct local authorities and inventory, audit, verification and transfer of Assets and Liabilities to either level of Government.

In addition, other priority areas included assessment of the capacity needs of both national and county governments, co-ordinating and facilitating the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively, and advice on efficient and effective rationalization and deployment of human resource to either level of government.

The Transition Authority's functional activities are yet to have full impact on the Kenyan devolution process. Notwithstanding, there is need for the government and stakeholders to put up formidable preventive measures to safeguard the devolution gains. There are many outstanding achievements made within the three years of TA's existence. These include unbundling, analyzing and transferring all functions previously performed by defunct local authorities and all of the devolved functions as per the Fourth Schedule to the Constitution.

Early in 2013, the Authority sensitized public officers to ensure that provision of services were not interrupted. Subsequently, the Authority successfully prepared for and inaugurated 47 county governments. This was made possible through a mechanism for coordination of the transition process that involved the recruitment and deployment of Interim County Transition Teams to assist county governments in establishing prerequisite capacity, as well as identification of offices. These frontier teams constituted over 650 personnel with different skills, such as accounting, human resource management, security policy and general administration.

Similarly, TA prepared a mechanism for effective transfer of assets between the two levels of government, issued and implemented a moratorium on transfer of public assets to safeguard assets and liabilities during the transition period. The

Authority also compiled an interim unaudited inventory of assets and liabilities that was shared with the county governments. It also developed and disseminated advisories, guidelines, publications, regulations and standing orders to facilitate the operation of county governments.

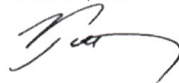
The overarching goal of Vision 2030 is to make Kenya a globally competitive nation with high quality of life for its citizens. It envisages that Kenya will be a newly industrialised nation. This will be achieved through human resource development, infrastructure and other developments within economic, social and political pillars.

In spite of all these milestones, critical aspect and key components of the TA mandate such as clarification of devolved functions, costing of service delivery, audit and transfer of public Assets and liabilities, are still outstanding. In addition, rationalization and deployment of human resource between the two levels of government is also critical in setting up efficient and effective public service.

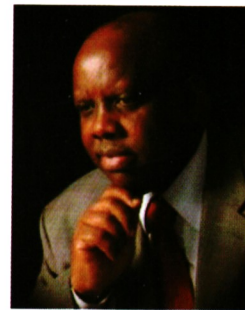
It is worthy noting that the two levels of government need an impartial umpire to midwife the devolution process. It is my hope and belief that TA work will continue being part of Kenya's devolution future.

Finally, I wish to thank the leadership of both levels of Government, the two houses of Parliament and all Kenyans for their support to TA. This enabled us to cover a lot of ground despite the challenges highlighted above.

Thank you.



**KINUTHIA WAMWANGI, EBS
CHAIRMAN
TRANSITION AUTHORITY**



ACKNOWLEDGEMENT

I wish to take this opportunity to thank all those who have, in one way or the other, contributed to the preparation of this Transition to Devolved System of Government, End Term Report. This report will inform the status of devolution up to the end of the transition period.

Much gratitude goes to the Chairman of the Transition Authority (TA), Mr. Kinuthia Wamwangi (EBS); the Members of the TA, Mrs. Angeline Hongo (MBS); Mr. Simeon Pkiyach, Mrs. Mary Ndeto (HSC), Mr. Bakari Omara, Ms. Safia Abdi, Mr. Erastus Rweria, (MBS) and Dr. Dabar Abdi Maalim.

We wish to thank the National Assembly, The Senate, The office of the Attorney General, The Ministries, Departments and Agencies, Commission on Revenue allocation, Public Service Commission, Salaries and Remuneration Commission, Council of Governors, and respective County Governments, the County Assembly Forum Commission on the Implementation of the Constitution, the civil society, United Nations Development Programme, and most importantly the people of the Republic of Kenya for supporting the implementation of Transition to the devolved system of government.

Much appreciation also goes to the Interim County Transition Team, County Transition Coordinators (CTCs), and the entire TA staff for their unwavering commitment in making the process of devolution a success.

Finally, I acknowledge the vital role played by the TA Technical Committee, together with the consultants from Borasoft Limited, in developing this report.

**STEPHEN K. MAKORI, OGW
CHIEF EXECUTIVE OFFICER
TRANSITION AUTHORITY**

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ACRONYMS AND ABBREVIATIONS

AMSs	Agricultural Mechanization Stations
AMIS	Asset Management Information System
ATCs	Agricultural Training Centers
CARPS	Capacity Assessment and Rationalization of the Public Service Programme
CASB	County Assembly Service Board
CBEF	County Budget and Economic Forums
CEC	County Executive Committee
CFSP	County Fiscal Strategy Paper
CGA	County Government Act 2012
CIC	Commission for the Implementation of Constitution
CIDPs	County Integrated Development Plans
COG	Council of Governors
CoK	Constitution of Kenya 2010
CPSBs	County Public Service Boards
CPST	Centre for Parliamentary Studies and Training
CRA	Commission on Revenue Allocation
CS	Cabinet Secretary
CTCs	County Transition Coordinators
EAC	East African Community
FACTs	Functional Analysis Competency Teams
FASTs	Functional Analysis Steering Teams
ICRS D	International Centre for Research in Sustainable Development
IFMIS	Integrated Financial Management Information System
IGRTC	Intergovernmental Relations Technical Committee
KICD	Kenya Institute of Curriculum Development
IPPD	Integrated Personnel Payroll Data
KEGOSES	Kenya Governance Strategic Execution Support
KEMSA	Kenya Medical Supplies Authority
KNICE-P	Kenya National Integrated Civic Education Program
KSG	Kenya School of Government
LAIFOM	Local Authority Integrated Financial Operations Managements System
LAs	Local Authorities
MCAs	Members of the County Assemblies
MDAs	Ministries Departments and Agencies
MTP	Medium Term Plan
OAG	Office of the Auditor General
OCOB	Office of the Controller of Budget
PFMA	Public Finance Management Act 2012
QRA	Quick Readness Assessment
SARAM	Services Availability and Readiness Assessment Mapping
SGC	Strathmore Governance Centre
SHOMAP	Small Holder Opportunity Markets Access Program
TA	Transition Authority
TDGA	Transition to Devolved Governments Act 2012
TIPs	Transition Implementation Plans
UACA	Urban Areas and Cities Act 2011
UACDF	Urban Areas and Cities Development Fund
UNDP	United Nations Development Programme

EXECUTIVE SUMMARY

Kenyans have gone through a lengthy process towards constitutional reforms. This culminated in a referendum on the 4th August 2010 where Kenyans exercised their sovereign right by overwhelmingly adopting a new constitution that carried with it fundamental changes in political, social and economic governance.

Key among the changes brought about by the new constitution was the decentralization and devolution of government. The letter and spirit of the devolved system is to promote service delivery and citizens' participation in governance decision at the lowest devolved unit, while minimizing perceptions of disenfranchisement as was formerly felt with a centralized system of government.

To realize these gains The Transition to Devolved Government Act No. 1 of 2012 was enacted, creating the Transition Authority (TA) under section 4, with the specific aim of providing a coordinated framework for the transition to devolved government in Kenya. The Act further delineated the functions of the Transition Authority and gave it the necessary powers to achieve its objectives.

To realize its mandate TA organised its operations into six broad areas namely; Functional Analysis, Transfer and Costing, Inventory & Audit of Assets and Liabilities of National & County Governments and Capacity Building and Assessment for the Devolved Structures. Others were; Planning, Budgeting and Finance, Civic Education on Transition and Stakeholder Participation and Regulations and Administrative Guidelines.

The achievements under Functional Analysis, Transfer and Costing included: development of framework for functional analysis and competency assignment. Outlining the principles guiding functional and competency assignment decisions, developed a mechanism for functions analysis (unbundling of functions). Furthermore, functional analysis and competency teams (FACTS) and functional analysis steering teams (FASTS) were created to support unbundling of functions. It also conducted analysis and transfer of county government functions and provided further clarification of transferred functions as provided for under the constitution

Under inventory and audit of assets and liabilities of national and county governments the achievements included; development of mechanism and criteria for transferring and/or sharing of assets and liabilities between the two levels of governments, development of regulations for the mechanism and criteria for transferring and sharing of assets and liabilities between the two levels of government. Other achievements included developing the guide for transfer and sharing for assets and liabilities of agricultural training centres and agricultural mechanization stations. Others were preparation and sharing of the unaudited inventory of the defunct local authorities with the national and county governments.

Further achievements were preparation of inventory of national government assets and liabilities, also installation of the assets management information system. Others were Gazettement of the technical committee on transfer of assets and liabilities and development of a planning framework

for management of assets and liabilities. Also conducted was the handing over/taking over exercise to safeguard public asset. Further, it issued advisories and publicized the moratorium on transfer of assets, developed procedures for disposal of boarded/surplus/obsolete government assets and partial transfer of public assets and liabilities.

Under capacity building and assessment for the devolved structures, achievements included: Successful inauguration and establishment of the county governments, development of transition mechanisms to coordinate inauguration of county governments and undertook various capacity building transformation initiatives. Others were: development of information, education and communication materials and undertaking a Quick Readiness Assessment (QRA). Other achievements were development of the National Capacity Building Framework and management of human resource during the transition period. Also achieved were engagement of stakeholders on establishment of a county pension scheme and transfer of staff as well as development of a mechanism for closure and transfer of public records.

Under planning, budgeting and finance the achievements included facilitation of development of budget for county governments for 2012/13 financial year, facilitation of preparation, publication and publicization of county profiles and capacity building in preparation of County Integrated Development Plans and spatial plans. Further achieved were facilitation of the development of county public finance management systems, capacity building of counties on planning and budgeting and mechanisms of county own revenue enhancement. Further achievements were: assessment and classification of urban areas and cities, amendments to the Act and Preparation of Urban Areas and Cities (Amendment) Bill and issuing advisory on establishment of management structures for urban areas and cities. Also achieved were giving advice on management of cross border towns, conducting research on status of reforms, projects and programmes and providing support to National Urban Development Policy (NUDP)

On civic education and public participation the achievements included: Establishment of Coordination mechanism for Civic Education, undertaking the Kenya National Civic Education Programme (KNICE-P), provision of co-ordination mechanism in the second phase of transition and development of civic education curricula and training manuals on devolution and public participation. Others were production and dissemination of civic education materials, development of civic education framework, compilation of civic education providers database and stakeholder engagement and coordination to facilitate civic education and public participation

Finally, under regulations and administrative guidelines key achievements included conducting analysis and proposing amendments to various laws touching on devolution, development of legal instruments, mechanisms and frameworks to facilitate TA at both levels of government to discharge their functions. Also achieved were capacity building on legal and intergovernmental as well as engaging in litigation on matters of transition.

In spite of all these milestones, critical aspect and key components of the TA mandate such as clarification of transferred functions, costing of service delivery, audit and transfer of public Assets and liabilities, are still outstanding. In addition, rationalization and deployment of human resource

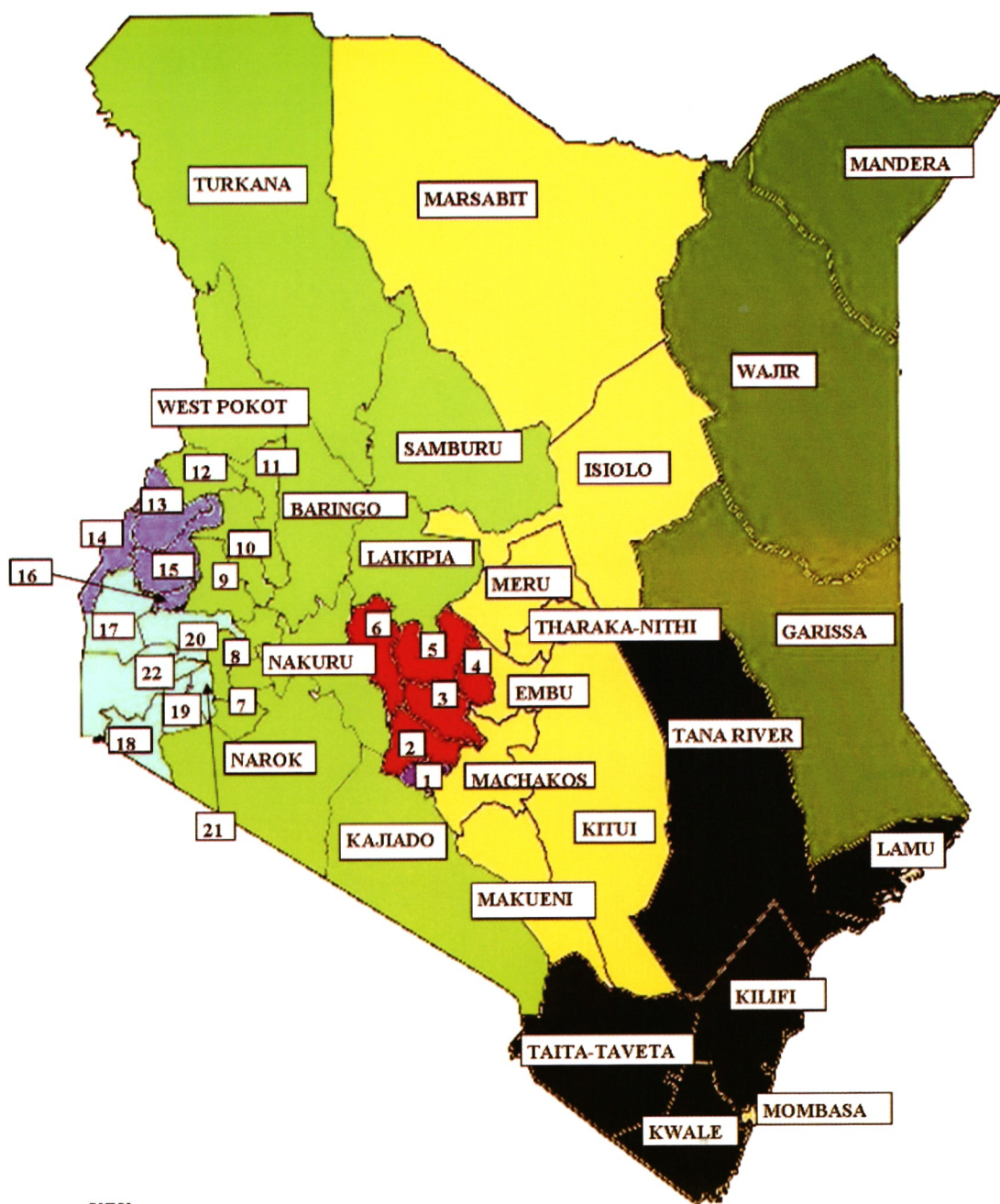
between the two levels of government is also critical in setting up efficient and effective public service. All the pending activities are enumerated under each thematic areas to ensure further follow up going forward. These issues need to be taken forward for Kenyans to realize the full gains of devolution.

During its existence the Transition Authority encountered both internal and external challenges which have constrained its mandate. These are outlined in this report. Furthermore the Authority has noted various emerging issues that were not foreseen at the inception of devolution. These affect the two levels of governments and their inter-relations as well as other extraneous issues. The challenges and emerging issues are enumerated under each thematic areas. A summary of broad challenges and emerging issues is also provided.

In view of the challenges and emerging issues, the report contains various recommendations under each thematic area. In summary 21, key recommendations are outlined at the end of the report. These touch on the legal framework to guide devolution going forward, recommendations on various human resource issues touching on devolution are also provided. Others are on further decentralisation of services, proper management of county finances and on pending issues regarding public assets and liabilities. Other key recommendations are on dealing with remaining issues of county functions, cities and urban areas management, policies on civic education and public participation as well as alignment of laws with the constitution in order to guide counties on policy formulation.

**PART I:
BACKGROUND**

MAP OF KENYA SHOWING COUNTIES



KEY

1. NAIROBI
2. KIAMBU
3. MURANG'A
4. KIRINYAGA
5. NYERI
6. NYANDARUA
7. BOMET

8. KERICHO
9. TRANS NZOIA
10. UASIN GISHU
11. ELGEYO-MARAKWET
12. NANDI
13. BUNGOMA
14. BUSIA

15. KAKAMEGA
16. VIHIGA
17. SIAYA
18. MIGORI
19. KISII
20. KISUMU
21. NYAMIRA

22. HOMA BAY

CHAPTER ONE: INTRODUCTION

1.1 Historical Background

Following the promulgation of the Constitution of Kenya on 27th August 2010, Kenya ushered in the most ambitious, complex and transformative initiative. It set out the roadmap for delivering the constitutional 'promise' of transferring power, responsibilities and resources and delivering a more devolved government that is closer and more responsive to the people. It marked the journey from a centralized to devolved system of governance hence the birth of national and 47 county governments. It also established a bicameral parliament and new judicial system.

At the centre of this transformation is the need to spur economic growth and to improve the quality of life for all Kenyans through adherence to democratic principles of good governance, respect for the rule of law, people participation in decision-making and delivery of quality services. The strength and performance of institutions as evident in good governance and respect for rule of law are the primary determinants of development.

As part of the implementation of the Constitution of Kenya (CoK) 2010, the government via Gazette Notice No 12876 of 25th October 2010 established the Taskforce on Devolved Government. The taskforce had the overall mandate of proposing implementation mechanisms for the devolved system of government as envisaged in the Constitution of Kenya, 2010.

Amongst other recommendations, the Task Force on Devolved Government recommended that a transition mechanism be established to work with, ministries, with the involvement of Commission on the Implementation of the Constitution (CIC), as provided by section 15 (2) (d) of the Sixth Schedule. The Task Force also developed the Sessional Paper on devolved government in Kenya, 2011 to provide for the policy framework through which devolution and transition was to be delivered.

A number of laws were subsequently enacted to operationalize the constitution and devolution. These included; The Public Finance Management Act (PFMA) 2012, County Governments Act (CGA) 2012, Urban Areas and Cities Act (UACA) 2011, The Intergovernmental Relations Act (IGRA), 2012 and The Transition to Devolved Governments Act (TDGA), 2012.

The Transition to Devolved Government Act No. 1 of 2012 established the Transition Authority (TA) under section 4, with the specific aim of providing a coordinated mechanism and framework for the transition to devolved government in Kenya. In addition, the objects and purpose of the TDGA, 2012 was to provide for a policy and legal mechanism for audit, verification and transfer to the national and county governments of assets and liabilities, human resources, pensions and other staff benefits of employees of the government and local authorities and any other connected matters. The objects of TDGA, 2012 also included ensuring closure and transfer of public records and further assess capacity building requirements of the national government and the county governments.

The Transition Authority was operationalized upon the issuance of the Gazette Notice Nos. 8281 and 8282 on 19th June 2012 for the appointment of the Chairman and Members, respectively. Subsequently they were sworn into office on 3rd July 2012. The Authority was required to carry out the activities

specified in respect of Phase One and Phase Two in the Fourth Schedule to the TDGA, 2012. The transition period was managed in two phases. Phase one spanning a period when the TDGA, 2012 was enacted to March 2013 and phase two began after the March 4th 2013 General Elections and ended in March 2016.

1.2 Mandate of Transition Authority

The Transition Authority (TA) is mandated by section 7 of the Transition to Devolved Government Act, 2012 (TDGA) to facilitate and coordinate the transition to a devolved system of government pursuant to Section 15 of the Sixth Schedule to the Constitution of Kenya 2010. Specifically, section 7(2) lists the functions as:

- i. Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule to the CoK 2010 to the National and County Governments;
- ii. Determine the resource requirements of each of the functions;
- iii. Develop a framework for the comprehensive and effective transfer of functions as provided under Section 15 of the Sixth Schedule to the CoK 2010;
- iv. Co-ordinate with the relevant state organ or public entity in order to:
 - a. Facilitate the development of the budget for County Governments during phase of the transition period;
 - b. Establish the status of the ongoing reform processes, development programs and projects and make recommendations on the coordinated management, reallocation or transfer to either level of government during the transition period;
- v. Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
- vi. Make recommendations for the effective management of assets of the national and county governments;
- vii. Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transition period;
- viii. Pursuant to section 15 (2)(b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from National to County governments, including; such criteria as may be necessary to guide the phased or asymmetric transfer of functions to county governments and the criteria to determine the transfer of previously shared assets, liabilities and staff of the government and the local authorities;
- ix. Carry out an audit of the existing human resource of the government and local authorities;
- x. Assess the capacity needs of the national and county governments;
- xi. Recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions;
- xii. Coordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- xiii. Advice on the effective and efficient rationalization and deployment of the human resources to either level of government;
- xiv. Submit monthly reports to the Commission for the Implementation of the Constitution and the Commission on Revenue allocation on the progress in the implementation of the devolved system of Government.
- xv. Perform any other function as may be assigned by national legislation in furtherance to sub-section 7(2).

Further mandate of Transition Authority provided under National Legislation;

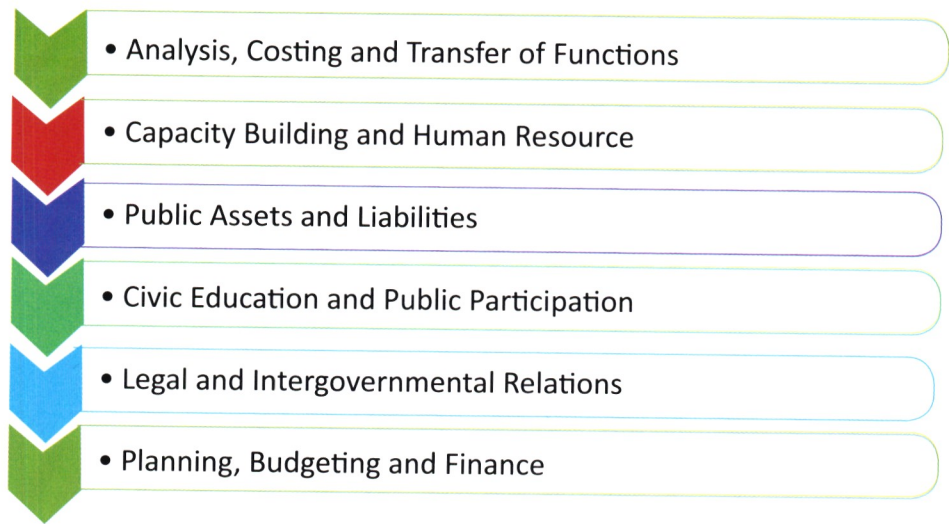
- i. Section 134 (2) of County Government Act 2012 provides that after the repeal of CAP 265, all issues that may arise as a consequence of the repeal shall be dealt with and discharged by the body responsible for matters relating to transition.

- ii. County Government Act 2012, section 138 (3) provides that TA in consultation with Public service Commission and relevant Ministries facilitate deployment, transfers and secondment of staff to the national and county governments.
- iii. Urban Areas and Cities Act section 54 (1) provides that Urban areas and cities to be assessed and classified during the Transition period.
- iv. Public Finance Management Act PFMA, 2012, Second Schedule section 13 provides that all issues that may arise on the repeal of CAP 265 that are related to PFMA, 2012 shall be dealt with and discharged by the body responsible for matters relating to Transition.

1.2.1 Thematic Areas

To execute its mandate TA organised its operations under the following thematic areas;

Figure 1: Transition Authority Thematic Areas



Source: Illustration by Authors



The promulgation of the Constitution of Kenya on 27th August 2010, marked the journey from a centralized to devolved system of governance

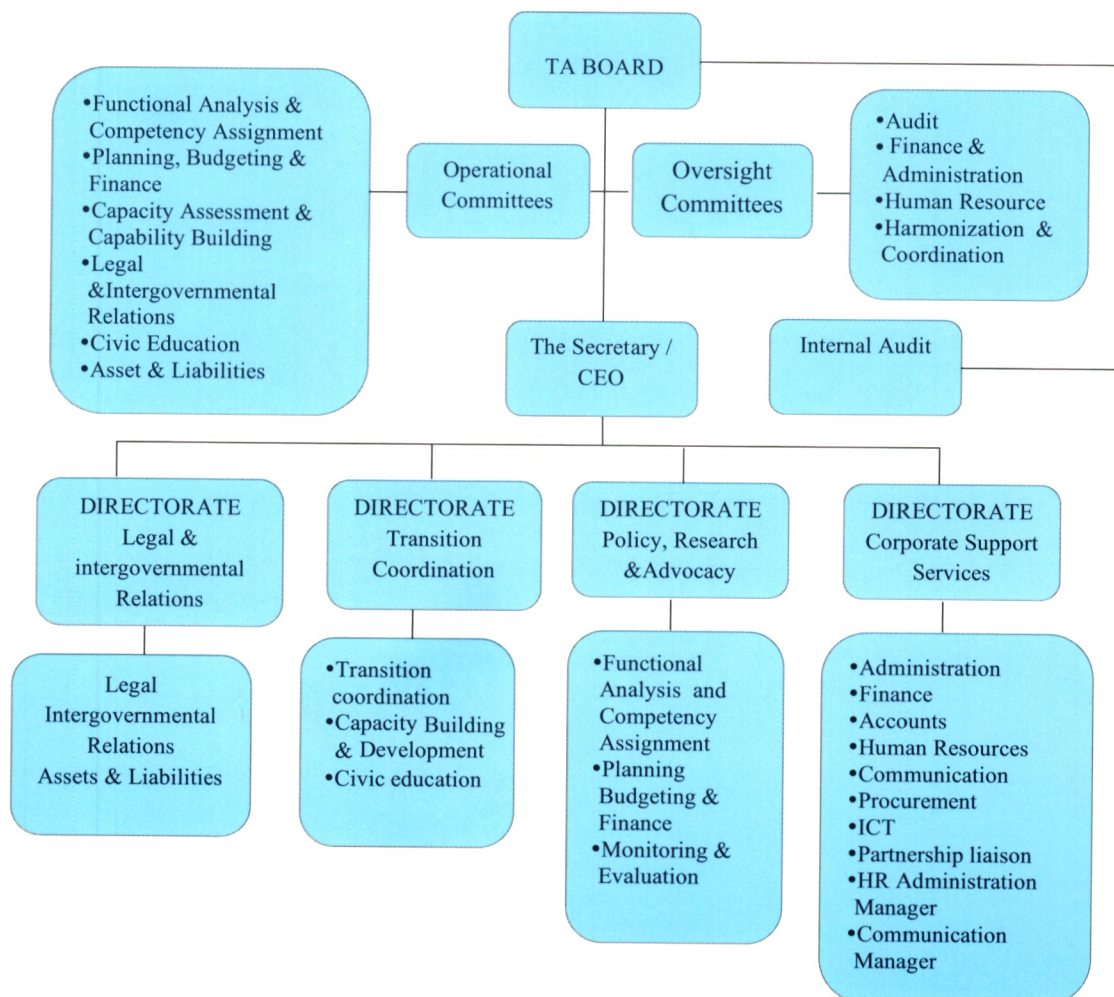
CHAPTER TWO: ESTABLISHMENT OF TRANSITION AUTHORITY

2.1 Introduction

Transition Authority was organized into operational and oversight committees all supported by the secretariat. The operational committees gave effect to Section 20 of the Transition to Devolved Government Act No. 1 of 2012. As provided for under the Act, these committees comprise members of the Authority together with co-opted members. This is to enhance participation in the transition process and it allows the Authority to leverage on expertise and other resources not present in the TA.

2.2 Structure of the Transition Authority

Figure 2: Management Structure of the Transition Authority



The TA Board consisted of a 17-member team. The Chairperson and eight other Members served on a fulltime basis, while six (6) others served on a part-time basis. These included the Principal Secretaries (Office of the President and Secretary to Cabinet, State Department responsible for matters relating to devolution and State Department responsible for the public service. Other members were State Department responsible for Finance, State Department responsible for Planning, State Department responsible for Justice and the Attorney-General) served on a part-time basis.

The board was organized in terms of operational committees namely:

2.3.1 Functional & Competency Analysis and Assignment Committee

The main mandate of the committee included the finalization, monitoring and evaluation of the functional & competency analysis and assignment process that is critical in ensuring clarity in the service delivery and resource allocation processes.

2.3.2 Planning, Budgeting and Finance Committee

The committee supported the process leading to the development of the County Integrated development plans and the county budgets, publication of the County Profiles, reviewing the planning and budgeting guidelines to ensure conformity with the Constitution of Kenya 2010 and review of the Urban Areas and Cities Act, 2011.

2.3.3 Capacity and Capability Development Committee

The committee was responsible for developing a rationalized and focused National Capacity and Capability Building Framework to support realization of effective devolved government. In consultation with relevant stakeholders, the committee was responsible for facilitating and co-ordinating capacity building of national and county government. Facilitate and co-ordinate audit of human resource of national Government in counties and local authorities.

2.3.4 Assets and Liabilities Committee

The committee was responsible for preparation and validation of inventory of all the existing assets and liabilities of government, other public entities and local authorities; making recommendations for the effective management of assets of the national and county governments; and providing mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period.

2.3.5 Civic Education Committee

The committee was responsible for initiating, facilitating and coordinating civic education on transition and devolution.

2.3.6 Legal and Intergovernmental Relations Committee

The Legal and Intergovernmental Relations Committee responsibilities included; advise, oversee and coordinate the intergovernmental work of the Transition Authority in legal matters, development of frameworks and regulations and advise the TA on all questions within its field of competence, taking due account of relevant transversal perspectives such as gender equality and issues of minorities.

2.3.7 Oversight committees

The oversight committees were for the general good governance of the resources availed to the TA and include Audit, Finance and Administration, Human Resources as well as harmonization Committees.

2.4 Transition Authority Secretariat

The secretariat was constituted as follows:

2.4.1 Secretary/CEO

The Secretary/CEO headed the secretariat of the TA. The secretariat was comprised of five Directorates namely: Legal & Intergovernmental Relations, Capacity and Capability Development and Transition Coordination Services, Policy & Research and Advocacy and Corporate Support Services.

The CEO was the Accounting Officer and was responsible for day to day administration of the Authority; Implementation of the decisions of the Authority; Forming and developing an efficient administration; Organizing, controlling and managing staff and maintaining accurate records on financial matters and resource use.

2.4.2 Directorate of Capacity and Capability Development and Transition Coordination Services

The directorate was responsible for providing a link between the transition teams and the Authority Headquarters; Coordinating transition activities in the Authority; Preparation and validation of inventory of all the existing assets and liabilities and making recommendations for their effective management and providing mechanisms for their transfer during the transition period.

It was also responsible for Liaising with the relevant agencies to ensure establishment of financial, human resources and procurement systems; Sensitizing public servants and the local authority staff to ensure uninterrupted service delivery and coordinating civic education, awareness creation and establishment of public participation forums

2.4.3 Directorate of Legal and Inter-Governmental Relations

The directorate was responsible for determining legal implications/impediments to implementation and developing appropriate legal and institutional framework for implementation of the Authority's mandate.

It was also responsible for advising the Authority on legal matters where the Authority may have sued or been sued; reviewing existing laws and regulations on service delivery and establishing gaps; and undertaking legal transactions, recovery, conveyance, agreements, leases and partnerships among others.

2.4.4 Directorate of Research, Policy and Advocacy

The directorate was responsible for developing comprehensive policy framework for research; policy analysis; providing accurate and credible data; developing an advocacy and communication plan; conducting investigations and inquiry on risk management areas; and monitoring and evaluating the implementation of various activities as well as performance measurement and impact assessment.

2.4.5 Directorate of Corporate Support Services

The directorate was providing responsible logistical support to the technical departments and units, ensuring prudent management and utilization of human, financial, and physical resources, oversaw provision of security services, managed assets and reported on the progress of all the activities of the Authority.

2.5 Corporate and Operational Policies and Manuals

TA was managed by various management instruments which included;

- i. TA Work Plan July 2012-June 2013
- ii. Strategic Plan (2012-2016)
- iii. Human Resource Manual
- iv. Customer Service Charter
- v. Communications Strategy
- vi. Various government circulars and policies

CHAPTER THREE: TRANSITION AUTHORITY FINANCIAL MANAGEMENT AND ADMINISTRATION



The Transition Authority administration was managed through three operational committees namely:

- i. Finance and Administration committee
- ii. Human Resource committee
- iii. Audit committee

3.1 Finance and Administration

3.1.1 Finance

The Finance and Administration was an operational support department which was responsible for the day to day operations of the Authority and reported to the Finance and Administration committee. It was headed by the Chief Executive Officer/Secretary who was the Accounting/Authorizing Officer of the Authority. The department was in charge of Administration, Finance and Accounts, Supply and Chain Management, Human Resource Management, ICT and records management

3.1.1.1 Budgetary Allocation (2012/2013 – 2015/2016)

During the period before elections, that is from 1st July 2012 to 31st December 2012, TA was operating under the Ministry of Local government and all expenditures were being accounted for by the Ministry. The Authority had been allocated Ksh 250 million while expenditure up to December 2012 amounted to Ksh 112,562,387. The balance of Ksh 137,437,613 was retained under the ministry.

From January 2013, TA was granted vote 170 with a budgetary allocation of Ksh 650 million under recurrent vote and Ksh 3.2 Billion under development vote. The Authority was allocated an additional Ksh 108 million under supplementary estimates hence total recurrent budget of Ksh 758 million. Total expenditure over the period was Ksh 756 million representing an absorption rate of 99.8%.

During the 2013/2014 financial year, the Authority was however placed under vote 103, Ministry of Devolution and Planning, and allocated a budget of Ksh. 555.8 million only, against a budget request

of Kshs 11.965 Billion. This underfunding seriously affected implementation of the Authority's planned activities.

The authority made several attempts to have the allocation increased by putting up requests for additional funding to Cabinet Secretary, National Treasury, Office of the Deputy President and Parliament. The TDGA 2012 section 28 (2) requires that Parliament shall allocate adequate funds to the Authority.

The Authority was however allocated additional funds of Ksh 104 million under the supplementary estimates hence increasing total approved recurrent budget to Ksh 659.8 million. Over the same period, total expenditure amounted to Kshs 659,732,296 representing absorption rate of 99.99%. The financial statements were audited by the office of the Auditor General where the Authority was issued with unqualified recurrent audit report (2013/2014)

Under the 2014/2015 financial year, The Authority was then placed under a new recurrent vote 1032, State Department of Devolution, Ministry of Devolution and Planning and allocated Ksh 300 million under the printed estimates against a budget request of Ksh 4.2 Billion. The allocation was however increased by the Parliamentary Budget Committee to Ksh 687 million. Expenditure over the period amounted to Ksh 686 million and hence an absorption rate of 99.7%

During the 2015/2016 financial year, the Authority was allocated a recurrent budget Kshs. 687 million against a budget request of Ksh 1.64 billion. The budget allocation was to cater for salaries and operational expenses including gratuity to TA members and staff after completion of their contracts in March 2016.

3.1.1.2 Development vote 170 ; funds disbursed to the counties for infrastructure development (2012/2013)

Section 7(k) and 7 (L) of TDGA 2012 mandated the authority to co-ordinate and facilitate the provision of support and assistance to National and County governments in building their capacity to govern and provide services effectively.

In order to realize the above mandate, during the 2012/2013 financial year, the Authority disbursed funds in form of AIEs totalling to Ksh. **296,737,000** to the 47 County Commissioners to facilitate the Assumption of Office of the Governors and Members of the County Assemblies. By March 2016, expenditures totalling to Ksh **290,589,833.90** had been accounted for leaving an outstanding balance of Ksh **6,147,167.10** **Annex 3.1** (*Status of Funds Disbursed by TA to County Commissioners as at March 2016*).

In addition a total of Ksh.2, 894,833,400 Million was disbursed to all the 47 County Governments, each receiving Ksh 61 Million, to develop initial county infrastructure and actual construction/ refurbishment and furnishing of non-residential office premises and purchase of the Hansard system for the County Assemblies. By March 2016, expenditures totalling to Ksh **1,900,005,211.20** had been accounted for leaving an outstanding balance of Ksh **994,828,188.80**

The Authority, in its effort to ensure that the outstanding balances were accounted for, wrote several demand letters and also through the print media, to the Counties directing them to account and make returns of the usage of the funds. **Annex 3.2** (*schedules of outstanding balances, demand letters, copy of print media*).

The Committee experienced the following challenges:

- i. Lack of operational independence as the Authority was placed as a department in the Ministry of Devolution and planning despite the fact that the Authority was supposed to serve both National and County Governments.
- ii. Inadequate financial support.
- iii. Non response by County Governments who had not accounted for the fund disbursed for initial county infrastructure development in 2013.

3.1.2 Administration

Transition Authority offices were situated along Haile Selassie Avenue at Extel-coms Building, on 8th, 5th, and 2nd floors with total coverage area of 20,000 sq feet in Nairobi City County.

During the Transition period, the Authority renovated and furnished the offices at Extel-coms Building, procured 17 motor vehicles, ICT equipment and other provisional support services to operationalize the TA mandate.

Within the transition period, the Authority continued to build various accountable documents to support its operations in the form of TA Asset registers, subject files, personnel files, procurement files, board and committee files, finance and accounts records.

Table 1: Transition Authority Motor Vehicles as at March 2016

S/NO.	MAKE	REG/ NO	CONDITION
1.	TOYOTA PRADO	GK B320D	Good
2.	TOYOTA PRADO	GK B321D	Good
3.	TOYOTA PRADO	GK B322D	Good
4.	TOYOTA PRADO	GK B323D	Good
5.	TOYOTA PRADO	GK B324D	Good
6.	TOYOTA PRADO	GK B325D	Good
7.	TOYOTA PRADO	GK B326D	Good
8.	TOYOTA PRADO	GK B327D	Good
9.	TOYOTA PRADO	GK B328D	Good
10.	TOYOTA PRADO	GK B329D	Good
11.	NISSAN ALMERA	GKB780D	Good
12.	NISSAN ALMERA	GKB788D	Good
13.	NISSAN ALMERA	GKB779D	Good
14.	NISSAN ALMERA	GKB774D	Good
15.	NISSAN ALMERA	GKB773D	Good
16.	NISSAN VAN ONE	GKB787D	Good
17.	NISSAN MINI BUS	GKB830D	Good

3.1.2.1 Motor vehicles allocated to the Counties

During the period, through the National Treasury, twenty three (23) vehicles were allocated to the 13 Counties on a temporary basis for use by the Governors until they acquired county vehicles. The National Treasury has since recalled the vehicles. However, only five counties have returned the vehicles as directed.

Table 2: Vehicles allocated to and received by counties

S/No.	County	Make	Reg. No.	STATUS
1.	Nyeri	Mercedece Benz E200	GK A421L	
2.	Nyeri	Toyota Avensis	GK A307H	
3.	Kisii	Mercedes Benz E200	GK A 411C	
4.	Kisii	Mitsubishi Pajero GLS	GK A 200L	
5.	Kirinyaga	Toyota Land Cruiser VX	GK A 615G	
6.	Kirinyaga	Nissan Land Cruiser VX	GK A 739G	
7.	Nyamira	Nissan Patrol	GK A 455L	
8.	Nyamira	Mercedes Benz E200	GK A 339E	
9.	Samburu	Nissan Patrol	GK A 398G	Returned
10.	Samburu	Mercedes Benz E200	GK A 457G	Returned
11.	Nakuru	Mercedes Benz E200	GK A600H	
12.	Nakuru	Nissan Patrol	GK A 347F	Returned

13.	Narok	Mercedes Benz E200	GK A501G	
14.	Bomet	Mercedes Benz E200	GK A921N	
15.	Bomet	Volvo S80	GK A921A	
16.	Bomet	Mercedes Benz E200	GK A503G	
17.	Siaya	Mercedes Benz E200	GK A502L	
18.	Siaya	Volvo S80	GK A533M	
19.	Machakos	Mercedes Benz E200	GK A545M	
20.	Machakos	Mercedes Benz E200	GK A123L	Returned
21.	Baringo	Mercedes Benz E200	GK A417D	
22.	Makueni	Mercedes Benz E200	GK A811B	
23.	Homabay	Mercedes Benz E200	GK A276G	Returned

3.2 Human Resource committee

The Human resource was managed through the Human Resource Committee on issues of recruitment, training, payroll management, discipline and staff welfare. The Authority staff establishment was 137 officers while the in-post were as follows:

Table 3: No. of Staff Working at Transition Authority

Type	Number
Contracted Staff	75
Deployed staff	53
Casual staff	6
Total	132

The officers were stationed at the TA Headquarters save for the 47 County Transition Co-ordinators who were deployed to the Counties.

3.2.1 Transition Human Resource County Support

During phase one of the transition period, the Authority posted interim county transitions team of 600 officers of various cadres to establish management structures and operationalize the counties.

The interim teams were deployed on February, 2013 and their term ended on September 2013. The County Interim Teams comprised of the following :

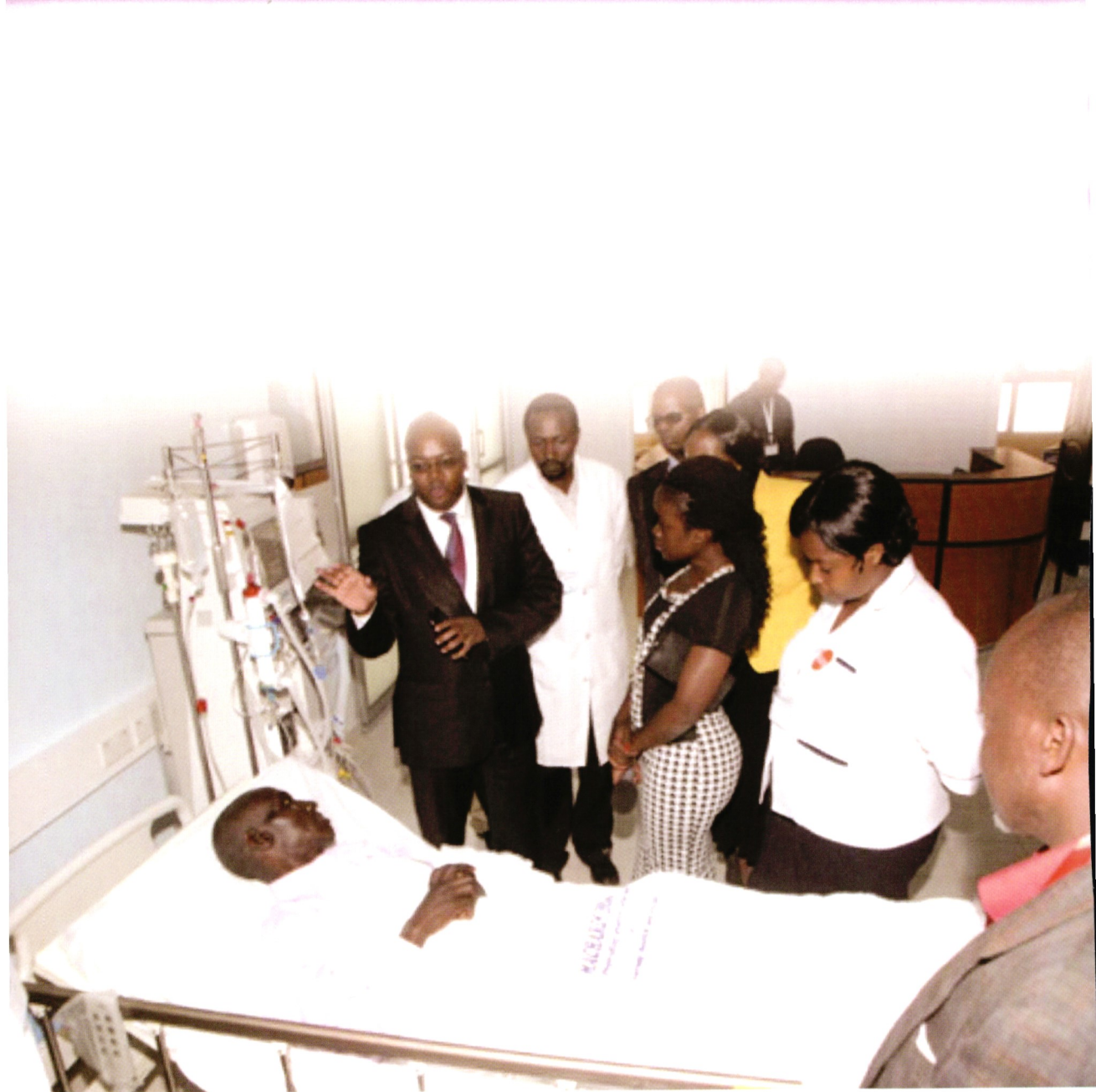
- i. County Secretary,
- ii. Clerk of County Assembly,
- iii. County Head of Human Resource Management,
- iv. Human Resource/Payroll Manager,
- v. County Information Communication Technology Manager,
- vi. County Chief Officer(Finance),
- vii. Head Of County Treasury(Accounting),
- viii. Head of County Internal Audit,
- ix. Head Of County Supply Chain Management,
- x. Sergeant-At-Arms,
- xi. Editor of Hansard,
- xii. Deputy County Assembly Clerk

The 47 County Governments and County Assemblies have to date constituted their County Public Service Boards and County Assembly Service Boards that are all operational.

3.3 The Audit Committee

The audit committee was responsible for prudent management of funds. The committee's role was to advise the Accounting officer on best internal control systems and practices.

PART II:
STATUS OF TRANSITION
TO DEVOLVED SYSTEM OF
GOVERNMENT



File Photo

The Director of Medical Services, Dr. Nicholas Muraguri talks to a renal patient at Machakos Level Five Hospital on May, 27th, 2015 prior to the launch of Managed Equipment Services by H.E President Uhuru Kenyatta.

Health is one of the devolved functions.

CHAPTER FOUR: ANALYSIS, COSTING AND TRANSFER OF FUNCTIONS

4.1 Introduction

Section 7 (1) of the Transition to Devolved Government Act, No. 1 of 2012 generally mandates the Authority to “*facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the Constitution*”. Specifically the functions of the Transition Authority are enumerated under section 7(2) (a, b, c) which include; to

- i. Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule to the Constitution to the national and county governments;
- ii. Determine the resource requirements for each of the functions;
- iii. Develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule

The Constitution has distributed the functions of government between the National Government and County Governments¹ in the Fourth Schedule. These functions can be categorized either as

- i. *Exclusive* where their performance is restricted entirely to the assigned level of government, or
- ii. *Concurrent* where both levels of government share in their performance or carry them out simultaneously
- iii. The third category relates to *residual functions* which are roles, duties or activities that are not expressly assigned to any one level of government by the constitution and are/can be assumed to remain with the level of government that was responsible for their performance prior to the enactment of the new constitution.

Generally, the functions of the two levels of Government suggest that the National Government is responsible for macroeconomic management of the national economy, national policy formulation, regulation, setting of national standards, monitoring and evaluation whilst the County Governments will be the ones in charge of service delivery and implementation of projects at the county level.

Article 187 (1) provides that a function or power of government at one level may be transferred to a government at the other level by agreement between the governments if a) the function or power would be more effectively performed or exercised by the receiving government; and b) the transfer of the function is not prohibited by the legislation under which it is performed or exercised.

Article 187 (2) also provides that if a function or power is transferred from a government at one level to a government at the other level then a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred in line with the ‘*finance follows functions*’ principle. This, as per Article (187) (2) (b), is to be done on the understanding that the constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.

Article 189 of the constitution also provides that Government at either level shall perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity

¹ Functional assignment can also be viewed as denoting the sharing of power between the national and devolved governments.

of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of the county government, within the county level. Government at each level, and different governments at the county level, shall cooperate in the performance of the functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

4.2 Objectives

The devolved system of governance is about achieving improved public service delivery and ensuring accountability in the processes. Therefore, realization of developmental devolved government in a manner that supports the overall objectives of the Constitution of Kenya, 2010 will require efforts aimed at strengthening those in existence and building new institutions.

This process required a clear and transparent effort to assign as well as clarify functions, competencies and responsibilities to the two levels of government. The specific objectives in respect of service delivery based on the functional assignment were as follows:

- i. To achieve clarity in the functional assignment through unbundling/clarifying them and assigning competencies between the national and county governments;
- ii. To determine the service level gaps in respect of each competency;
- iii. To determine the expected performance level;
- iv. To allocate funds to levels of government according to their service delivery mandates;
- v. To identify capacity and capability constraints;
- vi. To develop a short, medium to long term capacity building programme; and,
- vii. To review the organization of national government to reflect the assignment of functions under the CoK 2010

4.3 Activities Planned

- i. Facilitating the analysis and the phased transfer of the functions provided under the Fourth Schedule to the Constitution to the national and county governments
- ii. Determining the resource requirements for each of the functions
- iii. Developing a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule
- iv. Providing guidelines for development of Transition Implementation Plans to all Ministries, Departments, Agencies and County Governments
- v. Providing Strategic Interventions on Emerging Challenges Following the Transfer of Functions

4.4 Activities Achieved

4.4.1 Framework for Functional Analysis, Competency Assignment and Transfer

4.4.1.1 Framework for Functional analysis and Competency Assignment

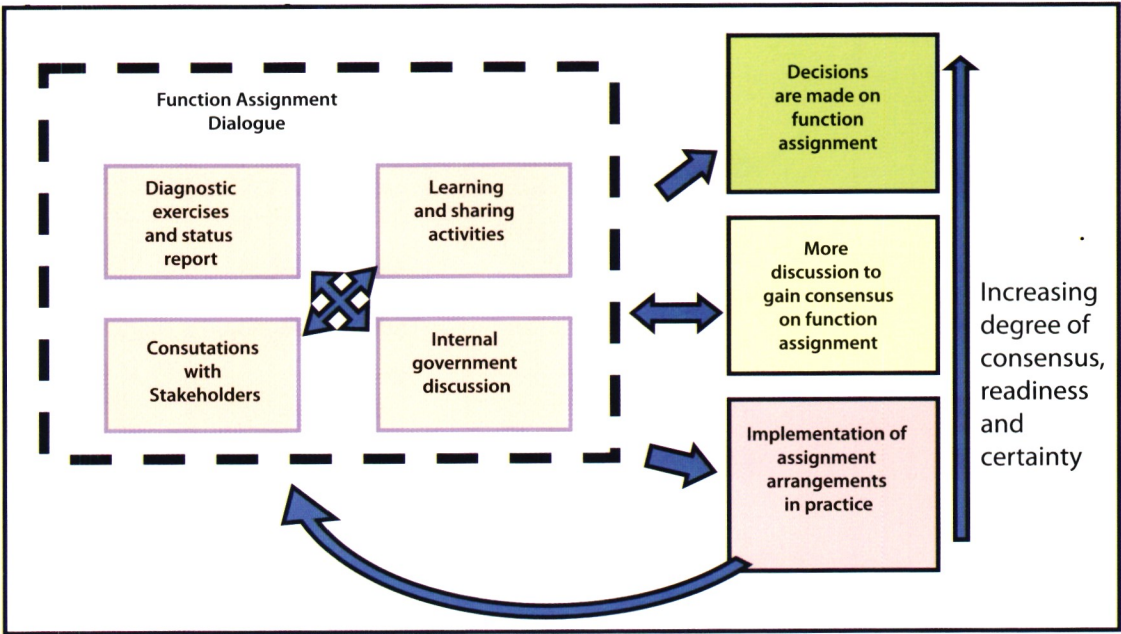
TA developed a comprehensive framework for analysis and transfer of functions. This was developed consultatively with all stakeholders (which included Line Ministries, Departments and Agencies, the Tenth Parliament, CIC, CRA and Civic Societies among others) The Framework was meant to facilitate harmonized processes and outputs.

It was based on international best practices. It included a criterion for functional analysis and competency assignment, the process of undertaking the tasks - the structures for gathering information

and decision making, costing of functions, development of sectoral policies, development of norms and standards for each sector as well as guidelines for development of transition implementation plans.

Apart from the legal and Constitutional provisions regarding this issue, a lot of *consultations and consensus* building was necessary for effective and efficient unbundling, analysis and transfer process. Towards this end, the Transition Authority held numerous consultative meetings with various stakeholders across every sector of the Kenyan Community (as demonstrated in Figures 1 and 2 below) in order to come up with a framework for functional analysis, competency assignment.

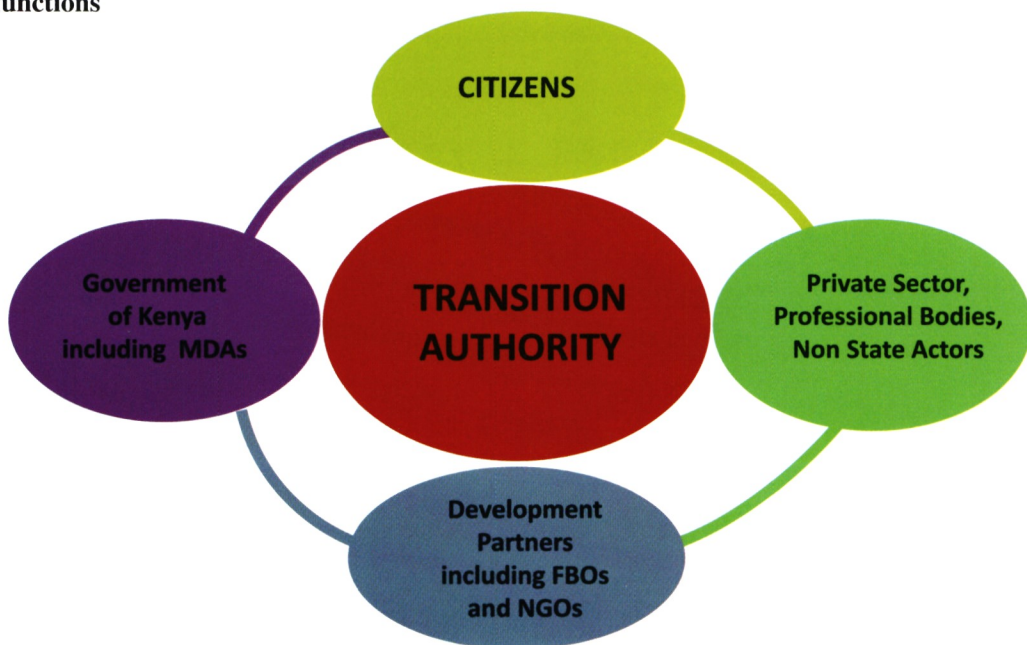
Figure 4: Functional unbundling and analysis process



As shown in figure one above, the functional analysis process is not a onetime off process but it is continuous and with respect to set constitutional timelines. In the Kenyan case, full analysis and transfer has been pegged to three years after the general elections under the new constitution. The Transition Authority has been engaging in various consultations, internal government discussions with MDAs, Donors and Civil Society Organizations with a bid of reaching consensus and effecting a smooth unbundling and analysis positions.

TA was at the fulcrum of all the stakeholders involved in the process. This is shown in **Figure 5**.

Figure 5: stakeholders' participation processes in functional analysis, costing and transfer of functions



As shown above, TA coordinated all the relevant stakeholders in the functional unbundling and analysis process. This was done by facilitating, coordinating, calling stakeholders forums, technical working sessions among other fora.

4.4.2 Principles Guiding Functional and Competency Assignment Decisions

The Transition Authority in determining the functional analysis and competency assignment used experiences drawn from other countries. Of great significance was the application of key principles to guide in competency/functional analysis. We followed the principles that were recommended by the report of the taskforce on devolved government (Taskforce on Devolved Government Report, 2011) prepared under the Ministry of local government in 2011. Below are of the key principles that helped to guide the process:

4.4.2.1 Constitutionality

This principle calls for the adherence to the Constitution in determining the competency assignment to any level of government. In Kenyan situation it's always important to refer to the Fourth Schedule to the CoK 2010 and confirm where it has been clearly assigned in the 4th Schedule.

4.4.2.2 Principle of Subsidiarity

The main economic benefits of decentralization arise from citizens having a greater influence over decisions affecting the services they receive. This concept is reflected in the principle of subsidiarity i.e., that a public service function should be assigned to the lowest level of government that is capable of delivering the service

This principle is at least implied in Articles 174 – 200 of the Constitution, which pertain to the creation of county government and the objects of devolution. Specifically, Article 174 includes the objective of giving the power of self-government to the people and enhancing their participation in making decisions (clause c) and recognizing the right of communities to manage their own affairs (clause d). Furthermore, Article 176(b) states that county governments should decentralize their functions and service delivery to the extent that it is efficient and practicable.

4.4.2.3 Transferability of Functions

The second principle is that of “transferability of functions”. The CoK 2010 recognizes the concept of transferability of functions from one level of government to another. It is recognized that there is no permanency in the assignment of functions. Article 187(1) of the constitution recognizes this principle and provides for transfer of functions.

It notes that a function or power of government of one level of government may be transferred to another level of government by agreement between the two levels of government. Such transfer would be necessary first, if the function or power would be more effectively performed or exercised by the level to which it is being transferred; and second, if the transfer of the function or power is not prohibited by the legislation under which it is assigned by the fourth schedule.

Consequently, it is possible to have one level of government transfer some of its functions to another level of government. Such transfer is not done by the constitution but by the agreement of the different levels of government. The transfer could be by agreement or by national legislation. Sometimes the legislation transferring the functions may be preceded by an agreement.

