

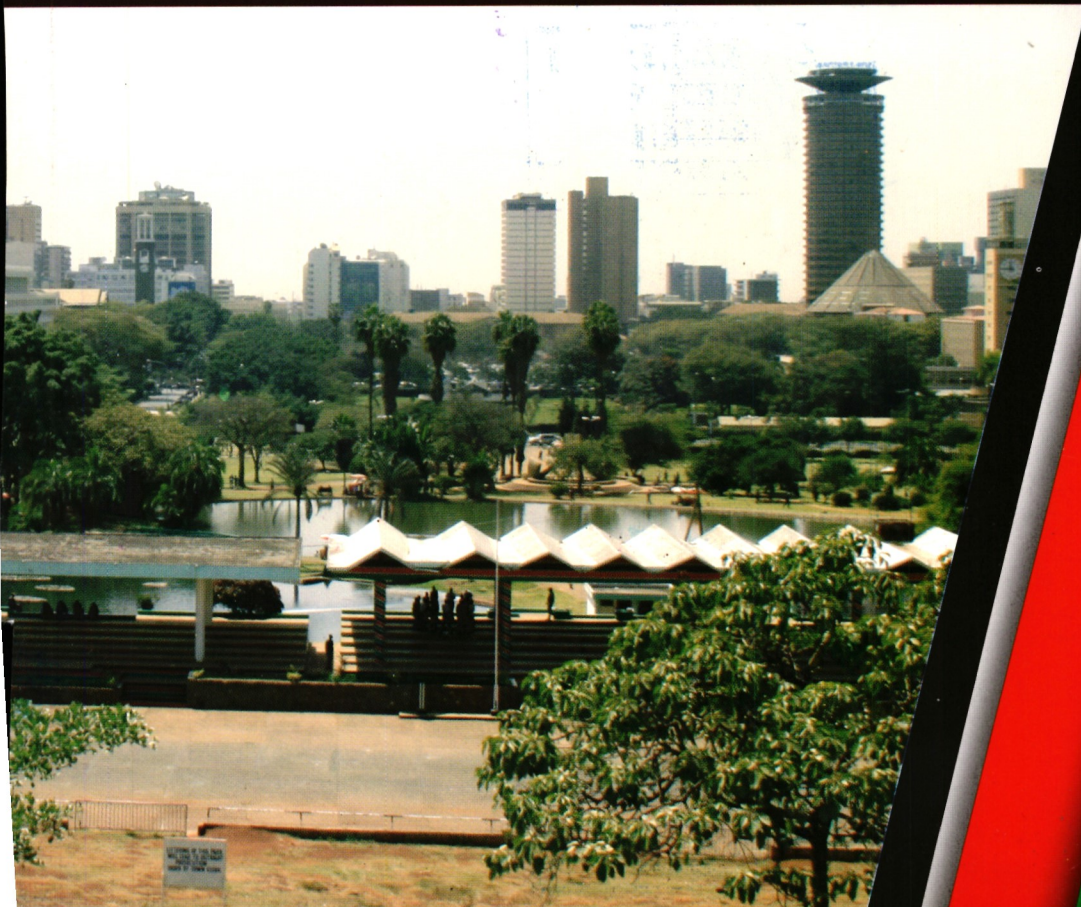


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# QUARTERLY REPORT

## October – December, 2013

*Quarterly report of The Transition Authority on progress in the Implementation of the transition to the devolved system of Government (Pursuant to section 7 and 25 of the TOG Act 2012)*





## **QUARTERLY REPORT October –December, 2013**

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the transition to the devolved system of Government  
(Pursuant to section 7 and 25 of the TOG Act 2012)

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## **ABBREVIATIONS**

ATCs	Agricultural Training Centres
BCLB	Betting Control and Licensing Board
CASB	County Assembly Service Board
CEC	County Executive Committee
CIC	Commission for the Implementation of the Constitution
CIDP	County Integrated Development Plans
CRA	Commission for Revenue Allocation
CTCs	County Transition Coordinators
EPZA	Export Processing Zones Authority
FACT	Functional Analysis Competency Team
FASTs	Functional Analysis Steering Team
ICRSD	International Centre for Research in Sustainable Development
IED	Institute of Education and Democracy
IFMIS	Integrated Financial Management Information System
IPPD	Integrated Personnel Payroll Data
KARI	Kenya Agricultural Research Institute
KNICE	Kenya National Integrated Civic Education
LAs	Local Authorities
LAIFOMS	Local Authority Integrated Financial Operations Management Systems
MCA	Member of County Assembly
MDAs	Ministries Departments and Agencies
MTP	Medium Term Programmes
TA	Transition Authority
TDGA	Transition to Devolved Government Act
TIPS	Transition Implementation Plans
UNDP	United Nations Development Programme

## CHAIRMAN'S STATEMENT



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

**Kinuthia Wamwangi, EBS**  
**CHAIRMAN, TRANSITION AUTHORITY**

During the October-December 2013 quarter, activities revolved around continued of unbundling and costing of functions and the provision of guidance on the implementation of Transition Implementation Plans by MDAs. Many of the issues that emerged during this quarter underscored the important role the Transition Authority continues to play in the resolution of key issues during the transition period.

Some of these issues included the gazettelement by the TA of the transfer of the devolved health service function to the counties in August 2013, which the health practitioners strongly resisted. The Authority also issued advisories and guidelines on human resource management in the counties including rationalization, deployment and secondment of staff to the counties during the transition period. Another critical milestone was the development of mechanisms for the transfer and management of assets and liabilities and the formation of a technical committee to oversee the process.

The Authority was also involved in extensive stakeholder engagements with various institutions including the Kenya Law Reforms Commission on the Public Participation bill, and the National Gender and Equality Commission which organized a meeting on Gender Responsive Budgeting. The Authority also collaborated with the Senate on county matters, particularly appeals by the counties requesting for the immediate transfer of remaining functions and supported Lamu County following the nullification of the Gubernatorial Election by ensuring that the Speaker of the County Assembly of Lamu was sworn in as acting governor on October 7<sup>th</sup> 2013. Another highlight was a consultative meeting with

three National Assembly committees in collaboration with the Commission on Revenue Allocation and the Office of the Controller of Budget.

Other notable engagements included a consultative meeting with women leaders on governance that targeted women Deputy Governors, Senators and County Assembly Speakers and its primary objectives were to enhance the capacity and competence of women leaders and to provide a forum for exchange of ideas, sharing of experiences and best practices with the senators. The Authority also facilitated dialogue between the Salaries and Remuneration Commission (SRC) and Members of the County Assemblies (MCAs) in relation to their remuneration.

The Authority continues the close collaboration with development partners and has advanced this engagement by developing knowledge sharing with international academic and research institutions. Following our successful earlier engagement with the State University of New York- SUNY Center for Technology in Government (CTG) on e-government, we were able to form a similar engagement with the Strathmore Governance Centre in November as part of the Kenya Governors Strategic Execution Support (KEGOSES) project. This project supported by the Ford Foundation is to be executed in collaboration with the Woodrow Wilson School of Public and International Affairs (Princeton University), and the Hills program on Governance of the Centre for Strategic and International Studies (CSIS). We expect to continue developing similar collaborative projects that support our core mandate in the near future.

I look forward to an even more activity filled quarter in 2014 as we roll out our three-year Strategic Plan in support of both levels of government through collaboration and regular consultations.

## MESSAGE FROM THE CEO/SECRETARY



A handwritten signature in black ink, appearing to be 'S. Makori', written over a horizontal line.

**Stephen K. Makori**  
**CHIEF EXECUTIVE OFFICER**

In the closing quarter of 2013 the Authority completed the 2013-16 Strategic Plan intended to provide direction and priorities activities over the next three years. These activities are intended to support and give clear direction in our results-based approach to implementation of the TA mandate. In addition, a one-year Operational Plan together with a Monitoring and Evaluation (M&E) Framework and its implementation matrix were also completed.

As a result, we now have the necessary strategic direction required to achieve the remainder of our mandate to delivering devolution to the people of Kenya during the transition period. The Strategic Plan once approved by the Board will also strengthen our communication strategy as we continue to engage with all the key stakeholders and widen the support basket from development partners. A substantive Communication and Resource Mobilization Strategy for the Authority is also under development in addition to the Procurement Plan which was completed and approved by the Board.

These measures will go a long way in meeting the challenge of resource constraints the Authority has been facing and will also allows us to optimally utilize what we have in the coming quarter. The Transition Authority Recurrent Budget for the 2013-2014 financial year is Kshs.556 million and allocations for three quarters to March 2014, amounting to Ksh 416.7 million have been received against expenditures of Ksh 353 Million.

In the next quarter, the Authority will continue to undertake key activities further related to the unbundling of the devolved functions as well as the monitoring and evaluation of Transition Implementation Plans (TIPs). We shall also continue

liaising with both levels of government on capacity building; audit and transfer of assets and liabilities; staff deployment and rationalization; and the assessment and classification of urban areas and cities. The Authority also intends to carry on with the coordination of civic education on devolution and to provide appropriate advisories on transition issues as part of our key activities.

We are grateful to UNDP and UN-Habitat for their support in ensuring TA achieves its set targets and mandate

In conclusion, the Transition Authority was able to play its role of mid-wifing the transition process even as we faced numerous challenges including threats of a premature disbandment. We intend to continue in the same spirit of remaining clearly focused on performing all the activities required to deliver on our mandate in the coming quarter and beyond.

## **EXECUTIVE SUMMARY**

During the October -December 2013 Quarter, the Authority's finalized its Strategic Plan 2013-16 and the Monitoring and Evaluation Framework. The Strategic Plan and the framework will provide direction and feedback mechanism during the implementation and delivery of TAs mandate.

The primary focus under the transfer of functions mandate was the continuation of unbundling and costing of functions and the provision of guidance on the implementation of Transition Implementation Plans by MDAs.

Advisories were prepared by the Authority including those on Human Resource Management and deployment of staff to the counties at the national and county government levels.

The counties were assisted by enhancing their capacities. For instance, during the quarter, a technical committee was constituted to assess the criteria listed the Urban Areas and Cities Act, 2011 on Classification of Urban Areas and Cities and propose amendments that would make it possible to appropriately implement the categorization.

