



ANNUAL REPORT 2013 - 2014



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Transition Authority
Annual Report
2013 - 2014

The Transition Authority
Annual Report
2013 - 2014

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Annual Report 2013-2014
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Our Vision

A seamless transition for better devolved service

Our Mission

To facilitate and coordinate the process of transition to devolved system of government



TA leadership and Principal Secretaries after a consultative meeting in July 2013



Abbreviations

MDAs - Ministries, Departments and Agencies
KSG - Kenya School of Government
IFMIS – Integrated Financial Management System
HRM – Human Resource Management
FY – Financial Year
FAQs - Frequently Asked Questions
FACA - Functional Analysis and Competence Assignment Committee
DPSM - Directorate of Public Service Management
CTC - County Transitional Coordinators
CRA - Commission on Revenue Allocation
CPSB - County Public Service Boards
CPC- Corruption Prevention Committee
CoK – Constitution of Kenya
CIDPs - County Integrated Development Plans
CIC - Commission for the Implementation of the Constitution
CEC - County Executive Committee
CBOs - Community Based Organizations
CGA – County Government Act
NGEC - National Gender and Equality Commission
IEBC - Independent Electoral and Boundaries Commission
NCPWD - National Council for Persons with Disabilities
NTA - National Tax Payers Association
SUPKEM – Supreme Council of Kenyan Muslims
LATF - Local Authority Transfer Funds
CGPFMT - County Governments Public Finance Management Transition Act
PPOA – Public Procurement Oversight Authority
CoG - Council of Governors
NSA - Non-State Actors
KEGOSES - Kenya Governors Strategic Execution Support
AMIS - Asset Management Information System
LAIFOMS - Local Authority Integrated Financial Operations Management System
IPPD - Integrated Personnel Payroll Database
CARPS - Capacity Assessment and Rationalisation of Public Service

About the Transition Authority

The Transition Authority (TA) was established in June 2012 under section 4 of the Transition to Devolved Government Act (TDGA 2012), to oversee the historical process of the implementation of devolution in Kenya. The mandate of the TA is to facilitate the realization of a devolved system of government through efficient and effective coordination of the transition process. In so doing, the TA is obligated to retain fidelity to the Constitution of Kenya (CoK) 2010, in exercise of its functions and powers as provided for under the Act. Having adopted the 'big bang' approach to decentralization and devolution over the gradual and incremental approach, Kenya's transition process is earmarked to be covered in two phases over a period of four years, stretching between June 2012 and March 2016. Phase 1, which commenced in June 2012 ended with the March 4, 2013 General Elections, while Phase 2 which began on March 5, 2013 is currently ongoing and is expected to end no later than March 2016

How the TA is organized

The TA works to achieve its mandate through a 17-member team organised into operational and oversight committees - all supported by a secretariat. As provided for in the TDGA, 2012, these committees comprise nine full time members and eight co-opted members. The co-opted members enhance institutional and citizenry participation in the transition process and enable the TA to leverage on its expertise and other resources not present within its set-up.

The six Operational Committees are charged with the core task of implementing the mandate of the TA. These include the Functional Analysis and Competency Assignment Committee; Planning, Budgeting and Finance Committee; Capacity and Capability Development Committee; Assets and Liabilities Committee; Civic Education Committee; and Legal and Intergovernmental Relations Committee. The Oversight Committees on the other hand ensure the good governance of the resources availed to the TA, and are comprised of the Audit Committee, the Finance and Administration Committee, and the Human Resource Committee.

The TA secretariat is headed by a Chief Executive Officer who is responsible for the day-to-day administration of the affairs of the organisation. The CEO works with four directorates namely: Legal and Intergovernmental Relations; Capacity and Capability Development and Transition Coordination Services; Research, Policy and Advocacy; and Corporate Support Services.

The TA implements its specific functions in wide consultation and partnership with government Ministries, Departments and Agencies (MDAs), the constitutional and independent offices particularly the Commission for the Implementation of the Constitution (CIC), Commission on Revenue Allocation (CRA), Office of the Auditor General and Office of the Controller of Budget; alongside development partners and Non State Actors (NSA).

Setting up the Infrastructure for Take-off Guided by the Eight-Point Roadmap

During Phase 1, the TA weathered significant start-up challenges to achieve the historical replacement of Kenya's eight provinces, 290 districts and 175 local authorities with 47 brand new counties in one go - without disruption to service delivery. That the TA realised this achievement in one year - more so at a time when major national events including the expiry of the National Accord and the General Elections were taking place, is indeed remarkable.

Guided by an Eight-Point roadmap that established the TA's broad path to the execution of its mandate in 2012-2013, the TA made huge steps within Phase 1 in laying the infrastructure necessary for facilitating the smooth transfer of functions to County and National governments. The successful coordination of the preparation of initial budgets for County governments for the period; preparation of County Development Profiles, as well as the issue of several other guidelines and advisories on implementation of devolution are just some key achievements for the period. The County Development Profiles formed the basis for the preparation of County Integrated Development Plans (CIDPs). The TA also made progress in facilitating, coordinating and providing leadership in civic education and stakeholders' engagement.

The Eight-point plan has been instrumental in focusing the TA towards the achievement of its set objectives for the period through its eight key work stream areas outlined as:

Optimal Operationalization of the TA

Resource Mobilization

Mapping the whole of government transition activity

Functions and competency analysis and assignment

Capacity and capability assessment and development

Inauguration of County governments

Strategic communication and engagement

Business process and performance management framework

The work of transition is enormous and the timelines for the transition process are tight and ambitious. During the inaugural period, TA experienced many challenges including difficulty in obtaining vital data from government Ministries, Departments and Agencies (MDAs); slow uptake and adoption of transition process by state organs; high expectations by the public; and inadequate resources, among others.

This notwithstanding, the TA is quite aware that the results of devolution will not be realised in a short timeframe and therefore the organisation must take a long-term view and focus on building a strong implementation culture, supported by a process of continuous and inclusive review of policies, programs and projects. In view of this, the TA, in facilitating the transition process will seek to strengthen the foundation for long term success of the devolution process while taking into account its lessons and formulating homegrown solutions to the transition challenges.

Building on a Strong Foundation

During the three-year Phase 2 period, which commenced in March 2013, the TA has been, and will continue to address itself to four strategic issues in order to steer the country through a seamless transition. The four Strategic issues have been listed as follows:

Ensuring County and National Governments are Performing Assigned Functions Efficiently and Effectively.

Ensuring Kenyans Embrace Devolution

Securing and Utilizing Public Assets and Identifying Liabilities, and

Strengthening Institutional and Individual Capacity and Capability

Measuring Success

In order to accomplish the set objectives around the four thematic areas, the TA has outlined its critical success factor during phase 2 as enhanced strategic thought-leadership management at the policy and operational levels. The organisation will hence focus on results with clear performance standards, rather than on activities. The Authority recognises that Kenyans are the key stakeholders in the transition process and has resolved to work towards adequately remaining engaged with them throughout the process. The TA is also cognisant that real impactful results will show up only with improved efficiency and effectiveness within the organisation. Likewise, the latter together with an institutionalized and robust monitoring and evaluation system will form a critical basis for engaging and managing strategic partnerships for the organisation. Equally, stakeholders' cooperation will play a key and central role in ensuring that the TA achieves expected results as set out in the Strategic Plan 2013 - 2016.

Our Leadership



Mr. Kinuthia Wamwangi, EBS
Chairman



Mrs. Angeline Hongo, MBS
Vice Chairperson

Mrs. Jacqueline Mogeni
Member



Mrs. Safia Abdi
Member

Mr. Simeon Pkiyach
Member



Dr. Dabar Abdi Maalim
Member

Mr. Bakari Omara
Member



Mrs. Mary Ndeto, HSC
Member

Mr. Erastus Rweria, MBS
Member



Our Leadership



Dr. Kamau Thugge, EBS
PS, The National Treasury

Alternate member:
Mr. Albert Mwenda



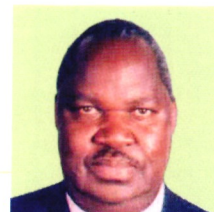
Eng. Peter Mangiti
PS, Planning

Alternate member:
Mr. J. Mukui



Mr. John Konchella
PS, Devolution

Alternate member:
Amb. P.R.O. Owade



Prof. Githu Muigai, EGH, SC
State Law Office

Alternate Member:
Ms. Muthoni Kimani



Management Team



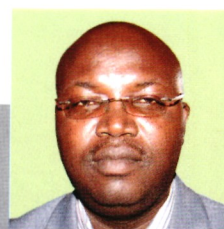
Stephen K. Makori
Chief Executive Officer



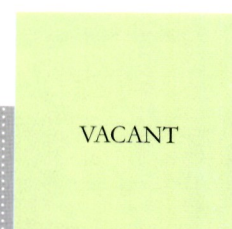
Cynthia Olotch
Director Legal and
Intergovernmental
Relations



Gitonga Mbaka
Director Transition
Coordination



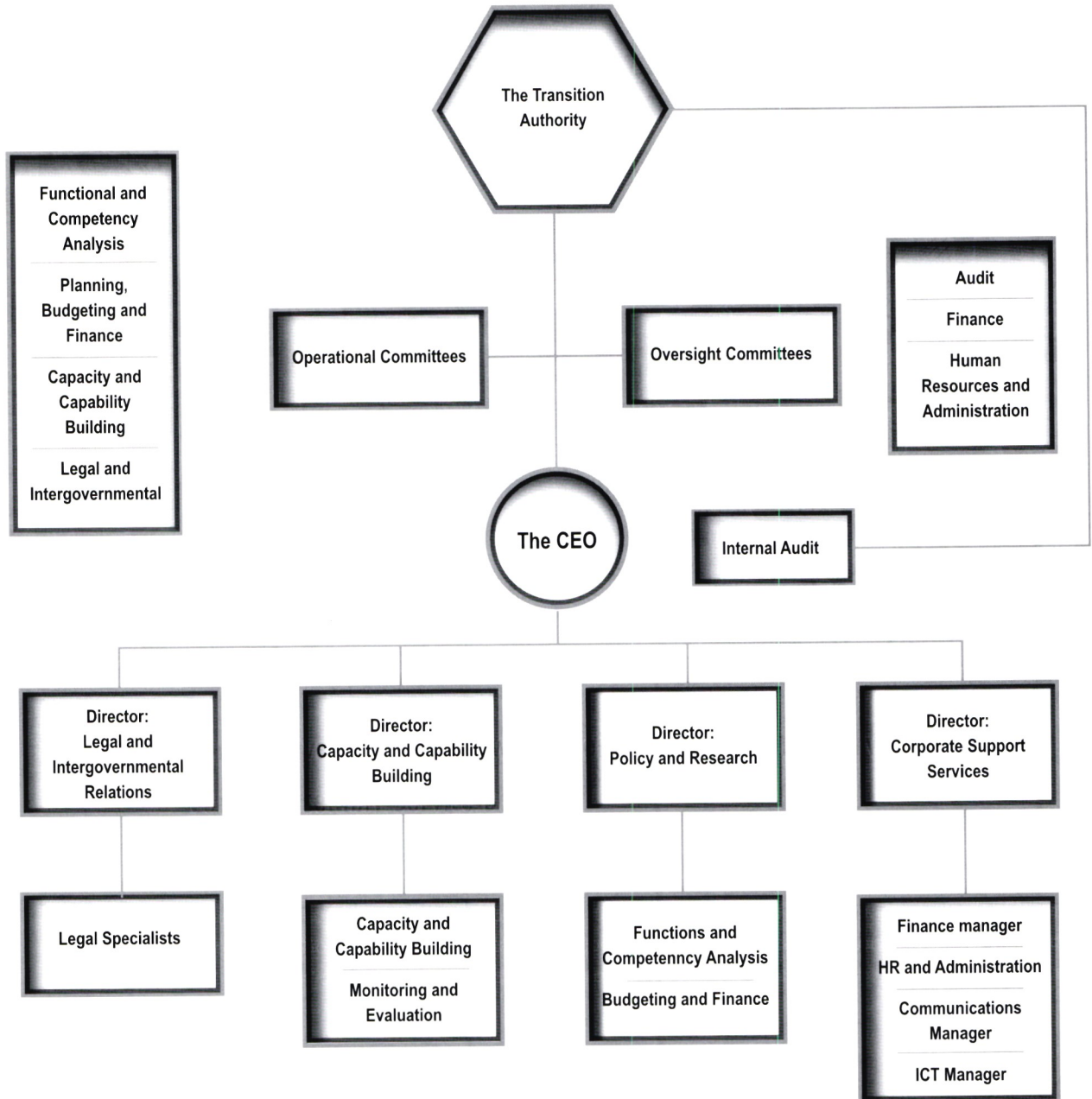
Peter Kimemia
Director Policy Analysis
and Advocacy



VACANT
Director Corporate
Support Services



The Transition Authority Structure



Chairman's Statement

It gives me great pleasure to report that indeed, the journey to a fully devolved system of government in Kenya is truly on course. Huge strides have been made all round during the second year towards delivering a seamless transition.