It is important to note that any agreement transferring a function can be cancelled and the responsibility for the function returned to the level of government to which the function or power is constitutionally assigned. This would be in line with article 187(2)(b) which provides that if a function or power is transferred from one level of government to another level, constitutional responsibility for the performance of the function or exercise of the power remains with the level of government to which the function is assigned by the constitution.

An important element of transferability of functions is the need to ensure that functions are not transferred without resources. Since resources follow responsibilities, any transfer of responsibilities must be accompanied by the resources necessary to perform the functions. In line with article 187(2) (a) any transfer of a function or power from one level of government to another level of government must ensure that the resources necessary for the performance of the function or exercise of the power are transferred to the level of government to which the function is being transferred. This is a consideration to take into account to avoid the possibility of one level of government undermining the ability of the other to operate by simply transferring to it functions without the accompanying resources.

4.4.2.4 Alignment of Capital and Recurrent Expenditures

In situations where one level of government is responsible for capital functions (for example, the construction of new health facilities) but another is responsible for recurrent functions, the mismatch can undermine service delivery. In general, it is undesirable if one level of government is able to create a liability that another level bears responsibility for.

In Kenya, operationalization of the Development Funds starkly illustrates the failure to observe this principle. Some of the funds support the construction of facilities, which then have to be provided with operational funding out of the limited recurrent budget of a national ministry. Sub-national governments may lack the capacity to manage large and complex construction projects. These limitations do not necessarily need to be addressed by retaining responsibility at the national level, but capital funding may be provided in the transfers to county governments.

4.4.2.5 Policy Formulation, Regulation, Standard vis-a-vis Implementation

The fourth principle draws a distinction between policy and standardization functions on the one hand, and implementation functions on the other. In an approach that follows this principle, the national level of government is assigned and performs the functions of formulating policy and setting national standards; while the sub-national level and any other lower levels of government are assigned and perform mainly implementation functions.

In such systems, more legislation is done at and by the national level of government while the sub-national level deals with the implementation of the legislations. Ordinarily, the legislations are done in very broad terms leaving room for each of the sub-national constituent units to be unique and different when filling in details and elaborating the legislations.

4.4.2.6 Principle of Proportionality

This principle largely requires that a level of government is allowed only to take action to the extent that is necessary to achieve the stated objectives. Article 190(3) provides that Parliament shall enact legislation that will allow national government to intervene to ensure county governments perform their functions. In 190(4), it details that the steps for achieving this, including possible takeover by national government for performance of those functions.

However, in Article 190(5), the provisions suggest some level of measured intervention through a requirement that a notice be issued to the defaulting county government and allows the national government to take only those measures that are necessary. It further provides that a process be defined by which the Senate would bring such an intervention to an end.

4.4.2.7 Economies of Scale

The seventh principle is the Economies of Scale. This is where there are savings to be realized in having a larger unit deliver the service. In the Kenyan context, the supply of essential medicines and supply by Kenya Medical Supplies Authority (KEMSA) is a good example. It is envisaged that KEMSA will in addition to ensuring security and standards will also save money if drugs and other essential medical supplies were purchased from a single source.

4.4.2.8 Spillovers:

The eighth principle is that of spillovers. This is where a particular service provides benefits or costs in more than one county. A good example is a function provided by Regional Development bodies which cuts across several counties and Level 5 and Four Hospitals

4.4.3 Mechanism for Functions Analysis (Unbundling of Functions)

According to the World Bank on Devolution without disruptions (2012), the unbundling (clarifying of functions) is an approach which is generally followed by many countries that rely either on a constitution or organic law to assign functions to local governments. However, most countries also find that broad-based functional assignment similar to the Fourth Schedule in the Kenya Constitution is insufficient for defining responsibility for the delivery of services among different levels of government.

Rather than assigning, for example, primary education to the lowest level of government, in practice, only certain components or service delivery functions are assigned. Therefore, another principle of functional assignment is to “unbundle” or clarify functions within sectors. This is particularly important if the constitution or organic law does not define specifically what activities are contained in an assigned function.

The World Bank (WB) report (2012) indicates the existence of at least three dimensions to “unbundling” functions. Firstly, is to recognize that functions in most sectors include a variety of specific tasks, sometimes involving multiple ministries. Each functional activity associated with a sector should be identified and analyzed.

Secondly, delivering a service involves a number of decisions, including how the service is to be planned, financed (e.g., from fees or general revenues), produced (e.g., public or private sector), and managed. Some of these tasks may be reserved for the national government whereas others may be devolved to a lower level of government.

Thirdly, unbundling of functions involves decisions regarding which level of government is responsible for allocating funds to a service, i.e., budgeting, along with being responsible for “producing” the service. Production decisions include responsibility over labor and non-labor inputs, overseeing and maintaining facilities, and constructing or reconstructing facilities. In sum, there is a wide array of combinations possible in the assignment process.

4.4.4 Creation of Functional Analysis and Competency Teams (FACTs) and Functional Analysis Steering Teams (FASTs) to Support Unbundling of Functions

As part of the framework for unbundling functions and creating room for stakeholder (public) participation, the TA provided guidelines to all the MDAs to create expert teams at each MDA referred to as “Functional Assignment Competency Teams (FACTs)”.

The Creation of Functional Assignment and Competency Teams (FACTs) at Ministerial, Departmental and Agency level was to carry out the detailed tasks of functional analysis, assignment and costing. The other roles and membership of these teams are shown below:

- i. Unbundling and definition of Functions
- ii. Facilitating development and review of policy papers on functional assignment.
- iii. Developing of the Transition Implementation Plans (TIPs)
- iv. Identification of preparatory work for transfer of functions
- v. Estimation of the tentative cost to deliver the functions (among others)

The membership of the FACTs included; Line ministries (technical staff, economists, finance officers, legal officers), Private sector, Non state actors, Development Partners. At the same time, the Transition Authority created another steering team drawn from various Stakeholders whose sole responsibility among others was to create a forum for validation of the FACT reports.

Membership of the FACT included: Transition Authority – Chair and convener, Principal Secretaries or representatives from the sectors (with emphasis on decision making capacity). Others were Chairperson of CIC or representative, Chairperson of CRA or representative, Representatives from the CSO and Private sector, Representatives of the Council of Governors.

4.4.5 Analysis and Transfer of County Government Functions (Part Two (2) Of the Fourth Schedule)

4.4.5.1 Phased Transfer of Functions

The transfer was done in phases as follows;

Phase One: Transfer of Functions

Section 23 of the TDGA 2012 requires TA to identify and gazette initial functions for transfer thirty (30) days before 4th March 2013 General Elections. The Authority identified the functions for initial transfer to the County Governments. These functions were largely those that were formerly being performed by the defunct Local Authorities. These functions did not require a lot of new infrastructure, structures and mechanisms to deliver services to the public. This transfer was effected through Legal Notice 16 dated 1st February, 2013.

Phase Two: Transfer of Functions

The second phase of functions transfer was on 9th August 2013. This was done vide Legal Notices no 137-183. A large percentage of the devolved functions hitherto performed by the provinces and districts were transferred during this phase. Despite the numerous challenges and political pressure to transfer all functions, the Authority was able to delay the transfer of a number of functions that were deemed not ready for transfer.

Notably, the management of Agricultural Training Centers and Agricultural Mechanization Stations as well as the Personnel Emoluments for all the functions were delayed for six months. Other functions that were delayed include the roads function pending agreement on classification, the mechanical and transport equipment functions, and electricity and gas reticulation and energy regulation among others. The National Government continued performing these functions on behalf of the County Governments as efforts to provide the necessary capacity continued.

Phase Three: Transfer of Functions

These entailed transfer of the management of Agricultural Training Centers (ATCs) and Agricultural Mechanization Stations (AMSs) under the agricultural sector. This followed development of Mechanisms for sharing of the ATCs and AMSs by the TA and agreements reached by the two levels of government on the governance and management of the facilities. It also included definition of relationships between the host counties and the neighboring ones using the facilities. The transfer was effected vide Legal Notice No. 33 of 17th March, 2014.

Phase Four - Transfer of Appealed Functions

These involved the functions that were withheld by TA on phase two citing capacity and other legal challenges. The County Governments subsequently appealed to the Senate. The Senate ruled that a number of them be transferred to the counties. These included management of Class D and E roads to be classified as County Roads, libraries, electricity and gas reticulation and energy regulation. A draft gazette notice was submitted to the AG for gazette on 7th of August, 2014. However, the National Assembly raised some concerns on the classification of roads and the matter had been in court until 11th November 2015 when a judgment was made by the court to transfer the roads functions to the 39 counties that appealed. These functions were transferred through Special Legal Notice No. 24 of 22nd Jan, 2016.

Phase Five: Proposed Transfer of Further Functions

The Transition Authority was to further transfer County Roads, libraries, electricity and gas reticulation and energy regulation functions to the eight counties that did not appeal to the senate.

4.4.5.2 Clarification of Transferred Functions

There have been many challenges in clear understanding of the functional assignment in both levels of governments with regard to transferred functions. The TA unbundled further the following functions:

- i. Land functions
- ii. Functions performed by Regional Development Authorities (RDA)
- iii. Functions performed Water Services Boards and other water institutions
- iv. Forestry functions,
- v. Sports and Culture functions
- vi. Betting, Casinos and Gambling Functions,
- vii. Agriculture Functions

The TA has since achieved more clarity in most of these functions and for purposes of providing clarity, would gazette these functions. As at the end of its term, TA had drafted a Gazette notice for this purpose. **See Annex 4.1**

4.4.6 Status of Transfer of Functions

As at 4th March 2016, the Transition Authority had transferred the functions as provided for in the Fourth Schedule to the Constitution of Kenya 2010 and section 15 of the Sixth Schedule as shown in the tables below;

4.4.6.1 Agriculture including crop and animal husbandry

Table 4: Status of Transfer of Agriculture, Crop and Animal Husbandry Functions

S / No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks	
a.	Crop and animal Husbandry	Provide agricultural extension services/ farmer advisory services	Transferred via Legal Notice No 116 dated 9 th August, 2013		
		Develop and implement programmes in the agricultural sector to address food security			
		Construction of regional grain storage structures			
		Enforce regulations and standards on quality control of inputs, produce and products from the agricultural sector			
		Avail farm inputs such as certified seeds, fertilizer and other planting materials (cassava cutting, potato vines etc) to farmers	Transferred via Legal Notice No 33 dated 17 th March 2014		
		Develop and implement programmes in the agricultural sector to address food security			
		Develop programmes to intervene on soil and water management and conservation of the natural resource base for agriculture			
		Promote market access for agricultural products			
		Provide infrastructure to promote agricultural production and marketing as well as agro-processing and value chains			
		Enhance accessibility to affordable credit and insurance packages for farmers			
		Management of Agricultural Training Centers and Agricultural Mechanization Stations			
					Land development services such as construction of water pans for horticultural production for food security.
		Formulate and review county specific policies, Develop and enact bills and regulatory frameworks for county specific policies Implement national and county specific policies and legislation			
		Livestock extension to deliver husbandry technologies to livestock farmers and pastoralists through: Farmer field days, Farm demonstrations ,Farmer field schools, Agricultural shows, Individual farm visits Farmer training courses (residential and non-residential), <i>Barazas</i> , Farmer tours, Posters, Brochures, leaf lets	Transferred via legal Notice No 116 dated 9 th August, 2013		
b.	Livestock sale yards;	i. Construction of sale yards ii. Collection of cess and fees relating to the yards iii. Management of yards	Transferred via Legal Notice No 16 dated 1 st February 2013		

S / No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
c.	County Abattoirs	Construction of Abattoirs Ensuring hygiene and quality standards in meat processing are met Management of county abattoirs	Transferred via Legal Notice No 16 dated 1 st February 2013	
d.	Plant and animal disease control;	Oversee Communal Dipping and spraying operations Vaccination Campaigns Control plant pests and diseases/noxious weeds that are specific to counties Oversee Communal Dipping and spraying operations	Transferred via legal Notice No. 116 dated 9 th August, 2013	
e.	Fisheries	Fisheries Extension services Up scaling sea weed, fin fish and crustacean culture County Fish Seed bulking units Development and maintenance of Fish Auction centers Zonation for aquaculture-County specific Disease control Aquaculture training On farm trials Fish health certification Development and maintenance of: i. Fish landing stations and jetties ii. Fish Auction centers iii. Fish landing fees Demarcation of all fish breeding areas and fencing of fish landing stations	Transferred via legal Notice No. 116 dated 9 th August, 2013	
		Fish Trade Licensing and Fish Movement permits Collection of Fish production Statistics		

4.4.6.2 County health services, including, in particular—

Table 5: Status of Transfer of County Health Services

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
a.	County Health Facilities And Pharmacies; (i) County facilities-including	Provincial General Hospitals	Transferred legal Notice No 116 dated 9 th August, 2013	
		Provincial Health Services		
		District health services/district and sub-district hospitals		
		Rural Health Centers		
		Dispensaries		
		Procurement of Essential Medical Supplies pharmaceutical and non-pharmaceuticals commodities (County pharmacies) Commodities specifications, quantifications, procurement, warehouse (storage), distribution and dispensing and quality control		
		Health Information systems Data collection, collation, analysis, supportive supervision, reporting Patient and health facilities records, Health Record Information System (HRIS), IFMIS, District Health Information Systems (DHIS)		
		Operations and maintenance Rehabilitation and maintenance of health facilities, vehicles and medical equipment/machinery, utilities		
b.	Ambulance services;	Emergency response	Transferred via Legal Notice No 16 dated 1 st February 2013 and legal Notice No 116 dated 9 th August, 2013	
		Patient referral system		
c.	Promotion of primary health care;	i. Environmental health Services-Water and food safety, pollution control, sanitation, occupational safety, hygiene control, community health	Transferred via legal Notice No 116 dated 9 th August, 2013	
		ii. Communicable disease control (including Public Health programs-HIV/AIDS, TB)		
		iii. Service delivery-(Disease prevention and control services, curative and rehabilitative services, health promotion services, TB, malaria, HIV, nursing services, laboratory, community health, oral health, maternal, reproductive health, child health)		

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
d.	Licensing and control of undertakings that sell food to the public;	i. Licensing and health test ii. Supervision of public food outlets	Transferred via Legal Notice No 16 dated 1 st February 2013	
e.	Veterinary service (excluding regulation of the profession)	Carry out/ coordinate/oversee i. Clinical services, ii. AI, embryo transfer, iii. Reproductive health management	Transferred legal Notice No 116 dated 9 th August, 2013	
f.	Cemeteries, funeral parlours and crematoria.	Cemeteries, funeral parlours and crematoria.	Transferred via Legal Notice No 16 dated 1 st February 2013	
g.	Refuse removal, refuse dumps and solid waste disposal.	Provision of waste collection bin, segregation of waste at source	Transferred via Legal Notice No 16 dated 1 st February 2013	
		licensing of waste transportation	Transferred via Legal Notice No 16 dated 1 st February 2013	
		Refuse dumps Zoning waste operational area, Conducting environmental impact assessment for the siting of dumps	Transferred via Legal Notice No 16 dated 1 st February 2013	
		Fencing of dumps		
		Monitoring waste characteristics		

4.4.6.3 Control of air pollution, noise pollution, other public nuisances and outdoor advertising

Table 6: Status of Transfer of Functions on Control of Air Pollution, Noise Pollution, Other Public Nuisances and Outdoor Advertising

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
	Control noise pollution, other public nuisances	Licensing for persons exceeding the permissible noise levels	Transferred vide legal Notice No 116 dated 9 th August, 2013	
		Noise mapping and action plan development		

4.4.6.4 Cultural activities, public entertainment and public amenities

Table 7: Status of Transfer of Functions on Cultural Activities, Public Entertainment and Public Amenities

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March, 2014	Remarks
a.	Betting, casinos and other forms of gambling	i. Licensing of business premises ii. Enforcement and compliance i.e. sport checks , Daily supervisions of casinos iii. Periodic Monitoring and evaluation iv. Monitoring and Evaluation of gaming activities v. Licensing of Premises for totali-sators vi. Handling of Complaints and arbitration vii. Authorization and issuance of Pool table permits within the counties viii. Authorization of Prize competition for promotions within the counties ix. Authorization of permit Amusement machines x. Authorization of lotteries within the county xi. Enforcement of compliance within the county e.g Spot checks on betting and other forms of gambling licensed by the County Government	Transferred vide legal Notice No 116 dated 9 th August, 2013	Implementation of this function has been marred by challenges relating to its concurrency nature. Licensing of casinos and gaming activities is a contentious function between the County Governments and National Government. Discussions are still ongoing
b.	Racing	County racing	Transferred via Legal Notice No 16 dated 1 st February 2013	
c.	Liquor licensing	County liquor licensing		
d.	Cinemas	County cinemas		
e.	Video shows and hiring;	County video shows and hiring		
f.	Libraries	- Provide library and information service responsive to the needs of the community; - Undertake collection, development and distribution of information materials; - Provide the community with a variety of information materials, programs, and services for personal growth and development; - Establish a local collection section in each library holding the respective community's resources, history, people, customs, and traditions to promote the capture of indigenous knowledge and languages - Support formal and informal self-education; - Support and complement research in all fields of Endeavour; - Provide wholesome use of leisure time in a most conducive learning environment, stimulate and promote public interest in reading books and multimedia for information, knowledge and enjoyment; - Provide lending, Inter-library loans, outreach, specialized and home-bound services. - Provide consultancy and research services to individuals, organizations, and the general community; - Provide advisory, reference and referral services using variety information materials; - Liaise with the national library and other relevant institutions to enhance information sharing.	Transferred via Legal Notice No 24 dated 22nd Jan 2016	A schedule of library facilities has been attached to the legal notice to 37 counties that appealed to the senate

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March, 2014	Remarks
g.	Museums	County Museums	Transferred legal Notice No 116 dated 9 th August, 2013	
h.	Sports and cultural activities and facilities;	i. Identification and development of Sports talent at county level ii. Establish and manage county sports talent academies iii. Develop and Manage County Sports Facilities iv. Ensuring that the National standards for development of sports facilities are adhered to v. Facilitate the preparations and participation of inter/intra county teams for sporting activities and events vi. Raise funds for sports development at County Level vii. Organize and coordinate research for sports programmes at County level	Transferred legal Notice No 116 dated 9 th August, 2013	
		Promotion of unity in Cultural activities and Facilities which entails		
		Cultural diversity at the county level		
		Encouraging formation of associations by cultural practitioners for promotion of various aspects of culture		
		Establishment of conflict resolution cultural forums and mechanisms to mitigate against Capacity building programmes to empower cultural practitioners and communities inter and intra communities conflicts		
		Cultural exchanges between communities and counties		
		Documentation and preservation of indigenous knowledge and other elements of Intangible Cultural Heritage		
		Establishment of community cultural centres		
		Research, documentation and dissemination of cultural information		
		cultural diversity at the county level		
		Policy implementation advice and guidance on cultural matters at county level		
i.	County parks, beaches and recreation facilities.	County parks, beaches and recreation facilities.	Transferred vide Legal Notice No 16 dated 1 st February 2013	

4.4.6.5 County transport functions

Table 8: Status of Transfer of County Transport Functions

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
a.	County roads	county roads including primary roads linking all sub county headquarters and minor roads linking markets and administrative centers excluding roads being managed by Kenya Urban Roads Authority, Kenya Rural Roads Authority, Kenya Wildlife Service and Kenya Forest Service;	Transferred under legal notice no 116 of 9 th August, 2013	
		Management, development of County roads (Defined as Class D ,E and other Unclassified Roads) according to the Roads Classification as agreed between the National and County Governments	Transferred vide Legal Notice No 24 dated 22nd Jan 2016 (Applies to 39 counties that appealed)	A schedule of roads register has been attached to the legal Notice for the 37 counties that appealed to the Senate
		Construction of County roads		
		Upgrading of County roads		
		Rehabilitating and maintaining County roads		
		Controlling reserves for County roads and access to roadside developments;		
		Implementing road policies in relation to County roads;		
		Ensuring that the quality of County road works is in accordance with nationally set standards		
		Planning the development and maintenance of County roads		
		Resource mobilization for development of County Roads		
		Liaising and co-coordinating with other authorities in planning and operations respect of County roads necessary for efficient forward planning		
		Monitoring and evaluating the use of County roads;		
		Collecting and collating all such data related to the use of County roads as may be needed.		
		Management of mechanical and transport equipment	Equipment shared by the two levels of government 80:20 basis for Counties and national government respectively	

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
b.	Street Lighting	Establishing street lights and other floodlights as may be required	Transferred vide Legal Notice No 16 dated 1 st February 2013	
c.	Access roads	Opening new access roads and grading to all weather roads for those existing already.	Transferred vide Legal Notice No 16 dated 1 st February 2013	
d.	Public road transport	Public road transport on licensing of public service vehicles operations	Transferred vide legal Notice No 116 dated 9 th August, 2013	
e.	Ferries and Harbours, excluding the regulation of international and national shipping and matters related thereto.	i. Development of infrastructure for landing facilities to facilitate water transport linking inter/intra counties ii. Acquiring, operating ferry crafts, boats and other water transport systems for water transportation operating and connecting inter/intra counties iii. Transport of vehicles, cargo and passengers linking county roads or water services within a county	Transferred vide legal Notice No 116 dated 9 th August, 2013	

4.4.6.6 Animal control and welfare

Table 9: Status of Transfer of Animal Control and Welfare Functions

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
a.	licensing of dogs; and	licensing of dogs; and	Transferred vide Legal Notice No 16 dated 1 st February 2013.	
b.	Facilities for the accommodation, care and burial of animals	Facilities for the accommodation, care and burial of animals	Transferred vide Legal Notice No 16 dated 1 st February 2013	

4.4.6.7 Trade development and regulation

Table 10: Status of Transfer of Trade Development and Regulation Functions

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
a.	Trade development and regulation	i. Implementation of the National Trade Policy ii. Provision of Business Development Services to Micro, Small and Medium Businesses engaged in trade iii. Development of wholesale and retail trade iv. Management of credit scheme for micro and small businesses v. Collection of business information and management of county Business Information Centres/Business Solution centres vi. Promotion of export business vii. Advocacy for provision of market infrastructure viii. Conducting trade fairs/exhibitions ix. Promotion of Investments	Transferred via legal Notice No 116 dated 9 th August, 2013	
b.	Markets;		Transferred via Legal Notice No 16 dated 1 st February 2013	
c.	Trade licenses (excluding regulation of professions);		Transferred via Legal Notice No 16 dated 1 st February 2013	
d.	Fair trading practices;	i. Implementation of the National Trade Policy ii. Provision of Business Development Services to Micro, Small and Medium Businesses engaged in trade iii. Development of wholesale and retail trade iv. Management of credit scheme for micro and small businesses v. Collection of business information and management of county Business Information Centres/Business Solution centres vi. Promotion of export business vii. Advocacy for provision of market infrastructure viii. Conducting trade fairs/exhibitions ix. Promotion of Investments x. Verification of weighing and measuring instruments; xi. Inspection of weighing and measuring instruments and pre-packed goods; xii. Investigation of complaints relating to unfair trade practices; and xiii. Prosecution of offences arising from unfair trade practices	Transferred via legal Notice No 116 dated 9 th August, 2013	

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
d.	Local tourism	Implementation of national tourism policies, strategies and programmes; - Liaison with the Ministry to ensure implementation of national tourism policies, strategies and programmes. These include the National Tourism Plans, Policy, National Tourism Strategy and related tourism development programmes - Incorporate tourism development strategies and programmes into County Integrated Development Plans - Work with the Ministry to implement Vision 2030 Programmes and Projects	Transferred via Legal Notice No 16 dated 1 st February 2013	
		Integrate and enforce the provisions of the Tourism Act 2011 and any other laws relating to tourism in the county laws - Develop county tourism regulations to enact the National Tourism Act, 2011 - Ensure synergy and harmony between the national and county legislative frameworks to avoid conflict. - Work with the Ministry to ensure understanding of laws and regulations affecting tourism. - Ensure compliance to the national tourism legislations and county laws.		
		Development and implementation of county tourism development plans, programmes and projects underpinned by principles of sustainable development; - Prioritize tourism development in County Integrated Development Plans - Liaise with the Ministry to guide the development and management of tourism product development planning processes - Provision and maintenance of county basic tourism infrastructure - Liaise with the Ministry to implement the Tourism Area Plans as guided by the framework for tourism area plans. - Undertake appropriate land use planning & environmental management - Ensure public health and safety management oriented to protection of environment standards. - Mainstream youth and women empowerment and all other tourism issues in county development plans and programmes. - Facilitate provision of funds for development of local tourism products and services within county. - Liaison with the Ministry to render technical support and capacity building to entities engaged in local tourism activities and services.		

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
		Co-ordinate and facilitate the management and control of county specific tourism activities; - Promote Community/village tourism entrepreneurship development - Promote Arts and cultural development - Organize consultative meetings with tourism stakeholders within the county - Liaise with the Ministry to organize cultural tourism events and other themed tourism festivals - Liaise with the Ministry to organize local tourism exhibitions at the counties - Collaborate with other counties in staging and hosting regional tourism festivals and events.		
		Development of partnerships between county government and other stakeholders in tourism matters:- - Set up and administer joint initiatives and actions between counties - Work with the Ministry and its agencies responsible for marketing activities to participate in national and international tourism events - Engage with national tourism private sector bodies for co-operation in the development of tourism and circuits - Develop mechanisms for conflict resolution in tourism practice at the county level.		

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
		Implementation of bilateral, regional and international agreements in tourism; Work with national government to implement relevant bilateral, multilateral regional and international agreements within the county.		
		Development of community based tourism projects and programmes; i. Liaison with the Ministry to sensitize local communities on the value and the need to conserve and protect tourism resources and attractions within the counties ii. Liaise with the Ministry to capacity build local communities on opportunities in tourism and sustainable operation of tourism enterprises iii. Develop funding mechanism for the community/village programme & projects at the county iv. Liaise with Ministry's funding agencies to finance community based tourism projects and programmes v. Liaise with the Ministry to monitor the performance of community based tourism projects to ensure sustainable, good governance and equitable sharing of benefits vi. Liaise with the Ministry to assist communities to negotiate fair agreements where either local or foreign private investors are involved.		
		Develop programmes for attracting tourism investments in the county; i. Liaise with the Ministry to document local tourism attractions, products and investment opportunities within the county ii. Work with the Ministry to develop and document incentive and disincentive programmes applicable to the county for tourism development. This could include provision of land, waiver of rates and levies among others iii. Organize fora to disseminate the investment opportunities and incentives to potential investor groups nationally and internationally iv. Liaise with local and international media to publicise county tourism investment opportunities.	Transferred via Legal Notice No 16 dated 1 st February 2013	
		Marketing and promotion of county tourism destinations i. Collaborate with the Ministry to undertake marketing & promotion of county tourism ii. Work with the Ministry to develop marketing materials to foster branding, destination image and competitiveness iii. Participate in national and international Marketing events co-ordinated by the Ministry iv. Solicit the Ministry's support on promotion of e-tourism uptake and website design for market access and linkages.		

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of Transfer as at 4 th March 2016	Remarks
		Collection, compilation and management of local tourism products and services profile information in the county; - Develop a mechanism and instruments for tourism data collection, management and reporting within the county - Facilitate sharing of county tourism data with the Ministry for integration in the national tourism statistics management and reporting instruments.		
		Co-ordinate maintenance of tourism products and services standards and quality management within the county; - Liaise with the Ministry to enhance the capacity of county tourism officials and industry players to ensure compliance and conformity with tourism standards regulations as provided under the national tourism Act, 2011 - Support the national government in classifying hospitality facilities and other tourism related enterprises using the EAC Classification Criteria - Liaise with the Ministry to ensure compliance with the provisions and regulations of tourism training standards at the county. - Enforce the Tourism Industry Code of Practice at the County.		
e.	Co-operative societies	- Promotion of co-operative societies - Processing of application for registration - Inspections and investigations - Training needs assessment for co-operative movement - Promotion of co-operative societies - Market information dissemination & advisory services - Banking inspections local Savings and Credit Cooperative Societies; - Risk assessment in Savings and Credit Cooperative Societies; - Investment advisory services; - Co-ordination and monitoring of co-operative indemnity by co-operative leaders - Promotion of co-operative ventures and innovations for local co-operatives; - Carrying out certification audits; - Carrying out continuous and compliance audits;	Transferred via legal Notice No 116 dated 9 th August, 2013	

4.4.6.8 County planning and development

Table 11: Status on Transfer of County Planning and Development Functions

S/No	Functions As Outlined In The Fourth Schedule	Unbundled Components	Status Of Transfer As At 4 th March 2016	Remarks
a.	Statistics	i. Custodian of official statistics in the County; ii. Maintenance of a comprehensive and reliable County Socio-Economic Database; iii. Quality assurance of statistical information; iv. Collection and compilation of statistical information; v. Analysis of statistical information; vi. Publication and dissemination of statistical information for public use.	Transferred Via Legal Notice No 116 Dated 9 th August, 2013	
b.	Land Survey and Mapping	Land survey and mapping and housing	Transferred Via Legal Notice No 16 Dated 1 st February 2013	
c.	Boundaries and Fencing;	i. Determination of property boundaries; ii. Solving of property boundary disputes; iii. Showing of property boundaries; iv. Ensuring fencing and development of properties; v. Finalization of surveying of administrative boundaries within the Counties	Transferred Via Legal Notice No 116 Dated 9 th August, 2013	
d.	Housing	- Prevention of mushrooming of slums - Implementation of Slum Upgrading Programmes (Except for ongoing projects) - Development of housing programmes - Management of all offices and institutional houses whose functions have been transferred to the County - Management and maintenance of houses that belonged to County, Municipal and City Councils	Transferred Via Legal Notice No 16 Dated 1 st February 2013	There are challenges in implementation of the housing function arising from lack of policy guidelines
e.	Electricity and Gas Reticulation and Energy Regulation.	Identification of the Renewable Energy sites for development	Transferred Via Legal Notice No 116 Dated 9 th August, 2013	

4.4.6.9 Pre-primary education, village polytechnics, home craft centres and childcare facilities.

Table 12: Status of Transfer of Pre-primary Education, Village Polytechnics, Craft Centres and Childcare Facilities Functions

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of transfer as at 4 th Oct 2016	Remarks
	Pre-primary education, village polytechnics, home craft centres and childcare facilities.	Pre-primary education, village polytechnics, home craft centres and childcare facilities.	Transferred via Legal Notice No 16 dated 1 st February 2013	

4.4.6.10 Implementation of specific national government policies on natural resources and environmental conservation, including –

Table 13: Status of Transfer of Functions on Implementations of Specific National Government Policies on Natural Resources and Environmental Conservation

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of transfer as at 4 th Oct 2016	Remarks
(a)	Soil and water conservation	Implementation of county specific water conservation and forestry policies through Water Resource users	Transferred via legal notice No 116 dated 9 th August, 2014	The following National government policies on Natural Resources and Environmental conservation are in draft stages: Forest policy 2014; National Environment policy 2013; National Education for Sustainable (ESD) policy 2013; National Wetlands Conservation and Management policy, 2013; Integrated Coastal Zone Management (ICZM) policy 2013
		i. Local water catchment protection		
		ii. Implementation of sub-catchment management plans		
		iii. Participation in water allocation and issuance of permits		
		iv. Flood mitigation and land reclamation at county levels		
		Water Pollution Control		
		i. Monitoring of water quality		
		ii. Enforcement of water quality standards		
		Borehole site identification and drilling		
		i. Planning of rural water supply		
		ii. Development of rural water points		
		iii. Maintenance of water points		

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of transfer as at 4 th Oct 2016	Remarks
(b)	Forestry.	i. Implementation of national policies that are applicable to the county forests. ii. Formulation of County level specific by- laws and legislations. iii. Development and implementation of County forest management plans. iv. Identification and setting a part of lands for forest reservation, development and creation of county forests. v. Development of nature based enterprises within the county forests. vi. Forestation and rehabilitation of fragile and degraded ecosystem/ forest in community lands. vii. Liaison with lead agencies / stakeholders in forest sector at the county. viii. Issuance of operation license within the private farms and the county forests in the community lands. ix. Intra-county conflict management on the county forest resources and farm forestry. x. Promotion of public private partnership management practice in county forests. xi. Maintenance of county forests and farm forestry records, database and information. xii. Collection and management of county forests and farm forestry revenue. xiii. Community awareness creation. xiv. Promotion of tree planting in community, private and county lands. xv. Increasing tree cover in private, community and county lands. xvi. Provision of forestry extension services in the county. xvii. Development and maintenance of county forest infrastructure.	Transferred via legal notice No 116 dated 9 th August, 2013	

4.4.6.11 County public works and services

Table 14: Status of Transfer of County Public Works and Services Functions

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of transfer as at 4 th March 2016	Remarks
a)	County public works and services	Public works including designing, documentation, post contracting, project management of construction and maintenance of public buildings and other infrastructural services,	Transferred via legal notice No 116 dated 9 th August, 2013	
		Construction of footbridges		
b)	Water and Sanitation services.	Water and sanitation services including rural water and sanitation services,		
		Provision of water and sanitation service in small and medium towns without formal service providers, water harvesting (specific to counties),		
		Urban water and sanitation services with formal service provision including water, sanitation and sewerage companies,		

4.4.6.12 Fire fighting services and disaster management

Table 15: Status of Transfer of Fire Fighting and Disaster Management Functions

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of transfer as at 4 th March 2014	Remarks
	Fire fighting services and disaster management.	Fire fighting services	Transferred via legal notice No 16 dated 1st Feb, 2013	
		Disaster Management.		

4.4.6.13 Control of drugs and pornography

Table 16: Status of Transfer of Functions on Control of Drugs and Pornography

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of transfer as at 4 th March 2016	Remarks
	Control of drugs and pornography.	Control of drugs and pornography.	Transferred via legal notice No 16 dated 1st Feb, 2013	

4.4.6.14 Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

Table 17: Status of Transfer of Functions on Community Participation in Governance at Local Level

S/No	Functions as outlined in the Fourth schedule	Unbundled Components	Status of transfer as at 4 th March 2016	Remarks
14.	Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.	Developing systems, standards and operational procedures for community participation	Transferred via legal notice No 116 dated 9 th August, 2013	There have been challenges emerging from ambiguity, concurrency and implementation of functions after the transfer of functions
		Facilitating formation/restructuring of community level structures for community engagement and participation in development initiatives		
		Facilitating formation, registration and certification of community groups		
		Undertake Community groups capacity building and sensitization		
		Providing Grant support to community groups to support up-scaling/replication of best practices		
		Facilitation to Community Capacity support centers		

4.4.7 Analysis/Unbundling of National Government Functions (Part Two of the Fourth Schedule to the CoK 2010)

TA carried out an analysis of functions under schedule four parts one (1) of the CoK 2010. These functions have been exclusively assigned to the National Government. Unbundling of National Government was necessary in order to bring clarity on the components of functions the national government is undertaking.

This also helps in determining the resources required by the national government in implementing its mandate. A comprehensive analysis of National Governments is enumerated in Functional Analysis, Competency Assignment, Costing and Transfer of Functions Report.

4.4.8 Determination of the Cost of Functions

4.4.8.1 Background

Determination of the resources required to perform functions is the action taken to determine the cost required to implement a particular function or delivery of services by government departments. The information derived from a comprehensive costing exercise does support many governments in planning and budgeting in enhancing allocative efficiency and effectiveness in the use of resources; measurement of performance and accountability of the leadership; supporting intergovernmental fiscal transfers; building on the existing data and statistics for future decision making; informing policy makers on how to raise revenues and revenue raising measures and aiding in the determination of expenditure prioritization.

Cost is the value of the resources (human, financial and physical) consumed for something such as an activity, output, or outcome. A question on costs is answered through effective costing, which involves the production of cost information specifically for the purposes intended. Costing depends on circumstance, the selection of the relevant variables, and the underlying assumptions, which significantly influence the final figures. A costing exercise requires consultation with all stakeholders who may be affected or potentially affected, thus proper consensus building on a particular costing methodology is critical.

Costing is needed because questions about costs arise virtually every day, such as the following:

- i. What is the optimum cost of performing function X?
- ii. What is the appropriate budget for Program Y?
- iii. What does it cost to deliver this service?
- iv. What did it cost to improve the timeliness of this service?
- v. What will the department's costs be in a joint undertaking?
- vi. What will the additional cost be if public demand for a service increases by 10 per cent or more?
- vii. What is the difference in cost between providing this function within government and outsourcing it?
- viii. What are the relevant costs associated with a proposed cost-recoverable arrangement?
- ix. What are the environmental costs associated with the projects undertaken by government?

4.4.8.2 Progress towards Costing of Government Functions

Section 7 (12)(b) of the Transition to Devolved Government Act, 2012 mandates the Transition Authority to **determine the resource requirements for each of the functions** and 7 (d) coordinate with relevant state organs or public entities in order to facilitate the development of the budget for County Governments during phase one of the transition period. Explained below are the steps taken by the Transition Authority to cost the functions.

i. Historical determination of resources for functions

Prior to the transfer of functions to the county governments, the Transition Authority engaged the National Treasury, the Commission on Revenue Allocation and technical officers from the line

Ministries, Departments and Agencies (MDAs) to map out the cost of functions earmarked for unbundling and transfer to the county governments.

All the functions earmarked for transfer were assigned code 098 by the Ministries, Departments and Agencies (MDAs). Reference was made to the Fourth Schedule to the Constitution of Kenya, 2010 in undertaking this exercise. The National Treasury and the MDAs used the existing institutional arrangements and the functions were mapped out as they were being delivered prior to devolution by the former central government MDAs.

The allocations for delivery of services to be devolved, equivalent to the government expenditure on the functions were analyzed as in the 2012/2013 budget. Projections were thereafter done for the financial year 2013/2014 to form the indicative cost of the functions devolved.

ii. Costs of New County Structures

The Transition Authority together with the National Treasury, Commission on Revenue Allocation and other stakeholders also recognized/estimated the costs of setting up new institutions at the county governments' level. To this end, costs were assigned to the County Assembly and County Executive in terms of personnel emoluments, administrative costs, cost of setting up public financial management systems and for County Public Service Board. This was meant to provide adequate resources to enable counties set up critical administrative structures to ensure uninterrupted level of service delivery.

iii. Break down of indicative financial resources for devolved functions

The totally determined costs earmarked for county functions included: Cost of specific devolved functions; cost for operationalization of county governments; and personnel and administration costs. A total cost of about **Kshs.210 billion** were realized from the budgets of the financial year 2012/13. Out of this, **Kshs.107.4 billion** being on account of recurrent expenditures and **Kshs.102.6 billion** accounted for by development expenditures.

4.4.8.3 Comprehensive Determination of Resource Requirements For Functions

The historical costing used was a temporary transition measure to allow for a comprehensive process of determination of the resources required to perform the devolved functions. The first phase was done for functions of five (5) sectors: Agriculture, Livestock and Fisheries; Health, Transport and Infrastructure; Water and Environment and Foreign Affairs.

The Transition Authority in collaboration with the Commission on Revenue Allocation (CRA) undertook a comprehensive costing of functions exercise. This is in recognition of the key mandate bestowed to the two institutions in relations to costing of functions and resource allocation.

The overall objective of the costing of functions assignment was to examine and determine the realistic Quantum or proportion of funds and other resources for performance of functions assigned to the national and county governments. The final report on costing of functions was submitted on Dec, 2015.

4.4.8.4 Output of the Costing exercise

The resultant output was comprehensive cost information for the functions in the five (5) sectors. The information will help the two levels of government to deliver efficient and effective services to the public in both quantity and quality. As efficiency improves, more resources will be freed for use in other areas and norms and standards will be raised or spade up to the benefit of consumers.

The governments will be able to make budget decisions, set fees for services, determine intergovernmental charges, and choose among alternative methods of providing services.

4.4.8.5 Strategic Interventions on Emerging Challenges Following the Transfer of Functions

TA provided guidance on key emerging challenges following transfer of functions. TA successfully

facilitated consultative fora including the secondment of Early Childhood Development (ECD) officers to County Governments (CGs). The objective of the forum was to build consensus on the secondment of the ECD officers to the county governments to continue performing the devolved pre-primary education function. TA provided the requisite guidance in line with Article 187 of the CoK, and the Teachers Service Commission (TSC) released the ECD officers to the county governments and District Centres for Early Childhood Education (DICECE) withdrew the court case it had instituted against the Commission.

TA also facilitated a consultative forum on the future position of the Centre for Training and Integrated Research in ASAL Development (CETRAD). The purpose of the forum was to forge a mutual understanding on the future of the CETRAD in view of its core mandate, namely, research and training, considering that the seconded staff from the former Ministry of Water, Environment and Natural Resources had been devolved to Laikipia County. In addition, TA also spearheaded the transfer and absorption of Youth Polytechnic instructors under the Economic Stimulus Programme (ESP) by the County Governments.

TA also provided technical support to various intergovernmental sectoral forums including health, agriculture, livestock and fisheries, sports and culture , roads among others. Such forums were important intergovernmental avenues to provide clarity on functional assignment challenges and enhancing service delivery by the two levels of government

4.4.9 Development of Transition Implementation Plans (TIPs) for MDA’s

This is one of the key tenets of embracing the new governance system of devolution. Each MDA was supposed to come up with clear road map on how to deal with the issues of policy, law and institutional review that are relevant to their service delivery mechanisms. In addition, the Transition implementation plans gives direction to the changes anticipated in the organization structures, reporting and assets and liabilities.

To this end, the TA developed guidelines that were issued to the MDAs and County Governments. TA engaged in technical backstopping sessions, workshops with the various institutions as they developed them.

4.5 Pending Activities

Table 18: Pending Issues on Analysis, Costing and Transfer of Functions

MANDATE AS PER THE TDGA, 2012	PENDING ACTIVITIES
Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule of the Constitution to the national and county governments	Unbundling/analysis of functions of state corporations performing devolved functions.
	Publishing and dissemination of unbundled reports
	Transfer of delayed functions to the national and county governments
	Analysis and costing of function No.14 of the forth schedule to the CoK 2010.
Determine the resource requirements for each of the functions	Costing of functions under the Ministries of: Energy and petroleum; the National Treasury; Devolution and Planning; Education; ICT; Lands and Housing; Tourism, Commerce and East African affairs; Mining; Sports, Culture and the Arts; Industrialization and Enterprise development; Labor and Social Services; Interior and Coordination of National Government.
	Validation and dissemination of the costing report for the 5 sectors

Develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule	Developing of framework to guide the analysis and performance of concurrent functions currently ongoing Analysis of concurrent functions
	Documentation, analysis of residual functions domiciled in various MDAs
Strategic intervention on emerging issues arising from implementation of transferred functions.	This will entail further analysis, assignment, consultation and consensus building on the performance of the various functions for example betting, function 14 and others
Intergovernmental Sectoral forums	Technical backstopping during sectoral intergovernmental consultative forums on implementation/performance and emerging functional assignment issues

4.6 Challenges

4.6.1 Delays in submitting vital information on functions

The MDAs were very slow in responding to request for information on their mandates and budget information to TA. This slowed down the unbundling process especially before the inauguration of the County Governments.

4.6.2 Time Constraints

There were time constraints in executing the mandate given that the Authority came in at a very late stage in the transition period.

4.6.3 Delay in reviewing of policy and legislative frameworks

The delay in the amendment of the various policies and legislations that govern delivery of services whose mandates have been devolved has been a key impediment in the transfer process.

4.6.4 Numerous litigation and judicial proceedings

There have been numerous litigation attempts concerning the mode of the transfer of functions. The various court cases in the health and roads sector depict this trend.

4.6.5 Problems of concurrency of functions

Delivery of Concurrent functions has marred the implementation of some functions. This has been in cases where revenue generation is involved or some benefits accrue to a level assigned a certain subcomponent of the concurrent function. Licensing of casinos that attract fess has been a good example.

4.6.6 Slow pace in Consultations, consensus building and reaching

Lastly, the slow pace of **consultations, consensus building and reaching** of agreements in relation to performance of some functions has been a key challenge. This slowed down the pace of unbundling and transfer of functions in some sectors for example the roads sector.

4.6.7 Challenges to costing

- The complexity of the overall costing exercise since it requires a lot of time and institutional auditing.
- Inadequate baseline information and data on costing of functions. This has slowed down the process since the historical resource allocations were skewed thus generalization is difficult.
- Costing of functions follows a comprehensive unbundling and analysis of the functions. The analysed functions should then be converted into expenditure assignments for which costs are assigned.

4.7 Emerging issues

4.7.1 Numerous litigation and judicial proceedings

There have been numerous litigation attempts concerning the mode of the transfer of functions. The various court cases in the health and roads sector depict this trend.

4.7.2 Inadequate Norms and standards for service delivery

The ministries, departments and agencies of the national government has been reluctant in providing requisite norms and standards that guide in the delivery of services.

4.7.3 Lack of proper capacity building framework by the national government

The COK 2010 mandates the national government to provide technical assistance and capacity building to the county government to foster their capacity in delivering devolved functions, however, inadequate and unclear framework has led to lack of clarity in delivering this role.

4.8 Lessons learnt.

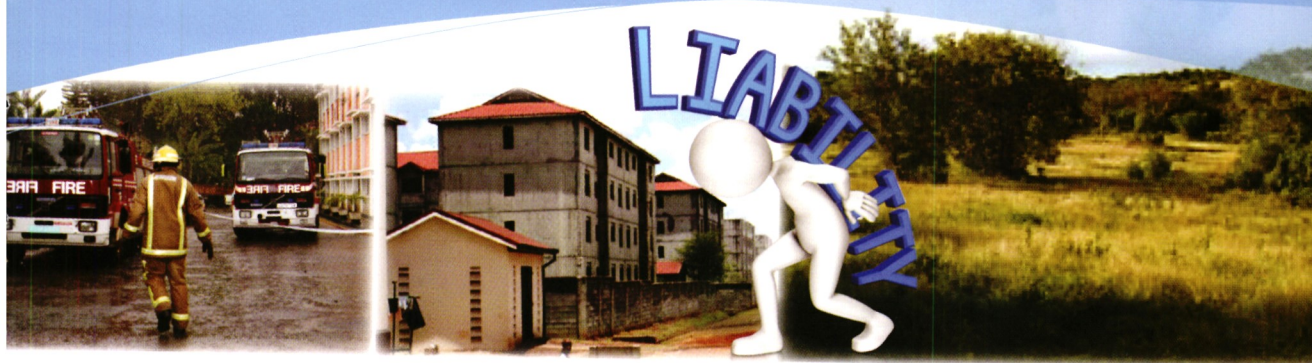
- i. Functional analysis and competency assignment is a continuous policy dialogue and not a onetime activity
- ii. Functional analysis, competency assignment is a not a mechanical and linear process. It is a complex issue which requires consultations and readiness to engage by the two levels of government

4.9 Recommendations

In the light of the above challenges, the following are the proposed recommendation going forward:

- i. Analysis and development of a framework for performance of Concurrent functions in sectors where they exist either by negotiated agreement on the definitions, legal definition by the IGTRC as a residual function.
- ii. The national Government to fast track finalization of review of the various policies and legislation that touch on devolved functions e.g. roads bill etc.
- iii. Also, the two levels need to fast track consensus building and agreement on the issues to pave way for review of the national legislations governing various devolved functions in the light of the devolved system.
- iv. Finalization of the unbundling of functions in the remaining sectors given that its not a onetime activity but a continuous process during the transition period by the Transition authority.
- v. The national government to provide norms and standards necessary for the performance of devolved functions

CHAPTER FIVE: PUBLIC ASSETS AND LIABILITIES



5.1 Introduction

The Constitution in Article 187 (2) (a) provides that “if a function or power is to be transferred from a government at one level to a Government at the other level then, arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred”.

The functions of TA that are related to public assets and liabilities are enumerated in Section 7 (2) (e), (f), (g) & (h) (ii) of the TDGA, 2012. The functions were broken down into activities and were listed in Section 1 (a), (b), (c) (d), (n), (o) & (p) of the Fourth Schedule to the Act, which included among other activities audit of all public assets and liabilities.

Section 35 of the TDGA, 2012 further provided for the moratorium on the transfer of all public assets during the transition period.

The validated (verified and audited) inventory was to include all assets and liabilities of all one hundred and seventy five (175) defunct local authorities as at 27th March, 2013, ministries and departments and all the state corporations/agencies in Kenya. The validated inventory was to inform which assets and liabilities were to be transferred or shared between the two levels of Government.

Transfer of assets and liabilities between the two levels of Government is an important process in implementing the devolved system of Government. However, both the process and substance in the transfer of assets and liabilities must be in conformity with the objectives and principles of devolution and other broader constitutional objectives and purposes. In order to achieve this, it is important that the process of transferring assets and liabilities is carried out through mechanism and criteria which will ensure equity, fairness and the general principle that resources follow functions.

The information contained herein comprises achievements, pending activities, challenges of the Transition Authority in preparation of inventory, audit and transfer of assets and liabilities between the two levels of Government in Kenya and developing an Integrated National and County Assets and Liabilities Register.

5.2 Objectives

The objectives under this programme included;

- i. To prepare and validate an inventory of all existing assets and liabilities of Government, other public entities and local authorities, TDGA 7 (2) (e)
- ii. To make recommendations for effective management of assets of National and County Governments, TDGA 7 (2) (f)

- iii. To provide mechanism for transfer of assets which may include vetting the transfer of assets during the transitional period, TDGA 7 (2) (g)
- iv. To develop the criteria to determine the transfer of previously shared assets and liabilities of government and local authorities (defunct) TDGA 7 (2) (h)(ii)

5.3 Activities Planned

The following activities were planned in order to achieve the above objectives:

- i. Audit assets and liabilities of the government, to establish the assets, debts and liabilities of the government
- ii. Audit assets and liabilities of local authorities, to establish the assets, debts and liabilities of each Local Authority
- iii. Audit local authority infrastructure in the counties, to establish the number and functionality of plant and equipment in Local Authorities
- iv. Audit government infrastructure in the counties, to establish the number and functionality of plant and equipment for the purposes of vesting them to either level of government
- v. Provide for a mechanism for the transfer of government net assets and liabilities to national and county governments
- vi. Provide mechanism for the transfer of assets which may include vetting the transfer of assets during the transitional period
- vii. Provide for a mechanism that will secure assets and liabilities held by the local authorities

5.4 Activities Achieved

5.4.1 Developed Mechanism and Criteria for Transferring and/or Sharing of Assets and Liabilities between the Two Levels of Government

It was a framework (mechanism and criteria) developed by TA together with stakeholders, which was used for transferring and or sharing public resources (assets and liabilities) between the National and County Governments during the transition period.

The resources (assets and liabilities) that were to be transferred or shared between the two levels of Government were the ones, which were in existence before assumption of office by the County Governments (Before 27th March, 2013).

The principle of the framework was hinged on the functional approach where “resources are to follow functions”. Resources are both assets and liabilities accumulated by both levels of government in the period up to 27th March, 2013.

The following were the risks of NOT having the framework (mechanism and criteria) for transferring and/or sharing of assets and liabilities between the two levels of Government:

- i. The functions devolved to Counties would not have adequate resources to be performed;
- ii. There would not be equity in sharing of these resources between the two levels of Government;
- iii. Service to the citizenry could be interrupted;
- iv. The County Governments would not adequately use the resources since legally they do not own them;
- v. Confusion arising in regard to public assets and liabilities as to who should bear the responsibility of liabilities that accrued from e.g. the defunct local authorities;
- vi. Conflicts between the two levels of Government or even between the Counties on ownership of public assets

The following were the recommendations of the mechanism and criteria for transferring and/or sharing of assets and liabilities between the two levels of Government:

- i. Resources that were to be transferred or shared between the two levels of Government would include both the assets (land, buildings, vehicles etc.) and liabilities (loans, unremitted statutory deductions, court cases etc.) associated with the devolved functions (functional approach);

- ii. Assets and liabilities associated with the devolved functions were only to be transferred to the correct entity, after they have been identified, audited, valued and a validated assets and liabilities register developed;
- iii. The County Governments were to take up the assets and liabilities of the defunct local authorities within their County;
- iv. Liabilities like Court cases arising out of an asset associated with a devolved function, were to be transferred to the same entity that will take up the asset;
- v. Dispute resolution mechanism was to be employed when disputes arose when transferring or sharing of public assets and liabilities during the transition period;
- vi. Charges and fees levied on assets (land, buildings etc.) by the National Land Commission or Ministry of Land, Housing and Urban Development to be waived when the asset associated to a devolved function is being transferred or shared;
- vii. An in-depth audit of unremitted taxes and other statutory deductions by the defunct local authorities was to be undertaken with a view to hold accountable the officers that never remitted the taxes or other statutory deductions due, while an amicable solution was to be reached between both levels of Government on how to settle or even waive or cap on interest therein as these are liabilities to be transferred to the County Governments

5.4.2 Developed Regulations for the Mechanism and Criteria for Transferring and Sharing of Assets and Liabilities between the Two Levels of Government

The regulations for the mechanism and criteria for transferring and sharing of public assets and liabilities were developed, to anchor in law the legal ownership of the assets and liabilities attached to devolved functions. Notably were liabilities of the defunct local authorities of which the regulations expressly provided that they were to be taken over by the County Governments. These regulations are yet to be gazetted in the Kenya Gazette.

5.4.3 Developed the Guide for Transfer and Sharing for Assets and Liabilities of Agricultural Training Centres and Agricultural Mechanization Stations

The Gazette supplement No. 116 of 9th August, 2013 provided for requisite structures and mechanism to be put in place by TA to aid in the transfer of management, assets and liabilities of the Agricultural Training Centers (ATCs) and Agricultural Mechanization Stations (AMSs).

The TA developed a guide which was a documentation of the process and requisite structures that were developed by the key stakeholders (National and County Governments) under the supervision of TA, and was used to transfer management, assets and liabilities of the ATCs and AMSs to the host Counties. The transfer was effected vide the Legal Notice No. 33 of 28th February, 2014.

5.4.4 Prepared and shared the unaudited inventory of the defunct Local Authorities with the National and County Governments

The TA collected and verified data on assets and liabilities of all one hundred and seventy five (175) defunct local authorities and presented these reports to both the National and County Governments and the public. Comments, new data and complains were then incorporated and the final unaudited inventories of assets and liabilities of the defunct local authorities were prepared. The reports are structured into forty seven (47) county reports and one (1) consolidated report.

Each report captured details and emerging issues of assets and liabilities of the defunct local authorities which were categorized as follows: Land, Buildings, Motor Vehicles, Computers and Accessories, Projects, Investments, Current Assets, Equipment, Furniture and Fittings, Biological Assets, Loans, Unpaid Emoluments, Unremitted statutory deductions, Other Creditors (unpaid contractors, unpaid legal fees, unpaid suppliers and unpaid consultants), Unremitted Statutory deductions. These are the reports that were to be used to resolve the outstanding issues in each defunct local authority before they were transferred to the county governments to bear responsibility.

5.4.5 Prepared Inventory of National Government Assets and Liabilities

The TA prepared an inventory of assets and liabilities of the national government which included ministries, departments and state corporations/agencies. The data captured by TA as at 31st December, 2015 is as follows (**Annex 5.1 & 5.2**):

- i. The Presidency and Deputy President office
- ii. Twelve (12) out of Nineteen (19) Ministries of National Government
- iii. One hundred and thirty eight (138) out of Two Hundred and Ninety Seven (297) State corporations/Agencies

5.4.6 Installed the Assets Management Information System

The TA installed an Asset Management Information System (AMIS). AMIS is currently housed on a server in Transition Authority offices. AMIS has the following capabilities:

- i. Capture validated and audited data of all Government assets and liabilities
- ii. Capture reference materials e.g. circulars and geo-referenced data
- iii. Generate periodic reports on individual assets and liabilities
- iv. Provide a local network access between the server and the desktop computers
- v. Provide remote access which would allow managing the server from a different point rather than the TA office
- vi. Web based so that AMIS can be accessed anywhere on the globe on user rights basis. This would enable the Counties to have access to AMIS via mobile phones, laptops and other compatible devices
- vii. Integrated with other information systems in Government
- viii. Have a backup which can be either off-site or on-site to safe guard the data uploaded on AMIS

5.4.7 Gazettement of the Technical Committee on Transfer of Assets and Liabilities

The TA gazetted an inter-agency technical committee on transfer of assets and liabilities vide Legal Notice No. 45: The Transition to Devolved Government (Transfer of Assets and Liabilities) Regulation 2013. The technical committee consisted of: two members from the TA Board, the Principal Secretary - National Treasury, the Attorney General, the Auditor - General, the Chairperson - Commission on Revenue Allocation, the Principal Secretary - Ministry of Land, Housing and Urban Development, the Chairperson - Commission on the Implementation of the Constitution. Other members included; the Principal Secretary – Devolution, the Chairperson - National Land Commission, the Chairperson - Ethics and Anti-Corruption Commission, the Chief Executive Officer - Privatization Commission, the Director General - Public Procurement Oversight Authority and two non-state actors.