The Authority also provided technical support and capacity building for the county governments in fiscal decentralization to guide in the implementation of the Public Finance Management Reforms Strategy of 2013 – 17 especially in the areas of budget and audit. The Authority also inducted County Public Service Boards (CPSB). On Assets and Liabilities, the Authority developed mechanisms for the transfer and management of Assets and Liabilities. These mechanisms provide guidelines for handling the transfers taking place in various counties during the transition period. To facilitate and ensure that civic education is coordinated, the Authority held several meetings with various stakeholders undertaking civic education initiatives. As a result, the TA was able to establish a database of civic education providers, curriculum materials to be developed and appropriate messages on devolution targeting various stakeholders.

Consultations with key players such as the National Assembly, the Senate, the independent commissions and the Executive took centre-stage as the Authority was faced with a lot of challenges during the quarter including threats of disbandment.

## **1 INTRODUCTION**

The Transition Authority (TA) is a statutory body whose mandate is to facilitate and coordinate the transition to devolved system of government in Kenya as per the Transition to Devolved Government Act 2012 and the provisions under section 15 of the sixth schedule to the constitution. The Authority is in phase 2 of the transition period which commenced on 5<sup>th</sup> March 2013 and is expected to end in March 2016. Section 25 of the Transition to Devolved Government Act (TDGA) mandates the Transition Authority to prepare Quarterly progress reports to provide regular update on the implementation of transition to devolved government.

This report covers the progress status of activities implemented during the October – December, 2013 Quarter. In this Quarter, the Authority focused on the unbundling of functions, preparation of advisories to guide the transition process, monitoring and provision of guidance on the implementation of Transition Implementation Plans (TIPS) by MDAs and facilitation and coordination of capacity building programmes and Civic Education. As a result, the following milestones were achieved:

1. The TA Strategic Plan 2013-16 was finalized
2. Established and operationalized county structures and systems.
3. Developed guidelines for rationalization, deployment and secondment of staff to the counties.
4. Developed Model County Structure.
5. Finalized Transition Implementation Plans by MDAs.
6. Inducted and operationalized County Public Service Boards
7. Unbundled and costed national and County functions
8. Developed criteria and draft guidelines on classification of urban areas and cities
9. Issued Advisories on emerging transition issues including human resource management in the counties during the transition period.
10. Developed Mechanisms for the transfer and management of Assets and Liabilities.

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

## **2 PROGRESS ON IMPLEMENTATION OF TA MANDATE**

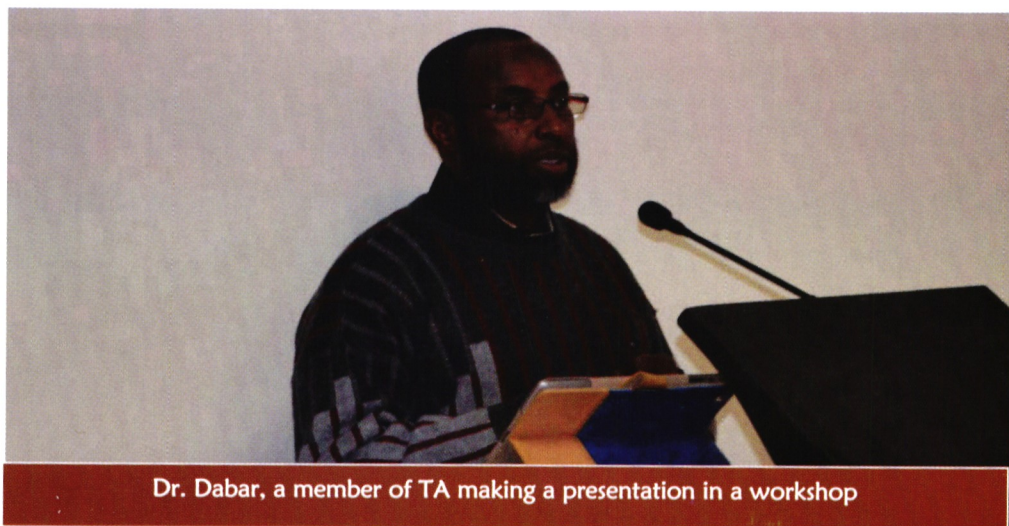
The Authority discharges its mandate through six operational committees chaired by board members namely:

- Functional Analysis and Competency Assignment
- Legal and Intergovernmental Relations
- Planning, Budgeting and Finance.
- Capacity and Capability Development.
- Assets and liabilities management
- Civic Education

These committees are supported by oversight Committees on Human Resource, Finance and Administration and Audit. To implement the decisions of the committees, the Authority has a secretariat composed of three technical directorates and one Corporate Support Services. In the implementation of these functions the TA engaged various stakeholders through consultative processes.

### **2.1 Functional Analysis and Competency Assignment**

The Authority endeavored to deliver on its key mandate in pursuant to section 7 (a) and (b) of the TDGA 2012. The Authority also engaged and provided guidance on various issues emanating from the functions transferred to counties in relation to the Authority's core mandate of facilitating the analysis and phased transfer of functions to the National and County governments as provided for in the Fourth Schedule to the Constitution.



Dr. Dabar, a member of TA making a presentation in a workshop

The following were the key deliverables:

### **2.1.1 Preparation of Transition Implementation Plans and Unbundling of Functions**

The Authority has engaged with sectors by holding technical working sessions at the Kenya School of Government in Embu between the 25<sup>th</sup> –29<sup>th</sup> November 2013 and at Mombasa Beach Hotel between the 16<sup>th</sup>-20<sup>th</sup> December, 2013 on Transition Implementation Plans and unbundling of functions as listed in the Fourth Schedule to the Constitution of Kenya 2010. The following Ministries were consulted:

- a) Ministry of Health
- b) Ministry of Agriculture, Livestock and Fisheries
- c) Ministry of Transport and Infrastructure
- d) Ministry of Sports, Culture and the Arts
- e) Ministry of Energy
- f) Ministry of Environment, Water and Natural resources
- g) Ministry of Education
- h) Ministry of Lands Housing and Urban Development
- i) Ministry of Interior and Coordination of National Government
- j) Ministry of Commerce, Tourism and East African Affairs
- k) Ministry of Devolution and Planning
- l) Ministry of Industrialization and enterprise Development
- m) Ministry of Labour and Social Services
- n) Ministry of Information Communication and Technology (ICT)
- o) Ministry of Mining

*Ministries of Foreign affairs, Defense and the National Treasury were invited but did not attend*

The Ministries engaged have finalized their transition implementation plans and presented their reports. The Transition Authority reviewed and compiled a report on the transition implementation plans and unbundled functions and intends to harmonize these plans through stakeholder engagement and further validate it by subjecting to scrutiny by the Functional Analysis Steering Team (FAST). The finalized plans will facilitate the sectors that will embrace devolution and also provide a platform for the CIC to be able to monitor its implementation. Copies of the draft TIPs and summary analysis reports are available.

### **2.1.2 Analysis of Agricultural Training Centres (ATCs) Functions for Transfer to the County Governments**

Through its Legal Notice No. 137-183, the Transition Authority retained the functions of the Agricultural Training Centres pending development of the requisite structures and mechanisms for sharing the resources among the counties. In this regard, The Authority engaged the Ministry of Agriculture, Livestock and Fisheries (State Department of Agriculture) on the ATC Function. TA held two (2) consultative meetings with the Ministry of Agriculture, Livestock and Fisheries (State Department of Agriculture) at Kilimo House on 5<sup>th</sup> and 10<sup>th</sup> November, 2013 on devolution of Agricultural Training Centres functions and assets. This was followed by a five (5) day workshop at Waruihu ATC, Kiambu.

A policy guideline on the operations and management of ATCs was developed and the Demonstrations Farms Fund (DFF) manual reviewed. TA also developed a mechanism to transfer the ATC functions and assets. The ATCs functions are therefore ready for transfer.

### **2.1.3 Costing of National and County Governments Functions**

One of the core mandates of the TA as stipulated in section 7(2) (b) of the Transition to the Devolved System of Government Act, 2012 is to determine the resource requirements for each of the functions to both levels of government. In view of this requirement, the TA developed Terms of Reference to undertake the costing of functions and subsequently convened consultative meetings with the Commission on Revenue Allocation (CRA) and the National Treasury.

### **2.1.4 Consultative Meeting with the Commission on Revenue Allocation (CRA) on Costing of Functions**

A meeting was held on 9<sup>th</sup> December, 2013 at Extelecom House, TA Board room 8<sup>th</sup> Floor. The objective was to have an overview of the CRAs' model of revenue share raised nationally between the National and the County Governments for the financial year 2014/2015

The CRA presented to the TA recommendations on sharing of Revenue raised nationally between the National and County Governments for the Financial Year 2014/2015 in line with Article 216 (1) of the CoK 2010, which mandates it to make recommendations for the equitable sharing of revenue raised by the National government between the two levels of government. This informed the basis for the Transition Authority to undertake realistic costing of functions jointly with CRA.

### **2.1.5 Consultative meeting with the Commission on Revenue Allocation (CRA) and the National Treasury**

The meeting was held on 23<sup>rd</sup> December, 2013 at Extelecom House, TA Board room 8<sup>th</sup> Floor. The objective was to deliberate on the cost implications of functions in relation to the Authority's pending decisions to transfer delayed functions for the financial year 2014/2015.

The county governments appealed to the Senate for the delayed functions; therefore the transfer of the functions would be based on the decision of the Senate on the appeals. It was noted that if the Senate rules in favor of the counties, there would be a significant effect on the recommendations of the sharable revenue. The meeting also agreed in principle that TA would gazette any changes by January 30<sup>th</sup> 2014

### **2.1.6 Consultative Meeting with Various Entities on Emerging Issues Related to the Devolved Functions**

#### **a) Export Processing Zones Authority (EPZA)**

The purpose of the meeting was to guide the organization on issues related to its operations and conflict with counties that are hampering its operations. EPZA raised a concern that the Mavoko Water and Sewerage Company has been using EPZA sewerage infrastructure without paying the due charges. It did not also pay the Authority for water consumed but was instead making partial payments to Nairobi Water at a tariff that has not been mutually agreed. The outcome of these meeting was that TA would facilitate dialogue between the county and EPZA in order to resolve these issues and this process has been initiated.