Our biggest milestone during the period was registered in the area of unbundling and transfer of functions. I am proud to report that by the close of FY 2013-2014, majority of the functions had been unbundled and transferred, and that both the national and county governments had been facilitated to assume their respective responsibilities. County reports indicate great enthusiasm in the uptake of the functions and resultant improvements in county budgetary allocations in sectors such as healthcare. This will go a long way in improving access to affordable, quality services for all citizens. The ultimate beneficiary is the people of Kenya.

At the TA we remain well aware that a smooth transition to a devolved government is dependant on strong institutions and competent individuals. Therefore, we take a broad approach to the capacity and capability strengthening assignment to include the adjustment of public policies, laws and regulations to support the devolution process; the modification of business processes to ensure that they lead to more effective delivery of public services, as well as enhance the systems for corodination of Natioanl and county governments. The assignment also includes measures to improve human resource capacity and skills-building

In this front, I am delighted to report that across the year the TA invested in well-coordinated capacity development interventions to equip both county leaders and staff to take on their new roles. By the end of the financial year, over 60 per cent of counties had rolled out the County Integrated Development Plans (CIDPs). Although many were yet to develop the sectoral and spatial plans, overall, work was in progress. With proper planning, counties will be better placed to monitor and evaluate their progress and enable citizens to hold them accountable.

The ratification and adoption of a National Capacity Building Framework in FY 2014/15 will provide for a national blueprint for capacity building initiatives countrywide in the new financial year.

In the same breath, the TA has been instrumental in providing legal guidance in matters underpinned in devolution. Assets and liabilities; analysis and costing of functions are some of the areas where TA has facilitated legal advise.





I wish to note that as a team, we are committed to upholding the law and facilitating the transition process to its full fruition."

The mandate of the TA will not be attained until Kenyans fully embrace the devolution process and its outcomes. Of particular note is that during the course of the year, the TA rolled out a civic education program using the curriculum developed by the TA and its stakeholders. This has opened doors for public participation in the transition process, a major prerequisite for successful devolution.

Over the past year, the TA has proactively engaged multiple stakeholders, so as to achieve an all-inclusive process. I am sincerely grateful to the Government Ministries, Departments and Agencies; the civil society and our development partners for their single-mindedness in ensuring that devolution works.

I also want to thank the entire staff and leadership of TA. Non of the achievements reported in this Report would have been possible without their support.

As we look forward to closing the remaining gaps in the new financial year, the TA remains upbeat about realizing excellent results in the execution of its mandate. I wish to note that as a team, we are committed to upholding the law and facilitating the transition process to its full fruition. We believe in devolution and are determined to play our part in empowering Kenya, in the new dispensation.

Kinuthia Wamwangi

CEO's Statement

I am pleased to present to you the Annual Report for the year ending 2013-2014. The Report details the progress the TA made throughout the year as well as the challenges met along the way.

Overall, it has been a successful year and the impact of our work continues to be felt across the country. I am happy to note that the year under review presented a myriad of opportunities for the TA team. Our sustained engagement with the National and County governments, key stakeholders and development partners, for example, continued to foster our good working relations with the said parties. As a result of these productive engagements, our teams at the headquarters and county offices have been able to operationalise the devolution process and bring it to life.

At this juncture, I wish to salute all the TA teams countrywide for their selflessness and willingness to be part of making history in our great country. The work that is cut out for the teams is enormous. The results are not instantaneous. This means that we must have a long-range view as implementers of the devolution process. We must also be flexible and innovative and be willing to learn on the go.

Finally, I would like to urge all our stakeholders to continue supporting our course so that we can collectively achieve success in the transition process.



Stephen Makori Kerosi



Executive Summary

The Transition Authority (TA) is a statutory body charged with the responsibility of facilitating and coordinating the transition to a devolved system of government in Kenya. Section 15 of the Sixth Schedule of the Constitution of Kenya (CoK) 2010 details the Authority's broader mandate, which is further explained in the Transition to Devolved Government Act (TDGA) of 2012. The two documents envisaged a smooth transition from a centralised system of government to an entirely decentralized system without undue interruption to the delivery of services to the public.

CoK 2010 sets an ambitious timeline of three (3) years, after the first election under the new constitution, for the transition to the devolved system of government to be fully implemented. The TA, being the body mandated to deliver on this onerous task, begun its work in earnest in June 2012.

During its first year in office (Financial Year 2012- 2013), the Transition Authority put in place the requisite infrastructure for a smooth take-off, guided by an eight-point roadmap that was developed in consultation with all the stakeholders. The Authority rolled out its activities by developing guiding frameworks for facilitating the smooth transfer of functions to County Governments; coordinating the preparation of initial budgets for County governments and the preparation of County Development Profiles, which formed the basis for the preparation of County Integrated Development Plans (CIDPs) that are being used to guide development in the 47 counties established under CoK 2010.

This Annual Report, is structured along four thematic areas and sums up the Authority's activities during the Financial Year (FY) 2013 -2014. The thematic areas are believed to encapsulate the wholesome aspirations of both CoK 2010 and TGDA 2012. The four areas cover the effective transfer of functions to either levels of government (and the enhancement of performance and delivery by those to whom the functions are assigned); heightening of public participation in the devolution process - to enable Kenyans embrace devolution; securing and utilizing public assets while identifying liabilities and improving performance of public servants in discharging their governance duties through targeted capacity building initiatives.

Below are the highlights in each of the four strategic areas as detailed in this Annual Report.

Ensuring County and National Governments Perform Assigned Functions Efficiently and Effectively

During the FY 2013-2014, the TA continued to engage Government Ministries, Departments and Agencies (MDAs) and other relevant stakeholders through sectoral and intergovernmental consultative forums to consolidate the gains made in the first year. Substantial progress was made towards reaching a consensus on the basis for costing of functions. TA worked with the CRA to carry out an extensive comparative research and concretized the concept of costing of functions with reference to countries such as Ethiopia, Sierra Leone, Papua New Guinea and Yemen. The new concept was approved and thereafter a consultant engaged to undertake the exercise of determining the costs of functions for all sectors for both levels of governments.

It is during this period that the TA completed the transfer of some functions whose transfer had been delayed (during the first phase), subject to development of requisite structures and mechanisms. The FY under review saw most of the county functions transferred with the exception of a few that were shared across counties and ongoing donor funded projects.

Ensuring that Kenyans Embrace Devolution

Public participation in the devolution process is vital for attaining a seamless transition process in Kenya. The CoK 2010 puts the citizenry at the centre of the devolution process. The TA, while discharging its mandate seeks to ensure the active participation of the citizenry in the devolution process. Towards this end, the TA developed a civic education framework and a comprehensive communication strategy during the FY 2013 -2014. The latter will form the basis for enhanced and coordinated engagements with the different stakeholders in the process and ensure they are fully on-boarded to the overall course of making devolution work in Kenya.

Securing and Utilizing Public Assets and Identifying Liabilities

During the FY under review, the TA engaged key stakeholders and reached a consensus with the Principle Secretaries on how to get data on public assets and liabilities held by MDAs and state corporations. This collaboration with the Principal Secretaries resulted in a 42.86% response rate from the Ministries and Departments, 16.42% from the Agencies/State Corporations and 89.14% from the defunct Local Authorities between October and December 2013.

Similarly, the TA together with the Auditor General signed a memorandum of understanding to facilitate the validation and audit of public assets and liabilities. As a result of this mutual engagement, the two bodies were able to capture submitted data on Asset Management Information System (AMIS) templates; analyse the data to determine its completeness, quality and integrity; and re-evaluate the AMIS templates' effectiveness for smooth data collection.

With the support of a consultant, the TA successfully developed mechanisms and criteria for the transfer of public assets and liabilities. This formed the basis upon which the proposed Framework for Transfer of Assets and Liabilities was developed.

Strengthening Institutional and Individual Capacity and Capability

During the period under review, the TA in consultation with the Kenya School of Government (KSG) and Parliament prepared a national capacity building framework that is expected to coordinate the capacity building efforts for the National and County governments. The draft framework was shared with key stakeholders for input before adoption by the TA.

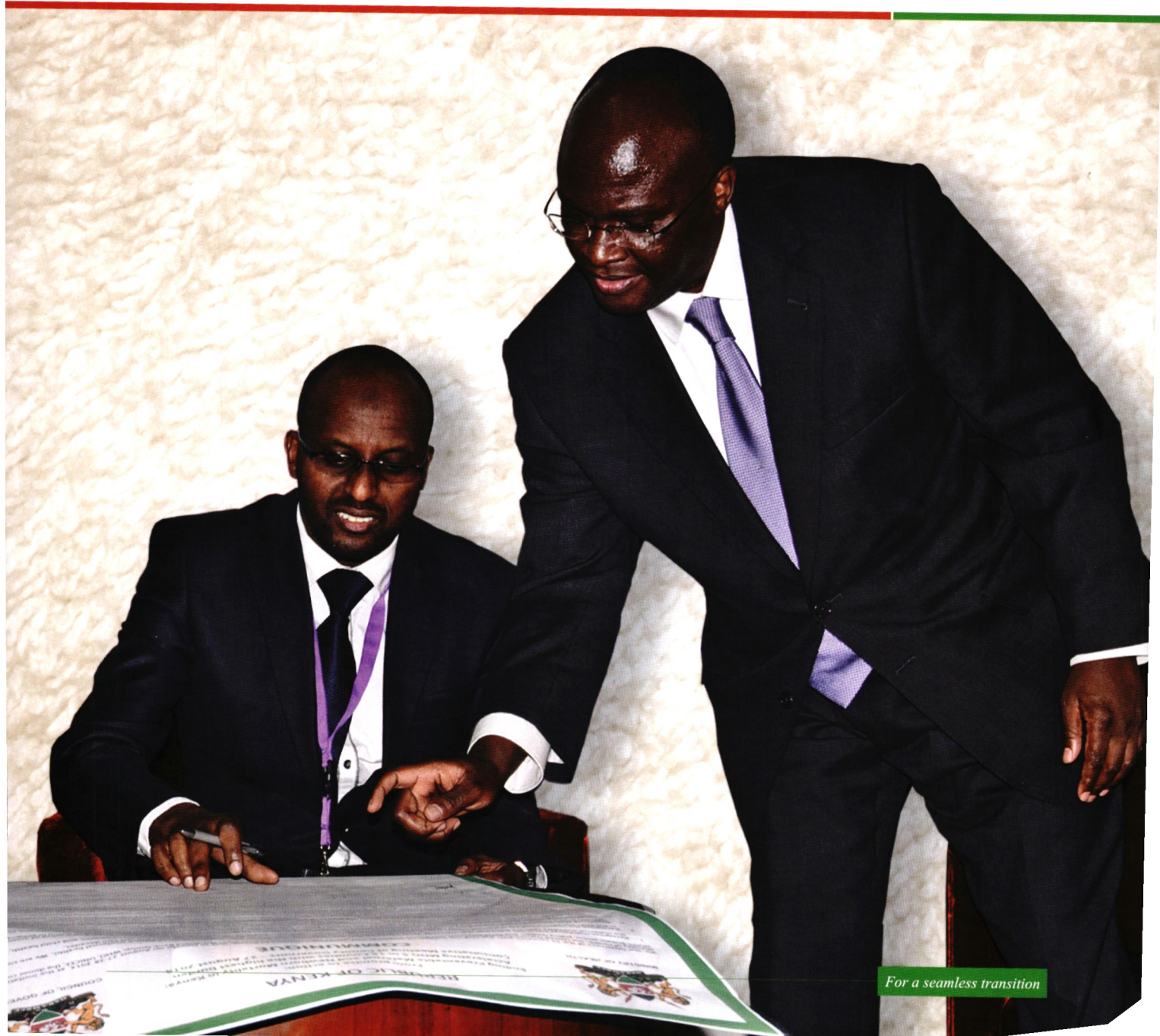
Meanwhile, the TA generated consensus among stakeholders on the framework for rationalization of county government staff. The framework stipulates the modalities of conducting the rationalization process, methods of sustaining staff in the Public Service, Staff Pension Management and Collective Bargaining Agreements.

