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STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

REPORT ON THE COOPERATION AGREEMENT BETWEEN THE NATIONAL GOVERNMENT AND NAIROBI CITY COUNTY GOVERNMENT.

PAPERS LAID	
DATE	15/7/26.
TABLED BY	Chairperson.
COMMITTEE	Devolution.
CLERK AT THE TABLE	Belinda.

15/07/26

APPROVED
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The Senate,
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Forwarded and recommended for approval for tabling
15/07/2026

JULY, 2026

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LIST OF ABBREVIATIONS/ACRONYMS

ADP	-	Annual Development Plan
CIDP	-	County Integrated Development Plan
IC	-	Implementation Committee
JSC	-	Joint Steering Committee
KeNHA	-	Kenya National Highways Authority
KURA	-	Kenya Urban Roads Authority
NMS	-	Nairobi Metropolitan Services
PCS	-	Prime Cabinet Secretary
PFM	-	Public Finance Management
RMLF	-	Road Maintenance Levy Fund

PRELIMINARIES

Mandate of the Committee

The Senate Standing Committee on Devolution and Intergovernmental Relations is established under Standing Order 228 (3) and the Fourth Schedule of the Senate Standing Orders. The Committee is mandated to "*consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.*"

Membership of the Committee

1. Sen. Sheikh Mohamed Abass, CBS, MP - **Chairperson**
2. Sen. Catherine Muyeka Mumma, CBS, MP - **Vice Chairperson**
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. (Dr) Oburu Oginga, MGH, MP - Member
5. Sen. Peris Pesi Tobiko, CBS, MP - Member
6. Sen. Paul Karungo Thangwa, CBS, MP - Member
7. Sen. Richard Momoima Onyonka, EBS, MP - Member
8. Sen. Mohamed Said Chute, CBS, MP - Member
9. Sen. Hezena M. Lemaletian, MP - Member

The Minutes of the Committee sittings in considering the Cooperation agreement between National Government and Nairobi City County Government are attached to this Report collectively as ***Annex 1***.

CHAIRPERSON'S FOREWORD

Mr. Speaker,

The Committee noted from media reports the execution of a Cooperation Agreement between the National Government, acting through the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs, and the Nairobi City County Government, acting through the Governor, on 17th February 2026 at State House, Nairobi.

The Agreement, made pursuant to Section 6 of the Urban Areas and Cities Act, establishes a framework for collaboration between the two levels of government on refuse collection and solid waste management, county roads, street lighting, markets, housing infrastructure, and water and sanitation within Nairobi City County, supported by a two-tier governance structure comprising a Steering Committee and an Implementation Committee. Consequently, the Committee resolved to invite the Governor of Nairobi City County to appear before it to deliberate on the contents of the Agreement, its implementation framework, and its implications.

Mr. Speaker,

On Thursday, 26th February 2026, the Committee considered a brief on the Agreement, following which it held a meeting with the Governor of Nairobi City County. The Senator for Nairobi City County, Sen. Edwin Sifuna, CBS, MP, was also invited and attended this engagement. Following its engagement with the Governor, the Committee resolved to invite the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs to appear before it to provide the National Government's perspective, including clarification on the rationale, implementation modalities, and expected outcomes of the Agreement. The Prime Cabinet Secretary appeared before the Committee on 30th March 2026.

During its consideration of the Agreement, the Committee was apprised of two constitutional petitions filed before the High Court of Kenya at Nairobi challenging the Agreement: Constitutional Petition No. E104 of 2026, *Christine Gathoni & Anor vs*

Council of Governors & Office of the Auditor General & 12 Others, in which the Senate is sued as the 6th Respondent, and Constitutional Petition No. E111 of 2026, *Katiba Institute vs Governor, Nairobi City County & 4 Others*, in which the Senate is enjoined as the 2nd Interested Party. Both petitions challenge the constitutionality of the Agreement on grounds including violation of the functional integrity of Nairobi City County, failure to conduct meaningful public participation prior to execution, absence of County Assembly approval, failure to involve the Senate, and violation of the constitutional framework for public finance.

The Committee considered a Committee Paper prepared by the Senate's Directorate of Litigation and Compliance Services on the two petitions, which recommended that the Committee consider the Agreement and propose a way forward to inform the Senate's position in the court proceedings, and proceeded to do so accordingly.

Mr. Speaker,

The Committee acknowledges that the Constitution contemplates and encourages cooperation between the two levels of government. Article 6(2) establishes the National Government and county governments as distinct and interdependent, and requires that they conduct their mutual relations on the basis of consultation and cooperation, while Article 189 gives practical expression to this principle by authorising cooperation in the performance of functions. The Committee further recognises that Section 6(5) of the Urban Areas and Cities Act imposes a mandatory obligation, pending for fourteen years, on the two levels of government to enter into such an agreement in respect of the capital city, and it is commendable that this obligation has now been acted upon. The Committee acknowledges the legitimate policy rationale for structured collaboration, given Nairobi's unique status as the capital city and host to diplomatic missions, international organisations, and other institutions of national and international significance.

However, having examined the Agreement against the constitutional and statutory framework, the applicable comparative practice, and the submissions of the Governor and

the Prime Cabinet Secretary, the Committee makes the following key findings, set out in full under Chapters Three and Four of this Report.

First, on the constitutional framework, the governance structure established under the Agreement vests policy-level oversight in a Steering Committee dominated by national government representatives, while the Governor chairs only the Implementation Committee. This leaves unclear whether the arrangement, in substance, remains one of cooperation under Article 189, or has taken on characteristics more consistent with a transfer of functions under Article 187, without the safeguards that would ordinarily attend such a transfer.

Second, on financing, the Agreement is silent on the source and mechanism of financing for its implementation. The figure of Ksh. 80 billion cited as the cost of implementation appears nowhere in the text of the Agreement, its only source being the oral submissions of the Prime Cabinet Secretary and the Governor before the Committee. The Committee further established that an allocation of Ksh. 270 million had already been made in the FY 2026/2027 budget estimates for the improvement of Nairobi's roads, a county function, for direct expenditure by a national government agency, rather than as a conditional allocation to the County Government.

Third, on public participation, the exercise conducted on the Agreement took place after its execution and coming into force.

Fourth, on legislative oversight, the Agreement does not provide for any reporting to the Nairobi City County Assembly or the Senate, notwithstanding the commitment of substantial public resources to the implementation of core county functions.

Fifth, on implementation, White Paper 7 under the Nairobi Rising Programme, proposing the establishment of a Nairobi Metropolitan Police Formation, was presented to the Committee as part of the framework for implementing the Agreement, notwithstanding that neither the Nairobi Rising Programme nor White Paper 7 is referenced anywhere in the text of the Agreement.

Mr. Speaker

It is on the basis of these findings, taken together, that the Committee arrived at its recommendation that the Agreement be temporarily suspended, rather than allowed to proceed in its current form, pending resolution of the issues identified. The Committee accordingly makes the following recommendations, set out in detail under Chapter Four of this Report:

1. **THAT** the Cooperation Agreement between the National Government and Nairobi City County Government be **temporarily suspended**, pending the resolution by the parties of the issues arising from the Committee's observations and analysis of the Agreement.
2. **THAT** the National Government and Nairobi City County Government submit a report to the Senate, **within sixty (60)** days of the adoption of this Report, indicating the progress made towards resolving the issues noted in recommendation 1.

Mr. Speaker,

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which led to the successful consideration of this matter.

I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this important assignment. Lastly, I wish to thank the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs, H.E. Hon. Dr. Musalia Mudavadi, EGH, and the Governor of Nairobi City County, H.E. Sakaja Johnson, who honoured the Committee's invitations and appeared before it to present their submissions.

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 228 (4)(a), to present the report of the Standing Committee on Devolution and Intergovernmental Relations on its

consideration of the Cooperation Agreement between the National Government and Nairobi City County Government.

Signed ..... Date 15.07.26

SEN. SHEIKH MOHAMED ABASS, CBS, MP

CHAIRPERSON,

STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

CHAPTER ONE: INTRODUCTION

1.1 Background

1. The Senate Standing Committee on Devolution and Intergovernmental Relations is established under the Standing Order 228 (3) and the Fourth Schedule of the Senate Standing Orders. The Committee is mandated to "*consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.*"

2. The Committee noted from media reports, the execution of the Cooperation Agreement between the National Government (acting through the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs) and the Nairobi City County Government (acting through the Governor) on 17th February 2026 at State House, Nairobi. Consequently, the Committee resolved to invite the Governor of Nairobi City County Government to appear before it to deliberate on the contents of the Agreement, its implementation framework, and its implications.

1.2 Content of The Cooperation Agreement

3. The Agreement is a 17-clause document dated February 2026 and signed on 17th of February 2026. It is entitled *"Cooperation Agreement between the National Government and the Nairobi City County Government"* and is expressed to be made pursuant to Section 6 of the Urban Areas and Cities Act.

4. The Agreement is structured as follows:

    a) **Preamble and Recitals:** Identifies the two parties, sets out the constitutional and statutory basis (Articles 6(2) and 189(2) of the Constitution, Section 6(5) of the Urban Areas and Cities Act, Section 23 of the Intergovernmental Relations Act), and expressly states that *"this Agreement does not constitute a transfer of functions to any level of Government."*

b) **Clause I:** Definitions and interpretation (defines "Agreement", "County Government", "Effective Date", "Financial Resources", "Function", "National Government", etc.).

c) **Clause II:** Purpose – it indicates that the parties share a common interest in fostering bilateral cooperation to position Nairobi as a globally competitive capital by sustaining the seat of the National Government, offices of diplomatic missions, efficient transport networks, commerce and industry, high quality service delivery, and a high standard of living for residents.

d) **Clause III:** Scope and areas of collaboration – it provides that the parties shall collaborate on refuse collection and solid waste management, development/maintenance/improvement of county roads, non-motorised transport and street lighting, planning and development of markets, housing-related infrastructure, provision of water and sanitation services, and *"such other areas as may be necessary ... as the Parties may mutually determine"* (Clause 3.2(vi)).

e) **Clause IV:** Roles and responsibilities of the parties – it prescribes joint responsibilities which include identification of projects, funding of operations, implementation, monitoring/evaluation/reporting, information sharing, acting in good faith, entering partnerships subject to procurement laws, and mitigating risks.

f) **Clause V:** Governance structure and committees – establishes a two-tier system:
   (i) Steering Committee (to oversee implementation) comprising:
      a. Chairperson: The Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs;
      b. Vice-Chairperson: The Governor of Nairobi City County;
      c. The Attorney General;
      d. Cabinet Secretaries responsible for: Interior and National Administration; Treasury and Economic Planning; Lands, public works, housing and urban development; Environment, climate

change and forestry; Water, sanitation and irrigation; and Energy and petroleum.

e. The County Attorney;

f. Two representatives from the Nairobi City County Government nominated by the Governor.

(ii) Implementation Committee (for technical, operational and administrative execution) comprising of:

a. Chairperson: The Governor of Nairobi City County;

b. Principal Secretaries responsible for: National security and national administration; the National Treasury; Housing and Urban Development; Roads; Environment; Water and Sanitation; and Energy;

c. Solicitor General;

d. A representative from the Executive Office of the President;

e. County Executive Committee members from Nairobi County Government responsible for corresponding functions; and

f. The County Solicitor.

The agreement provides that the Steering Committee shall meet quarterly, while the Implementation Committee shall meet monthly. Both may co-opt members and establish sub-committees.

g) **Clause VI:** Public participation – the Agreement provides that *"shall be subjected by the Nairobi City County to public participation as per the applicable laws"* and all projects and programmes shall also be subject to public participation.

h) **Clause VII:** Financing of the Agreement – it provides that the parties shall jointly agree on modalities for financing, including sources and cost-sharing; all programmes and projects shall be properly costed and provided for within the respective budgets of the National Government and the County Government and

processed through the applicable national and county budgetary processes; the flow of funds shall be in accordance with the Public Finance Management Act.

i) **Clauses VIII to XVII**: these clauses provide for entry into force and termination (the Agreement becomes effective fourteen days from the date of execution and remains in force for an initial period of twenty-four months, subject to renewal; termination may be by mutual agreement or by either party giving six months' notice), data protection, existing agreements, supplementary arrangements and amendments, governing law (the laws of Kenya), notices, dispute resolution (negotiation then referral to the Intergovernmental Relations Technical Committee), severability, entire agreement, and limitation of liability.

1.3 The Applicable Legal Framework

The Constitution of Kenya

5. Article 6(2) provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. This means the two levels of government remain separate ("distinct") and each has its own identity and powers, but they are required to work together ("inter-dependent") through consultation and cooperation. The Agreement is presented as an instrument to give effect to this duty.

6. Article 10(2) lists the national values and principles of governance that bind all State organs, including democracy and participation of the people and transparency and accountability. These values apply whenever governments enter agreements that affect public functions and public money. Any cooperation agreement must therefore involve meaningful public participation and be transparent.

7. Article 174 sets out the objects of devolution, including to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them and to promote social

and economic development and the provision of proximate, easily accessible services throughout Kenya. This means any arrangement affecting county functions must strengthen, not weaken, county self-governance and public participation.

8. Article 175(a) provides that county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively. This protects the financial autonomy of counties so that they can perform their functions without undue dependence on the national government.

9. Article 179(1) vests the executive authority of a county in the Governor who shall exercise and perform the executive authority of the county in accordance with the Constitution.

10. Article 185(1) provides that a county assembly shall consist of the members of the county assembly and shall exercise the legislative authority of the county. The County Assembly is the legislative arm of the county and must have a role in approving matters that affect county functions and finances.

11. Article 186(1) states that except as otherwise provided by the Constitution, the functions and powers of the national government and the county governments are set out in the Fourth Schedule. Part 2 of the Fourth Schedule assigns to county governments functions including county health services, county transport (including county roads), county planning and development, and pre-primary education, among others. The functions listed in the Agreement (refuse collection, county roads, markets, water & sanitation, housing infrastructure) are county functions.

12. Article 189(1) requires that Government at either level shall perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level and assist, support and consult and, as appropriate, implement the legislation of the other level of government.

13. Article 189(2) provides that Government at each level, and different governments at the same level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

14. Article 196(1)(b) requires that "A county assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

15. Article 201(b) includes among the principles of public finance "public participation in financial matters."

16. Article 202(2) embodies the principle that "funds follow functions."

Intergovernmental Relations Act, Cap 265F

17. Section 4 of the Intergovernmental Relations Act (Cap. 265F) prescribes the principles upon which all intergovernmental relations structures established under the Act shall be based. These include — recognition of the sovereignty of the people as provided under Article 1 of the Constitution; promotion of national values and principles of governance under Article 10 of the Constitution; respect for the constitutional status of each level of government and the institutions established at each level; promotion of equality and equity in service delivery; objectivity and impartiality in decision making; the requirement for consultation and cooperation as provided under Article 6(2) of the Constitution; the need to minimize intergovernmental disputes while cooperating in exercising their functions; accountability to the people in decision making and actions taken; and institutionalized protection of marginalized groups.

18. Section 23(a) provides that the national or a county government may establish a joint committee with a specific mandate where such a committee is necessary for the achievement of the objects and principles of devolution provided for in Articles 174 and 175 of the Constitution. Section 24 allows either level to transfer or delegate functions, powers or competencies. Section 26 requires that any such agreement be in writing, published in the Gazette, and notified to the relevant county assembly.

Urban Areas and Cities Act, Cap 275

19. Section 6(5) provides that, subject to subsection (2) which states that the capital city shall be governed and managed in the same manner as a county government, the two levels of government shall enter into an agreement regarding the performance of functions and delivery of services by the capital city.

Public Finance Management Act, Cap 412A

20. Section 191A (3) (4) requires that any agreement for conditional allocations be submitted to the county assembly for approval within fourteen days, with the assembly considering and approving or rejecting it. Section 191B requires public participation on such agreements. Section 191D requires submission of the agreement to the Senate and the Controller of Budget.

County Governments Act, Cap 265

21. Sections 108–109 require every county to prepare and adopt a County Integrated Development Plan, which "shall form the basis" for all annual development plans, budgets, and projects. No project may be implemented unless it is contained in the CIDP or ADP.

1.4 Consideration of Comparative Jurisdictions

22. In South Africa, the Intergovernmental Relations Framework Act 13 of 2005 requires Implementation Protocols for cooperation on concurrent functions. The official Implementation Protocol Guide published by the Department of Public Service and Administration (1st June 2006) and actual signed protocols (for example, between Gauteng Province and City of Tshwane for integrated transport and housing) contain the following mandatory elements that are expressly written into every protocol:

    (a) A clear statement of the parties and their authorised representatives.

    (b) Detailed objectives and priorities of the protocol.

(c) Separate and detailed clauses listing the precise roles and responsibilities of each sphere (national/provincial/municipal).

(d) Clear governance structures with balanced composition and defined functions for every committee.

(e) Specific financial contributions and resource commitments of each party listed in a schedule.

(f) A detailed workplan attached as an annexure that includes objectives, measurable indicators, outputs, timelines, allocated responsibilities, and budgets for each activity.

(g) Mandatory monitoring, reporting, and dispute resolution mechanisms with step-by-step escalation.

(h) Duration, review, amendment, and termination clauses.

(i) Explicit requirement that all projects align with the municipality's Integrated Development Plan (IDP – South Africa's equivalent of Kenya's CIDP).

23. In practice, these protocols are signed after public consultation and are tabled in the relevant provincial legislature and municipal council for approval. This ensures that no party can unilaterally change the scope or funding without going back to the legislatures.

24. In Australia, the National Partnership Agreements (NPAs) under the Intergovernmental Agreement on Federal Financial Relations (2009) are used for infrastructure and urban development. The National Partnership Agreement on Land Transport Infrastructure Projects (2019–2024) between the Commonwealth and all States/Territories is a good example. It contains:

(a) Identification of all parties.

(b) Detailed outcomes with measurable indicators (for example, reduction in road crashes, travel time savings, Indigenous employment targets).

(c) Clauses setting out shared and specific roles and responsibilities of the Commonwealth and each State/Territory.

(d) Governance arrangements including steering committees and project boards on a case-by-case basis.

(e) A project selection process that requires Project Proposal Reports and alignment with State strategic plans. Specific projects are listed in schedules that are updated twice a year by written agreement of all parties.

(f) Funding mechanisms with milestone-based releases, matching contributions from States, and conditions for withholding funds if milestones are not met.

(g) Ten specific mandatory reports (monthly progress reports, annual financial statements and audit reports, post-completion reports, Indigenous participation plans, etc.).

(h) Independent review 12 months before expiry.

(i) Escalation of disputes from officials to Ministers to First Ministers.

(j) Fixed term with clear extension and termination provisions.

25. These NPAs are signed only after the relevant State/Territory Parliament has had an opportunity to scrutinise them, and funding is released only when all reporting and accountability requirements are met.

26. The South African and Australian instruments are more prescriptive, leaving little room for discretion on roles, funding, project selection, reporting, or dispute resolution.

CHAPTER TWO: MEETINGS OF THE COMMITTEE

2.0 Introduction

27. On Thursday 26th February, 2026, the Committee considered a brief on the Cooperation Agreement between the National Government and the Nairobi City County Government, which outlined the key provisions of the Agreement, the applicable constitutional and statutory framework, as well as issues requiring further clarification.

28. Upon consideration of the brief, the Committee held a meeting with the Governor of Nairobi City County to deliberate on the contents of the Agreement, its implementation framework, and the anticipated implications on the governance and service delivery functions of the County.

29. The Senator for Nairobi City County, Sen. Edwin Sifuna, CBS, MP, was also invited and attended the Committee's engagement with the Governor of Nairobi City County, to deliberate on the matters arising from the Agreement.

30. Following its engagement with the Governor, the Committee resolved to invite the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs, to appear before it to deliberate further on the Agreement and provide the National Government's perspective, including clarification on its rationale, implementation modalities and expected outcomes. The Prime Cabinet Secretary appeared before the Committee on 30th March, 2026.

31. During its consideration of the Agreement, the Committee was apprised of two constitutional petitions that had been filed before the High Court of Kenya at Nairobi (Constitutional and Human Rights Division) challenging the Cooperation Agreement. In Constitutional Petition No. E104 of 2026 (Nairobi), Christine Gathoni & Anor vs Council of Governors & Office of the Auditor General & 12 Others, dated 18th February 2026, the Senate of the Republic of Kenya has been sued as the 6th Respondent. In Constitutional Petition No. E111 of 2026 (Nairobi), Katiba Institute vs Governor, Nairobi City County & 4 Others; Council of Governance & 4 Others

(Interested Parties), dated 19th February 2026, the Senate has been sued as the 2nd Interested Party. Both petitions challenge the constitutionality of the Cooperation Agreement on grounds including violation of the functional integrity of Nairobi City County, failure to conduct meaningful public participation prior to execution, absence of County Assembly approval, failure to involve the Senate, and violation of the constitutional framework for public finance.

32. The Committee considered a Committee Paper prepared by the Senate's Directorate of Litigation and Compliance Services on the two petitions, which recommended that the Committee consider the Cooperation Agreement and propose a way forward that would inform the Senate's position in the court proceedings. The Committee proceeded to consider the Agreement accordingly.

2.1 Meeting with the Governor of Nairobi City County

33. While appearing before the Committee on 26th February 2026, the Governor began his submissions by expressing his appreciation to the Committee for the opportunity to present and discuss the Cooperation Agreement between the Nairobi City County Government and the National Government.

34. The Governor emphasized that Nairobi City County is not comparable to other counties, noting that it serves as the capital city of the Republic. He recalled that during the debate on the revenue-sharing formula, there was a strong view that the additional support required by Nairobi could not be addressed through the same formula applied uniformly to all counties. He stated that this need arose not only from Nairobi's large population but also from other variables, including its landmass.

35. He further noted that there was a widely held position that the capital city requires substantial additional support to effectively discharge its unique national and metropolitan functions. In this regard, he drew attention to Section 6 of the Urban Areas and Cities Act, which frames such cooperation arrangements in mandatory terms.

36. The Governor emphasized that Section 6(5) of the Urban Areas and Cities Act expressly provides that, subject to subsection (2) which requires that the capital city be governed and managed in the same manner as a county government, the two levels of government shall enter into an agreement on the performance of functions and delivery of services in the capital city. He noted that the law uses mandatory, not optional, language, and that this requirement is 14 years overdue given that the Urban Areas and Cities Act was enacted in 2011.

37. The Governor highlighted that the law recognises Nairobi's unique status as the seat of the National Government. He noted that the city hosts a large diplomatic community, including approximately 150 foreign missions, as well as major international organisations such as the United Nations and UNICEF.

38. He further stated that the Act underscores the need for an efficient transport network linking rural areas, towns, and regional and international cities, and supporting commerce and industry—functions that place additional demands on the capital city.

39. The Governor observed that Nairobi receives substantial resources through the Division of Revenue, noting that the Senate allocates approximately KSh 20 billion to the County. He added that the County Government also generates its own revenue, which has been increasing due to ongoing efforts to strengthen collection.

40. The Governor noted that when Nairobi's equitable share and own-source revenue are combined—approximately KSh 33.8 billion—which he stated is insufficient for a city serving an estimated seven million people.

41. He expressly stated that the Cooperation Agreement is not a transfer of functions, but a framework for coordinated support and service delivery in the capital city. He clarified that a transfer of functions occurs under Article 187 of the Constitution, which requires a formal deed of transfer. He noted that, under such an arrangement, one level of government assumes functions ordinarily performed by the other.

42. The Governor added that a transfer of functions typically results in the creation of a new institution—such as the former Nairobi Metropolitan Services—to run the transferred functions. He emphasized that no institution has been created under the current Cooperation Agreement.

43. He explained that the County Government will continue performing its functions, and the National Government will continue performing its own. However, the Agreement now allows the National Government, through its appropriations in the National Assembly, to create a dedicated vote and allocate additional resources to support the capital city. He indicated that this approach provides a lawful mechanism for the National Government to supplement Nairobi's capacity without altering constitutional functions.

44. The Governor emphasized that Nairobi is the only county with a legal basis under the Urban Areas and Cities Act to leverage such special arrangements, owing to its status as the capital city. He stated that as the leader of the capital city, he must consider every lawful avenue available to strengthen service delivery. He noted that if Nairobi is struggling to meet its obligations and the law provides a mechanism to secure additional resources, he has a duty to pursue that opportunity for the benefit of residents.

45. He added that this reasoning applies across multiple sectors where the County faces significant pressure. The Governor highlighted sanitation as one of the key areas of partnership with the National Government. He explained that, under the Cooperation Agreement, work that would ordinarily take the County many years to complete can now be accelerated through joint efforts and additional support.

46. The Governor reported that the County and the National Government are jointly implementing a 54-kilometre sewer line, with 27 kilometres constructed on each side of the river under the Rivers Commission. He stated that the project is valued at approximately KSh 50 billion. He noted that Nairobi could not, on its own, have mobilised KSh 50 billion for a single sanitation project, yet the investment will address the city's sanitation needs for the next 40 years.

47. The Governor highlighted that the initiative includes a KSh 6 billion treatment plant in Kariobangi and an additional KSh 3 billion for last-mile connectivity, which also supports affordable housing and urban renewal programmes. He further stated that the broader programme includes the development of stadia, linear markets, and upgrades to public spaces such as Kamukunji Grounds, which he noted has already undergone visible transformation.

48. He concluded that these realities informed the County's pragmatic approach in embracing the Cooperation Agreement as a means of accelerating essential infrastructure for the capital city. He cautioned that an overly rigid interpretation of legal provisions could hinder the delivery of essential services to residents who require

them urgently. He noted that urban poverty is often more severe than rural poverty, as those without income in the city may lack shelter, food, and basic necessities.