The function of the inter-agency technical committee was to do the following:

- i. Facilitate an audit of public assets and liabilities and to advise the TA
- ii. Prepare, validate and submit an inventory of public assets and liabilities to the TA
- iii. Advise the TA on the transfer of shared assets and liabilities and
- iv. Recommend to the TA the review or reversal of irregular transfer of assets and liabilities by public entities during the transition period.

5.4.8 Developed a Planning Framework for Management of Assets and Liabilities

The TA developed the above document to enable it to achieve its mandate in relation to preparing an inventory, audit and transfer of public assets and liabilities.

5.4.9 Handing over/Taking over Exercise

This is an exercise that was meant to secure assets and liabilities of the defunct local authorities. The County Governments were to hold them in custody pending preparation of the inventory, verification, audit and transfer of the referred assets and liabilities. The handing over/taking over has been completed in thirty two (32) Counties (**Annex 5.3**).

5.4.10 Issued Advisories and Publicized the Moratorium on Transfer of Assets

The following were advisories that were issued by TA (**Annex 5.4**):

- i. The TA publicized the Moratorium on transfer of assets in the Daily Nation on 7th September 2012. This was meant to secure public assets and liabilities during the transition period
- ii. The TA issued an advisory on sharing of Government Houses on 14th March, 2014. This was prompted by the action of some of the County Governments to evict public officers occupying Government houses in their Counties
- iii. The TA publicized the Moratorium of transfer of assets in the Daily Nation on 7th May, 2014 page 35. This was meant to secure public assets and liabilities during the transition period
- iv. The Authority issued an advisory against disposal of boarded public assets without following due process. The advisory was sent to all Governors, Principal Secretaries, Independent Commissions and Heads of State Corporations /Agencies. The advisory was published in the print media on 11th July, 2014.

5.4.11 Developed Procedures for disposal of boarded/surplus/obsolete government assets

The TA developed the procedure for disposal of boarded/obsolete/surplus government assets during the transition period. These procedures were in conformity with the Public Procurement and Disposal Act, 2005 and were used by both the national and county governments during the transition period.

5.4.12 Transfer of Public Assets and Liabilities

The TA achieved the following:

- i. Transferred all the assets and liabilities of twenty four (24) Agricultural Mechanization Stations (AMSs) and thirty four (34) Agricultural Training Centers (ATCs) from the National Government – Ministry of Agriculture, livestock and fisheries to the host Counties. This was done vide the mechanism and criteria for transfer and /or sharing of public assets and liabilities. The transfer was effected vide legal notice no. 33 of 28th February, 2013.
- ii. Handed over the Mechanical and Transport Fund equipment from the national government to the county governments. The county governments are currently utilizing these equipments. The equipments were shared as shown in the (**Annex 5.5**).
- iii. The TA also gave approval for disposal of obsolete assets to various Ministries and Government agencies pursuant to Section 35 of the TDGA, 2012. This was after the public entities submitted the request form (**Annex 5.6**).

Some of the approvals given included:

- a. The National Treasury was granted approval to dispose boarded Government vehicles (280 No.) and other stores on 2nd May, 2014.
- b. State House - Nairobi was granted approval to dispose boarded Government vehicles and other stores on 9th May, 2014.
- c. The Teachers Service Commission was granted approval to dispose boarded Government vehicles and other stores on 16th May, 2014.
- d. Water Resources Management Authority was granted approval to dispose boarded Government stores on 25th June, 2014.
- e. Ministry of Information, Communication and Technology was granted approval to dispose boarded Government motor vehicles and other stores on 25th June, 2014.
- f. The Kenya Bureau of Standards was granted approval to dispose boarded Government motor vehicles and other stores on 19th June, 2014.
- g. The National Treasury was granted approval to dispose boarded Government motor vehicles (9 No.) and other stores on 19th June, 2014.

- iv. Verified and handed over six (6) out of nine (9) projects attached to Small Holder Opportunity Markets Access Program (SHOMAP) from the Ministry of Agriculture, Livestock and Development. The six (6) projects were in the following counties: Bungoma, Kericho, Kisii, Meru, Nyandarua and Tharaka Nithi.

- v. Verified and handed over fish processing plants from the Ministry of Agriculture, Livestock and Fisheries in three (3) counties namely: Kakamega, Meru and Nyeri.

5.5 Pending Activities

The following activities remain pending as at the end of TA's term;

- i. Resolve all aspects that have been outstanding from the Nation – Wide physical verification exercise of the assets and liabilities of the defunct local authorities using independent experts like Forensic Auditors, Actuaries etc.
- ii. Prepare inventory of the remaining seven (7) ministries of National Government
- iii. Verify and audit the inventory of assets and liabilities of all the nineteen (19) ministries of National Government
- iv. Prepare inventory of the remaining one hundred and fifty six (156) state corporations/agencies
- v. Verify and audit the inventory of assets and liabilities of all the state corporations in Kenya
- vi. The developed guidelines on disposal of boarded public assets need to be publicized more to reach all the public entities
- vii. Gazettment of the developed regulations for transferring or sharing of public assets and liabilities between the two levels of government
- viii. Facilitate the transfer of assets and liabilities between the two levels of Government
- ix. Dissemination of the mechanism to all stakeholders
- x. Dissemination of the validated criteria to all stakeholders
- xi. Transfer of previously shared assets and liabilities between the two levels of Government
- xii. Gazettment of the transferred assets and liabilities
- xiii. Publish the validated (verified and audited) inventory in the Kenya Gazette
- xiv. Conversion of the AMIS into a data Centre and link it with the existing Government information systems and uploading of audited data of public assets and liabilities

5.6 Challenges Encountered under Public Assets and Liabilities

The following were challenges encountered by TA in relation to its mandate in preparation of inventory, audit and transfer of public assets and liabilities during the transition period:

5.6.1 Time

The time allocated for TA to prepare an inventory, audit, transfer and publish an inventory of all public assets and liabilities between the two levels of government was not adequate.

5.6.2 Inadequate budgetary allocation

The budgetary allocations to the Transition Authority was inadequate to deliver on its mandate on preparing an inventory, audit, transfer and publish all public assets and liabilities within the three (3) year transition period as provided for in the TDGA, 2012.

5.6.3 Non-Availability of Documents

During the nationwide physical verification of assets and liabilities of the defunct local authorities, the documents required to support or to confirm the assets and liabilities were not readily available in most of the defunct local authorities. Also notable is that some ministries and state corporations/agencies did not submit their inventories to TA even after several communications.

5.6.4 Handing/Taking over

Some of the accounting officers from the defunct local authorities had been transferred or relocated within or outside the county without handing over the assets and liabilities in their custody. This meant that collection of factual data became a daunting task in the counties where the former town clerks did not hand over the assets and liabilities in their custody.

5.7 Emerging Issues:

1. Expiry of the Moratorium

The moratorium on transfer of public assets and liabilities as provided for in Section 35 of the TDGA, 2012 ceases with the elapse of the TDGA, 2012 on 4 March, 2016. This will provide a lacuna where public assets and liabilities attached to devolved functions can easily be transferred, and these transfers cannot be reversed due to the expiry of the moratorium. The security of public assets and liabilities attached to devolved functions will be compromised.

2. Spiralling Interest Rates on Unpaid Liabilities

The liabilities attached to devolved functions which include: unpaid loans, unpaid emoluments, unremitted statutory deductions, unpaid suppliers and other creditors continue to attract interests as the debts are still outstanding.

3. Draft Regulations for Transferring Assets and Liabilities

The regulations for transferring and sharing of public assets and liabilities between the two levels of governments, has not yet been gazetted as such clarity on which level of government is to bear responsibility of liabilities attached to devolved functions is not anchored in law.

5.8 Lessons learnt

5.8.1 Funding

The activities of TA in terms of preparation of inventory, audit and transfer of public assets, did not receive adequate funding from National government hence the need for TA to mobilize other resources.

The TA involved development partners like UNDP to subsidize the allocation from National Government. It also leveraged on multi agencies where it signed Memorandum of Understanding with other government agencies to deliver on its mandate e.g. MOU between TA and Office of the Auditor – General (OAG) in the preparation of the unaudited inventory of assets and liabilities of the defunct local authorities where the TA used available OAG human resources to cut on costs.

5.8.2 Liabilities

There is need for further consultation between the two levels of government on how the transferred liabilities attached to devolved functions will be settled, with a proposal of a “conditional grant” from National Government.

5.8.3 Non-Availability of Documents

The mitigation measure to be employed to the above challenge is the inclusion of Kenya National Archives and independent forensic auditors to reconstruct lost or missing documents.

5.8.4 Handing /Taking over Exercise

The mitigation measure to the above challenge employed was the recall of all the Town Clerks and other accounting officers who have not handed over assets and liabilities which were in their custody to the county government to do so.

5.9 Recommendations

The following are the recommendations in relation to public assets and liabilities:

- i. The unaudited inventory of all existing assets and liabilities of the defunct local authorities, to be handed over to the Intergovernmental Relations and Technical Committee to resolve the outstanding issues before the assets and liabilities of the defunct local authorities are transferred to the county governments to assume responsibility
- ii. The received data on unaudited and unverified inventory of all existing assets and liabilities of Ministries, Department and Agencies, to be handed over to the Intergovernmental Relations and Technical Committee, to resolve the outstanding issues before the assets and liabilities of other devolved functions are transferred to the county governments to assume responsibility
- iii. Valuation of assets and liabilities of the defunct local authorities and also the ones attached to other devolved functions to be undertaken, in order for the county governments to prepare their opening financial statements on which future audit will be based
- iv. The regulations for transfer and sharing of public assets and liabilities should be gazetted in order to anchor in law which level of government is to assume responsibility of which devolved asset or liability
- v. After all outstanding issues in all existing public assets and liabilities as at 27 March, 2013 have been resolved, the Intergovernmental Relations Committee should develop a validated (verified and audited) national and county assets and liabilities register, that consist of forty seven (47) county governments assets and liabilities registers and one (1) national government assets and liabilities register
- vi. For a comprehensive public assets and liabilities inventory, there is need to identify, list, verify, value and audit all the assets and liabilities before they are transferred or shared between the two levels of government. This will then usher in the following: individual county assets and liabilities registers as at 27 March, 2013, opening financial statement of each county upon which future audits will be based; and a validated inventory (register) of assets and liabilities of national government.

CHAPTER SIX: CAPACITY BUILDING AND HUMAN RESOURCE



6.1 Introduction

One of the objects of the Transition to Devolved Government Act 2012 (TDGA) is to provide a comprehensive and coordinated approach to ensure both national and county governments have the capacity to successfully perform their assigned functions. The Constitution recognized from the onset that transfer of power, responsibility and resources without the necessary institutional capacity will not yield the much desired results.

This chapter presents the various initiatives undertaken in coordinating and facilitating capacity building efforts to support devolution. It also presents challenges, pending activities and proposes recommendation on ensuring both levels have the capacity to perform assigned function effectively.

6.2 Objectives of Capacity Building and Human Resource Activities

Among other functions, section 7(2) of the TDGA, mandates the Transition Authority to:

- i. Assess the capacity needs of national and county governments;
- ii. Audit of the existing human resource of the government and Local Authorities;
- iii. Advise on effective and efficient rationalization and deployment of the human resource to either level of government
- iv. Recommend measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions;
- v. Coordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively government.

6.3 Achievements in capacity building

In the past three years the Country has achieved key milestones towards implementation of devolution and in ensuring national and county governments have capacity to perform their constitutional

mandates. Since its inception, the Authority has coordinated and facilitated various capacity building and human resource initiatives relating to strengthening the capabilities of county government to perform assigned functions. These include;

6.3.1 Successful inauguration and establishment of the county governments

TA, in conjunction with collaborating institutions and agencies including the then Office of the President; Ministries of Public Works; Housing; Lands; Local Government, the National Assembly and Auditor General among others conducted infrastructure assessment surveys in 2012 to establish the status of readiness for county governments.

Arising from this assessment, the National Treasury allocated KSH 3.2billion which TA in turn disbursed to the counties for refurbishment of county offices for use by the incoming devolved units. The assessment revealed the varying degree of preparedness of counties in terms of infrastructure and in particular identified several counties with glaring inadequate infrastructure. These included: Nyandarua, Bomet, Wajir, Mandera, Tharaka Nithi, Lamu, Taita Taveta, Kajiado among others. From the assessment report, the Authority also identified viable offices that the counties could use on inception and this advisory was published in the daily press February 2013 (**Annex 6.1**).

The county office accommodation initiatives continued and in August-November 2015, TA conducted another assessment to establish the current status. Based on that report, the Senate Adhoc Committee on County headquarters recommended an enhanced budget during the 2016/2017 financial year to support five counties with a critical need for office accommodation. These were Lamu, Tana River, Tharaka Nithi, Nyandarua and Isiolo.

6.3.2 Transition mechanism to coordinate inauguration of county governments

In order to ensure successful transition and uninterrupted service delivery, the Authority developed transitional mechanisms to coordinate the inauguration of the county governments and to provide technical support in establishing basic structures, systems and processes. This mechanism entailed recruitment of over 600 members of County Transition Teams.

The teams facilitated the closing of the accounts operated by the defunct local authorities, opening of new accounts, establishment of financial systems and structures such as Integrated Personnel and Payroll Database (IPPD), Integrated Financial Management Information System (IFMIS), G-Pay. They also undertook setting up offices of governors, assemblies and treasuries among others.

TA in collaboration with Ministry of Planning and the National Treasury facilitated development of county profiles, planning and budgeting just before the county governments were established. Additionally, TA recruited 47 County Transition Coordinators (CTC) to provide a mechanism for supporting counties in the devolution process. The Authority further sensitized the deemed seconded staff on the eminent change and the need to support the new government and continue to provide services during the transition.

6.3.3 Capacity Building Transformation Initiatives

The capacity building transformation initiative was a collaborative effort between the Transition Authority, Kenya School of Government (KSG), Ministry of Devolution and Planning, and Centre for Parliamentary Studies and Training (CPST), development partners and other key stakeholders. The efforts of the framework aimed at enhancing knowledge, skills and inculcate positive attitudes in the devolved structures through training of those engaged in the devolution process.

In conjunction with the KSG and CPST, TA conducted induction for the newly elected and appointed leaders in both the executive and in the assemblies on their new roles and responsibilities. These

included Governors & Deputy Governors, Speakers and Deputy Speaker, Clerks of County Assemblies, Members of County Assemblies, County Secretaries, County Executive Committee members, County Public Service Boards, County Assembly Service Boards and other county structures.

6.3.4 Development of Information, Education and Communication materials

To ensure that the newly elected leaders effectively performed their functions, the Authority was instrumental in facilitating development of the transition laws, standing orders, Governors Guidebooks and frameworks. Also developed were profiles, guidelines, budgets, financial and human resource management systems, induction and training manuals among others.

Further, TA developed administrative guidelines on operationalization of Transition to Devolved Government Act 2012. This included regulations for management of assets and liabilities; guidelines and advisories on management of public records, human resource management and functional analysis. Technical support was also provided in establishment of administrative and financial management structures and systems including administration, finance, accounts, procurement and human resource.

6.3.5 Quick Readiness Assessment (QRA)

In line with section 23 of the TDGA, TA conducted a Quick Readiness Assessment (QRA) in all 47 counties in early 2013. The objectives of the assessment were:

- i. To establish the state of capacity preparedness of the counties to assume the devolved functions as per the Fourth Schedule of the Constitution of Kenya, 2010.
- ii. To provide a framework for feedback to both the county, national government and line ministries on the state of preparedness to assume the devolved functions.
- iii. To promote informed actions by all actors with regard to the devolved functions.
- iv. To foster dialogue and coordination among the various stakeholders for devolution to succeed.
- v. To establish the gaps and prerequisite capacity building priorities and identify follow-up capacity development activities for effective transfer of functions to the county governments.

Some of the findings of the QRA are summarized below:

- i. As at the time of QRA, counties were yet to enact legislations related to the devolved functions. However, National legislations that were based on the old constitutional dispensation and local authority by-laws existed which the counties could modify and adopt for use as a start.
- ii. No county had established its own service delivery framework like strategic plans, budgets, business units, public private partnerships, community based mechanisms, management board committees, Service agreements among others.
- iii. There was a steady progress in the counties to establish administrative units such as County Executive Committee Members (CECs), County Public Service Boards (CPSBs) and County Assembly Service Boards (CASBs).
- iv. Counties had not carried out Capacity Needs Assessment (except Nairobi which had a comprehensive report on all the three levels -individual, organizational and prevailing environment), to determine their staffing levels and other requirement yet it is a critical component in the devolution process. In relation to specific functions, health sector had conducted a comprehensive capacity assessment, the Services Availability and Readiness Assessment Mapping (SARAM). It also emerged that some Counties had bloated staff in functions previously performed by defunct local authorities.
- v. Most counties had not made arrangements for further decentralization for easier service delivery.
- vi. Analyses of the status of infrastructure revealed that majority of counties were in dire need of adequate offices to house members of their county teams and staff. However, most counties were in the process of renovating these offices to make them habitable. In addition, most counties were in the process of procuring various office equipment for their offices.

To strengthen capacity for devolution, TA recognized public financial management as priority capacity building area for effective and efficient use of public resources. The interventions focused on strengthened budget formulation, resource mobilization and allocation. Other areas of focus included enhanced capacity of counties public financial reporting and the ability by counties to audit and oversight.

To strengthen the human resource function, TA held several capacity building initiatives for the County Public Service Boards and County Assembly Service Boards. TA coordinated the consolidation of payroll data for all Local Authorities, trained and deployed IPPD personnel to establish and manage County payrolls and all counties have now established human resource and financial management systems (IFMIS and IPPD).

Further, all the Counties have operational County Public Service /Assembly Boards. Counties have now established Sub-County and Ward administrative units and are in the process of equipping these units with staff and the necessary infrastructure. To date, there is enhanced capacity by County Assemblies to prepare the necessary working tools and documents for county assemblies including maces, interim standing orders and speakers' rules as a result of facilitation of training through TA. In addition there is enhanced legislative drafting of county governments through training of county attorneys and development of legislation development guidelines.

6.3.6 Development of the National Capacity Building Framework

TA developed a National Building Capacity Framework (NCBF) to provide for an operational and coordinated approach to capacity building. The Framework was adopted by Devolution Sector Working Group (DSWG) which is hosted by the Ministry of Devolution and Planning. Its medium term objectives of the framework are to:

- i. Provide counties with capacities to build structures and systems to promote and ensure sustainable and economic development;
- ii. Empower citizens in the counties to hold national and county governments accountable through sensitizing them on efficient policy instruments supporting devolution;
- iii. Orient key officials in the national and county governments associated with the devolved functions to familiarize and be receptive of their functions;
- iv. Facilitate in building capacities in management of financial and human resources, county institutions, community and stakeholders participation.

Institutions involved in capacity building in the country are guided by this framework in their various interventions.

6.3.7 Management of human resource during the transition period

One of the objects and purpose of the Transition to Devolved Government Act was to provide for policy and operational mechanisms for audit, verification and transfer to both levels of among others, human resource, pensions and other benefits of staff.

6.3.7.1 Audit of staff of the defunct local authorities and devolved departments

Section 7 (2(i)) of the Transition to Devolved Government Act, TDGA 2012 (i) mandate TA to carry out audit of existing human resource of the Government and Local Authorities.

Pursuit to the above provisions, TA carried out an audit of the human resource in the defunct local authorities and devolved departments. The data collected provided information on numbers, gender, the capacities and competencies of the staff. The data was critical in consolidating and processing the payroll for former local authority staff.

The information was shared with County Governments to assist in human resource management and planning. The results of the audit revealed the need for in-depth assessment of the entire public

service through a biometric solution and this formed the basis for the Capacity Assessment and Rationalization of the Public service (CARPS) programme.

Key findings and observations

i. Total Number of staff (by counties)

The Audit report indicated that the total number of staff in all counties was **102,653** as at **December 2013**. Out of this, **70,416** officers were from the devolved ministries, accounting for 70% of the counties workforce while the defunct Local authorities contributed 30% (**32,237**) as illustrated in the **Figure 1**

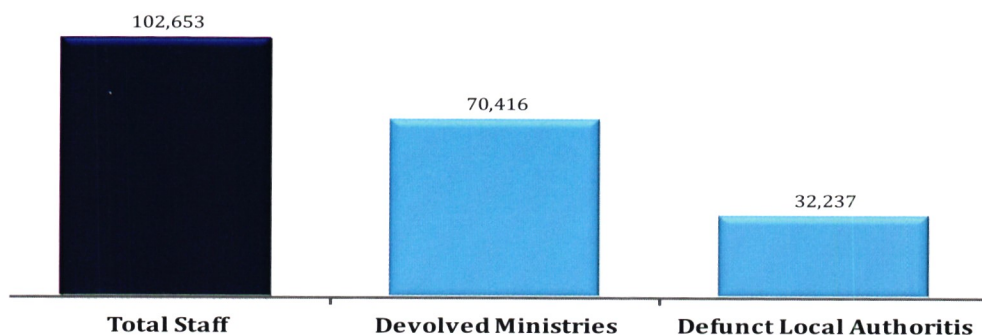


Figure 6: Total Number of staff (by counties)

Source: TA Counties human resource Audit report 2013

Nairobi County had the highest number of staff from defunct local authorities at 10,915, which was just above a third of all the staff from the defunct local authorities while Lamu County had the least staff at 44 working in the defunct local authorities. In terms of the devolved function Nakuru had most staff (3,349) while Mandera had the least (346).

Table 19: Total Number of staff (by counties)

No.	County	Devolved Ministries	Defunct Local Authorities	Total Staff
1	Mombasa	1,313	2,573	3,886
2	Kwale	957	209	1,166
3	Kilifi	628	371	999
4	Tana River	500	114	614
5	Lamu	493	44	537
6	Taita/Taveta	1,075	190	1,265
7	Garissa	1,401	84	1,485
8	Wajir	510	108	618
9	Mandera	346	74	420
10	Marsabit	748	66	814
11	Isiolo	701	226	927
12	Meru	3,047	537	3,584
13	Tharaka-Nithi	987	146	1,133
14	Embu	1,861	312	2,173
15	Kitui	1,829	264	2,093
16	Machakos	2,199	753	2,952
17	Makueni	1,286	271	1,557
18	Nyandarua	1,865	368	2,233
19	Nyeri	3,017	368	3,385
20	Kirinyaga	1,330	357	1,687
21	Murang'a	2,168	548	2,716
22	Kiambu	1,036	1,219	2,255
23	Turkana	542	51	593
24	West Pokot	711	83	794
25	Samburu	410	383	793
26	Trans Nzoia	1,355	286	1,641
27	Uasin Gishu	2,318	229	2,547

No.	County	Devolved Ministries	Defunct Local Authorities	Total Staff
28	Elgeyo/Marakwet	1,175	183	1,358
29	Nandi	1,546	165	1,711
30	Baringo	2,144	242	2,386
31	Laikipia	1,367	502	1,869
32	Nakuru	3,349	1,659	5,008
33	Narok	1,525	1,452	2,977
34	Kajiado	1,086	336	1,422
35	Kericho	1,394	402	1,796
36	Bomet	962	213	1,175
37	Kakamega	2,431	776	3,207
38	Vihiga	1,517	274	1,791
39	Bungoma	2,251	697	2,948
40	Busia	1,659	486	2,145
41	Siaya	1,552	370	1,922
42	Kisumu	2,484	1,237	3,721
43	Homa Bay	1,785	592	2,377
44	Migori	1,246	597	1,843
45	Kisii	2,215	654	2,869
46	Nyamira	1,430	251	1,681
47	Nairobi	2,665	10,915	13,580
	Total	70,416	32,237	102,653

Source: TA Counties Human Resource Audit Report 2013

ii. Distribution by gender

Distribution of the staff by gender indicated that there were **53.3%** male representation overall which was well within the constitutional requirements.

A closer scrutiny of the counties however revealed some contrast with some counties having more than two third of the same gender. These counties were Lamu 76.0%, Wajir 73.5%, Turkana 75.0%, West Pokot 70.0%, Samburu 69.0% and Mandera 86.0%.

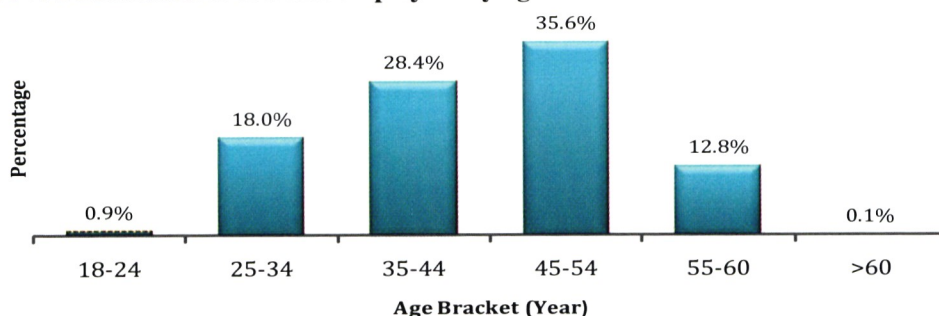
iii. Distribution by Ethnicity

Although many counties did not indicate the ethnicities of their staff, the data available indicated that most counties had more than 70% of their staff from the same ethnic group leaving less than 30% for other ethnic tribes. The counties with at least less than 70% from one ethnic group were; Taita Taveta 51%, Marsabit 29%, Isiolo 39%, Tharaka-Nithi 63%, Samburu 39%, Uasin Gishu 65%, Nandi 56%, Nakuru 50%, Narok 58%, Busia 58% and Nairobi 49%.

iv. Distribution by Age

Distribution of staff by age indicated that 12.8% of the county work force would exit the service by 2018. Further large majority officers were in the age bracket of 45-54 (35.6%) and only 15,108 officers were in the youth bracket (18-34) accounting for partly 19% of the entire work force in the counties.

Figure 7: Distribution of counties employees by age

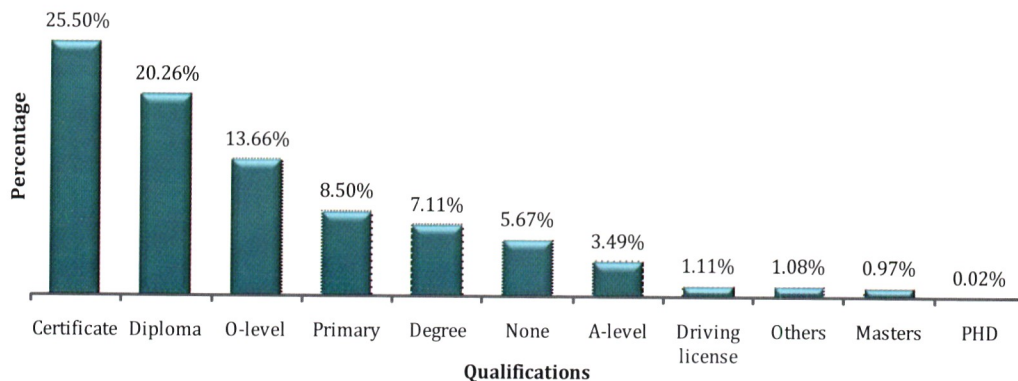


Source: TA Counties Human Resource Audit Report 2013

v. *Distribution by Highest level of Education Attained*

In terms of qualification, majority of the employees had certificates and diplomas at 25.50% and 20.26% respectively. Those high numbers were explained by the fact that majority of staff especially the devolved ministries in the county work force were nurses whose qualifications goes as certificates and diplomas. A good number of employees have O-level qualifications, majority of them coming from the defunct local Authorities.

Figure 8: Distribution by Highest Qualification



Source: TA Counties Human Resource Audit Report 2013

vi. *Critical issues that emerged from the overall audit report*

There were some major highlights observed from a number of counties that ought to be addressed. Some of these major highlights were:

- a. **Unauthorized recruitment:** There were emerging issues touching on irregular recruitment in some counties in disregard to the former Ministry of Local Governments circular suspending such recruitment.
- b. **Over-age staff:** In some counties, there were some staff that were over retirement age (60 years) who ought to have retired and they had not as per employment regulations. Further the audit revealed that majority of staff audited lay in the age group of 40-60 years and a smaller proportion below the age of 30 years.
- c. **Uncounted staff:** Some staffs in various counties were not counted either by chance or by design especially in Nairobi where a big number of devolved staff were not counted hence not possible to accurately validate the data hence an urgent action was needed to validate their status.
- d. **Unassigned staff:** Some counties were reporting that there were some staff that were unassigned as per the Public Service Commission (PSC) list. However further analysis revealed that these unassigned staff were employed under Special Programs especially in the Ministry of Health. A case in point is Elgeyo/Marakwet County which had 276 unassigned staff.
- e. **Shortages of professionals:** In all counties that were analyzed, there were some serious shortages of key professionals in the counties. These professionals include the technical cadres such as engineers, physical planners, architectures and land economists; however agricultural officers and clerical officers were in surplus in most counties.
- f. **Job group distribution:** The audit revealed that the distribution of job groups of most employees in the counties tended to be normal with majority found in the middle job groups 'G' to 'L', with the modal job group being 'K'. Very few employees were found in the highest job groups such as M, N, P, Q, R, and S.

- g. **Obsolete payroll:** During the audit exercise, it was observed that the earlier Civil Service payroll staff lists sent to counties was obsolete and not up-to-date. Also many officers had their promotions and designations shown on their pay slips but could not produce supportive relevant letters to support the new designation.
- h. **Academic qualifications:** Some staff in most counties did not produce academic certificates to validate their highest level of education. From those who did, the audit revealed that very few staff had attained Masters Level while majority had attained 'O' /Fourth Grade educational level.
- i. **Letters of first appointment.** In many counties, some officers did not produce their letters of first appointment to prove they were appointed in their line Ministries. For Example in Uasin Gishu County one hundred and seven (107) officers did not have those letters.
- j. **Latest Pay Slips:** The report indicated that in some counties, some officers failed to produce latest pay slips as required. It was noted that the reasons given for not having the pay slips were unique and varied.

6.3.7.2 Capacity assessment and Rationalization of the Public Service

In addition to audit of human resources, conducted in August-December 2013, the TDGA Section 7(m) mandates the Transition Authority to advice on effective and efficient rationalization and deployment of staff to either level of government. The County Government Act, 2012 also mandates the Authority in consultation with Public Service Commission and relevant institutions to facilitate and coordinate deployment, transfer and secondment of staff to national and County governments.

To facilitate this process during its inaugural meeting the Summit agreed to undertake a joint Capacity Assessment and Rationalization of the Public Service(CARPS). The Authority has been instrumental in Co-Chairing the Inter-Agency Technical Committee.

The overall objective of the CARPS Programme is to improve efficiency and effectiveness in public service delivery by aligning strategies, structures, systems, programs and staffing to achieve Vision 2030 and implement the provisions of COK,2010 and the subsequent legislations.

The program entailed human resource audit and skills assessment through biometric data registration; functional analysis, institutional and organizational reviews; determination of optimal staffing levels through workload analysis, and recommendations on rationalization and deployment of staff.. The exercise was conducted in 46 Counties (the exercise was conducted in Machakos county later in 2016) and in 20 Ministries and Departments. .

A. Key Findings and Observations

- i. Through biometric data registration, it was revealed that as at 31st October 2014, the total number of civil servants was 199,921 of which 126, 998 (64%) were in the counties whereas 72,923 (36%) were in the national government employment. Out of these, 36,266 had not been in the July 2014 payroll (hence freshly registered) whereas 4,541 could not be accounted for.
- ii. The analysis showed that a total of 61,503 (31%) of the civil servants fell in the 50-59 age group, implying they will exit the service in the next ten years. A further 59,639 (30%) were in 40-49 years.
- iii. On academic qualifications, the analysis showed that within the support services grading level, there were 481 employees with a Bachelors degree and above. Further review was recommended to establish whether the staff with degree qualifications were in appropriate job placement for the necessary redesignation.

- iv. The report identified overlapping and duplicating functions, roles and responsibilities within and across the two levels of government.
- v. According to the assessment, there were disparities in the nomenclature, job titles, grading and salary structures and notably the salary difference between the defunct local authority and mainstream civil service staff.
- vi. The analysis showed an acute shortage of technical and professional personnel with a high number in operations and support services. Further, most of the staff who should have been devolved with the transfer of functions were still held at the national government, implying idle capacity. Moreover, the available technical personnel was distributed in a skewed manner favouring national government and urban areas.
- vii. The assessment revealed that the transfer of functions has not been undertaken to its logical conclusion with the national government ministries and departments still implementing devolved and transferred functions. It was also found that some functions transferred had not been operationalized while counties were performing functions exclusively assigned to the national government. The review revealed duplication and overlapping functions, functions to be abolished, merged and others to be outsourced.
- viii. On optimal staffing levels, the assessment provided an analysis of scarce skills and areas of shortage and excess staffing. Based on this, the report made proposals to Ministries/ departments and counties on optimal staffing and recommendations by consultants based on best practices.
- ix. According to the assessment, both levels of government had not fully aligned their structures, programmes, processes and staff to their core mandates and functions as per the constitutional mandates. Ministries were found to be engaging in implementation as opposed to policy development and setting standards. This may explain the continued recruitment by them and the insignificant reduction in the number of directorates despite reduction in ministries from 44 to 19.
- x. The report from the assessment has made proposals for incentives that can cushion staff who may be affected by the rationalization and redeployment process. It recommends attractive incentives and livelihood programmes for those who may be affected by re-organization, outsourcing, mergers or distribution of staff between the two levels of government or those who may opt for voluntary separation.
Some of the incentives include: early release of pension, an exit package comprising three months' salary for every year worked, a one-off 'golden handshake', training for entrepreneurship and enhanced livelihoods and counseling for all affected staff prior to exercise of an option by concerned staff.
- xi. Findings with respect to distribution of staff by ministries and counties are as shown in the tables below;

Table 20: Number of biometrically registered employees

	Ministries	Number of Employee
1	Ministry of interior and coordination of national government	29517
2	Ministry of Education science and technology	9205
3	Ministry of Health	4694
4	Ministry of Land, Housing and urban development	4402
5	Ministry of Agriculture Livestock and Fisheries	3402
6	Ministry of Transport and infrastructure	3203
7	Ministry of devolution and planning	3068
8	The National Treasury	2870
9	Ministry of labor social security and services	2870
10	Environment Water and Natural resources	1919
11	Ministry of defence	1882
12	Office of The attorney General and Department of Justice	1076

	Ministries	Number of Employees
13	The presidency	921
14	Industrialization and Enterprise development	706
15	Ministry of Information Communication Technology	649
16	Ministry of East African Affair Commerce and Tourism	644
17	Ministry of Sports Culture and Arts	636
18	Ministry of Foreign Affairs	508
19	Ministry of energy and petroleum	494
20	Ministry of Mining	364

Source : CARPS Consolidated Report 2014

Table 21: Number of biometrically registered employees by County

	Counties	Employees registered by 31 st October 2014
1	Mombasa	4,452
2	Kwale	1,374
3	Kilifi	2,740
4	Tana-River	861
5	Lamu	675
6	Taita-Taveta	1,285
7	Garissa	1,765
8	Wajir	1,576
9	Mandera	1,698
10	Marsabit	959
11	Isiolo	1,053
12	Meru	4,090
13	Tharaka-Nithi	1,942
14	Embu	2,291
15	Kitui	2,080
16	Machakos	2,815
17	Makueni	2,924
18	Nyandarua	1,709
19	Nyeri	3,069
20	Kirinyaga	2,440
21	Muranga	2,438
22	Kiambu	5,053
23	Turkana	1,405
24	West-Pokot	1,965
25	Samburu	1,245
26	Trans-Nzoia	1,614
27	Uasin-Gishu	3,193
28	Elgeyo-Marakwet	1,840
29	Nandi	2,369
30	Baringo	4,041
31	Laikipia	1,768
32	Nakuru	4,917
33	Narok	2,833
34	Kajiado	1,674
35	Kericho	2,824
36	Bomet	2,259
37	Kakamega	3,230
38	Vihiga	1,339

	Counties	Employees registered by 31 st October 2014
39	Bungoma	4,989
40	Busia	2,132
41	Siaya	1,642
42	Kisumu	3,305
43	Homa-Bay	3,589
44	Migori	2,256
45	Kisii	5,325
46	Nyamira	1,909
47	Nairobi	14,046
	Total	126,998

Source : CARPS Consolidated Report 2014

B. Key Recommendations of the Report

- i. Freeze recruitment to allow for rationalization, deployment and redeployment of existing staff;
- ii. Distribute technical and professional staff between the two levels of government and across the counties;
- iii. Provide attractive incentive strategies to attract professionals to serve in the counties especially the hard-to-reach areas;
- iv. Commission an independent forensic audit to investigate irregularities in the payroll;
- v. Adopt a centralized payroll numbering and link IPPD to Kenya Registration Bureau, KRA and IFMIS;
- vi. Design a long-term National Performance Management System;
- vii. Ring-fence critical and scarce skills;
- viii. Harmonize salaries and remuneration for various cadres of staff performing similar jobs;
- ix. Expediting the finalization of enabling policies and legislation to facilitate undertaking the various functions;
- x. Adoption of proposed generic structures and corporate services models;
- xi. Explore modalities of minimizing duplication and cost of administrative structures at the sub-county and lower levels.

6.3.8 Establishment of a County Pension Scheme and Transfer of Staff

Vide Section 3 (d) (iv) of the TDGA, TA is mandated to provide a policy and operational mechanism during transition period for audit, verification and transfer to the national and county government of among others, the human resources, pensions and other staff benefits of employees.

6.3.8.1 County Pension Scheme

Pursuant to this mandate, the Authority initiated engagements with various stakeholders with a view to establish a County Pension Scheme which facilitates transferability and portability of human resource from national to county governments and between counties while at the same time safeguarding and protecting employees' pension rights.

Out of the engagements and through a Technical Committee comprising various institutions involved in human resource management during the transition period that included the County Public Service Board Forum, the Public Service Commission, the National Treasury, the Pensions Department, the Retirement Benefits Authority, the Salaries and Remuneration Commission, the Council of Governors, the Kenya County Government Workers Union, the County Assembly Forum, a report on modalities of establishing a County Pension Scheme was prepared.

The Technical Committee recommended that an Umbrella Pension Scheme be established for the staff of the Counties. The Committee also recommended that the two existing schemes LAPTRUST and LAPFUND be closed to new members with effect from the date the new Umbrella Scheme is established and that their administrative services be merged to offer administration services to the new Umbrella Scheme and to the two closed funds..

The Umbrella Scheme was to be anchored in an Act of Parliament preferably enacted by the Senate to give it a national outlook and to protect public interest. Consequently, TA facilitated the preparation of the County Governments Retirement Scheme Bill, 2015 which was presented to the Senate in August 2015.

Alongside the legislative process, it has emerged that there are other emerging (selfish) competing interests that have frustrated the conclusion of the process of establishing a county pension scheme. This has involved court cases. One case involves the protests by one of the existing county government staff pension manager, LAPFUND against the move by the Council of Governors to advertise for consultancy for advice on merger of the administrative services of LAPTRUST and LAPFUND as recommended by the Technical Committee. The Fund has also petitioned against apparent preference by the CoG in adopting the County Pension Fund. This has posed the risk of delaying the process of declaring counties as public Service and facilitating the transfer of seconded staff and their benefits.

6.3.8.2 Posting of Post-intern Medical Officers

Arising from stakeholder consultative meetings on health workers emerging issues, an inter-agency committee chaired by Transition Authority was formed. It drew members from the Public Service Commission, the Council of Governors (CoG), the Directorate of Public Service Management and Ministry of Health. Its purpose was to deliberate on requests for medical, dental officers and pharmacists by county governments.

The agreed framework involved receiving requests for medical personnel from the counties after which, the Ministry of Health would forward the requests to TA for posting. A total of 686 Medical Officers, 93 Dental Officers and 156 Pharmacists were posted as at December 2015.

Another cohort of inter medical staff will be finishing the programme in March/April 2016 and will be available for deployment in the same manner as last year. The requests for counties to give their priorities for posting has been made through the Council of governors by the public Service Commission.

Regarding issues of management of health professional staff, TA convened consultative engagements with the medical workers' Union representatives in order to mitigate against the incessant strikes that were affecting service delivery in the counties. From the fora, it was established that some of their grievances included delayed salaries, non-remittance of statutory deductions, delayed promotions, lack of training opportunities, salary disparities, lack of annual increment, employment of unqualified personnel and non-absorption of Economic Stimulus Programme workers.

Following the engagements, some resolutions were agreed and included:

- i. Creation of the central body to handle human resource issues as recommended by the Unions.
- ii. Continued engagement with the Unions by the county governments to discuss various issues raised by health workers.
- iii. The Council of Governors to be encouraged to sign Recognition Agreement with all the Unions. This Recognition Agreement should apply to all the counties.

As at February 2016, engagements on matters regarding health workers were still being pursued through a framework convened by the Public Service Commission.

6.3.8.3 Management of Youth Polytechnic Instructors

A. Youth polytechnic Instructors Engaged under the Economic Stimulus programme

By November 2014, the contracts for Youth Polytechnics (YP) instructors engaged in 2010 under the Economic Stimulus Package (ESP) programme had ended and the contracts for those who had been engaged in 2011 were expected to expire by May 2015.

Other challenges included non-remittance of capitation grants for subsidized youth polytechnics tuition.

In view of the fact that staff were still required in the institutions; and to allow time for the counties to budget for engagement of instructors on a long term basis, the Authority convened an inter-agency and inter-governmental consultative forum involving among others; the National Treasury, Public Service Commission, Directorate of Public Service Management, Ministries of Devolution and Planning, Education, and Council of Governors through the Education Committee.

Among other resolutions communicated by the Transition Authority through a circular letter dated 15th December 2015, Public Service Commission in conjunction with the Ministry of Education, Science and Technology extends the contract for the staff upto June 2015 after which the Counties would absorb and take full charge of management of the personnel on permanent and pensionable basis. On its part, it was agreed that Treasury provides funds to facilitate payment of staff for the period of extension, for payment of Service Gratuity and for capitation grants.

As at February 2016, it had been established that most of the counties had absorbed the ESP staff as agreed in the consultative forum both as permanent and pensionable or on contract. Notable exceptions included Nyeri County which advertised the posts afresh and had instructors going to court on account of discrimination. Others were Kakamega, Taita Taveta and Lamu that absorbed some but not all the instructors.

The Authority has also established that the State Department of Vocational Education and Training has been promised funds during the supplementary budgeting process to pay the salary arrears and Service Gratuity for the staff for the period of November 2014 to June 2015. However, there has been no undertaking from the National Treasury for allocation of Capitation Grants to support training in the polytechnics.

B. Youth Polytechnic Instructors Engaged on permanent and pensionable Terms

The issues concerning this cadre of staff involved lack of coordination regarding transfer of the payroll to the counties following the transfer of the function to the counties in August 2013. As a result the Ministry of Education had paid the salaries for the staff up to August 2014.

The forum mentioned above agreed that the Ministry transfers the payroll data for each county for the latter to start paying the staff effective September 2014 as the personal emoluments budget had been transferred to the counties under the County Allocation of Revenue Act 2013.

C. Youth Polytechnic Instructors Engaged by Boards of Management but getting Top-Up Grant from the Government

The issues affecting this category of staff were brought to the attention of the Transition Authority in February 2016 and involved stoppage of payment of the Grant and concerns about Service Gratuity and Pension. The Authority referred the matter to the Ministry of Education, Science and Technology for necessary guidance.

6.3.8.4 Deployment of staff serving in the county governments

Pursuant to section 138(2) of the County Governments Act 2012 and section 13 of the *Guidelines for Transition of Staff to the Counties*, the Transition Authority is mandated to facilitate the deployment, transfers and secondment of staff to the national and county governments in consultation with the public Service Commission and relevant Ministries. In this regard, the Authority had conclusively processed 296 requests for transfers and redeployment as at December 2015. Other requests are still pending.

6.3.9 Closure and Transfer of Public Records

Under Section 3 (d) (iv) TA is mandated to provide mechanism for closure and transfer of public records and information

To facilitate the development of a mechanism for closure and transfer of public records, TA carried out a survey of records in all the forty seven counties. The aim of the survey was to establish the status of public records, location of vital records, the capacity of counties to manage records (human resource, infrastructure, systems). County specific reports were prepared and shared with the county leadership and recommendations given.

The scope of the survey included records of the defunct local authorities and restructured provincial administration in all the counties. A survey questionnaire was used to obtain necessary feedback, especially on four main thematic areas that formed other objectives of the study. They included the closure and transfer of public records; the status of records, volume, categories, formats and identifications of vital documents; to establish the capacity to manage records in terms of human resource, infrastructure, processes and systems; and finally to establish the readiness of the county to receive records from the National Government.

The survey findings indicated that no proper handing over and transfer of records was done especially by the defunct local authorities with 73% of records dumped in the county premises and offices. Most of the records in terms of volume were ranging between 1-2500 and mostly in print format at 86% and cartographic at 14%.

In terms of capacity to manage records, the survey found out that 42% are qualified in record management, while 58% of staff managing records do not have prerequisite qualification to manage records. On space facilities, 80% of the offices do not have adequate space to keep records. Finally, the survey showed that most offices are not ready to receive new records due to acute shortage of skilled personnel, inadequate space and inappropriate infrastructure. In order to effectively and efficiently manage business, personnel, financial and information as an asset to preserve institutional memory. Thereafter guidelines on closure and transfer of records were developed and shared with the county leadership and forwarded to attorney general for Gazettement.

The report recommended that since records are a valuable information resource, there is need to allocate adequate space for them, provide appropriate equipment for storage, while at the same time hire qualified staff in records management. Capacity building programs were also recommended to commence to train the existing staff, as well as to set up systems and procedures for managing records.

Additionally, records should be appraised to facilitate transfer and disposal. Adequate budgetary allocation, establishment of record management units, efficient management of electronic records and provision of a secure environment were also recommended to be adopted by the county governments.

For Closure and transfer of public records the reports recommended the accounting officers to apply the provisions of cap 19 of Kenya National Archives and Documentation Service (KNADS) Act,

Disposal Acts Cap 14, Financial Order No.23, and other disposition documents (such as records retention schedules) that govern the removal of records from operational systems in a systematic and routine basis as listed below:

- i. Where there are files that have been appraised and earmarked for preservation and have not been collected to date, the survey recommended that all such files are collected by KNADS immediately.
- ii. In case of disposal of files/records, therefore, the counties were required to sort out the non-active files/records and consult the Kenya National Archives and Documentation Service (KNADS) for Appraisal and Disposal.
- iii. In cases where KNADS has already granted authority for destruction of valueless files/records, immediate action was recommended to be taken to destroy those records in the records management units, in order to create space.

The County Secretaries were further advised as the accounting officers in counties, to initiate the disposal of accountable/financial documents (vouchers, receipt books, Local Service Order's (LSO), Local Purchase Order's (LPO), etc.) as stipulated in Financial Order No.23 of the Government Accounting Procedures. For disposal of supplies records or stores the Public Procurement and Disposal Act No.3 of 2005 Section 129, they were required to apply the provision of this act.

6.4 Pending Activities

- i. Rationalization, deployment and transfer of human resource
- ii. Finalization of closure and transfer of public records and information

6.5 Challenges

- i. Delay in the finalization of rationalization and deployment of staff which is likely to result massive redundancies
- ii. Continued recruitment of staff resulting in increased wage bill and idle capacity at both levels of government
- iii. Lack of clear human resource management policies, norms and standards has resulted in uncalled for industrial unrest
- iv. Cascading devolution and strengthening the sub county units
- v. Inequitable distribution of staff particularly technical staff across all levels of public service
- vi. Discrimination, victimization of seconded staff

6.6 Emerging Issues

- i. Disparities in terms and conditions of service for various categories of staff in the counties
- ii. Existence of parallel payroll systems in the counties
- iii. Clamor for inter-county transfers due to differential treatment
- iv. Pension for staff of water companies/boards and other parastatals
- v. Delays in promotions of public servants
- vi. There are a lot of competing personal interests that have affected the conclusion of the county pension scheme

6.7 Lessons learnt

- i. Devolution being a new phenomenon, there was need for sufficient civic education to appreciate the implications/demands of the new governance structure.
- ii. Owing to the conflict that ensued during the transition period, there is need to build the capacity of various leaders to understand their various roles and responsibilities.

- iii. There was need for the national government to enhance its capacity for it to undertake its assigned functions and support the counties in building their (counties) capacity.
- iv. The public service policy, norms and standards needed to have been in place to guide the implementation of the devolution process.
- v. The need for respect for the rule of law cannot be overemphasized.

6.8 Recommendations/Way forward

- i. There is need to fast track the rationalization and deployment of staff.
- ii. The Ministry of Public Service, Youth and Gender Affairs should finalize the Collective Bargaining Agreement Framework to guide future negotiations in the devolved system of government.
- iii. There is need to need for standardization of the human resource management practices in the public service.
- iv. Counties should develop records management programs to safeguard and preserve public records and information for proper record-keeping to ensure transparency, efficiency and accountability in line with the existing law, that is, Public Archives and Documentation Act, CAP 19.
- v. The Ministry of Devolution and Planning should fast track the review of the National Capacity Building Framework to address the emerging capacity needs of both levels of government.
- vi. The Public Service Commission should develop a mechanism to protect the seconded staff from discrimination and victimization in line with the provisions of Article. 236 and CGA 73.
- vii. An inter-county transfer mechanism/framework should be put in place to manage the process.
- viii. Staff allowances, for example house daily subsistence should be harmonised across all counties rather than referring to some counties as 'others'.
- ix. Counties that have not concluded the process of absorption of ESP staff of Youth Polytechnics as agreed during stakeholder meeting should do so to facilitate finalization of the transfer of staff to the county public service.
- x. As TA exits, IGRTC should take over immediately so that the work that needs to be fast-tracked is not kept pending.
- xi. National Government should expedite payment of salary arrears and service gratuity of the ESP YP staff for the period between November, 2014 to June 2015 to avoid the suffering of the officers.
- xii. There is need for fast tracking the enactment of the county pension scheme to facilitate transfer of staff to the counties and harmonize all retirement benefits of county staff including those on contributory and non-contributory schemes.

CHAPTER SEVEN: PLANNING, BUDGETING AND FINANCE



7.1 Introduction

One of the operational areas in the Transition Authority was the thematic area of planning, budgeting and finance. This was to give effect to Section 20 of the Transition to Devolved Government Act No. 1 of 2012. It comprised members of the Authority together with co-opted members to enhance participation in the transition process and hence give effect to the provisions of the Constitution of Kenya 2010 related to participatory processes by state organs. It also enabled the TA to leverage on expertise and other resources not resident internally.

7.2 Objectives

The thematic area of Planning, Budgeting and Finance mandate in the Transition Authority included;

- i. Coordination of the preparation of initial County Medium Development Plans through a public participatory process;
- ii. To facilitate the preparation of initial (March- June 2013) and the FY 2013/2014 county budgets, to ensure such budgets are agreed upon;
- iii. To facilitate the identification of current county governments' revenue sources, including devolved funds and other local authority transfer funds;
- iv. To facilitate the implementation of Public Finance Management Act, 2012 by the counties and the coordination of the setting up of county government treasuries and their operationalization
- v. To undertake an assessment and classification of urban areas and cities as required by Section 54 of the Urban Areas and Cities Act, 2011;
- vi. To assist counties in establishing monitoring and evaluation systems; and
- vii. To assist counties 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 utilization and resource mobilization
- viii. To facilitate the preparation of county profiles, and ensure that the profiles were produced, published and publicized
- ix. To establish the status of ongoing reform processes, development programmes and projects and make recommendations on the management, reallocation or transfer to either level of government.

7.3 Achievements

The following were the specific achievements:

7.3.1 Facilitated the Development of Budget for County Governments for 2012/13 Financial Year

Section 7(1) (d) (i) of the *Transition to Devolved Government Act, 2012* requires the TA to co-ordinate with the relevant state organ or public entity in order to facilitate the development of the budget for county governments during Phase One of the transition period. In fulfilment of the requirement, the TA, in collaboration with the former Ministry of Finance prepared the budget for the 2012/2013 financial year (March - June 2013), for all the county governments, giving the allocations for the executive, county treasury and county assembly. In addition, the budgets were itemized as required by the law.

7.3.2 Facilitated the Preparation, Publication and Publicization of County Profiles

Section 1(i) of the Fourth Schedule of the TDGA requires TA to facilitate the preparation of county development profiles, to ensure that the profiles of counties are produced, published and publicized. In execution of the requirement, TA in collaboration with the former Ministry of Planning, National Development and Vision 2030, developed the profiles and facilitated the establishment of county forums in all the 47 counties.

The purpose of the forums was to validate the profiles in line with the provisions of the Constitution 2010 and *County Government Act 2012*. To assist counties in preparation of their County Integrated Development Plans (CIDPs), soft copies of the CIDPs were sent to the counties in February 2013. The county profiles were published and launched by His Excellency the President in June 2013. The county profiles were publicized in all the 47 counties.

7.3.3 Capacity Building in Preparation of County CIDPs and Spatial Plans

The TA in consultation with the former Ministry of Planning National Development and Vision 2030 prepared and issued to counties, guidelines on preparation of the County Integrated Development Plans (CIDPs) in May 2013. The guidelines assisted counties in the preparation of CIDPs and sectoral plans. In addition, TA in collaboration with the Physical Planning Directorate of the Ministry of Lands, Housing and Urban Development prepared and issued to counties guidelines for preparation of county and urban areas and cities spatial plans.

During the months of July and August 2013 in collaboration with the Kenya Municipal Programme of the Ministry of Lands, Housing and Urban Development, trained 10 officers from every county on how to prepare their County Integrated Development Plan and use of county development profiles in preparation of those plans. This enabled the counties to come up with zero draft CIDPs at the end of the training programme.

7.3.4 Facilitated the Development of County Public Finance Management Systems

The TA in collaboration with other partners prepared the *County Governments Public Finance Management Transition Bill, 2013* which Parliament enacted as *County Governments Public Finance Management Transition Act, 2013* to operationalize the transition county treasuries. The TA also posted and deployed officers seconded by the Public Service Commission to county treasuries. The officers were crucial in the operationalizing of county treasuries and public financial management systems. By issuing guidelines TA assisted the county governments in opening of the required three county bank accounts at the Central Bank of Kenya.

The TA also assisted counties by providing guidelines on designation of receiver of revenue, accounting officer and prepared and disseminated guidelines for operationalization of county financial management system to guide on budget preparation and execution by the county government in line with Article 190 of CoK, 2010 and *Public Finance Management Act, 2012*.

In addition, in line with sections 9(b) of the *County Government Public Finance Management Transition Act 2013*, guidelines were issued to enable the Transition Accounting Officer to authorize the opening and operation of the County Revenue Fund (Exchequer Account), County Recurrent Bank Account and County Development Bank Account. Furthermore, TA carried out initial training on planning and budgeting for the interim public finance management officers. The Authority also issued an advisory on the closure of the bank accounts of the defunct local authorities. (**Annex 7.1**)

After consultation with other stakeholders, TA advised the counties to adopt the use of Integrated Financial Management Information System (IFMIS) and facilitated the integration of Local Authority Integrated Financial Operations Managements System (LAIFOM) to IFMIS and the use of GPAY. The TA also issued an advisory to counties reminding the Governors the requirement of section 137 of PFMA to establish County Budget and Economic Forums (CBEF) as a forum for consultation by county governments and the establishment of the county planning units.

7.3.4.1 Stakeholder Consultative Meetings on Emerging Issues

The TA held a consultative meeting with the Chairmen of the Budget and Appropriations Committee, Speakers and Clerks of the County Assemblies and the County Executive Committee members for Finance and Economic Planning from 20th -23rd August 2015 at the Mombasa Beach Hotel.

The meeting harmonized the operational challenges between the County Assembly and the County Treasury in terms of funds flow to the County Assembly; adherence to the submission deadlines for policy documents like the Budget, County Annual Development Plan, Quarterly Reports, and County Fiscal Strategy Paper amongst others.

The County Assembly undertook to always adhere to the Budget Ceilings set by the County Fiscal Strategy Paper to avoid mutilation of the Budget and to always revert back to the Executive with a memorandum. The two arms also agreed to dialogue and always uphold consultation on the issues affecting their operations towards ensuring uninterrupted service delivery to the citizens.

The consultative meeting recommended that:

- i. Constitutional Commissions and Independent Offices be mandated to effectively engage the counties and the public when disseminating their reports especially on issues that need redress.
- ii. County Executive and County Assembly to come up with measures and ways of ensuring that they comply with the official deadlines/timelines in the County budgeting process.
- iii. Public participation be merged or rationalized between the two arms of County Government to harmonize the process and reduce public fatigue.
- iv. That the counties fully operationalize the County Budget and Economic Forum (CBEF) that would advise on matters budgets hence streamline the budget and planning at the County Government.
- v. That the two arms of county government should uphold management effectiveness which is based on the willingness to change attitudes and practices and make genuine efforts towards ensuring that the objects and principles of devolution are achieved.
- vi. That the County Assembly should be keen when scrutinizing the budgets by asking for details and fully itemized budgets in the form of printed estimates.