#### **b) Ministry of Sports, Culture and the Arts**

This meeting was held at the Ministry's HQ, Kencom on 22<sup>nd</sup> Oct, 2013. The Ministry had raised concerns on funds for three ongoing projects; rehabilitation of Mombasa, Eldoret and Kisumu Municipal Stadiums. These funds were sent to the counties and the projects stalled. The ministry also noted that sports officers devolved with the sports function to the counties are having challenges.

The outcome of these meeting was that TA will arrange for an inter-governmental meeting between the National Ministry and the County Executive Officers in charge of these dockets to have a mutual understanding. The processes and modalities of these engagements have been initiated.

### **c) Betting Control and Licensing Board (BCLB)**

The BCLB is faced with challenges in relation to transfer of functions and budgetary allocation to the counties. These include:

- Inadequate funding of the Regional offices e.g. Malindi office (Kilifi County) where new offices were under construction. Similarly lack of funds to pay rent had left the staff at risk of eviction from the rented premises. BCLB has in the past been operating under regional offices covering several counties. It is however facing operational challenges in funding where each county is only willing to fund activities within its boundaries.
- The current VAT Act, 2013 has exempted betting, lotteries and gaming activities from VAT. This has left a vacuum in the taxation of the industry with effect from 1<sup>st</sup> September, 2013. This raises a new challenge since the 20% withholding tax will take effect as from January, 2014.
- Counties are currently coming up with their own legal framework that is not in line with national policies with a view to initiating licensing of gaming activities e.g. Mombasa and Nairobi.

The outcome of these meeting was that TA arranges an inter-agency meeting between KRA, the Treasury and the **BCLB** board was the meeting held to explore solutions to the BCLB challenges. TA will also publish an advisory on the harmonization of the laws being enacted by the counties.

### **d) County Government of Mombasa on Kenya Ferry Services**

The County government of Mombasa raised a number of concerns with the Authority regarding the function of ferries and harbors. These included;

- The residents of the County approach the Mombasa County administration and not the National Government whenever there are problems with the Ferry.
- The County holds the view that the Likoni harbor and ferry is not within the international waterway but a local creek, and this is hence a county function.

The outcome of this meeting was a decision for TA to facilitate and coordinate a consultative meeting to provide guidance on the matter within November, 2013 with the following stakeholders:

- County Government of Mombasa
- Kenya Ferry Services

- Ministry Of Transport And Infrastructure
- Kenya Maritime Authority

TA has initiated the process of the consultation with all stakeholders.

**e) Intergovernmental Consultative Forum for the Transport and Infrastructure Sector at KICC on 21<sup>st</sup> November, 2013**

This was a follow up meeting to the first sectoral meeting held at KSG on 2<sup>nd</sup> -3<sup>rd</sup>, Sept. 2013 to address the classification of roads, roads inventory per county, sharing of mechanical equipment, Technical capacity issues at the counties, reporting mechanisms at the counties and the status of the Roads bill.

A presentation on devolution of the sector was done. The outcome of the forum was that the roads bill be expedited and moved to parliament within the next three months. Both levels of government agreed to ensure that they deliver the roads earmarked for this financial year. All the players in the sector also agreed to raise the bar in terms of quality service delivery.

**f) Engagement with the Veterinary Officers**

The Authority engaged veterinary officers during a meeting held on 19<sup>th</sup> November, 2013 at KARI headquarters, Nairobi. The key objective was to outline a functional relationship between the national and county governments with regard to delivery of veterinary services. Veterinary service is a largely devolved function, and the National Government would continue providing the requisite technical assistance to the counties. Both the National and County Governments were requested to work in a collaborative manner. In particular, the County veterinary Officers to work closely with the CECs and report to the respective head at the County Government level.

**g) Participation of the Annual Medical Engineers' Conference**

The Authority was represented in the Annual Medical Engineer's Conference held on the 13<sup>th</sup> -16<sup>th</sup> Nov, 2013 in Nakuru, at the Hotel Water Buck. A presentation touching on devolution and health services delivery was done. The forum discussed issues relating to devolution and in particular the manner in which the transfer of functions and staff has been effected to date. The pending court case presented by the various professional associations was also identified as one of the challenges facing the sector.

**h) Report on the Realization of National Values**

The Authority compiled a report on measures taken and progress achieved in the realization of national values as espoused by article 10 of the constitution. This

report was submitted to the Secretary, Directorate of National Cohesion and National Values on 20<sup>th</sup> November, 2013.

### **2.1.7 Status of Governance and Performance of Devolved functions by the County governments**

Further to the Transfer of functions to the County governments via the Kenya Gazette Supplement No. 116: Legal Notice No. 137 - 183 of 9<sup>th</sup> of August 2013, the Transition Authority through its field officers (County Transition Coordinators - CTC) conducted a review on the uptake of devolved functions by the Counties during the 1<sup>st</sup> quarter i.e from 9<sup>th</sup> August, 2013 - 8<sup>th</sup> November, 2013. The transfer of functions is one of the most significant steps towards bringing services closer to the people.

The reports captured the progress in the performance of the transferred functions, notable positive developments that have emerged during the period under review including but not limited to the development of new pieces of legislation by the County Assembly, new investments or projects commissioned during the period, peaceful resolution of conflicts, peace building efforts, actions in support of our national values especially national unity, cohesion and good governance in general, the key challenges and the suggested solutions. A compiled draft report is in place.

## **2.2 Legal and Intergovernmental Relations**

The Legal and Intergovernmental function in the TA is charged with advising, overseeing and coordinating the Legal and Intergovernmental aspects of the organizations mandate.

### **2.2.1 Public Participation Bill**

The Authority was involved in the discussions of the Public Participation bill for all the 47 Counties, which was organized by the Kenya Law Reforms Commission. The bill sought to give effect to paragraph 14 of part 2 of the Fourth Schedule of the Constitution and to establish modalities and platform for public participation in the governance of the counties.

### **2.2.2 Gender Responsive Budgeting Meeting**

The Transition Authority participated in a gender responsive budgeting meeting that was held in Nyeri and organized by the National Gender and Equality Commission. The main purpose of the meeting was for TA to offer support during the transition phase of devolution in order to ensure that Gender Responsive

Budgeting (GRB) is properly integrated in the devolution processes. TA made a presentation entitled '*a better understanding of the basic concepts and approaches to GRB*' and provided the guidelines that have been developed for the national government and Parliament, to be shared with county governments through a comprehensive framework of engagement and the development of sustainable linkages.

### **2.2.3 Provision of Guidance for Public Officers Serving In the Counties**

The Transition Authority received complaints relating to some counties which were evicting or threatening to evict public officers occupying government houses. As the body mandated to facilitate a smooth transition to the devolved system of government, the Transition Authority advised the counties on the legal provisions relating to the manner of dealing with public assets during the transition period. The importance of complying with the provisions of the Transition to Devolved Government Act in relation to public assets was underscored.

It was further highlighted that as counties create room for their newly appointed officers, consultations between the two levels of government would be important, so as to ensure that officers from either level of government are not disadvantaged.

### **2.2.4 Management of Water Services**

A number of counties have faced challenges in relation to the management of water services at the county level. The Transition Authority has ensured that guidance is provided to the counties that are facing challenges in this sector. Further, the TA has been in consultation with both the Water Services Regulatory Board as well as the Water Resources Management Authority in a bid to ensure a smooth transfer of the function of delivery of water services at the county level. The TA continues to advise, offer guidance and consult with the various players in the water sector.

### **2.2.5 Collaboration with the Senate on County Matters**

In accordance with Article 96 of the Constitution, the Senate represents the counties and exists to serve the counties and their governments. In this regard, TA works in close collaboration with the Senate. In the quarter under review, TA worked closely with the Senate in relation to the appeals by the county governments against the transfer of functions as gazette by the TA. Section 24 (7) of the Transition to Devolved Government Act provides that a county government may appeal to the Senate against a decision made by the TA in relation to the transfer of devolved functions. Twenty nine (29) counties appealed to the Senate requesting for the immediate transfer of functions which are yet to be transferred.

The TA collaborated fully with the Senate in relation to the appeals which were heard in the month of November 2013.

### **2.2.6 Transfer of the Function of Health Services**

Following the gazettelement of the transfer of the Health Services function to the counties in August 2013 by the TA, the health practitioners objected to this transfer. Consequently, they filed a case in court (Judicial Review no 17 of 2013) against the TA and others challenging the transfer of health services to the counties. The TA was adequately represented in the matter, with the hearing having been held in November 2013.

Further, the TA together with other stakeholders participated in a consultative meeting called by His Excellency the President, to iron out the issues revolving around the stalemate in the health sector. The TA welcomes this consultative approach of dealing with issues touching on devolution as it is in line with Article 6 (2) of the Constitution which provides that the governments at the national and county levels shall conduct their mutual relations on the basis of consultation and cooperation.

### **2.2.7 Development of Legislation on Joint Loans Boards**

Joint loans boards were formerly administered under the Local Governments Act. That Act has since been repealed and matters arising from such appeal vested in the TA. In order to aid counties in the management of Joint Loans Boards, it was observed that a legal framework was required. The Authority, together with other stakeholders held the first technical working forum to develop this law.

### **2.2.8 Support to Lamu County Following the Nullification of the Gubernatorial Election**

The TA facilitated a smooth transition following the nullification of the gubernatorial election in Lamu County. In collaboration with the Judiciary and the Independent Electoral and Boundaries Commission, the TA facilitated the assumption of office of the County Assembly Speaker as Acting Governor pending the gubernatorial by-election. This was in line with Article 182 (4) of the Constitution which provides that *if a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy governor is unable to act, the speaker of the county assembly shall act as county governor.*

The Speaker of the County Assembly of Lamu was sworn in as acting governor on October 7<sup>th</sup> 2013. In order to ensure that there was no disruption in service delivery during the period leading to the gubernatorial by-election scheduled for December 2<sup>nd</sup> 2013, the Transition Authority has continued to provide constant

support to Lamu County by giving advice on various matters on which the county has sought assistance.

### **2.2.9 Collaboration with Women Senators on County Matters**

The TA strengthened its collaboration with the Senate in order to support the ability of the counties to raise revenue as well as to deliver services. Consultative meetings were held with the women senators with a view of charting the way forward in relation to gender mainstreaming in the counties.

Further consultative meetings were held with the Senate as a whole to discuss modalities of cooperating so as to ensure that the capacity of counties to deliver services is strengthened.