49. He stated that the County is pursuing multiple projects under the Cooperation Agreement to address these urgent needs. One of the critical areas identified is public lighting. The Governor explained that Nairobi currently has about 50,000 streetlights, yet requires approximately 120,000 to adequately serve its population. He noted that KSh 3.7 billion has been allocated to expand lighting infrastructure across the city.

50. He highlighted that, similar to roads, many infrastructure challenges fall on the County even when the assets belong to the National Government. He cited the example of a flooded underpass along Haile Selassie Avenue, which is part of a national—and even international—road network, yet public criticism is often directed at the County. He gave a further illustration of unlit sections of Juja Road, where public criticism is directed at the County even though the assets are not under its control. He also noted that more than seven wards in Nairobi currently lack power after transformers were removed, and that although electricity supply is not a county function, he is compelled to intervene by engaging the Principal Secretary for Energy to restore services for residents.

51. He explained that the Cooperation Agreement provides a practical platform for such interventions through the Implementation Committee, which he chairs. The Governor noted that the Committee brings together key national officials, including the Principal Secretaries for Energy, National Treasury, and Security. He emphasized that many issues for which the County is blamed such as insecurity, fall outside the County's direct mandate, yet the Committee now enables structured engagement.

52. He added that the Implementation Committee meets as often as necessary, including multiple times a week, and functions as a hands-on mechanism for resolving operational challenges. He contrasted this with the Steering Committee, which focuses on policy

direction. He stated that the Implementation Committee allows him to directly follow up on commitments, including those with the responsible Principal Secretaries.

53. He stated that, overall, the Cooperation Agreement presents a strong and timely opportunity for Nairobi City County. He acknowledged that no agreement is perfect and that there is room for refinement. He indicated that the County is open to reviewing specific provisions and strengthening areas that require adjustment.

54. The Governor observed that some stakeholders have raised concerns about the composition of the Steering Committee, particularly the number of representatives from the National Government. He stated that this is a valid point and that the Committee's membership can be balanced. He added that concerns about chairing arrangements have also been raised and noted that such issues can be addressed through constructive engagement.

55. The Governor urged the Committee to focus less on the form of the Cooperation Agreement and more on its practical benefits for the city. He stated that the priority should be the outcomes Nairobi stands to gain, while procedural matters such as meeting convening and administrative arrangements can be refined over time. He described the Agreement as a significant opportunity for devolution, enabling Nairobi to accelerate service delivery in ways that would not be possible through county resources alone.

56. The Governor expressed confidence that within the next five to six months, residents will see substantial improvements across the city. He cited expected progress in cleanliness, sanitation, roads, and public lighting.

57. The Governor noted that effective service delivery in Nairobi requires constant interplay between the National Government and the County Government. He stated that this cooperation is unavoidable given the city's unique status and the nature of the functions involved.

58. He observed that every major capital city in the world operates under a similar framework. He cited examples such as Washington D.C, Berlin, London, Paris, Canberra, Cape Town, and Pretoria, noting that structured agreements are standard practice for capitals. He emphasized that a capital city cannot be overlooked, as it carries national, diplomatic, and metropolitan responsibilities that exceed those of ordinary counties;

59. He concluded the first limb of his submission by acknowledging that the Committee may have concerns about the Agreement to which he affirmed his readiness to provide any clarification required.

Issues raised by the Committee

Upon concluding his submissions, the Committee proceeded to raise the following questions and concerns to the Governor -

60. The Committee expressed serious concern about the Cooperation Agreement's adherence to the Constitution and the law, noting that Article 10 of the Constitution requires that all public policy decisions must comply with national values and principles of governance, including public participation. The Committee questioned the validity of the ongoing public participation process, noting that the Governor had already signed the Agreement before public views were sought, and that public participation scheduled for that week appeared retrospective. The Committee sought clarification on how this complies with Article 10, given that courts have held that public participation must be meaningful and conducted before decisions are made, not as a formality after the fact.

61. The Committee asked the Governor to explain why his administration did not present a draft of the Cooperation Agreement to the public at an earlier stage. Members noted that the discussions between the County Government and the National Government had taken considerable time, and questioned why the County did not issue a public notice indicating that such negotiations were underway and inviting Nairobi residents, and the

Nairobi City County Assembly, participate and provide their views before the Agreement was executed.

62. The Committee sought clarification on the legal basis of the Cooperation Agreement, noting that it is expressed to be made under Section 6 of the Urban Areas and Cities Act. The Committee emphasized that this section is expressly subject to Section 6(2), which requires that the capital city must be governed and managed as a county government.

63. The Committee referred to Article 177 of the Constitution, which establishes the membership of the County Assembly and the County Executive. Members sought clarification on how the Cooperation Agreement aligns with this constitutional structure, noting that no additional organ or external actors may be introduced into county management outside those expressly provided for in Article 176 and Article 177.

64. The Committee questioned whether the Agreement improperly introduces members of the National Executive into the management of county affairs, and asked the Governor to explain how this complies with the constitutional requirement that county governance must be exercised exclusively through the County Assembly and the County Executive Committee.

65. The Committee further requested an explanation of how long discussions with the National Government had been ongoing before the Agreement was signed. The Committee noted that such negotiations could not reasonably have occurred within a short period and asked the Governor to account for the duration and nature of these engagements, given his role as the head of the County.

66. The Committee asked the Governor to clarify why the Agreement only anticipates amendments arising from public participation, yet does not provide for the possibility that Nairobi residents may reject the Agreement entirely. The Committee noted that the Governor himself had spoken of refining the Agreement, and sought clarification on

why the text does not expressly recognize the public's right to reject, not merely amend, the proposal.

67. The Committee further observed that the Governor, as a former Senator, is aware that there already exist legal mechanisms for targeted national support to counties, including through the County Governments Additional Allocations Act. The Committee therefore asked why these established mechanisms were not used instead of creating a new framework.

68. The Committee sought clarification on why the Governor had not pressed the National Government to settle the outstanding land rates owed to Nairobi City County, previously estimated at over KSh 100 billion. The Committee further questioned why the Governor did not emphasize this matter in his engagements with the National Government, noting that payment of the outstanding land rates would enable the County to undertake functions such as the construction of roads, sewer lines, and drainage infrastructure directly, thereby enhancing service delivery to the residents of Nairobi.

69. The Committee sought clarification on how the Cooperation Agreement addresses the pending bills left by the defunct Nairobi Metropolitan Services (NMS), noting that these liabilities continue to appear in audit reports and remain unresolved.

70. The Committee asked the Governor to explain the difference between the previous NMS-related collaboration and the current Cooperation Agreement, and to outline what distinguishes the two frameworks in terms of structure, legality, and implementation;

71. The Committee asked why the County could not undertake projects such as roads, sewer lines, and drainage works using its own constitutional mandate and resources, provided the National Government settles its outstanding obligations.

72. The Committee asked how the Cooperation Agreement safeguards the functional integrity of the County Government, given that county functions must remain under county control even where national support is provided.

73. The Committee sought clarification from the Governor on whether the National Cabinet and the Nairobi City County Executive would both be sitting to plan and coordinate the same functions under the Cooperation Agreement. Members asked the Governor to explain how parallel planning processes, one at the national level and another at the county level would operate in practice, and whether this arrangement risked duplicating roles or undermining the County Government's constitutional mandate to plan and implement devolved functions.

74. The Committee expressed concern that the Cooperation Agreement may complicate audit processes, noting that documentation for expenditures may be scattered across multiple national and county entities, thereby hindering the Auditor-General's ability to conduct a coherent audit.

75. The Committee reminded the Governor that he had previously appeared before the Senate, assured Nairobi residents that the County would not repeat the NMS experience, and secured a concession that Nairobi residents would not bear NMS pending bills. The Committee therefore asked why the County has now entered into an arrangement that may expose Nairobi to similar liabilities.

76. The Committee asked the Governor to clarify why the Agreement does not clearly define the respective capacities of the National Government and Nairobi City County for example, the County's ability to install 40,000 streetlights versus the National Government's proposal to scale this to 70,000 through conditional grants.

77. The Committee expressed concern that the structure of the committees in the Agreement appears to give the National Government decision-making authority over county functions, rather than limiting its role to support.

78. The Committee noted that the role of the County Government within the Implementation Committee is unclear, and sought clarification on whether the Committee is intended to supervise, oversight, or directly implement county functions.

79. The Committee sought clarification on the intended use of conditional grants, noting that the Agreement does not specify whether national support is meant to be financial, technical, or both.

80. The Committee sought clarification on how disputes between the Steering Committee and the County Executive would be resolved, noting that the Agreement does not assign any role to the County Assembly or the Senate.

81. The Committee expressed concern that the Steering Committee is dominated by National Government representatives—eight members compared to four from the County—and asked how this structure safeguards county autonomy.

82. The Committee questioned why the reporting framework under Clause 7 of the Agreement is directed only to the County Executive Committee and the National Cabinet, with no provision for reporting to the County Assembly or the Senate, which are the constitutionally mandated oversight bodies.

83. The Committee asked the Governor to clarify how the proposed KSh 80 billion will be appropriated — specifically, whether the funds will first be channeled to the County Government for appropriation through the County Assembly, or whether the National Government will directly manage and disburse the funds for the projects, or whether such funds would be structured as conditional grants to be appropriated by the County Assembly.

84. The Committee noted that the Agreement defers key financial commitments to future joint decisions, and questioned whether an agreement that leaves major financial terms unsettled can be considered complete.

85. The Committee asked how the programmes introduced under the Cooperation Agreement relate to the existing County Integrated Development Plan (CIDP), noting that the CIDP is already in force. Additionally, the Governor to clarify whether the County will prepare an addendum to the Annual Development Plan (ADP) to incorporate these new programmes, or whether it intends to run two parallel ADPs,

which would be irregular. The Committee emphasized that clarity on the relationship between the Agreement, the CIDP, and the ADP is essential for oversight by both the Senate and the County Assembly.

86. The Committee sought assurance that the Controller of Budget will continue issuing statutory reports to the area Senator, noting that the Agreement involves county-related funding and therefore falls within the Controller's oversight mandate.

87. The Committee expressed concern that the Agreement spans two terms of government and may outlast the current Governor and the current National Government and asked how accountability will be safeguarded in future administrations without a clear, watertight reporting system.

88. The Committee warned that without explicit reporting obligations to oversight institutions, projects implemented under the Agreement could be easily abused, especially given the cross-government nature of the arrangement.

89. The Committee asked the Governor to specify the exact financial and resource commitments of each party under the Agreement, including how much the National Government and the County Government of Nairobi will respectively contribute, as contemplated in the Schedule.

90. The Committee sought clarification on whether there is a detailed work plan formally attached to the Agreement, setting out clear objectives, measurable indicators, outputs, timelines, and responsibilities for each party and further requested details of the monitoring, reporting, and dispute-resolution mechanisms, including whether there is a step-by-step escalation framework for resolving disagreements between the parties.

91. The Committee further asked the Governor to explain the duration, review, amendment, and termination clauses of the Agreement, and how these provisions protect the interests of Nairobi residents over time.

92. The Committee noted that the Agreement does not specify procedures or conditions for renewal, and requested clarification on how renewal, extension, or expiry would be handled to ensure continuity and legality.

Further responses from the Governor

The Governor submitted his responses to the above issues as follows -

93. The Governor stated that the County submitted the Agreement for public participation because there must be a concrete document for the public to review. He explained that without a draft Agreement, it would not have been possible to conduct a meaningful engagement process, as the public requires a specific text on which to give views;

94. He expressed openness to refining the public participation process, noting that if there are better ways to structure or sequence it, the Senate should guide the County accordingly. He emphasized that he does not intend to resist improvements, provided the overall objective of securing a sustainable fiscal arrangement for Nairobi is preserved.

95. On the question of what happens if the public rejects the Agreement, the Governor stated that amendments are possible, including the deletion of clauses where necessary. He noted that public participation is not an empirical or numerical vote, as individuals can mobilize large groups either in support or opposition. Instead, it is a process for gathering views to inform decision-making.

96. The Governor further observed that the law passed by Parliament and subjected to public participation requires an agreement between Nairobi City County and the National Government. He argued that this statutory requirement cannot be ignored, even as the content of the Agreement may be amended based on public input. He reiterated that while public participation is important, the ultimate goal is to secure a functional and sustainable framework for Nairobi as the capital city.

97. The Governor responded by emphasizing that the law requires Nairobi City County and the National Government to enter into an agreement, and that such an arrangement is therefore not optional unless Parliament amends the governing statute.

98. He reiterated that the Cooperation Agreement does not transfer any county functions to the National Government, and that each level of government will continue performing its constitutionally assigned roles independently.

99. The Governor explained that the involvement of national officials—such as the Principal Secretary for Interior—reflects the reality that national-level concerns in the capital, particularly security, often intersect with county operations. He stated that their presence in the committees is meant to facilitate coordination on matters that remain national functions.

100. The Governor explained that his approach to the Agreement is driven by pragmatic considerations, noting that Nairobi, as the capital city, hosts a significant number of national functions that intersect with county responsibilities. He emphasized that Section 6 of the Urban Areas and Cities Act recognize Nairobi as the seat of diplomatic missions, and many of the services provided to diplomatic institutions—such as water supply to the United Nations complex and the new line serving the diplomatic village—require coordinated action between the two levels of government.

101. He stressed that diplomacy, foreign service, and security are not devolved functions, yet they have direct operational implications for the County because they are physically situated within Nairobi. For this reason, he argued that structured collaboration is necessary to ensure that both national and county obligations in the capital are met efficiently.

102. The Governor reiterated that the committees established under the Agreement are not intended to oversight county functions, but to provide a forum where both parties can jointly review progress on agreed activities, identify challenges, and improve coordination. He noted that security concerns in the capital are substantial and often

invisible to the general public, making it essential for national and county officials to work together through a formal mechanism.

103. The Governor stated that the Constitution, under Article 189, expressly provides for the establishment of joint committees between the two levels of government, and that the Urban Areas and Cities Act further require the existence of a formal agreement for coordinated action in the capital. He emphasized that the committees created under the Cooperation Agreement are therefore not new governance structures, but constitutionally recognized joint committees.

104. He clarified that the arrangement is fundamentally different from the former Nairobi Metropolitan Services (NMS). Unlike NMS, the current framework does not create a new entity, does not establish a director-general or directorates, and does not involve the transfer or secondment of staff between the National Government and the County Government. He stressed that there is no human-resource restructuring, and each level of government will continue performing its respective functions independently.

105. The Governor explained that the Agreement merely provides for additional focus, resource allocation, and structured coordination due to Nairobi's unique status as the capital city. He noted that the intention is to enhance collaboration on matters that require joint attention, without altering the constitutional allocation of functions or undermining county autonomy.

106. The Governor stated that, given the scale of resources required for the capital, conditional grants are a viable mechanism, and he does not oppose their use. However, he emphasized that his primary objective is to secure a direct appropriation by the National Assembly specifically for Nairobi as the capital city, arguing that this would provide a more predictable and substantial funding stream.

107. He added that conditional grants could still serve as supplementary financing, but noted that many of the conditional grants approved in recent years have been donor-funded projects, which limits their flexibility and scope. He therefore maintained

that a dedicated national appropriation for the capital city is the more appropriate and sustainable approach.

108. The Governor confirmed that Nairobi has an existing County Integrated Development Plan (CIDP), but noted that the CIDP functions largely as a broad wish-list, and many of the projects contemplated under the Cooperation Agreement fall within its general aspirations. He explained that the law allows counties to amend the CIDP or prepare an addendum whenever new priorities arise, and the same flexibility applies to the Annual Development Plan (ADP).

109. He emphasized that all projects—whether arising from the CIDP, the ADP, or the Cooperation Agreement—must ultimately be appropriated by the County Assembly, since no expenditure can occur outside the approved county budget. He added that the National Government will also be required to appropriate its share of the KSh 80 billion, likely through a fresh national-level budget process to incorporate the agreed projects.

110. The Governor further explained that for the Controller of Budget to authorize the flow of funds between the two levels of government, there must be a formal framework governing the collaboration. He stated that the Cooperation Agreement provides this required framework, enabling both the National Government and Nairobi City County to receive, disburse, and account for funds in compliance with the law.

111. The Governor explained that the division of responsibilities under the Agreement is guided strictly by the constitutional and statutory mandates of each level of government. He stated that Nairobi City County will continue performing functions assigned to it—such as lighting and maintaining county roads—while the National Government will remain responsible for lighting and maintaining national roads.

112. He noted that the current classification of roads remains unchanged because of an existing court-issued stay order affecting the Road Maintenance Levy Fund (RMLF) framework. As a result, many roads within Nairobi continue to be categorized under KURA, KeNHA, and other national agencies, as reflected on the Kenya Roads Board

website. He emphasized that until the legal position changes, each level of government must operate within its existing functional mandate, and the Agreement does not alter these classifications.

113. The Governor explained that the reporting and financial framework under the Agreement does not introduce any new or irregular procedures. He stated that all aspects of funds flow, disbursement, utilisation, accounting, and reporting will continue to be undertaken strictly in accordance with the Public Finance Management Act, and that every project must undergo the full statutory budgetary process, including public participation, approval, and appropriation. He further stated that appropriations will continue to be undertaken separately by each level of government, and that the existing audit processes remain fully intact — the County Government will be audited for county-level expenditures and the National Government for national-level expenditures undertaken within the capital.

114. The Governor reiterated that the Agreement covers both county and national functions within Nairobi, and therefore requires a collaborative structure. He added that the question of who chairs the joint committees is less important to him than ensuring that the agreed activities are implemented effectively. However, he acknowledged the Committee's concerns about balance and representation, noting that while the current relationship between the two levels of government is cordial, future administrations may not enjoy the same cooperation. He therefore agreed that ensuring equitable representation in the committees is a reasonable safeguard for posterity.

115. The Governor affirmed that the pending bills of the defunct Nairobi Metropolitan Services (NMS) must be settled, noting that these obligations remain valid and must be addressed through the appropriate national mechanisms.

116. He emphasized that the current Cooperation Agreement does not create a new entity or organisation, and therefore does not generate new accounting structures or officers. He clarified that, unlike NMS, the Agreement does not establish a separate

administrative body with its own accounting officer, staff, or operational framework. As a result, no new liabilities or financial obligations are being created under this arrangement.

117. On outstanding land rates, the Governor clarified that the National Government owes approximately KSh 3.6 billion, not KSh 100 billion. He stated that the County has already submitted the claim through the National Land Commission, as required by law, and discussions are ongoing on whether the settlement will be made in one or two tranches. He also highlighted additional debts, including unpaid parking fees, and noted that the largest valuation relates to Embakasi Garrison, estimated at KSh 68 million. He informed the Committee that these matters have been escalated to the National Treasury for inclusion in the supplementary budget.

118. The Governor stated that Nairobi's main constraint is inadequate resources and noted that the pending regulations under the National Rating Act which are awaiting approval by the Cabinet Secretary will unlock significant revenue for the County. He explained that the Cooperation Agreement now provides a structured platform to follow up on these regulations with the relevant Principal Secretaries and to ensure regular reporting.

2.2 Meeting with the Prime Cabinet Secretary (PCS)

119. The Prime Cabinet Secretary, H.E. Hon. Dr. Musalia Mudavadi, EGH, on 26th March 2026 submitted his written submissions, which are attached to this report under *Annex II*.

120. In his opening remarks, the Prime Cabinet Secretary, indicated that he had done a formal and detailed written response on the matter, and forwarded it to the Committee through the Office of the Clerk of the Senate. He therefore stated that in his oral submissions, he was flagging out, in summary form, some aspects of the written response.

121. He submitted that the National Government already cooperates with County Governments under the Intergovernmental Relations Act, 2012 and the County Governments Act, 2012. He added that even the revenue-sharing framework reflects ongoing cooperation between the two levels of government. He therefore emphasized that the arrangement between the National Government and Nairobi City County is strictly a cooperation agreement and not a transfer of functions.

122. Through his legal advisor, Mr. Dan Ameyo, the Prime Cabinet Secretary outlined the constitutional and statutory basis of the Cooperation Agreement. He cited Article 189 of the Constitution, which expressly provides for cooperation between the two levels of government, including the establishment of joint committees and joint authorities; Article 6(2), which establishes the National and County Governments as distinct yet interdependent entities that must conduct their relations through consultation and cooperation; Section 6(5) of the Urban Areas and Cities Act, which provides the legal basis for structured cooperation in the management and development of Nairobi as the capital city; and Section 23 of the Intergovernmental Relations Act, which authorizes the establishment of joint committees to facilitate intergovernmental consultations. He reiterated that the Cooperation Agreement does not amount to a

transfer of functions and therefore does not fall within the scope of Article 187 of the Constitution.

123. The Prime Cabinet Secretary reported that the Cooperation Agreement clearly outlines the respective responsibilities of both parties, particularly regarding the framework for cooperation and financial management. He noted that the collaboration between the two levels of government is operationalized through specific national ministries that have defined roles in implementing the Agreement.

124. He informed the Committee that in total, implementation of the projects and the programs, envisaged under the agreement would cost the National Government 80 billion Kenya shillings.

125. He noted that the Agreement sets out specific targets to be achieved within its two-year implementation period. He reported that a Steering Committee has been established, which he chairs in his capacity as Prime Cabinet Secretary and is deputized by the Governor of Nairobi City County. In addition, an Implementation Committee, chaired by the Governor, has been constituted to oversee the day-to-day follow-up and execution of the Agreement's activities.

126. The Prime Cabinet Secretary explained that, within the legal framework established under the Urban Areas and Cities Act, Nairobi requires well-designed and coordinated interventions between the National Government and the County Government to ensure efficient and effective service delivery in the capital.

127. The Prime Cabinet Secretary reported that, in implementing the Agreement, his office developed a series of concept notes, referred to as White Papers, which outline the strategic approach and proposed interventions. He then provided a summary of the content of each of these papers-

i) White Paper 1 deals with Water and Sanitation and focuses on addressing the key aspects of the water challenge in Nairobi City;

ii) White Paper 2 deals with the Safe Streets which focuses on upgrading of roads, bridges, and installation of up to 50,000 streetlights within the city;

iii) White Paper 3 deals with Markets and Urban Economy which focuses on the formalization of informal trade and development of market infrastructure;

iv) White Paper 4 is on the Legal, Finance, Governance and Communication. This provides legal architecture for anchoring the Cooperation Agreement;

v) White Paper 5 is on Environment and Green Development. This talks to the issues of the Nairobi River's regeneration, the waste-to-energy opportunity, which includes the infrastructure required for the affordable housing and positioning of Nairobi as a city that can benefit from green finance.

vi) White Paper 6, focuses on Flood Resilience. This provides an integrated approach to urban water management, development of a flood masterplan and urban planning reforms;

vii) White Paper 7 deals with urban security. This provides for the establishment of the Nairobi Metropolitan Service Framework. The proposal establishes, a dedicated, ward-structured community embedded Metropolitan Police Formation within the Nairobi Police Service. He pointed that this will establish a dedicated police service without having to amend the National Police Service Act. He observed that, Nairobi City, Machakos, Kiambu, and sections of Kajiado Counties are within the Metropolis and so the Metropolitan Police Service would help in giving more focus to improve the security within this large Metropolis.

128. After outlining the contents of the White Papers, the Prime Cabinet Secretary informed the Committee that his Office was ready and willing to share the documents as they continue to be developed, and would make them available to the Committee.

129. The Prime Cabinet Secretary reiterated that the National Government has no intention of undermining the principles of devolution. To demonstrate his personal commitment to strengthening devolution, he noted that he was responsible for submitting the Sessional Paper on Devolution to Parliament and for leading the

development of the first six pieces of legislation that anchored devolution in law following the promulgation of the 2010 Constitution.

130. On the issue of pending bills left by the defunct Nairobi Metropolitan Services (NMS), the Prime Cabinet Secretary reported that a dedicated Committee is currently operating under a separate mandate to verify pending bills across public entities. He stated that the Committee is actively discharging its mandate and that its recommendations will guide how the National Government settles all its outstanding pending bills, including those inherited from NMS.