The TA in conjunction with the Public Service Commission (PSC) conducted an induction programme for County Executive Members in charge of Public Service, County Secretaries, County Public Service Boards and head of Human Resources Management in the Counties to empower them in managing the Human Resource function.

Challenges and Opportunities

The Authority while discharging its mandate has faced a number of challenges that have hitherto hampered the full realization of optimal results. These include lack of cooperation from some MDAs, inadequate resources for funding the TA's activities and insufficient political goodwill.

Ensuring County and National Governments Perform Assigned Functions Efficiently and Effectively



One of the overarching determinants of a successful transition to a devolved government is the level of efficiency and effectiveness with which the national and county level governments deliver essential services to their citizenry especially during the transition period. Both the Constitution of Kenya (CoK) 2010 and the Transition to Devolved Government Act (TDGA) 2012, envisage a seamless and coordinated transition to the devolved system while ensuring continued and uninterrupted service delivery for Kenyans. The CoK 2010 and the TDGA together make provisions for frameworks and mechanisms for audit, verification, transfer and even capacity building requirements, in order to ensure that there is no disruption in the delivery of services and, or duplication of functions among the two levels of government during the transition period.

In its endeavour to operationalize this mandate, the Transition Authority (TA), through the Functional Analysis and Competency Assignment Committee (FACA) singled out the effective transfer of functions; coupled with enhanced legal and operational capacity within TA; and a strengthened legislative framework to support the devolution process, as the three anchorage pillars for ensuring that the 47 counties and the national governments perform their assigned functions efficiently and effectively.

The TA recognizes that the effective transfer of powers and functions and the accompanying resources between the national and county governments is a delicate balance which requires a multiplicity of human resource skills and experiences, strong legislative backing and the commitment and resources' support from the two levels of governments, the different stakeholders and partners.

During Phase 1 of the transition period, the TA embarked on a rigorous process to set up its secretariat, a process that saw it become fully operational by the close of the period. At the county level, the County Transition Coordinators and Interim Transition Teams were put in place to establish the county governments.

Great strides were made in Phase 1 towards ensuring that the legal and intergovernmental relations were harnessed and that a supportive legal framework was provided to enable a smooth transition to the devolved system. This included the review of draft regulations to various devolution laws. These ground-breaking efforts in Phase 1 ushered the TA into a robust Phase 2 where cumulative and tangible results in each of the above focus areas is evident.

Section 7 of the TDGA, No. 1 of 2012 mandates the Authority to “*facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule of the Constitution.*” Specifically the functions of the Transition Authority are enumerated under this section to:

- Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule of the Constitution to the National and County Governments;
- Determine the resource requirements for each of the functions; and
- Develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule

Unbundling Functions

Unbundling of Functions of County Governments

This process was undertaken in line with the framework for functional analysis and competency assignment developed during the first phase of the transition period. In July, 2013, the TA engaged with respective Ministries on functions listed in Part 2 of the Fourth Schedule of the Constitution of Kenya 2010 and unbundled most of the functions. This process helped to inform the Second Phase of the transfer of functions in August 2013. Majority of the functions in Schedule Four Part 2 were transferred according to the Kenya Gazette Supplement No.116 of 2013. A number of sectors however, were excluded due to their cross cutting nature.

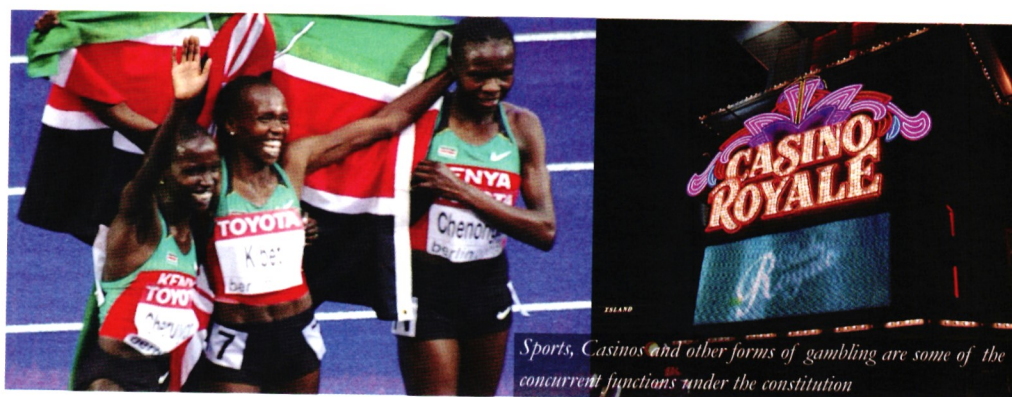
Unbundling National Government Functions

The TA started the period 2013-2014 set on completing the process of unbundling the National government functions. In particular, the TA engaged the line ministries whose functions are listed in the Fourth Schedule to the Constitution of Kenya 2010 and unbundled their related functions.

Unbundling Concurrent Functions

The constitution assigns some functions such as betting, casinos and other forms of gambling, sports, electricity and gas reticulation concurrently to the National and County governments. The implementation of these concurrent functions pose challenges service delivery.

In order to provide clarity and avoid duplication of roles, the TA successfully unbundled these concurrent functions through establishment of Inter-Agency Technical Committee for the case of betting, casinos and other forms of gambling functions, and through stakeholder consultative meetings and workshops for the case of roads, electricity and sports functions.



An Example: Unbundling a Function Within the Agricultural Sector

Function	National Agriculture Extension Program Components
Activities	Identify priorities for extension support
	Research and development of farming techniques
	Print resource materials
	Employ extension officers
	Train extension officers (run training colleges)
	Purchase seed and tools for demonstration farms
	Provide buildings for farmers training

Fig.1: A function is a discrete set of activities carried out in the delivery of a service

Function: National Agriculture Extension Program Components	National (policy)	County (implementation)
Identify priorities for extension support	x	
Research and development of farming techniques	x	
Print resource materials	??	??
Employ extension officers		
Train extension officers (run training colleges)	??	??
Purchase seed and tools for demonstration farms		x
Provide buildings for farmer training	x	x

Fig. 2: These functions have different assignments according to the Constitution

Developing Transition Implementation Plans for Ministries, Departments, Agencies and Counties

Section 16 of the TDGA (1), requires the TA to issue guidelines to State organs or public entities for the preparation of Transition Implementation Plans (TIPs). TIPs are key in providing counties with a checklist or roadmap in the development of structures, legislation and systems for the implementation of the new functions. They also provide a platform for reporting to the CIOC, CIC, the Summit and the Senate on the progress of implementing devolution in respect of roles, powers and responsibilities by the county governments. Pursuant to the TDGA (1), in November 2012 the TA developed guidelines for the preparation of TIPs and circulated them to all MDAs and to County governments for the development of their plans. 15 Ministries were then facilitated to develop their sectoral TIPs.

During the period under review, a national sensitization workshop for the County government officers was held at the Kenya School of Curriculum Development in April, 2014 in collaboration with Commission on the Implementation of the Constitution (CIC). As a result, 36 Counties have already submitted their TIPs to CIC and to the TA.

Transferring Devolved Functions to the County Governments

One of the main mandates of the TA is to facilitate a comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule. The Sessional Paper on devolved government in Kenya under the Constitutional of Kenya 2010 envisaged a phased and asymmetrical transfer of powers, functions and competencies to the County Governments. This is in line with Section 15 of the Sixth Schedule of the Constitution of Kenya 2010.

In fulfilment of the above provisions, the Authority has undertaken this task as follows:

Application and Review for Transfer of Functions to the County Governments

Section 23 of the Transition to Devolved Government Act, 2012 provides that every county government shall make a request in the prescribed manner to the Authority for transfer of other functions in accordance with section 15 of the Sixth schedule to the Constitution. Towards this end, the Authority developed mechanisms and an application form for transfer of functions to the county governments.

All the 47 county governments applied for transfer of functions as set out in part 2 of the fourth schedule to the CoK, 2010. Upon receipt of the requests, the Authority analyzed them based on

the criteria for transfer of functions set out under section 24 to the TDGA and the counties' quick readiness assessment report to ensure that the county governments are transferred to functions which they can perform

Phase Two of the Transfer of Functions

The second phase of functions transfer was undertaken through the Gazette Supplement No. 116, via Legal Notice No. 137-183 dated 9th August. Despite the numerous challenges, political pressure and the decision of the Summit to transfer all functions, the TA was able to delay the transfer of a number of functions that were deemed not ready for transfer. Notably, the management of Agricultural Training Centres and Agricultural Mechanization Stations as well as the Personnel Emoluments for all the functions were delayed for six months.

Other functions that were delayed include the roads function pending agreement on classification, the mechanical and transport equipment functions, and electricity and gas reticulation and energy regulation among others. The National Government continued performing these functions on behalf of the County Governments as efforts to provide the necessary capacity continued. **(See Annex 1)**

Phase Three of the Transfer of Functions

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

CASE STUDY

34
Number of
Agricultural Training
Centres (ATCs)
and Agricultural
Mechanization
Stations that
were successfully
handed over, setting
precedence for the
smooth transfer of
assets and liabilities
between the
National and County
governments

TA Marks a First in the Successful Handover of Agricultural Training Centres and Mechanization Stations

The physical handover of the 34 Agricultural Training Centres (ATCs) and Agricultural Mechanization Stations (AMSs) on February 2014, marked a first for the TA in its oversight role over the transfer of functions and assets from the National to the County Governments. The successful completion of the process set precedence for both levels of Government on the need for open engagement and consensus in facilitating the smooth transfer and handing over of assets and liabilities during the transition period.

Both the ATCs and the AMSs have supported the growth of the agricultural sector in Kenya since the 1950s, with the former providing the primary learning and testing centres for high-yielding agricultural technologies and offering improved practical farming and increased agricultural productivity. AMSs on their part have increased the opening of new land through on-farm mechanization services that include ploughing, harrowing, planting, harvesting as well as mechanized soil and water conservation through dam construction.

Prior to their transfer to the County Governments, the ATCs were managed at various levels from the Ministry of Agriculture, Livestock and Fisheries (MoALF) and their annual workplans and budgets coordinated and financed by MoALF.

In the new dispensation, the mandate of the National Government shall be policy formulation, review, monitoring of the implementation and development of operation standards and guidelines for the ATCs in line with the constitution, 2010. The National Government will also provide capacity building and technical assistance to the ATCs through their respective county Governments as well as audit the ATCs.

The functions of the ATCs will be managed at the county, sub-county and at ATC institution levels, with each bearing very specific roles and responsibilities. The county Government level will be accountable for the function of the ATCs and will also be responsible for technical guidance, monitoring and evaluation.

The sub-county will provide technical backstopping and its treasury will operate 70% of the funds allocated for running the ATC commercial enterprises.

The overall management of the ATCs will continue to be the responsibility of the ATC principal supported a team of six technical officers and support staff. The technical management committee and board of governors will continue to provide technical backstopping and policy oversight.

Costing of Functions

The TA recognizes that the central priority of the National Government is to provide basic services to all citizens within the constraint of available resources. This is the objective set out in the CoK Chapter Four. The Bill of Rights is a fundamental responsibility of the government. Responsibilities in respect of these rights are shared between the two levels of government, with each level charged with fulfilling assigned functions. However, this is challenging because the need for public goods and services is greater than the current service levels and the capacity to deliver effective services. Determination of the resource requirements for the performance of the functions remains one of the greatest challenges to an efficient delivery of government services in a constrained economic atmosphere.

Progress in Costing of Functions

The Transition Authority is undertaking the costing of functions exercise, in collaboration with Commission on Revenue Allocation (CRA) and the support of UNDP (Kenya). So far, the Concept Paper and Terms of Reference (TOR) for the exercise have been developed and shared with Principal Secretaries and presented during a stakeholders meeting held on 28 July 2014.

Five sectors namely: Agriculture, Fisheries and Livestock; Environment, Water and Natural Resources; Health; Transport and Infrastructure and Foreign Affairs were selected to be costed during the pilot phase.

To attract the best competence and expertise, provision of consultancy services will be advertised both in the local newspapers, the UNDP and the Transition Authority websites. This is to ensure that a consultant with international and global perspective and dimension is sourced. This is also to safeguard quality in the whole costing exercise.