- vii. That the County Assembly Members be proactive and strategic on budgets allocated for projects in their wards towards ensuring their delivery.
- viii. County Assemblies strategically establish the Sectoral working groups to ensure sectoral plans and priorities are reflected in the budgets.
- ix. More capacity building exercises be carried out for the MCAs on site at their respective Assemblies on public financial management
- x. The Public Finance Management Act, 2012 be amended to require the National Government to complete the Budget Policy Statement (BPS) and Division of Revenue in good time to enable the Counties discuss and give adequate time for public participation regarding the County Fiscal Strategy Paper (CFSP).
- xi. Fiscal management be decentralized from the County Treasury to other departments and to the further decentralized units.
- xii. County Governments utilize Information Technology

7.3.4.2 *The fiduciary mock reviews audit by Transition Authority and Public Finance Management Reforms Secretariat*

The Public Finance Reforms Secretariat together with the stakeholders came up with Public Finance Management Strategy for the period 2013-2018. To guide in the implementation of the Strategy, a Work plan was drawn to support the County governments in terms of capacity building in the areas of budget and audit.

One of the activities in the Work Plan drawn by the Steering Committee was to undertake a Fiduciary Mock Review in a few selected counties. The outcomes of the mock reviews were to act as case studies for the planned training activities for the county treasury officers. 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 required urgent intervention.

A Sample of ten (10) counties was identified for the exercise. The following counties were identified:- Mandera, Makeni, UasinGishu, Bungoma, Kwale, Isiolo, Kiambu, Siaya, Garissa and West Pokot.

The Fiduciary Mock Reviews started on the 28th of October 2013 and ended on the 13th of November 2013. The reviews were organized by the Transition Authority in collaboration with the Public Financial Management Reforms Secretariat, and Internal Audit Department of the National Treasury.

7.3.4.3 *Emerging issues from Mock Reviews*

i. Accounting and Accountability

Regarding accounting and accountability, the following issues emerged,

- a. All the counties reviewed did not operate exchequer cash books;
- b. Most of the counties reviewed did not use the approved official and miscellaneous receipt books for collection and accounting for revenues;
- c. Most of the counties were operating through 'county imprest bank accounts' which circumvented the County Revenue Fund Accounts system;
- d. IFMIS is only 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.
- e. Lack of a standard/effective computerised accounting, procurement and financial reporting package for donor funded projects.
- f. There were cases in the counties reviewed, of potential concealment of imprest advances by raising payment vouchers rather than imprest warrants, unauthorized payments, unauthorised/

unclear contract prices and variations, unauthorized overpayments to service suppliers, unsupported or inadequately supported payments.

ii. Budgeting Coordination and Monitoring

On budget coordination and monitoring, the following were the emerging issues;

- a. Budget constraints including inadequate and untimely flow of funds;
- b. Procurement plans had not been prepared by the counties reviewed. 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 becomes difficult;
- c. Institutional and capacity weaknesses at the County Treasuries;
- d. There is weak or inadequate performance monitoring and coordination of county activities;
- e. Slow setting up of county departments and other administrative structures to lead in the budgeting process for the devolved functions.

iii. Internal Control, Staffing and Oversight

The following were issues regarding internal control, staffing and oversight;

- a. Chronic understaffing and high staff turnover, especially by those who were on secondment from the national government;
- b. Weak internal oversight functions including lack of audit and finance committees;
- c. Weak social accountability structures and anticorruption safeguards which included lack of corruption/fraud prevention policies and strategies and weak institutional capacity to deal with irregularities, corruption and fraud;
- d. Internal audit coverage was inadequate despite the existence of an internal audit function in all implementing county departments;
- e. Limited knowledge of Government disbursement/procurement procedures due to high staff turnover and lack of sustainable staff training programs;

iv. Procurement and value for money

On 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; material amounts in procurement of goods and services being done on cash basis.

v. Non- compliance with timelines and legislation

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

Other areas of concern include poor records management and filing systems and lack of coordination of information flow within the counties.

vi. General Recommendations and way forward

The following were the general recommendations regarding public finance management:

- a. The National Treasury should fast track the roll out of IFMIS, ensuring all modules are operational, including the budget, accounting, procurement, financial, and reporting modules and networking the counties to ensure smooth operation of the system.
- b. The County Treasuries should be restructured and their capacities enhanced or strengthened with respect to their abilities to conduct quality control reviews, establishment of performance monitoring units, development of an operations manual to define services standards and timelines for service delivery at every stage of the fund flow process,
- c. The development and implementation guidelines on institutional risk management policy framework (IRMPF) at the County level, including the strengthening of audit committee

oversight functions, social accountability structures and appropriate anti-corruption safeguards,

- d. The National Treasury in consultation with responsible Ministry of Devolution and Planning should ensure that there is effective performance monitoring units in the counties,
- e. The Internal Audit should adopt risk-based approach and ensure adequate project coverage in their annual work plans. Also, internal audit should conduct half yearly 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.

7.3.5 Capacity Building of Counties on Planning and Budgeting

The Transition Authority implemented this activity through a programme called Kenya Governance Strategic Execution Support (KEGOSES). The programme was implemented in collaboration with the Strathmore Governance Centre (SGC), Council of Governors (COG), Commission on Revenue Allocation, and Office of the Controller of Budget (OCOB). This was implemented in February to March 2014. The participants included governors, deputy governors, county executive committee (CEC) members, chief officers, members of the county assemblies (MCAs) and other relevant county officials. The key areas of focus included the overview of Public Finance Management, Planning and Budgeting, Budget Execution, Devolution and Public Participation and Monitoring and Evaluation.

7.3.5.1 Emerging Issues from KEGOSES

i. Devolution & Public Participation

The issues/challenges that arose out of the presentations on Devolution and Public Participation, the required interventions and responsible/lead consortium partner for action were as follows:

Table 22: Devolution and Public Participation Issues under KEGOSES

Issue/Challenge	Intervention Required
Lack of a national policy framework and legal lacuna for public participation	Counties encouraged to enact legislation
Few Counties had formed County Budget and Economic Forum while others had informal arrangements	Counties that had not established the CBEF to do so and those with informal arrangements to formalize them
Political interference/Conflict of interest	County leadership should manage their political differences and ensure that they do not paralyze or stifle public participation
Minimal and sometimes no budgetary allocations for Public Participation	Counties should leverage on ICT platforms while ensuring that make provisions for public participation in their annual budgets.
Low literacy levels and grasp of roles by stakeholders in public participation	Civic education should continually be provided to the members of the public to sensitize them on their roles in public participation forums
Lack of public interest, demand for allowance and capture of the forums by lobby groups to protect their interests	Stratify public participation forums and moderate programmes well to ensure an all-inclusive process while continually engaging and sensitizing the public on their constitutional roles in public finance.
Limited window between notification and deadline for submission of view by the public and their incorporation into the documents such as CFSP and budgets.	The public should be informed in advance and adequate time provided for submission of views and their incorporation into the documents.
Public is reluctant to participate in government processes because most of their views are dropped, projects stalled or were not given priority at all.	Continuous engagement with the public and civic education is required to ensure that the public does not shy away from government affairs.
Untimely and limited access to information for public participation	Counties should provide adequate information that is easily accessed for meaningful engagement with the public

Issue/Challenge	Intervention Required
Poor communication and coordination strategy to carry out public participation exercise	Counties should make use of vernacular radio stations and other ICT platforms and coordinate the incorporation of views in their documents
Projects raised by the public are sometimes not prioritized and incorporated for implementation	Counties should know how to handle and prioritize projects raised by the public.

ii. *Public Finance Management*

The issues/challenges that arose out of the presentations on Public Finance Management, the required interventions and responsible/lead consortium partner for action are as follows:

Table 23: Public Finance Management Issues under KEGOSES

Issues/Challenges	Required Intervention
Budget Deficits	Budget deficit is a choice that should be avoided at all cost
Limited sources of revenue for county governments	County governments should ensure that their revenue raising measures were not inconsistent with and did not contradict national economic policy
Lack of legislations to collect revenues	County governments should ensure that their Finance Bills get the necessary approvals by their Assemblies to regularize the revenues they collect locally
Inadequate funds by oversight institutions to carry out their mandate including engaging and sensitizing the county officials on fiscal responsibility principles	Oversight institutions should be adequately facilitated to execute their mandate and ensure that counties adhere to the principles of public finance
Lack of proper regulations and guidelines on PFM and the political sensitivity of the transition period	Oversight institutions should carefully execute their mandate including reporting on financial matters bearing in mind of the regulatory and political environment under which county governments operate.
Declaration and use of revenues raised by devolved institutions such as hospitals remains unclear	Counties were advised to avoid using such revenue at source because it was illegal unless it was approved as Appropriation in Aid in the budget.
Inadequate capacity by MCAs to legislate on matters public finance	MCAs, particularly Finance and Budget Committees members should be engaged and sensitized to understand their roles
Limelight on the funds released to county governments only	The National Treasury should publicize the funds released for both national and county governments
Monthly release of funds hinders planning and implementation of projects	The National Treasury should revert to the quarterly release of funds to support counties in project implementation
Huge salary gaps between former Local Authority and devolved staff	The salaries of the defunct Local Authorities and devolved staff should be harmonized as soon as practicable by the Salaries and Remuneration Commission.
Huge wage bill due to blotted staffing levels	Rationalization of staff should be expedited to manage the wage bill
IFMIS related challenges	The National Treasury needed to follow up on all counties to ensure that the system works.
Existence of other systems; IPPD, G-Pay, e-Promis, LAIFORMS that do not necessarily talk to each other	Integrating/interfacing these systems so that they could talk to each other

Issues/Challenges	Required Intervention
Varied interpretations of the fiscal responsibility principle that <i>over the medium term</i> a minimum of 30% of county's budget shall be allocated for development expenditure.	Regulations to guide the interpretation and operationalization of this clause.
Determination of Assets and Liabilities in Counties was incomplete	TA and Auditor General to expedite the process

iii. Public Finance Management

Table 24: Planning and Budgeting Issues under KEGOSES

Issues/Challenges	Required Intervention
Estimation of project/programme costs in the CIDPs was poor	Realistic costing of projects/programmes should be done to avoid huge adjustments during implementation
Simultaneous preparation of CFSP with the BPS while the CFSP should be aligned to the BPS	There was need for clarity on the preparation of BPS and CFSP, clarity on the contents of CFSP and when it should be forwarded to CRA for comment
Finance Bills/ Revenue raising measures were developed without adequate consultations and in some cases were adaptations of those of former local authorities	There was need for capacity building in developing the Finance Bills
Little understanding on Programme Based Budgeting (PBB) and costing of activities	Counties should be provided with technical support specifically for PBB
Too many devolved funds such as CDF without a clear structure on how the projects to be implemented were arrived at	Projects that were to be funded through CDF should be those in the CIDP to avoid duplication
County Planning Units were not yet established	Synchronize planning and budgeting by establishing the CPU
Lack of up to date data on Counties to aid in planning and budgeting	County specific data should be developed including the County Fact Sheets and County Statistical Abstracts

iv. Budget Execution

Table 25: Budget Execution Issues under KEGOSOS

Issue/Challenge	Required Intervention
Regulatory lacuna for internal audit system	PFM Act 2012, regulations should provide for the composition, functions and reporting arrangements for an internal audit committee
Seeking and obtaining approval of appropriated emergency funds	Involve the county assembly when appropriating emergency funds to minimize political risks when seeking approval
Souring relations between CA and CE	MCAs and CE need to have informal meetings and sessions to strengthen their ties and diffuse real or perceived tensions
Centralization of operational accounts for both CA and CE	IFMIS can facilitate the separation of CA and CE accounts
Erratic exchequer releases impeded implementation of capital budget	Disbursement schedule should be reviewed to quarterly instead of monthly and adhered by the National Treasury.
Lack of clear distinction between reviewing budgets and supplementary budgets resulted into unstable budgets	Counties should prepare realistic budgets which will require few revisions/supplementary budgets

Issue/Challenge	Required Intervention
Failure to submit financial reports	Counties should ensure that they submit their financial reports in a regular and timely manner
Resistance to change	Counties should ensure that there was harmony among different categories of staff i.e those directly recruited by the counties, those from national government, and defunct local government employees.

v. *Monitoring and Evaluation*

Table 26: Monitoring and Evaluation

Issue/Challenge	Required Intervention
M&E units at the County and Sub-County level were in their formative stages	Counties should expedite the process of establishing the M&E units
Inadequate capacity to conduct M&E	Counties should liaise with MED to facilitate in building their capacity on M&E.
Poor record keeping	Counties should adopt a record keeping culture to track the progress of projects under implementation.

7.3.6 County Own Revenue Enhancement

The TA participated in the pre-conference preparation to plan for the forum. The aim of the conference was to bring both local and international stakeholders to discuss the strategies that can be used by the National Government to support the County Government in enhancement of their local revenues.

The specific objectives were to:

- recommend realistic solutions to the challenges faced by the counties in raising local revenue; and
- Contribute to the development of a national policy and or legislation on county own source of revenue to facilitate revenue enhancement.

The conference was organized around seven (7) thematic areas relating to issues that affect county own revenue sources enhancement. The thematic areas include:

i) **Tax, Licenses, Fees and Charges**

- Tax: Property Tax
- Trade Licenses: Single Business Permits, Double Taxation/charges
- Other County taxes, fees and charges

ii) **Management and Administration Systems**

- Required national and county policy and legislation
- ICT systems
- HR systems
- Citizen engagement/Public participation

From the conference, it was resolved that county governments be supported to improve their own revenue source collections in order to ease the fiscal difficulties they face in fulfilling their budget objectives, as well as ease the heavy reliance on the equitable share of revenue raised nationally. The conference also came up with recommendations to support the development of national policy, on county own revenues sources as directed under Section 46 of the PFM Act, 2012.

7.3.7 Advisory on Levying of Taxes, Fees and Charges by the County Governments

The Transition Authority over the transition period received several complaints on the charges and fees levied by the County Governments. The complaints were on vehicle branding fees (classified as outdoor advertising), charges on goods on transit, and other fees and charges implemented through certifications, inspections and permissions. The business community argued that some of the fees and user charges amounted to double taxation, was in breach of the Constitution and Public Finance Management Act, 2012, and further that it was detrimental to the national economic interest.

The Transition Authority advised that:

- i. The County Governments should therefore not levy any charges or fees on the transportation and distribution of goods by manufacturers or their agents, who do not have business premises in the County's area of jurisdiction, and are only transporting goods to sales outlets within the area. The manufacturers/companies should not be deemed to be carrying out a business in the county. Vehicle branding charges/licenses therefore do not apply.
- ii. The County Governments may levy charges and fees on manufacturers/companies operating within the county and has sales outlets established therein based on the services offered to the manufacturers/companies. This will ensure that the revenue raising measures by the county governments do not impede free flow of goods and services across counties.
- iii. The destination counties where the goods are delivered should levy fees and charges to the manufacturers/companies if there are specific services they offer to them when the goods are delivered. The services may include but not limited to parking spaces, promotion spaces, loading and offloading zones owned by the County Governments.
- iv. The County Governments should not reverse the wheels of our economic prospects spelt in the Vision 2030. The cumulative economic impact of the charges on the branded vehicles if they were to be charged by each county will result to deterioration in business and economic activity in the country. This will reduce investment opportunities in the country and ultimate fall in the Gross Domestic Product and even collapse of some of the companies. The collapse of companies will worsen the unemployment levels in the country leading to poverty and poor living standards of the citizens.
- v. The county governments should always uphold the spirit of public participation towards mitigation of public complaints in the process of individual county revenue mobilization. Individual county revenues are key towards reducing dependency from the National Government, but the process should enhance economic efficiency, provide conducive business environment and encourage public participation.

7.3.8 Assessment and Classification of Urban Areas and Cities

Section 54 of the *Urban Areas and Cities Act (UACA), 2011* requires that, during the transition period, assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under the Act, and shall be classified accordingly. However, it does not expressly state who is responsible for conducting the assessment and classification. Section 134(2) of the *County Governments Act, 2012* provides that all issues that may arise as a consequence of the repeal of *Local Government Act, Cap. 265* shall be dealt with and discharged by the body responsible for matters relating to transition.

Upon its establishment, TA with the support of the former Ministry of Planning, National Development and Vision 2030, collected data and information on capacity by urban areas to effectively and efficiently deliver essential services to its residents as provided for in the First Schedule of UACA. The data was analysed based on the criteria provided for in sections 5, 9, 10 and the First Schedule to the Act.

Among the findings was that, except for the three cities created by the Act (Nairobi, Mombasa and Kisumu) no other urban area qualifies for classification as per the criteria provided for in the Act. The Act does not provide roadmap on how the boundaries of urban areas and cities will be determined or delineated and the body or institution responsible for delineation of the boundaries. Based on the resident population criteria in sections 5, 9 and 10 of the Act Kenya would have three cities (Nairobi, Mombasa and Kisumu that were declared cities by the Act), two municipalities (Nakuru and Kisumu) and 130 towns. Furthermore, the Act is weak on governance of urban areas and cities. It became clear that the only solution to the problem was to amend the Act.

To critically analyze the classification criteria, TA constituted a technical team that drew membership from the Ministry of Lands, Housing and Urban Development; Ministry of Devolution and Planning; the UN-Habitat; the University of Nairobi; State Law Office; Kenya Law Reform Commission; Transition Authority and urban development experts. The technical team prepared a report on assessment and classification of urban areas and cities based on the criteria as set out in the Act.

The Terms of Reference for the Technical Committee were:

- a) Assess the criteria listed in Sections 5, 9 and 10 of the Urban Areas and Cities Act 2011,
- b) Assess the other sections of the Urban Areas and Cities Act, 2011,
- c) Propose amendments to the Urban Areas and Cities Act 2011 to facilitate classification of urban areas and cities.
- d) Prepare a report of the findings.

The technical team held several meetings and prepared report with findings and recommendations. The following were their general findings:

- i) That the Act was weak on the management and governance of cities and urban areas as envisaged in Article 184 of the Constitution;
- ii) That the Act does not provide for governance and conflict resolutions for urban areas located across more than one county or border towns or overlaps;
- iii) Although the Act provides for the number of members of a city/municipality Board it does not provide for the number of members of a town committee.
- iv) Important as they are, the Act does not provide for classification of lower levels of urban areas with a population less than 10,000.
- v) The Act provides for removal of a chairman of a board or committee but does not provide for the removal of other members.
- vi) While the Act provides for the conferment of an urban area with status of special purpose city on basis of its significant cultural, economic or political importance, it does not provide the same for a municipality or town. A case in point is the headquarters of counties.

Among the recommendations was that the *Urban Areas and Cities Act, 2011* required many amendments to make operational, among them:

- a) The classification of urban areas and cities based on the criteria in the Act does not put into consideration the roles/functions assigned to the urban areas and cities to perform in order to determine the service delivery that are mandatory to the urban areas as follows:
- b) There was need to consider the role and contribution of urban areas and cities in the development of the national economy. This would help to define the key services that an urban area or city could offer to the economy of Kenya as a whole so that the particular service(s) would not be made mandatory for other urban areas and cities when its necessity was of no importance.
- c) There was need to consider the role of urban areas in the context of strategic natural resources. This should cater for the issues that may arise as a result of discovery of natural resources that

may have important impact on urban sectors in terms of service delivery. A case in point is Turkana County with the discovery of oil.

- d) Role of urban areas with respect to regional/international set up should be considered. There was need to provide certain ascribed functions/services to some urban areas and cities so that they provide such mandatory services to the country as they serve as transit urban areas e.g. Namanga, Mandera, Busia and Malava etc.
- e) Equity and Regional balance with regard to access to services in terms of distribution of special function/purpose urban areas across the country i.e. location of strategic functions in the points of demand rather centralization of all services in one town and denying other towns the critical functions.
- f) Shared national development blue prints and agenda with respect to the future urban vision. There was need to consider national development agenda when coming up with urban areas and cities so that all move together with urban planning.
- g) Apart from population threshold and demonstrable revenue generation capacity, there was need to pursue the Gross Domestic Product and Gross Domestic Product per capita as classification criteria to provide for the economic potentially in the urban areas and cities.
- h) Ethnic and cultural compositions of the urban centres needed to be considered for purposes of cultural mix which has transformed urban areas in the country.
- i) Professionals and neighbourhood social organizations needed to be considered to tap into the urban development philosophy.
- j) The urban populations needed to be enlightened on urbanism so that they are transformed from ethnic based social organizations to interest based organizations.
- k) To promote urban development there was need to consider transformation of the urban areas and cities economies from the traditional methods to the most modern methods through industrial mix in terms of sectors.
- l) There was need to consider issues of metropolitan areas as classification criteria for the towns or municipalities that were shared by more than one county.
- m) The county assemblies should be mobilized to allow for the creation of market and local centres so as to create a clear urban areas progression system from the local level to the city.
- n) Proper financial assessment to ascertain the actual revenue potential for urban areas and cities should be conducted.
- o) Since not all towns would meet the range of services listed under the First Schedule to the Act, there was need for weighting to be done to the range of services so that towns can be classified based on the weights of the services they currently offer because some services would be important but not critical.
- p) There was a necessity to hold a stakeholders forum to provide them with the findings of the technical committee so that a way forward would be agreed upon.
- q) The team proposed that the urban areas and cities should be classified based on the following list so as to capture all urbanization activities from the grassroots level:

Category	Resident Population
City	250,000 or more
Municipality	50,000 - 249,999
Town	10,000 - 49,999
Market centre	2,000 - 9,999

The Technical team embarked on amendment of Act. At one point the team considered and actually incorporated metropolitan Areas in the amendments but later discarded the idea. Among the major changes to the Act are:

- a) The reduction of resident population in the classification criteria.

- b) The proposal to declare county headquarters as municipalities regardless of their resident populations.
- c) The introduction of a layer of urban areas lower layer of urban area named Market centre with a population of 2,000 9,999 resident population. This was guided by the fact that such settlements require basic services and because section 36(3) of UACA provide that a county government shall initiate an urban planning process for every settlement with a population of at least two thousand residents.
- d) The proposal for the number of members of Town Committee which was not provided in the Act
- e) Proposes better management and governance of urban areas.

Consultations being one of the principles guiding all the state organs in performance of their functions, the proposed amendments, were subjected to stakeholders forums in several consultative sessions and meetings. Some of the meetings include:

- i) The stakeholder workshop held from 16th to 17th October 2013 at the 680 Hotel,
- ii) Review of the Act workshop held from 1st to 4th December, 2013 at the Great Rift Valley Lodge.
- iii) Various validation fora have also been held and these includes the validation workshop held on 10th August, 2014 at the Hotel Intercontinental.
- iv) The sensitization workshop for all the County Executive Committee members in their in-charge of urban development on 4th December, 2014 at Maanzoni Lodge.
- v) Presentation to and discussion with the Council of Governors in their Pre-Summit meeting held on 6th December, 2014.

The TA submitted the Urban Areas and Cities (Amendment) Bill, 2015 to the Cabinet Secretary, Ministry of Land, and Housing and Urban Development on February 16, 2015 with copies to the clerks of the National Assembly and the Senate. On February 17, the Clerk to the Senate wrote back and informed TA that the bill was Senate Committee on Devolution.

The National Assembly summoned the CS/Ministry of Land, Housing and Urban Development and the TA to brief on the progress in the amendment of UACA, 2012 in view of the fact that a member of National Assembly had tabled a private member Urban Areas and Cities (Amendment) Bill, 2015. The CS informed the committee of the National Assembly that the Government Bill had been submitted to the Cabinet and it ready for tabling in Parliament.

7.3.9 Amendments to the Act and Preparation of Urban Areas and Cities (Amendment) Bill

After undertaking the analysis, recommendations and validation of various draft proposed amendments the Technical Team prepared the final *Urban Areas and Cities (Amendment) Bill, 2015* which was submitted to the CS/Ministry of Lands, Housing and Urban Development on 16th February 2015. Copies of the same were sent to the clerks of the Senate and National Assembly. On 17th February the Clerk to the Senate wrote to TA and inform that the Bill had been forwarded to the Senate Committee on Devolved Government.

On 9th November, 2015, the National Assembly summoned the CS/Ministry of Land, Housing and Urban Development and the TA to brief on the progress in the amendment of UACA, 2012 in view of the fact that a member of National Assembly and tabled a private members Urban Areas and Cities

(Amendment) Bill, 2015. The CS informed the committee of the National Assembly that the Government bill had been submitted to the Cabinet and is ready for tabling in Parliament.

7.3.9.1 Pending Activities on Urban Areas and Cities Act

The following are the outstanding issues.

- i. The draft amendments to the Urban Areas and Cities Act, 2011 were submitted to both houses of Parliament and are awaiting finalization. The Classification of the Urban Areas and Cities will be undertaken upon enactment of the law and subsequent set up of management and administrative structures for the Urban Areas and Cities.
- ii. The management framework for cross boundary urban areas also needs to be put in place and the same applies to the metropolitan areas.

7.3.9.2 Conclusions on Urban Areas and Cities

- i. Population threshold to be reviewed downwards and an affirmative action to be given to areas with low population density
- ii. The list of services in the first schedule to the Act to be reviewed to provide more realistic services and take into account further decentralized urban units in order to give a hierarchical chain of urban development in the future
- iii. There are urban areas located in two counties for example Keroka (Nyamira/Kisii). Nyahururu (Laikipia/Nyandarua), Moi's Bridge (Kakamega/UasinGishu), Matunda (Kakamega/UasinGishu), and Sultan Hamud (Makueni/Kajiado), The management, governance and service delivery for such urban areas will require inter-county agreement as provided for in the Intergovernmental Relations Act, 2012.

7.3.10 Advisory on establishment of management structures for urban areas and cities

When it came to the attention of TA that County Governments had started to appoint Town Administrators, it issued an advisory to the counties to desist from appointing municipal boards and town committee or appointing Municipal Managers and Town Administrators without following the due process of the law. Counties have no legal basis for constituting management structures and systems for their unclassified urban areas unless the Urban Areas and Cities Act, 2011 is amended. (Annex 7.3)

7.3.11 Amendment to Urban Areas and Cities (General) Regulations

It came to attention of the Technical Team, which TA appointed to propose amendments to the *Urban Areas and Cities Act, 2011* that the Task Force on Devolved Government had prepared regulations to all laws of devolution but the bills were not finalised. Alongside the amendment to the Act the team made amendment to the regulations. It was intended that to speed up implementation of the Act the responsible minister simultaneously table in Parliament the Urban Areas and Cities (Amendment) Bill and the Urban Areas and Cities (General) Regulations. However, at some point the team was advised to suspend the amendment to the Regulations until Parliament pass amendment because Parliament may make further amendment to the Act or reject some proposed amendments.

The draft Urban Areas and Cities (General) Regulations, 2013 is available in soft and hard copy.

7.3.12 Taskforce on Establishment of Urban and Cities Development Fund

The Technical team that worked on the amendments to the UACA considered the future development of urban areas following the new system of devolved system of government. It was clear to the team that with the repeal of the Local Government Act and hence LATF counties will find it difficult to raise funds to invest in urban infrastructure. They considered the possibility of amending the UACA to incorporate provision for establishment of a Fund for development of urban areas across the country.

However, they felt that the matter was so important that that it required a stand-alone Act in line with the Local Authority Trust Fund Act.

When the TA submitted draft Urban Areas and Cities (Amendment) Bill, 2014 to the Cabinet Secretary, Ministry of Lands, Housing and Urban Development in September 2014, among her comments was that the Bill be amended to include establishment of an Urban Areas and Cities Development Fund (UACDF). Before the incorporate the amendment and while consulting other stakeholders, especially the Council of governors, in December 2014 the CS wrote to inform TA that instead of establishing the UACDF as proposed earlier it should be established under its own Act of Parliament.

Following consultations with other stakeholders and with the approval of the TA Board, a task force was constituted to develop a framework that clearly spells out the institutional, legal, regulatory and operational frameworks of UACDF. The comprehensive legal framework should spell out the long-term vision; clear and feasible strategies and objectives for an (UACDF) agency; and specific execution principals and approaches that can thrive in Kenya's specific context.

This is premised on the fact that most infrastructure development projects require huge capital outlays and may not be possible to finance the same from the normal annual budgetary allocations to the counties. To ensure that urban development is sustained, establishment of such a fund is therefore important. TAs role is to facilitate and coordinate the process. Members were drawn from the following institutions:

- i. Institute of Planners
- ii. Institute of Certified Public Accountant of Kenya (ICPAK)
- iii. Directorate of Urban Planning in the Ministry of Lands, Housing and Urban Development
- iv. Directorate of Housing in the Ministry of Lands, Housing and Urban Development
- v. Institute of Engineers of Kenya
- vi. Ministry of Devolution and Planning
- vii. Kenya Law Reforms Commission
- viii. Council of Governors
- ix. Intergovernmental Technical Relations Committee
- x. An Urban Economist

The TA was to provide the chair and secretariat.

7.3.13 Management of cross border towns

Before the implementation of the devolved system of government in Kenya, some of the urban areas were managed by two local authorities. For example Keroka town was managed through a committee drawn from Gusii County Council and Nyamira County Council; given that the town is located at the border of Kisii and Nyamira counties.

To sustain service delivery after the operationalization of the county governments, counties with towns cutting across need to come up with joint committees to manage the towns. In the case of Keroka town, the two county governments of Nyamira and Kisii established a taskforce which found that 70% of Keroka town falls in Nyamira County and 30% in Kisii County. The two county governments adopted the task force report with a view to ensuring that the 70-30 formula would guide the management of the town and all other connected matters. The task force report was subjected to validation by the elected leaders from the two counties; who adopted it and agreed with the proposed management structure for the town.

The two county governments resolved to form an Interim Joint Management Committee composed of 7 members drawn from the two counties based on the 70-30 formula. The resolution was communicated to the Transition Authority to give seeking authority to establish the interim team. That necessitated the Kisii county government to write to the TA for authority to go ahead and set up the Committee.

Following a consultative meeting by the Transition Authority with the representatives of the two counties, an approval was granted for the establishment of the interim team.

Establishment of a joint committee to manage cross border town should be in line with the Urban Areas and Cities Act, 2011 and the Intergovernmental Relations Act, 2012. The planning and financing of such urban areas should be done jointly by the counties traversed by the urban area and the principles of public finance management should be adhered to. The plans and budgets should be approved by the county assemblies of the concerned counties.

7.3.14 Status of Reforms, Projects and Programmes

Section 7 of the *Transition to Devolved Government Act (TDGA), 2012* provides generally that the functions of the Transition Authority shall be to “facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the Constitution”. Specifically, section 7(2) (d) (ii) mandates the Authority to establish the status of ongoing reform processes, development programmes and projects and make recommendations on the management, reallocation or transfer to either level of government during the transition period.

The services of University of Nairobi Enterprises Services Ltd. (UNES) were procured to prepare an inventory of the status of all the on-going reform processes, development programmes and projects and outline key challenges facing the ongoing reform processes, development programmes and projects. The consultant was also expected to prepare a mechanism for management and reallocation of the reform process, programmes and projects to either level of government.

7.3.14.1 Pending Activities

Finalization of the establishment of the status of ongoing reform processes, development programmes and projects as at 2013. To make recommendations on the management, reallocation or transfer to either level of government during the transition period.

There should be a follow-up of the passing of the Urban Areas and Cities (Amendment) Bill, 2015 by Parliament. The Bill is reportedly with the Cabinet.

7.3.15 Support to National Urban Development Policy (NUDP)

TA was involved in many workshops, conference and forums organised by the Kenya Municipal Programme of the Ministry of Lands, Housing and Urban Development for validation of the draft National to Urban Development Policy (NUDP). During the validation process ten senior officers from each county were invited and TA was also invited among the resource persons.

The TA took advantage of the occasions to present the draft Urban Areas and Cities (Amendment) Bill 2015 to get the views of county officials.

7.4 Recommendations

There is need to amend Section 109 of the County Government Act, 2012 on County sectoral plans. Section 109 (1) provides that a County department shall develop a ten year county sectoral plan as component parts of the county integrated development plan. Section 109 (1) (c) requires the sectoral plan to be reviewed every five years by the county executive and approved by the county assembly, but updated annually.

Since the sectoral plans are a departmental plans equivalent to a national government ministerial/ departmental strategic plans and given that they are component parts of the county integrated

development plan, they cannot be for a longer period than the mother plan (county integrated development plan). It will be unrealistic to expect a county executive covering a future when they do not know whether the governor will win the next elections.

It is therefore recommended that the County Government Act 2012 should be amended to harmonize section 109 with section 108. The amendment should be as follow:

Section 109 (1) by deleting the word “ten” and substituting it with the word “five”. Section 109 (1) (d) by deleting the word “every five years” and substituting it with the word “annually”.

7.5 Challenges

The delay in the amendment of the Urban Areas and Cities Act, 2011 and the finalization of the Urban Development Policy was a key impediment in the implementation process. It has taken more than two years to amend the Urban Areas and Cities Act, 2011 and this affected the assessment and classification of urban areas and cities.

Due to lack of financial resources, the TA was unable to conduct the exercise in time and therefore there is time lapse. The lapsed timeline and hence its recall nature may have implications on outlining of the outputs/results of the projects.

During the exercise, there was a challenge in accessing the information and data that relate to the projects, programmes and reform initiatives. This was due to resistance from the concerned offices.

CHAPTER EIGHT: CIVIC EDUCATION AND PUBLIC PARTICIPATION



8.1 Introduction

The Fourth Schedule Section 1 (g) of the TDGA, 2012 mandates TA to facilitate civic education, to ensure civic education on devolution is commenced and coordinated. Section 98 of County Government Act, 2012 (CGA) provides 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.

The County Government Act also provides for principles of citizen participations in section 87 which include: timely access to information and data, reasonable access to process for law and policy making, protection of minorities and marginalised groups, legal standing for interested and affecting persons and organisations, balanced and reciprocal role of government and non- state actors in oversight, governmental facilitation and oversight and Public Private partnership among others.

From the foregoing, civic education, access to information and citizen/public participation are intertwined concepts that cannot be looked at in isolation. From this understanding, Transition Authority endeavoured to deal with the three issues in the implementation of transition process.

8.1.1 Other constitutional and legal provisions for public participation and civic education

The CoK 2010 placed the people of Kenya at the centre stage of governance. Article 1 (1) provides that all sovereign power belongs to the people of Kenya and shall be exercised in accordance with the constitution. Article 1 (2-3) further provides that the sovereign power can be exercised either directly or through their democratically elected representatives and delegated to the state organs at national and county level.

Participation is one of the national values and principles of governance under Article 10 of the CoK 2010. These values and principles bind all State Organs, State Officers, Public Officers and

all persons in interpreting and applying the constitution and laws and in making and implementing policy decisions.

Civic education and access to information are rights as provided in Article 33(1) and 35 of CoK 2010 respectively. It states that every person has a right to freedom of expression which include: freedom to seek, receive or impart information or ideas. Access to information include information held by State and any person, right to correction or deletion of incorrect information and that State shall publish and publicise information important to the nation.

On the issue of design, framework and implementation of civic education, the County Government Act in Section 100 provides that there shall be national design and framework to determine the contents of the curriculum. National and County Governments are responsible for facilitating the implementation of the civic education programme. In addition Section 100 (1) the County governments are also required to come up with civic education units.

Registered Non-State actors are to be involved in the design and implementation of the civic education as prescribed by regulations to the CGA.

8.1.2 Institutional Framework for Facilitation of civic education

Apart from the Transition Authority role in facilitating civic education and ensuring that it is commenced and coordinated, there are other primary actors. Section 137 of County Government Act provides that for the period preceding the establishment of County Governments, Ministries responsible for civic education, devolution and county governments shall facilitate the design, coordination and implementation of the civic education.

The same Ministries are responsible to create capacity and facilitate the county governments to effectively assume their responsibility in delivery of civic education in the county. The Commission for the Implementation of the Constitution (CIC) was expected to ensure the content of civic education curriculum and materials reflect the letter and spirit of Chapter Eleven of the Constitution.

In this regard, the former Ministry of Local Government, Ministry of State for Public Service and Ministry of Justice and Constitutional Affairs were responsible for facilitating civic education during the first Phase of Transition. During the second Phase of Transition, Ministry of Devolution and Planning, the Office of the Attorney General and Department of Justice and County Governments respectively were responsible for civic education. As alluded to earlier, registered non-state actors have a role in civic education.

8.2 Objective of Civic Education and Public Participation

The main objective of this program was to ensure that civic education and public participation are commenced and coordinated.

8.3 Activities Planned for Civic Education and Public Participation

- i. In collaboration with Ministry of Devolution and planning, provided coordination and oversight platform for civic education on devolution.
- ii. Develop civic education curriculum and messages on devolution.
- iii. Develop and disseminate civic education materials
- iv. Delivery of civic education through various strategies
- v. Facilitate the development of National Civic Education Framework
- vi. Facilitate development of Public Participation Policy

8.4 Status of Facilitation of Civic Education on Devolution

8.4.1 Establishment of Coordination mechanism for Civic Education

The co-ordination framework for civic education underwent changes with the changes of government in the two phases of the transition period. After the promulgation of the Constitution, the government established framework to facilitate civic education on the constitution.

8.4.2 Kenya National Civic Education Programme (KNICE-P)

During the first phase of transition which ended March 2013, the KNICE-P provided the coordination framework for civic education in Kenya. The KNICE programme had thematic committees including one on devolution.

The Authority adopted the framework. In addition, an adhoc committee was established whose membership comprised the Permanent Secretaries in the former ministries of Local Government, Ministry of State for Public Service and the Ministry of Justice, National Cohesion and Constitutional Affairs. The Committee worked in liaison with the Kenya National Integrated Civic Education Programme (KNICE-P) in coordinating civic education activities.

8.4.3 Co-ordination mechanism in the second phase of Transition

The March, 2013 general election and subsequent formation of new government ministries and departments brought about profound changes in management of civic education. The KNICE programme ended and the Authority had to find a mechanism to fill in the gap left by KNICE-P. A committee of the board was established with an interagency outlook.

The membership included: Ministry of Devolution and Planning (MoDP), Office of the Attorney-General and Department of Justice, defunct Commission for the Implementation of the Constitution and two civil society organizations (i.e. Uraia Trust and Amkeni Wakenya). The committee met frequently to review planned activities and to provide platform for sharing civic education activities with other stakeholders. At the county level, the TA had County Transition Coordinators who were supporting counties in matters transition including civic education and public participation.

8.4.4 Development of Civic Education Curricula and Training Manuals on devolution and Public Participation

During the first phase of transition, KNICE developed a national civic education curriculum on the Constitution that included devolution. All civic education providers used this to deliver civic education.

During the second phase of transition, TA facilitated and coordinated the development of the civic education curricula and training manuals on devolution and public participation. This was done in collaboration with the Ministry of Devolution and Planning (MoDP), Office of the Attorney General and Department of Justice, Council of Governors and Uraia Trust with the technical support of the Kenya Institute of Curriculum Development (KICD). These documents are ready for print and have been forwarded to MoDP for launching and dissemination.

The curricula were shared with the former CIC as stipulated in section 137(2)(b) of the CGA, 2012 to ensure the content of the curricula reflect the letter and spirit of Chapter 11 of the Constitution. The CIC agreed that the curricula meets the standards.

The curricula and training material have three programmes which targets different target groups. These are:

- i. 13 weeks programme targeting the general public
- ii. 6 weeks programme targeting people in institutions of learning
- iii. Executive programme targeting the opinion leaders, State /public officers.

The following support materials were also developed:

- i. PowerPoint presentations for Trainers to use during the implementation of the curriculum and training manual.
- ii. Information, Education and Communication booklet to be used by participants during and after the trainings.

8.4.5 Production and dissemination of civic education materials

TA in collaboration with the former Ministry of State for Public Service and now Directorate of Public Service Management (DPSM) produced and disseminated a training manual entitled “*Public Officers and Public Service in the Devolved Government*” for sensitizing public officers. This guided the officers in implementing their mandates and prepared them for inauguration of county governments. Other documents produced and disseminated by TA for sensitizing the leaders, public officers and the general public included:

- i. “Understanding the Transition to Devolved Systems of Government in Kenya: Frequently Asked Questions”. This booklet provides quick answers to questions on transition and devolution at large
- ii. “A Guide to the Mandates and Procedures of County Governments in Kenya”. The book gives detailed mandate of county governments as provided by the constitution and related laws
- iii. “A Guidebook for Governors”. The book mainly provides questions and answer related to public finance management

8.4.6 Civic Education Delivery

Before the March 2013 general election, TA facilitated public fora in 43 out of the 47 counties in Kenya, which gave education on devolution and the transition process. Through this mechanism, TA was able to sensitize public officers on the Constitution and transition to devolved government. This was accompanied by media campaigns on devolution and transitional issues in which an estimated 10 millions of Kenyans were reached especially through the mass media.

During the second phase of transition, the Authority was mainly engaged in opportunistic civic education using fora and events organized by other institutions. Among others, the institutions included; Kenya Governance Strategic Execution Support (KEGOSES) consortium programme, which sensitized county leaders on public participation, display and distribution of civic education materials during the Kenya @ 50 celebrations exhibition and first Devolution anniversary celebrations Conference, organised by the Council of Governors.

Media stations also offered programmes as part of corporate social responsibility. An example is the Citizen Radio programme “Darubini ya Ugatuzi” in which TA was slotted in for one hour programme per week for six weeks, mainly covering devolution topics. Others include Radio Waumini on their talk show “Mdahalo wa Ugatuzi” to educate citizens on devolution.

8.4.7 Development of Civic Education Framework

As mentioned earlier, the KNICE programme provided a platform for design, coordination and delivery of civic education during the first phase of transition. There is however need to have a sustainable framework. The process of developing the framework is ongoing with the Ministry of Devolution and Planning taking the lead. The completed framework is expected to give the following outputs:

- i. Proposal for institutional framework for civic education delivery by national and county governments;
- ii. Proposed strategies for delivery of civic education at national and county level including development of messages, delivery and financing;
- iii. Propose key consideration for civic education law to be adapted at national and county level and;
- iv. A civic education monitoring and evaluation framework.

8.4.8 Compilation of Civic Education Providers Database

TA has developed the civic education provider's profile database and shared with stakeholders who include Ministries, Departments and Agencies, County governments and civil society organizations. This database contains contact information and location of active civil societies in the counties. This is a reference document for stakeholder engagement by government and non-state actors who wish to engage in civic education. The database requires to be up-dated continuously.

8.4.9 Stakeholder Engagement and Coordination to Facilitate Civic Education

TA has engaged and provided guidance on civic education to both State and Non – State Actors. These included the Independent Electoral and Boundaries Commission, Hekima College, Uraia Trust, the Institute for Social Accountability, the Centre for Law and Research International (CLARION), the Institute for Education in Democracy, Sisi ni Amani which run SMS based civic education on devolution and land matters, the Olmaa Pastoralist Development Programme (OLPADEP) among others.

8.4.10 Public Participation

Laws and policies developed after promulgation of constitution made provisions for Public Participation. However, these provisions are not augmented with clear regulations. Some of the questions asked are; what is the threshold of public participation? What does reasonable access to information mean? Which mechanisms and platforms are ideal for different processes of policy and programme development and implementation? There were no definite answers to these questions. Consequently, in a stakeholder's conference organised by CIC in 2012, it was agreed that there was need for an overarching policy on public participation and a process was put in place to develop the policy. The Ministry of Justice National Cohesion and Constitutional Affairs was tasked to spearhead the process. After the formation of new government in 2013, the work was taken over by Office of the Attorney General and Department of Justice. The following are some of the results of this process.

8.4.10.1 Development of Public participation policy

TA together with the Office of the Attorney-General and Department of Justice facilitated the development of a National Public Participation Framework. A joint steering committee with a secretariat was constituted to carry out this activity. The Committee includes Kenya Law Reform Commission (KLRC), the Ministry of Devolution and Planning, Uraia Trust and Amkeni Wakenya. The draft policy was validated by Stakeholders and is being finalised. Once ready, it will provide answers to some of the above questions.

8.4.10.2 Development of Public participation guidelines for county Government

TA, the Ministry of Devolution and Planning, and other Stakeholders, with support of World Bank, developed guidelines on public participation. These guidelines are intended to be rolled out in the Counties to assist the County governments in developing their public participation legislation and policies. The guidelines provides answers to what, how, who of public participation.

8.4.10.3 Development of a Model law on public participation for county Governments

In preparation for coming in of county governments, the Kenya Law Reform Commission prepared model laws for all functions of County Governments including one on public participation. The Authority participated in the review of the model law. The civil society organisations lead by The Institute of Social Accountability (TISA) also developed a model law on the same and TA participated in the stakeholder review process. The model law has since been adapted by county Governments to develop county laws.

8.5 Pending Activities on Civic Education and Public Participation

Most preparatory processes to ensure civic education on devolution is commenced and coordinated are complete and what remains to be done is rollout of civic education. The following are specific pending activities;

- i. Printing, launching and dissemination of civic education curricula and training manuals. The Authority has forwarded these document to Ministry of devolution and Planning and Council Governors, and there is need to fast-track the print and dissemination.
- ii. Capacity building of County Government on curricula and training manuals. While the curricula and manuals have been subjected to stakeholder validation and piloting in five counties, there is need for a focused capacity building programme on the same.
- iii. Production of Information, Education and Communication materials in various formats e.g. Braille and sign language.
- iv. Finalization and dissemination of civic education framework by Ministry of Devolution and Planning
- v. Finalisation and dissemination of public participation framework
- vi. Rollout of public participation guidelines to the county governments.
- vii. Sustained and continuous capacity building for county governments by national government. The constitution assigned national government the function of capacity building and technical assistance to county governments.
- viii. Preparation of a comprehensive profile and database of civic education providers and organizations.

8.6 Challenges facing Delivery of Civic Education and Public Participation

Civic education being one of the integral avenues for citizen empowerment has been marred by the following challenges:

- i. Inadequate civic awareness on devolution by both government officials and public due to limited civic education programmes. This has led to wrong and at times misleading interpretation, development and implementation of constitution, laws, policies and programmes and ensuing court cases.
- ii. Lack of sustainable civic education framework. This has resulted to uncoordinated and duplication in delivery of civic education by various actors.
- iii. Lack of national policy on public participation has led to lack of standard and varying application by various stakeholders.
- iv. Inadequate funding for civic education by both national and county governments;
- v. Inadequate operationalization of the civic education structures under section 100 of the CGA, 2012.

8.7 Lessons learnt

- i. Civic education should not only depend on budgeted programmes but can also educate the citizens through opportunistic meetings like churches, mosques, Barazas and other public events.

- ii. It is of paramount importance that all civic education activities should be coordinated between the National and County government and Non – State Actors. This will reduce duplication and enhance proper utilisation of funds

8.8 Emerging issues

- i. Though civic education is one of the functions of both National and County governments, there is reluctance to fund the same. This could mean that civic education is not a priority activity or the governments do not want citizens who are knowledgeable of their rights to be held accountable by the people
- ii. During the piloting of the curricula and training manual it emerged that public officers who are the implementers of devolution are not as conversant as expected with the devolved system of government. They also require to be sensitized as much as the public

8.9 Recommendations

- i. ***Permanent and independent Institutional framework for civic education at national level:*** National Government should establish an agency and/or institution to be solely responsible for facilitating and coordinating civic education on constitution and laws enacted to operationalise the provisions of the constitution. This institution should have legal backing and funding to implement its mandate. With such institution, cases of KNICE programme ending with change of government will be avoided
- ii. ***Legal framework for civic education:*** County governments to fast-track enactment of civic education legislation as provided by section 101 of CGA. This will ensure institutionalisation and resourcing of civic education in the counties.
- iii. ***Role of civil society organisations in civic education:*** The regulation to CGA should be fast-tracked to operationalise the provision of section 100 (4) of the CGA. This will provide the framework of involvement of civil society organisations in design and implementation of civic education.
- iv. ***Programme for rollout out of civic education;*** Given that curricula and curricula support materials are ready, the Ministry of Devolution and Planning, Office of Attorney General and Department of Justice and Council of Governors should develop a programme and mobilise resources from development partners and government to facilitate rollout of civic education including dissemination of public participation guidelines.
- v. ***Public participation Policy:*** The Office of Attorney General and department of Justice should fast track the finalisation of policy on public participation.
- vi. ***Database on civic education providers:*** Ministry of Devolution and Planning and Office of Attorney General and Department of Justice in collaboration with County Governments should undertake a survey and mapping of civic education providers/organisations providing civic education. This will ensure that all corners of the country are reached and duplication of efforts is avoided.
- vii. ***Targeting of civic education:*** From the civic education fora carried out, it was observed that more men than women and persons with disabilities attend these workshops. It is therefore recommended that targeted civic education for these groups should be embraced.

CHAPTER NINE: LEGAL AND INTERGOVERNMENTAL RELATIONS



9.1 Introduction

The facilitation and coordination of the transition to devolved system of government was guided by numerous legal instruments including but not limited to the Transition to Devolved Government Act, 2012, the Intergovernmental Relations Act, 2012, County Governments Act, 2012, Urban Areas and Cities Act, 2011, and the Public Finance Management Act, 2012. In this respect, the Authority was expected to work closely with both levels of government particularly during the second phase of the transition.

Given that the Authority was a body corporate as established under section 4(2) of its constituting Act, it was recognized that there was a need for a legal and intergovernmental relations function, though not expressly reflected in the Authority's mandate. The function was essential in protecting the mandate and interests of the Authority in respect to suits instituted by or against the Authority. Additionally various aspects of the Transition to Devolved Government Act needed to be operationalized through regulations and legal notices, thereby informing the need.

9.2 Objectives

The Legal and Intergovernmental Relations function had the objective of advising, overseeing and coordinating the legal and intergovernmental aspects of the Authority's mandate.

9.3 Planned Activities

The planned activities are enumerated as follows:

- i. To carry out substantive legal analysis of the Transition to Devolved Government Act 2012 (TDGA) and all related laws
- ii. Contribute to the development of legal instruments that will enhance the capacity of both levels of government to discharge their functions
- iii. To contribute to the development of Transition Authority policies and frameworks on transition to devolved government
- iv. Ensure oversight on legal issues especially as they relate to TA mandate

9.4 Achievements

Transition Authority made great strides on matters legal and intergovernmental. Most of the achievements enumerated here below are largely tied to other functions of TA as it is a support function.

Additionally these achievements were made possible through partnerships with relevant stakeholders including Commission on the Implementation of the Constitution, Kenya Law Reform Commission, Office of the Attorney General and Department of Justice, The National Assembly, The Senate, County Governments, Council of Governors, Centre for Parliamentary Studies and Training (CPST) among others.

9.4.1 Analyzed and proposed amendments to various laws touching on devolution

To ensure that all the proposed pieces of legislation are in conformity with the requirements of the Constitution and the devolved system of government, the Authority frequently reviewed Bills before either the Senate or the National Assembly. Some of the bills reviewed were County Governments Amendment Bill (No.1) 2014, the County Governments Amendment Bill (No.2), 2014 and the Environmental Management and Coordination Act. Comments on these Bills were sent to the relevant houses to be taken into consideration when debating subsequent drafts of the Bills.

Comments on the development of various new bills such as the AFFA, KALRO and Crops Bill were also forwarded in addition to the spearheading of the development of the County Government Public Finance Management Transition Act.

In recognition of the limited transition period, a proposal was made for amendment of the Transition to Devolved Government Act. The same sought to extend the transition period in order to facilitate a seamless transition to devolved system of government. Further, proposals for the amendment of the Urban Areas and Cities Act were in addition to proposals on the development of laws to govern county pensions and benefits.

9.4.2 Developed legal instruments, mechanisms and frameworks to facilitate TA and both levels of government to discharge their functions

Transition Authority, with the support of the Office of the Attorney General, drafted various gazette and legal notices in fulfilment of the Authority's functions under the Transition to Devolved Governments Act, 2012. These touched on the transfer of functions to the county governments, the regulations on the Assumption of Office of County Governor as well as those on the transfer of assets and liabilities. Notably the authority also issued a gazette notice to provide guidelines for Transition of Staff to Counties. A list of the same is provided in **Annex 9.2** of this report.

Further to the gazette notices, the Authority issued various advisories over the past three years that touched on sensitive issues in devolution. Some of these were notably advisories on the concurrent function of betting, casinos and other forms of gambling; procedure for disposal of public land during the transition period; court cases arising from liabilities of defunct local authorities as well as on the establishment of the Office of the First Lady in the Counties.

These advisories sought to give guidance on the interpretation and application of various legislations touching the issues of devolution. Consequently, this has ensured effective implementation of functions and has deterred intergovernmental conflicts. These advisories among others were issued to all relevant stakeholders and a list of the same is provided in **Annex 9.1** of this report.

9.4.3 Capacity building on Legal and Intergovernmental Relations

As previously mentioned in this report, TA carried out capacity building for county assemblies, county attorneys and county speakers in the areas of legal and intergovernmental. This focused on legislative

drafting and parliamentary procedures such as standing orders, speaker's rules, mandates and procedures of county governments, the budget process, and etiquette in conducting house business.

The Authority also supported the institutionalization of the Council of Governors by deploying one of its members. This support has been beneficial to the COG in the establishment of structures and execution of its mandate. In the Authority's evaluation of the COG, has resultantly become one of the key players in the intergovernmental framework.

Kenya Law Reform Commission spearheaded the development of model laws for counties with TA reviewing the same. Some of these laws were adopted by the county governments and they have guided them in coming up with their own legislation thus helping in operationalization of their functions.

As a result of these capacity building initiatives, the county governments have now been able to draft laws and policies, and effectively implement the same. This has also seen enhanced professionalism in the conducting of the house business in the county assemblies.

9.4.4 Engaged in litigation on matters transition

As a body corporate capable of suing and being sued, the Authority has been enjoined in various suits touching on its mandate particularly on assets, human resource, election petitions and transfer of functions. The case matrix, which provides a list of the ongoing and concluded cases involving the authority, is **Annex 9.3** of this report.

9.5 Challenges experienced

- i. Lack of sufficient legislative drafting capacity in the county governments thus affecting the quality of the laws being drafted. It has also seen repetitive laws been drafted by county governments thus affecting effective implementation of their relevant functions.
- ii. Deficiency in laws has hindered TA in execution of its mandate such as in the classification of Urban Areas and Cities
- iii. Differences in interpretation of the law have led to misunderstandings between the two levels of government culminating in protracted court processes leading to disruption of service delivery
- iv. Numerous laws in various sectors such as agriculture, that are yet to conform with the Constitution, has affected effective operationalization of functions at both levels of government.
- v. Gaps, overlaps and conflict within the devolution laws such as in requiring constant amendment and thus hindering implementation
- vi. County governments attempting to pass laws that have not undergone adequate public participation process thus leading to county residents challenging the laws in court. This has led to delayed implementation of the bills awaiting conclusion of the court process.
- vii. Lack of sufficient support from the office of the Attorney General in developing the office of the County Attorneys. As a result county governments are spending large sums of money engaging consultants to perform these functions.
- viii. Transition Authority has been wrongly enjoined in numerous suits thus causing a strain on its resources. It has also caused a delay in the implementation of its functions such as in the case of roads function transfer.
- ix. Protracted inter-governmental consultations on already transferred functions holding back the implementation such as betting, casinos and lotteries function.

9.6 Pending Activities

- i. An in depth review of laws affecting devolved and concurrent functions in order to avoid duplication of roles by either level of government

- ii. Continuous capacity building in the counties on legal and legislative matters is required
- iii. Ongoing litigation in which the Authority has sued, been sued and or enjoined (Court Cases)
- iv. There is need for further amendments to legislation operationalizing devolution such as laws on pension, urban areas and cities, assets and liabilities.
- v. There is need to harmonize all the existing legislation in the country in order to ensure it reflects the letter and spirit of the constitution in respect making devolution a success.

9.7 Emerging Issues

- i. Some National Government departments have in some instance sought to legislate on functions that have already been devolved to the county governments such as in the case of the sports and Culture, agriculture.
- ii. County Governments have also sought to legislate on national government functions such as the Mombasa County Port Authority Act, 2015 and the Nairobi County Betting, Casinos and Lotteries' Act, 2015.
- iii. County governments have failed to adhere to the constitutional principles of intergovernmental relations by seeking to move to court to settle disputes rather than embracing alternative dispute resolution.
- iv. Numerous instances of the failure to respect the rule of law such as in the instances where Governors in some counties have purported to illegally sack various employees within the County Government structure.
- v. There have been numerous reports that county governments have failed to uphold the 30/70 rule in employment of the majority community resident in the county as well reports of practicing nepotism and cronyism in recruitment.
- vi. Absence of laws and regulations to define concurrent functions has led to overlaps, duplications and non-implementation of these functions.
- vii. County governments are legislation on functions where national laws have not been reviewed to align them with the constitution. These will likely create conflict of laws and adversely affect the implementation of their objectives.
- viii. There has been an issue with regards to the publishing of county government laws and the role of the attorney general prior to publication of these Acts in the Kenya Gazette. The lack of an office of the County Government Printer has led to delays in the publication of these acts as well as interference by the office of the Attorney General before publication.