Issues Raised by the Committee

131. Upon making his submissions the Committee raised the following questions to the Prime Cabinet Secretary -

a) The Prime Cabinet Secretary to explain why the agreement does not assign a role to the National Assembly and the Nairobi City County Assembly in the allocation and oversight of the funds to be used in implementing the projects and programs under the agreement, as the two institutions are constitutionally mandated to oversight the National Government and County Government respectively;

b) Explain why the agreement doesn't disclose the specific amount of money that the Nairobi City County Government will be contributing to the implementation of the Agreement and why it fails to detail the broader role of the County Government in executing the agreement;

c) Give an explanation why public participation process was not properly conducted prior to the signing of the agreement, noting that it was undertaken post-facto. Further, the Committee requested clarity on the clause providing that views from public participation will be incorporated into the agreement given this came after its signing.

d) Clarify any long-term plans for the National Government to collaborate with the Nairobi City County beyond the two-year period provided for in the agreement;

e) The Committee observed that Clause 7 of the agreement, on financing, is so vague and requested the Prime Cabinet Secretary to specify the source of the Ksh. 80 billion. The Committee noted that the clause only provides that the parties shall jointly agree on the modalities of financing without stipulating the respective financial obligation for each party;

f) Observing that the agreement provides that National Government Cabinet Secretaries are to convene in determining the planning and execution of county functions, what will be the exact role of the National Government and what then will be the role of the County Executive Committee in planning the same functions? How does the role for each level retain the distinctiveness of the two levels of government?

g) The Prime Cabinet Secretary was tasked to convince the Committee that this arrangement does not amount to implementing article 187 of the Constitution, but is disguised as Cooperation under Article 189. Considering that the National Government is funding, coordinating and implementing the projects, it can be argued that the National Government has taken over the functions of the County;

h) Noting that Article 187 clearly states that, if a function or power is transferred from a government at one level to a government to another level, constitutional responsibility for the performance of the function or exercise of the power shall remain with the level of government to which it is assigned under the Fourth Schedule. In this regard, the PCS was required to explain whether, under the cooperation agreement, there is one project that the national government has funded and coordinated, but where the function has remained under the control of the Nairobi City County government;

i) The Prime Secretary was requested to explain why the Cooperation initiative being operationalized through the Nairobi Rising Programme, does not provide the exact obligations for each level of government. To illustrate, under the street lighting component, the programme indicates that 50,000 streetlights shall be installed. The Committee sought to know what proportion of that number is to be funded by the National Government and what proportion by the County Government;

j) The Committee noted that the defunct Nairobi Metropolitan Services (NMS) left behind pending bills amounting to approximately KSh 16 billion. The Prime Cabinet Secretary was therefore required to clarify whether the ongoing Cooperation Agreement between the National Government and the Nairobi City County Government takes into account this outstanding liability, which arose from the previous national–county cooperation arrangement under NMS. The Committee further sought assurance that the current cooperation framework would not result in a similar situation where, upon the conclusion of the programme, the County Government is left burdened with substantial pending bills accumulated during the period of joint implementation;

k) He was asked to clarify what would happen if other counties that also have cities—such as Nakuru, Mombasa, and Kisumu—were to demand similar arrangements. Specifically, the Committee sought to know whether such counties would receive comparable financial support from the National Government and whether they would be entitled to a similar cooperation structure.

l) The Committee sought clarification on the extent to which the Cooperation Agreement preserves the functional autonomy of the Nairobi City County Government. Members observed that the joint planning structures established under the agreement—particularly in areas such as water supply, road development, and other county functions—appear to place national and

county officials in shared decision-making roles. Accordingly, the Committee requested the Prime Cabinet Secretary to clearly articulate the specific role of the Nairobi City County Government within this arrangement. The Committee emphasized that the central concern lies in determining whether the agreement constitutes limited cooperation, as envisaged under Article 189 of the Constitution, or whether it effectively results in the joint execution or assumption of county functions, which would fall within the ambit of Article 187 on transfer of functions. The Committee therefore invited the PCS to provide clarity on how the agreement safeguards the distinct constitutional mandate of the County Executive.

m) He was asked to indicate when the Nairobi Metropolitan Police is expected to be established, and to clarify the timelines or steps the National Government has set toward its operationalization;

n) He was asked to clarify whether the pending bills left by the defunct Nairobi Metropolitan Services (NMS) include salary obligations owed to former NMS staff;

o) The Committee sought clarification on whether the historical reality of Nairobi being originally a swamp has been factored into current planning frameworks. Members noted that White Paper 3 proposes the development of permanent urban facilities with strict infrastructure standards covering sanitation, waste management, security, water supply, electricity, and drainage. The Committee therefore requested the Prime Cabinet Secretary to confirm that these plans adequately account for Nairobi's unique geological and environmental characteristics.

p) The Committee sought clarification on the Prime Cabinet Secretary's submission that congestion in Nairobi is largely concentrated within informal settlements. Members requested the PCS to indicate whether there

are any plans to relocate or reorganize these densely populated areas as part of broader efforts to decongest the city;

q) The Committee sought clarification on how the Cooperation Agreement was formally executed on 27 February 2026, despite the absence of any corresponding budgetary allocation. Members noted that the proposed KSh 80 billion is not provided for in the 2025/26 financial year nor reflected in the 2026/27 Budget Policy Statement, and therefore requested the Prime Cabinet Secretary to explain the basis upon which the agreement was operationalized without prior budgetary provision; and

r) The Committee requested the Prime Cabinet Secretary to clarify who represents the State Department for Devolution in Cabinet deliberations, noting that the Department does not fall under any established Ministry.

Responses from the Prime Cabinet Secretary

132. The Prime Cabinet Secretary responded to the above questions raised by the Committee as follows –

a) He explained that Article 189 further elaborates the constitutional principle of interdependence by requiring that cooperation between the two levels of government be guided by a clearly defined framework. He added that Nairobi's unique position arises from statute, noting that an Act of Parliament designates Nairobi as the capital city and, under the Urban Areas and Cities Act, grants it special recognition. He stated that the current arrangement is therefore specific to Nairobi because it is supported by enabling legislation, and no similar law exists to provide such a framework for any other county;

b) The Prime Cabinet Secretary emphasized that devolution is a foundational principle of the Constitution and that no governance structure should undermine its significance. He further noted that the constitutional

framework—particularly Article 6(2)—recognizes that while the National and County Governments are distinct, they are also interdependent, and must therefore operate in a manner that respects both autonomy and cooperation;

c) The Prime Cabinet Secretary emphasized the need for substantial investment in infrastructure within densely populated areas such as Kibera, Kasarani, and Mathare. He noted that improving essential services—particularly sanitation—would significantly enhance these settlements' capacity to accommodate residents more sustainably. He stressed that such targeted urban infrastructure development is necessary for the long-term improvement of Nairobi city;

d) The Prime Cabinet Secretary explained that the joint teams initially held several meetings to establish the cooperation framework. He noted that, thereafter, the Steering Committee would assume an oversight role, meeting periodically—likely on a quarterly basis—to review progress. In contrast, the Implementation Committee, chaired by the Governor, would be more hands-on, working closely with the County's technical team and corresponding technical teams from the relevant national ministries to execute the agreement's activities;

e) The Prime Cabinet Secretary acknowledged that the KSh 80 billion required for the cooperation programme had not been provided for in the existing budget. He stated that this omission would be treated as a matter of urgency and confirmed that the necessary allocations would be incorporated into the ongoing budgeting process for the 2026/27 financial year;

f) The Prime Cabinet Secretary assured the Committee that all expenditures under the Cooperation Agreement would strictly comply with the Public Finance Management Act. He emphasized that both parties would ensure that every financial commitment and disbursement is undertaken in full accordance with the requirements of the Act;

g) The Prime Cabinet Secretary did not provide a clear explanation on who represents the State Department for Devolution in Cabinet. He noted that although the Department is domiciled under the Office of the Deputy President, the Deputy President sits in Cabinet in his capacity as Deputy President and not as a representative of any ministry or state department; and

h) The Prime Cabinet Secretary stated that the government has taken into account Nairobi's historical status as a former waterlogged area. He noted that modern engineering and scientific advancements now guide urban planning and infrastructure development to ensure the city is built in a manner that responds to its environmental characteristics.

133. In his closing remarks, the Prime Cabinet Secretary stated that his office would welcome the opportunity to invite the Committee for an inspection tour of Nairobi City to observe firsthand the joint efforts of the National and County Governments in implementing programmes and projects aimed at improving the city.

CHAPTER THREE: COMMITTEE ANALYSIS AND OBSERVATIONS

134. The Committee, having considered the relevant provisions of the Constitution and the applicable statutory framework, held meetings with the Governor of Nairobi City County and the Prime Cabinet Secretary, received and scrutinized the Cooperation Agreement, and examined the comparative practice in comparable jurisdictions, makes the following analysis and observations.

135. The Committee acknowledges that the Constitution contemplates and encourages cooperation between the two levels of government. Article 6(2) establishes the National Government and county governments as distinct and interdependent, and requires that they conduct their mutual relations on the basis of consultation and cooperation. Article 189 gives practical expression to this principle by authorising the two levels of government to cooperate in the performance of functions and to set up joint committees and joint authorities for that purpose.

136. Section 6(5) of the Urban Areas and Cities Act goes further by imposing a mandatory obligation on the two levels of government to enter into an agreement regarding the performance of functions and delivery of services in the capital city. This requirement has been pending for fourteen years since the enactment of the Act, and it is commendable that this obligation has now been acted upon. The Committee observes that this obligation under Section 6(5) is specific to Nairobi by virtue of its unique status as the capital city and host to diplomatic missions, international organisations, and other institutions of national and international significance, a status not shared by any other city or urban area governed under the Act. The Committee further recognises Nairobi's unique fiscal pressures, its metropolitan responsibilities, and the legitimate policy rationale for the National Government to provide structured support to the capital city for the benefit of its residents.

137. However, the Committee's analysis of the Agreement against the constitutional and statutory framework reveals concerns about the clarity of the cooperation arrangement

and its consistency with the requirements of Article 189 of the Constitution. These concerns are set out in the sections that follow.

3.1 The Constitutional Framework: Article 187 versus Article 189

138. The Constitution contemplates two distinct mechanisms through which the National Government and county governments may engage with each other's functions — the transfer of functions under Article 187 and cooperation in the performance of functions under Article 189. These two provisions serve fundamentally different constitutional purposes, are subject to different conditions, and produce different legal consequences. An agreement between the two levels of government must fall clearly within one or the other. Where the distinction is blurred, there is a risk that what is presented as cooperation may in substance amount to a transfer of functions, or vice versa.

139. Having considered the provisions of Articles 187 and 189 of the Constitution, the Committee observes that an agreement under each Article exhibits the following indicators:

An agreement under Article 187 (Transfer of Functions) is characterised by the following indicators —

(a) One level of government formally cedes the performance of a function or the exercise of a power to the other level, through a formal deed of transfer;

(b) The transfer is premised on the receiving government being in a position to more effectively perform the function than the assigning government;

(c) The transfer is not prohibited by the legislation under which the function is performed;

(d) Resources necessary for the performance of the transferred function are transferred alongside the function;

(e) The instrument of transfer expressly and unambiguously identifies the government ceding the function or power and the government accepting it, such that the direction of the transfer is clear on the face of the agreement;

(f) Constitutional responsibility for the function remains with the level of government to which it is assigned under the Fourth Schedule, notwithstanding the operational transfer;

(g) A new institutional or administrative structure may be established to perform the transferred function on behalf of the receiving government;

(h) The transferring government's role in the day-to-day performance of the function is diminished or ceases entirely for the duration of the transfer; and

(i) The arrangement is published in the Gazette and notified to the relevant county assembly in accordance with Section 26 of the Intergovernmental Relations Act.

An agreement under Article 189 (Cooperation) is characterised by the following indicators —

(a) Both levels of government retain and continue to independently perform their respective constitutionally assigned functions;

(b) Neither level of government assumes executive authority, policy oversight, or operational control over functions assigned to the other;

(c) The functional and institutional integrity of each level of government is respected, as required under Article 189(1);

(d) The government extending support is interested in strengthening the performance of the function by the level of government constitutionally responsible for it, rather than assuming responsibility for the function itself. Where such support is financial, it is channelled through an established intergovernmental funding mechanism, such as conditional grants under the County Governments Additional Allocations Act or conditional allocations

under Section 191A of the Public Finance Management Act. The support may alternatively, or in addition, take the form of technical expertise, capacity building, or other non-financial assistance;

(e) Any joint committees or authorities established serve a coordinating role and do not substitute for, or exercise the powers of, the constitutional organs of either level of government;

(f) The governance structures established under the agreement reflect equitable representation of both levels of government, consistent with the principles of intergovernmental relations under Section 4 of the Intergovernmental Relations Act;

(g) The agreement clearly delineates the specific roles, responsibilities, and financial contributions of each party, so that the distinctiveness of each level of government is preserved;

(h) The agreement is subjected to public participation and the approval of the relevant legislative bodies before execution, in accordance with Articles 10(2)(a), 196(1)(b), and 201(b) of the Constitution; and

(i) The agreement includes specific workplans, measurable targets, timelines, reporting mechanisms, and dispute resolution procedures, so as to ensure transparency, accountability, and effective oversight.

The Committee's assessment of the Agreement against this framework —

140. The The Committee notes that the Agreement expressly declares in its preamble that it does not constitute a transfer of functions; and while no new institution has been established, a Steering Committee and an Implementation Committee have been created to coordinate and oversee the implementation of the Agreement, within which the National Government is the dominant party.

141. However, the Committee finds that in several material respects, the Agreement does not sufficiently demonstrate the characteristics of a cooperation agreement under Article 189 —

(a) The functions covered under Clause III of the Agreement — refuse collection and solid waste management, county roads, markets, housing-related infrastructure, and water and sanitation services — are exclusively county functions under Part 2 of the Fourth Schedule. The National Government has no primary constitutional responsibility for any of these functions.

(b) The governance structure established under Clause V places policy-level oversight over the implementation of these county functions in a Steering Committee chaired by the Prime Cabinet Secretary and composed of ten national government representatives against four county government representatives. The Governor, in whom the Constitution vests the executive authority of the county under Article 179(1), chairs only the Implementation Committee, which is responsible for execution rather than policy direction. Article 179(2) establishes the County Executive Committee as the constitutional organ for the exercise of county executive functions. The Agreement does not clarify the relationship between the Implementation Committee and the County Executive Committee, or how conflicts between them will be resolved, raising a question as to what role the County Executive Committee will play in respect of functions covered under the Agreement. Further, Clause 5.4.2 empowers the Steering Committee to co-opt such other persons as it may consider necessary, without any limitation or requirement for the consent of the County Government, allowing the composition of the Committee to be expanded unilaterally.

(c) The Committee observed that a coordination role assumed by the National Government under Article 189 ought properly to be confined to the resources being contributed toward the performance of the function, whether financial,

technical, or in the form of personnel support, and to monitoring compliance with the terms and conditions attached to such support. It ought not extend to policy-level direction over the manner in which the function itself is performed. A Steering Committee vested with authority to set policy direction over refuse collection, county roads, markets, housing infrastructure, and water and sanitation services goes beyond the coordination of resources and amounts to supervision of the County Government in the performance of functions assigned to it exclusively under the Fourth Schedule, a role the Constitution does not confer on the National Government in respect of county functions. The composition and functions of the Steering Committee therefore leave unclear whether the arrangement, in substance, remains one of cooperation under Article 189, or has, notwithstanding the language of the Agreement, taken on characteristics more consistent with a transfer of functions under Article 187, without complying with the safeguards ordinarily attendant to such a transfer.

(d) The Committee further observed that this ambiguity produces a grey area in accountability. A Steering Committee dominated by national government representatives' exercises policy oversight over the implementation of county functions, while the County Executive Committee remains, under Article 179(2), the constitutional organ responsible for the exercise of county executive functions, and the County Government remains politically accountable to the residents of Nairobi and to the County Assembly for the performance of those functions. In these circumstances it is unclear where responsibility lies in the event of failure in service delivery, whether with the Steering Committee that sets the policy direction, or with the County Executive Committee and Governor who remain constitutionally and politically answerable for the outcome.

(e) The Agreement does not clearly delineate the specific roles, responsibilities, and financial contributions of each party within each area of collaboration. The

absence of this specificity makes it difficult to establish where the National Government's role ends and where the County Government's role begins, blurring the line between cooperation and assumption of county functions.

(f) The Agreement was executed before meaningful public participation was conducted and without the approval of the Nairobi City County Assembly, contrary to the indicators of a properly constituted Article 189 agreement.

(g) The The Agreement does not include a detailed workplan, measurable targets, or a specific reporting mechanism to legislative oversight bodies. These are features that are ordinarily characteristic of a properly constituted cooperation agreement, and are necessary to ensure that the distinctiveness of the two levels of government, as provided for under Article 6 of the Constitution, is preserved even as they cooperate in the performance of a function.

142. The Committee therefore finds that those who express concern that the Agreement may constitute a transfer of functions under Article 187 disguised as cooperation under Article 189 have a valid basis for that concern. The Agreement, in its current form, does not sufficiently demonstrate the characteristics of an Article 189 cooperation agreement.

3.2 Public Participation

143. The Report of the Ad Hoc Committee of the Nairobi City County Assembly indicates that the Governor's Message notifying the County Assembly of the Agreement was received by the Speaker on 19th February 2026, and that the Agreement was tabled in the Assembly on 20th February 2026. An Ad Hoc Committee was established on the same date to consider the Agreement. A newspaper advert dated 21st February 2026 invited members of the public to participate in public forums and to submit written memoranda. According to the advert, public participation was scheduled for Charter Hall on 26th February 2026 and across all seventeen sub-counties on 27th February

2026, with written submissions due by 5:00 p.m. on 27th February 2026. The Ad Hoc Committee's Report was tabled on 3rd March 2026.

144. The Agreement itself was signed on 17th February 2026. Clause 8.1 provides that the Agreement becomes effective fourteen days from the date of execution, placing the effective date at 3rd March 2026.

145. The Committee examined the public participation process against the constitutional provisions and the pronouncements of the superior courts on what constitutes meaningful public participation.

146. Article 10(1) of the Constitution provides that the national values and principles of governance bind all State organs, State officers, public officers, and all persons whenever any of them, among other things, make or implement public policy decisions. Article 10(2)(a) lists *"democracy and participation of the people"* as one of these national values and principles. Article 196(1)(b) requires a county assembly to "*facilitate public participation and involvement in the legislative and other business of the assembly and its committees."*

147. The Courts have developed clear principles on what meaningful public participation entails. The Supreme Court in **British American Tobacco Kenya, PLC v Cabinet Secretary for the Ministry of Health & 2 Others (Petition 5 of 2017) [2019] KESC 15** held that:

> *"Public participation had to be real and not illusory. It was not a cosmetic, public relations act or a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement."*

The Court further held that:

> *"Public participation was not an abstract notion; it must be purposive and meaningful. Public participation must be accompanied by reasonable notice and reasonable opportunity."*

148. The Court of Appeal **in Institute of Social Accountability & Another v National Assembly & 4 Others [2015] eKLR** held that public participation must be meaningful and must not be conducted as a rubber-stamping exercise after the fact.

149. The High Court **in Enock Aura v Cabinet Secretary, Ministry of Health & 11 Others (Constitutional Petition E473 of 2023 (Consolidated))** held that:

"Sensitization ought to have been done before inviting comments from the public"

and that the state has an affirmative obligation to sensitize the public on *"the nature, extent and magnitude of the policy"* before the technical process of public participation begins.

150. The Committee observes that the public participation process conducted in respect of this Agreement raises the following concerns when measured against these constitutional principles.

(a) On the sequencing of public participation, the Agreement was signed on 17th February 2026. Public participation was conducted on 26th and 27th February 2026. While the participation took place before the Agreement's effective date of 3rd March 2026, it was conducted nine days after the Agreement had already been signed and executed by both parties. The document presented to the public was not a draft open to substantive input but a concluded and binding agreement between the National Government and the County Government. The Constitution and the courts require that public participation must precede and inform the decision, not follow it. Public participation on a signed agreement inverts this requirement. The County Assembly's own Ad Hoc Committee acknowledged this concern in its report, noting that the majority view expressed during public participation was that such participation should precede the execution of agreements of this nature, and that the document ought to be presented in draft form to facilitate meaningful input before it becomes binding.

(b) On the adequacy of notice, the newspaper advert inviting public participation was published on 21st February 2026, five days before the first public forum on 26th February. For an agreement of this magnitude, committing Ksh. 80 billion in public funds and affecting the governance and delivery of core county functions for the capital city, five days may not have afforded the public adequate time to obtain the Agreement, study its seventeen clauses, understand its constitutional and financial implications, and prepare informed submissions. The Supreme Court held in the BAT Case that public participation "*must be accompanied by reasonable notice and reasonable opportunity.*" The question is whether five days constitutes reasonable notice for a matter of this nature and impact.

(c) On the adequacy of the period for written submissions, the deadline for written memoranda was set at 5:00 p.m. on 27th February 2026, only six days after the newspaper advert. This period had to accommodate the public obtaining the Agreement, reading and understanding it, and preparing a considered written submission on a complex intergovernmental instrument. The Supreme Court in the BBI Case, **Attorney General v David Ndii & 73 Others (Petition E016 of 2021) [2022] KESC 20**, held that meaningful public participation requires prior sensitization and education on the issues at hand. The record before the Committee does not indicate whether any civic education or sensitization was conducted before the public was invited to give views on the Agreement, as required by the High Court in the SHIF Case.

(d) On the relationship between the public participation timeline and the Agreement's effective date, the entire process from the signing of the Agreement to the tabling of the Ad Hoc Committee's Report took exactly fourteen days. This period corresponds precisely to the window prescribed under Clause 8.1 for the Agreement to come into force. The Ad Hoc Committee was established, public participation was conducted, written submissions were received, the Committee

deliberated, and a report with detailed observations and recommendations was produced, all within this fourteen-day window. The constitutional right to public participation should not be compressed to fit within a contractual timeline set by the parties to an agreement. As the Court of Appeal held in **Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others [2014] eKLR**, the nature and degree of public participation required depends on the nature and impact of the decision being made, not on the timelines prescribed by the parties.

151. The Committee observed that Clause 6.2 of the Agreement pre-limits the possible outcomes of public participation to amendment only, without acknowledging the possibility that the public may reject the Agreement in its entirety. This design feature is not merely a theoretical concern. The Committee took note of the public participation exercise subsequently conducted by the Nairobi City County Assembly's Ad Hoc Committee on the Cooperation Agreement, at Charter Hall and across the seventeen sub-counties on 26th and 27th February 2026. Notwithstanding broad public support for the underlying objective of intergovernmental cooperation, the County Assembly's own report records that the public raised concerns regarding the protection of county autonomy, clarity of financial obligations, and the adequacy of accountability mechanisms, and that the majority view among participants was that public participation ought to have preceded execution of the Agreement, with the document presented in draft form to allow for meaningful input before it became binding. This finding lends weight to the Committee's concern that the process was structured to validate a decision already made, rather than to genuinely inform it.

3.3 Financing of the Agreement

152. Clause VII of the Agreement provides that the parties shall jointly agree on the modalities for financing all programmes and projects, including sources of funding and cost-sharing arrangements, and that all programmes and projects shall be properly costed and provided for within the respective budgets of the National Government and the County Government. Clause 7.4 further provides that the flow of funds shall be

undertaken in accordance with the Public Finance Management Act and all other applicable written laws. These provisions signal an intention by the parties to operate within the established public finance framework.

153. The Committee observed that, beyond the stated intention to cooperate, the Agreement does not provide anything concrete in terms of the financial commitments each party is expected to make. It is unclear and silent on the extent of the support to be provided by either party, and unclear even as to how the specific functions under collaboration are to be funded.

154. The Prime Cabinet Secretary submitted before the Committee that the total cost of implementing the programmes and projects under the Agreement would be Ksh. 80 billion, to be contributed by the National Government. The Committee observed that this figure does not appear anywhere in the text of the Agreement itself, and that its only source is the oral submissions made by the Prime Cabinet Secretary and the Governor before the Committee. The Prime Cabinet Secretary acknowledged that the amount had not been provided for in the 2025/2026 financial year budget, and stated that the necessary allocations would instead be incorporated into the ongoing budgeting process for the 2026/2027 financial year. The Governor similarly stated that the National Government would be required to appropriate its share through a fresh national-level budget process, and that the relevant ministries would create vote lines under their budgets to cater for the Agreement.

155. The Committee examined the FY 2026/2027 budget framework against these submissions. The 2026 Budget Policy Statement was endorsed by Cabinet on 10th February 2026, one week before the Agreement was signed on 17th February 2026. The Budget Policy Statement does not reference the Cooperation Agreement or the Ksh. 80 billion commitments.

156. The Committee further examined the FY 2026/2027 budget estimates that were before the National Assembly and established that an allocation of Ksh. 270 million had been made for the improvement of roads in Nairobi under the County Cooperation programme. The Committee notes that the budget-making process for FY 2026/2027 has since been substantially concluded. The Appropriation Act, 2026 was passed by the National Assembly on 18th June 2026. The County Governments Additional Allocations Bill, 2026 was passed by the Senate on 17th June 2026 and was, as at the time of this Report, before the National Assembly for consideration.

157. The improvement of county roads is a function assigned to county governments under Part 2 of the Fourth Schedule. The allocation is not structured as a conditional allocation to Nairobi City County Government under the County Governments Additional Allocations Act, nor does it appear in the schedules of the County Governments Additional Allocation Bill, 2026, as tabled. The funds are instead budgeted for direct expenditure by a national government agency on a county function. The Committee notes that this is consistent with its findings in a separate engagement with the Kenya Urban Roads Authority (KURA), where the Committee established that KURA is among the national government agencies performing functions that are constitutionally assigned to county governments.

158. On the mode of financing, both the Prime Cabinet Secretary and the Governor indicated that the relevant national government ministries would budget for their respective contributions under their ministerial vote lines, while the County Government would budget separately under its own processes. The Committee finds that this approach raises a fundamental constitutional question.

159. Article 202(2) of the Constitution provides that "*County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.*" The established mechanism for giving effect to this

provision is the County Governments Additional Allocations Act, which is enacted annually by Parliament. This Act specifies the amounts to be allocated, the conditions attached to each allocation, the responsible national government entity, the recipient county, and the mechanism for disbursement, accounting, and audit. All conditional allocations under this Act are subject to intergovernmental participation agreements and are disbursed through the County Revenue Fund.

160. The proposal that national government ministries directly budget for and implement county functions through their ministerial vote lines bypasses this constitutional framework. County functions under Part 2 of the Fourth Schedule, including waste management, county roads, markets, housing infrastructure, and water and sanitation, are functions constitutionally assigned to county governments. When the National Government makes financial resources available for the performance of these functions, Article 202(2) requires that such resources be structured as additional allocations to the relevant county government, not as direct expenditure by national ministries on county functions. Where funds are instead budgeted directly for implementation by the National Government, the National Government ceases to be merely supporting the performance of the function and instead assumes its performance. Applying the indicators set out earlier in this Chapter, this moves the arrangement beyond cooperation under Article 189 and into the territory of a transfer of functions under Article 187, without complying with the safeguards that would ordinarily attend such a transfer.