Challenges

Despite a rather successful unbundling and transfer process, a number of emerging challenges have been noted. These might roll back the gains made in the process. They include:

Slow response from the line MDAs in terms of submitting requisite information and reports; for instance, the delay in development and submission of service norms and standards by national government departments;

Development and enactment of legislations that are perceived to claw back some components of devolved functions by the National Government;

Slow activation of various intergovernmental sectoral forums that are best placed to address emerging challenges in their respective sectors.

The major challenge in costing of functions has been inadequate financial resources to undertake the exercise. However, the TA with limited resources has managed to undertake historical cost analysis which has formed the basis for previous resource allocation.

There is also inadequate technical capacity to guide costing of functions as evidenced by limited local and global literature on costing of government functions and services. The TA has collated the available information and recommended a **Target Based Standard Equivalence Costing Approach [TBSECA]** which is in the costing of functions conceptual framework.

Way Forward

In the light of the above challenges, the following measures have been proposed as a way forward:

Fast-tracking of the finalization of the unbundling process in sectors which have not fully participated in the exercise. This calls for full collaboration and cooperation from MDAs. The Ministries are the custodians of the data used to assist the TA in the functional analysis processes.

Fast-tracking the development of a framework on performance of concurrent functions. This will abate the challenges being observed in sectors with concurrent functions, e.g. Casinos, Disaster Management etc.

Ensuring that the transfer of functions is completed as per the Sixth Schedule and TDGA 2012 within the transition period.

Channel adequate resources to TA to discharge its mandate;

Fast-track the costing process of the five sectors to be finalized by February 2015;

Continuous collaboration and cooperation from all the government agencies from both levels of government and development partners.

Prioritization of support to this initiative by IEBC.

Planning, Budgeting and Finance

During FY 2013-2014, the TA through its Planning, Budgeting and Finance Committee embarked on the process of working with counties to assess and classify urban areas and cities as required by Section 54 of the Urban Areas and Cities Act, 2011. This was in addition to assisting counties in establishing their revenue sources and mechanisms for utilization and resource mobilization. Some of the counties' revenue sources include; devolved funds and Local Authority Transfer Funds (LATF)

Classification of Urban Areas and Cities

The TA constituted a Technical Committee to assess the criteria listed in Sections 5, 9 and 10 of the Urban Areas and Cities Act, 2011. Among the findings of the Technical Committee was that if assessed on the basis of the criteria set out in the Act, none of the urban areas (previously known as such before the promulgation of the new Constitution) in Kenya would be classified as a city, municipality and town because most of the urban areas meet only the population criteria but fail on the rest of the criteria.

The committee noted that if the resident Population - Sections 5 (b), 9 (b) and 10 (b) threshold criteria is adopted, it would result in a dramatic reduction in the number of urban areas and cities. Effectively, there will be three cities (Nairobi, Mombasa and Kisumu), two municipalities (Nakuru and Eldoret) and 130 towns. Additionally, 38 former municipal councils would be downgraded to townships, 9 former town councils will be downgraded to unclassified urban areas and 36 formerly unclassified urban areas would qualify for classification as townships. One former municipal council (Karatina) and nine town councils (Wote, Masimba, Nyamache, Nyamarambe, Funyula, Chepareria, Kandara, Kangema and Sirisia) would be declassified. Following the same criteria, North Eastern Kenya and other areas that have a low population density would end up not having a town.

The previously unclassified urban areas which qualify for eligibility for grant of a town status based on resident population are: Ngong, Awasi, Kakuma, Wundanyi, Kitengela, Mtwapa, Isiolo, Juja, Ongata rongai, Moyale, Gilgil, Rhamu, Wanguru, Elwak, Njoro, Moi's Bridge, Lokichogio, Takaba, Awendo, Lamu, Chwele, Kiserian, Hola, Usenge, Madogo, Marsabit, Masalani, Butere, Msambweni, Kiminini, Mai Mahiu, Loitoktok, Lumakanda, Matunda, Watamu, and Githunguri.

The findings established that there was considerable leeway in the criteria for conferring city or municipality status but in the conferment of a town status, the criterion was rather stringent. The eligibility for grant of a town status and urban area ought to demonstrate economic, functional and financial viability. The committee therefore concluded that it would be challenging to classify formerly unclassified urban areas into towns because there were no activities to prove their economic, functional and financial viability.

Hence the Technical Committee recommended among other things that the law ought to be reviewed to amend the resident population threshold downwards and set more realistic measures of economic activities to enable the gradual growth of decentralised urban units.

Reviewing the Legal Framework on Classification of Urban Centres and Cities

The findings of the Technical Committee charged with reviewing the legal framework on the classification of urban areas and cities were subjected to different stakeholders' review in several forums. In compliance with the provisions of the Constitution on public participation, the TA also placed an advisory in the local dailies inviting public comments and suggestions on the findings. This process generated consolidated amendments which were presented to a team of urban experts before being forwarded to the legal team to draft a Miscellaneous Amendment Bill.

Next Step

Once the amendments are passed, the assessment and classification of urban areas and cities will commence in FY 2014-2015.

County Planning

The constitution apportions the responsibility of planning to both national and county governments. The County Government Act, 2012 requires that all county governments prepare and implement County Integrated Development Plans (CIDPs). The CIDPs are, according to the Act, five year plans that are implemented through annual budgetary allocation by the county governments. In addition, all planning is expected to be inspired by the Kenya Vision 2030 and be aligned to the second Medium Term Plan of Kenya Vision 2030.

The Public Finance Management Act, 2012 section 126(3) requires the CEC member responsible for planning to submit the development plan to the county assembly for its approval and send a copy to the CRA and the National Treasury not later than the September 1st in each year.

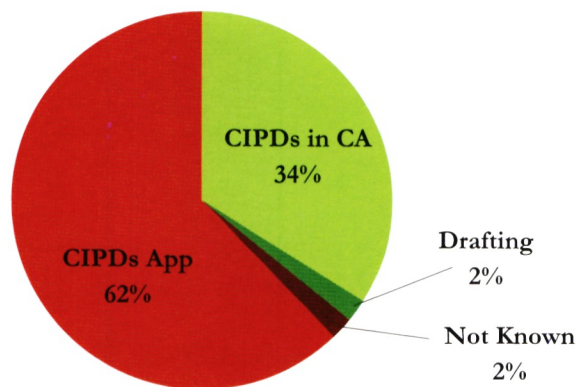
To enhance the capacity of the counties in planning, TA in collaboration with the Ministry of Lands, Housing and Urban Development through the Kenya Municipal Programme (KMP) organised a training for County Chief Officers. The training was undertaken in phases. Phase one targeted the counties where the KMP operates. All the other counties were covered during phase two. This notwithstanding, most counties did not meet the plans submission deadline of September 1, 2013. However, most counties did submitted draft plans.

Reports from Counties on Planning

In addition to the integrated county development plan, each county is expected to develop the following plans:

- County Sectoral Plan (for the county departments and other county entities);
- County Spatial Plan; and
- City and Urban Areas Plan.

To facilitate the county governments prepare the plans, the TA in collaboration with the Ministries of Devolution and Planning; and the Lands, Housing and Urban Development developed and issued guidelines for the preparation of CIDPs and Spatial plans respectively. The status of preparation of the plans as at the end of the year is as analyzed below.



County Integrated Development Plans

From the chart above, 62% of the county governments had already approved their integrated plans and began to operationalise them. 34% had their CIDPs in the County Assembly awaiting approval and 2% were in the drafting stage. The counties whose plans were still being drafted attributed the delays to challenges related to procuring consultancy services. In Muranga County for example, the planning unit which had earlier been at the periphery is currently working on the CIDP after the consultant failed to deliver.

By the close of the year, nine counties were still reviewing their CIDPs. In some instances, some counties felt that their plans were quite ambitious and needed to be tempered with reality. In other cases like Tharaka Nithi, the lower decentralized units or the wards were of the opinion that their priorities were not included in the plan and hence the need for review. Bungoma County expressed the need to review its plan in order to harmonize it with the priorities of the national government to avoid duplication of efforts and wastage of resources. In Kisumu County, some departments and sectors also expressed the need to review their sections due to the ever changing needs within the county.



Some counties have not yet approved their CIDPs. This is attributed to push and pull in projects allocations amongst the wards and limited consultation between the County Assembly and the Executive during the preparation process.

It is worth noting that, the preparation of the integrated plans requires enormous data which is often lacking in the counties. One of the other major challenges is that the County Planning Units are not adequately staffed or constituted to manage the entire county planning process. The planning units are also facing capacity challenges and this also caused delays in their finalization and submission to the County Assembly for approval.

Spatial Plans

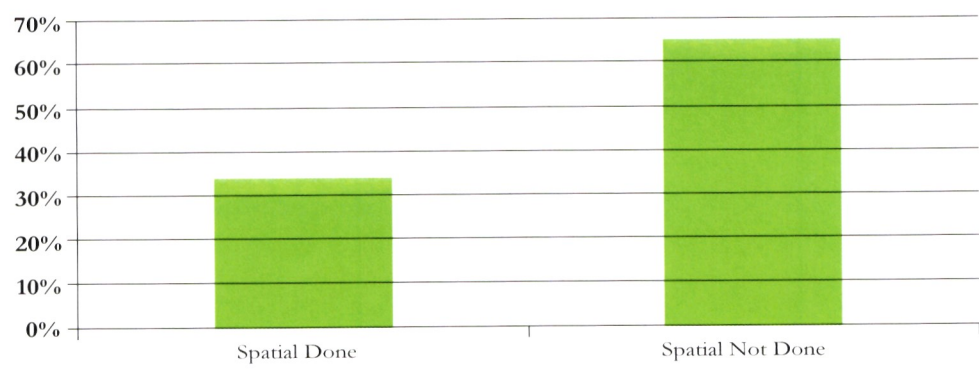
As at the end of FY 2013-2014, 34% of the counties were either in the process of preparing their spatial plans or had prepared a draft. Within this category, there are those counties that argued that their spatial plans were embedded in the integrated plan and there was no need to prepare separate plans.

During the same period, 66% of the counties had not embarked on the preparation of the spatial plans. The counties attributed the delay to the lack of resources required to prepare the plans. Many counties cited the lack of requisite skills within the counties and the exorbitant consultants' fees as impediments to the process.

Sectoral Plans

Most counties assumed their sectoral plans are contained in the CIDP. The law requires that sectoral plans be prepared separately for a ten year period. From the tabular representation below, only six counties prepared their sector plans during the period under review. By the end of the year, twelve counties were at different stages in the process of developing the plans. Isiolo's water and health sector plans for example were ready for legislation. In Wajir, the sector plans were finalized but the programs and projects had not been prioritized.

62% of the counties were yet to start preparing the sectoral plans. Tharaka Nithi County was yet to prepare its plan due to lack of capacity in some sectors. In Embu, the sector plans were developed concurrently with the CIDP. However, the county report indicates that there was initially lack of clarity on transferred functions and this affected the preparation of the sector plans.



Establishment of County Planning Unit

Section 105 of the County Government Act, 2012 envisages establishment of a County Planning Unit whose task is to ensure coordinated development planning in the county and linkage between county plans and the national planning framework among other roles pertaining to planning.

The reports from the counties indicate that half of the counties had already established their planning units and 50% were yet to set them up. However, some of the counties which had established their planning units have various challenges ranging from office space, personnel and capacity issues. West Pokot and Garissa counties for example indicated that the units had inadequate staff and plans were underway to recruit more and build their capacities. In Tana River, the unit had been established but needed to be staffed.

Establishment of Monitoring and Evaluation Unit

The monitoring and evaluation unit in most of the counties was not in place by the end of FY 2013-2014. About 17% of the counties had either established the unit or were in the formative stages of establishing the unit. The monitoring and evaluation unit will help to track the implementation of programmes and projects in the counties. There is therefore need for guidelines for the establishment of the system.

Inputs to the Devolution Section in the MTP II of the Kenya Vision 2030

Kenya's Vision 2030 envisages a globally competitive economy, democratic process in decision-making, more equitable allocation and distribution of resources and a high quality of life for all Kenyans. In order to achieve the Vision, the Second Mid Term Plan of the Kenya Vision 2030 has prioritized several issues, including the implementation of the Constitution of Kenya 2010.

The County governments are, therefore expected to play a pivotal role in planning and implementation of projects and programmes that are aimed at translating these national goals and aspirations into highly productive ventures.