TA organized a consultative forum with women leaders on governance and another forum with Senators. The Women leadership forum targeted women Deputy Governors, women Senators and Women County Assembly Speakers.

The objective of the two forums was to;

- Enhance the capacity and competence of Women Leaders to follow through on obligations for County Governments, to promote good governance, gender mainstreaming and servant leadership.
- To provide a forum for exchange of ideas as well as sharing of experiences and best practices with the Senators.
- Showcase TA work with the Senators and Women Leaders and Share a Common Understanding of Devolution with the leaders.
- Develop and disseminate materials for reference and for decision-making. This is an ongoing process that allows for the exchange of information and pooling of knowledge between TA and the Leaders.
- The above forums enabled TA to not only tap into and share specific expertise and experiences but to also further ensure that there is a coordinated approach to various devolution matters.

### **2.2.10 Dialogue between the Salaries and Remuneration Commission and the County Assemblies**

Following a go-slow by Members of the County Assemblies (MCAs) across the country as they agitated for an upward review of their remuneration, progress at the county level came to a near halt. This is due to the fact that a number of counties that had been requested by the Controller of Budget to review their budgets were unable to get their budgets approved by the county assembly due to

the go-slow. Further, the development planning process was also interfered with by the go-slow, as a number of county assemblies did not meet to approve the plans as is required by law.

The Transition Authority therefore met the Salaries and Remuneration Commission as well as the County Assembly Speaker's Forum and encouraged dialogue between the two, so as to ensure that the devolution process did not fall under threat.

### **2.2.11 Protecting of TA's Integrity and Image**

TA was competently represented in a number of court cases where it had been sued on matters relating to devolution. As a result, clarity emerged on devolution matters and at the same time the integrity of the devolution process remained protected.



TA working group in session

## **2.3 Planning Budgeting and Finance**

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

### **2.3.1 County Integrated Development Plans (CIDP)/Spatial Plans and Sector Plans**

County governments were required to submit their finalized Integrated Plans by 1st of September. By the end of the quarter under review, some county assemblies were yet to approve their CIDPs. The counties were issued with guidelines for the preparation of county spatial plans but reports from counties indicate that no county has started preparing them. A few counties have started the process of procuring consultants to assist them in developing the plans. In regard to the sector plans, preparation of integrated plans was informed by the sector plans which some counties had fully developed.

### **2.3.2 Classification of Urban Areas and Cities**

Concerning the classification of urban areas and cities, the report on the findings and recommendations of the team constituted to assess the criteria listed in Sections 5, 9 and 10 of the Urban Areas and Cities Act 2011 after incorporating comments from the stakeholders forum was further improved and shared with the county executive committee members in charge of urban development and other stakeholders.

In line with the constitutional provisions on governance and decision making process, all stakeholders are expected to participate actively in the debate over the classification of urban areas and cities. In order to reach a wider stakeholder engagement, TA placed an advisory in the local dailies on the findings of the technical committee and asked for comments on the same from the public.

During the quarter, a stakeholder's consultative forum was held and a report containing consolidated comments and feedback from the stakeholders prepared. Among the resolutions in one of the meetings is that the consolidated amendments will be subjected to a team of urban experts prior to presentation to the legal team for drafting into a Miscellaneous Amendment Bill. The experts were identified and will be having a forum in mid-January 2014.

## **Challenges**

If urban areas and cities are assessed on the basis of the criteria set out in the Act, none of the urban areas in Kenya would be classified as a city, municipality and town because most of the urban areas only meet the population criteria but fail on the rest.

## **Way forward**

Most counties did not meet the deadlines of submitting plans by September 1st 2013 and hence submitted drafts in order to comply with the legal requirement. The plans will inform the next budgeting cycle which is in progress.

In the view of the assessment and classification of urban areas and cities, the consolidated amendments will be subjected to a team of urban experts in prior to presentation to the legal team for drafting into a miscellaneous amendment bill.

### **2.3.3 Technical Support and Capacity Building for Fiscal Decentralization**

To guide in the implementation of the Public Finance Management Reforms strategy of 2013 17, the financial reform programme has drawn a work plan to support the County governments in terms of capacity building in the areas of budget and audit.

The fiduciary mock review was conducted in the selected counties of Mandera, Makeni, UasinGishu, Bungoma, Kwale, Isiolo, Kiambu, Siaya, Garissa and West Pokot.

The areas identified for audit include:

- Audit of the first financial allocations to the county governments for the financial year 2012/2013;
- The existing governance structure/administrative units (CPSB) in the counties and existence of a service delivery framework;
- The status of budgeting process and preparation of County Integrated Development Plans, Sectoral Plans and Spatial Plans by the county governments;
- Financial management systems (IFMIS/GPAY/IPPD) operations and human resource management in the county governments;
- Existence of legislation, policies and a regulatory framework to guide operations of the county governments;

- Existence of County Treasury units, well-functioning business units such as economic policy and budget execution unit, accounting, procurement, and internal audits;
- Infrastructure and systems (Offices equipment, Performance Management, and reporting systems) in the counties;
- Capacity and capability gaps to necessitate the county governments assume the assigned functions;
- Existence of needs assessment reports to inform planning and budgeting prioritization;
- Status of employment in the counties, how county governments have carried out employment and the cadre of human resource in the counties, i.e. Staff Audit and Human Resource Management

Committee Executive members of finance from six out of the ten counties were selected to participate in the benchmarking tours. Three counties namely West Pokot, Garissa and Bungoma went to Namibia for benchmarking. The other two counties (Isiolo, and Kwale) are yet to secure acceptance from the countries to be visited.

The mock reviews started on 28th of October and were completed on 13th of November. A draft report has been prepared. The draft report has been prepared.

Generally, the mock review shows that;

- (a) The process of initiating, processing and executing payment in the LAIFOMs is inconsistent.
- (b) Poor Administration and management of imprest contrary to section 71 of the PFM Act 2012.
- (c) Monthly imprest reports to the management not prepared.
- (d) Review of the Local Authority Integrated Financial Operations Management system (LAIFOMS) revealed that the system was incapable of producing summary financial reports e.g. quarterly reports, imprest status report.
- (e) The counties had not conducted a risk survey due to lack of structures and appropriate training.
- (f) There was a disconnect between the two levels of governments on posting of officers without conclusive consultations resulting in a bloated county public service.

- (g) The county public service establishment and scheme of service is yet to be fully developed.
- (h) The master asset register that would capture and control the movement of assets had not been put in place.
- (i) Citizen Service Centres for effective dissemination of information to the public as well as medium of engaging the public in decision making are yet to be established as provided for in the County Governments Act, 2012.
- (j) Regulatory and Policy issues are still being developed in on-going process.

#### **2.3.4 Mission on Public Finance Management Challenges in Selected Counties**

In February this year, the Kenya Government launched a new Strategy for Public Finance Management (PFM) Reforms in Kenya to further the gains made under the 2006/11 Strategy. The new strategy addresses gaps that were identified after the implementation of the 2006-2011 strategy and the realities of the new Constitutional order, especially in regard to the devolved system of government.

The Strategy, through its technical organ - the Sector Working Group - recently resolved to conduct a joint fact finding mission to selected counties involving Development Partners and relevant Government officials to assess the PFM situation on ground. The tours were expected to inform both the Government and the Development Partners on PFM interventions that required urgent attention.

For a start, three Counties in Nyanza and Western Provinces were selected for the mission. These included Busia, Homabay and Nyamira. The mission took place between the 25<sup>th</sup> and the 30<sup>th</sup> of November, 2013.

The objective of the visits was to meet key stakeholders in the field of Public Finance Management in the Counties and specifically to identify the areas in PFM that required urgent financial and technical support from both the Kenya Government and its Development Partners. The stakeholders whom the mission met included the Governor of Nyamira County; the Deputy Governors of Homabay, Nyamira and Busia Counties; the County Executive Secretaries for the three Counties; and the Heads and Chief Officers of Finance, Treasury, Internal Audit, Planning, Procurement, Accounting, Budget, ICT and Human Resource/Payroll. The findings are contained in the attached report.

#### **Highlights of the Findings**

The Internal Audit Units that have been established are being extended to the sub counties in some counties. Preparations of a Risk-Based Assessment Plans are also in progress. The Unit however faces a number of challenges.

For revenue collection, LAIFOMS (Local Authorities Integrated Financial Operations Management System) is still being used. Revenues have been both declining and increasing in some counties. Counties have developed their County Integrated Development Plans (CIDPs) that are being used to inform the 2014/15 budget was based on the CIDP. The County's Sectoral plans have been developed. The CIDP and the Budget documents were subjected to Public Participation through radio broadcasts in some counties websites. The County Budget and Economic Forum and the Sector Working Groups are yet to be established.

On matters of IFMIS & IT, the Counties have adopted the use of IFMIS, IPPD and G-pay. Work is ongoing to integrate IFMIS with G-pay. Similarly, LAIFOMS is being integrated with IFMIS. Counties have established the County Public Service Boards.

### **Challenges being faced by the counties include**

- Huge wage bill inherited from the bloated former Local Authorities.
- Lack of a national guideline on how to deal with the task of staff rationalization.
- Disparities in salaries and allowances between seconded/recently employed County staff and those inherited from former Local Authorities and low staff morale occasioned by lack of clear terms of service. This, it was noted, adversely affected revenue collection.
- Lack of onsite technical and operational support to the IFMIS and Gpay system and the poor IFMIS connectivity impacting negatively on service delivery.
- Manual collection of revenue and hence need for support to build capacity on revenue collection and administration.
- Full participation by key stakeholders in the budget making process is yet to be fully achieved as the County Budget and Economic Forum are yet to be institutionalized. Capacity building of county staff on budgeting is necessary. Support is also required to generate County specific data to assist in the budgeting process.
- Support is required to train Audit staff on Government Audit procedures.

### **2.3.5 County Government Public Finance Management Transition Act, 2013 implementation Status**

The County Governments Public Finance Management Transition Act, 2013 (CGPFMT Act) was repealed on 30<sup>th</sup> of September and this meant that the terms of the County Transition Teams terms would also expire. In some counties, the teams have ceased to be interim because they have been absorbed by the county public service boards in counties where they are already established while others still need the transition teams where the county public service boards have not been formed.