161. The High Court addressed this question in **Council of Governors v National Assembly & Others (Petition 252 of 2016) [2020] KEHC**, where the Petitioner challenged the allocation of funds by the national government for devolved functions through the Division of Revenue Act. The Court found that the national government cannot allocate itself funds for and undertake devolved functions without a proper

framework that respects the constitutional distribution of functions and the revenue-sharing architecture under Articles 202 and 203 of the Constitution.

162. The Committee finds that the appropriate mechanism for channelling the Ksh. 80 billion to Nairobi City County is through the County Governments Additional Allocations Act. This mechanism ensures parliamentary oversight over the allocation, specifies the conditions attached, provides for intergovernmental participation agreements, requires disbursement through the County Revenue Fund, and subjects the funds to the audit framework under the Public Audit Act. The proposal to fund county functions through ministerial vote lines circumvents all of these safeguards.

163. The Committee further observes that the Agreement does not specify the financial contribution of the Nairobi City County Government. While Clause VII refers to cost-sharing arrangements, the quantum, proportion, and mechanism for the County's contribution are left to future joint determination. Sections 129 and 130 of the Public Finance Management Act require that all county expenditure be authorised through the county budget process and approved by the County Assembly. In the absence of any specification of the County Government's financial obligation under the Agreement, it is unclear how the County's contribution will be subjected to the required budgetary and legislative processes.

164. The Committee also observes that while Clauses 7.1 and 7.4 of the Agreement provide for compliance with the Public Finance Management Act, these general saving clauses do not constitute compliance with the specific procedural requirements of that Act. Sections 191A, 191B, and 191D prescribe procedural preconditions that must be fulfilled within prescribed timelines: submission of the agreement to the County Assembly for approval within fourteen days of execution under Section 191A, public participation under Section 191B, and submission to the Senate and the Controller of

Budget under Section 191D. The record before the Committee does not indicate that these requirements have been fulfilled.

165. The Committee observes that, if it is the intention of either the National Government or the Nairobi City County Government to finance its obligations under the Agreement through borrowing, this ought to be expressly indicated in the Agreement, including the party borrowing and the basis upon which the borrowing would be undertaken. Article 211 of the Constitution and Section 50 of the Public Finance Management Act govern borrowing by the National Government, while Article 212 of the Constitution, read together with Sections 140 and 141 of the Public Finance Management Act, governs borrowing by county governments, and requires that any such borrowing be guaranteed by the National Government and approved by the relevant county assembly.

3.4 Legislative Oversight

166. Clause 7.5 of the Agreement provides that the parties shall report to the National Cabinet and the County Executive Committee annually on the implementation of the Agreement. The Agreement does not provide for any reporting to the legislative bodies constitutionally mandated to exercise oversight over the respective executive arms. Article 185(2) provides that the County Assembly exercises oversight over the County Executive Committee and any other county executive organs. Article 96(1) of the Constitution provides that the Senate represents the counties and serves to protect the interests of the counties and their governments. Article 96(3) provides that the Senate exercises oversight over national revenue allocated to county governments. An arrangement purportedly committing Ksh. 80 billion in public funds to the implementation of core county functions, without any agreement-specific reporting obligation to these institutions, leaves a significant gap in the oversight architecture.

167. The Governor submitted before the Committee that the existing reporting and audit frameworks under the Public Finance Management Act and the Public Audit Act remain fully intact. The Committee notes however that the statutory audit and reporting

framework operates on a per-entity basis: the County Government is audited separately and the National Government is audited separately. Indeed, any intergovernmental institutions are also audited separately. The cross-government nature of this Agreement, in which both levels of government contribute resources and jointly implement projects within the same county, means that no single audit will capture the full financial picture of the Agreement's implementation. The Agreement does not provide for a consolidated reporting or audit mechanism that would enable the Auditor-General or the oversight institutions to assess the overall financial performance of the Agreement as a whole.

168. The Agreement is also silent on the requirement for all projects implemented under it to be incorporated into the Nairobi City County Integrated Development Plan and Annual Development Plan before implementation. Sections 108 and 109 of the County Governments Act require that the CIDP form the basis for all budgets and projects. In the absence of an express provision requiring incorporation into the CIDP and ADP, there is a risk that projects may be implemented outside the planning framework that enables the County Assembly to exercise its oversight function. The Governor confirmed before the Committee that the law allows counties to amend the CIDP or prepare an addendum, and that all projects must ultimately be appropriated by the County Assembly. This position is however not reflected in the text of the Agreement, and as at the time of this Report, no such addendum had been submitted to or received by the Senate.

169. The scope of the Agreement can also be expanded without reference to any legislative body. Clause 3.2(vi) provides for collaboration on such other areas as the parties may mutually determine. Clause XI allows for supplementary arrangements to be entered into from time to time. Neither provision requires fresh public participation, County Assembly approval, or notification to the Senate before the scope is expanded or new arrangements are concluded. This effectively allows two executive organs to commit additional county functions and public resources to the cooperation framework

by agreement between themselves, without the knowledge or involvement of the institutions responsible for oversight.

3.5 Specificity of Roles and Responsibilities

170. Clause III of the Agreement sets out the areas of collaboration. Clause IV prescribes joint responsibilities including identification of projects, funding of operations, implementation, monitoring, evaluation, and information sharing. Neither clause clearly delineates what the National Government will do and what the Nairobi City County Government will do within each area of collaboration.

171. The Committee sought clarification from both the Prime Cabinet Secretary and the Governor on the exact obligations of each party, including specific financial contributions, project-level responsibilities, and performance targets. The Prime Cabinet Secretary did not provide a specific breakdown. The Governor explained that the division of responsibilities is guided by the constitutional and statutory mandates of each level of government, and that each will continue performing its assigned functions. While this explanation provides a general principle, it does not resolve the ambiguity in the Agreement itself. The functions covered under the Agreement are county functions under Part 2 of the Fourth Schedule, yet both levels of government are jointly responsible for their implementation under the Agreement. Without a clear delineation of who does what within each function, the boundary between cooperation and assumption of county functions remains undefined.

172. The Agreement does not include a schedule or workplan setting out specific projects, the responsible party for each project, measurable targets, timelines, or budgetary allocations. Clause XI provides for supplementary arrangements to be entered into for the purpose of implementing specific projects or programmes, but does not prescribe the timeline within which these arrangements will be concluded, or whether they will be subjected to public participation or County Assembly approval. Until these supplementary arrangements are concluded, the Agreement operates as a

broad framework of intent without the operational specificity needed to ensure accountability, measure compliance, or resolve disputes over roles and responsibilities.

173. The Committee did a comparative analysis, as set out under section 3.1 above, of the practice in South Africa and Australia, and established that cooperation agreements in those jurisdictions invariably include detailed workplans as annexures. Good practice would have required that this Agreement similarly set out clear, measurable targets and benchmarks against which its implementation could be assessed. The absence of equivalent specificity in this Agreement is not merely a drafting shortcoming. It has practical consequences for oversight. Without clear benchmarks, the County Assembly and the Senate cannot measure whether the parties are performing their respective obligations, cannot determine how public funds are being utilized within each area of collaboration, and cannot hold either party to account for non-performance.

3.6 Duration of the Agreement and Binding Effect on Successive Governments

174. Clause 8.1 of the Agreement provides that it shall remain in force for an initial period of twenty-four months from the date of execution, subject to renewal. The Agreement was executed on 17th February 2026. The initial twenty-four-month term therefore extends to February 2028, beyond the next general election scheduled for August 2027. The Agreement will run into the term of the next county government following that election.

175. The Agreement does not provide for any review or ratification process upon a change of administration at either level of government. An incoming Governor who assumes office after the 2027 general election will inherit an agreement to which he or she was not a party, committing the County Government to a governance and financial framework negotiated by the predecessor. The Agreement does not prescribe any mechanism for the incoming administration to assess, renegotiate, or exit the arrangement upon assumption of office.

176. Clause 8.1 provides that the Agreement is "subject to renewal" but does not prescribe the procedure or conditions for renewal. It does not specify whether renewal requires fresh public participation, County Assembly approval, or notification to the Senate. In the absence of a clear renewal mechanism, successive renewals could be effected by executive decision of the two parties alone, without reference to the legislative bodies or the public.

177. On termination, Clause 8.2 provides that either party may terminate the Agreement by giving six months' notice, and that the provisions of the Agreement shall remain in effect to the extent necessary to permit an orderly settlement of ongoing cooperation activities. The Agreement does not however define what constitutes an orderly settlement, the timeline within which it must be concluded, or the process by which any disputed liabilities will be resolved between the parties. The experience of the defunct Nairobi Metropolitan Services, which left outstanding pending bills of approximately Ksh. 16 billion upon winding up, underscores the importance of a clear financial settlement framework. The Agreement does not contain one.

3.7 White Papers for the Implementation of the Agreement

178. In the course of the Committee's inquiry into the implementation of the Agreement, the Prime Cabinet Secretary informed the Committee that the National Government had developed a series of White Papers under what he referred to as the Nairobi Rising Programme, intended to operationalize the Agreement across its various areas of collaboration. The Prime Cabinet Secretary listed these White Papers before the Committee but did not submit them for the Committee's review. In the course of discussion, the Committee's attention was drawn in particular to White Paper 7, which addresses policing within Nairobi.

179. The Prime Cabinet Secretary submitted before the Committee that White Paper 7 under the Nairobi Rising Programme provides for the establishment of a Nairobi Metropolitan Service Framework, specifically a dedicated, ward-structured,

community-embedded Metropolitan Police Formation within the Nairobi Police Service. He further submitted that this will establish a dedicated police service without the need to amend the National Police Service Act.

180. Whereas the Committee welcomes the initiative for enhanced security in the capital city and its environs, it noted that neither the Nairobi Rising Programme nor White Paper 7 is referenced anywhere in the text of the Agreement. The Agreement, as executed, does not mention the establishment of a Metropolitan Police Formation, nor does it identify policing as one of its areas of collaboration under Clause III. This raises a question as to the legal basis upon which White Paper 7, and the White Papers more generally, are said to constitute part of the framework for implementing the Agreement, when neither the Agreement's text nor any supplementary arrangement executed under Clause XI makes reference to them.

181. In relation to White Paper 7 on the Metropolitan Police Formation, the Committee considered Article 239(1) of the Constitution which establishes the national security organs of Kenya as comprising the Kenya Defence Forces, the National Intelligence Service, and the National Police Service. Article 243(1) provides that there is established the National Police Service, which shall comprise the Kenya Police Service and the Administration Police Service. Article 239(5) provides that the national security organs are subject to the authority of the Constitution and Parliament. Article 246(1) establishes the National Police Service Commission, which is responsible for the recruitment, appointment, and oversight of the National Police Service.

182. The National Police Service Act (Cap. 84) provides the legislative framework for the establishment, organization, and management of the National Police Service. Section 4 of the Act establishes the Kenya Police Service and the Administration Police Service as the two components of the National Police Service. The Act does not provide

for the establishment of a Metropolitan Police Formation or any specialized urban police unit within the National Police Service without Parliamentary authorization.

183. The Committee noted that the submission by the Prime Cabinet Secretary that a dedicated Metropolitan Police Formation can be established within the National Police Service without amending the National Police Service Act raises a constitutional and legal question. Article 239(5) of the Constitution subjects the national security organs, including the National Police Service, to the authority of Parliament. Any structural reorganization of the National Police Service, including the establishment of a new formation within it, would ordinarily require legislation enacted by Parliament, as the current framework under the National Police Service Act does not contemplate such a formation.

184. The Committee further noted that policing is a function of the national government under Part 1 of the Fourth Schedule of the Constitution, and does not fall within the areas of county government functions listed in the Agreement or in Part 2 of the Fourth Schedule. The inclusion of a Metropolitan Police Formation as one of the White Papers under the Nairobi Rising Programme therefore raises a question as to the relationship between this proposal and the Agreement, and whether its implementation falls within the scope of the cooperation framework established under the Agreement or whether it constitutes a separate national government initiative.

185. The Committee also noted that the proposed Metropolitan Police Formation is described as covering Nairobi City, Machakos, Kiambu, and sections of Kajiado Counties. The scope of the proposed formation therefore extends beyond the boundaries of Nairobi City County and into the jurisdiction of three other county governments, none of which are parties to the Agreement. The question that arises is whether a police formation of this nature, anchored in a cooperation agreement between the National Government and Nairobi City County Government alone, can lawfully operate across multiple county jurisdictions without the involvement or consent of the other affected

county governments and without a specific legislative framework authorising its establishment and operations.

CHAPTER FOUR: COMMITTEE RECOMMENDATIONS

The Committee recognises that Section 6(5) of the Urban Areas and Cities Act imposes a mandatory obligation on the two levels of government to enter into a cooperation agreement regarding the performance of functions and delivery of services in the capital city, and acknowledges the legitimate policy rationale for structured collaboration between the National Government and the capital city in light of Nairobi's unique status as the capital city, its role as the seat of national government, and its status as host to diplomatic missions, the United Nations Office at Nairobi, and other international organisations of regional and global significance. The Committee further acknowledges the importance of accelerating infrastructure development and service delivery for the residents of Nairobi City County.

Having considered the Agreement, the relevant constitutional and statutory framework, and the submissions of the stakeholders, and arising from the observations and analysis set out in this Report, the Committee makes the following recommendations —

1. **THAT** the Cooperation Agreement between the National Government and Nairobi City County Government be **temporarily suspended**, pending the resolution by the parties of the following issues arising from the Committee's observations and analysis of the Agreement:

    (a) **Constitutional characterisation of the Agreement.** The parties to clarify and, where necessary, restructure the governance arrangements under Clause V of the Agreement, to remove any ambiguity as to whether the Agreement operates as cooperation under Article 189 of the Constitution, or has, in substance, taken on the characteristics of a transfer of functions under Article 187.

    (b) **Governance structure.** The parties to clarify the mandate of the Steering Committee and align it with the constitutional structure of a county government, bearing in mind that the mandatory obligation to enter into a cooperation agreement under Section 6(5) of the Urban Areas and Cities Act

is subject to Section 6(2), which requires that the capital city be governed and managed in the same manner as a county government. In clarifying the mandate of the Steering Committee and reconstituting its membership, the parties must accordingly ensure that Nairobi City County continues to be governed in the same manner as other county governments, including rebalancing the composition of the Steering Committee, which is currently heavily weighted in favour of the National Government. The parties to further clarify the relationship between the Implementation Committee in the cooperation agreement and the County Executive Committee, so as to preserve the executive authority of the Governor under Article 179(1) of the Constitution and the functional integrity of the County Government.

(c) **Financing of the Agreement.** The parties to clarify the source and mechanism of financing for the Agreement, including the specific financial contribution of each party and the budgetary process through which such contributions will be made available. The parties to further clarify that any financial contribution by the National Government towards the implementation of county functions under the Agreement shall be channelled as additional allocations through the County Governments Additional Allocations Act, and not through ministerial budgets.

Should it be the intention of either party to finance its obligations under the Agreement, in whole or in part, through borrowing, this ought to be expressly stated, together with the party undertaking the borrowing and the process to be followed, in accordance with Articles 211 and 212 of the Constitution and the applicable provisions of the Public Finance Management Act.

(d) **Specificity of roles and workplan.** The parties to conclude and attach to the Agreement a detailed workplan setting out the specific projects, the responsible party for each project, measurable targets, timelines, and budgetary allocations for each area of collaboration.

(e) **Public participation.** The Committee reiterates its observation that public participation on the Agreement was conducted after its execution and coming into force, contrary to the constitutional threshold for public participation, which requires that it precede, and genuinely inform, decisions of this nature. The parties to ensure that no further amendments, supplementary arrangements, or extension of the scope of the Agreement are undertaken without prior public participation. The parties to further amend Clause 6.2 of the Agreement so as not to limit the scope of the outcome of a public participation exercise to only proposals for amendment to the Agreement or its clauses, and to provide for a feedback mechanism to the public following such exercises.

(f) **County Integrated Development Plan and Annual Development Plan.** The parties to confirm whether the projects contemplated under the Agreement are already incorporated into the Nairobi City County Integrated Development Plan 2023 - 2027 and the Annual Development Plan, and, where they are not, to complete the requisite amendment or addendum process, including public participation and County Assembly approval, before implementation of the affected projects.

(g) **Legislative oversight and reporting.** The parties to amend Clause 7.5 of the Agreement to provide for specific reporting obligations to Parliament and the Nairobi City County Assembly, and to establish a consolidated reporting and audit mechanism enabling the Auditor-General to assess the overall financial performance of the Agreement.

(h) **Duration and transition.** The parties to prescribe a clear process for the review and ratification of the Agreement by the incoming County Government following the 2027 general election, and a framework for the settlement of any outstanding financial obligations upon the expiry or termination of the Agreement.

(i) **White Papers.** The parties to clarify whether the White Papers developed under the Nairobi Rising Programme, including that relating to the proposed Nairobi Metropolitan Police Formation, form part of the Agreement, or constitute a separate national government programme, and, in either case, to clarify the legal basis for their implementation.

2. **THAT** the National Government and Nairobi City County Government submit a report to the Senate, **within sixty (60) days** of the adoption of this Report, indicating the progress made towards resolving the issues set out in recommendation 1 above.

LIST OF ANNEXTURES

Annex 1	Minutes of the sittings of the Standing Committee on Devolution and Intergovernmental Relations
Annex 2	Copy of Cooperation Agreement between the National Government and Nairobi City County Government
Annex 3	Submissions from the Prime Cabinet Secretary

Annex 1:

Minutes of the Standing Committee on Devolution and Intergovernmental Relations

MINUTES OF THE 208TH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 26TH FEBRUARY, 2026 AT 8:00 A.M AT THE COMMISSION BOARDROOM, COUNTY HALL AND ON THE ZOOM ONLINE PLATFORM

PRESENT

1. Sen. Sheikh Mohamed Abass, CBS, MP - Chairperson
2. Sen. Catherine Mumma, CBS, MP - Vice-Chairperson
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Paul Karungo Thangwa, CBS, MP - Member
5. Sen. Mohamed Said Chute, CBS, MP - Member
6. Sen. Peris Tobiko, CBS, MP - Member
7. Sen. Hezena Lemaletian, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr.) Oburu Oginga, MGH, MP - Member
2. Sen. Richard Onyonka, EBS, MP - Member

IN ATTENDANCE

1. Sen. Edwin Sifuna, CBS, MP - Senator, Nairobi County
2. Sen. Dan Maanzo, EBS, MP - Senator, Makueni County
3. Hon. Sakaja Johnson, EGH, MP - Governor, Nairobi City County
4. Mr. David Njoroge - Chief of Staff, Nairobi City County
5. Mr. Charles Keter - CECM, Finance, Nairobi City County
6. Ms. Christine Ireri - County Attorney, Nairobi County
7. Ms. Priscilla Mahinda - Chief Officer, Office of the Governor

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Desmond Rasugu - Clerk Assistant III (**taking minutes**)
3. Ms. Amran Mursal - Senior Fiscal Analyst
4. Ms. Angela Kagunyi - Legal Counsel II
5. Ms. Mwanamisi Mwachasi - Research Officer III

6. Mr. Stanley Gikore - Media Relations Officer III
7. Ms. Julia Gachoki - Serjeant-At-Arms
8. Mr. Johnstone Simuyu - Audio Officer III

MIN/SEN/DEVIR/1093/2026 PRAYER

The meeting was called to order at 8:29 a.m by the Chairperson, followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/1094/2026: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Mohamed Chute, CBS, MP and seconded by Sen. Karungo Wa Thangwa, CBS, MP as follows –

1. Prayer;
2. Adoption of the agenda;
3. Meeting with the Governor of Nairobi City County to deliberate on the Cooperation Agreement between the National Government and the Nairobi City County on the management of key services in Nairobi City County;
4. Any other Business; and
5. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/1095/2026:

MEETING WITH THE GOVERNOR OF NAIROBI CITY COUNTY TO DELIBERATE ON THE COOPERATION AGREEMENT BETWEEN THE NATIONAL GOVERNMENT AND THE NAIROBI CITY COUNTY ON THE MANAGEMENT OF KEY SERVICES IN NAIROBI CITY COUNTY.

1. The meeting began by considering a brief on the Cooperation Agreement between the National Government and the Nairobi City County Government, which outlined the key provisions of the Agreement, the applicable constitutional and statutory framework, as well as issues requiring further clarification.

2. The brief analysed in detail, the contents of the above -mentioned agreement which covered the structure of the agreement, including the preamble, purpose, scope and areas of collaboration, roles and responsibilities of the parties, governance structures, public participation, and financing of the agreement.

3. Thereafter, the Chairperson invited the Governor to apprise the Committee in detail on the contents of the Agreement, its implementation framework, and the anticipated implications on the governance and service delivery functions of the County.

Responses by the Governor

4. The Governor began by expressing his appreciation to the Committee for the opportunity to present and discuss the Cooperation Agreement between the National Government and the Nairobi City County Government.

5. The Governor emphasized that Nairobi City County is not comparable to other counties, noting that it serves as the capital city of the Republic. He recalled that during the debate on the revenue-sharing formula, there was a strong view that the additional support required by Nairobi could not be addressed through the same formula applied uniformly to all counties. He stated that this need arose not only from Nairobi's large population but also from other variables, including its landmass.

6. He further noted that there was a widely held position that the capital city requires substantial additional support to effectively discharge its unique national and metropolitan functions. In this regard, he drew attention to Section 6 of the Urban Areas and Cities Act, which frames such cooperation arrangements in mandatory terms.

7. The Governor emphasized that Section 6(5) of the Urban Areas and Cities Act expressly provides that, subject to subsection (2) which requires that the capital city be governed and managed in the same manner as a county government, the two levels of government shall enter into an agreement on the performance of functions and delivery of services in the capital city. He noted that the law uses mandatory, not optional, language, and that this requirement is 14 years overdue given that the Urban Areas and Cities Act was enacted in 2011.

8. The Governor highlighted that the law recognises Nairobi's unique status as the seat of the National Government. He noted that the city hosts a large diplomatic community, including approximately 150 foreign missions, as well as major international organisations such as the United Nations and UNICEF.

9. He further stated that the Act underscores the need for an efficient transport network linking rural areas, towns, and regional and international cities, and supporting commerce and industry—functions that place additional demands on the capital city.

10. The Governor observed that Nairobi receives substantial resources through the Division of Revenue, noting that the Senate allocates approximately KSh 20 billion to the County. He added that the County Government also generates its own revenue, which has been increasing due to ongoing efforts to strengthen collection.

11. The Governor noted that when Nairobi's equitable share and own-source revenue are combined—approximately KSh 33.8 billion—which he stated is insufficient for a city serving an estimated seven million people.

12. He expressly stated that the Cooperation Agreement is not a transfer of functions, but a framework for coordinated support and service delivery in the capital city. He clarified that a transfer of functions occurs under Article 187 of the Constitution, which requires a formal deed of transfer. He noted that, under such an arrangement, one level of government assumes functions ordinarily performed by the other.

13. The Governor added that a transfer of functions typically results in the creation of a new institution, such as the former Nairobi Metropolitan Services, to run the transferred functions. He emphasized that no institution has been created under the current Cooperation Agreement.

14. He explained that the County Government will continue performing its functions, and the National Government will continue performing its own. However, the Agreement now allows the National Government, through its appropriations in the National Assembly, to create a dedicated vote and allocate additional resources to support the capital city. He indicated that this approach provides a lawful mechanism for the National Government to supplement Nairobi's capacity without altering constitutional functions.

15. The Governor emphasized that Nairobi is the only county with a legal basis under the Urban Areas and Cities Act to leverage such special arrangements, owing to its status as the capital city. He stated that as the leader of the capital city, he must consider every lawful avenue available to strengthen service delivery. He noted that if Nairobi is struggling to meet its obligations and the law provides a mechanism to secure additional resources, he has a duty to pursue that opportunity for the benefit of residents.

16. He added that this reasoning applies across multiple sectors where the County faces significant pressure. The Governor highlighted sanitation as one of the key areas of partnership with the National Government. He explained that, under the Cooperation Agreement, work that would ordinarily take the County many years to complete can now be accelerated through joint efforts and additional support.

17. The Governor reported that the County and the National Government are jointly implementing a 54-kilometre sewer line, with 27 kilometres constructed on each side of the river under the Rivers Commission. He stated that the project is valued at approximately KSh 50 billion. He noted that Nairobi could not, on its own, have mobilised KSh 50 billion for a single sanitation project, yet the investment will address the city's sanitation needs for the next 40 years.

18. The Governor highlighted that the initiative includes a KSh 6 billion treatment plant in Kariobangi and an additional KSh 3 billion for last-mile connectivity, which also supports affordable housing and urban renewal programmes. He further stated that the broader programme includes the development of stadia, linear markets, and

upgrades to public spaces such as Kamukunji Grounds, which he noted has already undergone visible transformation.

19. He concluded that these realities informed the County's pragmatic approach in embracing the Cooperation Agreement as a means of accelerating essential infrastructure for the capital city. He cautioned that an overly rigid interpretation of legal provisions could hinder the delivery of essential services to residents who require them urgently. He noted that urban poverty is often more severe than rural poverty, as those without income in the city may lack shelter, food, and basic necessities.

20. He stated that the County is pursuing multiple projects under the Cooperation Agreement to address these urgent needs. One of the critical areas identified is public lighting. The Governor explained that Nairobi currently has about 50,000 streetlights, yet requires approximately 120,000 to adequately serve its population. He noted that KSh 3.7 billion has been allocated to expand lighting infrastructure across the city.