Following several stakeholder consultation and validation workshops held in 2013-2014, the TA together with the stakeholders picked out the key achievements and flagship projects and programmes that have successfully been implemented under devolution. One of the key achievements in the sector is the establishment of the Transition Authority. Others are analysis and the phased transfer of functions; determination of resource requirements for each of the functions; human resource management; capacity development; civic awareness, preparation of assets and liabilities inventory and facilitating the preparation of the Integrated Development Planning and Funding Mechanisms. These programmes are also earmarked to continue during the MTP II period.

County Budgeting and Budget Execution

County Budget Process

All the county governments complied with the April 30, 2014 deadline for the submission of the budget to the County Assembly. Most of the counties also complied with the legislations though challenges were faced in terms of balancing competing projects with the constraints of the budget, declining revenue collections, and overwhelming expectations from the public. The public participation forums organized for the discussion of the budget estimates were inadequate due to time constraints.

County Fiscal Strategy Paper (CFSP)

Information from the counties indicates that all counties prepared their County Fiscal Strategy Papers (CFSP) and submitted them to the County Assemblies. The main challenges reported by the counties were inadequate background information to advice on county ceilings, inadequate capacity to prepare the paper given that the counties are new institutions and lack proper baseline information and the format for preparation of the CFSP.

In view of this, the counties requested for a more focused and hands-on training on preparation of the CFSP. They also argued that the February 15th and 28th deadlines for the submission of the Budget Policy Statement (BPS) the CFSP respectively were too short to allow counties to realign their CFSPs to the BPS. Most counties did not also meet the deadline for submitting the debt strategy paper required to be submitted together with the CFSP.

All in all, the counties have embraced the Programme - based Budgeting and are gradually adjusting to it. It is noteworthy that all the counties were already collecting their own revenues and some had plans of cascading the collection to the lower decentralized units. There were also proposals to start collecting revenue electronically to curb corruption. In most counties revenue collection potential was yet to be fully exploited because there were cases where revenues were declining.

Establishment of the County Budget and Economic Forum

Section 137 of the County Governments Act, 2012, requires the county governments to establish a County Budget and Economic Forum. However, from the information from the counties, only 19 (40%) counties had set up the Forum. In some instances, the Forum was in place but not functional. This therefore calls for more sensitization on the importance and roles of the Forum to the members and the counties.

Budget Implementation and Execution

All the county governments prepared their appropriation bills for the FY 2013- 2014, including the supplementary budgets on time. However, while some counties had already embarked on preparing their implementation reports, others were relying on the report by the Office of the Controller of Budget. Garissa County for example reported having spent only about 40% of its budget. The county attributed the low uptake to the delays in procurement and low absorption capacity.

Internal Audit Department

While all the counties had set up the department for internal audit, the departments were not fully operationalized by the end of the review period. The County Audit committees had not also been set up in most of the counties to support the department. The counties however had operational County Treasuries

Technical Support and Capacity Building for Fiscal Decentralization

County Training Needs Assessment

A key component of the work of the TA is to provide technical expertise to support the county governments with skills to undertake their responsibilities with emphasis on budgeting and internal audit processes. This is being achieved by enhancing the capacity of the National Treasury and the 47 County Government Treasuries. During FY 2013-2014, two consultants were contracted to provide assistance in fiscal decentralization specifically handling budgeting and risk based audit.

The consultants carried out a needs assessment based on nine counties that would inform the content of the county capacity building manuals. The counties visited by the consultants included Kirinyaga, Nairobi, Isiolo, Mombasa, Machakos, Kisumu, Kakamega, Turkana, and Garissa. During the needs assessment exercise, the consultants were accompanied by officers drawn from the Kenya School of Government, the National Treasury, the TA and the Ministry of Devolution and Planning. Following this exercise, two training manuals were developed and validated in a retreat graced by key stakeholders. During the review period, the consultants also trained 94 County Budget staff and 94 County Audit staff on the sub-national budget and audit processes. This was done over a period of six months.

Mock Reviews

Under the program on technical support and capacity building for fiscal decentralization, the TA conducted fiduciary mock reviews in selected counties namely: Mandera, Makueni, Uasin Gishu, Bungoma, Kwale, Isiolo, Kiambu, Siaya, Garissa and West Pokot.

The areas identified for audit included:

- ◆ the first financial allocations to the county governments for the financial year 2012/2013; existing governance structure/administrative units and service delivery framework;
- ◆ the status of budgeting process and preparation of County Integrated Development Plans, Sectoral Plans and Spatial plans by the county governments;
- ◆ operations of the Financial Management Systems (IFMIS/GPAY/IPPD) and Human Resource Management in the county governments;
- ◆ existence of legislation, policies and 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 audit;
- ◆ counties' infrastructure and systems including offices, equipment, performance management, and reporting systems;



- ◆ capacity and capability gaps that would impede county governments' assumption their assigned functions;
- ◆ existence of needs assessment reports to inform planning and budgeting prioritization;
- ◆ status of employment in the counties, and how county governments have carried out employment and the cadre of human resource in the counties.

A consolidated report of the mock review indicated that the Local Authority Integrated Financial Operations Management System (LAIFOMS) in the counties was incapable of producing summary financial reports. At the same time, the counties had not been able to conduct risk surveys due to lack of structures and appropriate training. The report also showed that most counties had bloated public service due to inadequate consultation between the two levels of government. Moreover, the county public service scheme was yet to be fully developed.

County Budget Leadership Training

The TA, working with the Kenya Governors Strategic Execution Support (KEGOSES) and UTAWALA Project jointly launched a collaborative initiative with partners comprising Strathmore Governance Centre (SGC), Council of Governors (CoG), Commission on Revenue Allocation (CRA), and Office of the Controller of Budget (OCOB), to empower the county leadership in achieving a coordinated approach towards good governance and sound financial management in the county governments.

The initial training conducted during FY 2013-2014 targeted county officials such as the County Executive Committees (CEC) Members of Finance and Economic Planning; Chief Officers for Finance and Economic Planning, County Economic Advisors, Chiefs of Staff, County Secretaries, Clerks of the County Assembly and the Chairs of the Budget and Appropriations Committee of the County Assemblies. The county officials from across the county received training in public finance management; planning and budgeting; budget execution; devolution and public participation; monitoring and evaluation.

The multi-institutional leadership strengthening project envisages to achieve a number of outcomes including:

- ◆ Establishment of a database to aid county governments in planning and decision-making; Provision of a detailed report on the current and anticipated capacity needs of county governments;
- ◆ Provision of support to county governments from the constitutional offices and Transition Authority;
- ◆ Institutionalization of mechanisms to facilitate public participation in county affairs;
- ◆ Enhancement of capacity and entrenchment of good governance and sound financial management by county governments;

- ◆ Enhancement of coordinated and mutually beneficial accountability structures between county governments, the constitutional offices and TA; and
- Enhancement of capacity of the constitutional offices and TA in matters affecting institutional governance.

Monitoring and Evaluation of Public Finance Management in Selected Counties

In an effort to assess progress made in public finance management in the counties, the TA in conjunction with government officials and development partners went on a fact finding mission in three Counties in Nyanza and Western regions. The objective of the visits was to meet key stakeholders in the counties and specifically to identify the areas in PFM that required urgent financial and technical support from the Kenya government and its development partners. The mission met 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, Budgeting, ICT and Human Resource/Payroll.

The visits revealed that the counties had established their County Public Service Boards and developed their CIDPs as well as the county sectoral plans. The counties had used the CIDPs to inform the 2013-2014 county budgets. However, the County Economic Forum and the Sector Working Groups were yet to be established. The mission also found that the counties had established their Internal Audit Units, although they were facing a number of challenges. Some counties had made progress and gone on to establish the Audit Units in the sub-county. In all the counties, preparation of Risk Based Assessment Plan was also in progress.

With regard to county revenue collection, the counties were utilising the Local Authorities Integrated Financial Operations Management System (LAIFOMS) and were integrating the same with IFMIS. Similarly, work was ongoing to integrate IFMIS with Gpay. Revenue collection however was reported to fluctuate from month to month.

It is worthy to note that The CIDP and the Budget documents were both subjected to Public review through public radio broadcasts and in some counties' websites.

Other Capacity Building efforts on the Budgeting Process

The TA in collaboration with the Centre for Parliamentary Studies (CPS), organised a training programme for selected county assemblies on the budget cycle. The training programme was supported by the West Westminster Foundation for Democracy (WFD) under the Kenya Governance Improvement Programme (KGIP).

County Government Public Finance Management Transition Act, 2013 implementation Status

The County Governments Public Finance Management Transition Act, 2013 (CGPFMT Act) was repealed on September 30, 2013, effectively bringing the terms of the County Transition Teams to a close. To ensure uninterrupted service provision, the TA issued an advisory to the County Governments to expedite the passing of the finance bill, the revenue collection bill and the appointment of Chief Officers and Accounting Officers. It is noted that all the counties were still collecting rates using the by-laws pursuant to section 23 of the County Governments Public Finance Management Transition Act, 2013.

Forum with the National Assembly Committees

To address the organisation's budgetary constrains and other related challenges during the period under review, the TA together with the Office of the Controller of Budget and the Commission on Revenue Allocation, co-hosted a forum to deliberate on the issues with selected committees of the National Assembly. The three committees included the Budget and Appropriation Committee, Finance, Planning and Trade Committee and the Transport, Public Works and Housing Committee.

Emerging Issues, Challenges and Way Forward

- ◆ Public participation forums are expensive and most counties did not budget for them in FY 2013-2014. There is also lack of public interest to participate in the forums and those who take part demand to be paid. In addition, most Sector Working Groups do not have clear terms of reference to guide in the public participation meetings.
- ◆ 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.
- ◆ The Finance and Budget Committee members of the County Assemblies need to be properly trained to understand their roles and responsibilities.
- ◆ The Exchequer releases are sometimes erratic thus hindering proper planning and implementation of projects.
- ◆ Most counties have challenges with poor internet connectivity which interferes with optimal performance of IFMIS. Additionally, IFMIS does not have the revenue module posing a challenge in revenue collection.
- ◆ Most county officers need to be trained on Change Management
- ◆ Disparities in salaries and allowances between seconded/employed county staff and those inherited from former local authorities and low staff morale occasioned by lack of clear terms of service. Modalities to harmonize the salaries of the former local authorities' staff and the devolved staff needs to be put in place as weighs heavily on the county governments' revenues and financial resources.
- ◆ There are challenges in the prioritization of projects and programmes during the development of CIDPs, given the competing demands of the MCAs and the public. In some counties, there is continuous rejection of the CIDPs by the MCAs causing delays in implementation. Equity as opposed to equality in project resource allocation in the counties needs emphasis.
- ◆ The format for the preparation of the CFSP varies across counties. There is need to harmonize the same through an agreed upon single format. There is need to align the timeline between the release of the Budget Policy Statement and the requirement of the county fiscal strategy paper.
- ◆ Further staff capacity building is required to enable the counties staff propose programmes that match the budget allocated and to promote their compliance with the budget. Support is required to train Audit staff on Government Audit procedures.

CASE STUDY

500 Million
Amount of money
in Kenya Shillings
set aside by
Murang'a County
Government for
a flagship dairy
programme after
TA reassigned the
Agro Marketing
and Cooperative
Development
function to the
County Government

Murang'a Country Farmers Enjoy Access to Improved Dairy Farming Practices

Dairy farming is a key economic activity in Murang'a County. The County boasts of a great potential in dairy farming with an estimated 250,000 dairy farmers, capable of producing about 200,000 litres of milk a day. Over the years, dairy farmers in the County have not been realizing the maximum returns from the sale of milk, owing to the existence of middlemen.

Similarly, access to vital support services such as Artificial Insemination (AI) had proven costly following privatization of the service in the late 1980s. A single insemination cost a minimum of KES 1,500. This cost was not only prohibitive but also discouraged farmers from seeking the service hence negatively impacting on the overall milk production.

In early 2014, the TA reassigned the Agro Marketing and Cooperative Development function to the County Government under the Department of Agriculture, Livestock and Irrigation. The transfer triggered action from the County government which launched an ambitious KES 500 million flagship dairy programme. The programme is aimed at empowering farmers and enabling them to derive good profits from dairy farming. Through the programme, a total of KES 48 million was set aside to improve and provide Artificial Insemination Services. A host of radical operational changes were made including constructing roadside crushes where cows are inseminated at a cost of only KES 500 for a first insemination and one possible repeat insemination. This reduction in cost meant that the overall cost to farmers dropped by over 30% from KES 9.75 million to KES 3.25 million over a period of eight months. During the same period, repeats went down by 10% indicating an improvement in the efficiency. This initiative has further created new employment for 50 Animal Health Technicians/Inseminators, who double up as Agricultural Extension Officers responsible for providing farmer education. Notably, inseminations also increased from an average 300 to 900 per month, adding up to a total of 6,500 inseminations over the period. This is a number that would have been achieved over a period of not less than 21 months.