During the beginning of the quarter, most counties had not drafted county Supplementary Appropriation bills and all the counties were generally still collecting rates using the by-laws pursuant to section 23 of the County Governments Public Finance Management Transition Act, 2013 which had been repealed.

### **Way forward**

It is proposed that the expiry of the CGPFMT Act be extended to allow for enough time to enact the necessary legislation and the same was brought to the attention of the national assembly and the senate to fast track the process.

The county governments are of the view that the interim teams stay a little longer to help in building the capacity of the newly recruited county staff. This is however subject to availability of funds.

Regulations on public finance management have been circulated to the counties for comments.

### **2.3.6 Forum with the National Assembly committees**

The Transition Authority requested and had a session with three committees of the National Assembly namely; The Budget and Appropriation Committee, Finance, Planning and Trade Committee and the Transport, Public Works and Housing Committee. The forum was co-planned and co-hosted by the Office of the Controller of Budget and the Commission on Revenue Allocation who had similarly requested for meetings with two public Finance the Committees. Namely the Budget and Appropriation Committee and the Finance, Planning and Trade Committee.

The idea of meeting the three committees was welcome in the view of these challenges faced by TA which include budgetary constraints among others. It was also an opportunity to try out the concept of financial and human resource pooling by government organs with shared objectives.

## **2.4 Capacity and Capability Development**

The Capacity and Capability Development thematic area implements the Transition Authority's mandate of developing a rationalized and focused National Capacity Building Framework to support realization of effective devolved government. This is derived from Section 7 (j) of the Transition to Devolved Government Act, 2012 that mandates the Authority to assess the capacity needs of national and county governments and in (l) to coordinate and facilitate the provision of support and assistance to national and county government in building capacity to govern and provide services effectively.

The following activities were undertaken in the quarter

### **2.4.1 Preparation for Payroll Management in the Counties**

When the Transition Authority transferred the functions to the counties in July 2013, the management of the payroll was suspended by six months so as to give counties time to enhance their capacity to handle the function. In preparation for the transfer of the function by the counties, the Authority, in conjunction with the Directorate of Public Service Management (DPSM) in the Ministry of Devolution and Planning organized and coordinated a one-week hands-on induction course for five officers from every county involved in payroll management. This was in addition to the payroll managers who had been inducted in June 2013. Larger counties were allowed to nominate more officers to create a bigger pool of the personnel to handle the payroll in the counties. Following this training, the Ministry of Devolution and Planning has now been able to transfer the payroll management to the counties effective January 2014.

### **2.4.2 Induction of County Public Service Boards**

The Authority in conjunction with the Public Service Commission conducted a countrywide training in regional clustered centres covering the CPSBs in all the counties. Other stakeholders who participated in the training included the pensions department of the Treasury. The objective of the training was to sensitize the members on their role, expectations and the modalities of conducting their duties. Outputs of the induction included the following:

- i. Capacity on human resource management for CPSB officials was built
- ii. Skills on matters of handling staff were enhanced
- iii. Modalities of engagement between the Public Service Commission (PSC) and CPSBs and the Transition Authority were developed.

### **2.4.3 Consultative Forum for County Public Service Boards**

During the quarter, the Authority organized a consultative forum for County Public Service Board (CPSB) on 19<sup>th</sup> to 22<sup>nd</sup> November 2013 at the Whitesands Hotel, Mombasa which brought together CPSB Chairs and their members and representatives of relevant government departments, Commissions and other agencies. The purpose of the retreat was to review the Boards' mandate, procedural and policy expectations, examine common issues pertinent to the Boards' operations with a view to developing and sharing, and adopting best practices among the members.

#### **Outcomes of the Retreat**

- i. CPSB members were able to discuss common issues that affect them
- ii. The logistical and administrative challenges being experienced by most CPSBs were discussed and a coordinated approach to leverage synergies in efforts to realize the devolution dream agreed upon.
- iii. Modalities of achieving a close working relationship with key national and county government departments was agreed on and ideas on how to share the richness and depth of the knowledge and experience gained from their respective boards deliberated upon.
- iv. A consultative group to negotiate and engage with partners and national government agencies responsible for facilitating the transition process was formed.

### **2.4.4 Inter-agency Consultative Meetings on Rationalization and Staff deployment**

In the quarter, the Authority participated in consultative meetings on deliberations on modalities of ensuring a smooth transfer of human resource from the national to county governments. The high-level Taskforce has representatives of the following organizations among others: Ministry of Devolution and Planning, the Retirement Benefits Authority, County Public Service Boards, County Assembly Service Boards, Salaries and Remuneration Commission, Commission for the Implementation of the Constitution, the Commission on Revenue Allocation, the Senate, the Controller of Budget, the Council of Governors and the Public Service Commission.

Through this committee, the following has been achieved:

- a. A draft generic grading and staffing structure to facilitate standardization of appointments and common approach to human resource management across the public service has been developed;
- b. Draft guidelines on terms and conditions of transfer, secondment and deployment of staff to the counties have been developed.
- c. Proposal for conducting payroll cleansing in the national and county governments has been developed and is set for implementation in due course.

#### **2.4.5 Establishment of County Pension Scheme**

Following intensive consultations amongst stakeholders involved in management of human resources during the transition period, on 6<sup>th</sup> December 2013, the Labour and Social Welfare Committee of the Council of Governors established an inter-agency Technical Committee with the mandate of preparing the framework for establishment of a county pension scheme. The TA was appointed as the convener of the committee meetings and in this period the committee developed the terms of reference and facilitated the receipt of presentation from two pension schemes serving the staff of the defunct authorities. The Authority also coordinated preparations a retreat for the Committee that was scheduled for January 2014.

#### **2.4.6 Issue of Advisory on Human Resource Management in the Transition Period**

As the counties were embarking on establishment of various structures including filling various positions created by the County Public Service Boards, the attention of the Authority was drawn to incidences of non-adherence to standard and fair procedures for carrying out the functions as per the provisions of the law. This led the Authority to issuing an advisory highlighting the general constitutional and legal provisions so as to streamline the process and ensure fairness.

#### **2.4.7 Issue of Advisory on Staffing in the Counties**

Concerned about the numerous job advertisements in the media for positions currently held by staff performing devolved functions thus causing widespread public concern and apprehension among affected officers the Authority issued an advisory among other things on the need to suspend recruitment of new staff outside the public service pending finalization of the anticipated rationalization process and deployment of the existing officers.



Capacity & Capability retreat at Maanzoni Lodge

## **2.5 Management, Transfer and Audit of Public Assets and Liabilities**

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

- a) Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and defunct local authorities;
- b) Make recommendations for the effective management of assets of the national and county governments;
- c) Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transition period;
- d) Develop the criteria to determine the transfer of previously shared assets and liabilities of the government and defunct local authorities.

The functions as enumerated above have been broken down into activities and are listed in Sections 1 (a), (b), (c), (d), (n), (o) & (p) of the Fourth Schedule to the TDGA, 2012 as shown below:

- a) Audit assets and liabilities of the government, to establish the assets, debts and liabilities of the government;
- b) Audit assets and liabilities of defunct local authorities, to establish the assets, debts and liabilities of each defunct local authority;
- c) Audit defunct local authority infrastructure in the counties, to establish the number and functionality of plant and equipment in defunct local authorities;
- d) Audit the government infrastructure in the counties, to establish the number and functionality of plant and equipment for the purpose of vesting them to either level of government;
- n) Provide for a mechanism for the transfer of government net assets and liabilities to national and county governments;
- o) Provide mechanism for the transfer of assets and liabilities which may include vetting the transfer of assets during the transition period;
- p) Provide a mechanism that will secure assets and liabilities held by the defunct local authorities.

During the Quarter, 2013, TA in relation to management and transfer of public assets and liabilities was able to achieve the following:



Asset & Liabilities Retreat at Sarova Shaba Isiolo2

### 2.5.1 Preparing an Inventory of Public Assets and Liabilities

The Authority through the office of Chief of Staff requested the MDAs who had not submitted their inventories to do so. The response is positive with MDAs availing the required data.

Submission of inventories percentages:

Ministries and Departments – 42.86%

Agencies/State Corporations – 16.42%

Defunct Local Authorities – 89.14%

The following are pie chart illustrations of the MDAs and State Corporation submission of data on public assets and liabilities to TA as up to 31<sup>st</sup> December, 2013.

DEFUNCT LOCAL AUTHORITIES ON DATA SUBMISSION

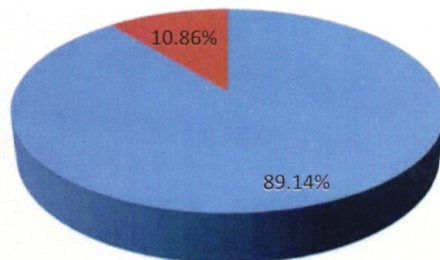
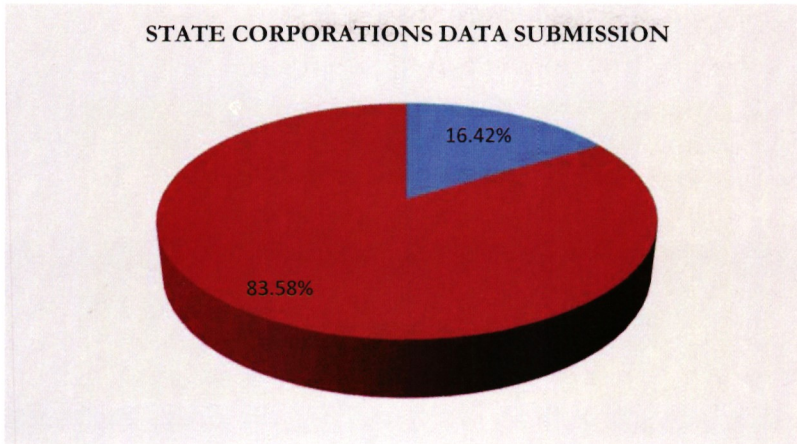
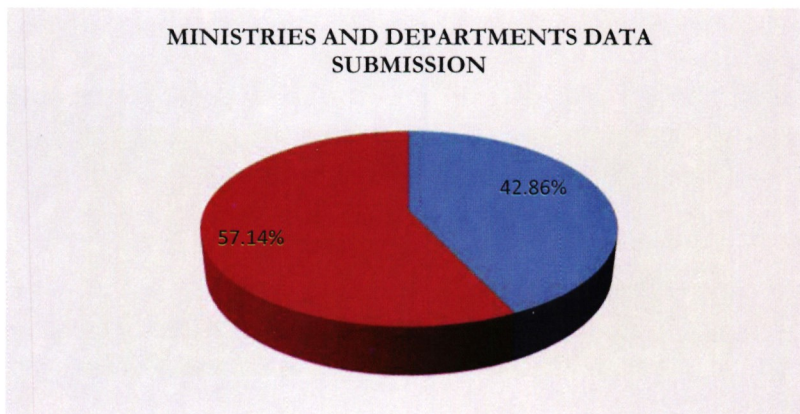


Fig. 1: Defunct Local Authorities - 10.86% have **NOT** submitted & 89.14% **HAVE** submitted.