21. He highlighted that, similar to roads, many infrastructure challenges fall on the County even when the assets belong to the National Government. He cited the example of a flooded underpass along Haile Selassie Avenue, which is part of a national—and even international—road network, yet public criticism is often directed at the County. He gave a further illustration of unlit sections of Juja Road, where public criticism is directed at the County even though the assets are not under its control. He also noted that more than seven wards in Nairobi currently lack power after transformers were removed, and that although electricity supply is not a county function, he is compelled to intervene by engaging the Principal Secretary for Energy to restore services for residents.

22. He explained that the Cooperation Agreement provides a practical platform for such interventions through the Implementation Committee, which he chairs. The Governor noted that the Committee brings together key national officials, including the Principal Secretaries for Energy, National Treasury, and Security. He emphasized that many issues for which the County is blamed such as insecurity, fall outside the County's direct mandate, yet the Committee now enables structured engagement.

23. He added that the Implementation Committee meets as often as necessary, including multiple times a week, and functions as a hands-on mechanism for resolving operational challenges. He contrasted this with the Steering Committee, which focuses on policy direction. He stated that the Implementation Committee allows him to directly follow up on commitments, including those with the responsible Principal Secretaries.

24. He stated that, overall, the Cooperation Agreement presents a strong and timely opportunity for Nairobi City County. He acknowledged that no agreement is perfect and that there is room for refinement. He indicated that the County is open to reviewing specific provisions and strengthening areas that require adjustment.

25. The Governor observed that some stakeholders have raised concerns about the composition of the Steering Committee, particularly the number of representatives from the National Government. He stated that this is a valid point and that the Committee's membership can be balanced. He added that concerns about chairing arrangements have also been raised and noted that such issues can be addressed through constructive engagement.

26. The Governor urged the Committee to focus less on the form of the Cooperation Agreement and more on its practical benefits for the city. He stated that the priority should be the outcomes Nairobi stands to gain, while procedural matters such as meeting convening and administrative arrangements can be refined over time. He described the Agreement as a significant opportunity for devolution, enabling Nairobi to accelerate service delivery in ways that would not be possible through county resources alone.

27. The Governor expressed confidence that within the next five to six months, residents will see substantial improvements across the city. He cited expected progress in cleanliness, sanitation, roads, and public lighting.

28. The Governor noted that effective service delivery in Nairobi requires constant interplay between the National Government and the County Government. He stated that this cooperation is unavoidable given the city's unique status and the nature of the functions involved.

29. He observed that every major capital city in the world operates under a similar framework. He cited examples such as Washington D.C, Berlin, London, Paris, Canberra, Cape Town, and Pretoria, noting that structured agreements are standard practice for capitals. He emphasized that a capital city cannot be overlooked, as it carries national, diplomatic, and metropolitan responsibilities that exceed those of ordinary counties.

30. He concluded the first limb of his responses by acknowledging that the Committee may have concerns about the Agreement to which he affirmed his readiness to provide any clarification required.

Issues raised by the Committee

Upon concluding his submissions, the Committee proceeded to raise the following questions and concerns to the Governor -

31. The Committee expressed serious concern about the Cooperation Agreement's adherence to the Constitution and the law, noting that Article 10 of the Constitution requires that all public policy decisions must comply with national values and principles of governance, including public participation. The Committee questioned the validity of the ongoing public participation process, noting that the Governor had already signed the Agreement before public views were sought, and that public participation scheduled for that week appeared retrospective. The Committee sought clarification on how this complies with Article 10, given that courts have held that public participation must be meaningful and conducted before decisions are made, not as a formality after the fact.

32. The Committee asked the Governor to explain why his administration did not present a draft of the Cooperation Agreement to the public at an earlier stage. Members noted that the discussions between the County Government and the National Government had taken considerable time, and questioned why the County did not issue a public notice indicating that such negotiations were underway and inviting Nairobi residents, and the Nairobi City County Assembly, participate and provide their views before the Agreement was executed.

33. The Committee sought clarification on the legal basis of the Cooperation Agreement, noting that it is expressed to be made under Section 6 of the Urban Areas and Cities Act. The Committee emphasized that this section is expressly subject to Section 6(2), which requires that the capital city must be governed and managed as a county government.

34. The Committee referred to Article 177 of the Constitution, which establishes the membership of the County Assembly and the County Executive. Members sought clarification on how the Cooperation Agreement aligns with this constitutional structure, noting that no additional organ or external actors may be introduced into county management outside those expressly provided for in Article 176 and Article 177.

35. The Committee questioned whether the Agreement improperly introduces members of the National Executive into the management of county affairs, and asked the Governor to explain how this complies with the constitutional requirement that county governance must be exercised exclusively through the County Assembly and the County Executive Committee.

36. The Committee further requested an explanation of how long discussions with the National Government had been ongoing before the Agreement was signed. The Committee noted that such negotiations could not reasonably have occurred within a short period and asked the Governor to account for the duration and nature of these engagements, given his role as the head of the County.

37. The Committee asked the Governor to clarify why the Agreement only anticipates amendments arising from public participation, yet does not provide for the possibility that Nairobi residents may reject the Agreement entirely. The Committee noted that the Governor himself had spoken of refining the Agreement, and sought clarification on why the text does not expressly recognize the public's right to reject, not merely amend, the proposal.

38. The Committee further observed that the Governor, as a former Senator, is aware that there already exist legal mechanisms for targeted national support to counties, including through the County Governments Additional Allocations Act. The Committee therefore asked why these established mechanisms were not used instead of creating a new framework.

39. The Committee sought clarification on why the Governor had not pressed the National Government to settle the outstanding land rates owed to Nairobi City County, previously estimated at over KSh 100 billion. The Committee further questioned why the Governor did not emphasize this matter in his engagements with the National Government, noting that payment of the outstanding land rates would enable the County to undertake functions such as the construction of roads, sewer lines, and drainage infrastructure directly, thereby enhancing service delivery to the residents of Nairobi.

40. The Committee sought clarification on how the Cooperation Agreement addresses the pending bills left by the defunct Nairobi Metropolitan Services (NMS), noting that these liabilities continue to appear in audit reports and remain unresolved.

41. The Committee asked the Governor to explain the difference between the previous NMS-related collaboration and the current Cooperation Agreement, and to outline what distinguishes the two frameworks in terms of structure, legality, and implementation.

42. The Committee asked why the County could not undertake projects such as roads, sewer lines, and drainage works using its own constitutional mandate and resources, provided the National Government settles its outstanding obligations.

43. The Committee asked how the Cooperation Agreement safeguards the functional integrity of the County Government, given that county functions must remain under county control even where national support is provided.

44. The Committee sought clarification from the Governor on whether the National Cabinet and the Nairobi City County Executive would both be sitting to plan and coordinate the same functions under the Cooperation Agreement. Members asked the Governor to explain how parallel planning processes, one at the national level and another at the county level would operate in practice, and whether this

arrangement risked duplicating roles or undermining the County Government's constitutional mandate to plan and implement devolved functions.

45. The Committee expressed concern that the Cooperation Agreement may complicate audit processes, noting that documentation for expenditures may be scattered across multiple national and county entities, thereby hindering the Auditor-General's ability to conduct a coherent audit.

46. The Committee reminded the Governor that he had previously appeared before the Senate, assured Nairobi residents that the County would not repeat the NMS experience, and secured a concession that Nairobi residents would not bear NMS pending bills. The Committee therefore asked why the County has now entered into an arrangement that may expose Nairobi to similar liabilities.

47. The Committee asked the Governor to clarify why the Agreement does not clearly define the respective capacities of the National Government and Nairobi City County for example, the County's ability to install 40,000 streetlights versus the National Government's proposal to scale this to 70,000 through conditional grants.

48. The Committee expressed concern that the structure of the committees in the Agreement appears to give the National Government decision-making authority over county functions, rather than limiting its role to support.

49. The Committee noted that the role of the County Government within the Implementation Committee is unclear, and sought clarification on whether the Committee is intended to supervise, oversight, or directly implement county functions.

50. The Committee sought clarification on the intended use of conditional grants, noting that the Agreement does not specify whether national support is meant to be financial, technical, or both.

51. The Committee sought clarification on how disputes between the Steering Committee and the County Executive would be resolved, noting that the Agreement does not assign any role to the County Assembly or the Senate.

52. The Committee expressed concern that the Steering Committee is dominated by National Government representatives—eight members compared to four from the County—and asked how this structure safeguards county autonomy.

53. The Committee questioned why the reporting framework under Clause 7 of the Agreement is directed only to the County Executive Committee and the National Cabinet, with no provision for reporting to the County Assembly or the Senate, which are the constitutionally mandated oversight bodies.

54. The Committee asked the Governor to clarify how the proposed Ksh.80 billion will be appropriated specifically, whether the funds will first be channelled to the County Government for appropriation through the County Assembly, or whether the National Government will directly manage and disburse the funds for the projects, or whether such funds would be structured as conditional grants to be appropriated by the County Assembly.

55. The Committee noted that the Agreement defers key financial commitments to future joint decisions, and questioned whether an agreement that leaves major financial terms unsettled can be considered complete.

56. The Committee asked how the programmes introduced under the Cooperation Agreement relate to the existing County Integrated Development Plan (CIDP), noting that the CIDP is already in force. Additionally, the Governor to clarify whether the County will prepare an addendum to the Annual Development Plan (ADP) to incorporate these new programmes, or whether it intends to run two parallel ADPs, which would be irregular. The Committee emphasized that clarity on the relationship between the Agreement, the CIDP, and the ADP is essential for oversight by both the Senate and the County Assembly.

57. The Committee sought assurance that the Controller of Budget will continue issuing statutory reports to the area Senator, noting that the Agreement involves county-related funding and therefore falls within the Controller's oversight mandate.

58. The Committee expressed concern that the Agreement spans two terms of government and may outlast the current Governor and the current National Government and asked how accountability will be safeguarded in future administrations without a clear, watertight reporting system.

59. The Committee warned that without explicit reporting obligations to oversight institutions, projects implemented under the Agreement could be easily abused, especially given the cross-government nature of the arrangement.

60. The Committee asked the Governor to specify the exact financial and resource commitments of each party under the Agreement, including how much the National Government and the County Government of Nairobi will respectively contribute, as contemplated in the Schedule.

61. The Committee sought clarification on whether there is a detailed work plan formally attached to the Agreement, setting out clear objectives, measurable indicators, outputs, timelines, and responsibilities for each party and further requested details of the monitoring, reporting, and dispute-resolution mechanisms, including whether there is a step-by-step escalation framework for resolving disagreements between the parties.

62. The Committee further asked the Governor to explain the duration, review, amendment, and termination clauses of the Agreement, and how these provisions protect the interests of Nairobi residents over time.

63. The Committee noted that the Agreement does not specify procedures or conditions for renewal, and requested clarification on how renewal, extension, or expiry would be handled to ensure continuity and legality.

Further responses from the Governor

The Governor submitted his responses to the above issues as follows -

64. The Governor stated that the County submitted the Agreement for public participation because there must be a concrete document for the public to review. He explained that without a draft Agreement, it would not have been possible to conduct a meaningful engagement process, as the public requires a specific text on which to give views.

65. He expressed openness to refining the public participation process, noting that if there are better ways to structure or sequence it, the Senate should guide the County accordingly. He emphasized that he does not intend to resist improvements, provided the overall objective of securing a sustainable fiscal arrangement for Nairobi is preserved.

66. On the question of what happens if the public rejects the Agreement, the Governor stated that amendments are possible, including the deletion of clauses where necessary. He noted that public participation is not an empirical or numerical vote, as individuals can mobilize large groups either in support or opposition. Instead, it is a process for gathering views to inform decision-making.

67. The Governor further observed that the law passed by Parliament and subjected to public participation requires an agreement between Nairobi City County and the National Government. He argued that this statutory requirement cannot be ignored, even as the content of the Agreement may be amended based on public input. He reiterated that while public participation is important, the ultimate goal is to secure a functional and sustainable framework for Nairobi as the capital city.

68. The Governor responded by emphasizing that the law requires Nairobi City County and the National Government to enter into an agreement, and that such an arrangement is therefore not optional unless Parliament amends the governing statute.

69. He reiterated that the Cooperation Agreement does not transfer any county functions to the National Government, and that each level of government will continue performing its constitutionally assigned roles independently.

70. The Governor explained that the involvement of national officials such as the Principal Secretary for Interior reflects the reality that national-level concerns in the capital, particularly security, often intersect with county operations. He stated that their presence in the committees is meant to facilitate coordination on matters that remain national functions.

71. The Governor explained that his approach to the Agreement is driven by pragmatic considerations, noting that Nairobi, as the capital city, hosts a significant number of national functions that intersect with county responsibilities. He emphasized that Section 6 of the Urban Areas and Cities Act recognize Nairobi as the seat of diplomatic missions, and many of the services provided to diplomatic institutions—such as water supply to the United Nations complex and the new line serving the diplomatic village—require coordinated action between the two levels of government.

72. He stressed that diplomacy, foreign service, and security are not devolved functions, yet they have direct operational implications for the County because they are physically situated within Nairobi. For this reason, he argued that structured collaboration is necessary to ensure that both national and county obligations in the capital are met efficiently.

73. The Governor reiterated that the committees established under the Agreement are not intended to oversight county functions, but to provide a forum where both parties can jointly review progress on agreed activities, identify challenges, and improve coordination. He noted that security concerns in the capital are substantial and often invisible to the general public, making it essential for national and county officials to work together through a formal mechanism.

74. The Governor stated that the Constitution, under Article 189, expressly provides for the establishment of joint committees between the two levels of government, and that the Urban Areas and Cities Act further requires the existence of a formal agreement for coordinated action in the capital. He emphasized that the committees created under the Cooperation Agreement are therefore not new governance structures, but constitutionally recognized joint committees.

75. He clarified that the arrangement is fundamentally different from the former Nairobi Metropolitan Services (NMS). Unlike NMS, the current framework does not create a new entity, does not establish a director-general or directorates, and does not involve the transfer or secondment of staff between the National Government and the County Government. He stressed that there is no human-resource restructuring, and each level of government will continue performing its respective functions independently.

76. The Governor explained that the Agreement merely provides for additional focus, resource allocation, and structured coordination due to Nairobi's unique status as the capital city. He noted that the intention is to enhance collaboration on matters that require joint attention, without altering the constitutional allocation of functions or undermining county autonomy.

77. The Governor stated that, given the scale of resources required for the capital, conditional grants are a viable mechanism, and he does not oppose their use. However, he emphasized that his primary objective is to secure a direct appropriation by the National Assembly specifically for Nairobi as the capital city, arguing that this would provide a more predictable and substantial funding stream.

78. He added that conditional grants could still serve as supplementary financing, but noted that many of the conditional grants approved in recent years have been donor-funded projects, which limits their flexibility and scope. He therefore maintained that a dedicated national appropriation for the capital city is the more appropriate and sustainable approach.

79. The Governor confirmed that Nairobi has an existing County Integrated Development Plan (CIDP), but noted that the CIDP functions largely as a broad wish-list, and many of the projects contemplated under the Cooperation Agreement fall within its general aspirations. He explained that the law allows counties to amend the CIDP or prepare an addendum whenever new priorities arise, and the same flexibility applies to the Annual Development Plan (ADP).

80. He emphasized that all projects, whether arising from the CIDP, the ADP, or the Cooperation Agreement, must ultimately be appropriated by the County Assembly, since no expenditure can occur outside the approved county budget. He added that the National Government will also be required to appropriate its share of the Ksh 80 billion, likely through a fresh national-level budget process to incorporate the agreed projects.

81. The Governor further explained that for the Controller of Budget to authorize the flow of funds between the two levels of government, there must be a formal framework governing the collaboration. He stated that the Cooperation Agreement provides this required framework, enabling both the National Government and Nairobi City County to receive, disburse, and account for funds in compliance with the law.

82. The Governor explained that the division of responsibilities under the Agreement is guided strictly by the constitutional and statutory mandates of each level of government. He stated that Nairobi City County will continue performing functions assigned to it—such as lighting and maintaining county roads—while the National Government will remain responsible for lighting and maintaining national roads.

83. He noted that the current classification of roads remains unchanged because of an existing court-issued stay order affecting the Road Maintenance Levy Fund (RMLF) framework. As a result, many roads within Nairobi continue to be categorized under KURA, KeNHA, and other national agencies, as reflected on the Kenya Roads Board website. He emphasized that until the legal position changes, each level of government must operate within its existing functional mandate, and the Agreement does not alter these classifications.

84. The Governor explained that the reporting and financial framework under the Agreement does not introduce any new or irregular procedures. He stated that all aspects of funds flow, disbursement, utilisation, accounting, and reporting will continue to be undertaken strictly in accordance with the Public Finance Management Act, and that every project must undergo the full statutory budgetary process, including public participation, approval, and appropriation. He further stated that appropriations will continue to be undertaken separately by each level of government, and that the existing audit processes remain fully intact, the County Government will be audited for county-level expenditures and the National Government for national-level expenditures undertaken within the capital.

85. The Governor reiterated that the Agreement covers both county and national functions within Nairobi, and therefore requires a collaborative structure. He added that the question of who chairs the joint committees is less important to him than ensuring that the agreed activities are implemented effectively. However, he acknowledged the Committee's concerns about balance and representation, noting that while the current relationship between the two levels of government is cordial, future administrations may not enjoy the same cooperation. He therefore agreed that ensuring equitable representation in the committees is a reasonable safeguard for posterity.

86. The Governor affirmed that the pending bills of the defunct Nairobi Metropolitan Services (NMS) must be settled, noting that these obligations remain valid and must be addressed through the appropriate national mechanisms.

87. He emphasized that the current Cooperation Agreement does not create a new entity or organisation, and therefore does not generate new accounting structures or officers. He clarified that, unlike NMS, the Agreement does not establish a separate administrative body with its own accounting officer, staff, or operational framework. As a result, no new liabilities or financial obligations are being created under this arrangement.

88. On outstanding land rates, the Governor clarified that the National Government owes approximately KSh 3.6 billion, not KSh 100 billion. He stated that the County has already submitted the claim through the National Land Commission, as required by law, and discussions are ongoing on whether the settlement will be made in one

or two tranches. He also highlighted additional debts, including unpaid parking fees, and noted that the largest valuation relates to Embakasi Garrison, estimated at KSh 68 million. He informed the Committee that these matters have been escalated to the National Treasury for inclusion in the supplementary budget.

89. The Governor stated that Nairobi's main constraint is inadequate resources and noted that the pending regulations under the National Rating Act, which are awaiting approval by the Cabinet Secretary, will unlock significant revenue for the County. He explained that the Cooperation Agreement now provides a structured platform to follow up on these regulations with the relevant Principal Secretaries and to ensure regular reporting.

MIN/SEN/DEVIR/1096/2026: ANY OTHER BUSINESS

There was no any other business.

MIN/SEN/DEVIR/1097/2026: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 11:26 a.m. The next meeting to be held on Monday, 2nd March, 2026 at 10.00 a.m.

SIGNED..... **DATE**.....30/04/2026

SEN. SHEIKH MOHAMED ABASS, CBS, MP,
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

MINUTES OF THE 217TH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON MONDAY, 30TH MARCH, 2026 AT 10:00 A.M AT MINI CHAMBER, COUNTY HALL AND ON THE ZOOM ONLINE PLATFORM.

PRESENT

1. Sen. Sheikh Mohamed Abass, CBS, MP - Chairperson
2. Sen. Catherine Mumma, CBS, MP - Vice-Chairperson
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Paul Karungo Thangwa, CBS, MP - Member
5. Sen. Hezena Lemaletian, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr.) Oburu Oginga, MGH, MP - Member
2. Sen. Richard Onyonka, EBS, MP - Member
3. Sen. Peris Tobiko, CBS, MP - Member
4. Sen. Mohamed Said Chute, CBS, MP - Member

IN ATTENDANCE

a) Office of the Prime Cabinet Secretary

1. H.E Hon. Musalia Mudavadi, EGH, - Prime Cabinet Secretary
2. Mr. Joseph Busiega
3. Ms. Juliana Yiapan
4. Mr. Dan Ameyo
5. Ms. Anne Olubendi
6. Mr. Samuel M. Kawanja
7. Mr. Fidel Salach
8. MS. Belinda Otieno
9. Mr. Jeremy Shabati
10. Mr. Anders Ihachi
11. Mr. James Juma
12. Mr. Kiprop Marrimoi

b) State Department for National Government Coordination

13. Mr. Abdi Salan - Principal Secretary

c) State Department for Devolution

14. Mr. Mahat Salle – Secretary, State Department for Devolution

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Desmond Rasugu - Clerk Assistant III **(taking minutes)**
3. Ms. Angela Kagunyi - Legal Counsel II
4. Ms. Amran Mursal - Senior Fiscal Analyst
5. Ms. Mwanamisi Mwachasi - Research Officer III
6. Mr. Stanley Gikore - Media Relations Officer III
7. Ms. Julia Gachoki - Serjeant-At-Arms
8. Mr. Charles Oyosi - Audio Officer III
9. Ms. Terryanne Macheru - Attachee

MIN/SEN/DEVIR/1144/2026 PRAYER

The meeting was called to order at 10:25 a.m. by the Chairperson, followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/1145/2026: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. (Prof.) Magaret Kamar, EGH, MP and seconded by Sen. Catherine Mumma, CBS, MP as follows -

1. Prayer;
2. Adoption of the agenda;
3. Meeting with the Rt. Hon. Prime Cabinet Secretary to deliberate on the Cooperation Agreement between the National Government and the Nairobi City County Government on the management of key services in Nairobi City County;
4. Any other Business; and
5. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/1146/2026:

MEETING WITH THE RT. HON. PRIME CABINET SECRETARY TO DELIBERATE ON THE COOPERATION AGREEMENT BETWEEN THE NATIONAL GOVERNMENT AND THE NAIROBI CITY COUNTY GOVERNMENT ON THE MANAGEMENT OF KEY SERVICES IN NAIROBI CITY COUNTY

1. The meeting commenced with a round of introductions by all those present. In his opening remarks, the Chairperson welcomed the Right Honourable Prime Cabinet Secretary and the accompanying officers and stated that the Committee looked forward to constructive deliberations on the Cooperation Agreement between the National Government and the Nairobi City County Government.

2. He stated that the Committee was keen to understand the particulars of the Agreement, the legal framework underpinning its execution, and the implications of its implementation on service delivery in Nairobi City County. He thereafter invited the Right Honourable Prime Cabinet Secretary to present his responses to the issues raised by the Committee.

Responses by the Prime Cabinet Secretary

3. In his opening remarks, the Prime Cabinet Secretary, indicated that he had done a formal and detailed written response on the matter, and forwarded it to the Committee through the Office of the Clerk of the Senate. He therefore stated that in his oral submissions, he was flagging out, in summary form, some aspects of the written response.

4. He submitted that the National Government already cooperates with County Governments under the Intergovernmental Relations Act, 2012 and the County Governments Act, 2012. He added that even the revenue-sharing framework reflects ongoing cooperation between the two levels of government. He therefore emphasized that the arrangement between the National Government and Nairobi City County is strictly a cooperation agreement and not a transfer of functions.

5. Through his legal advisor, Mr. Dan Ameyo, the Prime Cabinet Secretary outlined the constitutional and statutory basis of the Cooperation Agreement. He cited Article 189 of the Constitution, which expressly provides for cooperation between the two levels of government, including the establishment of joint committees and joint authorities; Article 6(2), which establishes the National and County Governments as distinct yet interdependent entities that must conduct their relations through consultation and cooperation; Section 6(5) of the Urban Areas and Cities Act, which provides the legal basis for structured cooperation in the management and development of Nairobi as the capital city; and Section 23 of the Intergovernmental Relations Act, which authorizes the establishment of joint committees to facilitate

intergovernmental consultations. He reiterated that the Cooperation Agreement does not amount to a transfer of functions and therefore does not fall within the scope of Article 187 of the Constitution.

6. The Prime Cabinet Secretary reported that the Cooperation Agreement clearly outlines the respective responsibilities of both parties, particularly regarding the framework for cooperation and financial management. He noted that the collaboration between the two levels of government is operationalized through specific national ministries that have defined roles in implementing the Agreement.

7. He informed the Committee that in total, implementation of the projects and the programs, envisaged under the agreement would cost the National Government 80 billion Kenya shillings.

8. He noted that the Agreement sets out specific targets to be achieved within its two-year implementation period. He reported that a Steering Committee has been established, which he chairs in his capacity as Prime Cabinet Secretary and is deputized by the Governor of Nairobi City County. In addition, an Implementation Committee, chaired by the Governor, has been constituted to oversee the day-to-day follow-up and execution of the Agreement's activities.

9. The Prime Cabinet Secretary explained that, within the legal framework established under the Urban Areas and Cities Act, Nairobi requires well-designed and coordinated interventions between the National Government and the County Government to ensure efficient and effective service delivery in the capital.

10. The Prime Cabinet Secretary reported that, in implementing the Agreement, his office developed a series of concept notes, referred to as White Papers, which outline the strategic approach and proposed interventions. He then provided a summary of the contents of each of these papers-

    i) White Paper 1 deals with Water and Sanitation and focuses on addressing the key aspects of the water challenge in Nairobi City;
    ii) White Paper 2 deals with the Safe Streets which focuses on upgrading of roads, bridges, and installation of up to 50,000 streetlights within the city;
    iii) White Paper 3 deals with Markets and Urban Economy which focuses on the formalization of informal trade and development of market infrastructure;
    iv) White Paper 4 is on the Legal, Finance, Governance and Communication. This provides legal architecture for anchoring the Cooperation Agreement;
    v) White Paper 5 is on Environment and Green Development. This talks to the issues of the Nairobi River's regeneration, the waste-to-energy opportunity, which includes the infrastructure required for the affordable

housing and positioning of Nairobi as a city that can benefit from green finance.

vi) White Paper 6, focuses on Flood Resilience. This provides an integrated approach to urban water management, development of a flood masterplan and urban planning reforms.

vii) White Paper 7 deals with urban security. This provides for the establishment of the Nairobi Metropolitan Service Framework. The proposal establishes, a dedicated, ward-structured community embedded Metropolitan Police Formation within the Nairobi Police Service. He pointed that this will establish a dedicated police service without having to amend the National Police Service Act. He observed that, Nairobi City, Machakos, Kiambu, and sections of Kajiado Counties are within the Metropolis and so the Metropolitan Police Service would help in giving more focus to improve the security within this large Metropolis.