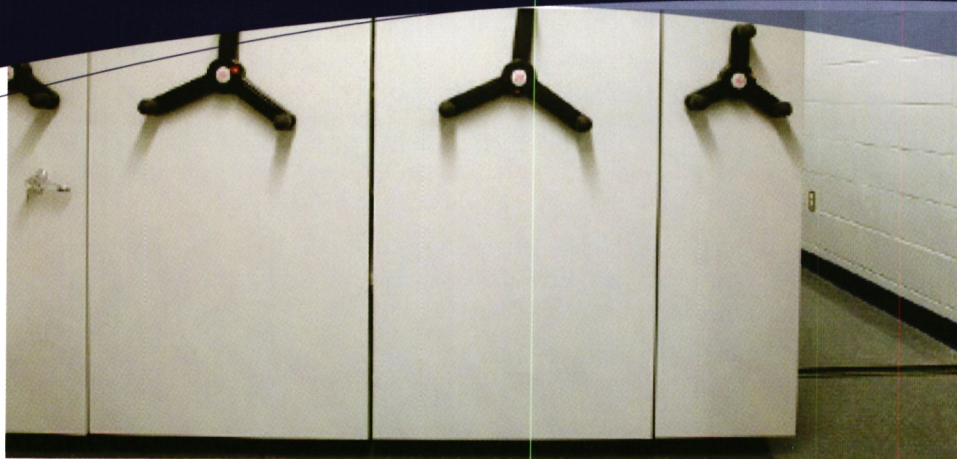
9.8 Lessons learnt

- i. Devolution is not an event but a process and this needs all the parties involved to lift the mantle together with one view and objective.
- ii. Mutual Cooperation between the two levels of government in execution of their functions is fundamental in realizing the objectives of devolution.
- iii. Failure to adopt alternative dispute resolution as opposed to litigation has hindered the performance and implementation of devolved functions thereby denying the citizens their rights and freedoms as provided for in the constitution.
- iv. The time that was allocated for the transition period was so limiting to the Authority to allow it execute its mandate as stipulated in the Transition to Devolved Government Act, 2012. This is contrary to the many countries that have a devolved system of government and their transition period spans to almost 15 years.

9.9 Recommendations

- i. Continuous and structured capacity building in the county and national government is vital to allow them effectively perform the devolved functions
- ii. National and county governments should embrace the principles of the Intergovernmental Relations by resolving their disputes using alternative dispute resolution instead of litigating. Judicial processes should be a last resort as both levels of government should cooperate and consult more to avoid unnecessary court battles.
- iii. Some of the crucial pending litigation should be urgently taken over by the Ministry of devolution and planning as the Intergovernmental Relations Technical Committee is not a body corporate and thus lacks the sufficient capacity to handle them.
- iv. There should be an amendment to the Intergovernmental Relations Act in order to give the technical committee more powers and autonomy for it to sufficiently be capable of taking over and implement Transition Authority activities.
- v. Kenya Law reform should deepen their assistance to county Governments in building their capacity in legislative drafting.
- vi. The National Government to fast-track development of policies, standards and norms to facilitate improved and effective service delivery.
- vii. Regulations touching on devolution laws to be fast-tracked especially for the County government Act, the urban areas and cities act, the intergovernmental relations act, and the Public Finance Management Act. These will help in the further operationalization of these laws.

CHAPTER TEN: DOCUMENTATION AND PRESERVATION OF TA RECORDS



10.1 Introduction

This section gives the documentation aspects of transition authority at the end of its term that will preserve the institutional memory of TA functional activities for ease of future reference.

Section 37 (3) of TDGA required that the Transition Authority wound up in an orderly manner after the expiry of its period which ends 4th march 2016. Specifically, the section requires that;

- i. Those aspects of its work that will be of value to other institutions are preserved, documented and transferred to the relevant institutions; and
- ii. Its files and records are preserved and transferred to the National and County Governments Coordinating Summit.

There are compelling reasons to believe that it is only through the operation of well-run records management programs that an institution retains control of its institutional memory. Additionally, records management is more than retention, storage, and disposal of records. It entails all record-keeping requirements and policies that allow an organization to establish and maintain control over information flow and administrative operations.

As evidence of official business, Transition Authority records have a continuous use as a tool for management, accountability, business continuity, legal support and as points of reference. From the outset transition authority recognized the need for proper management of its institutional memory critical in enabling the national and county governments to efficiently and effectively meet their legal, regulatory and statutory compliance and discharge of their functions.

The documents listed by the time of exit includes; Administrative records, Program planning documents, litigation support records, Research records, various categories reports, Contracts, Agreement records, Advisories, and oversight documents among others.

10.2 Activities

The following activities were undertaken

- i. Collection and preservation of all the records generated by Transition Authority and an inventory prepared to that effect

- ii. Classification, cataloguing and transfer to publication/ records to the relevant institutions like Kenya national library services and attorney general's office as per the requirements of legal deposit Act and Act TDGA 2012
- iii. Documentation of TA'S programmes for ease of access and reference

The files presented are classified using accepted standards of records classification and processed materials done at three levels:

- i. **Accessioning/cataloguing:** this involved accessioning through listing of all materials in a register that gives the overall picture of materials that Transition authority has acquired over the entire period of its existence, for purposes of information and accountability.
- ii. **Classification:** THIS involved identifying the records into categories of functional activities and the records they generate and grouping them, if applicable, into files to facilitate description, control, links and determination of disposition and access status. It involved putting the materials in categories and giving them distinctive numbers. The classification system adopted was Alfa Numeric filing system, which listed down all administrative records, program planning documents, contracts, reports, litigation support records, research records, policies, advisories procedures, guidance and oversight documents.
- iii. **Arrangement and boxing:** Accordingly various print information materials were arranged into boxes, numbered from various thematic areas. it included documents such as reports, advisories, guidelines, gazette notices among others

In a nutshell, it is only through the operation of a well-run records management system that government institutions can ensure secure and reliable records programs like digitization. This will assist them retain control of their institutional memory, facilitating them to offer seamless service delivery to the citizenry.

10.3 TA documents

The TA documents include the list of gazette notices, legal advisories, workshop presentations, documentaries, inventories of Transition Authority assets and liabilities, catalogue of Transition Authority publications, reports and strategic plan, checklists, policy dashboards, questionnaires, and implementation matrix, among others.

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16	Machakos	TA/8/16
17	Makueni	TA/8/17
18	Nyandarua	TA/8/18
19	Nyeri	TA/8/19
20	Kirinyaga	TA/8/20
21	Muranga	TA/8/21
22	Kiambu	TA/8/22
23	Turkana	TA/8/23
24	West Pokot	TA/8/24
25	Samburu	TA/8/25
26	Trans Nzoia	TA/8/26
27	Uasin Gishu	TA/8/27
28	Elgeyo Marakwet	TA/8/28
29	Nandi	TA/8/29
30	Baringo	TA/8/30
31	Laikipia	TA/8/31
32	Nakuru	TA/8/32
33	Narok	TA/8/33
34	Kajiado	TA/8/34
35	Kericho	TA/8/35

36	Bomet	TA/8/36
	Construction Of County Offices - Bomet	TA/8/36/1
37	Kakamega	TA/8/37
38	Vihiga	TA/8/38
39	Bungoma	TA/8/39
40	Busia	TA/8/40
41	Siaya	TA/8/41
42	Kisumu	TA/8/42
43	Homa Bay	TA/8/43
	Tom Mboya University College – Homa Bay	TA/8/43/1
44	Migori	TA/8/44
45	Kisii	TA/8/45
46	Nyamira	TA/8/46
47	Nairobi	TA/8/47
48	County Government General	TA/8/48
09	Regional Development Authority	
1	Tana Athi River	TA/09/1
2	Ewaso Nyiro North	TA/09/2
3	Ewaso Nyiro South	TA/09/3
4	Lake Basin	TA/09/4
5	Kerio Valley	TA/09/5
6	Coast Development Authority	TA/09/6

10	Partners	
1	UNDP	TA/10/1A
2	UNDP Project Steering Committee	TA/10/1B
3	JICA	TA/10/2
4	Un-Habitat	TA/10/3
5	Classification Of Urban Areas And Cities	TA/10/4
11	Planning	
1	Performance Contract	TA/11/1
2	Vision 2030	TA/11/2
3	Planning And National Development	TA/11/3

12	Welfare	
1	Ceremonial Occasions	TA/12/1
2	Honours And Awards	TA/12/2
3	Staff Welfare	TA/12/3
4	Ask Shows	

13	Visits	
1	Important Visits	TA/13/1
2	Visits General	TA/13/2
14	Transport	
1	Transport General	TA/TRANS/01
2	Boarded Vehicles	TA/TRANS/02
3	Work Tickets	TA/TRANS/03
4	Fuel	TA/TRANS/04
5	Drivers For Members	TA/TRANS/05

15	Court Cases	
1	Court Cases General	TA/6/12/1B
2	Tanathi Water Services Board- Vs –Ta (Matter Closed)	TA/6/12/2B
3	D. Mwomondeny - Vs-Ta (Matter Closed)	TA/6/12/3B
4	M.Kivuti-Vs-M.L.Kariuki, Iebc & Ta (Matter Closed)	TA/6/12/4B
5	Dr.C.Kodongo& 2 Others (Matter Closed)	TA/6/12/5B
6	J.T. Ole Musini & 3 Others-Vs-Ta & 10 Others (Matter Closed)	TA/6/12/6B
7	The Law Society Of Kenya-Vs-Ta, Psc & Hon.Ag (Matter Closed)	TA/6/12/7B
8	F. M. Makola-Vs-Felix G. Mbiuki, Ta Among Others (Matter Closed)	TA/6/12/8B
9	C. Fwamba & B. H. Njeri-Vs-Ta & Ibec (Matter Closed)	TA/6/12/9B
10	K. Terer-Vs-J. Langat,Ta Among Others	TA/6/12/10B
11	E.Sikna & G.P. Narok On Behalf Of Trusted Society Of Human Rights-Vs-Mara Conservancy, Ta Among 4 Others	TA/6/12/11B
12	T. Gatitu-Vs-Municipal Council Of Eldoret	TA/6/12/12B
13	K. Gachungi-Vs-County Govt Of Kiambu, Ta & Municipal Council Of Kiambu (Matter Closed)	TA/6/12/13B
14	F. A. Kimangi Muindi-Vs-Municipal Council Of Machakos	TA/6/12/14B
15	Isaack M Mohamud -Vs-Ta (Ex Parte) (Matter Closed)	TA/6/12/15B
16	G.K. Kimani & 5 Others -Vs-Ta (Matter Closed)	TA/6/12/16B
17	Tom K. Werunga-Vs-Ta (Matter Closed)	TA/6/12/17B
18	Cenriva Traders Ltd-Vs-Ta (Matter Closed)	TA/6/12/18B
19	County Council Of Bomet-Vs-Local Govt. Ag & Commissioner Of Lands	TA/6/12/19B
20	J. G. Kionga-Vs-P. N. Michanjo,Ta Among 3 Others	TA/6/12/20B
21	A.I.Bakari& M.A.Karbat-Vs-Chairman, Garissa County Service Board, Ta Among Others	TA/6/12/21B
22	Kmpdu, Knun & Khps-Vs-Ta	TA/6/12/22B
23	Mundia N. Geteria-Vs- Embu County Council-Vs- Ta Among 3 Others (Matter Closed)	TA/6/12/23B
24	Daniel S. Ole Nkere-Vs-Govt Ofbomet, Ta & Others	TA/6/12/24B
25	Nairobi Metropolitan& Others-Vs-Nairobi County,Ta & Others	TA/6/12/25B
26	Jimmy G. Kiago& Another-Vs-Ta & 6 Others	TA/6/12/26B
27	Henry Loyolmoi-Vs-Ta & West Pokot County Govt.	TA/6/12/27B
28	Okiya Omutatah & Others-Vs-Ag, Ta & Council Of Governors	TA/6/12/28B
29	Patrick Kariithi & 114 Others-Vs-Laikipia Govt. Ta	TA/6/12/29B
30	Masosa Construction -Vs-Kisii County, Ta & 2 Others	TA/6/12/30B
31	Hon. D. N. Muchungu-Vs- Embu County Govt & 5 Others	TA/6/12/33B
32	Kajiado Town Plot Owners Association-Vs-Kajiado County Govt.	TA/6/12/32B
33	Elizabeth N. Masaku-Vs-Nakuru County Govt.	TA/6/12/31B
34	Power Pump Tech. Co. Ltd-Vs-Kitui C. Govt & Ta	TA/6/12/34B
35	Peter Munya Gatirau-Vs- D.M.Kithinji, IEBC & Another -	TA/6/12/35B
36	Siaya County Assembly Service Board-Vs- Ta & The Attorney General	TA/6/12/36B
37	James Kuria Wairagu & 8 Others-Vs-Ta And Busia	TA/6/12/37B
38	K-Rep Bank-Vs-Clerk To County Assembly Of Busia,Governor Of Busia & Chairman,Ta	TA/6/12/38B
39	Nyahururu Municipal Council Workers-Vs- County Government Of Laikipia, Ta & Psc	TA/6/12/39B
40	Samson Ole Tina-Vs- The Governor,County Sec.Ecm,Finance Narok County Government,Ta	TA/6/12/40B
41	The Speaker Of Nakuru County Assembly And 46 Others-Vs-Ta	TA/6/12/41B
42	Council Of Governors-Vs-Ag Knha Kura & Ta	TA/6/12/42B

43	Kenya County Government Workers Union-Vs- Min. Of Devolution & Others	TA/6/12/43B
44	Evans W. Makhoha & Another-Vs-Council Of Governors & 6 Others	TA/6/12/44B
45	Transition Authority-Vs-Src	TA/6/12/45B
46	Associatio N Of Gaming Operators-Vs-Govt. Of Nairobi City& County Council Of Nairobi City	TA/6/12/46B
47	Dr. Jane Njunguna & 43 Others-Vs- Src,Ta & 4 Others	TA/6/12/47B
48	International Legal Consultancy -Vs-Moh & 5 Others, Cic, 47 County Governments & Ta	TA/6/12/48B
49	Reference - An Application By The Speaker Of The County Assembly Of Embu	TA/6/12/49B
50	Peres N. Mose-Vs-Dir. Of Public Prosecution, Eaecc, Ta&Nyamira Cpsb	TA/6/12/50B
51	Kenya County Government Workers Union-Vs-County Govt. Of Bomet,Cpsb, Ta& Psc	TA/6/12/51B
52	Local Authorities Provident Fund Board-Vs-Cog, Rba, Ta & Ag	TA/6/12/52B
53	Gideon Bore&32 Others-Vs-Baringo Cpsb & 3 Others	TA/6/12/53B
16	Internal Memos	
1	Capacity And Capability Memos	2/1/1C
2	Civic Education Memos	2/1/1B
3	Functional Analysis & Competency Assignments Memos	2/2/1B
4	Finance And Aadministration Committee Memos	2/3/1B
5	Budget, Planning And Finance Committee Memos	2/4/1B
6	Assets And Liabilities Committee Memos	2/5/1C
6	Harmonization And Coordination Committee Memos	2/6/1B
8	Legal And Inter-Governmental Relations Memos	2/7/1B
9	Human Resource Management Committee Memos	2/8/1B
10	Audit Committee Memos	2/9/1B
11	Procurement Memos	3/6/1B
12	General Administration Issues Memos	6/1/1B

10.3.2 CONFIDENTIAL FILES

S/No.	File Ref. No.	File Subject
1	TA/CONF/7/5	Finance Matters
2	TA/ CONF /7/3	Salaries Matters (Conf)
3	TA/2/5	Assets & Liabilities
4	TA/6/10/2	Meetings General
5	TA/CONF/8/31	Laikipia County
6	TA/HRM/2	Staff Matters
7	TA/HRM/4	Posting
8	TA/HRM/2/1A	Confidential Agreements
9	TA/HRM/2/1B	Confidential Agreements

10.3.3 Closed Records Inventory/Register

S/No	File Ref. No.	File Subject	Vol.	Covering Dates		Last Folio
				Opened	Closed	
1	TA/2/1	Capacity & Capability	I	26/11/2012	31/8/2013	180
2	TA/2/1	Capacity & Capability	Ii	1/9/2013	30/1/2014	161
3	TA/2/1	Capacity & Capability	Iii	1/1/2014	27/2/2015	170
4	TA/2/1/2A	Carps	I	27/2/2014	26/2/2015	165

5	TA/2/1/4	Closure & Transfer of Public Records	I	27/05/2014	30/06/2015	110
6	TA/2/2	Functional Analysis	I	Jan 2013	30/5/2013	122
7	TA/2/2	Functional Analysis	Ii	4/12/2013	11/11/2013	215
8	TA/2/2	Functional Analysis	Iii	5/10/2013	13/5/2014	127
9	TA/2/2	Functional Analysis	Iv	7/5/2014	1/10/2014	100
10	TA/2/2	Functional Analysis	V	30/9/2014	27/3/2015	139
11	TA/2/2	Functional Analysis	Vi	24/02/2015	17/08/2015	119
12	TA/2/2	Functional Analysis	Vii	17/8/2015	8/12/2015	77
13	TA/2/2/1B	Memos - Functional Analysis	I	21/01/2014	28/07/2015	103
14	TA/2/5	Assets & Liabilities	I	Jan 2013	28/5/2013	136
15	TA/2/5	Assets & Liabilities	Ii	29/5/2013	8/8/2013	115
16	TA/2/5	Assets & Liabilities	Iii	9/8/2013	12/11/2013	114
17	TA/2/5	Assets & Liabilities	Iv	8/8/2014	22/1/2014	115
18	TA/2/5	Assets & Liabilities	V	23/1/2014	6/5/2014	108
19	TA/2/5	Assets & Liabilities	Vi	7/5/2014	23/5/2014	117
20	TA/2/5	Assets & Liabilities	Vii	25/5/2014	21/8/2014	102
21	TA/2/5	Assets & Liabilities	Viii	22/8/2014	7/10/2014	82
22	TA/2/5	Assets & Liabilities	Ix	19/9/2014	11/01/2015	92
23	TA/2/5	Assets & Liabilities	X	5/2/2015	15/4/2015	115
24	TA/2/5	Assets & Liabilities	Xi	31/03/2015	06/07/2015	107
25	TA/2/5	Assets & Liabilities	Xii	06/07/2015	31/08/2015	85
26	TA/2/5	Assets & Liabilities	Xiii	14/8/2015	19/10/2015	54
27	TA/2/5	Assets & Liabilities	Xiv	4/6/2015	3/11/2015	58
28	TA/2/5	Assets & Liabilities	Xv			Active
29	TA/2/5	Assets & Liabilities	Xvi			Active
30	TA/2/5/4	Handing Over Reports For Assets and Liabilities	I	22/04/2013	19/08/2015	42
31	TA/3/2	Public Procurement	I	Jan 2013	18/3/2013	89
32	TA/3/2	Public Procurement	Ii	19/3/2013	31/7/2013	111
33	TA/3/2/1B	Procurement Offers	I	28/5/2013	6/12/2013	48
34	TA/4/1	Training	I	23/10/2012	09/06/2015	100
35	TA/4/2	Seminars and Workshops	I	14/8/2012	15/7/13	99
36	TA/4/2	Seminars and Workshops	Ii	16/7/2013	2/12/2014	128
37	TA/4/3	Internship	I	20/12/2012	22/7/2014	83
38	TA/6/1	General Correspondence	I	15/04/2013	28/07/2015	172
39	TA/6/1/1B	Memos-Admin Issues	I	20/1/2014	24/2/2015	133
40	TA/6/2	Stakeholders	I	27/11/2012	28/2/2014	95
41	TA/6/3	Publication	I	20/12/2012	16/7/2013	88
42	TA/6/6	ICT	I	Jan 2013	20/6/2013	55
43	TA/6/7	County Assemblies	I	Jan 2013	16/5/2013	181
44	TA/6/10	Meetings General	I	12/12/2012	17/10/2013	107
45	TA/6/12	Legal Framework	I	Jan 2013	8/4/2013	98
46	TA/6/12	Legal Framework	Ii	9/4/2013	28/2/2014	148
47	TA/6/12	Legal Framework	Iii	1/2/2014	25/2/2015	158
48	TA/6/12	Legal Framework	Iv	5/3/2015	6/1/2016	128
49	TA/6/15	Complaints General	I	15/9/2012	16/10/2013	85
50	TA/6/16	Ta Invitations	I	2/10/2012	31/8/2013	152
51	TA/6/16	Ta Invitations	Ii	1/9/2013	21/7/2014	138

52	TA/6/16	Ta Invitations	Iii	22/7/2014	25/11/2014	79
53	TA/6/16	Ta Invitation	Iv	26/10/2015	29/11/2015	165
54	TA/6/27	Reports	I	12/1/2013	4/3/2015	198
55	TA/7/1A	Allowances	I	5/11/2012	20/12/2013	126
56	TA/7/3	Salaries Matters (Conf)	I	9/10/12	14/11/2014	145
57	TA/7/5	Finance Matters	I	18/12/2012	30/6/2013	214
58	TA/7/5	Finance Matters	Ii	8/7/2013	2/8/2013	98
59	TA/7/7A	Audit Queries	I		18/11/2014	117
60	TA/7/9	Mtef Budget	I	19/4/2013	7/5/2014	47
61	TA/8/22	Kiambu County	I	24/1/2013	4/11/2014	74
62	TA/8/47	Nairobi County	I	5/12/2012	13/5/2015	134
63	TA/8/48	County Governments General	I	30/4/2013	30/1/2014	125
64	TA/10/1A	Undp	I	3/12/2012	30/6/2014	172
65	TA/HRM/4	Postings	I	Jan 2013	16/5/2013	281
66	TA/HRM/4	Postings	Iii	1/8/2013	31/8/2013	234
67	TA/HRM/4	Postings	Iv	1/9/2013	2/2/2014	231
68	TA/HRM/4	Postings	V	3/2/2013	4/3/2014	218
69	TA/HRM/4	Postings	Vi	4/3/2014	20/5/2014	204
70	TA/HRM/4	Postings	Vii	21/5/2014	22/10/2014	143
71	TA/HRM/4/2/A&B	County Transfers	I	19/3/2014	9/9/2014	163
72	TA/HRM/4/2	County Transfers	Ii	22/9/2014	5/2/2015	106
73	TA/HRM/4/2	County Transfers	Iii	4/2/2015	22/4/2015	118
74	TA/HRM/4/2	County Transfers	Iv	16/4/2015	14/1/2015	85
75	TA/HRM/4/2	County Transfers	V			
76	TA/HRM/4/2	County Transfers	Vi			
77	TA/HRM/4/2	County Transfers	Vii	13/8/2015	12/10/2015	100
78	TA/HRM/4/2	County Transfers	Viii	28/9/2015	15/1/16	114
79	TA/HRM/4/2	County Transfers	Ix			95
80	TA/HRM/4/2	County Transfers	X	15/12/2015	15/2/2016	114
81	TA/HRM/8	Employment	I	Jan 2013	30/3/2013	31
82	TA/HRM/8	Employment	Ii	1/4/1013	4/6/2013	42
83	TA/HRM/8	Employment	Iii	5/6/2013	11/2/2014	40
84	TA/HRM/15	Hrm Matters	I	20/3/2013	30/11/2014	127
85	TA/HRM/15	Hrm Matters	Ii	3/12/2014	10/11/2015	109
86	TA/08/TRANS/1	Transport	I	22/8/2013	17/6/2014	260

CHAPTER ELEVEN: ASSESSMENT OF STATUS OF DEVOLUTION



11.1 Introduction

The devolved system of government has been in existence for almost three years and its implementation has received mixed reactions with both success and challenges being reported in the overall governance of the system and delivery of services. As the transition period came to close, it was imperative to take stock of the uptake of the status of implementation, key milestones, challenges, capacity gaps and lessons learnt towards the realization of the devolved system of government. Towards this end, the Authority contracted Kenya Institute of Public Policy Research and Analysis (KIPPRA) to undertake an independent assessment of status of devolution covering the period beginning March 4th 2013 to March 2016.

The objectives of the assessment was to among others: establish the status of uptake and implementation of assigned functions to National and County Governments, to assess the relationship between national and county governments and the effectiveness of the intergovernmental relations mechanisms, to identify achievements, challenges, threats and opportunities arising from the implementation of devolved of system government, to establish capacity gaps and requisite capacity needs for both levels of government and to make policy, programmatic and operational recommendations on how to address identified capacity gaps, other challenges to further entrench devolution;

The assessment covered all the forty seven County Governments, and Ministries of National Government. The general approach of undertaking the assignment was a transparent, interactive and participatory approach. It involved consultative meetings with the Authority staff, engagement with key informants, interviews with chief officers of County and National governments and discussions with representatives of various groupings including religious communities, civil societies, households and businesses. Separate reports have been prepared for each County government. In addition, one national government and one consolidated report have been prepared.

This chapter presents summary of the findings, challenges and recommendations. It is instructive to note that the findings of the assessment presented in this chapter may be similar to observations made by the Authority in the previous chapter. It should therefore not be viewed as repetition given that these are findings of an independent and objective assessment.

11.2 Key findings

11.2.1 Administrative and Governance systems and structures

The general findings in terms of administrative and governance system and structures are that most counties executives have all the required departments which are operational. Most county assemblies have various committees established. However information on county assemblies was not adequate as some counties did not provide information at all on county assembly administrative and governance systems and structures.

11.2.2 Uptake and implementation of devolved functions

Majority of the county governments have taken up a large proportion of the devolved functions that were transferred to them for implementation and service delivery. However, it was noted that County governments mainly due to a number of reasons as well as the continued undertaking of functions were not carrying some of the transferred functions out by the national government.

A number of devolved functions that have not been taken up by some Counties as captured during the assessment include Cinemas, Video shows and hiring, County transport including Ferries and harbours, lands, housing and urban development, Betting, casinos and other forms of gambling, Facilities for the accommodation, care and burial of animals. In agriculture, there are gaps in provision of extension services due to funds limitations. County governments have not fully undertaken other functions such as collection and dumping of garbage efficiently.

The reasons given for not taking up and implementing the functions were presented as lack of budgeted resources, lack of policy at the county level, non-existence of the function in the respective county for example betting and casinos in Samburu, lack of sufficient capacity, duplication of functions as both levels of government allocate resources to carry out same functions leading to non performance.

Largely, the extent of uptake of functions by the county governments has been influenced by their priorities. This follows the principle of self-determination and self-governance.

On the other hand, the assessment revealed that the national government is still carrying out some devolved functions. These include functions such as those of traffic and parking, public road transport, water and sanitation services, electricity and gas reticulation, forestry, outdoor advertising and housing.

For some Counties, some sub-components of some functions have not been properly domiciled in their departments hence causing confusion on the level of government performing the function. For instance, though implementation of government policies on natural resources and environmental conservation on soil and forestry is expected to be performed by department of lands, physical planning and natural resources, the sub-function is grouped under function under agriculture department.

National government still undertakes some agricultural functions such as extension of services (storage of grains and produce, animal husbandry) through national programmes under agencies such as National Cereals and Produce Boards. This state of affairs has posed a number of challenges namely:

- a) The most prevalent reason provided was that the County Governments were unaware that such transfer of such functions had been gazetted.
- b) The other notable challenge to implementation of the operations at county level is that funds are mostly not disbursed from the National government on time which hinders delivery of functions by the Counties.

- c) The lack of a detailed and structured system for monitoring and evaluation system in the Counties means that uptake of functions cannot be monitored especially on the specific level of government performing the function.
- d) Certain functions are still being carried out by national government agencies such as the Kenya National Highways Authority (KENHA) that undertakes outdoor advertising.
- e) There is limited public participation and consultation in the uptake of devolved functions thus the public are not aware of the level of government responsible for a specific function.
- f) Duplication of functions as both levels of government allocate resources to similar functions through various agencies.
- g) There is a large pool of unskilled workforce hampering uptake of functions by the County and service delivery.
- h) The lack of national legal frameworks, policies, standards and norms for the Counties to capably undertake functions remains a major challenge.

11.2.3 Key achievements in term of projects and programmes undertaken

Mostly, there are clear indications of improved development in Kenya as can be seen in Counties as compared to the situation before March 2013. There has been an attitude change among the people because of devolution of functions, with most people investing within the counties. The gains from devolution stem from the fact that the county leaderships understand the actual needs of the people and this informs how priorities of development are arrived at. Again, interactive governance improves feed-back which is crucial for planning purposes.

The general achievements resulting from projects and programmes undertaken after March 2013 that were realized in the counties include improved health facilities, improved roads, better education services, increased job opportunities, increased street lighting, improved security and better water services. Some counties had specific achievements but those mentioned above cut across counties.

11.2.4 Public Finance management and Planning

11.2.4.1 Planning

All the counties have prepared and approved their county integrated development plans. However, Integrated Urban Development Plans, sectoral plans, spatial plans and strategic plan are yet to be prepared in the counties. This has been attributed to capacity and resource constraints and lack of baseline data for reference. The implementation is on the other hand is affected by frequent changes in county priorities and weak monitoring and evaluation systems

11.2.4.2 Budgeting and Budget Execution

In budgetary preparation process and execution, various challenges are encountered which either slow or influence the outcome. Increasingly, political influence for project prioritization and low technical capacity in drafting the required documents are the main challenges. Notably most counties are yet to put in place any revenue automation systems which is crucial in improving locally- generated resources. Other specific findings were:

- a) Diversity within some counties coupled with vastness has affected service delivery. This is further compounded with high illiteracy among the residents.
- b) In counties, which have established the county budget and economic forum, the forums are not representative as the elderly and faith-based groups are not represented.
- c) Debt Management Unit and Asset Management units are yet to be set up in most of the counties.

- d) Notably most counties are yet to put in place revenue automation systems which is crucial in improving locally- generated resources.

11.2.5 Human Resource management and capacity building

County Governments have different categories of staff. They were staff inherited from defunct local authorities, those of devolved functions and others recruited by counties. They have varied capacity. Some of the specific findings were:

- a) Most of the staff previously working for the defunct local authorities lacked sufficient skills and competencies. Although a number of counties have developed human resource manuals and policies. Capacity assessment surveys also revealed that most counties did not have training frameworks or localized schemes of service and were using the one from the national government. Some county assemblies have reported having limited capacity to draft laws.
- b) The records management function is either lacking in most counties or under- funded.
- c) Most departments are not automated their service delivery systems making it difficult to manage transaction of delivery of services
- d) Insecurity is one of the biggest challenges facing staff serving in the north eastern counties who care not from the dominant tribe thus the counties are unable to attract skilled workers.
- e) Other challenges include political interference in recruitment processes resulting in staff holding offices without the prerequisite qualifications.
- f) In many counties discrimination and victimization of seconded staff especially has been reported resulting in mass strikes and low morale.
- g) The County Public Service Boards and the County Assembly Service Boards are reported to be underfunded making it difficult to successfully execute their roles and responsibilities.
- h) Some counties have overstaffed some departments such as procurement units while understaffing others such as the health care units. Reports also indicate that some counties have little consideration in considering the special interest groups while recruiting.
- i) Counties reported that delay in establishing a county pension scheme has delayed transfer of seconded staff whose pension is still held at the national government.
- j) Limited office space
- k) High wage bill due to adhoc recruitments
- l) Lack of performance management system in most of the counties.

11.2.6 Further Decentralized units

In most of the counties visited, service delivery, stopped at the county headquarters. Further devolved units lack resources to effectively discharge their duties. In the vast counties, insecurity has been a major challenge. In all counties, budget estimates for the urban areas and cities are not prepared.

All urban areas were supposed to be subjected to the Urban Areas and Cities Act, 2011 for purposes of assessment and classification. On application of the law, the classification of urban areas and cities as required was unattainable as per the criteria set out in the Act. Some counties however, have gone ahead and undertaken the classification of their urban areas despite the inapplicability of the Urban Areas and Cities Act, 2011.

11.2.7 Civic education and public participation

In relation to public participation, the county governments undertook public participation in the process of formulating county policies and legislation for select functions although there has been limited public involvement in the implementation of devolution within the counties. The public does not meaningfully participate due lack of understanding of the Constitution and functions of the county government as well as inadequate time allocated for reviewing bills and policy documents.

The main mechanism used for public participation was the use of town hall meetings, ICT and establishment of citizen fora at county and decentralized units. There has however been poor communication because of the timing and mode of communication used by the conveners of the meeting. In addition, Persons Living With Disability are on most occasions been sidelined in the public forums

There has been limited and poorly coordinated of civic education programmes run by various groups including national and county governments and non-state actors. As a result, there is low level of public awareness on devolution.

11.2.8 Legal and Intergovernmental relations

Generally, counties have taken up their legislative role as per Article 185 of the constitution with all counties having enacted a number of laws related to their functions. However, there have been challenges in the formulation of county specific policies and laws due to lack of capacity and in some instances lack of national laws and policies and or standards and norms to guide them.

The intergovernmental relations institutions such as the council of Governors, IBEC, The Summit, and the Intergovernmental Relations Technical Committee have been institutionalized. The intergovernmental Forums in the counties are not operational.

Regarding intergovernmental disputes the most common strain on relations are; the delay in release of funds by treasury, the health sector is not fully devolved as well as hitches with concurrent functions. This has led to court cases, which at times disrupt services. There is a need to enhance Alternative Dispute Resolution (ADR) channels in order to strengthen dispute resolution as opposed to litigation.

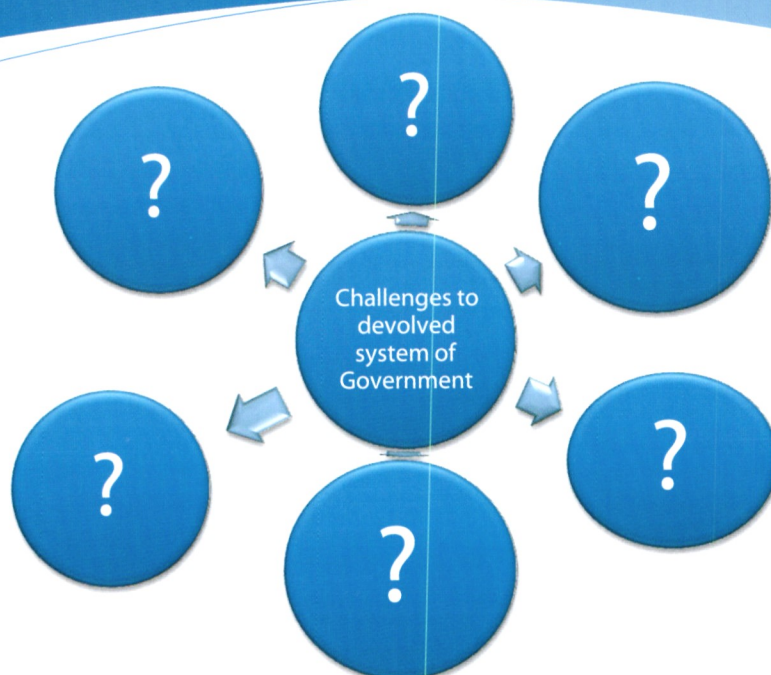
11.3 Recommendations

- i. There is need for constitutional amendment to make governorship position a non-elective position. This will depoliticize the institution of governorship and minimize political interference in governance and delivery of service.
- ii. Further clarification of functions of the national and county governments is necessary to avoid inter-government disputes and duplication of services delivery.
- iii. The parliament should allocate adequate budget to County Governments that is commensurate to magnitude and complexity of functions devolved. This will ensure counties to implement the assigned functions.
- iv. National Government to enhance security in coastal and Northeastern regions to mitigate service disruptions and attract technical skills from other parts of the country.
- v. To promote effective asset management, the Transition Authority or any appointed agency should speed up the process of audit and transfer of assets.
- vi. Audit should be carried out frequently to unearth corruption in public service. This requires office of controller of budget and audit to be empowered to effectively execute their mandate and follow-up implementation of their recommendations.
- vii. Ethics and Anti-corruption Commission to decentralize its offices to the counties to closely follow cases of corruption. This will minimize cases of corruption and direct resources that would otherwise be misappropriated to development projects.
- viii. The County Governments requires its own statistical abstract to guide the development of plans. National government should increase efforts to capacity build county officials in areas where capacity is deficient. This applies especially in preparation of county plans and county budgets. In addition, strong monitoring and evaluation system needs to be instituted to ensure adherence to designed plans.

- ix. In budget execution, there is need to stick with the County Integrated Development Plan.
- x. There is need to strengthen the link between planning and the budget process since public participation in planning will only be meaningful if the choices made are translated into spending.
- xi. Given the governance challenges in the county, it is necessary that systems are put in place for effective and transparent service delivery.
- xii. National government should strengthen ICT competences at county level given that procurement regulations have become a problem in terms of complexity of the requisite processes.
- xiii. The national and county governments should manage wage bill through freezing further employment of employees and restructuring to ensure that service delivery is not compromised
- xiv. National and county Governments should put in place enabling laws, policies and institutional frameworks and budgets for human resource management.
- xv. The relevant laws should be reviewed and independent budget provided to ensure County Public Service Boards executes its mandate independently without political interference.
- xvi. National government to review all laws and policies to align them with the constitution. Further, development of regulations to existing devolution laws should be fast-tracked.
- xvii. Affirmative action including lowering requirements for special interest groups should be explored for them to access county jobs.
- xviii. County Government should consider building technical skills such as for engineers and doctors through sponsorships.
- xix. County Government to enhance budgetary allocations to decentralized units (sub-counties, wards, villages) including urban areas and cities for improved proximate services to the residents. In addition, County Governments should develop urban areas and cities plans to facilitate budget allocations.
- xx. County Governments should enact laws related to civic education and public participation to facilitate budget allocation and sustained delivery of civic education
- xxi. County Governments to support establishment and strengthening of groups and associations to champion the needs of different groups.
- xxii. To guarantee effective public participation, civic education should be undertaken to sensitize the public on the purpose and expectations of public participation. The county and national Governments should further improve its communication mechanisms with stakeholders.
- xxiii. The national public participation framework needs to be finalized so that the county public participation laws can be abstracted from it. This will be for the sake of standardization of the laws and policies at county level.
- xxiv. To avoid politics impeding development and relations between the two levels of government, the National and County Governments should embrace the spirit of intergovernmentalism and ensure they consult and cooperate. Each level of government should also respect the rule of law.
- xxv. Civic education should also be enhanced to create public awareness on the roles of various institutions in promoting intergovernmental relations.
- xxvi. There is need to consider creation of an independent body to act as a watchdog on the implementation of functions and relations between the two levels of government.

**PART III:
CHALLENGES, EMERGING
ISSUES AND LESSONS
LEARNT**

CHAPTER TWELVE: CHALLENGES



12.1 Internal Challenges

- i. **Very broad mandate with short time limit:-**The constitution of Kenya 2010, sixth schedule, section 15 provided for phased and asymmetrical transfer of functions for a period not exceeding three years but when the Transition to Devolved Government Act 2012 was enacted, it expanded the mandate to facilitating and coordinating the devolved system of government, which created additional functions.
- ii. **Inadequate funding/resources:-** Budgetary allocation constraints hampered implementation of planned TA programmes and projects. In addition, most of the projects such as validation of inventory of all the existing assets and liabilities and their identification, verification and audit require technical expertise because the scope of work covers both national and county governments.
- iii. **Legal constraints:** According to the Transition to Devolved Government Act, 2012 one of the mandates of TA was to facilitate civic education, to ensure civic education on devolution is commenced and coordinated. As such, TA could not implement civic education and had to rely on Government ministries, County Governments and non-state actors for implementation of civic education thus the law limits TAs span of control in the implementation
- iv. **Capacity;** Inadequate capacity to perform assigned responsibilities by some committees due to shortage of staff arising from high staff turn-over brought about by the uncertainties on TA tenure.

12.2 External Challenges

- i. **Delay in Reviewing or Re-alignment of Policy and Legislative Frameworks;**
The delay by the National government in the amendment of the various legislations and

policies that relate to devolution and delivery of services for functions which were to be devolved has been a key impediment in the implementation process. For example, it has taken more than two years to amend the Urban Areas and Cities Act, 2011 and this has affected the assessment and classification of urban areas and cities. In the appeal by Governors, the Senate ruled that legislation for classification of roads be enacted but there is no evidence that the national government has drafted the relevant bill.

ii. Numerous Litigation and Judicial Proceedings

There have been numerous litigation attempts concerning the mode of the transfer of functions and delivery of concurrent functions. The various court cases in the health and roads sector depict this trend. In most of the cases, TA was always enjoined.

iii. Problems of Concurrency of Functions

Delivery of concurrent functions has marred the implementation of some functions. This has been common in cases where revenue generation is involved or some benefits accrue to a level of government assigned a certain sub-component of the concurrent function. A good example is the lincensing of betting and casinos.

iv. Slow Pace in Consultations and Consensus Building

The slow pace of consultations, consensus building and reaching of agreements in relation to performance of some functions has been a key challenge. This slowed down the pace of unbundling and transfer of functions in some sectors. A good example was the roads sector.

v. Reluctance to Provide Norms and Standards for Service Delivery

The ministries, departments and agencies of the national government have been reluctant in providing requisite norms and standards that guide in the delivery of services for transferred functions. This tends to indicate that MDAs want counties to fail in the delivery of services.

vi. Lack of Coordinated Implementation of Capacity Building Framework by the National Government.

The Constitution mandates the national government to provide technical assistance and capacity building to the county government to foster their capacity in delivering devolved functions. In some instances training was not informed by training needs assessment.

vii. Implementation of the Recommendation of the Technical Committee on the Best Pension Arrangement.

Implementation of the recommendation of the technical committee on the best pension arrangement for the counties has not been finalized because of vested interests by different players which have disadvantaged the workers who have reached the retirement age and the newly recruited county workers.

viii. Clawing back devolved functions

Creation of institutions by the National government e.g. the AFFA and Kenya Tourism Authority

ix. Rejection of county transition teams in some counties.

Some county governments failed to cooperate with the transition teams deployed by TA forcing some of the officers to leave their stations prematurely while others were ejected from their offices. This created capacity gaps in key departments like county treasuries, Procurement, county assemblies, and human resource management.

CHAPTER THIRTEEN: EMERGING ISSUES FACING DEVOLUTION



13.1 Issues Concerning County Governments

- i. Some County governments are lagging behind in the implementation of public participation, particularly, adoption and implementation of appropriate legislation, establishment of County Budget and Economic Forums;
- ii. Majority of the County Assemblies lack appropriate systems of disseminating information to the public for public participation such that the public is not involved in the legislative process.
- iii. Some Counties are unwilling to implement civic education since it will empower the public
- iv. In most counties, there is Centralization of resources at the county headquarters leaving the sub-counties without resources which hampers service delivery
- v. Inadequate Capacity. Insufficient capacities have been observed in the following areas:
 - a. Formulation of county specific policies, laws and regulations,
 - b. Development and management of programmes,
 - c. Human resources management and management of county treasuries
- vi. It is emerging that the county public service boards are facing monumental challenges in the execution of their work. These challenges are both institutional, political and those pertaining to human resource.
 - a. As an institution, CPSBs lack operational autonomy due interference by county politicians and lack of adequate budgetary allocations for the CPSBs to meet their obligations which has interfered with the service delivery in the counties and thus hindered service delivery in the counties. The boards are gradually losing their independence, thus threatening the principal of separation of power envisaged in the constitution.
 - b. The undefined roles of part time board members and their scope of work are not clearly defined. This has led to conflict in some instances while at the same time, the 4th Member are feeling demotivated due to these inconsistencies.
 - c. On the major mandate of CPSBs is to recruit staff, however, in the execution of this role, the CPSBs face political interference leading to discrimination, nepotism, tribalism, cronyism patronage and victimization in the recruitment of county staff.
 - d. CPSBs are also grappling with glaring disparities in remuneration and promotion of the staff, with the newly-appointed staff and those of the defunct local authorities enjoying better remuneration and job grades than the staff from devolved functions.

- vii. In Public Financial Management Systems, reports reveal that some counties have connectivity problems as well as inadequate skilled staff to implement IFMIS and G-Pay
- viii. Human Resource Management.

After the transfer of management of human resources for devolved functions was effected (January, 2014) a number of challenges have been observed. The major ones include:

- a. Discrimination, nepotism, tribalism, cronyism, patronage and victimization in the recruitment of county staff
- b. Failure by the national government to prepare bills and regulations on devolution
- c. Failure to adhere to the 30% recruitment rule on the dominant community as provided for under CGA, 2012 and Violation of the principles of public service;
- d. Threats by County Government to return seconded staff (those from the defunct local authorities and those performing transferred functions) back to the national government
- e. There is weak integration between various categories of staff e.g. former Local Authorities, devolved functions and newly employed staff
- ix. Inadequate county infrastructure. There is inadequate office space for CECs, Chief Officer (CO), Directors and other employees at the headquarters. More often than not, in some counties, officers are sharing offices while some infrastructures such as filing cabinets for keeping their records cannot be accommodated due to lack of space. This has led to poor working environment due to congestion.
- x. The constant threats of impeachments of Governors, CECs, Chief Officers, Speakers and Clerks of the County assemblies by the Members of the County Assembly (MCAs) more often affect service delivery
- xi. In some counties court cases and litigations affect the service delivery of the county executives. These court cases emanate from different stakeholders in the county governments.
- xii. County Assemblies lack qualified staff to handle assembly matters especially legal drafters.
- xiii. Most of the staff operating the county registries lack the requisite skills in records management since most of the staff in these units is clerical officers.

13.2 Issues Concerning National Government

- i. Retention of Resources for Functions Devolved to the counties by the National government and from the analysis of the Programme Based Budget for the National Government, some of the programs and sub-programmes budgeted for is within the functions assigned to the county governments
- ii. There are delays in publishing and Gazettement of approved bills. This is because they rely on government printer which serves all county governments and the national government

13.3 Intergovernmental Relations Issues

A number of issues have emerged that relate to intergovernmental relations. These include:

- i. Delay in release of county funds by the National Treasury to the county governments,
- ii. Misunderstanding of the functions of capacity building by the National government for county governments – the procurement of medical equipment by the national government is a case in point,
- iii. Inadequate funding for the health function and misallocation of conditional grant for level 5 hospitals by counties,

- iv. Conflicts between staff of national and county governments in operationalization of concurrent functions for example in lands, housing and roads functions at the County level,
- v. Overlapping roles by staff from both levels of government,
- vi. Supremacy battles and political wrangles. Specifically the wars were between:
 - a. The Governors and County Commissioners;
 - b. National Assembly and the Senate;
 - c. Governors and the members of Parliament
 - d. The two arms of County Governments – Executive and County Assembly
 - e. Judiciary and legislature especially in the handling of the impeachment process - one organ deems it a governance issue not a legal issue.

13.4 Other Issues

- i. Hyped Public Expectation - As political leaders engaged the public during the campaigns in the last general elections, un- attainable promises were made which the leaders cannot satisfy. Consequently, the public appear disillusioned by the devolution process. Arising from this, the Members of County Assemblies are introducing a ward development fund yet it is not in their mandate.
- ii. Unhealthy Competition for resources between the National and the County Governments, and within the county government departments

RECOMMENDATIONS & CONCLUSION

CHAPTER FOURTEEN:



14.1 Recommendations

In view of the above challenges and emerging issues it is recommended;

- i. That parliament provides a legal mechanism to safeguard and effectively execute the mandate, powers, authority and independence that were resident in the TDGA, 2012
- ii. That the Inter-Governmental Relations and Technical Committee (IGRTC) takes over staff who were performing the TA functions. This will ensure leveraging on the experience, institutional memory, and to maintain momentum and gains realized,
- iii. That a human resource management policy be developed to guide on human resource matters at both levels of Government. The policy should provide framework for monitoring for adherence to public service norms and standards. This is due to the challenges facing the public service in the new dispensation
- iv. Establishment of an inter-governmental mechanism under the Inter-Governmental Relations and Technical Committee (IGRTC) be undertaken to handle, resolve and manage matters for public officers including state officers. This will address the issue of existing disparities in terms and conditions of staff be fast tracked.
- v. That Salaries and Remuneration Commission (SRC) fast tracks the harmonization of salaries and remunerations for all public officers including state officers. This will address the issue of service for the deemed distribution of professionals between the two levels of government. It has been noted that following the transfer of functions most professional departments more independent and creation of the lowest level including making county departments to guide further decentralization should be developed.
- vi. That following the transfer of functions from the national to the county governments, the process of rationalization and deployment of staff of the defunct local authorities.
- vii. Parliament should fast track the enactment of a county pension scheme to facilitate transfer of service for the deemed distribution of professionals between the two levels of government. That there should be equitable distribution of functions most professional departments more independent and creation of the lowest level including making county departments to guide further decentralization should be developed.
- ix. That Public Finance Management Act (PFM), 2012 be amended to accommodate issues such as ring-fencing of particular programmes. Further, a mechanism should be developed to ensure county budgets are within their allocations and are done based on county priorities. Although county budgets are done guided by Public Finance Management act 2012 and
- x. Although county budgets are done guided by Public Finance Management act 2012 and

- are guided by programme based budgets approach it has been established that there are challenges relating to this
- xi. That the Inter-Governmental Relations and Technical Committee (IGTRC) urgently finalizes the process of auditing and transferring public assets and liabilities for the 175 defunct local authorities and the devolved functions. That legal framework to extend the moratorium on transfer of public assets to safeguard them be established
 - xii. That the draft framework on concurrent functions be finalized, disseminated and implemented. This will guide analysis, assignment, monitoring and performance of the functions for example betting and casinos and others. This is due to challenges associated with determination of resource requirements of functions for the remaining 13 sectors be carried out to ensure efficient planning
 - xiii. That IGTRC finalizes the two levels of Government for example disaggregation of state functions between the Urban Areas and Cities Act, 2011 should be
 - xiv. The finalization of the amendments and classification of urban areas and cities. The corporations on the Urban Areas and Cities Act also need to be completed. The hastened to pave way for assessment and dissemination of urban areas and cities. The regulations on the Urban Areas and Cities Act also need to be completed. This is because the place to enable the urban areas deliver services efficiently to the public. This is because the urban areas and cities require huge capital outlay. Continue spearheading the task force for the establishment of Urban Areas and Cities (General) Regulations, provide for management of urban areas located across boundaries of more than one county
 - xv. In the Urban Areas and Cities Regulations, provide for management of urban areas
 - xvi. Amend the County Government Act, 2012 to harmonize Section 109 with Section 108. ensure continuous and sustained civic education. This will
 - xvii. National Government to fast-track finalization and operationalization of national civic education framework to facilitate establishment of necessary coordination structures and assist all State Departments and Agencies at both national and county governments to facilitate effective public participation.
 - xviii. National Government to develop an overarching policy on public participation. This will ensure continuous and sustained civic education. This will
 - xix. National Government to review, formulate and enact policies and laws to align them with the constitution. This will guide the County Governments to develop county policies and laws which are aligned to the national ones.
 - xx. National Government to review, formulate and enact policies and laws to align them with the constitution. This will guide the County Governments to develop county policies and laws which are aligned to the national ones.
 - xxi. National Government to review, formulate and enact policies and laws to align them with the constitution. This will guide the County Governments to develop county policies and laws which are aligned to the national ones.

14.2 Conclusion

The transition to a devolved system of government has been a journey that required courage, co-operation and participation of both levels of governments, development partners and most importantly the people of Kenya.

Cognizant of the arduous journey, an independent body was paramount to midwife this process. The Transition Authority was consequently formed as the torchbearer of devolution. The Authority encountered numerous challenges in executing its mandate such as an over-ambitious transition period, very high public expectations, inadequate funding, constant interference of its autonomy and, most unfortunately, threats of its disbandment. Despite all these, the Authority rose above the challenges and successfully delivered on its mandate to ensure devolution for better services.

Forward, Kenyans need to sustain the objects and principles of devolution as envisaged in the constitution. There is need for appreciation that devolution is a continuous process that shall

require synergized interactions amongst the different stakeholders. It was only through teamwork, consultation, and collaboration with all its partners that the Authority was able to live up to its expectations and deliver the Kenyan dream.

We are grateful to you, the people of Kenya, for giving us the privilege to guide this process and walking beside us every step of the way. It now rests upon the shoulders of every Kenyan to fiercely guard the gains made thus far and to ensure the vision of devolution is realized as enshrined in the Constitution.

We are pleased to present this end term report to inform present and future generations, as a road map on sustaining the devolution momentum. As the African adage goes, if you want to go quickly, go alone, but if you want to go far, go with others. God bless you all and God bless Kenya.