**Fig. 2:** State Corporations - 83.58% have **NOT** submitted & 16.42% **HAVE** submitted.



**Fig. 3:** Ministries and Departments – 57.14% have **NOT** submitted & 42.86% **HAVE** submitted.

### 2.5.2 Mechanisms for Transfer or Sharing of Public Assets and Liabilities

TA was able to procure a consultant to assist it in developing the mechanisms and criteria for transfer of public assets and liabilities pursuant to Sections 7 (2) (g), (h) ii and 1 (n), (o) & (p) of the Fourth Schedule to the TDGA, 2012. The draft report on mechanisms and criteria for transfer of public assets and liabilities was prepared and presented to TA.

### **2.5.3 Handing Over of Assets and Liabilities by Defunct LAs to Counties**

This exercise is still ongoing while the following twenty counties have already submitted the handing over reports: Nyandarua, Narok, Kajiado, Meru, Kisumu, Tana River, Nyeri, Muranga, Mombasa, UasinGishu, Kilifi, Bomet, Busia, Vihiga, Kisii, Kitui, Nakuru, Trans Nzoia, TharakaNithi and Wajir.

### **2.5.4 Complaints on Transfer of Public Assets and Liabilities**

TA's response to complaints about public assets and liabilities is still ongoing using the address mechanisms for complaints. The complaints registered were on unpaid salaries from the former employees of the defunct local authorities.

### **2.5.5 Approval for Disposal of Public Assets and Liabilities**

The Authority in conformity with the Legal Notice No. 45 of February, 2012 granted approval to the National Treasury for disposal of assorted stores.

### **2.5.6 Handing Over of Agricultural Training Centres and Agricultural Mechanization Stations**

These facilities were handed over to the host counties for custody noting that, the completion of the mechanisms and criteria for transfer of public assets and liabilities will inform the transfer or sharing of these facilities in conformity with the Intergovernmental Relations Act.

### **2.5.7 Employment of Information Communication Officers**

The process for recruiting these crucial staff that would include: System Administrator, Network Administrator, Database Administrator, Data Entry Clerks & Webmasters to help in managing and maintaining of the Asset Management Information System has started.

## **Challenges and Proposed Solutions**

The major challenge is financing of activities of TA that are related to management and transfer of public assets and liabilities during transition period. Some of the activities like validation, valuation, audit, uploading of data onto AMIS need financing to achieve TA's mandate.

The other challenge is that the former town clerks of the defunct local authorities left without handing over the assets and liabilities of their respective county or municipal councils. Consequently, trying to locate them to do the handing over has become a daunting task. Additionally, the Chief Executive Members of Finance are reported to be routinely busy to finalize on this exercise.

Financing of TA's mandate in relation to management and transfer of public assets and liabilities should be increased and there is a concerted effort by TA to collaborate more with its current partners and also seeking additional partner's in order to mobilize additional resources to achieve its mandate.

TA is engaging the Auditor General through a memorandum of understanding in order to carry out TA's mandate of audit of public assets and liabilities pursuant to Sections 1 (a), (b), (c) & (d) of the Fourth Schedule to the TDGA, 2012.

Adequate funding and more collaboration between TA, MDAs, Development partners and organization pursuing the same agenda would enable TA to achieve its mandate in relation to management and transfer of public assets and liabilities within the stipulated time frame.

Concerted effort is needed from the counties that are yet to carry out the handing over of assets and liabilities from the defunct local authorities so that this exercise is expedited to allow for verification, validation, audit and transfer of these assets and liabilities to the respective counties.

## **2.6 Facilitation and Coordination of Civic Education**

One of the functions of the Authority as provided in the Fourth Schedule to the Transition to Devolved Government Act, 2012 (1) (g) is to "**facilitate civic education to ensure civic education on devolution is commenced and coordinated**". Further, the County Government Act (CGA) 2012 Section 98 – 101 provides for the principles, objectives, design, implementation, and institutional framework for Civic Education on devolution. The CGA, 2012 states the purpose of civic education as to "**have an informed citizenry that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding, and ownership of the constitution**".

The Civic Education Activities conducted in the Quarter include the following:

### **2.6.1 Revision, Reprinting and Dissemination of the Frequently Asked Questions Civic Education Handbook**

Early in the year 2013, the Authority had successfully launched and disseminated the original edition of the above-named civic education handbook as a critical reference for understanding devolution in the country. During this quarter, the Authority revised the book to capture contemporary and emerging realities of implementation of devolution and with the assistance of UNDP, a second edition of 10,000 copies was reprinted and dissemination commenced immediately especially through the County Transition Coordinators.

### **2.6.2 Participation in the Review of Model Law on Public Participation**

The Transition Authority participated in the workshop organized by Kenya Law Reform Commission to review model laws on public participation. The model law is among those already shared with the county governments by the Commission. A follow-up workshop will be organized for county officers to provide them with the philosophy and principles behind the model laws for them to effectively adopt and modify as necessary.

### **2.6.3 Delivery of Civic Education**

The Authority comprehensively made use of opportunistic fora to sensitize the public on transition and devolution. The following were some of the events:

#### **a) Kenya@50 Celebrations**

The Authority participated in the celebrations marking 50 years of independence that were held at the Kenyatta International Convention Centre in December 2013 and seized the opportunity to sensitize the public on devolution and transition matters. Information about the Transition Authority was provided and materials on devolution were given out including Frequently Asked Questions developed by the Transition Authority, Citizen Handbook developed by URAIA, Civic Education on Devolution by K-NICE, Journalists Handbook by Kenya Correspondents Association and Curriculum for the KNICE Education Programme.

#### **b) Civic Education in the Counties**

- i. The County Transition Coordinator hosted county visits by Uraia Trust; a Non-Governmental Organization actively involved in civic education activities in the country. Uraia visited the counties with an objective of getting relevant information from the counties to facilitate development of national curricula that would guide civic education in the country. During the visit, the Uraia interacted with the county government officials and distributed the devolution laws that comprised 2300 copies of the Constitution of Kenya 2010, a similar number of Volumes I & II of the Devolution Acts and 1440 copies of Citizen Handbook.
- ii. Further the County Transition Coordinators participated in opportunistic civic education by making presentations on transition and devolution matters in forums organized by other institutions.

## **Challenges**

- a. Minimal resources allocated for civic education activities
- b. Lack of national framework on civic education
- c. There are no structured civic education programmes in the counties
- d. Citizen participation in devolution process is hampered by unsustainable expectations including demand for handouts when they attend county for a hang-ups ostensibly initiated by non-governmental organizations in some regions.
- e. The process of developing a curriculum for civic education on devolution is only underway and without such a framework, the messaging is uncoordinated and in some cases, conflicting and out rightly wrong.
- f. Due to underfunding of the Authority, its officers on the ground, the CTCs are poorly facilitated to engage in aggressive civic education activities.

## **Recommendations**

- a. There is need for the Transition Authority to mobilize adequate funding for civic education activities by the CTCs and other players.
- b. Development of a national framework for civic education need to be fast-tracked.
- c. There is need to encourage partnership with other organizations with similar civic education activities for better coordination.
- d. The process of the development of civic education curriculum on devolution needs to be fast-tracked so as to give a framework for content, methodology and resourcing of civic education.

## **2.7 County Progress Reports**

The Authority has county transition teams in all the 47 counties. These teams are charged with operationalization of the county structures and systems. The capacity Issues related to TA mandate covers the progress status of establishment of administrative units, infrastructure systems, and financial management systems and audit of human resource.

### **2.7.1 Establishment of Administrative Units**

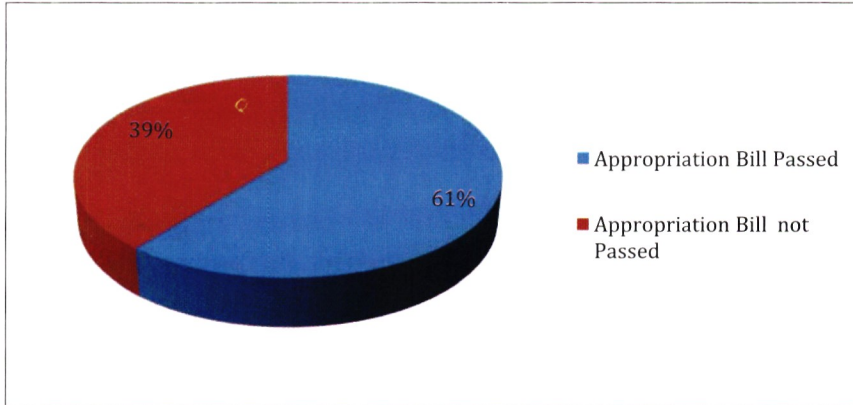
During the period under review, the Transition Authority continued to monitor the preparedness of the counties especially on the establishment of administrative units which are crucial components of the county governments. These units include the County Executive Committees (CEC), County Assembly Service Boards (CASBs), County Public Service Boards (CPSBs), County Chief Officers (CCOs) and ward administrators among others lower units.

By the end of October, only Nakuru, Siaya and Lamu counties had not established their CECs. However by the end of the year, all the counties had their CECs fully established. With regard to CASBs, only Narok and Tana River counties had not fully constituted their boards but the boards have since been fully established in these two counties.

During the last quarter, only Kisumu County had not established their CPSB but it has since been established and thus all the counties have their CPSBs in place. However in as much as these crucial units reported 100% establishment in the counties, the recruitment of County Chief Officers, sub-county administrators, village and ward administrators has been on-going in most of the counties.