Promoting Citizenry Participation in Devolution



Enhancing Public Participation in the Transition Process

Citizenry and national and county government staff's understanding, buy-in and active participation in the devolution process is a paramount prerequisite for attaining a smooth transition. The absence of strong mechanisms to enhance national consciousness and unity during the process can likely lead to a weakening of national cohesion. Effective citizenry engagement through civic education and sensitization of public service staff are therefore important ingredients for supporting the process to a devolved system.

One of the very first steps that the TA took in FY 2012/13 was to establish an organisational website. The TA has been using this platform to educate Kenyans on its work and to report the progress being made towards attaining a fully devolved government system. During the same period, in conjunction with several government ministries namely, Ministry of State for Public Service (MSPS), Ministry of Local Government and former Ministry of Justice and National Cohesion and Constitutional Affairs (MOJNCCA), developed a set of civic education materials and embarked on a civic education program for Public Officers and the general public. This program was supported by UNDP and JICA and was expected to bridge into FY 2013/14.

Development of a Communication Strategy

The period 2013/14 was a critical phase given that the county Governments had already been inaugurated and the implementation of devolution had begun. The TA therefore undertook to develop a coordinated approach to its communication with different stakeholders. It is noteworthy that by the close of 2013-2014, the organisation's communication strategy was complete and in place. The strategy will form the basis for enhanced engagement with national and county staff and the public.

Development of the Public Participation Framework

In FY 2013/14, the TA collaborated with the office of the Attorney General and Department of Justice to fast-track the development of a public participation policy. A concept note and draft roadmap for policy development was prepared and shared with wider stakeholders towards the end of the April 2014. Following this, the TA participated in a workshop organized by the Kenya Law Reform Commission (KLRC) to review the model law on public participation. The model law is among those already shared with the county governments for them to modify and adopt as necessary. The County Governments are at different stages of converting the model law into Bills.

Development of the National Civic Education Framework

The TA worked with the Ministry of Devolution and Planning, the Office of the Attorney General and the Department of Justice to lead the process of developing the institutional framework for the coordination and delivery of civic education in the country. This led to a stakeholders' consultative retreat for all the actors involved in civic education during which a joint co-ordination framework was completed and adopted. The framework stipulates the coordination mechanism; civic education topics and messages; strategies and resources for delivery of civic education and a framework for monitoring and evaluation.

A sub-committee was set up to vet the content in the education and information materials being developed.

Deepening relationships with non-state actors

In an effort to establish and deepen relationships with non-state actors, the TA initiated collaborative engagements with the following institutions during the review period.

URAIA Trust: URAIA and the Kenya Institute of Curriculum Development had been negotiating on a possible collaboration to develop civic education curriculum on devolution since 2012. In January 2014, the two signed a Memorandum of Understanding (MOU) in which they also incorporated the TA and the Ministry of Devolution and Planning as partners. This milestone heralded the beginning of the all-inclusive process of the curriculum development for civic education. In the MoU, the TA and Ministry of Devolution and Planning undertook to mobilize resources for piloting, printing and disseminating the curriculum document.





Institute of Education and Democracy (IED): The TA engaged with IED with a view to forging a partnership for mobilising resources for financing civic education activities. The collaboration will also enable the two organisations to develop a comprehensive civic education strategy following a needs assessment in the counties.

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

Kenya National Chamber of Commerce and Industry (KNCCI): An MOU was developed between TA and KNCCI to partner in sensitizing their members on devolution. The MOU was signed in early 2014.

Sisi ni Amani Kenya (SNA-K): Through local NGO Sisi ni Amani Kenya (SNA-K), TA has expanded its civic awareness reach during the year using the NGO's Short Message service (SMS) which currently has a subscriber base of about 65,000. The messages disseminated are designed by SNK-K in conjunction with TA.
Reaching out to County government staff

The TA actively participated in the following forums to educate county staff on Kenya's newly devolved system.

No.	County	Progress
1	Isiolo	<ul style="list-style-type: none"> ◆ Educated heads of departments in the County Government on PFM Act and budgeting processes. ◆ Sensitized the new County Secretary on the processes of the County Government. ◆ During the one year anniversary celebrations, the public were sensitized on functions and progress of the county and the role of citizens in devolution process.
2	Kwale	<ul style="list-style-type: none"> ◆ Educated the ward administrators on devolution in the four sub-counties
3	Murang'a	<ul style="list-style-type: none"> ◆ Held one-day induction training and civic education for all public officers from the defunct local authority in all sub-counties. Topics covered included: devolution, county functions, management of human resources, change management, code of conduct and etiquette, communication, leadership and management of financial resources.
4	Kericho	<ul style="list-style-type: none"> ◆ Facilitated sharing of contents of Kenya Gazette Notice, Vol. CXVI – No. 20 of 7th February 2014, on the “Guidelines for Transition Staff to Counties” with County Government officials and heads of departments. ◆ A Consultative/sensitization meeting with the County Budget Controller and County directors of departments was undertaken.
5	Tharaka Nithi	<ul style="list-style-type: none"> ◆ Trained County Government staff on development of action plans. ◆ In conjunction with the National Gender and Equality Commission, coordinated a forum to sensitize and create awareness on violence against the elderly in society. The forum targeted and identified the victims.
6	Kisumu	<ul style="list-style-type: none"> ◆ Sensitized County Government employees on the role of the County Assembly Service Board and distributed the special gazette notice no. 20 of 7th February 2014 to government officers and the Civil Servants Union. ◆ Held a public forum on fiscal strategy paper. The TA Coordinator used the opportunity to educate the public on the budgeting process.
7	Trans Nzoia	<ul style="list-style-type: none"> ◆ Informed the private sector and farmers on major economic and political issues that affect their lives and educated them on citizen participation in the various activities of the County Government
8.	Narok	<ul style="list-style-type: none"> ◆ Accorded 30 free minutes on Mayian FM radio station for civic education. ◆ Discussed with 'SISI NI AMANI KENYA' Initiative, a group that is interested in partnering with TA in civic education to enable the NGO to develop text messages for this exercise.

No.	County	Progress
9.	Marsabit	◆ Sensitized the newly appointed County Chief Officers for County Government of Marsabit on Devolution; TA and its mandate; public participation and its place in all devolved organs; budget process; CIDP generation; and budget execution and reporting.
10	Nakuru	◆ 32 Public Health staff were educated on devolution, devolved functions and management of the same.
11.	Samburu	◆ Sensitized youth during the Anglican Church Youth Conference on the transition process to a devolved system of government process
14	Meru	◆ Ward leaders were sensitized on the importance of public participation in governance in the county.

Public Forums on Civic Education

During the celebrations to mark 50 years of independence held at the Kenyatta International Convention Centre in December 2013, the TA seized the opportunity to disseminate its information materials. Among the materials disseminated were: the Frequently Asked Questions developed by the TA, Citizen Handbook developed by URAIA, Civic Education on Devolution by K-NICE, and Journalists' Handbook by the Kenya Correspondents Association.



During the year, the County Transition Coordinator hosted county Uraia Trust in the counties. During the visits, Uraia interacted with the county government officials and distributed 2300 copies of the Constitution of Kenya 2010, a similar number of Volumes 1 and II of the Devolution Acts and 1440 copies of the Citizen Handbook.

At a forum in Nairobi county where Medium Term Expenditure Framework (MTEF) Budget was presented, the TA staff made a presentation on citizen participation. A total of 150 Frequently Asked Questions on Devolution booklets were distributed.

Similarly, at the Kegoses Consortium Training of county leaders, the TA made a presentaion on citizen participation.

Emerging Issues, Recommendations and Way Forward

Inadequate budgets to spearhead own civic education forums resulted in disjointed efforts in civic engagement and public participation efforts during the year. There is need for the National Government to step up funding for civic education and public participation activities in order to effectively fill the existing knowledge gaps and to enable Kenyans to adequately engage with the process of devolution as well as empower them hold their governments accountable.

CASE STUDY

20 million

Amount of money in Kenya Shillings set aside by Makueni County during financial year 2013-2014 for civic education. The programme has so far trained ward representatives, religious leaders and teachers from the 27 wards.

Makueni Invests KES 20 Million in Civic Education

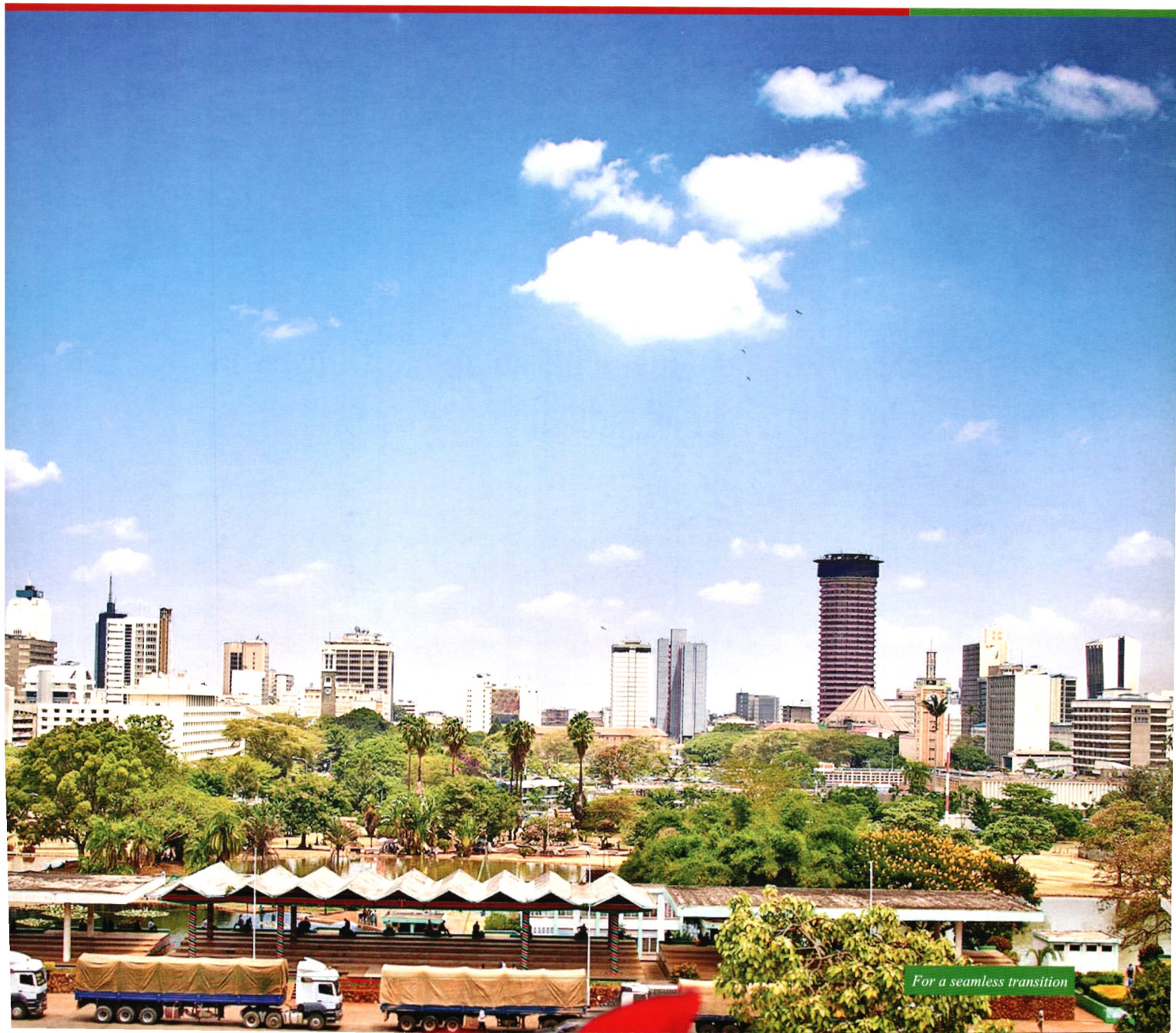
Without County Governments embracing Devolution and creating an enabling environment for their constituents to take advantage of the devolved system, it would be a long time before Kenyans realise the fruits of devolved governments. Makueni County residents will be set to benefit from a 20 million investment programme set aside by their County for civic education in FY 2013-2014.