ANNEXES

Annex 3.1: Status of Funds Disbursed By TA to County Commissioners as at March 2016

	COUNTY	Initial Refurbishment of Governors	Swearing Of Governors	Procurement of Hansard	Swearing of MCAs	Total Issue	Total Expenditure	Outstanding Balance
1.	BARINGO	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,270,000	NIL
2.	BOMET	2,000,000.00	2,000,000.00	2,000,000.00	225,000.00	6,225,000	6,225,000	NIL
3.	BUNGOMA	2,000,000.00	2,000,000.00	2,000,000.00	405,000.00	6,405,000	4,572,546	1,832,454
4.	BUSIA	2,000,000.00	2,000,000.00	2,000,000.00	315,000.00	6,315,000	106,205,000	110
5.	ELGEYO MARAKWET	2,000,000.00	2,000,000.00	2,000,000.00	180,000.00	6,180,000	6,180,000	NIL
6.	EMBU	2,000,000.00	2,000,000.00	2,000,000.00	180,000.00	6,180,000	6,180,000	NIL
7.	GARISSA	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,270,000	NIL
8.	HOMA BAY	2,000,000.00	2,000,000.00	2,000,000.00	360,000.00	6,360,000	6,360,000	NIL
9.	ISOLO	2,000,000.00	2,000,000.00	2,000,000.00	90,000.00	6,090,000	6,090,000	NIL
10.	KAJIADO	2,000,000.00	2,000,000.00	2,000,000.00	225,000.00	6,225,000	5,767,704	457,296
11.	KAKAMEGA	2,000,000.00	2,000,000.00	2,000,000.00	531,000.00	6,531,000	6,531,000	NIL
12.	KERICHO	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,080,000	90,000
13.	KIAMBU	2,000,000.00	2,000,000.00	2,000,000.00	540,000.00	6,540,000	6,540,000	NIL
14.	KILIFI	2,000,000.00	2,000,000.00	2,000,000.00	315,000.00	6,315,000	6,315,000	NIL
15.	KIRINYAGA	2,000,000.00	2,000,000.00	2,000,000.00	180,000.00	6,180,000	6,180,000	NIL
16.	KISII	2,000,000.00	2,000,000.00	2,000,000.00	405,000.00	6,405,000	6,405,000	NIL
17.	KISUMU	2,000,000.00	2,000,000.00	2,000,000.00	420,000.00	6,420,000	5,999,359.90	420,640.10
18.	KITUI	2,000,000.00	2,000,000.00	2,000,000.00	360,000.00	6,360,000	6,360,000	NIL
19.	KWALE	2,000,000.00	2,000,000.00	2,000,000.00	180,000.00	6,180,000	6,180,000	NIL
20.	LAIKIPIA	2,000,000.00	2,000,000.00	2,000,000.00	135,000.00	6,135,000	6,135,000	NIL
21.	LAMU	2,000,000.00	2,000,000.00	2,000,000.00	90,000.00	6,090,000	3,955,000	2,135,000
22.	MACHAKOS	2,000,000.00	2,000,000.00	2,000,000.00	360,000.00	6,360,000	6,341,000	18,060
23.	MAKUENI	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,270,000	NIL
24.	MANDERA	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,270,000	NIL
25.	MARSABIT	2,000,000.00	2,000,000.00	2,000,000.00	180,000.00	6,180,000	5,924,000	256,000
26.	MERU	2,000,000.00	2,000,000.00	2,000,000.00	405,000.00	6,405,000	6,405,000	NIL
27.	MIGORI	2,000,000.00	2,000,000.00	2,000,000.00	360,000.00	6,360,000	6,250,000	109,950
28.	MOMBASA	2,000,000.00	2,000,000.00	2,000,000.00	342,000.00	6,242,000	6,279,599	62,401
29.	MURANGA	2,000,000.00	2,000,000.00	2,000,000.00	342,000.00	6,242,000	6,242,000	NIL
30.	NAIROBI	2,000,000.00	2,000,000.00	2,000,000.00	1,020,000.00	7,020,000	7,020,000	NIL
31.	NAKURU	2,000,000.00	2,000,000.00	2,000,000.00	660,000.00	6,660,000	6,660,000	NIL
32.	NANDI	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,270,000	NIL
33.	NAROK	2,000,000.00	2,000,000.00	2,000,000.00	261,000.00	6,261,000	6,111,340	149,660
34.	NYAMIRA	2,000,000.00	2,000,000.00	2,000,000.00	171,000.00	6,171,000	6,171,000	NIL
35.	NYANDARUA	2,000,000.00	2,000,000.00	2,000,000.00	225,000.00	6,225,000	6,225,000	NIL
36.	NYERI	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,270,000	NIL
37.	SAMBURU	2,000,000.00	2,000,000.00	2,000,000.00	135,000.00	6,135,000	6,135,000	NIL
38.	SIAYA	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,270,000	NIL
39.	TAITA TAVETA	2,000,000.00	2,000,000.00	2,000,000.00	180,000.00	6,180,000	6,180,000	NIL
40.	TANA RIVER	2,000,000.00	2,000,000.00	2,000,000.00	135,000.00	6,135,000	5,965,656	169,344
41.	THARAKA NITHI	2,000,000.00	2,000,000.00	2,000,000.00	135,000.00	6,270,000	6,269,950	50.00
42.	TRANS-NZOIA	2,000,000.00	2,000,000.00	2,000,000.00	225,000.00	6,225,000	6,225,000	NIL
43.	TURKANA	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,269,950	50.00
44.	UASIN GISHU	2,000,000.00	2,000,000.00	2,000,000.00	360,000.00	6,360,000	6,359,081	919
45.	VIHIGA	2,000,000.00	2,000,000.00	2,000,000.00	225,000.00	6,225,000	5,899,467	325,533
46.	WAJIR	2,000,000.00	2,000,000.00	2,000,000.00	270,000.00	6,270,000	6,250,250	19,750
47.	WEST POKOT	2,000,000.00	2,000,000.00	2,000,000.00	180,000.00	6,180,000	6,180,000	NIL
GRAND TOTAL		94,000,000.00	94,000,000.00	94,000,000.00	13,737,000.00	296,737,000	290,589,833.90	6,147,167.10

Annex 3.2: Status of funds disbursed by TA to the county governments as at March, 2016

S/No.	A.I.E. Number	County	Infrastructure (Kshs)	Hansard (Kshs)	Total Amount Issued (Kshs)	Total Expenditure	Outstanding Balance
1.	A685044	Baringo	54,390,760.00	7,201,440.00	61,592,200.00	0.00	61,592,200.00
2.	A685047	Bomet	54,969,460.00	6,622,740.00	61,592,200.00	0.00	61,592,200.00
3.	A685048	Bungoma	52,654,660.00	8,937,540.00	61,592,200.00	0.00	61,592,200.00
4.	A685049	Busia	53,812,060.00	7,780,140.00	61,592,200.00	60,277,321.70	1,314,878.30
5.	A685050	Elgeyo Marakwet	55,548,160.00	6,044,040.00	61,592,200.00	61,592,200.00	0
6.	A685051	Embu	55,548,160.00	6,044,040.00	61,592,200.00	61,592,200.00	0
7.	A685052	Garissa	54,390,760.00	7,201,440.00	61,592,200.00	59,091,556.00	2,500,644.00
8.	A685053	Homa Bay	53,233,360.00	8,358,840.00	61,592,200.00	54,429,583.00	7,162,617.00
9.	A685055	Isiolo	56,705,560.00	4,886,640.00	61,592,200.00	59,162,200.00	2,430,000.00
10.	A685056	Kajiado	54,969,460.00	6,622,740.00	61,592,200.00	61,592,200.00	0
11.	A685057	Kakamega	50,918,560.00	10,673,640.00	61,592,200.00	60,331,779.00	1,260,421.00
12.	A685058	Kericho	54,390,760.00	7,201,440.00	61,592,200.00	17,155,604.00	44,436,596.00
13.	A685059	Kiambu	50,918,560.00	10,673,640.00	61,592,200.00	61,592,200.00	0
14.	A685060	Kilifi	53,812,060.00	7,780,140.00	61,592,200.00	0.00	61,592,200.00
15.	A685061	Kirinyaga	55,548,160.00	6,044,040.00	61,592,200.00	61,582,348.00	9,852.00
16.	A685062	Kisii	52,654,660.00	8,937,540.00	61,592,200.00	61,592,200.00	0
17.	A685063	Kisumu	53,812,060.00	7,780,140.00	61,592,200.00	61,592,200.00	0
18.	A685064	Kitui	53,233,360.00	8,358,840.00	61,592,200.00	53,395,133.60	8,197,066.40
19.	A685046	Kwale	55,548,160.00	6,044,040.00	61,592,200.00	61,592,200.00	0
20.	A685065	Laikipia	56,126,860.00	5,465,340.00	61,592,200.00	15,833,000.00	45,759,200.00
21.	A685066	Lamu	56,705,560.00	4,886,640.00	63,592,200.00	0.00	63,592,200.00
22.	A685067	Machakos	53,233,360.00	8,358,840.00	61,592,200.00	59,095,725.00	2,496,475.00
23.	A685068	Makueni	54,390,760.00	7,201,440.00	61,592,200.00	61,356,392.00	235,808.00
24.	A685069	Mandera	45,362,082.00	7,201,440.00	61,592,200.00	9,028,678.00	52,563,522.00
25.	A685090	Marsabit	55,548,160.00	6,044,040.00	61,592,200.00	61,592,200.00	0
26.	A685070	Meru	52,654,660.00	8,937,540.00	61,592,200.00	26,445,373.70	35,146,826.30
27.	A685071	Migori	52,333,360.00	9,258,840.00	61,592,200.00	40,525,288.00	21,066,912.00
28.	A685072	Mombasa	54,390,760.00	7,201,440.00	61,592,200.00	0.00	61,592,200.00
29.	A685073	Muranga	53,812,060.00	7,780,140.00	61,592,200.00	1,173,425.00	60,418,775.00
30.	A685074	Nairobi	46,288,960.00	15,303,240.00	61,592,200.00	0.00	61,592,200.00
31.	A685075	Nakuru	51,497,260.00	10,094,940.00	61,592,200.00	0.00	61,592,200.00
32.	A685076	Nandi	54,390,760.00	7,201,440.00	61,592,200.00	0.00	61,592,200.00
33.	A685077	Narok	54,390,760.00	7,201,440.00	61,592,200.00	61,592,200.00	0
34.	A685071	Nyamira	55,548,160.00	6,044,040.00	61,592,200.00	61,592,200.00	0
35.	A685079	Nyandarua	54,969,460.00	6,622,740.00	61,592,200.00	0.00	61,592,200.00
36.	A685080	Nyeri	54,390,760.00	7,201,440.00	61,592,200.00	61,592,200.00	0
37.	A685081	Samburu	56,126,860.00	5,465,340.00	61,592,200.00	0.00	61,592,200.00
38.	A685082	Siaya	54,390,760.00	7,201,440.00	61,592,200.00	19,632,929.50	41,959,270.50
39.	A685083	Taita Taveta	55,548,160.00	6,044,040.00	61,592,200.00	5,925,000.00	55,667,200.00
40.	A685045	Tana River	56,126,860.00	5,465,340.00	61,592,200.00	0.00	61,592,200.00
41.	A685084	Tharaka Nithi	56,126,860.00	5,465,340.00	61,592,200.00	0.00	61,592,200.00
42.	A685085	Trans-Nzoia	54,969,460.00	6,622,740.00	61,592,200.00	0.00	61,592,200.00
43.	A685086	Turkana	54,390,760.00	7,201,440.00	61,592,200.00	0.00	61,592,200.00
44.	A685054	Uasin Gishu	54,390,760.00	7,201,440.00	61,592,200.00	61,592,200.00	0
45.	A685087	Vihiga	54,969,460.00	6,622,740.00	61,592,200.00	61,592,200.00	0
46.	A685088	Wajir	54,390,760.00	7,201,440.00	61,592,200.00	61,592,200.00	0
47.	A685089	West Pokot	55,548,160.00	6,044,040.00	61,592,200.00	61,592,200.00	0
GRAND TOTAL			2,549,100,020.00	345,733,380.00	2,894,833,400.00	1,900,005,211.20	994,828,188.80

Annex 4.1: Gazette Notice for Clarification of Transferred Function

GAZETTE NOTICE NO..... THE CONSTITUTION OF KENYA

THE TRANSITION TO DEVOLVED GOVERNMENTS ACT, 2012 TRANSFER OF FUNCTIONS
IT IS NOTIFIED for the general information of the public that the functions Approved for transfer by the Transition Authority through Legal Notice Nos. 16, 137 to 183 of 2013 contain the components set out in the Schedule hereto.

SCHEDULE

Function of National Government	Components of Function	Function of County Government	Component of function
Protection of the environment and national resources with a view to establishing a durable and sustainable system of development, including in particular: (c) Water protection, Securing sufficient residual water, Hydraulic engineering, Safety of dams	i. Formulate policies and guidelines regarding the management, conservation and utilization of all types of forests ii. Manage all state forests iii. Manage all provisional forests in consultation with the forest owners iv. Protect forests in Kenya in accordance with the provisions of existing laws and policies v. Promote training and education in forestry vi. Collaborate with individuals and private and public institutions in identifying research needs and applying research findings on forest management and conservation	Implementation of specific national government policies on natural resources and environmental conservation including – b) Forestry	i. Farm Forestry extension services ii. Forest and game reserves formerly managed by local authorities iii. Implementation of national policies that are applicable to the county forests. iv. Formulation of county level specific by- laws and legislations. v. Development and implementation of county forest management plans. vi. Identification and setting a part of lands for forest reservation, development and creation of county forests. vii. Development of nature based enterprises within the county forests. viii. Forestation and rehabilitation of fragile and degraded ecosystem/ forest in community lands. ix. Liaison with lead agencies / stakeholders in forest sector at the county. x. Issuance of operation license within the private farms and the county forests in the community lands. xi. Intra-county conflict management on the county forest resources and farm forestry. xii. Promotion of public private partnership management practice in county forests. xiii. Maintenance of county forests and farm forestry records, database and information. xiv. Collection and management of county forests and farm forestry revenue. xv. Community awareness creation. xvi. Promotion of tree planting in community, private and county lands. xvii. Increasing tree cover in private, community and county lands. - xviii. Development and maintenance of county forest infrastructure. xix. Development of charcoal industries (promotion/use) within the county forests and private farms. xx. Development of urban forestry programs within the counties. xxi. Enforcement of forest legislation within the county forests and private farms. xxii. Management of county forest

Cultural activities, public entertainment and public amenities including- Libraries	i. Be a National Bibliographic agency for collecting the National imprint through Legal deposit; ii. Publish the National Bibliography and Periodical Directory; iii. Acquisition, preservation and conservation of information materials in all formats produced in and outside Kenya, relating to Kenya and the Kenyan people and such other materials and sources of knowledge necessary for a comprehensive national library for the current and future generations; iv. Maintain and extend other published and unpublished collections relating or emanating from Kenya; v. Provide reference and referral services with the assistance of skilled professionals using information materials in all formats; act as the agency for International Standard Book Number (ISBN), International Standard Music Number (ISMN), and International Standard Serial Number (ISSN) vi. promote access to published documents, nationally and internationally; vii. promote awareness and appreciation of the published national documentary-heritage; viii. provide effective leadership, guidance, and advice to Kenyan libraries and information services; ix. promote professional development through appropriate training in consultation and cooperation with relevant educational institutions and professional bodies; x. undertake and support research for innovations and development in the field of library and information service; xi. provide consultancy and research services to individuals, private and public organizations; xii. liaise with libraries and other institutions in and outside Kenya to promote information sharing; xiii. coordinate and administer the inter-lending scheme; xiv. ensure library standards are maintained in the libraries and other information centres; xv. develop ICT infrastructure for library services and continuous development of digital services; xvi. promote information awareness and information literacy xvii. co-ordinate provision of library and information service for persons with disabilities (PWD) and promote equitable distribution of library services in the country - xviii. promote production of information materials suitable for persons with disabilities including language disabilities; and xix. Coordinate and host the national union catalogue. xx. Develop a center for books, to promote a culture of reading, writing, and publishing in local languages, information and advice, advocacy, book development and easy access to books for all.	Cultural activities, public entertainment and public amenities including- Libraries	a. provide library and information service responsive to the needs of the community; b. undertake collection, development and distribution of information materials; c. provide the community with a variety of information materials, programs, and services for personal growth and development; d. establish a local collection section in each library holding the respective community's resources, history, people, customs, and traditions to promote the capture of indigenous knowledge and languages e. support formal and informal self education; f. support and complement research in all fields of Endeavour; g. provide wholesome use of leisure time in a most conducive learning environment, stimulate and promote public interest in reading books and multimedia for information, knowledge and enjoyment; h. Provide lending, Inter-library loans, outreach, specialized and home-bound services. i. provide consultancy and research services to individuals, organizations, and the general community; j. Provide advisory, reference and referral services using variety information materials; and k. Liaise with the national library and other relevant institutions to enhance information sharing. Excluding the Kenya National Library Services facilities at the Headquarter Offices, Buruburu Library and Nakuru Library which shall remain under the National Government.
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KINUTHIA WAMWANGI,
Chairman, Transition Authority

Annex 5.1: Status of submission of inventory for ministries

	OFFICE/MINISTRY	DEPARTMENTS	STATUS
1	Office of the President	N/A	Submitted
2	Office of the Deputy President	N/A	Submitted
3	Interior and Co-ordination of National Government	Interior - National Police Service	NOT submitted
		Interior - Immigration	NOT submitted
		Interior - prisons and Correctional facilities	NOT submitted
		National Government Coordination	NOT submitted
4	Devolution and Planning	Planning	Submitted
		Devolution	Submitted
		Office of Management and Budget	Submitted
		Gender and Children Affairs	Submitted
		Youth Development	Submitted
		Development of Northern Kenya and Other Arid Lands	Submitted
		Special Programmes	Submitted
5	Foreign Affairs and International Trade	N/A	Submitted
6	Defence	N/A	NOT submitted
7	Education, Science and Technology	Education	Submitted
		Science and Technology	NOT submitted
8	The National Treasury	Finance (Head Quarters)	Submitted
		District Treasuries	Submitted
9	Health	N/A	NOT submitted
10	Transport and Infrastructure	Infrastructure	Submitted
		Transport	Not Submitted
11	Environment, Water and Natural Resources	Environment and Natural Resources	NOT submitted
12	Water and Irrigation	Water	NOT submitted
		Irrigation	NOT submitted
13	Land, Housing and Urban Development	Land (Not Submitted), Housing (Not Submitted) and Urban Development (Submitted)	Partially submitted

14	Information, Communication and Technology	N/A	Submitted
15	Sports , Culture and Arts	N/A	NOT submitted
16	Labour, Social Security Service	N/A	Submitted
17	Energy and Petroleum	N/A	Submitted
18	Agriculture, Livestock and Fisheries	Livestock Development	Submitted
		Agriculture	Submitted
		Fisheries Development	Submitted
19	Industrialization and Enterprise Development	N/A	Submitted
20	East African Affairs Commerce and Tourism	Commerce and Tourism	Submitted
		East African Community	Submitted
21	Mining	N/A	NOT submitted

Annex 5.2: Status of submission of inventory for ministries

	OFFICE/MINISTRY	PARASTATALS/AGENCIES UNDER MINISTRY	STATUS
1	Office of the President	National Intelligence Service	NOT submitted
		National Security Council	NOT submitted
		State Corporation Advisory Council	Submitted
2	Office of the Deputy President	lapsset Corridor Development Authority	NOT submitted
		Transforming Kenya	NOT submitted
3	Interior and Co-ordination of National Government	National Disaster Operations Centre	NOT submitted
		Betting Control and Licensing Board	NOT submitted
		National Cohesion and Integration Commission	NOT submitted
		Police Oversight Authority	NOT submitted
		Kenya Citizens and Foreign Nationals Service	Submitted
		Kenya Correctional Service	NOT submitted
		NACADA	Submitted
		National Police Service Commission	Submitted
		Independent Police Oversight Authority	NOT submitted
		National Crime Research Centre	Submitted

4	Devolution and Planning	Kenya National Bureau of Statistics	Submitted
		Constituency Development Fund Board	NOT submitted
		Kenya School of Government	NOT submitted
		Efficiency Monitoring Unit	NOT submitted
		Inspectorate of State Corporations	NOT submitted
		Performance Contracting	NOT submitted
		Draught Management Authority	Submitted
		Transition Authority	Submitted
		Public Service Commission	NOT submitted
		Youth Enterprise Development Fund	Submitted
		Kenya National Youth Council	NOT submitted
		Kenya Association of Youth Centres	NOT submitted
		National Youth Service (excluding HQ)	Submitted
		Women Enterprise Fund	Submitted
		Non Government Organisation Board	Submitted
		Poverty Eradication Commission	Submitted
			Submitted
5	Foreign Affairs and International Trade	NONE	N/A
6	Defence	Kenya Ordnance Factory Corporation	Submitted
		National Defence College	NOT submitted
		Defence Staff College	NOT submitted

7	Education, Science and Technology	Kenya Education Management Institute	Submitted
		Kenya Institute of Special Education	Submitted
		Kenya Institute of Education	NOT submitted
		Jommo Kenyatta Foundation	Submitted
		Kenya Literature Bureau	Submitted
		National Council for Science & Technology	NOT submitted
		Public Universities Inspection Board	NOT submitted
		University of Nairobi	Submitted
		Moi University	NOT submitted
		Egerton University	NOT submitted
		Jomo Kenyatta University of Agriculture & Technology	Submitted
		Kenyatta University	Submitted
		Maseno University	NOT submitted
		Kenya National Examination Council	Submitted
		Jomo Kenyatta Foundation	NOT submitted
		Kenya Institute of Education	NOT submitted
		Kenya Education Staff Institute	NOT submitted
		Commission for Higher Education	NOT submitted
		Higher Education Loans Board	Submitted
		Teacher's Service Commission	NOT submitted (only vehicles submitted)
		Western University College of science and Technology	NOT submitted
		The Technical University of Kenya	NOT submitted
		Technical University of Mombasa	Submitted
		Pwani University	Submitted
		South Eastern University College	NOT submitted
		Kimathi University of Science and Technology	NOT submitted
		Kisumu Polytechnic	NOT submitted
		Kabianga University College	Submitted
		Narok University College	NOT submitted
		Bondo University College	NOT submitted
		Laikipia University College	NOT submitted
		Chepkoiel University College	NOT submitted
		Karatina University College	Submitted
		Taita University College	Submitted
		Kirinyaga University College	NOT submitted
		Kisii University College	Submitted
		Rongo University College	NOT submitted
		Embu University College	Submitted
		Co-operative University College	NOT submitted
		Chuka University	NOT submitted
		Meru University	NOT submitted
		Garissa University	NOT submitted
		Machakos University	NOT submitted
		Multi Media University	Submitted
		Masinde Muliro University	Submitted
		Kenya National Commission - UNESCO	Submitted
		Kenya	

8	The National Treasury	Kenya Revenue authority	Submitted
		Retirement Benefits Authority	NOT submitted
		Kenya Re-Insurance Corp.	Submitted
		Capital Markets Authority	Submitted
		Consolidated Bank of Kenya	Submitted
		Deposit Protection Fund Board	NOT submitted
		Kenya Post Office Savings Bank	NOT submitted
		Kenya Accountants & Secretaries Examination Board (KASNEB)	NOT submitted
		Kenya National Assurance (2001) Limited	Submitted
		Central Bank of Kenya	NOT submitted
		Capital Markets Tribunal	NOT submitted
		State Corporations Appeals Tribunal	Submitted
		Kenya Institute for Public Policy Research and Analysis	NOT submitted
		Privatisation Commission	Submitted
		Public Procurement Oversight Authority	submitted
		Kenya Reinsurance Corporation	NOT submitted
		Agricultural Finance Corporation	submitted
		Industrial Development Bank	Submitted
		Kenya institute of Supplies Management	NOT submitted
		Kenya Trade Network Agency	NOT submitted
		Policy Holders Compensation Fund	Submitted
		Local Authorities Provident Fund	NOT submitted
		National Bank of Kenya	NOT submitted
		Auditor General	Submitted
		Commission on Revenue Allocation	Submitted
		Salaries and Remuneration Commission	Submitted
		Anti - Money Laundering Authority	NOT submitted
		State Corporations Creditors	Submitted
		Financial Reporting Centre	NOT submitted
		Insurance Regulatory Authority	Submitted
		Unclaimed financial assets Authority	NOT submitted
9	Health		
		Kenyatta National Hospital	Submitted
		Kenya Medical Training College	Submitted
		National Hospital Insurance fund	Submitted
		Moi Teaching & Referral Hospital, Eldoret	Submitted
		Kenya Medical Research Institute	NOT submitted
		Kenya Medical Supplies Agency	Submitted
		Radiation Protection Board	NOT submitted
		Government Chemist	NOT submitted
		Pharmacy and Poisons Board	NOT submitted
		Referral Hospitals Authority	NOT submitted
		National AIDS Control Council	NOT submitted
10	Transport and Infrastructure		

		Kenya Airports Authority	Submitted
		Kenya Railways Corporation	Submitted
		Kenya Ports Authority	Submitted
		Kenya Ferry Services Limited	Submitted
		Transport Licensing Board	NOT submitted
		Kenya Civil Aviation Authority	NOT submitted
		Transport Licensing Appeal Tribunal	NOT submitted
		Kenya National Shipping Line	NOT submitted
		Kenya Roads Board	Submitted
		KeRRA	Submitted
		KENHA	Submitted
		Materials Testing & Research Department	Submitted
		KURA	Submitted
		Kenya Insitute of Highways Building and Technology	Submitted
		Kenya Railways Training School	NOT submitted
		East African School of Aviation	NOT submitted
		Kenya Maritime Authority	Submitted
		Bandari College	NOT submitted
		Transport Licencing Board	Submitted
		National Roads Safety Council	NOT submitted
		National Transport and Safety Authority	NOT submitted
		MOT& I Headquarters	Submitted
		Mechanical & Transport Department	Submitted
		Engineers Board of Kenya	Submitted
11	Environment, Water and Natural Resources	National Water Conservation & Pipeline Corporation	Submitted
		National Irrigation Board	NOT submitted
		Kenya Water Institute	NOT submitted
		Water Services Regulator Board	Submitted
		Lake Victoria South Water Services Board	NOT submitted
		Coast Water Services Board	Submitted
		Northern Water Services Board	Submitted
		Water Services Trust Fund	Submitted
		Rift Valley Water Services Board	NOT submitted
		Lake Victoria North Water Services Board	NOT submitted
		Athi Water Services Board	Submitted
		The Tana Water Services Board	NOT submitted
		Water Resources Management Authority	Submitted
		Ewaso Ngiro North Development Authority	Submitted
		Ewaso Ngiro South Development Authority	NOT submitted
		Lake Basin Development Authority	NOT submitted
		Coastal Development Authority	NOT submitted
		Kerio Valley Development Authority	NOT submitted
		Tana & Athi River Development Authority	Submitted
		Kenya Forestry Research Institute	Submitted
		National environmental Management authority	Submitted
		Imarisha Lake Naivasha Management Board	NOT submitted
		Kenya Meteorological Department	NOT submitted
		Kenya Water Towers Agency	Submitted
		Kenya Meteoroligical Training College	NOT submitted
12	Land, Housing and Urban Development	National Housing Corporation	NOT submitted
		Kenya Building Research Centre	NOT submitted
		Settlement Fund Trustees	NOT submitted
		National Land Commision	NOT submitted

13	Information, Communication and Technology	Kenya Broadcasting corporation	NOT submitted
		Kenya Institute of Mass Communication	NOT submitted
		Postal Corporation of Kenya	Submitted
		National Communications Secretariat	NOT submitted
		Telkom Kenya	NOT submitted
		Communications Authority of Kenya	Submitted
		Multimedia University	NOT submitted
		Safaricom	NOT submitted
		Konza Technopolis Development Authority	Submitted
		Brand Kenya Board	Submitted
		Kenya Year Book Editorial Board	Submitted
		Kenya Information Communication Technology Board	NOT submitted
14	Sports , Culture and Arts	Sports Stadia Management Board	Submitted
		Permanent Presidential Management Commission	NOT submitted
		National Museums of Kenya	Submitted
		Kenya National Libraries Services	Submitted
		Kenya Sports Authority	NOT submitted
		Kenya Film Classification Board	Submitted
		Kenya Film Commission	NOT submitted
		Public Archives Advisory Council	NOT submitted
		Kenya National Archives and Documentation Service	NOT submitted
15	Labour, Social Security Service	National Industrial Training Authority	NOT submitted
		National Social Security Fund	Submitted
		National Council for Persons with Disability	Submitted
		National Council for Children Services	NOT submitted
16	Energy and Petroleum	Kenya Power and Lighting Company	NOT submitted
		Kenya electricity Generating Company (KenGen)	NOT submitted

17		Kenya Pipeline Company	Submitted
		National Oil Corporation of Kenya	NOT submitted
		Kenya Petroleum Refinery	NOT submitted
		Electricity Regulatory Board	NOT submitted
		The Energy Tribunal	NOT submitted
		Rural Electrification Authority	Submitted
		Energy Regulatory Commission	NOT submitted
		Kenya Electricity Transmission Company	NOT submitted
		Geothermal Development Company	Submitted
	Agriculture, Livestock and Fisheries	Tea Board of Kenya	Submitted
		Pyrethrum Board of Kenya	Submitted
		Horticultural Crops Development Authority	Submitted
		Coffee Board of Kenya	NOT submitted
		Agricultural Finance Corporation	Submitted
		National Cereals & Produce Board	Submitted
		Kenya Plant Health Inspectorate Service	Submitted
		Kenya Sugar Board	NOT submitted
		Nzoia Sugar Company	NOT submitted
		South Nyanza Sugar Company	NOT submitted
		Chemilil Sugar Company	NOT submitted
		Kenya Sugar Research Foundation	NOT submitted
		Pests Control Products Board	Submitted
		Central Agricultural Board	NOT submitted
		Nyayo Tea Zones Development Corporation	Submitted
		Agricultural Development Corporation	NOT submitted
		Kenya Seed Company	Submitted
		Kenya Agricultural Research Institute (KARI)	Submitted
		Coffee Research Foundation	Submitted
		Tea Research Foundation of Kenya	Submitted
		Sugar Arbitration Board	NOT submitted
		Agricultural Information Resource Centre	NOT submitted
		Kenya Sisal Board	Submitted
		Bukura Agricultural College	NOT submitted
		Kenya Marine & Fisheries Research Institute	Submitted
		Kenya Dairy Board	NOT submitted
		Kenya Meat Commission	NOT submitted
		Kenya Veterinary Vaccines Production Institute	Submitted
		Co-operative College of Kenya	NOT submitted
		New Kenya Co-operative Creameries Ltd	NOT submitted
		Kenya Marine & Fisheries Research Institute	NOT submitted
		Kenya Dairy Board	NOT submitted
		Kenya Veterinary Board	NOT submitted
		Coconut Development Authority	Submitted
		National Bio-Safety Authority	Submitted
		Agro Chemical Food Company	Submitted
		Kenya Animal Genetics Resource Centre	Submitted
		Agriculture Livestock and Fisheries Authority	NOT submitted
		Kenya Leather Development Council	Submitted
		Coffee Development Fund	Submitted
18	Industrialization and Enterprise Development	Numerical Machining Complex	Submitted

		Kenya National Accreditation Service	Submitted
		Anti-Counterfeiting Agency	Submitted
		Kenya Industrial Property Institute	Submitted
		Kenya Agricultural & Development Institute	NOT submitted
		East Africa Portland Cement	NOT submitted
		Kenya Bureau of Standards	Submitted
		Kenya Investment Authority	Submitted
		Export Processing Zones Authority	Submitted
		Kenya National Trading Corporation	NOT submitted
		Kenya Wine Agencies Limited	NOT submitted
		Industrial & Commercial Development Corporation	Submitted
		Industrial Development Bank	NOT submitted
		Kenya Industrial Estates Limited	Submitted
		Industry Property Tribunal	NOT submitted
		East African Portland Cement Company Limited	NOT submitted
		Kenya Industrial Research & Development Institute	Submitted
		Competition Authority of Kenya	Submitted
		Kenya Copyright Board	Submitted
		Micro & Small Enterprise Authority	Submitted
		National Industrial Training Authority	Submitted
19	East African Affairs Commerce and Tourism		
		Kenya Tourist Development Corporation	NOT submitted
		Kenya Tourist Board	Submitted
		Catering Training & Tourism Development levy Trustees	NOT submitted
		Kenya Utalii College	NOT submitted
		Kenya Wildlife Services	NOT submitted
		Kenyatta International Conference Centre Corporation	Submitted
		Kenya Tourist Fund	Submitted
		Hotels and Restaurants Authority	NOT submitted
		Export Promotion Council	Submitted
		Kenya Safari Lodges	Submitted
		Bomas of Kenya	Submitted
20	Mining	NONE	N/A
	TOTAL: SUBMISSION/TOTAL		138/295

Annex 5.3: Status on Submission of the Handing over Report

	COUNTY	Status On Submission Of The Handing Over Report AS AT 4/March/2016
1	BUSIA	SUBMITTED
2	KILIFI	SUBMITTED
3	KITUI	SUBMITTED
4	THARAKA NITHI	SUBMITTED
5	BARINGO	SUBMITTED
6	TANA RIVER	SUBMITTED
7	KISUMU	SUBMITTED
8	TAITA TAVETA	SUBMITTED
9	BOMET	SUBMITTED
10	MURANGA	SUBMITTED

11	TRANS NZOIA	SUBMITTED
12	KAJIADO	SUBMITTED
13	WAJIR	SUBMITTED
14	VIHIGA	SUBMITTED
15	LAMU	SUBMITTED
16	NAKURU	SUBMITTED
17	KWALE	SUBMITTED
18	KIRINYAGA	SUBMITTED
19	KISII	SUBMITTED
20	NAROK	SUBMITTED
21	MERU	SUBMITTED
22	ISIOLO	SUBMITTED
23	SIAYA	SUBMITTED
24	NYERI	SUBMITTED
25	MOMBASA	SUBMITTED
26	UASIN NGISHU	SUBMITTED
27	LAIKIPIA	SUBMITTED
28	NYANDARUA	SUBMITTED
29	NANDI	SUBMITTED
30	KIAMBU	SUBMITTED
31	MACHAKOS	SUBMITTED
32	NAIROBI	NOT SUBMITTED
33	GARISSA	NOT SUBMITTED
34	MARSABIT	NOT SUBMITTED
35	KAKAMEGA	NOT SUBMITTED
36	BUNGOMA	NOT SUBMITTED
37	NYAMIRA	NOT SUBMITTED
38	KERICHO	NOT SUBMITTED
39	EMBU	NOT SUBMITTED
40	SAMBURU	NOT SUBMITTED
41	MAKUENI	NOT SUBMITTED
42	HOMA BAY	NOT SUBMITTED
43	WEST POKOT	NOT SUBMITTED
44	TURKANA	NOT SUBMITTED
45	MIGORI	NOT SUBMITTED
46	MANDERA	NOT SUBMITTED
47	ELGEYO MARAKWET	NOT SUBMITTED
	TOTAL SUBMITTED	THIRTY TWO (32)
	TOTAL NOT SUBMITTED	FIFTEEN (15)

Annex 5.4: Advisories on Public Assets and Liabilities

Annex 5.4.1: Advisory of Sharing of Government Houses



TRANSITION AUTHORITY

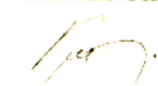
ADVISORY ON TRANSFER OR SHARING OF GOVERNMENT HOUSES DURING THE TRANSITION PERIOD

It has come to the attention of the Transition Authority (TA) that various Counties are evicting public officers from government houses located within their counties. The TA takes cognizance of the fact that the County Governments are in need of housing. The TA however cautions against evicting the current occupants of government houses without following proper procedures.

The Transition Authority would therefore like to advise the County and National Governments as follows:

1. Housing is a shared function between the two levels of government. Further, the Constitution in Article 187 contains the principles that resources necessary to perform a function or exercise power of either level of government should be transferred to the level of government performing the said function or exercising power. Houses, being a resource (asset) shall be transferred to the level for which the function is being performed or power is being exercised but within a proper framework and procedure.
2. There is need to follow clear modalities of sharing the housing function, including government houses currently in existence. The TA has developed the mechanism and criteria for the transfer and sharing of public assets and liabilities, which shall soon be subjected to public participation forums. Some aspects of the mechanism for the transfer and sharing of public assets and liabilities were discussed with Governors and County Executive Committee Members for Agriculture, leading to the transfer of the management of Agricultural Training Centres and Agricultural Mechanization Stations. This was done through an elaborate, consultative and agreeable process which involved development of policy guidelines, preparing inventory of assets and liabilities, conducting verification, valuation and handing/taking over exercise. The handing over/taking over reports were signed by both levels of Government and witnessed by the TA, after which the transfer was gazetted with an effective date of 28th February, 2014. A similar process will be adopted for government houses.
3. The TA is also in the process of compiling an inventory of all government assets and liabilities, including an inventory of all government houses in the country. This will facilitate the implementation of the sharing mechanism and provide clarity when transferring these assets and liabilities to either level of government.
4. The TA in collaboration with the Office of the Auditor General (OAG) will be auditing and verifying government assets and liabilities. The collaboration between the TA and the OAG is detailed in a Memorandum of Understanding entered into between the two institutions.
5. It is important to note that Section 35 of the Transition to Devolved Government Act has placed a moratorium on the transfer of public assets and liabilities during the transition period. Section 35 (2) (C) provides that the transfer of immovable assets will only be done with the approval of the Transition Authority, in consultation with the National Treasury, the Commission on Revenue Allocation, the Cabinet Secretaries responsible for matters relating to intergovernmental relations and land.
6. In a bid to implement provision No. 5 and transfer public assets and liabilities, the TA developed Regulations (Legal Notice No. 45 of 2013) under the Transition to Devolved Government Act, setting up an inter-agency technical committee to transfer public assets and liabilities during the transition period. The technical committee is composed of the TA, the National Treasury, the Office of the Attorney General, the Office of the Auditor General, the Commission on Revenue Allocation, the Ministry of Land, Housing and Urban Development, the Commission on Implementation of the Constitution, the Ministry of Devolution and Planning, the National Land Commission, the Ethics and Anti-Corruption Commission, the Privatization Commission, the Public Procurement and Oversight Authority and two non-state actors.
7. The TA therefore urges both the County and National Governments to maintain the status quo until the mechanism and criteria for transfer and sharing of public assets and liabilities has been finalized through public participation.
8. Should a County or National Government or Agency wish to transfer public assets during this transition period the TA urges that they apply to the Transition Authority in the prescribed manner detailed in Legal Notice No. 45 of 2013. Both the Legal Notice and request form are available on the Transition Authority website: www.transauthority.go.ke.
9. Public officers occupying government houses should therefore not be evicted from the said houses without following due process.

We thank both the National and County Governments for their continued support during this transition period and together, we shall make devolution a success.


KINUTHIA WAMWANGI, EBS
CHAIRMAN

Annex 5.4.2: Advisory on disposal of boarded public assets

DAILY NATION
Friday July 11, 2014

27



TRANSITION AUTHORITY

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NAIROBI

ADVISORY ON DISPOSAL OF BOARDED PUBLIC ASSETS BY BOTH NATIONAL AND COUNTY GOVERNMENTS

It has come to the attention of the Transition Authority that some County Governments and Ministries, Departments and Agencies/ State Corporations (MDAs) are disposing boarded public assets without following due process.

The Transition to Devolved Government Act imposes a moratorium on the transfer of public assets during the transition period. The TA further publicized the moratorium (which also includes disposal of boarded public assets) on 7th September, 2012, 22nd May, 2013 and 7th May, 2014.

The Authority is cognizant of the fact that MDAs are required to dispose boarded public assets during the financial year, in order to fulfill the required performance contracting obligations. During this transition period therefore, the requirements of the Public Procurement and Disposal Act should be read together with the Transition to Devolved Government Act, 2012 in relation to disposal of public assets.

The following is the procedure for disposal of boarded public assets by County Governments, National Government's Ministries, Departments and Agencies (MDAs) during the transition period. This procedure in addition to the Public Procurement and Disposal Act:

1. Submit an inventory of all assets, liabilities and staff as per the available templates on the Authority's website.
2. Formally request TA for authority to dispose the specific boarded public assets. The request form is available on the Authority's website.
3. Attach the required documentation as indicated in the request form (part No. 2) these documents include:
 - a. A list of boarded public assets to be disposed;
 - b. The minutes of the board of survey that passed the resolution to dispose the boarded items in part 3 (a) above;
 - c. In case the list in part 3 (a) includes boarded motor vehicles or road construction equipment, then inspection reports from Mechanical and Transport Department – Ministry of Transport and Infrastructure for each boarded motor vehicle or road construction equipment should be attached;
 - d. Evidence of ownership of the boarded public asset;
 - e. Valuation report of each of the boarded public asset.
4. The request for disposal of the listed boarded public assets is processed by the Authority as provided for in Section 35 of the Transition to Devolved Government Act, 2012.
5. In the event that the approval is granted the County Government or Ministry, Department or Agency/State Corporation is required to submit a report to the Authority on the outcome of the exercise (sale through public auction, destruction or otherwise) in order for the Authority to update its inventory accordingly.
6. The County Governments and National Government's MDAs will be required to adhere to all legal requirements when disposing boarded public assets.

County Governments and National Government's MDAs are therefore advised to adhere to the aforementioned procedure. Public officers who fail to adhere to the provisions of the law will have their actions nullified and shall be held personally responsible as stipulated in Section 33 (2) of the Transition to Devolved Government Act, 2012.

Together let us make devolution a success by abiding by the rule of law. The Transition Authority is committed to ensuring seamless transition to a devolved system of Government in Kenya and to safeguard public property during the transition period.


KINUTHIA WAMWANGI, EBS
CHAIRMAN

Annex 5.4.3: Advisory on handing over assets and liabilities



Telephone: +254-0710287080
E-mail: infotransauthority@gmail.com

Ex-telecoms House – 8th Floor
P.O. Box 10736 - 00100
NAIROBI

Our Ref. TA/2/5

August 5th, 2013

To all County Governors

To all County Executive Members for Finance

To all immediate former clerks of the defunct local authorities

HANDING OVER/TAKING OVER REPORT OF ASSETS AND LIABILITIES FROM LOCAL AUTHORITIES TO THE COUNTY GOVERNMENTS

The Transition Authority is established under Section 4 of the Transition to Devolved Government Act, with the mandate of facilitating and coordinating the transition to devolved system of government. In this regard, and in an effort to ensure the county governments are fully appraised of the assets and liabilities of the defunct local authorities we hereby direct all immediate former clerks of Local Authorities to complete the attached Handing over/Taking over report with the County Executive Member for Finance.

All the information in the attached form should be duly filled in and a copy of the report be distributed according to the list on the form. The exercise shall be witnessed by the County Transition Coordinator who will sign on behalf of the Chairman, Transition Authority.

Please note that the handing over /taking over report will not amount to a transfer of assets and liabilities to the county governments, but will be an administrative tool aimed at providing clarity on the assets, liabilities and such other items that were in place at the time the county governments came into existence on 27th March, 2013. This will also enable the Transition Authority finalize its inventory of assets and liabilities as mandated by the Transition to Devolved Government Act, 2012.

By a copy of this letter, the County Transition Coordinators are requested to witness and ensure the smooth completion of this exercise.



KINUTHIA WAMWANGI
CHAIRMAN

Copy: All County Transition Coordinators

HANDING OVER/TAKING OVER REPORT (Local Authority to County Government)

Name of Local Authority Clerk handing
We, over and Executive
Member for Finance..... County taking over
(Name in full)

CERTIFY that we have today the of 20
(Day) (Month)

Handed over/ taken over respectively, the responsibility for the following items, in the presence
of the Chairman, Transition Authority or his/her representative.

- 1.0 LA Main Account
- 1.1 Cash Book written up and reconciled up to 20
- 1.2 Ledger
- 1.3 Journal
- 1.4 Rent Register
- 1.5 Counterfoil Receipt Book Register
- 1.6 Bank Statements, paying in slip, and bank reconciliation
- 1.7 Deposit Saving Account Books - (quote account numbers) and attach bank balance
certificate
- 1.8 Cheque Books
- 1.9 Payment voucher files (numbered 1)
- 1.10 Commitments (Vote Book) Register
- 1.11 Local Purchase Order Books as listed below (see counterfoil Receipt Book Register)
 - Used No. 10
 - Partly used No. 40
 - Unused No.
- 1.12 Local Service Order Books as listed below (see counterfoil Receipt Book Register)
 - Used No. 10
 - Partly used No. 40
 - Unused No.
- 2.0 LAIF Account - A/C No.
 - 2.1 Cash Book
 - 2.2 Ledger
 - 2.3 Journal
 - 2.4 Bank Statement and bank reconciliation
- 3.0 Shares
 - 3.1 Name and Registration number of the entity in which the Shares are held
 - 3.2 Date when Shares were acquired
 - 3.3 Number, Class and Value of Shares

4.0 Any other account maintained by the Local Authority, including:-

4.1 Savings/Deposit Book/s Nos.

4.2 We certify that all balances have been reconciled with bank statements as per bank certificates (attached herewith) and that the balances AGREE with the CASH BOOK(S)

5.0 Cash Survey Report

We have examined together the contents of the Safe/Cash Box and found the position as shown in the report below

MAIN ACCOUNT		Notes (in Kenya Currency)	LOCAL AUTHORITY FUND ACCOUNT	
Kshs.	Cts		KSh	Cts
		Silver		
		Copper		
		Sub- total		
		Add value of cheques (enumerated) Postal Order/Money Order		
		TOTAL		
		Add value of stamps (all denominations)		
		GRAND TOTAL		

6.0 Attached find a list of sundry creditors giving details of invoices/bills outstanding

6.1 Name of Creditor Invoice/Bills No. Amount Remarks

6.2 A list of Sundry Debtors giving details

Name of Debtor Particulars Amount Remarks

7.0 All stores have been physically verified, handed over and taken over as detailed below:

7.1 Office equipment (to give details of make, type, serial No., etc)

Typewriter(s), Adding Machine(s), Safe and Cash Boxes, Duplicating Machine(s), etc (See the Inventory Books)

7.2 Local Authority Vehicles(s) – Type, Make Reg. No., etc. (See vehicle Registration Book)

7.3 Plants and Equipment – Type, Make, serial no., etc

Electricity Generators, Water Plant(s), Projector(s), Radios(s), Tape Recorder(s) Television Set(s), Refrigerator(s), Tractor(s), Cooker(s), Lawn Mower(s), etc

7.4 All stores handed over and taken over:

(a) as per Inventory/Ledger No. (Permanent Equipment)

(b) as per Inventory/Ledger No. (Consumable Stores)

(c) as per Inventory/Ledger No. (Expenditure Stores)

(d) as per Inventory/Ledger No. (Stationery)

(e) as per Inventory/Ledger No. (Kitchen Equipment) (where relevant)

(f) as per Inventory/Ledger No.(Cookery, Cutlery Equipment) (where relevant)

(g) as per Inventory/Ledger No.

(h) as per Inventory/Ledger No.

And we certify that everything is in order

8.0 Local Authority Records

Local Authority/ Committee Minutes Book(s), Log Book(s), Visitors' Book(s), Local Authority Files, Buildings Register and documents, Furniture Record Book(s), Files for all circulars issued by the Ministry of Local Government and other Government Institutions, personal files for employees Scale 1-20, Abstracts of Accounts Audited Accounts for previous year, etc.

8.1 Any other necessary information (to include cash shortage, a list of stores discrepancies, a list of surplus stores, and other discrepancies the taking over Executive Member for Finance would like to make).

Signature
Handing over Clerk Taking over Executive Member for Finance County

Date Date

Distribution: 1 copy to PS – Devolution Sign
1 copy to RLGO Witness
1 copy to Governor Designation Chairman TA
1 copy to Internal Auditor Date
1 copy to Handing over Clerk


TRANSITION AUTHORITY
PUBLIC NOTICE

The Transition Authority is established under **Section 4** of the Transition to Devolved Government Act with the broad mandate of facilitating and coordinating the transition to devolved system of government.

Section 35 of the Act freezes the transfer of public assets during the transition period. It provides as follows:

1. A State organ, public office, public entity or local authority shall not transfer assets and liabilities during the transition period.
2. Despite subsection (1), a State organ, public office, public entity or local authority shall-
 - a. During Phase One, transfer assets or liabilities with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation, the Ministry of Local Government and the Ministry of Lands; or
 - b. During Phase Two, transfer assets or liabilities with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations; and
 - c. Transfer immovable property, with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations and lands.
3. The Authority may, on its own motion or on a petition by any person, review or reverse any irregular transfer of assets or liabilities in contravention of subsection (1).
4. Any transfer of assets or liabilities made in contravention of subsection (1) shall be invalid.

The Transition Authority has noted that public entities have been advertising and publicizing transfer of various public assets without following the procedure laid out above.

This is therefore to caution the public against getting involved in transfer of public assets without ensuring that due process has been followed. We would also like to reiterate to all public entities that any transfer of assets and liabilities made in contravention of the provisions of Section 35 of the Act shall be invalid.

The Chairman
Transition Authority
Extelecoms House, 8th Floor
www.transauthority.go.ke

ARM MACHINERY FROM BRAZIL EX-STOCK

NEW

Annex 5.4.5: Advisory on illegal transfer of public assets

DAILY NATION
Friday September 7, 2012

Republic of Kenya



TRANSITION AUTHORITY

PUBLIC NOTICE

ILLEGAL TRANSFER OF PUBLIC ASSETS

The Transition Authority is a statutory body established under the Transition to Devolved Government Act, 2012 to provide a framework for the transition to devolved system of Government pursuant to Section 15 of the Sixth Schedule to the Constitution of Kenya 2010 (CoK 2010), and for connected purposes. The members of the Authority were appointed by H.E. The President on 18th June 2012 and sworn in on 2nd July 2012. The Authority is therefore operational.

The Authority is mandated to facilitate and coordinate the transition to the devolved system of government as provided by the CoK 2010. The functions of the Authority are spelt out in the Transition to Devolved Government Act, 2012, Section 7, sub-sections (1) - (3) which include:

1. Facilitate the analysis and the phased transfer of functions to national and county governments as provided under the Fourth Schedule to the CoK 2010 and to determine resource requirements for each function.
2. Develop framework and criteria for comprehensive and effective transfer of functions.
3. Coordinate with relevant state organ or public entity in order to facilitate development of county government budgets during the phase one of the transition period.
4. Establish status of ongoing reform processes, development programmes and projects.
5. Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities as well as make recommendations for the effective management, transfer including vetting of assets.
6. Carry out audit of existing human resources of the government and Local Authorities.
7. Assess capacity needs of county and national Governments, recommend measures to develop capacity and coordinate and facilitate capacity building support.
8. Advise on the effective and efficient rationalization and deployment of the human resource to either level of government.
9. Facilitate civic education and ensure it is commenced and coordinated.

The Authority is expected to implement its functions in two phases. Phase one is the period between 9th March 2012 and the date of the first election under the Constitution. Phase two is the period between the date of the first election and three years after the election under the Constitution. The transition period is the period between 9th March 2012 when the Transition to Devolved Government (TDG) Act came into effect and three years after the first election under the Constitution.

Section 35 of the Transition to Devolved Government Act 2012 imposes moratorium on the transfer of assets and liabilities during transition period. Section 35 (1) specifically provides that a state organ, public office, public entity or Local Authority shall not transfer assets and liabilities during the transition period. Section 35 (3) empowers the Authority on its own motion or on a petition by any person, to review or reverse any irregular transfer of assets or liabilities in contravention of Section 35(1) of the Act.

Section 35 (4) states that any transfer of assets or liabilities made in contravention to the moratorium shall be invalid. The ONLY circumstances under which transfer of assets or liabilities shall be allowed are as stated in Section 35(2 a, b, c) and these are:

A. State organ, public office, public entity or local authority shall:

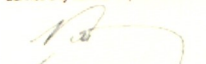
- a) During Phase One, transfer assets or liabilities with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation, Ministry of Local Government and the Ministry of Lands.
- b) During Phase Two, transfer assets or liabilities with the approval of the Authority, in consultation with National Treasury, the Commission on Revenue Allocation and Cabinet Secretary responsible for matters relating to intergovernmental relations.
- c) Transfer immovable property, with the approval of the Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations and lands.

In the short span of the existence of the Authority, citizens have filed complaints regarding illegal transfer and disposal of public assets in contravention of the above stated legal provision.

This notice serves as a warning to all public entities and officers to refrain from any unauthorized transfers, conversion of ownership and vandalism. Members of the public are requested to be on the lookout and inform the Transition Authority of any transgression.

Section 33 (2) of the Transition to Devolved Government (TDG) Act provides that any person who transfers assets without the requisite approval commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years, or to both.

Finally, all Kenyans are reminded that prior to this law coming into existence, the Cabinet had already banned any transfer of public assets to private ownership.


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TRANSITION AUTHORITY

ADVISORY ON THE TRANSFER OF EQUIPMENT HELD UNDER THE MECHANICAL AND TRANSPORT FUND (MTF)

The Transition Authority (TA) is established under Section 4 of the Transition to Devolved Government Act (TDGA), with the mandate of facilitating and coordinating the transition to devolved system of governance. One of the functions of the TA as enumerated under Section 7 (2) (h) (ii) of the TDGA is to determine the criteria for the transfer of previously shared assets between the National and County Governments.

Further, Section 8 (2) (e) gives the TA power to make recommendations and facilitate the distribution of assets to the national and county governments.

Summit Decision on Transfer of MTF Equipment

The two levels of government, through the National and County Governments Coordinating Summit, agreed to share the equipment under the Mechanical and Transport Fund in the ratio of 20% to National Government and 80% to County Governments. The Transition Authority is therefore required to facilitate the sharing of this equipment as agreed and in line with its mandate.

The Transition Authority received a listing of the equipment forming 80% of all the equipment held by the MTF from the Ministry of Transport and Infrastructure.

Clustering of counties for purposes of sharing MTF Equipment

The counties have been clustered into regions for purposes of sharing the said equipment. The following are the cluster regions:

NO.	COUNTY REGION	COUNTIES IN THE REGION
1	BUNCOMA	BUSIA, BUNGOMA
2	ELDORET	TRANS NZOIA, UASIN GISHU, ELGEYO MARAKWET, NANDI
3	EMBU	EMBU, THARAKA NITHI, KITUI
4	GARISSA	GARISSA
5	GARSEN	LAMU, TANA RIVER
6	HOMA BAY	HOMA BAY, MIGORI
7	ISIOLO	ISIOLO, MERU
8	KAKAMEGA	KAKAMEGA, VIHIGA
9	KERICHO	KERICHO, BOMET, NAROK
10	KISII	KISII, NYAMIRA
11	KSUMU	KISUMU, SIAYA
12	MARSABIT	MARSABIT
13	MOMBASA	KILIFI, MOMBASA, KWALE, TAITA TAVETA
14	NAIROBI	MACHAKOS, MAKUENI, Kajiado, NAIROBI
15	NAKURU	NAKURU, Baringo, LAIKIPIA, NYANDARUA, SAMBURU
16	NYERI	NYERI, KIRINYAGA
17	THIKA	KIAMBU, MURANGA
18	TURKANA	TURKANA, WEST POKOT
19	WAJIR	WAJIR, MANDERA


Kimuthia Wamwangi, EBS
CHAIRMAN

The MTF equipment is to be shared between the counties in each region unless otherwise stated in each letter sent to the governors. Governors are required to cater for the cost of transporting any equipment that has been allocated to their areas in cases where the equipment may not be currently situated in their counties.

Agreements between counties

The Transition Authority has requested and expects county governors to agree on the apportionment of the equipment allocated to each region and to inform us of the same, for purposes of effecting the handing over/taking over (transfer) to the respective County Government from the Ministry witnessed by the Authority. All signed agreements were to reach Transition Authority by 6th March, 2015.

The Ministry of Transport and Infrastructure

The Ministry of Transport and Infrastructure was requested to stop using any of the equipment that has been allocated to the County Governments so as to maintain their current level of serviceability pending the final transfer to the respective County Government.

Handing Over/Taking Over

Once the TA receives the agreement signed by the governors in a region, it will prepare the handing over/taking over report capturing the details in the agreements for signature by the Cabinet Secretary, Ministry of Transport and Infrastructure on the one hand and the respective County Governor on the other hand and witnessed by the Chairman, Transition Authority.

The Ministry will then hand over the logbooks to the respective county government.

Identification of County government officer

To safeguard the equipment, each governor will be expected to appoint an officer to be identified by the Regional Managers or County Roads Engineer (National Government) of the region where the equipment is.

On identification, the Regional managers or County Roads Engineer (National Government) will show the equipment for collection by the county government appointed officer.

It is important to note that the transfer of the MTF equipment does not include the Mechanical yards. However, county governments are encouraged to request to utilize the services provided therein.

Transition Authority expects this process to be very smooth and advises both National and county governments to cooperate and respect each other as they hand over and take over respectively.

Annex 5.6: Request Form for Transfer of Assets and Liabilities



TRANSITION AUTHORITY

REQUEST FOR TRANSFER OF PUBLIC ASSETS AND LIABILITIES

1. Name of public entity (transferor)

P.O BOX

Tel

2. Description of Asset/Liability to be transferred/ incurred (include registration number, location and other relevant details)

3. Value of the asset or liability as at date of proposed transfer (attach valuation report)

4. Evidence of ownership of the property

5. When the asset/liability was acquired

6. Entity to which transfer is being made (transferee)

7. Where asset/liability is a contractual obligation – attach all documents relating to the contract



REQUEST FOR TRANSFER OF PUBLIC ASSETS AND LIABILITIES

8. Justification / reason for transfer

9. Public entity should demonstrate that;

- a. the transfer is in public interest;
- b. public participation has been met;
- c. there is value for money;
- d. the transfer is at market value;
- e. transfer will result in improved service delivery there is compliance with other relevant laws and all procedure have been followed.

(Attach supporting documents)

Name

Designation

Signature

Accounting / Authorized officer

Official Stamp Date

FOR OFFICIAL USE ONLY

Approved ☐

Not Approved ☐

Reasons

Annex 6.1: Interim County Government Offices

REPUBLIC OF KENYA



TRANSITION AUTHORITY

INTERIM COUNTY GOVERNMENT OFFICES

The following facilities have been identified to serve as Interim County Government Offices. The respective departments are requested to ensure that the officers are vacated to facilitate renovation and refurbishments

NO	COUNTY	COUNTY ASSEMBLY	COUNTY EXECUTIVE	COUNTY TREASURIES	NO	COUNTY	COUNTY ASSEMBLY	COUNTY EXECUTIVE	COUNTY TREASURIES
1	KAJIADO	COUNTY COUNCIL OF KAJIADO	MINISTRY OF STATE FOR PLANNING AND VISION 2030 DISTRICT OFFICES	CURRENT DISTRICT TREASURIES OFFICES- KAJIADO	25	SAIBURU	COUNTY COUNCIL OF SAMBURU	TOWN COUNCIL OF MARALAL	DISTRICT TREASURY
2	KIRINYAGA	COUNTY COUNCIL OF KIRINYAGA	KIRINYAGA DISTRICT HEADQUARTERS (2 ND FLOOR)	DISTRICT COMMISSIONERS HEADQUARTERS PREMISES (GROUND FLOOR)	26	BUNGOMA	COUNTY COUNCIL OF BUNGOMA	MUNICIPAL COUNCIL OF BUNGOMA	MUNICIPAL COUNCIL OF BUNGOMA
3	LAKEURIA	MUNICIPAL COUNCIL OF NANYUKI CHAMBERS AND OFFICES	LEASE AS PRIVATE BUILDING	MUNICIPAL COUNCIL OF NANYUKI (TREASURY)	27	KAKAMEGA	KAKAMEGA TOWN HALL	KAKAMEGA COUNTY COUNCIL	KAKAMEGA COUNTY COUNCIL
4	NYANDARUA	NEW PREFABRICATED STRUCTURES	DISTRICT COMMISSIONERS OFFICES OKALAU	DISTRICT COMMISSIONERS OFFICES OKALAU	28	BUSIA	MUNICIPAL COUNCIL OF BUSIA	COUNTY COUNCIL OF BUSIA	COUNTY COUNCIL OF BUSIA
5	WAIIR	LEASE AS PRIVATE BUILDING	LEASE AS PRIVATE BUILDING COUNTY COUNCIL OF WAIIR	CITY HALL	29	SIAYA	COUNTY COUNCIL OF SIAYA	ARTHI HOUSE (MINISTRY OF LANDS)	ARTHI HOUSE (MINISTRY OF LANDS)
6	NAIROBI	CITY COUNCIL CHAMBERS AND OFFICES	PRIME MINISTERS OFFICE	CITY HALL	30	HOMA BAY	COUNTY COUNCIL OF HOMA BAY	HOMA BAY MUNICIPAL COUNCIL	HOMA BAY MUNICIPAL COUNCIL
7	TANA RIVER	COUNTY COUNCIL OFFICES AT WUNDANYI	COUNTY COUNCIL OFFICES AT WUNDANYI MINISTRY OF COMMUNICATIONS, WUNDANYI	COUNTY COUNCIL OF WUNDANYI OFFICES	31	BARINGO	KABARNET TOWN COUNCIL	BARINGO COUNTY COUNCIL	BARINGO COUNTY COUNCIL
8	GARISSA	COUNTY COUNCIL OF GARISSA HALL	MUNICIPAL COUNCIL OFFICES AT GARISSA - ONE WING OF PROVINCIAL HEADQUARTERS - GARISSA	DCS OFFICE - GARISSA	32	UASIN GISHU	COUNTY COUNCIL OF UASIN GISHU	ELDORET MUNICIPAL COUNCIL	ELDORET MUNICIPAL COUNCIL
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Annex 6.2: Advisory on responsibilities and roles of the various offices in the County Public Service



TRANSITION AUTHORITY

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Office of the Chairman
Extelecoms House 8th Floor
P.O. Box 10736-00100
NAIROBI

10th March, 2015

REF: TA/2/1

To:

- 1) All County Executive Committee Members
In-charge of Finance,
- 2) All County Secretaries
- 3) All Clerks of County Assemblies,
- 4) All Chairpersons County Public Service Board
- 5) All Secretaries, County Public Service Board
- 6) All Chiefs of Staff

ADVISORY ON THE ROLES AND RESPONSIBILITIES OF VARIOUS OFFICES IN THE COUNTY PUBLIC SERVICE

1. The Transition Authority is established under Transition to Devolved Government Act, 2012, pursuant to Section 15 of the Sixth Schedule to the Constitution of Kenya. The mandate of the Authority is to coordinate and facilitate a smooth transition to devolved system of government.
2. Accordingly, the Authority has received numerous requests seeking clarification on the roles, responsibilities and relationships of the following offices in the County Public Service; (i) the County Secretary (ii) the Executive Committee

Member for Public Service (iii) the County Public Service Board and (iv) the Chief of Staff.