### **2.7.2 County Legislation**

Out of 28 counties that had presented the reports, 17 of them had passed the County Appropriation Bill while 11 had not primarily due to recess and the strike that had paralyzed the operations of the county government. The counties that had passed this bill were Garissa, Homa Bay, Isiolo, Kajiado, Kericho, Kilifi, Kirinyaga, Kwale, Machakos, Migori, Makueni, Murang'a, Nyandarua, Samburu, Taveta, Wajir and Turkana. Those that had not passed the bill included Embu, Kisumu, Meru, Mombasa, Nakuru, Nyeri, Siaya, Tana River, TharakaNithi, Trans Nzoia and West Pokot. The counties that had passed the Appropriation Bill were thus 61% of the counties that had submitted their report as shown in diagram next page.



### 2.7.3 Status of Governance in the Counties

Through Gazette Notice number 116 of the 9<sup>th</sup> of August 2013, the Transition Authority approved the transfer of functions to the Counties. This was in response to the applications in which County governments confirmed that they had the requisite capacity for the performance of the functions in question. The transfer of functions is one of the most significant steps towards bringing services closer to the people.

It is instructive that the contemplation of the constitution is that the process should result in enhanced service delivery across the country as all the counties incrementally improve their performance.

The Transition Authority is duty-bound to monitor the governance performance of the counties during the Transition period in order to facilitate and coordinate remedial measures in cases where challenges are being experienced.

As such, data were collected to analyze how the counties were fairing since the transfer of functions. The key findings of these reports indicated the following:

- i. All counties had established the necessary institutions, to ensure a smooth uptake of the devolved functions. The established institutions are as mentioned earlier the CECs, CASBs and CPSBs.
- ii. Apart from finance and appropriations bills, most counties have not enacted other legislations related to other devolved functions to enhance service delivery.
- iii. Most counties were in the process of drafting county health bills.
- iv. Most counties had established their County Integrated Development Plans (CIDPs) and those which have not, the plans are waiting approval by respective County Assemblies.

- v. In most counties, the budget making process was participatory. This trend should be encouraged.

However, despite some progress from the counties, there were emerging issues that the counties should resolve to enhance governance and service delivery to the public. These challenges include and not limited to the following:

- i. Poor working relationship between the county assembly and the executives;
- ii. It is emerging that the issue of marginalization and not including minorities in the recruitment process is a major challenge in the Counties reviewed. A good case is the reports that one of the smaller clans feel that they are not being considered for the jobs by the bigger clan;
- iii. Some of the counties under review have reported minimal activities on some functions albeit them having being already transferred to them;
- iv. The rising number of court cases involving obligations, debts and liabilities entered into by the now defunct local authorities is proving to be a challenge to the Counties;
- v. There exist shortage of skills required to deliver services in key sectors such ICT, treasury and Infrastructure;
- vi. Inadequate civic education on the governance processes;
- vii. The immediate County Council Clerk has been un-cooperative regarding the audit of assets and liabilities and there are no proper records.

#### **2.7.4 Counties HR Audit**

As part of implementation of the constitution, the first general election was held on March 4<sup>th</sup> 2013 which ushered in both national and 47 county governments. These governments are in the process of establishing prerequisite structures, determining their staffing needs and defining roles and responsibilities. Further, it is the responsibility of both governments as a priority goal, to ensure goal, to ensure these governance/operational structures are well staffed with competent staff and with adequate numbers.

The exercise was carried out across all the counties and covered all the staff of the devolved functions and defunct Local Authorities deployed in each county.

#### **Analysis of HR audit findings: Emerging issues**

The following are some of the highlights of the audit exercise.

- a) **Irregular recruitment:** There are emerging issues of irregular recruitment in some counties. For example, in Laikipia County, *it was noted that two Local Authorities (LAs) namely the former Laikipia County Council and the Rumuruti Town Council had engaged members of staff in disregard of the Ministry of Local Governments circular suspending such recruitment.*
- b) **Over-age staff:** In some counties, there were some staff who were over retirement age (60 years) who ought to have retired and they have not as per employment regulations. Further the audit revealed that majority of staff audited lie in the age group of 40-60 years and a smaller proportion below the age of 30 years.
- c) **Uncounted staff:** Some staffs in various counties were not counted either by chance or by design hence not possible to accurately validate the data hence an urgent action is needed to validate their statuses. There is thus need for uncounted staff to present themselves for headcount before action is taken.
- d) **Unassigned staff:** Some counties were reporting that there are some staffs that are unassigned as per the Public Service Commission (PSC) List. However further analysis revealed that these unassigned staff were employed under Special Programs especially the former Ministry of Health. A case in point is Elgeyo/Marakwet County which had 276 unassigned staff.
- e) **Shortages of professionals:** In all counties that have been analyzed, there are some serious shortages of key professionals in the counties. These professionals include engineers, physical planners, architectures and land economists; however agricultural officers and clerical officers are in surplus in most counties.
- f) **Job group distribution:** The audit revealed that the distribution of job groups of most employees in the counties tends to be normal with majority found in the middle job groups 'G' to 'L', with the modal job group being 'K'. Very few employees are found in the highest job groups such as M, N, P, Q, R, and S.
- g) **Obsolete payroll:** During the exercise, it was observed that the earlier Civil Service payroll staff lists sent to counties was obsolete and not up-to-date. Also many officers had their promotions and designations shown on their pay slips but could not produce supportive relevant letters of the same. Others had never changed their pay point despite having been transferred from one station to another.
- h) **Academic qualifications:** Some staff in most counties did not produce academic certificates to validate their highest level of education. From those who did, the

audit revealed that very few staff have attained Masters levels while majority have O' Levels.

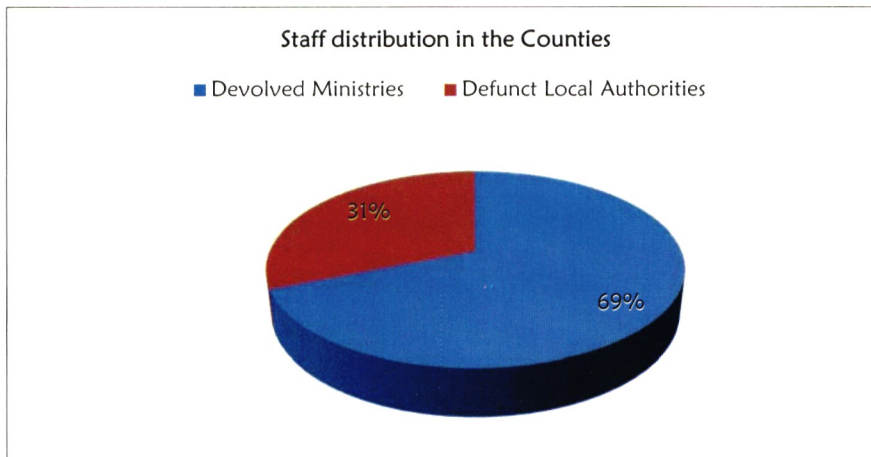
- i) **Letters of 1<sup>st</sup> appointment.** In many counties, some officers did not produce their letters of first appointment to prove they were appointed in their line Ministries. For Example in Uasin Gishu county one hundred and seven (107) officers did not have those letters.
- j) **Latest Pay Slips:** The report indicated that in some counties, some officers failed to produce latest pay slips as required. It was noted that the reasons given for not having the pay slips were unique and varied.

### Overall HR Audit result

#### No of staff

The total Number of staff in all counties is **103,468**. Out of these, **71,260** officers are from the devolved ministries accounting for 70% of the counties work force while the defunct Local authorities contribute 30% (**32,208**). By counties Nairobi County has majority of the worker from defunct local authorities at 10,915, which is just above a third of all the staff from the defunct local authorities. In terms of the devolved function Nakuru have most staff (3349).

The audit revealed that 69% of the county staff are from the devolved ministries while 31% are from the defunct local authorities as shown in the diagram below.



The **Table 1** summarizes the staff audit results from all the 47 counties.

Table 1: Total Number of staff

No.	County	Devolved Ministries	Defunct Local Authorities	Total Staff
1	Mombasa	2274	2549	4823
2	Kwale	957	209	1166
3	Kilifi	628	371	999
4	Tana River	390	114	114
5	Lamu	493	44	537
6	Taita/Taveta	1075	190	1265
7	Garissa	1401	84	1485
8	Wajir	510	108	618
9	Mandera	339	69	408
10	Marsabit	748	66	814
11	Isiolo	701	226	927
12	Meru	3047	537	3584
13	Tharaka-Nithi	987	146	1133
14	Embu	1861	312	2173
15	Kitui	1829	264	2093
16	Machakos	2199	753	2952
17	Makueni	1,286	271	1,557
18	Nyandarua	1865	368	2233
19	Nyeri	3017	368	3385
20	Kirinyaga	1330	357	1687
21	Murang'a	2168	548	2716
22	Kiambu	1036	1219	2255
23	Turkana	542	51	593
24	West Pokot	711	83	794
25	Samburu	410	383	793
26	Trans Nzoia	1355	286	1641
27	UasinGishu	2318	229	2547
28	Elgeyo/Marakwet	1175	183	1358
29	Nandi	1546	165	1711
30	Baringo	2144	242	2386
31	Laikipia	1367	502	1869
32	Nakuru	3349	1659	5008
33	Narok	1525	1452	2977
34	Kajiado	1086	336	1422
35	Kericho	1394	402	1796
36	Bomet	962	213	1175
37	Kakamega	2,431	776	3,207
38	Vihiga	1517	274	1791
39	Bungoma	2251	697	2948
40	Busia	1659	486	2145
41	Siaya	1552	370	1922
42	Kisumu	2484	1237	3721
43	Homa Bay	1785	592	2377
44	Migori	1246	597	1843
45	Kisii	2215	654	2869
46	Nyamira	1430	251	1681
47	Nairobi	2665	10915	13580
	<b>Total</b>	<b>71,260</b>	<b>32,208</b>	<b>103,468</b>

### **3 OPERATIONAL ACTIVITIES**

These activities provide oversight support and guidance to the implementation of TA mandate. Finance and Administration committee is one of the oversight committees of the Transition Authority. The committee ensures that day to day operations of the Authority are facilitated. The key objective of the committee is to provide timely financial support to enable TA achieve its mandate in an efficient and effective manner.

In this quarter, the Authority undertook the following activities under the day to day operations of the Authority.