11. After outlining the contents of the White Papers, the Prime Cabinet Secretary informed the Committee that his Office was ready and willing to share the documents as they continue to be developed, and would make them available to the Committee.

12. The Prime Cabinet Secretary reiterated that the National Government has no intention of undermining the principles of devolution. To demonstrate his personal commitment to strengthening devolution, he noted that he was responsible for submitting the Sessional Paper on Devolution to Parliament and for leading the development of the first six pieces of legislation that anchored devolution in law following the promulgation of the 2010 Constitution.

13. On the issue of pending bills left by the defunct Nairobi Metropolitan Services (NMS), the Prime Cabinet Secretary reported that a dedicated Committee is currently operating under a separate mandate to verify pending bills across public entities. He stated that the Committee is actively discharging its mandate and that its recommendations will guide how the National Government settles all its outstanding pending bills, including those inherited from NMS.

Issues Raised by the Committee

14. Upon making his submissions, the Committee raised the following questions to the Prime Cabinet Secretary -

a) The Prime Cabinet Secretary to explain why the agreement does not assign a role to the National Assembly and the Nairobi City County Assembly in the allocation and oversight of the funds to be used in implementing the projects and programs under the agreement, as the two institutions are constitutionally

mandated to oversight the National Government and County Government respectively.

b) Explain why the agreement doesn't disclose the specific amount of money that the Nairobi City County Government will be contributing to the implementation of the Agreement and why it fails to detail the broader role of the County Government in executing the agreement.

c) Give an explanation why public participation process was not properly conducted prior to the signing of the agreement, noting that it was undertaken post-facto. Further, the Committee requested clarity on the clause providing that views from public participation will be incorporated into the agreement given this came after its signing.

d) Clarify any long-term plans for the National Government to collaborate with the Nairobi City County beyond the two-year period provided for in the agreement.

e) The Committee observed that Clause 7 of the agreement, on financing, is so vague and requested the Prime Cabinet Secretary to specify the source of the Ksh. 80 billion. The Committee noted that the clause only provides that the parties shall jointly agree on the modalities of financing without stipulating the respective financial obligation for each party.

f) Observing that the agreement provides that National Government Cabinet Secretaries are to convene in determining the planning and execution of county functions, what will be the exact role of the National Government and what then will be the role of the County Executive Committee in planning the same functions? How does the role for each level retain the distinctiveness of the two levels of government?

g) The Prime Cabinet Secretary was tasked to convince the Committee that this arrangement does not amount to implementing article 187 of the Constitution, but is disguised as Cooperation under Article 189. Considering that the National Government is funding, coordinating and implementing the projects, it can be argued that the National Government has taken over the functions of the County.

h) Noting that Article 187 clearly states that, if a function or power is transferred from a government at one level to a government to another level, constitutional responsibility for the performance of the function or exercise of the power shall remain with the level of government to which it is assigned under the Fourth Schedule. In this regard, the PCS was required to explain whether, under the cooperation agreement, there is one project that the national government has funded and coordinated, but where the function has remained under the control of the Nairobi City County government.

i) The Prime Secretary was requested to explain why the Cooperation initiative being operationalized through the Nairobi Rising Programme, does not

provide the exact obligations for each level of government. To illustrate, under the street lighting component, the programme indicates that 50,000 streetlights shall be installed. The Committee sought to know what proportion of that number is to be funded by the National Government and what proportion by the County Government.

j) The Committee noted that the defunct Nairobi Metropolitan Services (NMS) left behind pending bills amounting to approximately KSh 16 billion. The Prime Cabinet Secretary was therefore required to clarify whether the ongoing Cooperation Agreement between the National Government and the Nairobi City County Government takes into account this outstanding liability, which arose from the previous national–county cooperation arrangement under NMS. The Committee further sought assurance that the current cooperation framework would not result in a similar situation where, upon the conclusion of the programme, the County Government is left burdened with substantial pending bills accumulated during the period of joint implementation.

k) He was asked to clarify what would happen if other counties that also have cities, such as Nakuru, Mombasa, and Kisumu were to demand similar arrangements. Specifically, the Committee sought to know whether such counties would receive comparable financial support from the National Government and whether they would be entitled to a similar cooperation structure.

l) The Committee sought clarification on the extent to which the Cooperation Agreement preserves the functional autonomy of the Nairobi City County Government. Members observed that the joint planning structures established under the agreement particularly in areas such as water supply, road development, and other county functions, appear to place national and county officials in shared decision-making roles. Accordingly, the Committee requested the Prime Cabinet Secretary to clearly articulate the specific role of the Nairobi City County Government within this arrangement. The Committee emphasized that the central concern lies in determining whether the agreement constitutes limited cooperation, as envisaged under Article 189 of the Constitution, or whether it effectively results in the joint execution or assumption of county functions, which would fall within the ambit of Article 187 on transfer of functions. The Committee therefore invited the PCS to provide clarity on how the agreement safeguards the distinct constitutional mandate of the County Executive.

m) He was asked to indicate when the Nairobi Metropolitan Police is expected to be established, and to clarify the timelines or steps the National Government has set toward its operationalization.

n) He was asked to clarify whether the pending bills left by the defunct Nairobi Metropolitan Services (NMS) include salary obligations owed to former NMS staff.

o) The Committee sought clarification on whether the historical reality of Nairobi being originally a swamp has been factored into current planning frameworks. Members noted that White Paper 3 proposes the development of permanent urban facilities with strict infrastructure standards covering sanitation, waste management, security, water supply, electricity, and drainage. The Committee therefore requested the Prime Cabinet Secretary to confirm that these plans adequately account for Nairobi's unique geological and environmental characteristics.

p) The Committee sought clarification on the Prime Cabinet Secretary's submission that congestion in Nairobi is largely concentrated within informal settlements. Members requested the PCS to indicate whether there are any plans to relocate or reorganize these densely populated areas as part of broader efforts to decongest the city.

q) The Committee sought clarification on how the Cooperation Agreement was formally executed on 27 February 2026, despite the absence of any corresponding budgetary allocation. Members noted that the proposed KSh 80 billion is not provided for in the 2025/26 financial year nor reflected in the 2026/27 Budget Policy Statement, and therefore requested the Prime Cabinet Secretary to explain the basis upon which the agreement was operationalized without prior budgetary provision; and

r) The Committee requested the Prime Cabinet Secretary to clarify who represents the State Department for Devolution in Cabinet deliberations, noting that the Department does not fall under any established Ministry.

Responses from the Prime Cabinet Secretary

15. The Prime Cabinet Secretary responded to the above questions raised by the Committee as follows –

a) He explained that Article 189 further elaborates the constitutional principle of interdependence by requiring that cooperation between the two levels of government be guided by a clearly defined framework. He added that Nairobi's unique position arises from statute, noting that an Act of Parliament designates Nairobi as the capital city and, under the Urban Areas and Cities Act, grants it special recognition. He stated that the current arrangement is therefore specific to Nairobi because it is supported by enabling legislation, and no similar law exists to provide such a framework for any other county.

b) The Prime Cabinet Secretary emphasized that devolution is a foundational principle of the Constitution and that no governance structure should undermine its significance. He further noted that the constitutional framework particularly Article 6(2) recognizes that while the National and County Governments are distinct, they are also interdependent, and must therefore operate in a manner that respects both autonomy and cooperation;

c) The Prime Cabinet Secretary emphasized the need for substantial investment in infrastructure within densely populated areas such as Kibera, Kasarani, and Mathare. He noted that improving essential services—particularly sanitation—would significantly enhance these settlements' capacity to accommodate residents more sustainably. He stressed that such targeted urban infrastructure development is necessary for the long-term improvement of Nairobi city.

d) The Prime Cabinet Secretary explained that the joint teams initially held several meetings to establish the cooperation framework. He noted that, thereafter, the Steering Committee would assume an oversight role, meeting periodically, likely on a quarterly basis, to review progress. In contrast, the Implementation Committee, chaired by the Governor, would be more hands-on, working closely with the County's technical team and corresponding technical teams from the relevant national ministries to execute the agreement's activities.

e) The Prime Cabinet Secretary acknowledged that the KSh 80 billion required for the cooperation programme had not been provided for in the existing budget. He stated that this omission would be treated as a matter of urgency and confirmed that the necessary allocations would be incorporated into the ongoing budgeting process for the 2026/27 financial year.

f) The Prime Cabinet Secretary assured the Committee that all expenditures under the Cooperation Agreement would strictly comply with the Public Finance Management Act. He emphasized that both parties would ensure that every financial commitment and disbursement is undertaken in full accordance with the requirements of the Act.

g) The Prime Cabinet Secretary did not provide a clear explanation on who represents the State Department for Devolution in Cabinet. He noted that although the Department is domiciled under the Office of the Deputy President, the Deputy President sits in Cabinet in his capacity as Deputy President and not as a representative of any ministry or state department; and

h) The Prime Cabinet Secretary stated that the government has taken into account Nairobi's historical status as a former waterlogged area. He noted that modern engineering and scientific advancements now guide urban planning and infrastructure development to ensure the city is built in a manner that responds to its environmental characteristics.

16. In his closing remarks, the Prime Cabinet Secretary stated that his office would welcome the opportunity to invite the Committee for an inspection tour of Nairobi City to observe firsthand the joint efforts of the National and County Governments in implementing programmes and projects aimed at improving the city.

MIN/SEN/DEVIR/1147/2026: ANY OTHER BUSINESS

There was no any other business.

MIN/SEN/DEVIR/1148/2026: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 12:03 p.m. The next meeting is to be held on Wednesday, 8th April, 2026.

SIGNED..... **DATE**.....30/04/2026

SEN. SHEIKH MOHAMED ABASS, CBS, MP,
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS.

MINUTES OF THE 221ST SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 23RD APRIL, 2026 AT 10:00 A.M IN COMMITTEE ROOM 8, FIRST FLOOR, BUNGE TOWER.

PRESENT

1. Sen. Sheikh Mohamed Abass, CBS, MP - Chairperson
2. Sen. Catherine Mumma, CBS, MP - Vice-Chairperson (Chairing)
3. Sen. (Dr.) Oburu Oginga, MGH, MP - Member
4. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
5. Sen. Richard Onyonka, EBS, MP - Member
6. Sen. Peris Tobiko, CBS, MP - Member
7. Sen. Paul Karungo Thangwa, CBS, MP - Member
8. Sen. Mohamed Said Chute, CBS, MP - Member

ABSENT WITH APOLOGY

Sen. Hezena Lemaletian, MP - Member

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Desmond Rasugu - Clerk Assistant III **(taking minutes)**
3. Ms. Angela Kagunyi - Legal Officer II
4. Ms. Mwanamisi Mwachasi - Research Officer III
5. Mr. Stanley Gikore - Media Relations Officer III
6. Ms. Julia Gachoki - Serjeant -At-Arms
7. Mr. Charles Oyosi - Audio Officer III
8. Ms. Terryanne Macheru - Attachee

MIN/SEN/DEVIR/1160/2026: PRAYER

The meeting was called to order by the Chairperson at 10: 24 a.m followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/1161/2026: ADOPTION OF AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Richard Onyonka, EBS, MP and seconded by Sen. Mohamed Chute, CBS, MP as follows –

1. Prayer;
2. Adoption of the agenda;
3. Confirmation of the Minutes of the Previous Meetings;
4. Consideration of Matters arising from the Minutes;
5. Consideration of constitutional Petition Number E111 of 2026 – Katiba Institute vs Governor, Nairobi City County and 4 others on the Cooperation Agreement between Nairobi City County and the National Government;
6. Any other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/1162/2026: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

Confirmation of minutes of the previous sittings was deferred to the next meeting.

MIN/SEN/DEVIR/1163/2026:

CONSIDERATION OF CONSTITUTIONAL PETITION NUMBER E111 OF 2026 KATIBA INSTITUTE VS GOVERNOR, NAIROBI CITY COUNTY AND 4 OTHERS ON THE COOPERATION AGREEMENT BETWEEN NAIROBI CITY COUNTY AND THE NATIONAL GOVERNMENT.

1. The Committee considered a brief from the Directorate of Litigation and Compliance on the above-mentioned petitions. The brief outlined the particulars of the Cooperation Agreement and the issues raised by the two petitioners regarding the said Agreement;
2. The Committee was informed that, in the first petition filed by Ms. Christine Gathoni, the Senate had been enjoined as a respondent, while in the petition filed by Katiba Institute, the Senate had been enjoined as an interested party.
3. In the first petition, the petitioner alleges that the Cooperation Agreement is unlawful on several grounds, including violation of Articles 186 and 187 of the Constitution, lack of public participation, absence of County Assembly approval, failure to involve the Senate, and breach of public finance principles.
4. In the second petition, the petitioner contends that the Agreement violates the functional integrity of Nairobi City County contrary to Article 6(2) as read with Article 189 of the Constitution; encroaches upon the institutional integrity of the Nairobi City County Executive; undermines the authority of the Nairobi City County Assembly; and contravenes constitutional principles on prudent, responsible, open, and accountable use of public resources, among other concerns. In summary, both petitioners seek to challenge the legality of the Agreement.

5. The brief further outlined the applicable legal framework under the Constitution and the Urban Areas and Cities Act in relation to the issues raised; and
6. The Committee was informed that, in light of the foregoing, the Senate's input in the court proceedings is necessary for purposes of determining the legality of the Cooperation Agreement. The Committee was also notified that the matter is scheduled for mention on 28th May, 2026, and was therefore requested to provide appropriate directions on the way forward.

Upon deliberation, the Committee resolved to conclude its consideration of the matter and table its report before the Senate ahead of the court mention date.

MIN/SEN/DEVIR/1164/2026: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 11:45 a.m. The next meeting is to be held on notice.

SIGNED..... **DATE**.....22/06/26.....

SEN. SHEIKH MOHAMED ABASS, CBS, MP,
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS.

MINUTES OF THE 223RD SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 30TH APRIL, 2026 AT 10:00 A.M IN COMMITTEE ROOM 4, FIRST FLOOR, BUNGE TOWER.

PRESENT

1. Sen. Sheikh Mohamed Abass, CBS, MP - Chairperson
2. Sen. Catherine Mumma, CBS, MP - Vice-Chairperson
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Peris Tobiko, CBS, MP - Member
5. Sen. Paul Karungo Thangwa, CBS, MP - Member

ABSENT WITH APOLOGY

1. Sen. (Dr.) Oburu Oginga, MGH, MP - Member
2. Sen. Richard Onyonka, EBS, MP - Member
3. Sen. Mohamed Chute, CBS, MP - Member
4. Sen. Hezena Lemaletian, MP - Member

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Desmond Rasugu - Clerk Assistant III (**taking minutes**)
3. Ms. Angela Kagunyi - Legal Officer II
4. Ms. Mwanamisi Mwachasi - Research Officer III
5. Mr. Stanley Gikore - Media Relations Officer III
6. Ms. Julia Gachoki - Serjeant -At-Arms
7. Mr. Charles Oyosi - Audio Officer III
8. Ms. Terryanne Macheru - Attachee

MIN/SEN/DEVIR/1170/2026: PRAYER

The meeting was called to order by the Chairperson at 10:27 a.m followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/1171/2026: ADOPTION OF AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. (Prof.) Margaret Kamar, EGH, MP and seconded by Sen. Paul Karungo Thangwa, CBS, MP, as follows –

1. Prayer;
2. Adoption of the agenda;
3. Confirmation of the Minutes of the Previous Meetings;
4. Consideration of Matters Arising from the Minutes;
5. Consideration of the Report on the Cooperation Agreement Between the National Government and Nairobi City County Government;
6. Any other Business; and
7. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/1172/2026: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETINGS

a) The minutes of the 208th sitting of the Committee held on Thursday, 26th February, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Paul Karungo Thangwa, CBS, MP and seconded by Sen. Catherine Mumma, CBS, MP; and
b) The minutes of the 217th sitting of the Committee held on Monday, 30th March, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Paul Karungo Thangwa, CBS, MP and seconded by Sen. Catherine Mumma, CBS, MP.

MIN/SEN/DEVIR/1173/2026: CONSIDERATION OF MATTERS ARISING FROM THE MINUTES

There were no matters aring from the minutes confirmed.

MIN/SEN/DEVIR/1174/2026:
CONSIDERATION OF THE REPORT ON THE COOPERATION AGREEMENT BETWEEN THE NATIONAL GOVERNMENT AND NAIROBI CITY COUNTY GOVERNMENT.

The Committee considered the draft report on the above-mentioned Cooperation Agreement. Members reviewed the analysis of the key issues arising from the report, together with the Committee's observations on those matters. The Committee also undertook an extensive review of the chapter detailing its meeting with the Governor of Nairobi City County and the Prime Cabinet Secretary to ensure that it accurately reflects the record of deliberations.

In its discussions, the Committee took into account the constitutional framework governing intergovernmental cooperation as set out under Articles 187 and 189 of the Constitution. Accordingly, the Committee directed the Secretariat to incorporate the necessary amendments and present the revised report for consideration and adoption at the next meeting.

MIN/SEN/DEVIR/1175/2026: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 11:42 a.m. The next meeting is to be held on notice.

SIGNED..... **DATE**.....22/06/26.....

SEN. SHEIKH MOHAMED ABASS, CBS, MP,
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS.

MINUTES OF THE 234TH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON MONDAY, 22ND JUNE, 2026 AT 10:00 A.M AT COMMITTEE ROOM 4, FIRST FLOOR, BUNGE TOWER AND ON THE ZOOM ONLINE PLATFORM

PRESENT

1. Sen. Sheikh Mohamed Abass, CBS, MP - Chairperson
2. Sen. Catherine Mumma, CBS, MP - Vice-Chairperson
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Richard Onyonka, EBS, MP - Member
5. Sen. Peris Tobiko, CBS, MP - Member
6. Sen. Paul Karungo Thangwa, CBS, MP - Member
7. Sen. Mohamed Said Chute, CBS, MP - Member
8. Sen. Hezena Lemaletian, MP - Member

ABSENT WITH APOLOGY

Sen. (Dr.) Oburu Oginga, MGH, MP - Member

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Desmond Rasugu - Clerk Assistant III **(taking minutes)**
3. Ms. Angela Kagunyi - Legal Officer II
4. Ms. Amran Mursal - Senior Fiscal Analyst
5. Ms. Mwanamisi Mwachasi - Research Officer III
6. Mr. Jack Lemetek - Media Relations Officer III
7. Ms. Julia Gachoki - Serjeant -At-Arms
8. Mr. Charles Oyosi - Audio Officer III
9. Ms. Terryanne Macheru - Attachee
10. Ms. Umlikier Mohamed - Attachee

MIN/SEN/DEVIR/1222/2026: PRAYER

The meeting was called to order at 10:17 a.m. by the Chairperson, followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/1223/2026: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Richard Onyonka, EBS, MP and seconded by Sen. Catherine Mumma, CBS, MP as follows -

1. Prayer;
2. Adoption of the agenda;
3. Confirmation of Minutes of previous Meetings;
4. Consideration of Matters Arising from the Minutes;
5. Consideration and adoption of the report on the Cooperation Agreement between the National Government and the County Government of Nairobi City;
6. Consideration and adoption of the report on the application for conferment of city status to Thika municipality;
7. Any other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/1224/2026: CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS.

a) The minutes of the 222nd sitting of the Committee held on Monday, 27th April, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Catherine Mumma, CBS, MP and seconded by Sen. Mohamed Chute, CBS, MP;
b) The minutes of the 223rd sitting of the Committee held on Thursday, 30th April, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Peris Tobiko, CBS, MP and seconded by Sen. Catherine Mumma, CBS, MP;
c) The minutes of the 224th sitting of the Committee held on Monday, 4th May, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Catherine Mumma, CBS, MP and seconded by Sen. Mohamed Chute, CBS, MP;
d) The minutes of the 225th sitting of the Committee held on Thursday, 7th May, 2026 were confirmed as a true record of the proceedings after being proposed by Mohamed Chute, CBS, MP and seconded Sen. Catherine Mumma, CBS, MP;
e) The minutes of the 226th sitting of the Committee held on Friday, 8th May, 2026 at 10.00 a.m were confirmed as a true record of the proceedings after being proposed by Mohamed Chute, CBS, MP and seconded Sen. Peris Tobiko, CBS, MP;
f) The minutes of the 227th sitting of the Committee held on Friday, 8th May, 2026

at 2.00 p.m were confirmed as a true record of the proceedings after being proposed by Mohamed Chute, CBS, MP and seconded Sen. Mohamed Abass, CBS, MP;

g) The minutes of the 228th sitting of the Committee held on Monday, 11th May, 2026 at 10.00 a.m were confirmed as a true record of the proceedings after being proposed by Mohamed Chute, CBS, MP and seconded Sen. Mohamed Abass, CBS, MP;

h) The minutes of the 229th sitting of the Committee held on Thursday, 14th May, 2026 were confirmed as a true record of the proceedings after being proposed by Mohamed Chute, CBS, MP and seconded Sen. Catherine Mumma, CBS, MP;

i) The minutes of the 230th sitting of the Committee held on Tuesday, 26th May, 2026 were confirmed as a true record of the proceedings after being proposed by Hezena Lemaletian, CBS, MP and seconded Sen. Catherine Mumma, CBS, MP;

j) The minutes of the 231st sitting of the Committee held on Thursday, 4th June, 2026 were confirmed as a true record of the proceedings after being proposed by Hezena Lemaletian, MP and seconded Sen. Mohamed Chute, CBS, MP;

k) The minutes of the 232nd sitting of the Committee held on Monday, 8th June, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Peris Tobiko, CBS, and seconded by Hezena Lemaletian, CBS, MP.

MIN/SEN/DEVIR/1224/2026: CONSIDERATION OF MATTERS ARISING FROM THE MINUTES

There were no matters arising from the minutes that were confirmed.

MIN/SEN/DEVIR/1225/2026:

CONSIDERATION AND ADOPTION OF THE REPORT ON THE COOPERATION AGREEMENT BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENT OF NAIROBI CITY.

The Committee resumed consideration of its Report on the Cooperation Agreement between the National Government and the Nairobi City County Government, and reviewed the key observations arising from its earlier deliberations. This included an examination of the principal issues requiring scrutiny under the Agreement, namely: the constitutional framework for intergovernmental cooperation as set out in Articles 187 and 189 of the Constitution; the adequacy of public participation; the financing arrangements; the scope of legislative oversight; the clarity of roles and responsibilities assigned to each level of government; and the establishment mandate of the proposed Nairobi Metropolitan Police Unit.

Upon deliberation on the foregoing issues, the Committee resolved to recommend in its report to the House that the Agreement be **temporarily suspended** to allow for the

negotiation of a revised framework. The renegotiated Agreement should be subjected to comprehensive public participation, incorporate a detailed implementation workplan, and provide for explicit reporting obligations requiring the implementing parties to submit periodic implementation reports to Parliament and the Nairobi City County Assembly. The Committee further resolved that the purported KSh. 80 billion commitment by the National Government be anchored in the County Governments Additional Allocations Act, 2026/2027, among other necessary safeguards.

The Committee directed the Secretariat to clearly incorporate these recommendations into the draft Report and to present the revised version to the Committee for final consideration and adoption.

MIN/SEN/DEVIR/1226/2026:

CONSIDERATION AND ADOPTION OF THE REPORT ON THE APPLICATION FOR CONFERMENT OF CITY STATUS TO THIKA MUNICIPALITY.

The Committee considered the report on the application for the conferment of city status to Thika Municipality and resolved to recommend that the **Senate approves** the conferment of city status to Thika Municipality. The report was unanimously adopted after being proposed by Sen. Mohamed Chute, CBS, MP and seconded by Sen. Peris Tobiko, CBS, MP.

MIN/SEN/DEVIR/1227/2026: **ANY OTHER BUSINESS**

There was no any other business.

MIN/SEN/DEVIR/1228/2026: **ADJOURNMENT AND DATE OF NEXT MEETING**

The Chairperson adjourned the meeting at 12:22 p.m. The next meeting to be held on Monday, 29th June, 2026.

SIGNED..... **DATE**.....2/07/26

SEN. SHEIKH MOHAMED ABASS, CBS, MP,
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS.