3. Pursuant to our mandate, the Authority would wish to clarify from the onset that all the above offices are established to facilitate and coordinate smooth running of the county governments, while at the same time enhancing efficiency, transparency and accountability in the management of the affairs of the County. This therefore means that these offices are complementary but not in competition.

Role and Responsibilities of the County Secretary

4. Section 44 of the County Government Act, 2012, (CGA) establishes the office of the County Secretary who is the Secretary to the Executive Committee and the Head of Public Service. Section 56 of the CGA further provides that the county public service shall be headed by a County Secretary, appointed under Section 44 thereof. This therefore means that the County Secretary is responsible to the Governor and the Executive Committee for coordination and smooth running of the County Public Service.
5. She/he is responsible for communicating the decisions of the Executive Committee to the appropriate persons and authorities and following up on the implementation of the decisions of the Executive committee. As head of Public Service, she/he is responsible for providing leadership and coordinating the affairs of Chief Officers to ensure efficient and effective service delivery and prudent utilization of public resources. The Secretary is therefore the link between the executive and the entire Public Service.

Roles and responsibilities of the Executive Committee Member for Public Service

6. It has been observed that most Counties have established a designated Executive Committee Member for Public Service Management. In essence, this is a political office, designated by the Governor, to provide oversight and policy direction on management of the Public Service.
7. The Executive Member for Public Service is expected to handle high level public service policy issues such as advising on structure, compliment control, staff welfare, remunerations and performance management. In order to avoid conflict of interest, the Executive Committee Member should not be seen to handle day to day administrative and management issues such as staff discipline, performance appraisal, and payment of salaries, but should work

closely with the County Secretary in addressing broad and complex human resource issues and advise the Executive Committee in making informed decisions.

The Roles and Responsibilities of the Chief of Staff

8. It is important at this point to clarify that the position of the Chief of Staff and those of other advisors are not a Public Service Office but political appointments negotiated between the Governor, Transition Authority, Public Service Commission and Salaries and Remuneration Commission, at the inception of County Governments.
9. The Chief of Staff is therefore responsible to the Governor for facilitating and coordinating the smooth running of the Governor's office in so far as private staff matters are concerned, including those of advisors. She/he is therefore the liaison officer between the Governor's private staff and the Office of the County Secretary. The Chief of staff or any other advisor have no executive powers and cannot commit the Government in anyway especially on financial and human resources matters. The terms and condition of service are well spelt out by the Salaries Remuneration Commission.

The Roles and Responsibilities of the County Public Service Board

10. Section 57 of the CGA establishes the County Public Service Boards with specific roles and responsibilities which include; (i) establishing and abolishing offices in the Public Service, (ii) appointing persons to hold or act in those offices including those in Cities and Urban areas (iii) confirming appointments (iv) exercising disciplinary control and (v) promoting the values and principles set out in Article 10 and 232 of the Constitution, among other responsibilities.
11. It has been noted that the boards have relegated their responsibilities subjected themselves to manipulation and influence by other persons including Governors and Members of the County Assembly. While the boards are expected to perform their functions on behalf of the County Government in consultation and collaboration with other County Government agencies, especially the County Secretary and the Chief Officers, they should not be seen to be unduly influenced or cede their powers or independence to any other authority.
12. Further, it has come to our attention that both the Chiefs of Staff and the County Secretaries are recruiting or appointing persons without due consultation or approval of the County Public Service Board. Any such recruitment or appointments made outside the legally established framework are null and void

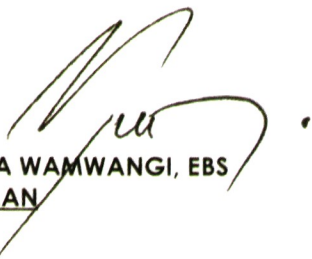
and tantamount to abuse of office and misappropriation of public resources. The boards are therefore required to investigate and nullify such decisions. Where the boards fail to do so they will be deemed to have abrogated their responsibility. Legal action may be taken against such boards.

13. In addition to this, Section 59(d) and (f) of the CGA requires the boards to make reports to the County Assembly on the execution of its mandate. This is a noble task aimed at promoting accountability and transparency in public service management. For this reason, the board must work independently to objectively evaluate and report on its functions. Any action of the Board that is unduly influenced by a member of the County Assembly will be treated as a cross border trespass and subjected to legal remedy.

Roles of Accounting Officers

14. On financial matters, it has been brought to our attention that County Secretaries and Chief officers are the Accounting Officers in some Counties. At the national level, the Secretary to the Cabinet and Head of Public Service, who is mirrored by the County Secretary, is not an Accounting Officer. However, he plays an oversight role in as far as financial matters in the National Government are concerned.
15. According to the Public Financial Management Act, 2012, the Accounting Officer is the person responsible for the administration of a public entity. This would therefore infer that this role inheres to persons serving as Chief Officers, the Clerk to the Assembly or CEO/Secretary to the County Public Service Board or the City board. It is also important to note that the Executive Committee Member for Finance is responsible for appointment of all Accounting Officers in the County Public Service in accordance with the Public Financial Management Act, 2012.

Thank you for your continued support to devolution.



KINUTHIA WAMWANGI, EBS
CHAIRMAN

Copy:

Ms Anne Waiguru, OGW
Cabinet Secretary
Ministry of Devolution and Planning
NAIROBI

Mr. Isaac Ruto, EGH
Chairman
Council of Governors
Delta House, Westlands
NAIROBI

Mr. Joseph K. Kinyua, CBS
Chief of Staff and Head of Public Service
Executive Office of the President
State House
NAIROBI

Mrs Agnes Odhiambo
Controller of Budget
Office of the Controller of Budget
Bima House
NAIROBI

Mr. Edward Ouko
Controller
Office of the Auditor General
Anniversary Towers
NAIROBI

All Governors

All County Assembly Speakers

SPECIAL ISSUE



THE KENYA GAZETTE

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GAZETTE NOTICE No. 821

THE STATE CORPORATIONS ACT

(Cap. 446)

THE COMPANIES ACT

(Cap. 486)

APPOINTMENT

IN EXERCISE of the powers conferred by section 7 (3) of the State Corporations Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces appoint—

WILLIAM LAY

to be the Chairman and Director of the East African Portland Cement Company Limited, up to 7th November, 2014 with effect from 22nd January, 2014 and revoke the appointment of Mark Kitaanyu ole Karbolo*.

Dated the 22nd January, 2014.

UHURU KENYATTA,
President.

*G.N. 8002 of 2011

GAZETTE NOTICE No. 822

THE CONSTITUTION OF KENYA

SPECIAL SITTING OF THE ELEVENTH PARLIAMENT

REVOCATION

IN EXERCISE of the power conferred by Standing Orders No. 22 of the National Assembly, the Speaker of the National Assembly revokes Gazette Notice No. 715 of 2014.

Dated the 6th February, 2014.

JUSTIN B. N. MUTURI,
Speaker of the National Assembly.

GAZETTE NOTICE No. 823

THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT

(No. 8 of 1999)

APPOINTMENT

IN EXERCISE of the powers conferred by section 125 (b) of the Environmental Management and Co-ordination Act, the Cabinet

Secretary for the Ministry of Environment, Water and Natural Resources re-appoints—

TOM OJIENDA (PROF.)

to be a member of the National Environment Tribunal (NET), for a period of three (3) years, with effect from the 1st January, 2014.

Dated the 3rd February, 2014.

JUDI WAKHUNGU,
*Cabinet Secretary,
for Environment, Water and Natural Resources.*

GAZETTE NOTICE No. 824

THE STATE CORPORATIONS ACT

(Cap. 446)

NEW CO-OPERATIVE CREAMERIES LIMITED

APPOINTMENT

IN EXERCISE of the powers conferred by section 5 (3) of the State Corporations Act, the Cabinet Secretary for Industrialization and Enterprise Development re-appoints—

KIPKIRUI LANG'AT (DR.)

to be the Managing Director of the New Kenya Co-operative Creameries, for a period of one (1) year, with effect from the 15th March, 2014.

Dated the 5th February, 2014.

ADAN MOHAMED,
*Cabinet Secretary,
Ministry of Industrialization and Enterprise Development.*

GAZETTE NOTICE No. 825

THE TRANSITION TO DEVOLVED GOVERNMENT ACT

(No. 1 of 2012)

Table of content.

- 1— Enabling law.
- 2— Purpose of guidelines.
- 3— Scope.
- 4— Interpretation of terms.
- 5— Rationalization of public service during the transition period.

- 6—Seconded officers.
- 7—Terms and conditions of seconded officers.
- 8—Training and development of seconded officers.
- 9—Discipline of seconded officers.
- 10—Transfer of service and of officers.
- 11—Pension.
- 12—Establishment and abolition during transition period.
- 13—Redeployment and release of seconded officers during the period of secondment.

THE TRANSITION TO DEVOLVED GOVERNMENT ACT, 2012

(No. 1 of 2012)

GUIDELINES FOR TRANSITION OF STAFF TO COUNTIES

Enabling law.

1. Pursuant to the provisions of section 7(2)(m) of the Transition to Devolved Government Act, 2012, it is notified for the information of the general public that the Transition Authority has made the following guidelines for the secondment of public officers to county governments.

Purpose of the guidelines.

2. The purpose of these guidelines is to provide for—

- (a) the administration of the transfer of service of seconded officers to county governments;
- (b) the mechanisms and process for the deployment and redeployment of seconded officers between the national government and county governments, among county governments and between the county governments and the national government;
- (c) the effective management of human resource during the transition period by the national government and county governments;
- (d) the safeguarding of the terms and conditions of service of seconded officers;
- (e) the collaboration and co-operation between the national government and county governments during the transition period; and
- (f) the distribution of human resources among county governments and between the national government and county governments.

Scope

3. These guidelines shall apply to public officers who are seconded officers during the transition period.

Interpretation of terms

4. In these Guidelines, unless the context otherwise requires —

“Act” means the Transition to Devolved Government Act (No. 1 of 2012);

“deployment” means the process of posting a public officer by the Public Service Commission or any authorized person in a county government, or from one county government to another county government, or from a county government to the national government, during the transition period;

“Ministry” means the Ministry for the time being responsible for the public service;

“rationalisation” means the process of restructuring and organizing the national government and the county government structures, systems, competencies and processes by deploying public officers in accordance with the Constitution, any written law and any relevant guidelines;

“rationalisation report” means an intergovernmental human resource capacity assessment and rationalization report envisaged in Guideline 5;

“release” means the process by which a seconded officer in a county government resumes service in the national government;

“seconded officer” means an officer of the public service who is deemed to be seconded to a county government from the national government and whose secondment is pursuant to—

- (a) section 138 of the County Government Act, No. 17 of 2012; and
- (b) section 57 of the Urban Areas and Cities Act, No. 13 of 2011;

“Summit” means the National and County Government Coordinating Summit established under section 7 of the Intergovernmental Relations Act;

“transfer of service” means the transfer of pensionable service of a public officer from the Public Service Commission to a county public service;

“transition period” means the period between commencement of the Act and three years after the first elections under the Constitution.

Rationalization of the public service during transition period

5. (1) The Transition Authority shall advise the national government and county governments on the effective and efficient capacity assessment, rationalization and deployment of public officers in the national and county governments as contemplated in section 7(2)(m) of the Transition to Devolved Government Act, (No. 1 of 2012).

(2) The Summit shall guide the preparation and implementation of the policy on the capacity assessment, rationalization and deployment of seconded officers contemplated in paragraph (1) and publish an inter-governmental staff rationalization report.

(3) The Public Service Commission, the county public service boards and the county assembly service boards shall implement the rationalisation report.

(4) The Cabinet Secretary for devolution and planning shall constitute an inter-agency team consisting of representatives from—

- (a) the national government;
- (b) the county governments; and
- (c) any other relevant person, body or institution,

who shall implement the rationalisation report in addition to other functions as shall be specified in the instrument of appointment.

(5) The Summit shall consider and approve reports on the implementation of the capacity assessment and rationalisation report published by the Public Service Commission, the county public service boards, the county assembly service boards and any other relevant person, body or institution.

Seconded officers

6. (1) A seconded officer shall, during the transition period—

- (a) carry out all lawful orders and instructions of the county government; and
- (b) follow the relevant county government policies in the discharge of the function of the office or position held.

(2) The Public Service Commission shall inform in writing all authorized officers of the recommendations of the rationalization report and facilitate the process of informing the seconded officers of the effect of the recommendations of the rationalization report.

(3) All authorized officers shall, in the form provided in the Schedule, inform all seconded officers in writing of their secondment to county governments and the information shall include—

- (a) confirmation of the seconded officers’ appointment in the county government;
- (b) the date of the secondment;

- (c) the duration of the secondment;
- (d) the date when the secondment shall end;
- (e) the remuneration and other benefits of the seconded officer;
- (f) the maintenance of the pension status of the seconded officer;
- (g) the management of the career progression of the seconded officer during the period of secondment;
- (h) the management of the training and capacity building of the seconded officer during the period of secondment; and
- (i) disciplinary matters regarding the seconded officer during the period of secondment.

(4) These Guidelines does not prevent a county government from appointing a seconded officer in the county public service.

(5) These Guidelines shall not prevent a seconded officer in a county public service or a county assembly service from applying for any office or position in any county government or in the national government.

Terms and conditions of seconded officers

7. (1) The terms and conditions of service, including remuneration, allowances and pensions or other benefits, of seconded officers shall not be varied to the disadvantage of the officers.

(2) During the period of secondment, seconded officers shall continue to benefit from the housing schemes to which they had subscribed to on the date of the commencement of the County Governments Act (No. 17 of 2012).

(3) During the period of secondment, seconded officers shall continue to benefit from the medical schemes to which they had subscribed to on the date of the commencement of the County Governments Act (No. 17 of 2012).

Training and development of seconded officers

8. (1) For the purposes of the career development of seconded officers, the existing training and career development policy of the national government shall apply during the transition period.

(2) Despite paragraph (1), the national government may provide for the training of seconded officers in consultation with a county government.

(3) These guidelines shall not prevent a county government from training a seconded officer in addition to the training provided for by the national government.

(4) A seconded officer who has undergone training at the expense of the national government or of a county government shall execute a bond to serve in the county government to which that officer is serving for a period that shall be prescribed in the bond.

(5) The salary or remuneration of a seconded officer who is undergoing training shall be paid by the respective county government in which that seconded officer is serving during that period the seconded officer shall be away for training.

(6) Before a seconded officer leaves that officer's duties in order to attend training that seconded officer shall comply with the requirements of the public service regarding training and career development including obtaining relevant authorizations and clearances from the relevant authorized officers, whether at county government level or national government level.

Discipline of seconded officers.

9. (1) A County Public Service Board shall be responsible for the disciplinary control of seconded officers in the county public service as the Public Service Commission may delegate to that county public service board.

(2) Despite paragraph (1), a county public service board shall not dismiss a seconded officer from service but may recommend to the Public Service Commission the dismissal of that officer in accordance with the Public Service Commission Regulations.

(3) Where a seconded officer who does not carry out the lawful orders or instructions of the county government in which that officer is serving or does not follow that county government's policies, the county government may take any necessary action as may be provided in the Public Service Commission Regulations or in any written law.

(4) Within thirty days of the publication of these Guidelines, the Public Service Commission shall, in writing, delegate disciplinary authority over seconded officers to—

- (a) the county public service boards;
- (b) county assembly service boards; and
- (c) authorized officers of the county government.

Transfer of service and of officers

10. (1) The transfer of service of a seconded officer from the national government to a county government shall be effected —

- (a) after the county government has established a county pension scheme for its officers;
- (b) for the purpose of pensions, the declaration of the county government as a public service; and
- (c) after the relevant county service board appoints that seconded officer to that county service.

(2) Where a county government identifies a public officer whose service the county government has determined is required in the county that county government may request in writing the Ministry to temporarily second that public officer to the county government.

(3) If the national government temporarily seconds a public servant to a county government on the written request of that county government, the county government shall be responsible for the salary, remuneration and other benefits of that public officer but the pension obligations of the national government to that seconded officer shall not be transferred to the county government.

Pension

11. During the period of secondment, the pension rights of a seconded officer are protected under the scheme to which that officer subscribed on the date of the commencement of the County Governments Act.

Establishment and abolition of offices during transition period

12. (1) During the transition period and before the rationalization contemplated in Guideline 5 is finalised, a county government shall not appoint any person to perform the duties being performed by a seconded officer.

(2) A county government may redeploy a seconded officer to perform other functions in the county if those other functions may be performed by a person of the same rank and qualifications as the seconded officer.

(3) A County Public Service Board may, during the transition period, establish a new office in the county public service.

(4) In establishing a new office in the county public service in accordance with paragraph (1), a county public service board or a county assembly service board shall apply the criteria provided under sections 46 and 60 of the County Governments Act.

Redeployment and release of seconded officers during the period of secondment

13. (1) The Transition Authority, in consultation with the Public Service Commission, may facilitate the redeployment of a seconded officer from one county government to another county government during the transition period in consultation with the national government and the relevant county governments.

(2) The Transition Authority shall constitute an inter-agency committee to resolve any challenges that may arise during the redeployment of seconded officers from one county government to another county government and the committee shall consist of representatives from—

- (a) the Transition Authority;
- (b) the Council of Governors;
- (c) the National Consultative Forum of County Public Service Boards;
- (d) the Ministry;
- (e) the Public Service Commission;
- (f) any other relevant person, body or institution as may be necessary.

(3) A county government may release to the national government a seconded officer during the transition period if—

- (a) the seconded officer is among a class of seconded officers recommended for release to the national government by the rationalization report contemplated in Guideline 5;
- (b) the national government requests the county government to release the seconded officer; or
- (c) for any justifiable reason and after applying the due process as provided in any written law, public service regulations and policies.

(4) A county government that intends to release a seconded officer to the national government shall notify the Public Service Commission of the intention to release that seconded officer not less than two months before the intended date of the release.

(5) The Public Service Commission may on receiving the notice of intention to release a seconded officer from a county government —

- (a) redeploy the seconded officer; or
- (b) take any other action that is consistent with the seconded officer's terms and conditions of service.

(6) The relevant authorised officer shall, when releasing a seconded officer from a county government to the national government, ensure that the relevant procedures of the Public Service Commission regulations have been adhered to.

SCHEDULE

(g. 6 (3))

Dear _____

RE: SECONDMENT TO THE GOVERNMENT OF COUNTY

Pursuant to the provisions of the County Government Act, 2012, I hereby confirm that you have been seconded to serve in the County

Government of _____. Your secondment commenced on the 3rd March, 2013.

During your secondment—

- (a) you shall remain an employee of the National Government and your terms and conditions of service, including housing and medical benefits, shall not be altered to your disadvantage. Particularly, your period of continuous employment shall remain unbroken.
- (b) you shall continue to abide by your terms and condition of service;
- (c) you shall report and be accountable to the host county government work, performance and results;
- (d) you shall report on day-to-day matters to the head of department or supervisor at the county;
- (e) your salary shall be Ksh _____ (unless otherwise lawfully varied) and your current incremental date shall continue to apply as well as your current pension arrangement shall continue to apply during the secondment or until your service is transferred to the county government;
- (f) you shall comply with the relevant county policies and procedures; and
- (g) you shall continue working at your current duty station or as you may be deployed by the Chief Officer, County Public Service Board or County Assembly Service Board.

In addition, your career progression and development shall be managed in accordance with your current scheme of service and any other guidelines that may be applicable. The existing training and capacity-building policy shall continue to apply and shall be managed by the national government in consultation with the County Chief Officer.

Further note that, nothing prevents the county government from training you to enhance your skills and competencies. Therefore, you are eligible and may apply for any training and capacity-building facilities that may be available in the county government.

Yours Sincerely,

Principal Secretary,

Ministry of _____

Dated the 7th February, 2014.

KINUTHIA WAMWANGI,
Chairman, Transition Authority.

Annex 7.1: Guidelines for Operationalization of County Financial Management System and letters of designation

Annex 7.1a: Guidelines for Operationalization of County Financial Management System

The Transition Authority (TA) is a statutory body with a constitutional mandate of facilitating and coordinating the transition to the devolved system of government in Kenya pursuant to the provisions of the Transition to Devolved Government Act 2012, and section 15(2) (d) of the sixth Schedule to the Constitution of Kenya, 2012.

Pursuant to its mandate, Transition Authority together with the National Treasury, The Office of the Controller of Budget, Commission on Implementation of Constitution (CIC), Commission on Revenue Allocation (CRA), Auditor General's Office and other Stakeholders have developed the following Guidelines to Guide on budget preparation and Execution for the County Government in line with Article 190 of CoK 2010 and Public Finance Management Act 2012

Planning:

Generally, a policy and planning system should enable the county governments to understand better the realities of what is affordable over the medium term and to address sectoral priorities strategically.

Planning at the county level should take into account the need for the development of an Integrated Development Plan plus the determination of any financial and economic priorities for the county over both the medium and long-term and should generally conform with the provisions of sections 125 and 126 of the Public Finance Management Act

Further, under the County Government Act, planning is a mandatory duty assigned to the County and such planning shall integrate economic, physical, social, environmental and spatial planning. It is also important to note that section 104 of the same Act makes it clear that no public money shall be spent outside of the planning framework as developed by the county.

Reference must also be made to section 108 of the County Government Act that espouses the ideals relating to the County Integrated Development Plans. This does not exclude the fact that **Part XI of the Act** is generally instructive on matters touching on all spheres of planning, within the county.

Budget Execution

In order to execute the County Budget, the County Executive and the County Assembly should rationalize their budgets to recognize the roles of each arm of the Government, the finances released to the counties should fund key services of the County government and should follow the general rule of;

- I. At least 30% for Development and at most 70% Recurrent Expenditure ceilings need to be put in place for both the County Assembly and the Executive. The County Fiscal Strategy Paper should be prepared to provide direction for the expenditure limits and as a general guide, operational expenditure should not exceed 30% of the Personnel Emoluments but while respecting section 107 and 117 of Public Finance Management Act 2012.
- II. Ordinarily County Assemblies should not have development expenditure purse unless in special circumstances
- III. There shall only be one County Treasury responsible for all county Funds and shall be headed by the County Executive Committee for Finance (PFM act 2012 sec 103).
- IV. In order to effect the principle of separation of powers the County assembly, shall be a Vote. With the County Assembly Clerk as the Accounting officer
- V. County Budgets shall form the basis for withdrawing Funds from the County Revenue Funds. In this respect, you are advised resources should be allocated based on functions to be performed by each arm of governments based on justifications for provision of basic services.

For example the Parliament in the fiscal year 2013 /2014 has been allocated 19 Billion out of a budget of 1.6 Trillion. This is based on justifications for expenditure to enhance oversight of public funds and not equity between Parliament and National Executive.

- VI. All requests for grant of credit should be signed by the (during interim Period by Transition County Accounting Officer) County Executive Committee member for Finance or his/her delegatee and addressed to the Controller of Budget
- VII. Parliament or County Assembly approval must be obtained before any expenditure is occurred. This is through an Act of Parliament or a county legislation.
- VIII. All County Accounting Officers are required by law to keep proper books of accounts
- IX. All revenue collected should be deposited to the County Revenue Fund (.....Exchequer Account) at The Central Bank of Kenya and any withdrawals from the County Revenue Fund shall be authorized by the Controller of Budget in accordance with Act of Parliament or county legislation or county appropriation Act..
- X. The Controller of Budget will only authorize withdrawal of funds from the County Revenue Fund based on Appropriation Act, or Vote on Account or County legislation or an Act of Parliament
- XI. The County Assembly Should maintain its oversight role

It is important to note that public resources should only be applied for **service delivery**. **Counties are therefore encouraged to** constantly improve services, while outlining their specific short, medium and long-term goals for service provision on priority basis.

Public Participation:

Good governance dictates that government operations and decisions should be made openly and with the active participation of those people influenced by them. The budget is the primary economic policy document of the government and for this reason transparency and participation in the budget are particularly important, on the part of the citizenry.

Under the PFM Act, public participation in the context of the budget process is to be achieved by way of counties constituting the County Budget and Economic Forum, a reality and not routine exercise. Section 87 (b) of the County Government Act is equally instructive on the subject.

Counties are not stopped from exploring other avenues that enhance public oversight over budget implementation.

2013/2014 Budgeting

The Interim Principal Officer Finance should guide the County in terms of providing budget guideline that contains the ceilings to each spending unit of the County that includes the County Assembly. All other spending units should present their budget to the County Executive Committee Member for Finance for consolidation and submission to the County Assembly. Similarly the Clerk to the County Assembly will prepare County Assembly estimates of budget for approval by a County Assembly Service Boards in line with the ceilings provided by the Transition County Treasury and submit the approved estimates to the County Assembly for review and approval.

The County Transition Accounting Officer or County Executive Committee Member for Finance are required to prepare their estimates of budget in full compliance with Constitutional and the Public Finance Management Act ,2012 provisions.

Borrowing

County Governments are required to comply with Article 212 of the Constitution as well as Sections

138 and 139 of PFMA for receipt of grants and donations from development partners. Any borrowing should be strictly for financing development as provided for under Section 58 of PFM Act 2012

Procurement

Public Procurement and disposal act shall apply in all Public Procurements

Opening , Operating and Closing of Bank Accounts.

In accordance with Sections 9 (b) of the County Government Public Finance Management Transition Act 2013, the Transition Accounting Officer shall authorize the opening and operation of the County Revenue Fund (.....Exchequer Account) and County Recurrent Bank Account and County Development Bank Account.

Pursuant to its mandate, the TA's hereby requires that the following accounts be operated in respect of each County

County Revenue Fund (.....County Exchequer Bank Account) at the Central bank of Kenya

A Recurrent Bank Account and a Development Bank Account at the Central Bank of Kenya. An Imprest Bank Account or Petty Cash Bank Account may be opened in Central Bank of Kenya or a Bank Approved by the County Executive Committee Member for Finance and such Commercial Bank should be credible, and with a wide network of branches and Government of Kenya has interest in.

Each County must note the requirement under Section 119(2) of the PFM Act to open and operationalise a Treasury Single Account as soon as possible so as to ensure prudent management of public funds

Accounting and Reporting

County Treasury Transition Accounting Officer is required to keep proper financial records at all times as required by the PFM Act, 2012. Further, he /she shall be required to prepare and submit financial and non financial statements to the Auditor General for audit with copies to CoB, CRA and the National Treasury.

The County Transition Accounting Officer (Receiver of Revenue) is required by the PFM Act, 2012 to remit all money raised, received by or on behalf of the County Government to the County Revenue Fund intact pursuant to Article 207 of the Constitution. Any withdrawal from the County Revenue Fund shall require authorization by the Controller of Budget in line with an Act of Parliament or County appropriation Act or County legislation. The Receiver of Revenue is required to prepare and submit financial statements to Auditor General for Audit within three months after the end of each financial year.

Human Resource –Payroll Management

Pursuant to Section 138 of the County Governments Act, 2012, the Transition Authority in consultation with the relevant line Ministry / department shall rationalize staff. Further, the Transition may also seek the indulgence of the Governors during this exercise pending the official transfer of staff performing devolved functions within the county government.

County Governments are advised to request for the last Pay Change Advice(PCA) certificates for each officers who is performing a devolved function to facilitate smooth transfer of officers wages and the attendant obligations thereof. This should be done through the Transitional Authority with copies to the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation.

The County Public Service Boards and County Assembly Service Boards are required to undertake a job evaluation exercise and determine the appropriate structure for each function for optimum service delivery while taking into account their development needs vis a vis the wage bill.

County Governments are further required to fully factor in the wages of staff for all devolved functions as well the defunct local authorities in line with the principles resources shall follow functions as espoused in the Constitution. This is important since human resource is the most important asset of any organization.

Support to County Governments by the National Government.

County Governments are encouraged to seek support through the Transitional Authority from the line Ministry / department. This is a Constitutional requirement for the National Government to support county governments during the transition period. This will assist county governments to develop their capacities within a very short period and consequently enhance service delivery.

KINUTHIA WAMWANGI
CHAIRMAN, TRANSITION AUTHORITY.

Annex7.1b: Designation of Receiver of Revenue

Ref:

Date:

(Name of the Transition County Principal Officer) to be indicated

Transition Principal Officer

County Of

P.O. BOX

LETTER OF DESIGNATION RECEIVER OF REVENUE

In accordance with the powers conferred on The Transition Authority by section 21 of The County Government Public Finance Management Transition Act, 2013, you are hereby designated Receiver of Revenue in respect of all revenue of (*Name of County*) County Government in year 2012/2013.

As Receiver you are henceforth responsible for all aspects of the collection of the above revenue and for rendering a proper account of the sums received. In order that there may be no misunderstanding, it is emphasized that under the heading of collection your responsibility covers all the following stages:-

- (i) Ascertaining the existence of liabilities and ensuring that correcting figures are levied;
- (ii) Establishing written records of sums due;
- (iii) Taking proper steps to secure payment.

Should you at any time consider that your appointment needs to be terminated, you should give notice to the County Treasury of the circumstances. If the Treasury concurs, your appointment will be formally terminated.

To help you to discharge your responsibility where the necessary work cannot be done within the County of which you are the Accounting Officer, you may appoint as Collector the Accounting Officer of the Department in which the work is to be done. If you make such an appointment you will be responsible for ensuring that whatever work is entrusted to the Collector is covered by proper instructions laying down the procedures to be followed. The Accounting Officer appointed Collector will be responsible for observance of the instructions. You should at all times keep the adequacy of these instructions under review.

As Receiver, you must be fully informed of arrears of revenue outstanding from time to time in order that you may ensure that proper action for recovery, or abandonment, is taken. You should accordingly obtain at intervals of not more than six months adequate details of arrears. You are reminded that details of arrears of revenue, and of revenue abandoned, must be included in the revenue account to be submitted annually to the Auditor General under the Public Audit Act, 2003.

All revenue shall be paid to the credit of the County Exchequer Account at such times in such manner as the County Government may direct.

Please acknowledge receipt of this letter.

KINUTHIA WAMWANGI
CHAIRMAN TRANSITION AUTHORITY

Annex7.1c: Designation of Accounting Officer

Ref:

Date:

(Name of the Transition Principal Officer) to be inserted

The Transition Principal Officer

..... County Government

P.O. BOX 49720

LETTER OF DESIGNATION ACCOUNTING OFFICER

1. In accordance with the powers conferred on Transition Authority by Section 18 of The County Governments Public Finance Management Transition Act, 2013, you are hereby designated Accounting Officer for County Government year 2012/2013 whose services are indicated below:-

Recurrent: Salaries and expenses of the (*name of county*) County Government, including general administration and planning,.

Development: Capital expenditure, including general administration and planning, The County Government.

- 2 (1) As an Accounting Officer you will be responsible to the Treasury to ensure that the resources of your County Government are used in a way that is:
- (a) lawful and authorized; and
 - (b) effective, efficient, economical and transparent.
- (2) In carrying out your responsibilities under subsection (1), you shall do the following in relation to your County Government:-
- (a) Ensure that no expenditure is made unless it is lawful, authorized, effective, efficient and economical;
 - (b) Ensure proper financial and accounting records are kept;
 - (c) Ensure that any financial or accounting records kept in electronic format are adequately protected which shall include ensuring that such records are adequately backed-up and adequately protected against computer viruses;
 - (d) Prepare and submit accounts for each financial year under the Constitution of Kenya 2010 for audit by Auditor-General;
 - (e) Ensure that adequate arrangements are made for the management of liabilities;
 - (f) Ensure that all applicable procedures are followed in the acquisition or disposal of property and that adequate arrangements are made for the custody, safeguarding and maintenance of property;
 - (g) Bring any concerns you have that a proposed decision or policy originating from your County may result in resources being used in a way that is unlawful, unauthorized,

ineffective, inefficient, uneconomical or not transparent to the attention of the County Executive Committee responsible for the County Treasury.

(h) Perform such other duties as may be directed by the County Treasury.

Further, in your responsibilities as the Accounting Officer, you should take into account the following:-

1. *As the Accounting Officer you will sign the Appropriation Accounts, and thereby making yourself responsible for its correctness. As the Accounting Officer, both County Assembly and The County Treasury will regard you as primarily responsible for the balance in the custody of your County Treasury or Accounting Unit, although you yourself may hold no part of it. It should be emphasized that the responsibility for the proper conduct of financial business cannot be delegated to a subordinate officer.*
2. *It will be seen that this letter stresses your personal responsibility as the Accounting Officer for the conduct of financial business. Your most obvious duty is to ensure that the public funds entrusted to your care are properly safeguarded. As an Accounting Officer you must comply with the financial provisions contained in various laws, regulations, financial instructions, accounting instructions and circulars issued by the County Executive Committee from time to time. In these as in other matters of a technical nature, you will naturally have the advice of appropriate officers. The precise arrangements to be made will depend upon the circumstances of Department, but they should invariably include, without regard to personal considerations, independent and effective checks of cash balances in the hands of any officer, and effective management of revenues and expenditures including proper administration of the monthly payroll applicable to your County.*
3. *It is your duty as the Accounting Officer to ensure that the funds entrusted to you are applied only to the purposes intended by Parliament. You must satisfy yourself, for instance, that any payment made by your County government are both within the ambit of the Vote and also covered by specific statutory authority where necessary; and that Parliamentary approval has been sought, by way of Supplementary Estimate or e.g. in connection with a service not contemplated when the original estimate was taken. It will be your responsibility to maintain an effective, efficient and transparent system of financial management and internal control. That this has been done is implicit in your signature on the Appropriation Accounts. As the Accounting Officer you must ensure proper management and control of commitments and expenditure within the quarterly limits and cash available as advised by the County Treasury in its instructions on the commitment and cash releases. It should be emphasized that goods and services are ordered/procured, or LPOs are issued only when there are sufficient balances in your quarterly expenditure within the commercially accepted time and as much as possible payments should be made immediately after delivery. It must be emphasized that there should be no build up of arrears (pending bills).*
4. *You will be responsible for stores and other Government assets acquired by your County Government for any losses arising. The control of stores is an aspect of management which is a matter for the County Government. You are therefore responsible for implementing all measures established to secure adequate stock control and accounting procedures covering the receipt, custody, issue and disposal of stores, etc., the verification of balances and the investigation of discrepancies. You should also ensure proper maintenance of all your assets including vehicles and other equipment. In deciding on the extent of verification and maintenance of stores, you will weigh the likely cost of detailed investigation of discrepancies against the benefits to be expected from it, e.g. in avoidance of future losses. It is desirable that the procedures should include safeguards against the suppression of receipt vouchers, and unauthorized alteration of quantities shown on vouchers.*

5. *Expenditure must not be incurred in excess of the total sum authorized by Parliament to be spent on any one Vote and neither should you, without the prior sanction of the County Assembly, incur expenditure on any sub-head or item, except those items in respect of which approval of reallocation has been given to you, of a Vote in excess of the amount specified in the Estimates, even though savings may be available elsewhere. You are also required to submit the necessary financial returns as called for by the Treasury in various circulars on timely basis. These will include monthly expenditure and revenue returns, outstanding commitments including imprest and any other periodical statements asked for.*
6. *You should ensure that imprests are issued only for official purposes and the amount issued should not be excessive and must be used for the intended purpose. In case of temporary imprest, it must be surrendered within 48 hours after the job is done and standing imprest must be surrendered at the end of each financial year. Imprest returns should be given to you monthly and any officer who fails to account for imprest in full the surrendered amount shall become a debt owed to the government by the officer and the debt shall attract interest at the prescribed rate of the regulations. The debt and interest shall be recovered from any salary or other amounts owed to the government officer in total. No new imprest should be issued until the previous imprest taken has been accounted for in full. In any case officers should be discouraged from taking imprest except only when it is necessary to do so.*
7. *Regulations, management and accounting of donor funds are clearly elaborated in chapter 9 of the current Government Financial Regulations and Procedures. As an Accounting Officer you must ensure that donor funds both as revenue and Appropriation-in-Aid (A.I.A) are captured in your records and properly accounted for and that direct payments and Statements of Expenditures/Financial Management Reports (SOEs/FMRs) to replenish Offshore/County Exchequer Special Accounts are properly verified and submitted on a timely basis to the Executive Committee for onward transmission to the donors. Expenditure under A. I.A items must be followed up with the donors and captured in your accounts within the financial year in which they relate. Before transferring any funds to any organization or authority within or outside the government you must obtain a written assurance from the organization/authority that an effective, efficient and transparent management and internal control systems are in place.*
8. *You are answerable to the County Assembly Public Accounts Committee for the formal regularity and propriety, in the sense described above, of all the expenditure out of the Vote for which you responsible. Similarly you are expected to ensure that adequate machinery exists for the due collection and bringing to account, whether as Appropriations in Aid or as Extra Exchequer Receipts, of all receipts of any kind connected with the Vote under your control.*
9. *If any questions are raised concerning the propriety of a particular payment, the County Assembly Public Accounts Committee may seek the view of the County Treasury; and they will normally wish to know whether the Treasury has been consulted. On all technical matters affecting the accounts, and on any matters touching the propriety and regularity of the transactions, Treasury Officers are available to be consulted. As Accounting officer you should, therefore, regard it as part of your responsibility to ensure that before your County Government enters into any transactions, the regularity of which may be called in question, the advice of the County Treasury, however, will not absolve you from your formal responsibility as Accounting Officer, and you should therefore also make sure that any issue of sufficient importance to call in question that responsibility should be brought to your personal attention, even though the advice of the Treasury may already have been obtained.*

10. *The above paragraphs set your duties as an Accounting Officer in regard to Accounting for the regularity for expenditure from your Vote and the avoidance of misappropriation, losses and wasteful expenditure in the strict sense, matters which are capable for formal definition. It should be emphasized that any dereliction of duty in this respect may lead to a recommendation by the Public Accounts Committee that expenditure already incurred should be disallowed. Should this happen, the doctrine of personal accountability means that you are liable to have to defray the expenditure from your own purse unless Parliament is agreeable at the request of Treasury to allow the expenditure.*
11. *As the Accounting Officer, if you commit an act of financial misconduct willfully or negligently and fail to discharge your responsibility described above you will be liable for surcharge for losses caused to the government including other disciplinary action being preferred against you which will include recommendation for demotion, retirement or dismissal from the Public Service. It is for this reason that, as will be seen in paragraph 15 of this letter, a recognized procedure has been developed to protect you, should you be overruled by your County Executive Committee Member Responsible For Finance or any other authority in a matter which may lay you open to a financial penalty.*
12. *As explained in paragraph 2 above, on technical matters you will naturally have the advice of appropriate officers. You should however note that it will be your responsibility to take effective and appropriate disciplinary steps against any official in the service of your County Government that contravenes or fails to comply with the financial regulations and Treasury instructions. These should include any other officer who commits an act which undermines the financial management and internal control systems of the County Government and/or permits an unauthorized, irregular, fruitless and wasteful expenditure.*
13. *The Auditor-General will not doubt bring to the notice of the County Assembly Public Accounts Committee any cases of apparent waste and extravagant administration; and the committee will expect you to satisfy them that the policy approved by the Parliament has been carried out with due regard to economy, and to furnish them with explanations of any examples to the contrary to which their attention has been drawn. In this regard when the affairs of your Vote are under discussion by the Public Accounts Committee you will be required to appear in person to answer their questions. County Assembly through its committee may raise matters of policy and draw your attention to the existence of wasteful expenditure whenever they occur and you as the Accounting Officer must be prepared to answer any queries raised by the Committee.*
14. *It may sometimes happen that you disagree with your County Executive Committee Member or any other authority upon a matter of importance affecting the financial administration of your County. In the first place, the County may seek to insist upon implementing policy in a manner which you regard as wasteful and extravagant. While it is, of course our duty as an Accounting Officer in the last resort to obey any instruction given to you by your Minister, it is none the less your duty to do everything in your power to see that the administration of the Department is carried on with efficiency and economy. You should, therefore not hesitate to represent your objection to any course of action which you regard as inconsistent with that duty, and to place on record disagreement with an decision which you may find difficulty in defending, as a measure of prudent administration before the County Assembly Public Accounts Committee.*
15. *Alternatively, the matter which is the subject of your protest may be one which involves your personal liability on a question of formal regularity or propriety. In that case you should set out your objection to the proposed expenditure, and your ground for it, in writing, and only make the payment upon written instruction from your County overruling the objection. Finally, after making such a payment you, should inform the Treasury of the circumstances and should communicate the papers to the Auditor-General. Provided that this procedure*

has been faithfully followed – but only on this condition – the County Assembly Public Accounts Committee will no doubt acquit you of any personal responsibility for the expenditure.

16. A further matter concerns the relationship between you and the County Treasury. Attention has been drawn to the role of the Treasury in advising upon technical matters of accounting, and on more general questions of regularity and propriety. It only remains to add, without prejudice to your personal responsibility as a Chief Officer to a Department for the efficient conduct of your own administration, that the County Treasury may often be able, by reason of its central co-ordinating position, to give helpful advice in the exercise of that responsibility in its widest aspects. It is indeed, an essential part of the present-day conception of Government organization that there should be the closest contact and co-operation at all levels. As the Accounting Officer, you are therefore encouraged, and should encourage your own subordinates, to make the fullest use of this right consultation.

Please acknowledge receipt of this letter, by sending to me formal acceptance in writing of your appointment as Accounting Officer with the responsibilities described herewith.

KINUTHIA WAMWANGI
CHAIRMAN TRANSITION AUTHORITY

CC: Mrs. Agnes N. Odhiambo
Controller of Budget
Bima House
NAIROBI

Mr. Edward R. O. Ouko
Auditor General
Kenya National Audit Office
P.O. BOX 30084
NAIROBI.

Mr Joseph Kinyua
Permanent Secretary Finance/Treasury
P.O BOX 30007
NAIROBI

Guidelines for Opening And Management of County Bank Accounts

The following guidelines are meant to guide the Transition Accounting Officers to open and operate the County Government bank accounts.

COUNTY BANK ACCOUNTS

In accordance with Section 9 (a) and (b) of the County Government Public Finance Management Transition Act 2013, the Transition County Treasuries shall authorize the opening and operating of the following county government bank accounts.

- A. County Revenue Fund (County Exchequer Bank Account at the Central Bank of Kenya)
- B. County Government Recurrent and Development Bank Account at the CBK
- C. County Revenue collection Account- clearance Account at a commercial bank to be identified by the Accounting Officer of the Transition County Treasury;
- D. County Government Standing Imprest Account at a commercial bank to be identified by the Accounting Officer of the Transition County Treasury

a) COUNTY REVENUE FUND (.....County Government Exchequer Account)

In accordance with Sections 9 (a) of the County Government Public Finance Management Transition Act 2013, the Transition Accounting Officer of the Transition County Treasury shall authorize the opening and operating of the County Revenue Fund (.....County Government Exchequer Account at the CBK) and will be the authorized officer

NOTE:

The CBK shall provide bank statements daily to all Transition Accounting Officers in an official county government email address (website) on daily basis for the purpose of cash management and bank reconciliation.

GUIDELINES FOR THE COUNTY REVENUE FUND

1. The County Revenue Fund (.....County Government Exchequer Account) shall receive county own revenue, shareable national government revenue, national government grants and transfer exchequer issues (Collection and transfer account)
2. The County Government Exchequer Account shall never be overdrawn at any time
3. The County Treasury shall initiate the requisition for grant of credit (authorization) by the Controller of Budget to withdraw funds from the County Revenue Fund. This requisition shall be signed by an authorized Transition County Accounting Officer. The requisition shall be in a standard form(FORM A-Sample)
4. Any withdrawal from this account shall require the authority of the Controller of Budget. The withdrawal shall be communicated to the Transition County Treasury in a standard form(FORM B-Sample)
5. Upon grant of credit by the Controller of Budget , the Transition County Treasury shall issue written instruction (Treasury Order) to the Central Bank of Kenya in a standard form (Form C-Sample) requesting the Central Bank to Release the funds as authorized by the Controller of Budget to the designated account.
6. The approval by the Controller of Budget together with the Transition County Treasury written instructions (County Treasury Order) shall be sufficient Authority for the Central Bank of Kenya to release the funds as approved to theCounty Government Operational Account
7. The Transition County Treasury written instructions (Transition County Treasury Order) shall bear at least two (2) authorized signatories. The two (2) authorized signatories shall be:
 - a) The Transition Accounting Officer or an authorized officer designated by him / her; and
 - b) The Transition County Treasury Head of Accounting function

WITHDRAWAL INSTRUCTIONS

- Form A- Requisition form by the Transition Accounting Officer with a list of beneficiary departments at the back
- Form B- Approval by the Controller of Budget with a list of beneficiary departments at the back
- Form C – County Treasury Order for Issue of Exchequer to Central Bank
- Form D- Transition County Treasury written instructions (Transition County Treasury Order) detailing exchequer issues to the spending units.

NOTE 2

1. Any person designated by Controller of Budget shall be introduced by her to the Central Bank of Kenya
2. The Central Bank of Kenya requires an exhibit of the physical signed authorization form (Form B) and Transition County Written Instructions (Form C) to effect any withdrawal from the County Government Exchequer Account and transfer the same to theCounty Government Operational Account at the Central Bank of Kenya).
3. The Central Bank of Kenya shall accept the approval of Controller of Budget or a person designated and authorized by her accompanied by the Transition County Treasury written instruction (Transition County Treasury Order) in a scanned form subject to certification by Controller of Budget or a person designated by her in any branch of the Central Bank of Kenya.
4. The Transition County Treasury Accounting Officer shall deliver original approval documents (Form B and C) through the Controller of Budget for onward transmission to the nearest Central Bank of Kenya branch.
5. When the original approvals are delivered to any Central Bank of Kenya branch, the approval documents shall be deemed to have been properly delivered to the Central Bank of Kenya.
6. The Transition Treasury Accounting Officer shall issue an exchequer notification to the spending unit. The notification shall be released after confirmation by the Transition Treasury Accounting Officer that crediting of the respective CBK operational Bank Account has occurred.
7. County Government Operational Account at the Central Bank of Kenya shall require G-Pay system to be installed in all the Transition County Treasuries by the CBK.

b). COUNTY GOVERNMENT CBK OPERATIONAL BANK ACCOUNT

In accordance with Sections 9 (b) of the County Government Public Finance Management Transition Act 2013, the Transition Accounting Officer shall authorize the opening and operation of theCounty Government Operations Bank Account at the Central Bank of Kenya.

Procedure for operation of the (.....) County Government Operation Bank Accounts

- 1) The accounting officer shall designate authorized officers to operate this account.
- 2) The accounting officer of the treasury may authorize approval limits to the County Transition Officers on all the spending units.
- 3) At least two (2) officers shall be the authorized signatories for purposes of operating this account

4) The accounting officer may withdraw the signatory of any officer authorized so long as there is good reason for that decision.

5) The operational county account shall never be overdrawn at any time.

C) County Government Operations Bank Account- Standing Imprest

1. This account shall be expected to cater for small value transaction office running expenses.
2. In accordance with Sections 9 (b) of the County Government Public Finance Management Transition Act 2013, the Transition Accounting Officer shall authorize the opening and operation of theCounty Government Operations Bank Account at a Commercial Bank which is credible, with wide network and government has interest in.
2. All Transition County Treasuries which are served by Central Bank of Kenya shall operate their Petty Bank/ Imprest Bank account at the Central Bank of Kenya.
3. Any amount withdrawn from the commercial bank shall be debited (received into) in the spending unit main cash book.
4. The Head of Accounting Function shall authorize in the IFMIS system or a designate officer to account for the entire cash withdrawn from the Petty Cash / Imprest Bank Account - IFMIS cash module
5. The commercial bank account shall not be withdrawn.
6. Any cash withdrawal from this account shall be in the name of the County Accounting Officer and will be accounted for in the normal manner.
7. The Transition County Treasury shall set limits of office cash float. Any withdrawal beyond the set limit shall be approved by the Transition County Treasury in writing

d) COUNTY GOVERNMENT REVENUE COLLECTION ACCOUNT

4. In accordance with Sections 9 (b) of the County Government Public Finance Management Transition Act 2013, the Transition Accounting Officer shall authorize the opening and operation of theCounty Government Operations Bank Account at a Commercial Bank which is credible, with wide network and government has interest in. This account shall be a sweeping (Clearance) account and transfer from this account shall be to the designated CBKCounty Revenue Fund (County Exchequer Account).
5. This account shall be operated by a minimum of two signatories of which shall be:-
 - d. The county accounting officer
 - e. The head of accounting unit
6. Each county treasury shall give standing instructions for transfer of revenue at least once a week on the first working day of the week

NB. In all of the above accounts proper records shall be maintained and regularly reconciled to the bank balances

KINUTHIA WAMWANGI
HAIRMAN TRANSITION AUTHORITY

Annex 7.2: Classification of Urban Areas and Cities Based On Resident Population

	Urban Centre	County	District	Current Status	Core-urban & Peri-urban Population	Future Status
1	NAIROBI	Nairobi	Nairobi Districts	City	3,133,518	City
2	MOMBASA	Mombasa	Mombasa/Kilindini	City	938,131	City
3	KISUMU	Kisumu	Kisumu East/West/Nyando	City	409,928	City
4	NAKURU	Nakuru	Nakuru/Nakuru North	Municipality	307,990	Municipality
5	ELDOROT	Uasin Gichu	Eldoret East/West/Wareng	Municipality	289,380	Municipality
6	RUIRU	Kiambu	Ruiru	Municipality	238,858	Township
7	KIKUYU	Kiambu	Kikuyu	TownCouncil	233,231	Township
8	KANGUNDO- TALA	Machakos	Kangundo	TownCouncil	218,557	Township
9	MALINDI	Kilifi	Malindi/Kilifi	Municipality	207,253	Township
10	NAIVASHA	Nakuru	Naivasha	Municipality	181,966	Township
11	KITUI	Kitui	Kitui	Municipality	155,896	Township
12	MACHAKOS	Machakos	Machakos	Municipality	150,041	Township
13	THIKA	Kiambu	Thika West/Gatanga	Municipality	139,853	Township
14	MAVOKO	Machakos	MACHAKOS	Municipality	139,380	Township
15	KARURI	Kiambu	Kiambu East	TownCouncil	129,934	Township
16	NYERI	Nyeri	Nyeri North/South	Municipality	125,357	Township
17	KILIFI	Kilifi	Kilifi	TownCouncil	122,899	Township
18	GARISSA	Garissa	Garissa/TanaRiver	TownCouncil	119,696	Township
19	VIHIGA	Vihiga	Vihiga	Municipality	118,696	Township
20	MUMIAS	Kakamega	Mumias	Municipality	116,358	Township
21	BOMET	Bomet	Bomet/Sotik	Municipality	110,963	Township
22	MOLO	Nakuru	Molo	TownCouncil	107,806	Township
23	NGONG	Kajiado	Kajiado North	Unclassified	107,188	Township
24	KITALE	Trans Nzoia	Trans Nzoia West	Municipality	106,187	Township
25	LITEIN	Bomet	Buret	TownCouncil	104,600	Township
26	LIMURU	Kiambu	Kiambu West	Municipality	104,282	Township
27	KERICHO	Kericho	Kericho/Kipkelion	Municipality	103,911	Township
28	KIMILILI	Bungoma	Bungoma North	Municipality	94,927	Township
29	AWASI	Kisumu	Nyando/Kisumu East	Unclassified	93,369	Township
30	KAKAMEGA	Kakamega	Kakamega Central	Municipality	91,768	Township
31	KAPSABET	Nandi	Nandi Central	Municipality	91,030	Township
32	MARIAKANI	Kilifi	Kaloleni/Kinango	TownCouncil	89,321	Township
33	KIAMBU	Kiambu	Kiambu East	Municipality	88,869	Township
34	MANDERA	Mandera	Mandera East	TownCouncil	87,692	Township
35	NYAMIRA	Nyamira	Nyamira	TownCouncil	84,239	Township
36	MWINGI	Kitui	Mwingi	TownCouncil	83,803	Township
37	KISII	Kisii	Kisii Central/KisiiSouth	Municipality	83,460	Township
38	WAJIR	Wajir	Wajir East	Unclassified	82,800	Township
39	RONGO	Migori	Rongo	TownCouncil	82,066	Township
40	BUNGOMA	Bungoma	Bungoma South	Municipality	81,151	Township
41	AHERO	Kisumu	Nyando/KisumuEast	TownCouncil	76,828	Township
42	NANDIHILLS	Nandi	Nandi Central/East	TownCouncil	73,626	Township
43	MAKUYU	Muranga	Muranga South	TownCouncil	71,913	Township
44	KAPENGURIA	West Pokot	West Pokot	TownCouncil	71,477	Township
45	TAVETA	TaitaTaveta	Taveta	TownCouncil	67,505	Township
46	NAROK	Narok	Narok North	TownCouncil	67,505	Township
47	OLKALOU	Nyandarua	Nyandarua North	TownCouncil	66,015	Township
48	KAKUMA	Turkana	Turkana North	Unclassified	65,814	Township
49	WEBUYE	Bungoma	Bungoma East/Lugari	Municipality	65,280	Township
50	MALABA	Busia	Teso North/South	TownCouncil	63,324	Township
51	MBITAPOINT	Homa Bay	Suba	TownCouncil	62,974	Township
52	UKUNDA	Kwale	Msambweni	Unclassified	62,529	Township
53	WUNDANYI	TaitaTaveta	Taita	Unclassified	62,404	Township
54	BUSIA	Busia	Busia/Teso South	Municipality	61,715	Township
55	RUNYENJES	Embu	Embu	Municipality	61,604	Township
56	MIGORI	Migori	Migori	Municipality	61,049	Township
57	MALAVA	Kakamega	Kakamega North	TownCouncil	60,831	Township
58	SUNEKA	Kisii	Kisii South	TownCouncil	60,730	Township
59	EMBU	Embu	Embu	Municipality	60,673	Township