The programme will reach an approximated 800,000 people in the County spread over an area of just above 8000 square kilometers. Enhancing public participation in matters of devolution is a key prerogative for the County. Through the programme, County leaders will be trained first and in turn roll out civic education initiatives in the grassroots. The civic education programme being undertaken together with the TA has so far trained 3 ward representatives selected from existing Community Based Organisations, religious leaders and teachers from 27 of the 30 wards.

The training programme emphasises proper governance, the roles and functions of county governments and public participation in county development.

The programme utilises a simple civic education handbook with practical exercises and illustrated sample training tools that can be used to deliver civic education in communities and groups.

Securing and Utilising Public Assets and Identifying Liabilities





Securing, Management, Audit and Transfer of Public Assets and Liabilities

The distribution of functions between the National and County Governments as enumerated in the Fourth Schedule of the Constitution of Kenya can only be adequately performed if the resources associated with these functions are also assigned appropriately to either levels of Government. Citizens can only continue to access quality services from the National and County governments if the resources (assets) are well secured and managed during the transition period.

To achieve the aforementioned, Sections 7 (2) (e), (f), (g) and (h) (ii) of the TDGA, 2012 provide for the TA to do the following:

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

Among the key accomplishments registered during FY 2012-2013 was the gazettelement of the Technical Committee on Transfer of Assets and Liabilities (TCTAL). This is an inter-agency committee whose membership consists of representation from: the TA board, Commission on Revenue Allocation, Commission for the Implementation for the Constitution, Public Procurement Oversight Authority, Privatization Commission, Ministry of Lands, Housing and Urban Development, National Treasury, National Land Commission, Attorney General, Civil Society, Ethics and Anti-Corruption Commission and the Auditor General. The mandate of the TCTAL is to advise the TA on issues related to securing, management and transfer of public assets and liabilities as well as facilitate the audit of the same.

The TA also developed and installed an Asset Management Information System (AMIS) with capabilities for data protection and remote access to the data using laptops or mobile phones from anywhere on the globe. All data on assets and liabilities is being captured with the help of the new system (AMIS). The system will in future be converted into a data centre that would offer real time data on all assets and liabilities owned by both the National and County Governments and will be integrated with all existing Government information systems.

During the period, the TA was also able to prepare unaudited inventory of assets and liabilities of all the defunct local authorities that was shared with the County Governments after they assumed office in March 2013.

With the ground well-secured for take-off, the 2013-2014 period saw the TA realize the following milestones:

Securing public assets and liabilities

The TA was able to facilitate the handing over of assets and liabilities of the defunct local authorities by the County Governments. This is an administrative exercise where the County Governments were to hold the assets and liabilities of the defunct local authorities in custody pending their audit and subsequent transfer. This was done in 27 out of the 47 counties.

The TA also publicized the moratorium on public assets as provided for in Section 35 of the TDGA, 2012. This was meant to ensure that public assets and liabilities were secured during the transition period. Following this, The TA prepared an inventory of all public assets and liabilities. This was data either submitted to TA or the TA together with OAG staff went and collected this data in the Counties.

The following pie charts illustrate the submission of data on public assets and liabilities to TA by the local authorities, MDAs and State Corporations as of June 30, 2014.

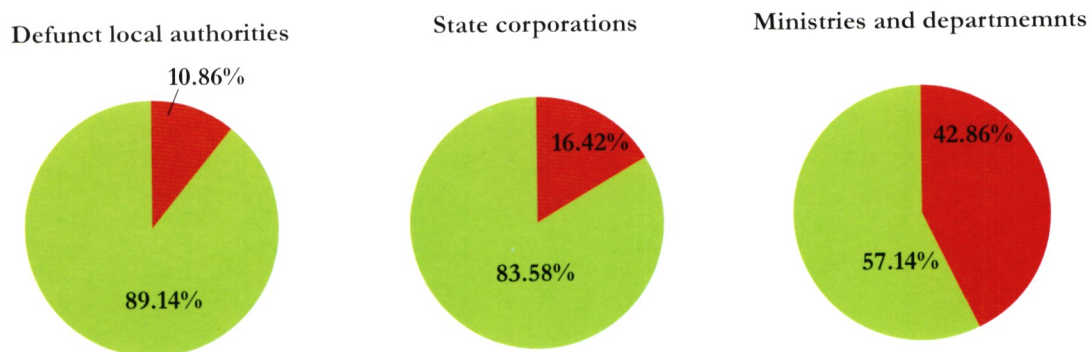


Fig. 1: 10.86% have **NOT** submitted. 89.14% **HAVE** submitted.

Fig. 2: 83.58% have **NOT** submitted. 16.42% **HAVE** submitted.

Fig. 3: 57.14% have **NOT** submitted. 42.86% **HAVE** submitted.

Managing Public Assets and Liabilities During the Transition Period

The TA developed a planning framework which it adopted as the roadmap for the management of public assets and liabilities during the transition period.

During this period, the TA issued advisories to facilitate the efficient management of public assets and liabilities. County governments for example were advised against evicting public officers within their Counties from Government houses, until the TA had prepared and validated an inventory of all Government houses and facilitated their transfer to the appropriate Government.

The TA developed and publicized the guidelines for disposal of boarded/idle assets by public entities. (See Annex 4)

The development of the mechanism and criteria for transfer and/or sharing of public assets and liabilities ensured that assets and liabilities were transferred and/or shared between the two levels of Government without affecting service delivery to citizens. One of the TA's highlights for the year was the successful management of the transfer process of 34 Agricultural Training Centres and 24 Agricultural Mechanization Stations from the National to County Governments vide the Guide for Transfer and Sharing of Public Assets and Liabilities.



Auditing Public Assets and Liabilities

The TA in collaboration with its key stakeholders commenced the Audit of public assets and liabilities during the year under review. It is on the basis of the audit that the public assets and liabilities were to be transferred to the correct entity to bear the responsibility or benefit thereof. The following are some of the activities registered towards this goal in 2013-2014:

- ◆ **Data Audit** - This ensured that the data held at the TA was adequately audited to determine its completeness.
- ◆ **Data Upload** - After data audit this data was captured onto the AMIS templates ready for analysis
- ◆ **Data Analysis** - This isolated the gaps that were in the captured data so that missing data would be sought and gaps filled. E.g. missing chassis numbers, LR numbers etc.
- ◆ **Planning for the pilot study on verification of assets and liabilities:** Comprehensive planning was done to carry out a pilot study on verification of assets and liabilities in 12 Counties namely: Machakos, Mombasa, Narok, Bungoma, Siaya, Isiolo, TaitaTaveta, Tana River, Nyeri, Garissa, Bomet and West Pokot.

The objectives of the pilot study were:

- ◆ To capture missing information in the inventory of assets and liabilities in the identified Counties so as to fill in any gaps that existed in TA records.
- ◆ To obtain clarity on the Terms of Reference for use by the County Teams to carry out the exercise of preparing and verifying the inventory of assets and liabilities in each County, under the stewardship of TA and OAG.
- ◆ Ensure the Counties which had not yet submitted their handover reports completed the exercise, and submitted the reports to TA. Pilot Counties that were yet to finalize the handover exercise were: Machakos, Bungoma, West Pokot, Garissa and Siaya.
- ◆ To identify aspects of the exercise that needed to be warehoused and/or interrogated further to enable the development a comprehensive inventory of all Government assets and liabilities.

The Pilot Study was undertaken in August 2014 and reports prepared. This informed the nationwide exercise on preparation and verification of assets and liabilities of the defunct local authorities.

Facilitating the Transfer of Public Assets and Liabilities

The TA facilitated the transfer and sharing of all ATCs and AMSs vide the Legal Notice No. 33 of February 28, 2014 (See Annex 1).

In addition, the Authority gave several public entities approvals for disposal of boarded/idle assets after the entities adhered to the disposal guidelines. The National Treasury, for example, obtained approval to dispose over 300 Government motor vehicles.

Emerging Issues

- ◆ Inadequate funding by the National government of activities related to public assets and liabilities - This has compelled the TA to seek additional funds from development partners in order to achieve its mandate.
- ◆ Lack of optimum cooperation by the MDAs in providing TA with data on assets and liabilities to enable it to prepare and validate an inventory of public assets and liabilities.
- ◆ The County Governments were sworn in without a validated assets and liabilities register or an opening balance sheet upon which future audits would be based on. This called for the urgent preparation and validation of the assets and liabilities and the transfer of the same facilitated to enable the County governments to legally own the assets and bear the liabilities.

Strengthening Institutional and Individual Capacity and Capability



Strengthening Institutional and Individual Capacity and Capability

Learning from other jurisdictions which like Kenya have adopted the ‘big bang’ approach to decentralisation, the Transition Authority (TA), views the assignment for enhancing the capacity and capability of county and national governments from a broad perspective which includes the adjustment of public policies, laws and regulations to support the devolution process; institutional reforms to align them to the devolved government structures; modification and reengineering of business processes to ensure that they lead to more effective delivery of public services and support more business-friendly investment climates; as well as enhance the systems for inter and intra governmental coordination. The assignment also includes measures to improve human resource capacity and skills; promotion of effective change management towards values aligned to the Constitution of Kenya (CoK) 2010; and enhancing opportunities for effective and informed citizen participation in all the governance processes.

When the TA assumed this assignment in the 2012-2013 period, it was clear that it was taking on the responsibility of laying a firm basis for endowing the county governments with the capacity and capabilities for a competitive yet cooperative devolved government; and that while the national government was largely in place, the county governments were not and had to be established as new without disruption in the delivery of public services.

Initial assessment of counties’ infrastructure and human resource preparedness undertaken during Phase 1, pointed to the need for immediate support in both areas in order to get the counties to settle down and get on with their operations. In response, the TA provided the resources to refurbish county offices and deployed Interim County Transition Teams and Coordinators to lay down the operational structures and systems. Governors, their deputies, Members of County Assemblies and other county staffs were inducted and trained on their roles in ensuring a strong kick off to a smooth transition. The trainings were based on the newly developed curriculum specifically for public officers. As at the close of the first year of the implementation of the transition, a draft National Capacity Building Framework that will guide the management of capacity building initiatives of the devolved system was ready. The TA was also in the process of developing a draft Rationalisation and Deployment Policy for the two levels of government.

During FY 2013-2014, the TA coordinated the capacity building activities for both levels of governments, assessed the capacity needs of counties and recommended necessary interventions. The organisation was also instrumental in coming up with policy guidelines for the deployment of staff.



Collaboration with Other Agencies to Develop Capacity Building Framework

National Capacity Building Framework

Building stakeholders' consensus in the development of a national capacity building guide is a critical prerequisite for TA's success in executing its mandate. During FY 2013-2014, the TA involved different key interest groups in the review of the draft National Framework for Capacity Building that it had developed in Phase 1, before finally adopting it. The draft is in the process of being harmonised with other strategies of other like-minded institutions such as the Ministry of Devolution and Planning. When complete, the Capacity Building Framework will be the single point of reference for all capacity building initiatives countrywide.

Developing a Capacity Assessment and Rationalization Plan

Following up on the work started in FY 2012-2013, the TA organised a consultative retreat attended by the Public Service Commission; the Directorate of Public Service Management; Ministry of Labour, Social Securities and Services; Salaries and Remuneration Commission; and pension schemes - LAPTRUST and LAPFUND - during which the Framework for Capacity Assessment and Staff Rationalisation was deliberated and sanctioned. The Framework outlines the modalities of conducting the staff rationalization process; it contains a plan for hiring and retaining staff in Public Service; and details staff's pension management and collective bargaining agreements in the devolved system.



Theresa Pardo and Donna Canestraro meeting with the Transition Authority Board of Kenya along with representatives from The World Bank.

Since then, various inter-agency sub-committees which are tasked with the implementation of the Capacity Assessment and Rationalization Program have developed their guidelines and have embarked on their work. The Program is expected to result in clear organisational structures and optimal staffing of the national and county governments; and an inventory of existing skills, competencies and gaps in both levels of government.

Staffing and Grading Structure in Place

The Inter-agency Committee on Rationalisation of Staff Deployment which comprises of the 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, started its work in FY 2013-2014. The Inter-Agency Committee drafted a generic grading and staffing structure to facilitate the standardisation of recruitment in the counties. The structure will be especially useful for providing a common approach to human resource management across the public service. Guidelines for entry and advancement within the grading structure have also been developed and awaiting adoption after which they will be used as basis for harmonization of salaries and allowances.