MINUTES OF THE 236TH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 2ND JULY, 2026 AT 9:00 A.M AT COMMITTEE ROOM 4, FIRST FLOOR, BUNGE TOWER AND ON THE ZOOM ONLINE PLATFORM

PRESENT

1. Sen. Sheikh Mohamed Abass, CBS, MP - Chairperson
2. Sen. Catherine Mumma, CBS, MP - Vice-Chairperson
3. Sen. (Prof.) Margaret Kamar, EGH, MP - Member
4. Sen. Dr. Oburu Oginga, MGH, MP - Member
5. Sen. Paul Karungo Thangwa, CBS, MP - Member
6. Sen. Mohamed Said Chute, CBS, MP - Member
7. Sen. Hezena Lemaletian, MP - Member

ABSENT WITH APOLOGY

1. Sen. Richard Onyonka, EBS, MP - Member
2. Sen. Peris Tobiko, CBS, MP - Member

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Desmond Rasugu - Clerk Assistant III **(taking minutes)**
3. Ms. Angela Kagunyi - Legal Officer I
4. Ms. Mwanamisi Mwachasi - Research Officer III
5. Mr. Stanely Gikore - Media Relations Officer III
6. Ms. Julia Gachoki - Serjeant -At-Arms
7. Mr. Charles Oyosi - Audio Officer III
8. Ms. Umlikier Mohamed - Attachee

MIN/SEN/DEVIR/1234/2026: PRAYER

The meeting was called to order at 9:17 a.m. by the Chairperson, followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/1235/2026: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Mohamed Chute, CBS, MP and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP as follows -

1. Prayer;
2. Adoption of the agenda;
3. Confirmation of the Minutes of the Previous Meeting;
4. Consideration of Matters Arising from the Minutes;
5. Consideration of the Report on the Cooperation Agreement between the National Government and Nairobi City County;
6. Consideration of the Report on the County Governments (Amendment) Bill, 2024 (Senate Bills No. 39 of 2024)
7. Any other Business; and
8. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/1236/2026: CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS.

a) The minutes of the 233rd sitting held on Thursday, 11th June, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Mohamed Chute, CBS, MP, and seconded by Sen. (Prof.) Margaret Kamar, EGH, MP.
b) The minutes of the 234th sitting held on Monday, 22nd June, 2026 were confirmed as a true record of the proceedings after being proposed by Sen. Hezena Lemaletian, MP and seconded by Sen. Mohamed Chute, CBS, MP.

MIN/SEN/DEVIR/1237/2026: CONSIDERATION OF MATTERS ARISING FROM THE MINUTES

There were no matters arising from the minutes that were confirmed.

MIN/SEN/DEVIR/1238/2026:

CONSIDERATION AND ADOPTION OF THE REPORT ON THE COOPERATION AGREEMENT BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENT OF NAIROBI CITY.

The Committee resumed consideration of the Report on the Cooperation Agreement between the National Government and the Nairobi City County Government, and reviewed the recommendations as amended to reflect the changes adopted during its previous sitting on the matter. Upon further deliberation, the Committee resolved to recommend that the Cooperation Agreement be **temporarily suspended** to allow for the negotiation of a revised framework. The renegotiated Agreement should be subjected to comprehensive public participation, incorporate a detailed implementation

workplan, and provide explicit reporting obligations requiring the implementing parties to submit periodic implementation reports to Parliament and the Nairobi City County Assembly, among other necessary provisions.

The Report was unanimously adopted after being proposed by Sen. Mohamed Chute, CBS, MP, and seconded by Sen. Hezena Lemaletian, MP.

MIN/SEN/DEVIR/1239/2026:
CONSIDERATION OF THE REPORT ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL, 2024 (SENATE BILLS NO. 39 OF 2024)

The Committee resumed consideration of its Report on the County Governments (Amendment) Bill, 2024 (Senate Bills No. 39 of 2024) and resolved to recommend the deletion of all clauses of the Bill. The report was unanimously adopted after being proposed by Sen. (Prof.) Margaret Kamar, EGH, MP and seconded by Sen. Hezena Lemaletian, MP.

MIN/SEN/DEVIR/1240/2026: ANY OTHER BUSINESS

a) The Committee resolved to invite the Governors of Kiambu and Makueni Counties to appear before the Committee for deliberations on matters relating to its ongoing inquiry into the governance and management of municipalities;and
b) The Committee further resolved to undertake an oversight visit to Samburu County at the earliest opportunity, subject to the Committee's scheduling and logistical considerations.

MIN/SEN/DEVIR/1241/2026: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 10:30 a.m. The next meeting to be held on Monday, 13th July, 2026.

SIGNED..... **DATE**.....14.07.26.....

SEN. SHEIKH MOHAMED ABASS, CBS, MP,
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS.

Annex 2:

Copy of Cooperation Agreement between the National Government and Nairobi City County Government

REPUBLIC OF KENYA

CO-OPERATION AGREEMENT

BETWEEN

THE NATIONAL GOVERNMENT

AND

NAIROBI CITY COUNTY GOVERNMENT (NCCG)

on

Collaboration for the Promotion of Social and Economic Development in the Capital City Pursuant to Section 6 of the Urban Areas and Cities Act, Cap. 275

February, 2026

RECEIVED IN THE GOVERNMENT ORIGINER, NAIROBI

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COOPERATION AGREEMENT

BETWEEN

THE NATIONAL GOVERNMENT

AND

NAIROBI CITY COUNTY GOVERNMENT (NCCG)

ON

COLLABORATION FOR THE PROMOTION OF SOCIAL AND ECONOMIC DEVELOPMENT IN THE CAPITAL CITY PURSUANT TO SECTION 6 OF THE URBAN AREAS AND CITIES ACT, CAP, 275.

FEBRUARY 2026

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THIS COOPERATION AGREEMENT hereinafter referred to as "Agreement" made

BETWEEN

I. **THE NATIONAL GOVERNMENT** acting through the **PRIME CABINET SECRETARY AND CABINET SECRETARY FOR FOREIGN AND DIASPORA AFFAIRS,** having its registered office at Office of the Prime Cabinet Secretary, Kenya Railways, Off Haile Selassie Avenue, P.O. Box 62345 - 00200 NAIROBI, *(which expression shall include its successors and permitted assigns)*;

AND

II. **THE NAIROBI CITY COUNTY GOVERNMENT** acting through the Governor having its registered office at City Hall Way, City Hall Building, P. O. Box 30075-00100, Nairobi, *(hereinafter referred to as "Nairobi County" which expression shall include its successors and permitted assigns)*

RECITALS AND DECLARATIONS OF COMMON INTENT

WHEREAS The National Government, through its various Ministries, Departments and Agencies is mandated to formulate, implement, and oversee policies and initiatives across a broad range of sectors vital to Kenya's development. These Ministries include key actors in infrastructure, education, foreign relations, water management, public safety, and economic development, each operating under a constitutional and statutory framework to serve the nation's strategic interests.

WHEREAS Article 132 of the Constitution of Kenya vests executive authority in the President of the Republic of Kenya as the Head of State and Government, including the authority to direct, coordinate and supervise the functions of Ministries and Government Departments, and in furtherance of this mandate the President issued Executive Order No. 1 of 2025, *Organization of the Government of the Republic of Kenya*, to provide for the organization and effective coordination of the National Executive;

PURSUANT To Executive Order, the Prime Cabinet Secretary is mandated to assist the President and the Deputy President in the coordination and supervision of Ministries and Government Departments;

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WHEREAS Nairobi City County Government is established as a County Government under Article 176 of the Constitution. In addition, it also doubles as the capital city of Kenya which hosts the seat of the National Government and offices of diplomatic missions.

RECOGNIZING that Nairobi City County is the Capital City of Kenya and is mandated to provide infrastructure necessary to sustain the seat of the national Government, offices of Diplomatic missions, efficient transport network connecting to rural areas, towns and other local, regional and international cities and commerce and industry.

RECOGNIZING Nairobi City's growing stature within the community of nations as a key diplomatic and international hub, the City has experienced a significant expansion of international offices, placing Nairobi alongside New York, Geneva, and Vienna as one of only four cities globally hosting multiple United Nations headquarters;

WHEREAS Nairobi City and the Greater Nairobi Metropolitan Area collectively contributes significantly to the national gross domestic product and continue to serve as the principal driver of Kenya's economic growth, with a shared aspiration to further consolidate their role in national and global affairs, enhance competitiveness within the Global Cities Index, and progressively attain first-world city standards;

WHEREAS Article 6 (2) of the Constitution of Kenya provides that governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations based on consultation and cooperation.

WHEREAS Article 186 of the Constitution recognizes the respective functions and powers of the national government and county governments. Article 189 (2) of the Constitution provides that Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

WHEREAS Section 6 (5) of the Urban Areas and Cities Act, Cap 275 provides the legal basis for intergovernmental cooperation and partnerships between the two levels of government for the purpose of enhancing the performance of functions and the delivery of services within the Capital City. The parties share the common goal and objectives to collaborate with a view of

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promoting social and economic development within the jurisdiction of the Capital City;

WHEREAS Section 23 (a) of the Inter-Governmental Relations Act, Cap 265F provides that the National or a County Government may establish a joint Committee with a specific mandate where such a Committee is necessary for the achievement of the objects and principles of Devolution provided for in Article 174 and 175 of the Constitution.

RECOGNIZING that this Agreement does not constitute a transfer of functions to any level of Government.

NOW THEREFORE having considered the above, the parties agree to work in collaboration and interdependently toward achieving the objectives of this Agreement as follows:

1. CLAUSE I: DEFINITIONS AND INTERPRETATION

1.1. The following expressions (save where the context requires otherwise), bear the following meanings:

1.1.1. **"Agreement"** means this Cooperation Agreement and any schedules, annexures, or appendices attached hereto.

1.1.2. **"County Government"** means the Nairobi City County Government established under Article 176 as read together with Article 6 (1) and the First Schedule of the Constitution.

1.1.3. "**Effective Date"** means the date on which this Agreement comes into force as provided under Article 8 of this Agreement;

1.1.4. **"Financial Resources"** means the budgetary allocations, grants, revenues, or any other monetary resources necessary for the performance of this Agreement;

1.1.5. **"Function"** means any power or duty assigned to a level of government under the Fourth Schedule to the Constitution or any legislation enacted pursuant thereto;

1.1.6. "**National Government"** means the National Executive as established under Article 130 of the Constitution;

1.1.7. References to Clauses are (unless the context otherwise requires) to a Clause respectively of this Agreement.

1.1.8. Words importing the singular meaning where the context so admits include the plural meaning and vice versa; and

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1.1.9. The Clause and paragraph headings are for reference purposes only and shall not affect the interpretation of this Agreement.

2. CLAUSE II

PURPOSE

2.1. **THE PARTIES TO THIS** Agreement share a common interest in fostering bilateral cooperation and collaboration to give effect to Section 6 (3) of the Urban Areas and Cities Act, Cap 275 by positioning Nairobi as a globally competitive capital, ensuring the city provides the infrastructure and environment necessary to sustain:

(i) the Seat of the National Government

(ii) Offices of Diplomatic Missions.

(iii) an efficient transport network connecting the Capital to the rural areas, towns and other local, regional and international cities.

(iv) commerce and industry.

(v) high quality service delivery in support of national aspirations to achieve first world status in a generation.

(vi) high standard of living for all residents of Nairobi in a clean and secure environment; and

(vii) a structured framework for collaboration between the parties in the planning, financing and implementation of infrastructure and urban development in the Capital City.

3. CLAUSE III

SCOPE AND AREAS OF COLLABORATION

3.1. The Parties agree that collaboration under this Agreement shall be directed towards strengthening the performance of county functions and improving the quality, efficiency, and sustainability of service delivery within the Capital City, through coordinated planning, resourcing, and implementation support by the National Government and the County Government.

3.2. In furtherance of this objective, the Parties shall collaborate in the following areas:

(i) Refuse collection, management of refuse dumps and solid waste disposal to improve public health within the Capital City through enhanced and integrated waste management systems.

(ii) Development, maintenance and improvement of County roads, Non-Motorized Transport and street lighting to enhance transport

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services within the Capital City, with the objective of improving urban mobility, safety, accessibility, and connectivity.

(iii) Planning and development of markets in order to promote orderly trade, support micro, small and medium enterprises(MSMEs)advance integrated urban development, and facilitate the provision of dignified trading facilities in response to urban growth while strengthening the capital city's position as a commercial hub;

(iv) Housing related infrastructure and development needs of the Capital City; and

(v) Provision of water and sanitation services with the objective of enhancing access to safe water, improving sanitation standards, protecting public health, and supporting sustainable urban development within the Capital City.

(vi) Such other areas may be necessary to support the effective performance of county function and delivery of services within the Capital City as the Parties may mutually determine.

3.3. The Parties agree that the scope and areas of collaboration set out in this Clause shall be implemented strictly in accordance with the Constitution, the Urban Areas and Cities Act, Cap 275, the Intergovernmental Relations Act, Cap 265F and all other applicable written laws.

4. CLAUSE IV

ROLES AND RESPONSIBILITIES OF PARTIES

4.1. **Joint responsibilities in implementation of projects and programs**

(i) Identification of projects and activities to be implemented jointly or separately in the Capital City in a manner that is consistent with the Constitution and national laws.
(ii) Funding of operations and activities of the Capital city.
(iii) Implementation of identified projects and activities.
(iv) Monitoring, evaluation and reporting.
(v) Sharing and exchange of information.
(vi) The Parties will endeavour to act in utmost good faith and dedication in fulfilment of activities.
(vii) Entering into agreements with other parties and partners towards the better performance of the objectives of this Agreement subject to the provisions of the Public Finance Management Act, Cap 412, Public Procurement and Asset

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Disposal Act, Cap 412C, Public Private Partnerships Act, Cap 430 and attendant Regulations and other relevant provisions of the law.

(viii) Taking reasonable steps to mitigate any factors that may negatively affect the successful implementation of this Agreement.

5. CLAUSE V

GOVERNANCE STRUCTURE AND COMMITTEES

5.1. The parties established a Joint Steering Committee to oversee the implementation of the Agreement in accordance with Article 189 (2) of the Constitution as read together with Section 6 (6) (a) of the Urban Areas and Cities Act, Cap 275 and section 23 of the Intergovernmental Relations Act, Cap 265F.

5.2. The Parties hereby establish a two-tier governance structure for the effective implementation of this Agreement, comprising:

(i) a Steering Committee; and

(ii) an Implementation Committee.

5.3. The Committees established under clause 5.2 shall operate in a complementary and coordinated manner to give effect to the objectives of this Agreement.

5.4. **Steering Committee**

5.4.1. The Steering Committee shall oversee the implementation of this Agreement and shall comprise –

(i) The Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs who shall be the Chairperson;

(ii) The Governor of Nairobi City County who shall be the Vice- Chairperson;

(iii) The Attorney General;

(iv) Cabinet Secretaries responsible for:

(a) Interior and National Administration.

(b) Treasury and Economic planning.

(c) Lands, public works, housing and urban development.

(d) Environment, climate change and forestry.

(e) Water, sanitation and irrigation; and

(f) Energy and petroleum.

(v) The County Attorney.

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(vi) Two representatives from the Nairobi City County Government nominated by the Governor.

5.4.2. The Steering Committee may co-opt such other persons as it may consider necessary for the proper discharge of its functions.

5.4.3. The Principal Secretary responsible for Devolution and the County Secretary of Nairobi County shall serve as Joint Secretaries to the Steering Committee and the Implementation Committee.

5.4.4. The Steering Committee shall meet quarterly and may hold such additional meetings as may be necessary for the effective performance of its mandate.

5.5. **Implementation Committee**

5.5.1. The Implementation Committee shall be responsible for the technical, operational and administrative execution of this Agreement.

5.5.2. The Implementation Committee shall comprise:

(i) The Governor of Nairobi City County who shall be the Chairperson;

(ii) Principal Secretaries responsible for:

(a) the National security and national administration;

(b) the National Treasury;

(c) Housing and Urban Development;

(d) Roads;

(e) Environment;

(f) Water and Sanitation; and

(g) Energy.

(iii) Solicitor General;

(iv) a representative from the Executive Office of the President;

(v) County Executive Committee members from Nairobi County Government responsible for corresponding functions;

(vi) The County Solicitor.

5.5.3. The Implementation Committee shall meet once every month or as may be necessary for the effective discharge of their mandates.

5.5.4. The Implementation Committee may co-opt such other persons as it considers necessary for the discharge of its mandate and may establish Project specific committees, Technical Committees or such other sub-committees as it may consider necessary for the effective implementation of this Agreement.

5.5.5. Each Committee shall regulate its own procedure, quorum, and meeting modalities, subject to any directions issued by the Steering Committee.

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6. CLAUSE VI: PUBLIC PARTICIPATION

6.1. This Agreement shall be subjected by the Nairobi City County to public participation as per the applicable laws.

6.2. The Agreement together with any amendments as shall be necessitated by public participation constitute the entire agreement between the parties. Both parties acknowledge that they have not entered into this agreement in reliance wholly or partly on any statement or representation made by the other except as contained or referred to herein.

6.3. All projects and programs undertaken under this Agreement shall be subject to public participation in accordance with applicable laws.

7. CLAUSE VII

FINANCING OF THE AGREEMENT

7.1. The parties shall jointly agree on the modalities for financing all programmes and projects undertaken pursuant to this Agreement, including the sources of funding, cost-sharing arrangements where applicable, and the mechanisms for the flow of funds within the provisions of the Public Finance and Management Act, Cap 412.

7.2. Each implementing Party shall, in accordance with Clause 7.1 above within its respective mandate, be responsible for performing and honoring its obligations undertaken under this Agreement.

7.3. All programmes and projects to be implemented under this Agreement shall be properly costed and provided for within the respective budgets of the National Government and the County Government, as applicable, and shall be processed through the applicable national and county budgetary processes and in accordance with the respective budget cycles of the Parties.

7.4. The flow of funds, disbursement, utilisation, accounting, reporting, oversight, and audit of all funds under this Agreement shall be undertaken in accordance with the Public Finance Management Act, Cap. 412 and all other applicable written laws.

7.5. The parties shall report to the National Cabinet and the County Executive Committee annually on the implementation of the Agreement.

8. CLAUSE VIII

ENTRY INTO FORCE, AND TERMINATION

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8.1. This Agreement shall become effective fourteen days from the date of execution and shall remain in force for an initial period of twenty-four months from the date of execution subject to renewal.

8.2. Parties may terminate this agreement mutually or a party may terminate this agreement by giving six months' notice to the other party. Such termination shall take effect at the expiry of the six-month period from the date the termination notice is issued provided that the provisions contained herein shall remain in effect to the extent necessary to permit an orderly settlement of all arrangements made with respect to the ongoing cooperation activities.

9. CLAUSE IX

DATA PROTECTION

9.1. Each party undertakes to protect and not to disclose to any third parties the data exchanged during the subsistence of this Agreement and after the end of the Cooperation Agreement save for by the operation of the law.

9.2. Each party undertakes to use the data exchanged solely for the purpose for which the scope of this exchange allows.

9.3. Each party to this Agreement acknowledges the importance of protecting the privacy of all information provided by the other party and warrants that in dealing with data collected during this collaboration they shall at all times strictly comply with the Data Protection Act, 411C.

10. CLAUSE X

EXISTING AGREEMENTS

10.1. Any existing arrangements between the parties herein and other third parties touching on the objective of this Agreement shall remain in force insofar as they are consistent with the objectives of this Agreement.

11. CLAUSE XI

SUPPLEMENTARY ARRANGEMENTS AND AMENDMENTS

11.1. The Parties may, from time to time, enter into supplementary arrangements within the scope and framework of this Agreement for the purpose of implementing specific agreements, collaborations, projects, or programmes contemplated herein.

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11.2. Any supplementary arrangement entered into pursuant to Clause 11.1 shall be in writing and executed by the duly authorized representatives of both Parties and shall be consistent with and subject to the provisions of this Agreement.

11.3. No amendment, variation, or modification of this Agreement shall be valid or binding unless it is made in writing and executed by both Parties through a formally signed instrument expressly stating that it amends this Agreement.

11.4. Unless expressly stated otherwise, no supplementary arrangement entered into under this Clause shall amend, vary, or override the provisions of this Agreement.

12. ARTICLE XII

GOVERNING LAW

12.1. The provisions of this Agreement and any amendments or annexes thereto shall be governed by, construed, and enforced in accordance with the laws of the Republic of Kenya.

13. ARTICLE XIII

NOTICES

13.1. Any notice or other communication to be given under this Agreement shall be in writing and shall be sufficiently given if delivered:

(a) By Registered Mail Ten (10) days from the date of such delivery.
(b) Personally/hand delivery on the date of such delivery: or
(c) Electronic Service of Notices through E-mail shall be deemed served on that day it was sent within the official business hours on a business day in the relevant jurisdiction in which it is sent. If it is sent outside business hours and on a day, not a business day, it shall be considered to be served on a subsequent day is a business day to the following addresses:

FOR THE NATIONAL GOVERNMENT	FOR NAIROBI CITY COUNTY GOVERNMENT
PRIME CABINET SECRETARY AND CABINET SECRETARY FOR FOREIGN AND DIASPORA AFFAIRS OFFICE OF THE PRIME CABINET SECRETARY, KENYA RAILWAYS, OFF HAILE SELASSIE AVENUE, P.O. BOX 62345 - 00200	THE GOVERNOR NAIROBI CITY COUNTY GOVERNMENT P.O.BOX 30075 00100 NAIROBI, Email: Info@nairobi.go.ke

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NAIROBI **Email: info@primecs.go.ke**	

13.2. If any party under this Agreement changes their address or premises, they shall within seven (7) days thereafter send or deliver to the other party written confirmation of their new address.

14. ARTICLE XIV

DISPUTE RESOLUTION

14.1. In the event of any dispute, or disagreement arising from or pertaining to this agreement, the parties shall at the first instance endeavor to resolve the dispute amicably through negotiations, but if the dispute is not resolved amicably within 90 days from the date one Party notifies the other of the dispute in writing, the parties shall refer the dispute to the Intergovernmental Relations Technical Committee provided under the Intergovernmental Relations Act, Cap 265F.

15. ARTICLE XV

SEVERABILITY

15.1. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect. The parties agree to replace the invalid or unenforceable provision with a valid and enforceable provision that most closely achieves the intent and economic effect of the invalid or unenforceable provision.

16. ARTICLE XVI

ENTIRE AGREEMENT

16.1. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements, representations, and warranties.

17. ARTICLE XVII

LIMITATION OF LIABILITY

17.1. Each party shall be mandated to fulfill its obligations on the projects and programs initiated under this agreement.

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IN WITNESS WHEREOF, the parties herein have caused this **AGREEMENT** to be signed by their duly authorized representatives.

SIGNED at Nairobi on this 17th day of February 2026

SIGNED ON BEHALF OF THE NATIONAL GOVERNMENT:

HIS EXCELLENCY DR. MUSALIA MUDAVADI E.G.H.
PRIME CABINET SECRETARY AND CABINET SECRETARY FOR FOREIGN AND DIASPORA AFFAIRS

In the presence of:

MS. DORCAS AGIK ODUOR SC, E.G.H
HON. ATTORNEY-GENERAL

SIGNED ON BEHALF OF NAIROBI CITY COUNTY GOVERNMENT:

H.E. SAKAJA ARTHUR JOHNSON, CBS, EGH
GOVERNOR

In the Presence of:

CS. CHRISTINE IRERI, MCIArb, CP³ P
Ag. COUNTY ATTORNEY

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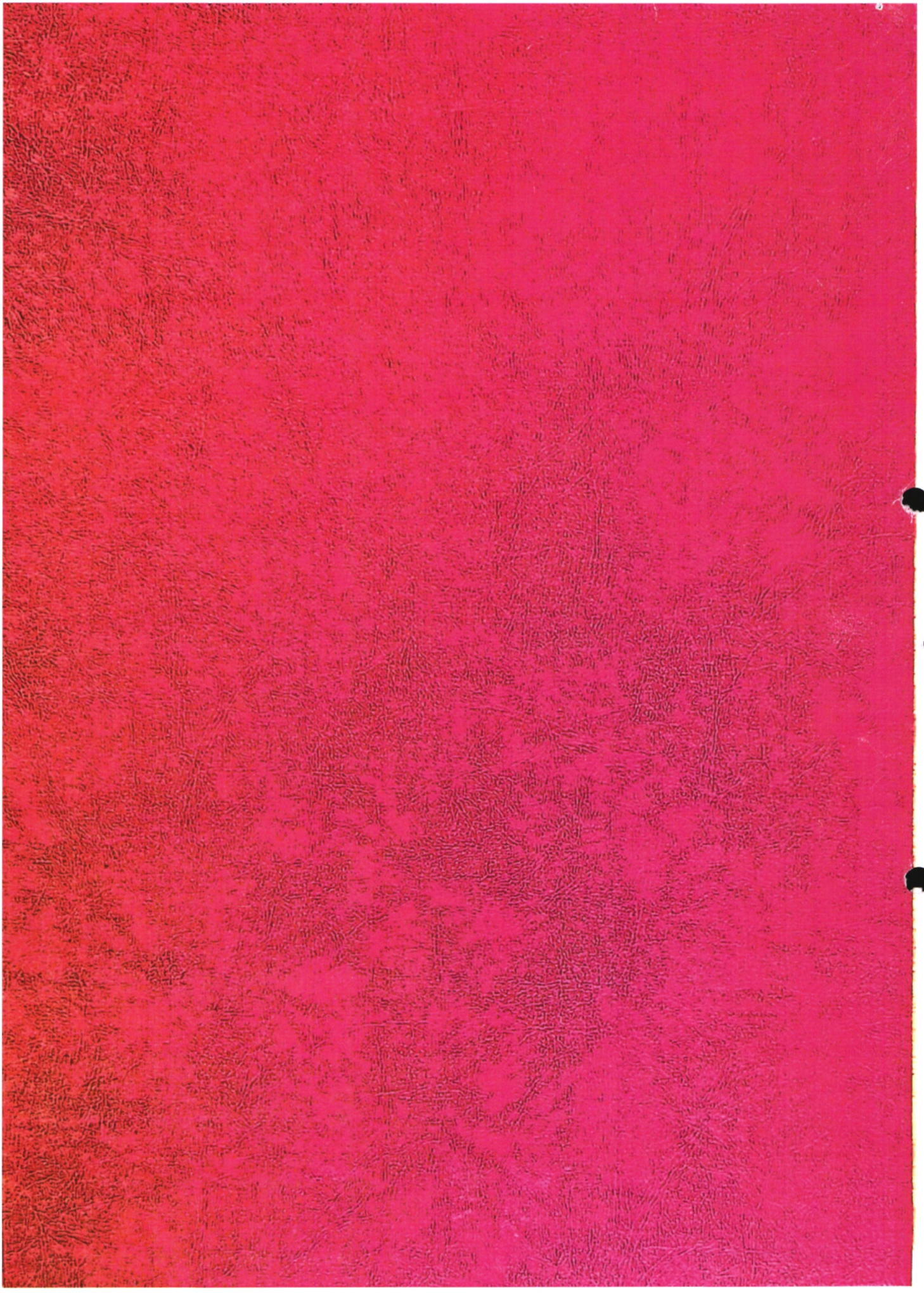

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Annex 3:

Submissions from the Prime Cabinet Secretary

THE SENATE
RECEIVED
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OFFICE OF THE PRIME CABINET SECRETARY AND MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

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EOP/OPCS/ADM/1/2 Ref. No. .....