	Urban Centre	County	District	Current Status	Core-urban & Peri-urban Population	Future Status
60	Ogembo	Kisii	Gucha	TownCouncil	60,289	Township
61	HOMABAY	Homa Bay	HomaBay	Municipality	59,844	Township
62	LODWAR	Turkana	Turkana Central	Municipality	58,218	Township
63	KITENGELA	Kajiado	Kajiado North	Unclassified	58,167	Township
64	UKWALA	Siaya	Siaya	TownCouncil	57,081	Township
65	KEROKA	Kisii	Kisii Central/Masaba	TownCouncil	54,655	Township
66	MERU	Meru	Imenti North	Municipality	53,627	Township
67	MATUU	Machakos	Yatta	TownCouncil	53,144	Township
68	OYUGIS	Homa Bay	Rachuonyo	TownCouncil	52,354	Township
69	NYAHURURU	Laikipia	Laikipia West	Municipality	51,434	Township
70	KIPKELION	Kericho	Kipkelion	TownCouncil	49,939	Township
71	LUANDA	Kakamega	Emuhaya	TownCouncil	49,346	Township
72	NANYUKI	Laikipia	Laikipia East	Municipality	49,233	Township
73	MAUA	Meru	Igembe	Municipality	49,012	Township
74	MTWAPA	Kilifi	Kilifi	Unclassified	48,625	Township
75	ISIOLO	Isiolo	Isiolo/Imenti North	Unclassified	46,128	Township
76	ELDAMARAVINE	Baringo	Koibatek	TownCouncil	45,799	Township
77	VOI	TaitaTaveta	Taita	Municipality	45,483	Township
78	SIAYA	Siaya	Siaya	Municipality	45,353	Township
79	NYANSIONGO	Nyamira	Borabu	TownCouncil	45,313	Township
80	LONDIANI	Kericho	Kipkelion	TownCouncil	44,953	Township
81	ITEN/TAMBACH	Elgeyo Maraket	Keiyo	TownCouncil	44,448	Township
82	CHUKA	Tharaka Nithi	Meru South	Municipality	43,470	Township
83	MALAKISI	Bungoma	Bungoma South	TownCouncil	41,784	Township
84	JUJA	Kiambu	Thika West	Unclassified	40,446	Township
85	ONGATARONGAI	Kajiado	Kajiado North	Unclassified	40,178	Township
86	BONDO	Siaya	Bondo	TownCouncil	39,224	Township
87	MOYALE	Masabit	Moyale	Unclassified	37,387	Township
88	MARALAL	Samburu	Samburu Central	TownCouncil	35,472	Township
89	GILGIL	Nakuru	Naivasha	Unclassified	35,293	Township
90	NAMBALE	Busia	Busia/Teso South	TownCouncil	34,735	Township
91	TABAKA	Kisii	Gucha South	TownCouncil	34,724	Township
92	MUHORONI	Kisumu	Nyando/Kisumu East	TownCouncil	34,457	Township
93	KERUGOYA/ KUTUS	Kirinyaga	Kirinyaga	Municipality	34,014	Township
94	UGUNJA	Siaya	Siaya	TownCouncil	33,878	Township
95	YALA	Siaya	Siaya	TownCouncil	33,646	Township
96	RUMURUTI	Laikipia	Laikipia West	TownCouncil	32,993	Township
97	BURNTFOREST	Uasin Gichu	Eldoret East/Wareng	TownCouncil	32,649	Township
98	MARAGUA	Muranga	Muranga South	TownCouncil	32,315	Township
99	KENDUBAY	Homa Bay	Rachuonyo	TownCouncil	31,699	Township
100	CHOGORIA	Tharaka Nithi	Maara	TownCouncil	31,623	Township
101	RHAMU	Mandera	Mandera Central	Unclassified	31,051	Township
102	KEHANCHI	Migori	KuriaEast/West	Municipality	30,109	Township
103	MURANGA	Muranga	Muranga North	Municipality	28,775	Township
104	KWALE	Kwale	Kwale	TownCouncil	28,252	Township
105	KABARNET	Baringo	Baringo Central	Municipality	27,278	Township
106	SAGANA	Kirinyaga	Kirinyaga	TownCouncil	27,147	Township
107	MTITOANDEI	Makueni	Kibwezi	TownCouncil	25,919	Township
108	WANGURU	Kirinyaga	Kirinyaga	Unclassified	24,932	Township
109	ELWAK	Mandera	Mandera Central	Unclassified	24,368	Township
110	NJORO	Nakuru	Molo	Unclassified	23,551	Township
111	MOI'S BRIDGE	Kakamega/Uasin Gichu	Lugari/Eldoret West	Unclassified	22,165	Township
112	LOKICHOGIO	Turkana	Turkana North	Unclassified	22,156	Township
113	SOTIK	Bomet	Sotik	TownCouncil	21,997	Township
114	PORTVICTORIA	Busia	Bunyala	TownCouncil	21,701	Township
115	TAKABA	Mandera	Mandera West	Unclassified	21,474	Township
116	AWENDO	Homa Bay	HomaBay/Rongo	Unclassified	20,887	Township
117	LAMU	Lamu	Lamu	Unclassified	19,465	Township
118	CHWELE	Bungoma	Bungoma West	Unclassified	19,163	Township
119	OTHAYA	Nyeri	Nyeri South	TownCouncil	18,943	Township

	Urban Centre	County	District	Current Status	Core-urban & Peri-urban Population	Future Status
120	KAJIADO	Kajiado	Kajiado Central	TownCouncil	18,281	Township
121	KISERIAN	Kajiado	Kajiado North	Unclassified	18,096	Township
122	HOLA	Tana River	TanaRiver	Unclassified	17,337	Township
123	USENGE	Busia	Bondo	Unclassified	15,935	Township
124	MADOGO	Tana River	TanaRiver	Unclassified	15,824	Township
125	MARSABIT	Marsabit	Marsabit	Unclassified	14,907	Township
126	MASALANI	Garissa	Ijara	Unclassified	14,012	Township
127	BUTERE	Kakamega	Butere	Unclassified	12,780	Township
128	MSAMBWENI	Kwale	Msambweni	Unclassified	11,985	Township
129	KIMININI	Transzoia	TransNzoia West	Unclassified	11,659	Township
130	MAIMAHIU	Nakuru	Naivasha	Unclassified	11,230	Township
131	LOITOKTOK	Kajiado	Loitokitok	Unclassified	11,064	Township
132	LUMAKANDA	Kakamega	Lugari	Unclassified	10,580	Township
133	MATUNDA	Kakamega/Uasin Gichu	EldoretWest/Lugari	Unclassified	10,031	Township
134	WATAMU	Kilifi	Malindi	Unclassified	10,030	Township
135	GITHUNGURI	Kiambu	Githunguri	Unclassified	10,007	Township
136	WOTE	Makueni	Makueni	TownCouncil	9,875	Unclassified
137	KILGORIS	Narok	Trans Mara	Unclassified	9,865	Unclassified
138	MAIRO-INYA	Nyandarua	Nyandarua North	Unclassified	9,858	Unclassified
139	WAMBA	Samburu	Samburu East	Unclassified	9,622	Unclassified
140	NAMANGA	Kajiado	Kajiado Central	Unclassified	9,066	Unclassified
141	SORI	Migori	Migori	Unclassified	8,964	Unclassified
142	MAKINDU	Makueni	Kibwezi	Unclassified	8,883	Unclassified
143	ISINYA	Kajiado	Kajiado North	Unclassified	8,670	Unclassified
144	HABASWEIN	Wajir	Wajir South/West	Unclassified	8,500	Unclassified
145	KARATINA	Nyeri	Nyeri North	Municipality	8,499	Unclassified
146	TIMAU	Meru	Imenti North	Unclassified	8,333	Unclassified
147	BARAGOI	Samburu	Samburu North	Unclassified	7,992	Unclassified
148	KINANGO	Kwale	Kinango	Unclassified	7,958	Unclassified
149	CHEMELILI	Kisumu	Nyando/Kisumu East	Unclassified	7,888	Unclassified
150	MAJENGO	Kilifi	Kilifi	Unclassified	7,788	Unclassified
151	NKUBU	Meru	Imenti South	Unclassified	7,551	Unclassified
152	SUBUKIA	Nakuru	Nakuru North	Unclassified	7,309	Unclassified
153	MARIGAT	Baringo	Baringo	Unclassified	7,160	Unclassified
154	EMALI	Makueni	Nzaui	Unclassified	7,024	Unclassified
155	MAZERAS	Kilifi	Kaloleni	Unclassified	6,886	Unclassified
156	SULTANHAMUD	Makueni/Kajiado	Nzaui/Kajiado Central	Unclassified	6,636	Unclassified
157	MERTI	Isiolo	Isiolo	Unclassified	6,532	Unclassified
158	KALOLENI	Kilifi	Kaloleni	Unclassified	6,438	Unclassified
159	SINDO	Migori	Suba	Unclassified	6,362	Unclassified
160	ARCHERSPOST	Samburu	Samburu East	Unclassified	6,275	Unclassified
161	MUHURU BAY	Migori	Migori	Unclassified	6,254	Unclassified
162	KAPSOKWONY	Bungoma	Mt.Elgon	Unclassified	6,152	Unclassified
163	MAGARINI	Kilifi	Malindi	Unclassified	6,051	Unclassified
164	NJABINI	Nyandarua	Nyandarua South	Unclassified	6,042	Unclassified
165	MARERENI	Kilifi	Malindi	Unclassified	5,949	Unclassified
166	NAIRAGIEENKARE	Narok	Narok North	Unclassified	5,907	Unclassified
167	KIBWEZI	Makueni	Kibwezi	Unclassified	5,871	Unclassified
168	NAROMORU	Nyeri	NyeriNorth/Laikipia East	Unclassified	5,805	Unclassified
169	DAADAB	TaitaTaveta	Lagdera	Unclassified	5,723	Unclassified
170	MWATATE	Taita Taveta	Taita	Unclassified	5,573	Unclassified
171	GATUNDU	Kiambu	Gatundu	Unclassified	5,550	Unclassified
172	BISSIL	Kajiado	Kajiado Central	Unclassified	5,376	Unclassified
173	DUNDORI	Nakuru	Nakuru North	Unclassified	5,221	Unclassified
174	LOIYANGALANI	Masabit	Laisamis	Unclassified	5,117	Unclassified
175	SOLOLO	Isiolo	Moyale	Unclassified	5,104	Unclassified
176	MASENO	Siaya	Kisumu West	Unclassified	5,103	Unclassified
177	KINNA	Isiolo	Garbatulla	Unclassified	4,867	Unclassified
178	SALGAA	Nakuru	Nakuru	Unclassified	4,740	Unclassified
179	LARE	Meru	Igembe	Unclassified	4,614	Unclassified

					Core-urban	
	Urban Centre	County	District	Current	& Peri-urban	Future
				Status	Population	Status
180	KAPSOWAR	Elgeyo Maraket	Marakwet	Unclassified	4,492	Unclassified
181	MAUNAROK	Nakuru	Molo	Unclassified	4,357	Unclassified
182	MAJIMAZURI	Baringo	Koibatek	Unclassified	4,265	Unclassified
183	KABUTI	Kericho	Kericho	Unclassified	4,237	Unclassified
184	CHEPTAIS	Bungoma	Mt. Elgon	Unclassified	3,899	Unclassified
185	BAHATI	Nakuru	Nakuru North	Unclassified	3,833	Unclassified
186	GARBATULA	Isiolo	Garbatulla	Unclassified	3,774	Unclassified
187	KIRIA-INI	Muranga	Muranga North	Unclassified	3,711	Unclassified
188	MOGOTIO	Baringo	Koibatek	Unclassified	3,701	Unclassified
189	LUNGALUNGA	Kwale	Msambweni	Unclassified	3,670	Unclassified
190	MWEIGA	Nyeri	Nyeri North	Unclassified	3,583	Unclassified
191	BUMALA	Busia	Busia	Unclassified	3,504	Unclassified
192	KAGUMO	Kirinyaga	Kirinyaga	Unclassified	3,449	Unclassified
193	JUAKALI	Uasin Gichu	Eldoret West	Unclassified	3,427	Unclassified
194	MITUNGUU	Meru	Imenti South	Unclassified	3,402	Unclassified
195	KATHIANI	Machakos	Machakos	Unclassified	3,365	Unclassified
196	KAGIO	Kirinyaga	Kirinyaga	Unclassified	3,357	Unclassified
197	KAPCHEROP	Elgeyo Maraket	Marakwet	Unclassified	3,168	Unclassified
198	TIMBOROA	Baringo	Koibatek	Unclassified	3,150	Unclassified
199	KABATI	Muranga	Muranga	Unclassified	3,128	Unclassified
200	ENDARASHA	Nyeri	Nyeri North	Unclassified	3,049	Unclassified
201	GARSEN	Tana River	Tana Delta	Unclassified	2,904	Unclassified
202	TURBO	Uasin Gichu	Eldoret West	Unclassified	2,831	Unclassified
203	KANGARI	Muranga	Muranga South	Unclassified	2,810	Unclassified
204	TONGAREN	Bungoma	Bungoma North	Unclassified	2,793	Unclassified
205	SIKAKO	Embu	Mbeere	Unclassified	2,694	Unclassified
206	LORGORIAN	Narok	Trans Mara	Unclassified	2,689	Unclassified
207	LAISAMIS	Marsabit	Laisamis	Unclassified	2,643	Unclassified
208	MOGONGA	Kisii	Gucha	Unclassified	2,545	Unclassified
209	NDORI	Siaya	Rarieda	Unclassified	2,522	Unclassified
210	MACHINERY	Makueni	Kibwezi	Unclassified	2,505	Unclassified
211	MASII	Machakos	Mwala	Unclassified	2,501	Unclassified
212	KINAMBA	Laikipia	Laikipia West	Unclassified	2,319	Unclassified
213	RONGAI	Nakuru	Nakuru	Unclassified	2,215	Unclassified
214	OLENGURUONE	Nakuru	Molo	Unclassified	2,119	Unclassified
215	ENGINEER	Nyandarua	Nyandarua South	Unclassified	2,033	Unclassified

Annex 7.3: Advisory on Assessment and Classification of Urban Areas and Cities



TRANSITION AUTHORITY

ADVISORY ON ASSESSMENT AND CLASSIFICATION OF URBAN AREAS AND CITIES - CALLING FOR PUBLIC PARTICIPATION

The Transition Authority is established under Section 4 of the Transition to Devolved Government Act 2012 with the broad mandate of facilitating and coordinating the transition to devolved system of government.

Prior to the coming into effect of the Constitution of Kenya 2010, cities and urban areas were managed under the Local Authority Act, Cap 265. Upon promulgation of the Constitution of Kenya 2010 and pursuant to the provisions of Article 184, the management of urban areas and cities moved from the Local Government to County Governments through the enactment of the Urban Areas and Cities Act, 2011.

The Urban Areas and Cities Act, 2011 outlines the procedure for the conferment of a city, municipality or town status. Section 5(1), 9(3) and 10(2) of that Act outline the criteria for classification of a city, municipality and town, respectively. Section 5(2) provided for conferment of the status of special purpose city to an urban area that has significant cultural, economic or political importance.

Under Section 54, the Act provides that, during the transition period assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under the Act, and shall be classified accordingly. Under section 7 of the Transition to Devolved Governments Act 2012, the Transition Authority is mandated to inter-alia "facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the Constitution". This means that during the transition period it is the Transition Authority's responsibility to undertake the assessment and classification of urban areas and cities.

The Transition Authority has noted that some county governments have advertised and publicized the vacancies for Municipal Managers and Town Administrators while others have appointed Interim Municipal Managers and Town Administrators before their urban areas have been assessed and classified as required by the law. Except for Nairobi, Mombasa and Kisumu which were declared cities by the Act, all other urban areas have to be classified in accordance with the criteria laid down by the law.

It should be noted that among the key classification requirements under sections 5(1), 9(3) and 10(2) of the Urban Areas and Cities Act (2011) is the existence of an urban area or city integrated development plan in accordance with the Act. It is the responsibility of the county governments to prepare the integrated development for the urban areas under their jurisdiction.

Assessment of Urban Areas

While awaiting the preparation of integrated development plans by county government, the Transition Authority constituted a Technical Team with membership drawn from the ministries of Devolution and Planning, Lands, Housing and Urban Development, the Kenya Law Reform Commission, the Kenya Municipal Programme (KMP) formerly in Ministry of Local Government and the Urban Habitat to assess urban areas on the basis of the criteria set out in the Urban Areas and Cities Act of 2011. The Technical Team was tasked to make recommendations based on the assessment. The findings by the technical team are summarized below.

i) Resident Population Thresholds

The Act requires that for conferment of city status there should be at least five hundred thousand residents according to the final gazetted results of the last population census, at least two hundred and fifty thousand residents for a municipality and at least ten thousand residents for a town. In 2009 the National Bureau of Statistics undertook census for 215 urban areas. Based only on the resident population, the assessment revealed that, Kenya would have three cities (Nairobi, Mombasa and Kisumu), only two municipalities (Nakuru and Eldoret), 110 townships and 80 unclassified urban areas. The detailed results are provided under Annex 1 or can be accessed on the TA website: <http://www.transitionauthority.go.ke>

It should be noted that 38 former municipal councils would be downgraded to townships, 36 formerly unclassified urban areas would qualify for classification as townships while one former municipal council (Karatina) and one town council (Wote) would be declassified. It should also be noted that whereas cities and municipalities will be body corporate the management of towns will not be.

ii) Existence of Integrated Urban Area or City Development Plans

As noted above, any assessment of urban areas and cities and their classification will not be completed until county governments prepare the required plans.

iii) Demonstrable Ability to Generate Revenue to Sustain Operations

Sections 51(K) and 9(3)(b) of the Act require that an urban area have demonstrable capacity to generate sufficient revenue to sustain its operations to qualify for classification into a city and municipality respectively. Section 10(2)(b) requires an urban area to have demonstrable economic, functional and financial viability to qualify for classification as a town. Analysis of revenue sources for former City Council of Nairobi, former municipal and town councils by the Technical Team revealed that, in the last three financial years, they were heavily dependent on the Central government. The revenue collection for the financial year 2011/2012 is in Annex 2 which can also be accessed on TA website: <http://www.transitionauthority.go.ke>

This means that the criterion is currently not attainable by any of the existing urban areas. However, the technical team also noted that, even in other jurisdictions/countries the national government supports the urban areas and cities in terms of financing some of their operations. Indeed, this criterion tends to contradict section 43 of the Act which provides that among others, funds of a board shall consist of monies allocated by a county assembly for the purposes of the management and service delivery of the city or municipal board.

iv) Demonstrable Revenue Collection or Revenue Collection Potential

As reported pointed out above, analysis of past revenue sources revealed that all urban areas and the current three cities received a large amount of their revenue from the central government (now national government) ranging from 16% for Mavoko to 87% for Nyamache during the 2011/2012 financial year. It is a well known fact that there were massive leakages in the revenue collection by the defunct local authorities and that there is high potential to collect more revenue. However, until a detailed assessment is undertaken it is difficult to determine the exact potential.

The Authority will facilitate the analysis of revenue collection potential for the urban areas across the country.

v) Demonstrable Economic, Functional and Financial Viability

Among the criteria for qualification for classification as a town is that an urban area must have a demonstrable economic, functional and financial viability (Section 10(2)(b)). Again this is an area which requires detailed assessment especially for urban areas which were formerly not town councils but currently have a resident population which qualify them for conferment of the status of towns.

vi) Ability to Provide Services

In classifying an area as a city, municipality or town, the law requires that regard shall be given to the ability to provide the services listed in the First Schedule to the Act. Analysis of data and information collected by the Authority revealed that no urban area or city has the capacity to effectively and efficiently deliver all the required essential services. However, the Technical Team observed that some of the required services are not entirely necessary. For instance, it is not necessary to have an airport and airstrip or municipal stadium and a stadium. Equally, it is not possible for every future city or municipality to have a marine water front.

vii) Infrastructural Facilities, Including but Not Limited to Roads, Street Lighting, Markets, Fire Stations, and an Adequate Capacity for Disaster Management

The Team noted that all these facilities and services are among the ones listed in the First Schedule to the Act and therefore, it was not necessary to have them as specific criteria.

viii) Institutionalized Active Participation by Residents in the Management of Affairs of the urban area

Until the promulgation of the Constitution of Kenya 2010, public participation in the management of public affairs was not an explicit requirement. In addition to the new constitution, Section 12(d) of the Urban Areas and Cities Act (2011) on principles of governance and management of urban areas requires them to institutionalize active participation by their residents in the management of the urban area and city affairs. Being a legal requirement it should not have been made a criterion for the classification process.

ix) Sufficient Space for Expansion

The technical team observed that the criterion of having sufficient space for expansion should not be a key criterion because urban areas can expand irrespective of their current space status and therefore it should not be used as a classification criterion.

OVERALL OBSERVATIONS

The Technical Team concluded that, the classification of urban areas and cities as required by the relevant piece of legislation (UACA 2011) is not achievable under the prevailing circumstances. None of the urban areas meet all the criteria for classification. Additionally, the county governments have not completed the preparation of their urban areas and city integrated development plans as required by the Act and also the urban areas do not have the ability to provide the services listed in the First Schedule to the Act.

It would appear that the criteria for classification of urban areas and cities as contained in the Act was crafted without consultations of the technocrats and professionals in the areas of urban policy and urban settlement who would have given professional advice. Furthermore, the resident population threshold provided for in the Act is considerably higher than the one recommended by the Task Force on Devolved Government (TFDG) which was 250,000 and above for cities, 75,000 - 249,999 for municipalities and 10,000 - 74,999 for townships.

Moreover, although they will play important political and economic role the Act does not provide for classification of county headquarters. Based on the recommendations of the TFDG resident population threshold, Kenya would have five cities, 36 municipalities and 93 townships as listed in Annex 3 which can also be accessed on TA website <http://www.transitionauthority.go.ke>

RECOMMENDATIONS

- 1) The Technical Team was of the view that the law should be reviewed to reduce the resident population thresholds, provide more realistic services in the First Schedule and take into account further decentralized urban units in order to give a hierarchical chain of urban development in the future.
- 2) As in the case of section 5(2) which allows for an area to be conferred with the status of special purpose city, that section should be replicated under section 9 and 10 with reference to municipalities and towns respectively to take into account special purpose towns arising from special cultural events which were not considered in the Act.
- 3) Both the national and county governments should set aside funds to support the urban areas and cities because these units are unlikely to develop capacity to generate sufficient revenue to sustain their operations in the near future.

INVITATION FOR PUBLIC PARTICIPATION

In line with the constitutional provisions on governance and decision-making processes, the Transition Authority wishes to encourage all stakeholders to participate actively in the debate over the classification of urban areas and cities. You may send your comments to info@transitionauthority.go.ke over the next seven (7) working days.

County Governments are advised to desist from appointing municipal boards and town committees or appointing Municipal Managers and Town Administrators without following the due process of the law. Currently, unless the Urban Areas and Cities Act (2011) is amended as suggested above, Counties have no legal basis for constituting management structures and systems for their unclassified urban areas.

XINUTHIA YAMWANGI
CHAIRMAN

Annex 9.1: Legal Advisories

The Authority in exercise of its functions issued advisories to County governments in respect of:-

1. Advisory on the impeachment of Governors
2. The Speaker's rules
3. Guidelines on the assumption of office of the county governor
4. Procedure for election of county speakers
5. Advisory on the county revenue raising legislation
6. Advisory on the winding up of the poverty eradication commission
7. Advisory on the stalemate of Wajir County-the internal wrangles
8. Advisory on the roles of the first ladies in the counties
9. Advisory on the moratorium of assets
10. Guidelines on the transition of county staff
11. Advisory on the impeachment of the Deputy Governor Machakos County
12. Advisory on ward development of funds
13. Advisory on the removal of the members of county public service boards and the chairperson
14. Advisory on the various roles and responsibilities of various offices in the county public service
15. Advisory on the board matters in the counties, and the roles of county assemblies in the establishment of county executive offices
16. Regulations for closure of public records
17. Regulations for the sharing of assets and liabilities

Annex 9.2: Legal and Gazette Notices

During the term of the Transition Authority, various gazette and legal notices in fulfilment of the Authority's functions under the Transition to Devolved Governments Act, 2012 were issued. These are:

1. Legal Notice No.16 of 2013, The Transition to Devolved Government Act, 2012, Transfer of Functions
 - Transferred the first thirteen (13) functions to the County Governments.
2. Legal Notice No. 45 of 2013, The Transition to Devolved Government (Transfer of Assets and Liabilities) Regulations, 2013
3. Legal Notice 47 of 2013, The Transition To Devolved Government (Assumption Of Office Of County Governor) Regulations, 2013
4. Legal Notice No. 137 – 183 of 2013, The Transition to Devolved Government Act, 2012, Transfer of Functions
 - Transfer of the functions specified in the various Schedule to the 47 county governments, with effect from the 9th August, 2013 under the proviso that the responsibility for the personnel emoluments related to the discharge of the devolved functions shall be managed by the national government for a period not exceeding six months or as shall be agreed upon between the two levels of government, whichever comes first.
5. Legal Notice No. 33 of 2014, The Transition to Devolved Government Act, 2012, Transfer of Functions
 - Transfer of the Agricultural Training Centres and Agricultural Mechanization Stations
6. Gazette Notice No. 825 of 2014, The Transition to Devolved Government Act, 2012, Guidelines for Transition of Staff to Counties
7. Legal Notice No. 4 of 2016, The Transition to Devolved Government Act, 2012, Transfer of Functions
 - Transfer of the Roads to the thirty nine (39) county governments that filed an appeal with the Senate as per the court order in High Court Petition No. 472 of 2014 and transfer of the libraries.

Annex 9.3: Transition Authority Litigation Case Matrix

TA REFERENCE	NAME OF CASE	BACKGROUND OF THE CASE	CURRENT STATUS
TA/6/12/8B	Franklin Makola Vs. TA & 4 Others Machakos HC Petition No. 5 of 2013	This was a Constitutional Petition filed by one of the contestants for the position of the Speaker of Machakos County Assembly challenging the manner in which the election was conducted.	TA was represented in this matter by the firm of J.A Makau. The case was dismissed on 24 th June 2013 with costs awarded to TA. FILE CLOSED.
TA/6/12/20B	James G. Gitonga Vs. T.A & Another Nakuru ELC Case No. 428 of 2013	The Plaintiff herein alleges that the transfer of a residential plot to the 1 st defendant by Naivasha Municipal was erroneous and should be nullified as the property was legally in his name.	TA is being represented in Court by Garane and Associates No further documents served on TA by the parties.
TA/6/12/15B	R Vs. TA, Exparte Issack Mohammed Mohamud Garissa HC Misc Civil Application NO 7 of 2013	The matter is between the Commissioner of Lands, the Attorney General and others. From the available documents TA is not a party to this action. However, we were served by a notice of motion drawn by Musyoki Mogaka and Co. Advocates and a letter dated 1/06/2013 requesting for an appointment with a view to settling the matter.	Matter abated as no further documents were served on TA
TA/6/12/25B	Nairobi Metropolitan SACCOS & 25 Others Vs. TA & 3 others Petition No. 486 of 2013	Nairobi Metropolitan SACCOS & 25 Others Vs. TA & 3 others Petition No. 486 of 2013	TA served with a Memorandum of Appearance dated 11 th /10/13 from the 1 st and 2 nd Respondents listing TA as the 4 th Respondent. There has been no further correspondence on the matter. No court papers have been served upon the Authority MATTER CLOSED

TA/6/12/16B	George K. Kimani & Others Vs. TA HC at Kitale E and L case No. 66 of 2013	The Applicants are residents of Cherangani Estate in Kitale town who were allegedly served with a notice to vacate those premises by the Interim Secretary of Trans-Nzoia County.	Vide a letter date 2 nd May 2014, the AG informed us that TA was discharged from any legal responsibility. MATTER CLOSED
TA/6/12/18B	Cenriva Traders Ltd Vs. TA Kitale HC E & L No. 70 of 2013,	The dispute herein involves the revocation of a tenancy agreement entered into between the defunct County Council of Nzoia and the Plaintiff issued by the Interim Secretary for Trans- Nzoia County.	Vide a letter date 2 nd May 2014, the AG informed TA it was discharged from any legal responsibility. MATTER CLOSED
TA/6/12/27B	Henry Loyolmoi Vs. TA & West Pokot County Government Industrial Cause No. 163 of 2013	This is a suit brought against the defunct county council of Pokot alleging breach of employment contract by the council against a former employee	The Attorney General was requested to represent TA in the matter through a letter dated 18 th November 2013. There has been no further correspondence on the matter. No further court papers have been served upon the Authority
TA/6/12/28B	Okiya Omtata & Others Vs. TA & Others Petition NO. 593 OF 2013)	This is a matter challenging the transfer of the Referral hospitals from the national to the county governments by TA.	The matter came up for hearing on 6 th March 2014 and was fully heard and completed on this day. Judgment on the 6 th June 2014 MATTER CLOSED
TA/6/12/30B	Masosa Construction V Kisii County & 3 Others (Misc Civil Application No. 14 of 2013 (JR))	This is a Judicial Review Application where the Applicant is requesting the court to compel the respondents to settle a decree of 8,464,699.05/= made by the High Court at Kisii on the 23 rd March 2010 in favour of the Applicant in satisfaction of a contract to construct a road within Kisii Municipality. The Transition Authority has been sued as the body responsible for matters arising out of the repeal of the Local Governments Act	The Office of the Attorney General is representing TA. Hearing of the Notice of Motion application dated 7/10/2015 set for 18 th Jan 2016 AGs office requested for more time to respond to the issues in the matter. Mention on 17 th April 2016

TA/6/12/11B	E. Sikona & Governor Narok Vs. Mara Conservancy, TA and 4 Others Nakuru CC NO. 37 of 2013	The matter herein concerns the management of the Mara Conservancy which fell under the former Trans-Mara County Council. The Applicant is requesting the court to restrain some of the defendants from continuing to manage the conservancy as they have now been appointed to public offices. The Transition Authority has been sued as the body responsible for matters arising out of the repeal of the Local Governments Act	We requested the office of the Attorney General to represent us in Court. A letter dated 23 rd April 2014 has been dispatched to the AGs office requesting for an update on the status of the case. Ruling delivered by Hon. Justice Emukule. Dismissing the application. FILE CLOSED
TA/6/12/14B	Mundia Njeru Gateria V Embu County Govt , TA & 3 Others Constitutional Petition NO. 5 of 2013	This is a matter touching on revocation of the Applicants appointment as the chairperson to the County Public Service Board of Embu County allegedly in contravention of Section 58 (5) of the County Governments Act.	This Matter has been referred to the AG's office for representation in Court. A letter has been dispatched to the office of the AG on the status update. The chairman of the Embu CPSB reinstated, thus the purpose of litigation was achieved. MATTER CLOSED
TA/6/12/4B	Mungai Kivuti Vs. Margaret Lorna Kariuki & TA & IEBC Civil Case No. 54 of 2013	The Applicant herein alleged that the Interim Clerk to the County Assembly of Embu fraudulently deprived him of an opportunity to apply for the position of Speaker of that County and moved court to compel TA & IEBC to include him in the list of candidates vying for the said position.	The firm of Mogusu and Associates was representing the Authority in this matter. The Matter was heard and finalized with no costs awarded. MATTER CLOSED
TA/6/12/9B	Crispus wamba & Another Vs. TA & 3 Others Judicial Review MiscAppl No 110 OF 2013	The Applicants approached the court for orders declaring that the election of the Speaker of Nairobi County Assembly was null and void on the grounds that at the time of his election, the Assembly was not properly constituted.	The firm of Professor Tom Ojienda was representing TA in this matter. Judgment was delivered on 29 th of August 2013. MATTER CLOSED
TA/6/12/13B	Kimani Gacungi V County Government of Kiambu & 2 Others Misc. Civil Cause No. 17 of 2013	The applicant herein alleges that he was served with an enforcement notice by Kiambu County Government. He is seeking an order of prohibition against the respondents prohibiting them from trespassing on his property.	The matter was referred to the AG for representation. The Court dismissed the Applicants application dated 13 th June 2013 vide a judgment delivered on 17 th March 2014 MATTER CLOSED

TA/6/12/10B	Kipkemboi Terer V John Langat Others Kericho Election Petition No 1 of 2013	This was a case challenging the election of the Speaker of Bomet County on grounds that he was not qualified to vie for the position of speaker among other things. TA was sued as the body responsible for facilitating the transition to devolved system of government.	TA was represented by the AG's Office in this matter. Judgment was delivered and costs amounting to 5,170,634/= awarded against TA. NO appeal by the office of the AG. Costs not enforced as against TA
TA/6/12/24B	Daniel Ole Nkere Vs. County Government of Bomet , TA & Others HC of Kericho JR No. 3 of 2013	The Applicant moved to court seeking a Judicial Review on the decision of the Governor of Bomet to remove him from office.	The matter was referred to the Attorney General to represent the Authority. Suit seems to have abated. No further documents and or notices were served on the authority.
TA/6/12/17B	Tom K. Werunga Vs. TA Kitale HC E & L 70 of 2013	This case revolves around the ownership of a parcel of land in Kitale allegedly sold to the plaintiff by the defunct Kitale Municipality that subsequently refused to approve development plans submitted to them by the plaintiff.	Vide a letter date 2 nd May 2014, the AG informed us that TA was discharged from any legal responsibility. MATTER CLOSED
TA/6/12/2B	Tanathi Water Services Board Vs. TA Machakos HCCC NO. 8 of 2013	The Applicant was aggrieved by the decision of the Authority to evict him from premises previously allocated to him by the Ministry of water and irrigation to pave way for county government offices.	The Matter was settled by Consent, a memorandum of understanding was signed by both parties to settle the matter, and the consent filed in court accordingly. Matter settled by consent signed on 12 th 03 /13 FILE CLOSED
TA/6/12/21B	Ali Baraki and M.A Karbat Vs. Chairman Garissa County Service Board, TA & 3 others Civil Appeal NO 236 of 2013	The Applicant in this matter was challenging the recruitment and appointment of members of the Public Service Board on grounds that the procedure followed violated the law	The firm of Mwaura & Wachira represented the Authority in the lower court thereafter the Office of the AG was requested to represent TA when this matter went on appeal. Appeal pending
TA/6/12/6B	Joseph Ole Musini & 3 others Vs. TA & 10 others Milimani HC Petition No. 3 of 2013	This was an election petition challenging the election of the Governor of Narok County during the 4 th March 2013 general elections	A ruling was delivered wherein the petition was dismissed. MATTER CLOSED

TA/6/12/7B	The Law Society Of Kenya Vs. TA & 2 Others Constitutional Petition NO. 190 of 2013	This case was instituted by the Law Society of Kenya to seek the courts' interpretation on the proper and effective operation of county governments.	The firm of Lucy Kambuni and Associates was representing the Authority. Judgment was delivered on 14 th June 2013. The matter was dismissed with no orders as to cost. MATTER CLOSED
TA/6/12/32B	Kajiado Town Plot Owners Association & 22 others Vs. Kajiado County Government & 4 others and TA and Another	The case has been instituted by members of Kajiado Association who are aggrieved by a public notice issued by Kajiado County suspending all dealings in land in the county and directing that all buildings illegally erected be demolished. TA is an interested party.	There is little information on the matter as the file has been missing since December 2014. There are however interim orders against the demolishing of any houses/ properties.
TA/6/12/34B	Power Pump Technology Co. Ltd Vs. Kitui County Government	This is a lawsuit regarding an alleged breach of contract for the construction of a slaughter house by the now defunct County Council of Kitui against Power Pump Technology	AGs Office on record for the Authority. TA contests the Arbitration fee- Kshs. 200,000/= TA wrote a letter on 16 th January 2016 stating their position that the said amount is not payable given the fact that it was held by the COURT that TA was wrongly enjoined in the matter
TA/6/12/3B	Dennis Mwamodenyi Vs. TA Industrial Court Cause No. 307 of 2013	This case involved the alleged unfair and illegal demotion and redeployment of the claimant who was formerly employed as a District public Health Officer in Machakos to a Public Health Officer in Kitui	The firm of Kerandi Manduku & Ondabu was representing TA in this matter The matter was withdrawn from court on 25 th April 2013 to pave way for an out of court settlement MATTER CLOSED
	Njoroge G. Musyoka Vs. County Government of Kiambu, TA & Another Nairobi HC Misc. App. No. 171 of 2013	The dispute herein revolves around the alleged eviction of the applicant from a property in Kangagi Market, Kiambu County by the County government of Kiambu.	The Office of the Attorney General represented TA in this matter. The case was dismissed through a judgment delivered on 17 th March 2014. Costs were awarded to TA and the 1 st Respondent. MATTER CLOSED

TA/6/12/5B	Calvin Kadongo & 2 others Vs. TA & 5 Others Milimani HC Petition No. 174 of 2013	The Petitioner herein sought to bar the assumption to office of any other person elected during the March 4 th general election until the Supreme Court pronounces itself on the validity of the Presidential election.	The firm of Nyandoro & Co. Advocates represented TA in this case. The matter was dismissed on 26 th March 2013 with no orders as to costs. CASE CLOSED
TA/6/12/42B	COUNCIL OF GOVERNORS VS THE AG, KENHA KURA AND TA HCC No. 472/2014	The matter relates to the Transfer of roads to counties and classification of the said roads Following appeals from counties on failure to transfer the roads by the TA, the senate determined the appeals and generated a report directing that the roads be transferred. TA prepared a gazette notice to approve the transfer of the mentioned roads which gazette notice was submitted to the AG's office for publishing. The National Assembly wrote to the AG's office to halt the gazetting after which the AG complied and failed to proceed. The Issue of contention is the classification and definition of roads to determine which roads belong to the National Government.	The matter was last in Court in 31st October 2014 as directed by the Court to inform court on the mediation process that the court had asked the parties to look into. No mediation and consent was reached. Parties have been directed to file submissions The Office of the Attorney General is on record representing the Authority. Judgment delivered on 11/12/2015 Gave way for gazetting of functions vide Kenya Gazette Special Issue no. 4 of 2016.
TA/6/12/41B TA/6/12/39B	THE SPEAKER OF NAKURU C.ASSEMBLY & 46 OTHERS VS.TA SIAYA COUNTY ASSEMBLY SERVICE BOARD VS.TA AND AG.	On 28th January 2014. TA issued an advisory to all County Assembly Service Boards to the effect that they should; Suspend the establishment of ward offices within their respective counties. Establish ward offices within the framework of ward administrative units under section 51 of the county governments Act 2012. Displeased by the advisory, Siaya County Assembly Board together with 46 other County Assemblies sued the Authority.	The Court via an order dated 21st August 2014 issued conservatory orders against TA, restraining it from implementing, relying upon and or in any manner whatsoever acting upon the circular/gazette it issued. It ordered that the position of secretary and driver be created and sourced from among existing staff in the county. The matter is currently in abeyance as it awaits the outcome of petition No 368 of 2014.

TA/6/12/22B	KENYA MEDICAL PRACTITIONERS ,PHARMACISTS AND DENTIST UNION(KPMDU) KENYA NATIONAL UNION OF NURSES AND KENYA HEALTH PROFFSSIONALS.	The Kenya medical and practitioners ,pharmacists& dentist Union and Kenya health professionals society are seeking a judicial review on the decision of TA to transfer county health services to the counties.	There was judgment entered by court on 18 th Dec 2014 and court ruled that it was not satisfied that the orders sought by the applicants were merited and the case was dismissed. The medical body appealed the ruling. The AG is on record for TA.
TA/6/12/38B	K-REP BANK VS-CLERK TO COUNTY ASSEMBLY BUSIA COUNTY GOVERNOR BUSIA COUNTY AND CM TA	The clerk Busia County issued a notice to K-Rep bank asking them to vacate the building. The Premise belongs to the County government of Busia. The bank insists that it has a valid contract with the county government.	The office of the AG on record for the Authority. Parties are pursuing ADR
	BOMET COUNTY COUNCIL VS.LOCAL GOVERNMENT ,AG AND OTHERS	The Authority has been enjoined erroneously in the matter.	The AG's office was requested to represent the Authority. MATTER CLOSED
	ISSAK M.MOHAMUD VS.TRANSITION AUTHORITY	The Authority is the respondent in the matter. The Authority is being sued for its decision to rescind the appointment of Mr.Isaac Mohammed Mohamud as the County Assembly Clerk of Wajir County Assembly.	Matter sorted out of court.
TA/6/12/37B	JAMES K.WAIRAGU AND OTHERS VS.TA AND BUSIA COUNTY GOVERNMENT	The Authority has been sued alongside the County government of Busia on allegations of illegally constructing a parking lot in the James Wairagus and others parcels of land. The Plaintiffs are seeking damages.	The matter was in Court on the 17 th of September 2014. The AG is on record for the Authority Hearing- 28/1/2016
TA/6/12/33B	HON SPEAKER D.N MUCHUGU VS SPEAKER EMBU AND OTHERS.	The petitioner avers that upon the impeachment of the Governor of Embu under Article 182 (2) of the Constitution, she is authorized to assume office as the county governor for the remainder of the term of the county governor and she should be sworn in as per Article 74 of the Constitution.	The authority has given its detailed position on the matter. The Office of the AG is on record to represent the authority.

TA/6/12/40B	SAMSON OLE TINA VS.THE GOVERNOR COUNTY SEC ,FINACE NAROK	The authority together with others has been sued as a respondent in the matter. Its being accused of entering upon and or/trespassing onto all that property otherwise known as L.R.NO. TRANSMARA /OLALUI/15	The AG is on record representing the authority. Mention slated for 20/01/2016 gave directions of a further mention on 17 th april 2016. Moratorium on Assets & Liabilities in Place.
TA/6/12/29B	P.KARIITHI & 114 OTHERS VS GOVT OF LAIKIPIA AND TA	The Claimants state that they were employed by the Town Council of Rumuruti and later absorbed by the Laikipia county public service board in their various capacities. Later their services were terminated	Matter was submitted to the AGs office for representation. Hearing -26/01/2016 Matter proceeded for hearing on the said date. Parties to file Submissions and mention the matter
TA/6/12/39B	NYAHURU MUNICIPAL COUNCIL VS.COUNTY GOVT OF LAIKIPIA, TA AND PUBLIC SERVICE COMMISSION.	TA Sued as the second respondent. TA sued by 24 different claimants for payment of gratuity allegedly owed by the municipal Council of Nyahururu a predecessor of the County government of Laikipia.	AG's office on record for the Authority. Matter has been inactive, no other documents served other than initial pleadings.
TA/6/12/49B	In the Matter of a Reference by the Speaker, Embu County Assembly	Filed subsequent to the impeachment proceedings instituted against Embu Governor Hon. Martin Wambora Matter seeking an advisory on the timelines for filling of the position of Governor due to impeachment.	Hearing 9/12/2015 Matter did not take off as supreme court bench not constituted. Parties to fix date mutually.
TA/6/12/45B	Transition Authority Versus Salaries & Remuneration Commission & 4 Others. As consolidated with Petition 9 of 2015 (Dr. Jane Njuguna & Others Vs. TA)	Remuneration terms of TA employees	On 10 th December, 2015, Matter coming up before Hon. Justice Wasilwa was adjourned as the court was not sitting Matter in abeyance. Pending parties taking out a fresh date at the Registry. Orders in place, against the Reduction of the said employee salaries.

	Kenya County Government workers Union Versus Bomet County Government & 3 others	Purported transfer of employees from County Govt to National Government. The Governor & the County CPSB had stopped their salaries and benefits.	Mwaura and Wachira Advocates on Record for TA. Contempt of court application taken out against the governor. On 18.12.2015, by consent of all parties, the contempt proceedings are withdrawn on condition that the Employees are reinstated and salaries paid pending the hearing and determination of the main suit. Main suit yet to take off.
TA/6/12/44b	Evans Wafula & another Vs. Transitional Authority & Six Others	The petitioner argues that the risk being arbitrarily being deprived of their retirement benefits if the recommendations by the COG with regards to LapFund and LapTrust are implemented	L.M Kambuni & Co. on record for TA. Petition 53 of 2015. (formerly 599 of 2014) Matter was to come up on the 21/01/2016 Court was not sitting. Parties to file submissions and take a date at the registry for judgement. Industrial cause 101/2015 is stayed pending the outcome of the judgement in pet. 53 of 2015
TA/6/12/48	International Legal Consultancy vs Ministry of Health & CIC, 47 county Governments & Others	National Government signed a deal worth 38b with service providers to provided medical facilities, without involving some levels of government	Matter abated after all the Governors agreed as COG to take all the Equipment.
TA/6/12/35B	P.M Gatirau vs D.M Kithinji, IEBC and Another	Matter relates to the validity of the election of Peter Munya	Ruling delivered on 2/04/2014 MATTER CLOSED
TA/6/12/43B	Kenya County Government Workers Union vs Ministry of Devolution & Others	Biometric data capture excercise	

TA/6/12/46B	Afrika Rafiki Ltd & 2 others Vs Nairobi City County & Others	Levying of Licence Charges on casino and other Gambling operators by the Nairobi City County as well as the enactment of the Nairobi City County Betting, lotteries and Gaming Act, despite the ongoing stakeholder consultations with the latest at Sentrim Naivasha.	Hon. Justice Lenaola gave an Interim Judgement in which the Learned Judge opined:- That the matter has not yet crystallized to warrant his decision. That the TA convene another inter agency consultative forum to iron out the remaining contested issues following the Sentrim meeting. Meeting convened on 18th January 2016 at Utalii Hotel. Shortly thereafter, the firm of Macharia Gikaria & Associates advocates sent a letter protesting that their clients were not consulted. The Firm of L M Kambuni has already filed in court an Affidavit of the deliberations of the inter agency consultative Forum in which all the pending issues from the Sentrim Elementaita meeting were resolved. Advocates yet to take a date to mention the matter before the Hon. Judge for Further directions.
TA/6/12/54B	TA Vs PRIVATIZATION COMMISSION	Privatization of Five (5) Sugar Companies. Consent of TA on the intended privatization not sought	On 17.02.2016, the matter was mentioned for purposes of signing a Consent midwifed by the office of the AG. However Migori & Kisumu county representatives refused to sign the consent on the basis that the condition both counties gave for signing the consent was that the matter is brought up before the summit, which was not the case. Matter to be mentioned on 29th February. AG to convene another stakeholder meeting before then.

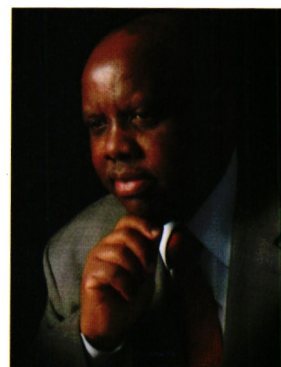
	REPUBLIC VS COG, RETIREMENTS BENEFITS AUTHORITY, TA& OTHERS	Applicants seek to have the ex parte applicant's substantive notice of motion be stayed pending the full hearing and determination of E&LR Constitutional Petition No 53/2015 (Previously HC of Kenya Constitutional Petition no 599/2014 and E&LR Civil Case No 107/2015)	The matter was scheduled for hearing on 16/02/2016. Court to rule on the matter after parties make their submissions.
	Assumption Sisters of Nairobi Vs William Kabogo & 4 others	Matter allegedly about the privatization of Madaraka primary in Thika.	Notice of motion coming up for hearing wherein TA is seeking to be enjoined in the matter TA will be praying for the re-opening of the school pending the finalization of the matter.
TA/6/12/50B	Peres Nyakerario Mose Vs DPP, EACC, TA, & Nyamira County Government	Seeks to stop the prosecution of the Plaintiff on account of abuse of office. Matter relates to procurement of Insurance for 15 County Government Motor Vehicles.	Judgement delivered by hon. Lady justice W. A. Okwany on 8.02.2016 The notice of motion seeking to stop the prosecution was dismissed. No adverse orders on TA

APPENDICES

Profile of the Board members

Kinuthia Wamwangi, EBS -Chairman, Transition Authority

Mr. Kinuthia Wamwangi is a professional with over thirty years work experience. He has worked as a lecturer, local government administrator and consultant. He served as a Legal Officer/Senior Administrative Officer rising to the position of Municipal Advocate of Thika Municipality. He was later appointed Assistant Town Clerk for the Mombasa Municipal Council, and then Town Clerk for Thika and Nyeri Municipal Councils.



Mr. Wamwangi then worked as the first Personnel and Administrative Manager at the National Social Security Fund (NSSF) and later as the Human Resource Manager Carnaud Metalbox [Currently known as Nampak(K) Ltd] based in Thika Municipality. After a study break in the UK, he joined the Kenya School of Government (previously Kenya Institute of Administration – KIA) as a visiting lecturer in Local Government for a period of 1 ½ years.

He was then hired by the Municipal Development Partnership for Eastern and Southern Africa (MDPESA), in Harare, Zimbabwe responsible for a World Bank supported decentralization initiative covering 25 countries in Eastern and Southern Africa. He served as Senior Programme Officer in charge of Capacity Building, (HIV/AIDS) and Gender Mainstreaming. During this period he was seconded to the Afri-cities Summit held in Nairobi in September, 2006 where he served in the capacity of Deputy Director.

He thereafter worked as an Independent Consultant in many capacities including working for the Inter-Ministerial Committee of the Government of Kenya on Small, Micro and Medium Enterprises for 3 years. His role as a devolution consultant enabled many Non-State Actors to engage with government organs charged with writing the Constitution of Kenya, 2010.

Mr. Wamwangi holds a Bachelor of Laws (LLB) from the University of Nairobi and is an Advocate of the High Court of Kenya with a Diploma in Law from the Kenya School of Law. He also holds a Masters of Law (LLM) in Employment Law and Employment Relations from the University of Leicester, and a Master's of Science in Human Resource Management from the University of Manchester. He is undertaking his Doctoral studies in Leadership and Governance at the Jomo Kenyatta University of Agriculture and Technology

Mrs. Angeline Awino Hongo, MBS, - Vice-Chairman, Transition Authority



Mrs Angeline Hongo is a career civil servant with over 30 years working experience. She holds a Master in Business Administration degree and Bachelor in Commerce degree. She has attended several courses and workshops in Local Governance Finance.

She has worked as an Auditor in the then Controller and Auditor- General Office. She later joined the then Ministry of Cooperative as Principal Cooperative Auditor charged with auditing cooperative societies in Nairobi. Afterwards, she worked in the then Ministry of Local Government as Program Coordinator, Kenya Local Government Reform Program, charged with reforming Local Government Sector.

Angeline served as the Secretary to Local Authority Transfer Fund Advisory Board, and was appointed Joint Secretary to the Task Force on Devolution in Kenya, which was charged with the mandate to propose implementation mechanisms for the devolved system of Government.

She was also appointed member of Inter-Ministerial Committee charged with implementing the Task Force report and came up with the Devolution laws. Angeline has been a board member of KASNEB and Tana Water Services Board.

She was decorated with the Presidential Award of Moran of Burning Spear (MBS) in December, 2013 for exemplary service. Mrs. Hongo is the immediate former Vice-Chairperson of the Transition Authority, where she was charged with coordinating and facilitating seamless transition to devolved systems of Government.

Mr. Erastus B.I.N. Rweria - Member



Mr. Erastus B.I.N. Rweria is trained economist and a career civil servant. He joined the service in 1977 in the Ministry of Planning and National Development. He worked in several ministries most of which he headed their planning departments. He rose from a Planning Officer to Chief Economist/Deputy Director of Efficiency Monitoring Unit (EMU) before he became the Director of Unit which served for 16 years. Apart from serving in a number of task forces he is best known for chairing the last Extra-ordinary Inspection

Team of the City Council of Nairobi whose report is commonly referred to as the Rweria Report. Mr. Rweria was honoured with Moran of Burning Spear (MBS) on 12th December, 2007 by His Excellency the President of Kenya.

After retiring from the Public Service in 2008, Mr. Rweria became a consultant and a part-time lecturer for the Kenya School of Government and the Kenya Education Staff Institute. In 2012 he joined the Transition Authority as a Member.

Simeon Pkiyach Pkatey – Member

Mr Simeon Pkiyach Pkatey is an Animal Scientist professional with over 27 years of work experience, worked in the Civil Service in the Ministry of Agriculture and Livestock. He also worked as a project manager Arid lands Resource Management Project West Pokot, a part time Lecturer Eldoret University and Agriculture Manager Kerio Valley development Authority. He has experience in Project Management and Public Finance Management, Community Development and Public Participation.



Simeon holds Msc. in Animal Science from Aberdeen University in the United Kingdom, a Bsc and a Diploma from Egerton University

He is a member of Animal Production Society of Kenya and British Society of Animal Science.

Mary Mwangeli Ndeto, Hsc Member



Mrs Mary Ndeto is a Devolution expert, Results Based Management Champion, Institutional Capacity Building and Strategic Partnerships expert and a Human Resource Management Practitioner. She is also a Certified Ethics Officer and a holder of Head of State Commendation.

Ndeto has over thirty years experience in public service management. She has served as a Director, Institutional Capacity Building and Strategic Partnership in the Public Sector Transformation Programme and Director Recruitment and Selection at the Public Service Commission. Ndeto has served as a human resource officer in various Ministries/Departments and Agencies

As a Member of Transition Authority Mrs Ndeto has gained a wealth of experience in devolution. She has being instrumental to spearheading Capacity Building Transformation Initiative, the National Capacity Building Framework and advising national and county governments on human resource management. She co-chaired the Technical Committee on Joint Capacity Assessment and Rationalization of the Public Service Programme.

Mrs Ndeto holds MSC Human Resource Management (University of Manchester) She is specialized in International Human Resource Management, Human Resource Practice, and Human Resource Planning in Organizations, Core Human Resource Issues, and Organizational Development, Information Communication in Human Resource. She holds a Bachelors degree. Social Sciences (University of Nairobi).and a High Diploma in Human Resource Management, ;

Attended several academic and professional courses in various parts of the world. This include i- Advanced Public Service Management course (SIDA)-Sweden, Results Based Management and Medium Term Planning and Performance Based Budgeting (IDEA International)-Dar Es salaam, Tanzania; Human Rights Based Approach to Development, Advanced Human Resource Management in the Public Sector(INTAN)-Malaysia; Top Management Seminar on Making, Implementing and Evaluating Public Policy (Strathmore University)-Kenya;-Performance Contracting (Boston Institute for Developing Economies) and Achieving Outstanding Achievement(University of Witwatersrand)-South Africa

Safia Abdi - Member



Safia Abdi is a Kenyan citizen. She holds Master of Arts degree in Rural Sociology and Community Development and Bachelors degree in Political Science and Philosophy. Safia has over 17 years working experience in Government of Kenya and in relief and development not-for-profit International Organizations. She is one of the members of Transition Authority, a government institution charged with the responsibility of facilitating and co-ordinating transition from a centralized to a devolved system of government in Kenya. Safia also worked in development and humanitarian assistance programmes with a range of International Not-for-Profit Organizations for over 14 years. Safia

has extensive experience in managing and coordinating programmes generally focused on poverty reduction, humanitarian aid and policy advocacy. Specifically, she has overseen programmes in areas of governance, decentralization, livelihood enhancement, health, drought cycle management, disaster risk reduction, resilience building, climate change adaptation, market access, conflict management and gender and development. She has represented Transition Authority and the Not-for-profit organizations in national and international fora and presented papers.

Dr. Dabar Abdi Maalim -Member

Dr. Maalim is a Member of the Transition Authority and Chair of the Functional Analysis, Assignment and Costing sub-committee of the Authority. He is an Honorary Director, NEP College of Health Sciences (which is sponsored by Kenya Muslims Charitable Society - a Faith Based Organization in Kenya). He has a PhD in Community Health from University of Reading (UK) and Masters from Wales College of Medicine, Cardiff (UK) and with over 12 years of experience as a university academician having attained the rank of Assistant Professor at Aga Khan University, East Africa before joining the Transition Authority (Kenya). *Dr. Maalim has consulted with various national and international institutions including Government of Kenya, DANIDA, UNICEF-Ethiopia, and World Health Organisation (WHO), Islamic Development Bank among others. He was the Team Leader/Science Coordinator of the Millennium Villages Project (Kenya) and Associate Research Scientist – Earth Institute, Columbia University USA between November 2010 and January 2012.*



Dr. Maalim has also done extensive research and has several publications to his credit, particularly in the area of access to preventive health care services for the disadvantaged communities, and hence developed *“The Disenfranchised Community Model”*. He also served between 2004 - 2013 as a Presidential Appointee to the National Anti -Corruption Campaign Steering Committee (NACCSC) where the major role was to sensitize and stigmatize the Kenyan community against the evils of corruption. Dr. Maalim is one of the founding members of Umma University (Kenya) - a project of Direct Aid International/ Africa Muslims Agency, which is the only Muslim university in Kenya. He is also the current Chairman of the University’s (Umma) Academic and Research Committee.

Mr. Bakari Garise Omara - Board Member



Mr. Bakari Garise Omara is an education professional with over 30 years work experience having risen through the ranks from a teacher, principal, District Education Officer (DEO) to County Director of Education.

He worked as an Education Management trainer at Kenya Education Staff Institute (KESI) now KEMI. As a Senior Assistant Director of Education (SADE) at the Ministry of Education headquarters, he was in charge of the Emergency Education cluster working closely with International Organisations and NGO’s as the chairperson.

His experience in the sector saw him appointed a member of the Task-Force on the Re-engineering of CEMASTEAs. He was also a member of the Task-Force on the Resettlement of IDPs and Forest Evictees.

He later on joined the then Office of the Prime Minister as an Assistant Director, Transformative Leadership and Change Management.

He holds a Bachelor’s Education and Masters in Business Administration, both from Kenyatta University. He is an Associate Member of Institute of HRM and of the Institute of Corporate Governors, Kenya.

Mr Omara is currently a Member of TA, where he is the chairperson in charge of public assets and liabilities.

Mrs. Jacqueline Mogeni - Member



Mr. Stephen Kerosi Makori, OGW - Board Secretary and CEO

Mr. Stephen Kerosi Makori is a Member of the Transition Authority, Chief Executive Officer and Head of the Secretariat of the Transition Authority. He holds a Bachelor's Degree in Political Science (Government) and Economics from the University of Nairobi. He also holds two Masters Degrees in Public Administration and Business Administration. He is currently pursuing a PhD in Business Administration (Strategic Management) from Jomo Kenyatta University of Agriculture and Technology (JKUAT).



Mr. Makori is a trained public administrator with over 24 years of experience in public service, having started off as an Assistant Secretary in 1991 in the then Ministry of Finance. He later moved to the Office of the President in 1996 and was deployed as a District Officer in various districts, before rising to become a District Commissioner. He again served in several districts, with his last field station being Kirinyaga East District.

Mr. Makori's long experience in public service saw him in 2012 deployed to the Transition Authority as the Chief Executive Officer. He is the Authority's Accounting Officer and has successfully steered the implementation of the decisions of the TA Board, while serving as its Secretary. In December, 2015, His Excellency the President of the Republic of Kenya honoured him with the Order of the Grand Warrior (OGW) for his exemplary public service.

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