- i. Preparation of the Authority's Operational Plan, Procurement Plan and the Strategic Plan;
- ii. Preparation of the Monitoring and Evaluation (M&E) Framework and its implementation matrix and realigning the M&E framework to the Strategic Plan;
- iii. Preparation of the communication and resource mobilization strategy;
- iv. Analyze the Expenditure trends for the Quarter; and ensure preparation of the expenditure report for the Quarter and advise management;
- v. Purchase of ICT equipment and provision of Internet connection and telephone devices to the offices

#### **3.1 Preparation of the Authority's Operational Plans**

One of the key objectives of the Finance and Administration committee is to ensure that the Authority is fully operational and this can only be achieved through the preparation of the Master Work Plan, Procurement Plan, the Strategic Plan and the Operational plan.

The Strategic plan preparation process has been finalized. It will give TA the strategic direction needed to achieve its mandate and also to deliver devolution to the people of Kenya. The strategic plan covers several key areas around the mandate of the Authority pursuant to the Transition to Devolved Governments Act, 2012. The strategic plan will also strengthen the communication strategy of the Authority and widen the support basket from development partners. The final version of the Strategic Plan is ready for approval by the Board and subsequent printing and launching. The support from UNDP has been immense in coming up with the Strategic Plan.

The Authority's Master Work Plan had been prepared together with the Procurement plan. The Procurement Plan had been approved by the Board and is operational while the Work Plan and Operational Plan are under review for approval.

### **3.2 Preparation of the Authority's Monitoring and Evaluation Framework**

The Monitoring and Evaluation framework aims at strengthening performance management of key tasks and deliverables for the Authority. The monitoring and evaluation framework has been finalized. The M&E framework is currently being aligned to the Strategic Plan and the Operational Plan for smooth operation and implementation of the Authority's programmes.

### **3.3 Preparation of the Communication and Resource mobilization strategy**

The committee has been in the process of preparing the Communication and Resource mobilization strategies for the Authority. These Communication strategy document is important for day to day efficient operations of the Authority and also in communication with the general public.

Given the resource constraints the Authority is facing, it is a challenge to the implementation of most of the drawn out programmes and plans. To this end, the Authority is in the process of finalizing the resource mobilization strategy to help bridge the resource gap. The two strategy documents are to be finalized and forwarded to the Board for approval.

### **3.4 Transition Authority Half Year Financial Report 2013-2014**

Transition Authority Recurrent budget for the 2013-2014 financial year is Kshs.556 million. The office has received three quarterly allocations up to March 2014 totaling to Ksh 416.7 million. At the same period, expenditure amounted to Ksh 353 Million. The funds were utilized as follows

- 1) Compensation to employees Kshs 226 million.
- 2) Operational expenses Kshs 127 million

Analysis of the vote book revealed that funds on some critical expenditure items had been exhausted. This has made it necessary to continuously review the funds and reallocations where necessary to enable continued operations of the office operations. However the final reallocations will be presented to the Board for approval once supplementary estimates are released by the National Treasury.

Below is a summary of the half year cash flow for the six months up to 31st December 2014:

**Table 2: CASH FLOW PROJECTION 2013-2014**

Title	PROJECTED 2013						PROJECTED 2014						Total
	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	
Headquarters	KSH	MILLION											
<b>1.0 TOTAL INFLOW</b>	<b>46.3</b>	<b>46.3</b>	<b>46.3</b>	<b>46</b>	<b>46</b>	<b>46.3</b>	<b>46.3</b>	<b>46.3</b>	<b>46.3</b>				<b>417</b>
<i>Government Grants</i>	46.3	46.3	46.3	46	46	46.3	46.3	46.3	46.3				417
<i>Other Revenue</i>													
<i>Appropriation in Aid</i>													
<b>2.0 TOTAL CASH OUTFLOW</b>	<b>49.7</b>	<b>74.1</b>	<b>74.4</b>	<b>55</b>	<b>47</b>	<b>53.1</b>							<b>353</b>
<b>2.1 CURRENT EXPENDITURE</b>													
Compensation to Employees	49.7	48	46.7	27	27	27							225.4
Use of Goods & Services		26.1	27.7	28	19.7	26.1							127.6
Current transfers to Govt Agencies													
Other Recurrent													
<b>2.2 CAPITAL EXPENDITURE</b>													
Acquisition of Non-Financial Assets													
Capital Grants to Govt Agencies													
Other Development													
<b>Net cash Flow</b>	<b>-3.4</b>	<b>-28</b>	<b>-28</b>	<b>-9</b>	<b>-0.4</b>	<b>-6.8</b>							<b>63.7</b>

### **3.5 Expenditure Report for the Financial Year 2012/2013**

The Expenditure report and the financial statements for the FY 2012/2013 had been prepared, finalized and submitted to the Auditor General as required by law. The Auditor General later sent external auditors to the Authority to audit the documents. The audit process was undertaken successfully and the preliminary report submitted for action.

### **3.6 Provision of Internet and other ICT equipment**

The committee through the procurement and ICT departments has ensured the Authority has requisite ICT equipment and internet to ensure smooth operation of the Authority's programmes and activities. This has ensured that communications within and outside the Authority are done effectively and efficiently.

The committee has also ensured that IFMIS operationalization in the Authority is fast-tracked and is now near completion as the survey had been done and the location for set up identified. The committee has also facilitated the development of the Asset Management Information System (AMIS). The purchased ICT equipment for the County Transition Coordinators (CTCs) has also been branded and distribution finalized to the officers in the counties.

The committee is fast-tracking the installation of official telephone devices in the offices to necessitate efficient communication.

In conclusion, the Transition Authority through the Finance and Administration Committee is committed to ensuring that all the activities and programmes of the Authority are facilitated in a timely manner. This will ensure that the Authority achieves its mandate as required by law through the thematic committees.

## **4 STAKEHOLDERS ENGAGEMENTS**

The Authority constantly engages stakeholders and partners from various fields to ensure that they all play their respective roles in promoting the devolution agenda. During this Quarter, the Authority engaged the following Stakeholders and partners

### **4.1 Kenya Chamber of Commerce**

Kenya Chamber of Commerce with a view to developing an MOU between the parties. The aim of the MOU is to facilitate a partnership between the Authority and the Chamber of Commerce in matters of trade, commerce and investment and economic development under the devolved system of Government.

### **4.2 Kenya Red Cross Society**

The Transition Authority engaged in discussions with the Kenya Red Cross Society to provide a framework for cooperation between the two organizations, aimed at supporting disaster management and humanitarian services in the framework of the devolved system of Government. The deliberations between TA and KRCS culminated in a Memorandum of Understanding detailing the collaboration between the two organizations in the area of disaster management in the devolved system of government. The MoU is aimed at realizing an efficient transition in disaster management at national, county and sub-county level in Kenya.

### **4.3 URAIA Trust**

The engagements comprised of negotiations for collaboration in development of civic education curriculum on devolution—a process that had started earlier between the Trust and the Kenya Institute of Curriculum Development. As a result of the engagement, the following was achieved:

- i. A Memorandum of Understanding (MOU) between the two was developed and is set to be signed in January 2014
- ii. TA and Ministry of Devolution and Planning were incorporated as partners and started participating in the design phase of the curriculum development for civic education.

- iii. TA and Ministry of Devolution and Planning undertook to mobilize resource for piloting, printing and dissemination of the curriculum document among others.

#### **4.4 Institute of Education and Democracy (IED)**

TA engaged with IED with view to partnering in resource mobilization for financing civic education activities.

#### **4.5 Drivers of Accountability**

The Authority held discussions with Drivers of Accountability on mandate, strategy and activities of the Authority with a view of identifying areas for partnership. Discussion is underway to partner on devolution sector stakeholders mapping in all the counties.

## 5 PARTNERSHIP SUPPORT

In the implementation of the activities for the Quarter, the TA received support from UNDP and Un-Habitat.

The UNDP Basket Support “**Implementation of Transition to Devolved System of Government in Kenya**” The basket funds were drawn from UNDP, DANIDA and UNICEF. The target priority areas were;

- Strengthening of TAs capacity to deliver its mandate including strategic plan, Monitoring and Evaluation Framework, Communication Strategy, Resource Mobilization Strategy and publication of TA Reports and other topical Issues.
- Unbundling , costing and Transfer of functions
- Capacity Building Programmes for Counties and national government
- Civic Education and stakeholder engagements.

UN-Habitat on the other hand supported the TA through the “County Urban Development under Devolution” programme. The specific areas for support in this Quarter included review of the Urban Areas and Cities Act, In the Quarter; the technical committee was supported to review the urban areas and cities Act as well as the classification of cities criteria.

## **6 CHALLENGES EXPERIENCED IN QUARTER**

- a) Threats to disband TA vide Miscellaneous Bill causing anxiety among members and staff.
- b) Inadequate financial allocation for the FY 2013/14 that has hindered implementation of all Programmes of the Authority.
- c) Revelations of audit of staff in the counties on irregular recruitment, unaccounted staff, shortage of professionals and obsolete payroll.
- d) Lack of Policies, norms and standards in relation to devolved functions. This is causing a lot of misunderstanding among the parties involved.
- e) Delayed submission of required information on TIPs, HR records and Assets and liabilities from MDAs. This is causing delay on the audit of the inventory.
- f) Duplicating and overlapping mandates on Capacity building with other national Ministries.
- g) TA, interim Staff being replaced by those employed by County Governments whose capacity needs to be build.
- h) Inability to classify urban areas and cities due to untenable criteria provided under the Urban Areas and Cities Act (2011).

## **7 PROJECTED ACTIVITIES FOR NEXT QUARTER, 2014**

The Authority will continue with the ongoing activities in the implementation of its mandate which include:

- Further Unbundling of the devolved functions.
- Evaluating and Monitoring the Transition Implementation Plans
- Coordinating Civic Education on devolution.
- Collaborating with National Government in Capacity building activities for the County Governments.
- Audit of Assets, Liabilities and on-going and stalled projects and programmes
- Provision of Advisories on emerging transition issues
- Rationalization of national and county government staff.
- Assessment and classification of urban areas and cities
- A retreat on pension arrangement to analyze, synthesize and consolidate the reports of various schemes with an objective of recommending the suitable pension plans for the counties.

## **8 CONCLUSION**

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

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

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