25th March, 2026 Date.....

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
NAIROBI

THE SENATE
RECEIVED
27 MAR 2026
DIRECTOR COMMITTEE SERVICES
(DGAC)

DGAC
Please deal.
JN
26/3/2026

Dear Jeremiah,

RE: APPEARANCE BEFORE THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

Reference is made your letter under Ref.Sen/DGAC/DEVIR/2026/033 dated 18th March, 2026 inviting me to appear before the Committee on Devolution and Intergovernmental Relations to deliberate on matters relating to the Cooperation Agreement entered between the County Government of Nairobi City County and the National Government on the following issues;-

i. the particulars of the Agreement and the legal framework supporting the execution of the Agreement.;
ii. how the implementation of the Agreement will affect service delivery in the Nairobi City County; and
iii. the plans in place by the National Government to settle the pending bills inherited by the defunct Nairobi Metropolitan Services.

This is to confirm that I will be available to apprise the Committee on **Monday 30th March, 2026 at 10.00am.**

The purpose of this letter therefore, is to submit the attached presentation to the Committee.

Yours Sincerely,

H.E. Dr. Musalia Mudavadi, EGH
PRIME CABINET SECRETARY AND CABINET SECRETARY

Encls.

Copy to: **CPA Dr. Aurelia Rono, CBS**
Principal Secretary
State Department for Parliamentary Affairs
Railways Headquarters
NAIROBI

Mr. Michael Lenasalon
Principal Secretary
State Department for Devolution
Harambee House Annex
NAIROBI

INVITATION TO APPEAR BEFORE THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS, ON MONDAY, 30TH MARCH 2026, REGARDING THE COOPERATION AGREEMENT BETWEEN THE NATIONAL GOVERNMENT AND NAIROBI CITY COUNTY GOVERNMENT

INTRODUCTION

Honourable Chairperson,

Honourable Members,

1. May I take this opportunity to thank the Committee for its invitation to appear before it and to deliberate on the Cooperation Agreement entered into between the National Government and the Nairobi City County Government.

2. This engagement arises from the Committee's mandate under Standing Order 228(3) to consider matters relating to devolution, intergovernmental relations, and the governance and management of county governments and urban areas.

3. I wish to commend the Committee for its continued oversight role in safeguarding the principles of devolution while ensuring that intergovernmental collaboration enhances service delivery to citizens.

4. Honourable Chairperson, the subject matter before this Committee is of significant national importance, given Nairobi's unique status as both a County Government and the Capital City of the Republic.

5. Nairobi is far more than an ordinary County. It is the **political and economic capital of East Africa**, the critical international centre for the United Nations, **the regional hub for diplomatic missions, global organisations and multinational corporations, and the commercial gateway into Eastern and Central Africa**. Its performance therefore carries national, regional and global obligations that no other county bears.

As His Excellency the President observed at the signing on 17 February 2026, the fiscal and operational framework of county financing was never designed for a capital city of this scale and responsibility. This Cooperation Agreement closes that gap squarely within the Constitution, without transferring any functions.

6. The latest KNBS Gross County Product Report confirms that **Nairobi City County contributes 27.5% of Kenya's total Gross Value Added and generates over KSh 4.1 trillion annually in economic output**, far more than any other county. It hosts foreign embassies and high commissions and is home to the United Nations Office at Nairobi (UNON), the only UN headquarters in Africa and the Global South, including UNEP and UN-Habitat. It also hosts multilateral financial institutions such as The World Bank Africa Regional Headquarters and the IMF Africa Regional Office.

7. Further, Kenya's leading private sector institutions — Equity Bank, KCB, NCBA, Co-operative Bank, Safaricom, Kenya Breweries, Coca-Cola Kenya, Centum, and Brookside Dairies, among others — have their headquarters, their staff, their supply chains, and their customers in this city. These facts impose obligations that only the National Government can facilitate. A functional, world-class capital is therefore not a county luxury, it is a national and regional imperative.

8. In this regard, the Cooperation Agreement represents a deliberate and structured effort by both levels of government to strengthen collaboration in the delivery of critical services and infrastructure within the Capital City.

9. At the outset, Honourable Chairperson, I wish to underscore that the Cooperation Agreement **does not constitute a transfer of functions, but instead provides a structured framework for cooperation** in the performance of constitutionally assigned functions, consistent with Article 189 of the Constitution of Kenya and the principles of devolution.

Honourable Chair,

10. I now wish to turn my attention to responding to the questions raised by the Committee. The Specific information required is as follows:

    i. The particulars of the Agreement and the legal framework supporting the execution of the Agreement;

    ii. How the implementation of the Agreement will affect service delivery in the Nairobi City County; and

    iii. The plans in place by the National Government to settle the pending bills inherited by the defunct Nairobi Metropolitan Services.

    iv.

QUESTION ONE: PARTICULARS OF THE AGREEMENT AND THE LEGAL FRAMEWORK SUPPORTING THE EXECUTION OF THE AGREEMENT

Honourable Chairperson,

11. Allow me to highlight the specific particulars of the Agreement:

(A) PARTICULARS OF THE AGREEMENT

12. The Cooperation Agreement is a cooperative intergovernmental framework designed to facilitate **coordinated planning, financing, and implementation of projects** aimed at improving service delivery within Nairobi City County.

Strategic Objective / Purpose - Clause II of the Agreement

13. The purpose of the Agreement is to establish a structured framework for cooperation between the National Government and Nairobi City County Government to enhance coordinated planning, financing and implementation of infrastructure and urban development, with the aim of **positioning Nairobi as a globally competitive capital city** that effectively supports government functions, diplomatic presence, economic activity, efficient transport systems, high-quality service delivery and an improved standard of living for residents in a clean and secure environment.

Scope and Areas of Collaboration – Clause III

14. The Agreement provides for collaboration in key sectors, including:

    i. Refuse collection, solid waste management and disposal to improve public health through integrated waste management systems within the Capital City;

    ii. Development, maintenance and improvement of County roads, Non-Motorized Transport (NMT) and street lighting to enhance urban mobility, safety, accessibility and connectivity;

    iii. Planning and development of markets to promote orderly trade, support Micro, Small and Medium Enterprises (MSMEs) and facilitate dignified and structured trading spaces;

    iv. Housing and urban development to support infrastructure development and respond to urban growth pressures;

    v. Water supply and sanitation services to enhance access to safe water, improve sanitation standards and protect public health;

vi. Any other mutually agreed areas necessary to support effective performance of county functions and delivery of services within the Capital City.

15. These areas remain within **the constitutional mandate of the County Government,** with the National Government playing a **facilitative and supportive role** to enhance performance and service delivery.

Roles and Responsibilities – Clause IV

16. The Agreement provides for joint responsibilities in implementation, including:

i. Identification of projects and programmes to be implemented jointly or separately in a manner consistent with the Constitution and national laws;

ii. Funding of operations and activities of the Capital City, including development and service delivery initiatives;

iii. Implementation of identified projects and programmes, either jointly or through designated implementing entities;

iv. Monitoring, evaluation and reporting to ensure accountability, transparency, and performance tracking;

v. Sharing and exchange of information between the Parties to facilitate coordinated decision-making;

vi. Acting in good faith in the execution of obligations under the Agreement;

vii. Entering into agreements with third parties and partners, subject to compliance with procurement, public finance, and PPP laws;

viii. Mitigating risks that may negatively affect the successful implementation of the Agreement.

17. Notably, these responsibilities are exercised **collaboratively and do not derogate from the constitutional assignment of functions to either level of Government.**

18. All activities shall be undertaken in **compliance with the Public Finance Management Act, Public Procurement and Asset Disposal Act and Public Private Partnerships Act.**

Implementation Architecture – Clause V

19. The Agreement establishes a two-tier delivery governance structure, i.e., a Joint Steering Committee (JSC) for **strategic oversight**, chaired by myself with an Implementation Committee (IC) for **technical coordination**, chaired by the H.E. the Governor.

20. The Joint Steering Committee, chaired by the Prime Cabinet Secretary with the Governor as Vice-Chairperson, provides **overall policy direction and strategic oversight**, bringing together key national and county leadership to guide implementation.

21. The Implementation Committee, chaired by the Governor, is responsible for the **technical, operational and administrative execution** of the Agreement, comprising relevant Principal Secretaries, County Executive Members and technical officers.

22. Both Committees are supported by joint secretaries, may co-opt additional members as necessary, and operate through regular meetings, with the flexibility to establish sub-committees to ensure effective coordination and delivery of programmes and projects.

23. Currently, we have established a dedicated operational secretariat of personnel, drawn from the State Department of Devolution, the State Department of National Government Coordination and the Nairobi City County Government, to ensure timely and accountable delivery.

24. These structures are **coordination mechanisms envisaged under Article 189** and do not create parallel authorities or substitute the constitutional mandates of either level of Government.

Financial Framework – Clause VII

25. The Agreement provides for jointly agreed financing arrangements for all programmes and projects, including sources of funds, cost-sharing and mechanisms for fund flow, in compliance with the **Public Finance Management Act, Cap 412.**

26. **Each party is responsible for honoring its financial obligations within its mandate**. All initiatives must be properly budgeted and processed through the respective national and county budget cycles. Fund disbursement, utilization, accounting, reporting, oversight and audit will follow legal and regulatory requirements.

27. Annual reporting on implementation is required to both the Cabinet and the County Executive Committee.

28. Importantly, all financial arrangements shall be implemented within existing constitutional and statutory frameworks and **shall not result in fiscal control being transferred from one level of Government to another.**

The Programme Components:

29. The Agreement's overarching vision is operationalized through the **Nairobi Rising Programme**, a landmark cooperation initiative formalized on 27th February 2026 during the first Joint Steering Committee, which coordinates implementation processes of Projects and programmes. It commits approximately **KSh 80 billion** toward urban transformation in Nairobi comprising the following:

S/ No.	Initiative	Project Scope
1.	**Street lighting**	**50,000 light points. Finishing 10,000 light points and installing 40,000 new ones.**
2.	**Electricity**	**Last Mile connection to the informal settlements**
3.	**Settlement upgrading**	**The program will support prepaid metering, transformers and settlement lighting.**
4.	**Water Supply**	**Increasing capacity by 50,000 cubic litres**
5.	**Sanitation**	**Construction of 54Km Sewer Line**
6.	**Roads & Drainage**	**59Kms in Phase 1**
7.	**Ward Mobility**	**backed by 3.7B County Funding**
8.	**Solid Waste Management**	**County Government allocates 100 acres and Ksh 4B with 2B from National Government for recovery facilities and transfer stations.**
9.	**Nairobi River Regeneration**	**Tackling Riparian Land encroachment and pollution**
10.	**Urban Security**	**A Nairobi Metropolitan Police Unit framework will be presented within 60 days.**

Entry into Force and Termination – Clause VIII

30. **Clause VIII** provides that the Agreement shall enter into force fourteen (14) days after execution and remain in force for **an initial period of twenty-four (24) months,** subject to renewal. It may be terminated by mutual agreement or by either party upon giving six months' notice.

Dispute Resolution – Clause XIV

31. Any dispute arising under the Agreement shall initially be **resolved amicably through negotiations.** Should the parties fail to reach a resolution within 90 days, the matter shall be **referred to the Intergovernmental Relations Technical Committee,** in accordance with applicable law.

32. This reinforces the principle that disputes are to be addressed through **cooperative governance mechanisms rather than adversarial processes**, ensuring that intergovernmental collaboration remains the cornerstone of conflict resolution.

(B) LEGAL CONTEXT

33. The Cooperation Agreement is firmly grounded in the Constitution and statutory framework governing intergovernmental relations.

34. In particular, the Agreement is anchored on:

    i. **Article 189 of the Constitution of Kenya**, which provides for cooperation between the two levels of Government, including the establishment of joint committees and joint authorities;
    ii. **Article 6(2) of the Constitution of Kenya**, which establishes that the two levels of Government are distinct and interdependent and shall conduct their relations through consultation and cooperation;
    iii. **Urban Areas and Cities Act, particularly Section 6(5),** which provides the legal basis for structured cooperation in the management and development of the Capital City.

35. Further, the Agreement draws from the framework established under the **Intergovernmental Relations Act, particularly Section 23,** which authorizes the establishment of joint committees to facilitate intergovernmental collaboration.

36. It is important to emphasize that the Agreement expressly provides that it does not constitute a transfer of functions and therefore does not fall within the ambit of Article 187 of the Constitution of Kenya.

37. Instead, the Agreement, particularly under **Clause III and Clause IV**, operationalizes cooperative governance by facilitating coordination, support, and joint implementation without divesting either level of Government of its constitutionally assigned mandate.

Nature of the Agreement - Recitals

38. The Agreement, in the Recitals, expressly provides that:

It ***"does not constitute a transfer of functions to any level of Government..."***

39. Accordingly, the Agreement preserves the constitutional allocation of functions by **ensuring that all functions remain vested in the County Government,** while the **National Government plays a complementary role** through the provision of technical, financial, and institutional support to enhance effective service delivery within the Capital City.

40. This reflects the **constitutional doctrine of interdependence without encroachment**, ensuring that cooperation does not translate into **assumption or usurpation of functions**.

41. By directly aligning Nairobi City County's development with the National Government, the Agreement streamlines coordination between local and national priorities. This enables faster and more efficient implementation of national development agendas, flagship infrastructure projects and strategic initiatives, guaranteeing that Nairobi's growth integrates seamlessly with Kenya's broader national goals.

Public Participation – Clause VI

42. **Pursuant to Article 10 and 196 of the Constitution**, the agreement further mandated public participation, which was conducted by the Nairobi County Assembly on 26th and 27th February 2026, to ensure that the cooperative framework remains accountable to the people without altering the institutional responsibilities of each level of Government.

43. The public participation process recommended that the implementation of the Agreement be strengthened through clear delineation of roles between the National and County Governments, enhanced transparency and regular public reporting on progress, and the establishment of a robust coordination and oversight mechanism (anchored on the JSC and IC) to ensure accountability. Participants further emphasized the need for inclusive stakeholder engagement, protection of county autonomy while enabling collaboration, prioritization of service delivery outcomes in key sectors such as waste management, transport, water, and security, and the adoption of measurable performance indicators to track impact and ensure responsiveness to citizen needs. These recommendations have all been adopted in the implementation process.

QUESTION TWO: HOW THE IMPLEMENTATION OF THE AGREEMENT WILL AFFECT SERVICE DELIVERY IN NAIROBI CITY COUNTY

Honourable Chairperson,

44. On the effect of the Agreement on service delivery in Nairobi City County, I wish to state as follows:

Enhanced Coordination between the National Government and the County Government of Nairobi for Service delivery

45. The Agreement establishes a **unified framework** for planning and implementation, which **reduces fragmentation and duplication** across agencies and ensures that both levels of government work in a synchronized manner to deliver urban services efficiently. The on-going works on desilting drains to reopening rivers that had been choked by illegal developments now coordinated through a **multi-agency team is just the beginning of concerted efforts that demonstrates the decisive action taken by the Government through this Coordination Framework.**

46. The Agreement enhances service delivery in Nairobi through a structured coordination framework anchored in a two tier approach i.e Tier 1: the Joint Steering Committee (JSC) which is chaired by myself and the Vice- Chair is H.E the Governor of Nairobi; and Tier 2: the Implementation Committee (IC) chaired by H.E. the Governor of Nairobi and co-chaired by the Principal Secretary, State Department of Housing & Urban Development. The JSC **provides strategic oversight and policy direction** at the national and county level, while the IC, chaired at the county level and comprising sector Principal Secretaries**, drives weekly coordination, implementation, costing work plans, ensuring accountability, prioritizing the high-impact projects, continuous progress tracking, and resolution of bottlenecks**. This collaborative architecture ensures continuous alignment between strategy and execution, enabling both levels of government to work in a synchronized manner, reduce duplication, and accelerate delivery of priority urban services.

Accelerated Infrastructure Development

47. Through joint implementation, the pooling of resources, and coordinated oversight, the Agreement is expected to **accelerate the execution of programmes and projects, reduce delays caused by institutional silos and enhance the responsiveness** of both levels of government to the complex challenges of managing a modern capital city.

48. Key sectors, including roads, housing, waste management, water services, and energy infrastructure, are expected to benefit from faster delivery timelines, enhanced quality and reliable infrastructure. This will, in turn, improve access to essential services for both residents and businesses across Nairobi City County.

Operationalization of the Agreement for Service Delivery

49. **My Office has developed Seven White Papers** that provide commitments with specific procurement timelines, Development Partner engagement frameworks, and delivery milestones against which both levels of governments will be held accountable.

The Seven White Papers are:

- **White Paper 1: Water & Sanitation**; expansion of water supply and sewer systems. The strategy is to structure all water and sanitation systems into three tiers aligned to delivery horizon with **sewer infrastructure** elevated to Tier 1 (immediate) given the public health urgency and visibility of impact and the **Ngethu Water Treatment Plant Rehabilitation** identified as some of the immediate needs. The second tier (medium) is programmed to deal with medium term investments over the period 2026-28 while the third ties focus on the long-term expansion network over the period 2027-2030.
- **White Paper 2: Safe Streets**; upgrading roads and bridges and installing up to 50,000 streetlights; The strategy is to adopt a safe streets framework covering three tracks: **Track A**: Safety and Mobility Infrastructure; **Track B**: Mobility Systems-Discipline, Design and Behavior and **Track C**- Urban Landscaping and the JKIA Gateway.
- **White Paper 3: Markets & Urban Economy**; formalization of informal trade and development of market infrastructure; The design philosophy is **decentralization within structure**. Each market node is designed as a permanent urban facility- not a collection of temporary stalls- with non-negotiable infrastructure standard covering: sanitation, waste management, security, water supply, formal electricity and drainage.

- **White Paper 4: Legal, Finance, Governance & Communication;** The White Paper provides the legal architecture for anchoring the cooperation agreement the and the statutory instruments required. On Communication, the paper further establishes the architecture across two dimensions: the **strategic communications and civic engagement** framework that makes the programme's delivery visible, and the Nairobi Rising brand identity and creative brief that gives the transformation a distinctive, Nairobi-owned visual and linguistic identity.
- **White Paper 5: Environment & Green Development**; river regeneration and waste-to-energy initiatives; The White Paper argues for a sustainability framework that weaves environmental accountability while addressing four distinct but interconnected priorities: **the Nairobi Rivers Regeneration Programme; the Waste to Energy opportunity; the environmental infrastructure required for the Affordable Housing Program and the Nairobi positioning for green finance.**
- **White Paper 6: Flood Resilience**; development of a flood masterplan and urban planning reforms; The Flood Resilience Masterplan adopts the **Sponge City design philosophy**-an integrated approach to urban water management that treats rainfall as a resource to be absorbed, slowed and managed rather than an emergency to be drained as fast as possible. The sponge City model draws on four comparable urban contexts: Amsterdam (canal-integrated urban drainage); Singapore (Active beautiful clean waters programme); Tokyo (underground flood retention tunnels) and Kigali (citywide green infrastructure programme following the 2009 floods). Each contributes specific design elements to the Nairobi Masterplan.
- **White Paper 7: Urban Security**; establishment of a metropolitan police service framework. The Nairobi Metropolitan Police Service (NMPS) proposal **establishes a dedicated ward-structured, community-embedded metropolitan police formation within the National Police Service**-not a replacement of the National Police Service, but a cooperative expansion of Kenya's metropolitan policing capacity, existing under the NPS Act.

50. Further, it is instructive to note that public participation for the projects identified in the White Papers was duly undertaken within the existing National Government budgetary framework; the said projects are therefore already under execution, and this Cooperation Agreement primarily provides the requisite financing and coordination framework to facilitate their continued implementation.

Improved Accountability

51. The joint governance structures established under the Agreement ensure continuous monitoring and evaluation, transparent reporting, and shared accountability between the National and County Governments, promoting efficient and responsible service delivery.

52. By enabling coordinated support without transferring functions, **the Agreement ensures that service delivery is strengthened without undermining devolution.** This approach mirrors international best practices. Capital cities in devolved and federal systems receive structured national support precisely because their performance determines the entire country's economic competitiveness, diplomatic standing and investor confidence, without any transfer of local functions.

53. I wish to reiterate that this coordinated national support is not an **intrusion on devolution, it is a constitutional recognition that Nairobi's success is Kenya's success**. When the capital city functions as a world-class hub by being safe, clean, connected and competitive, every Kenyan benefits through enhanced economic activity, diplomatic prestige, job creation and regional leadership.

QUESTION THREE: PLANS IN PLACE BY THE NATIONAL GOVERNMENT TO SETTLE THE PENDING BILLS INHERITED BY THE DEFUNCT NAIROBI METROPOLITAN SERVICES

54. All interventions in respect of pending bills are being undertaken within existing legal mandates and do not arise from any transfer of functions under the Cooperation Agreement.

55. As per the Auditor-General's Report for FY 2021/2022, the Nairobi Metropolitan Services recorded pending bills amounting to **KSh 14,814,008,078. These comprised KSh 553,291,857 for FY 2018/2019, KSh 267,696,314 for FY 2019/2020, KSh 1,361,463,344 for FY 2020/2021, and KSh 12,631,556,563 for FY 2021/2022, respectively.**

56. The National Treasury has put in place settlement options to clear claims recommended by the Pending Bills Verification Committee **across all sectors.** The recommended pending bills relating to the **Defunct Nairobi Metropolitan Services** form part of the bills earmarked for settlement under this arrangement.

57. In addition, the National Treasury will prepare a Cabinet Memorandum jointly with the Attorney General to seek Cabinet approval to facilitate the settlement of the recommended pending bills arrears for Nairobi Metropolitan Services.

58. The settlement options available for Government to finance the recommended pending bills/claims arrears are three namely: -

Option I: Budgetary Provisions – This will require the National Treasury to create a fiscal space of the entire amount of **Kshs.155.3 billion to be factored in the fiscal year 2025/2026**. This will strain the already strained fiscal framework and may affect on-going priority Government programmes/projects or increase the fiscal deficit to above 5.0%;

Option 2. Securitization – This will require the National Treasury to weigh the available options for securitization of the entire amount either through issuance of Government Bond or Treasury Bills for the **entire amount of Kshs.155.3 billion**. This will not be popular with Micro and Small Enterprises who require the resources now to settle pressing matters such as bank loan facilities and immediate family needs. However, it can be done for Medium Enterprises and well-established corporations/companies with pending bills arrears of above Kshs.50 million; and

Option 3. A blend of both Budgetary provision and Securitization. This option will require the Micro and Small Enterprises with pending bills arrears **say up to Kshs.100 million** to be factored in the budget for fiscal year 2025/2026 and the balance of pending bills arrears above Kshs.100 million be securitized either through issuance of a Government Bond or any other security.

59. The National Treasury recommends ***option three (3)*** given that it is affordable to Government, and will not strain the fiscal framework, it is acceptable to Micro and Small Enterprises and likely to be accepted by Medium Enterprises and well-established corporations / companies. Further, it will inject some liquidity in the economy, with both forward and backward linkages and thus stimulate the economy.

CONCLUSION

Honourable Chairperson,

60. In conclusion, I wish to reiterate that the Cooperation Agreement is a **lawful and constitutionally grounded framework** that strengthens

intergovernmental collaboration without undermining the principles of devolution.

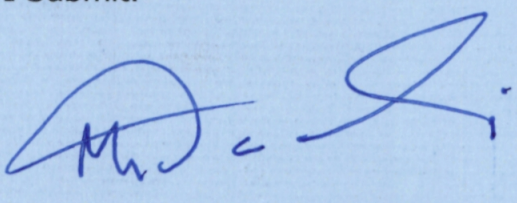
61. The Agreement preserves the **constitutional allocation of functions** while enhancing the capacity of both levels of government to deliver critical services to the residents of Nairobi.

62. The Government remains committed to ensuring that its implementation results in tangible improvements in service delivery, infrastructure development and overall quality of life within the Capital City.

63. Nairobi City County is unique, it is the heartbeat of the Republic of Kenya, the face of Kenya that is often seen by the world, and the **economic and diplomatic hub of Eastern Africa**. A special, lawful arrangement of the present nature is not only appropriate but essential. **It respects every letter of the Constitution while providing our capital city with the structured national partnership it needs to fulfil its unique responsibilities.**

64. By making Nairobi truly work, we uplift every Kenyan, strengthen devolution itself and present to the world a capital worthy of the great Republic of Kenya, which it serves. This is cooperative governance in the true national interest and, Honourable Chairperson and Honourable Members, **the National Government stands ready to deliver**.

I Submit.



H.E. HON. DR. MUSALIA MUDAVADI, EGH
PRIME CABINET SECRETARY AND CABINET SECRETARY FOR FOREIGN AND DIASPORA AFFAIRS