Terms and Conditions for Transfer, Secondment and Deployment

During the same period, the Committee developed draft guidelines for the terms and conditions of transfer, secondment and deployment of staff to the counties. The guidelines were shared with Governors and gazetted on February, 7, 2014.

The TA is confident that the said guidelines will facilitate the smooth administration of the transfer of service of seconded officers to county governments as well as provide structured mechanisms and processes for the deployment and redeployment of seconded officers between the two levels of government and across county governments. In so doing, it is necessary to safeguard the terms and conditions of service of seconded staff.

Payroll Cleansing

One of the steps that have been successfully concluded towards staff rationalisation during the FY 2013-2014 period is the cleansing of staff payroll in the national and county governments. After the transfer of functions to the counties in July 2013, the management of the payroll was deferred for six months to prepare the counties to assume the function. During that time, the TA in conjunction with the Directorate of Public Service Management (DPSM) in the Ministry of Devolution and Planning coordinated a one-week hands-on training course for county officers charged with payroll management. The function was transferred to the counties effective January 2014 and the TA has been facilitating the rectification of any anomalies detected in collaboration with the relevant ministries and the Directorate of Public Service Management in the Ministry of Devolution and Planning.

An issue that is waiting to be tackled fully is the challenge of poor internet connectivity and prolonged downtimes. As a result, the successful integration of the Integrated Personnel Payroll Database (IPPD) in counties such as TaitaTaveta, Turkana, Kwale, Marsabit and Wajir has been hampered.

Establishing a County Public Service Pension Scheme

The County Public Service Pension Scheme matter took centre-stage in FY 2013-2014 when the Technical Committee established to advise on the best pension arrangement for counties presented its report and recommendations prepared after wide consultations with stakeholders.

The Technical Committee recommended that an Umbrella Pension Scheme be established for the staff of counties and that the existing pension schemes for the defunct local authorities, LAPTRUST and LAPFUND be closed to new members with effect from the date the new Umbrella Scheme is established.

The Committee envisaged a new Umbrella Scheme anchored in an Act of Parliament enacted by the Senate to give it a national look and to protect public interest. The Committee further proposed that the administration of services of LAPTRUST and LAPFUND be merged to offer administration services to the new Umbrella Scheme and to the two closed funds.

The Committee also recommended that upon adoption of the report by the Council of Governors, that an Implementation Committee be set up to oversee the implementation of the recommendations of the Technical Committee.

The report was presented to the Council of Governors' Committee on Health, Labour and Social Welfare in February 2014, who indicated areas of further clarity. The Technical Committee prepared an addendum responding to the issues raised by the Governors and incorporated it into the report in the month of March. The Report was presented to the Council of Governors at a stakeholders' consultative meeting on April 29, 2014.

Key among the Technical Committee's recommendations were that a uniform Umbrella Pension Scheme under an Act of Parliament by the Senate (as per Article 96 of the Constitution of Kenya 2010) to safeguard the scheme against any arbitrary changes to any aspects of the scheme and to give it a national outlook and protect public interest, be established; and the new scheme be established under the management of a new Board of Trustees pursuant to the Act establishing the scheme.

Following the consultative meeting, the Council of Governors (CoG) on June 16, 2014, published an advisory to county governments, informing them that the CoG had endorsed LAPTRUST (Umbrella Retirement Fund) which had then changed its name to County Pension Fund as the scheme of choice to offer retirement benefits to members, officers and staff of county governments in line with the provisions of Section 132 of the CGA.

In line with its mandate, the TA responded to the COG's advisory and underscored the importance of anchoring the establishment of the county pension in an Act of Parliament as well as the need for the establishment process to take into consideration the interests of all affected staff including the 70,000 seconded staff from the National Government, the 32,000 defunct local authorities' staff and the newly recruited county staff.

The Authority further advised that the provision of pension for county staff be considered both as a transitional as well as a technical issue. The TA therefore proposed that the Taskforce on Parastatal Reforms works jointly with the Technical Implementation Committee proposed in the Technical Committee Report.

Transfer of Staff Records

The transfer of staff records to the counties is practically the culmination of a thorough staff rationalisation process. It is important that county governments not only have adequate physical resource capacity to manage staff records, but also have addressed and resolved pending staffing issues such as pension management concerns, and the absorption of seconded staff from the national government.

In May 2014, the Cabinet Secretary, Ministry of Devolution and Planning wrote to the governors to enquire on their readiness to receive staff records from the national government. In an advisory to the Cabinet Secretary, the TA cautioned that many county governments were yet to determine their optimal staffing levels and confirm staff seconded to their counties as envisaged in the County

Governments Act (CGA), 2012 and Gazette Notice 825 of February 7, 2014 on *Guidelines for Transition of Staff to the counties*. The implication was that the seconded staff still belonged to the National Government until the County Public Service Boards absorbed and confirm them in their establishments. Still, some staff had not received their salaries for as many as five months since deployment.

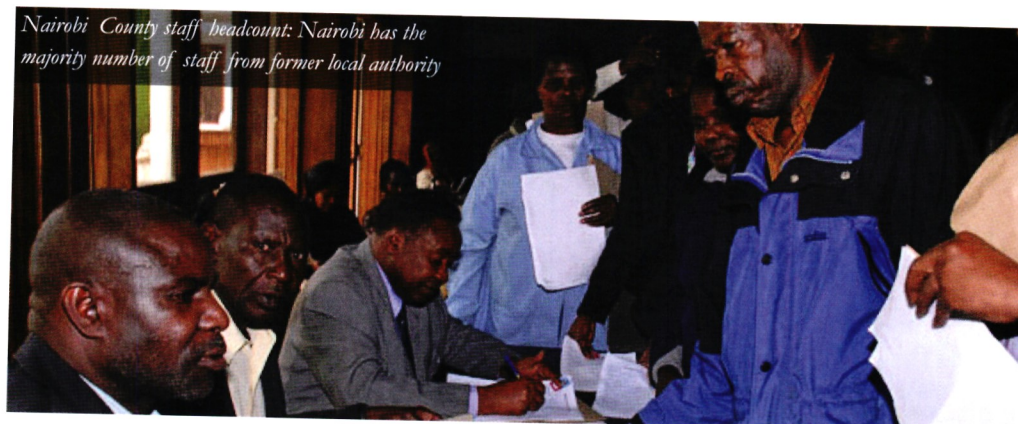
Moreover, with the county pension scheme yet to be established, the same staff files would be used by the National Government to process transfer documents.

In view of this, the TA recommended that ministries and agencies whose functions had been devolved to process all pending human resource issues before the transfer of the records; that counties conduct capacity needs assessment to determine their optimal staffing levels and confirm the appointment of seconded staff; and that the county governments make use of provincial and district files which were at their disposal until all the transition issues including pension were resolved.

Building a Human Resource Inventory in the Counties

At the start of FY 2013-2014 period, the TA undertook an audit of human resource in the county governments which started with a physical headcount of staff. The exercise was facilitated by the County Transition Team and resulted in an inventory of data that will be useful for decision-making especially in the counties, but also at the inter and intra-governmental levels. An in-depth analysis of the data revealed that there were a total of 102,653 employees, out of which 70,416 came from devolved ministries while those of former local authorities were 32,237.

In terms of percentage, the staffs from devolved ministries account for about 68.5% while those from the former local authorities account for 31.5%. Nairobi County has the majority of staff from former local authorities at 10,915. This is about a third of all staff from former local authorities in the country. Lamu County on the other hand has the least at 44. In devolved functions, Nakuru County leads with most staff (3,349) while Mandera has the least (346).

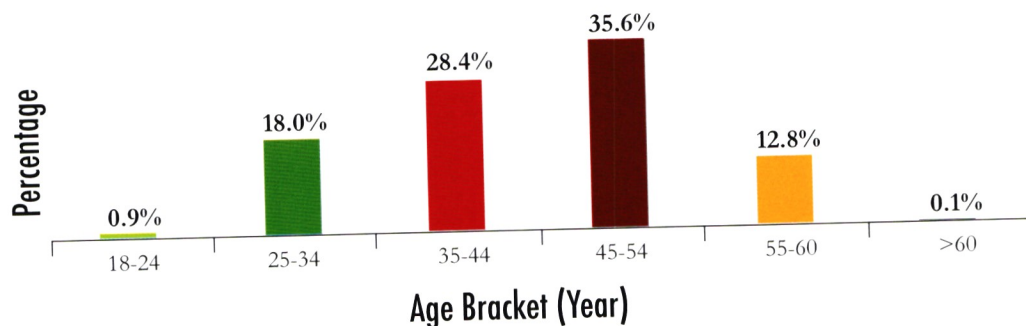


Nairobi County staff headcount: Nairobi has the majority number of staff from former local authority

the constitution requirements of two-third gender rule. However, closer scrutiny of the counties reveals some contrast with some counties having more than two third of the same gender. These counties are Lamu 76.0%, Wajir 73.5%, Turkana 75.0%, West Pokot 70.0%, Samburu 69.0% and Mandera 86.0%.

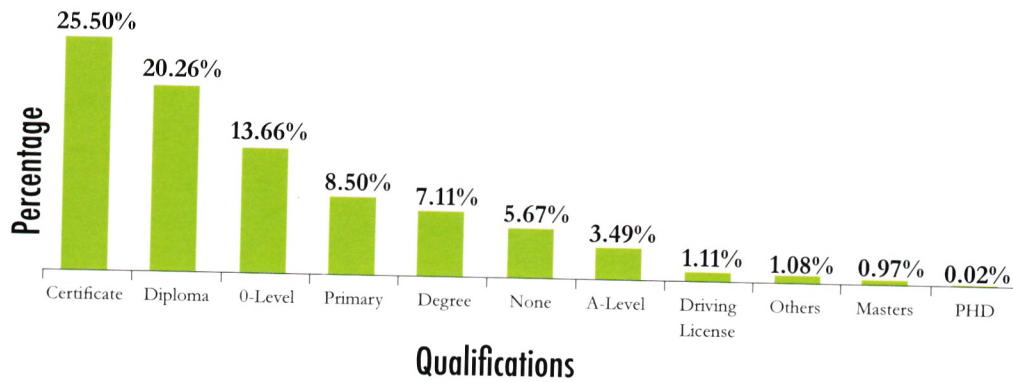
Distribution by ethnicity indicated that most counties have more than 70% of their staff from the same ethnic group leaving less than 30% for other ethnic groups. The counties with less than 70% staff from one ethnic group are; Taita Taveta 51%, Marsabit 29%, Isiolo 39%, Tharaka-Nithi 63%, Samburu 39%, Uasin Gishu 65%, Nandi 56%, Nakuru 50%, Narok 58%, Busia 58% and Nairobi 49%.

Distribution of staff by age indicates that 12.8% of the county work force will exit the service in the next five years. Further, a large majority of officers are in the age bracket of 45-54 (35.6%) and only 15,108 officers are in the youth bracket (18-34) accounting for partly 19% of the entire work force in the counties as shown in the diagram below.



In terms of qualification, majority of the employees have certificates and diplomas at 25.50% and 20.26% respectively. Those high numbers are explained by the fact that majority of staff in the county workforce are nurses who are at certificate and diploma level. A good number of employees have O-level qualifications, majority of them coming from the defunct local authorities. Comparatively, by counties, there are only eight counties with at least one employee with a PHD. These are Nyeri, Nyamira, Kiambu, Uasin Gishu, Nairobi, Nakuru, Busia and Murang'a. At Master's Degree level, Meru takes the lead with 98, followed by Machakos and Uasin Gishu at 63 each. Other counties with a significant number of staff with a Master's Degree are Nyeri 60, Kisumu 57, Nyamira 52 and Nairobi 50.

The TA disseminated its report on human resource audit widely within the national and county governments in March 2014. The report will be useful for human resource planning and management at both levels of government.



Capacity Development Interventions

Induction of County Leadership

A series of capacity development initiatives aimed at preparing the county leadership and staff for their roles in the transition to a devolved system took place in FY 2013-2014. The TA purposefully organised induction sessions for Governors, Chairpersons of County Public Service Boards (CPSB) and County Assembly Service Boards (CASB) very early during the year. Among the most common themes tackled during the induction sessions were the distinction between the roles of County Public Service Boards and the County Assembly Service Boards; the most efficient methods of ensuring a seamless management of human resources during the transition period; and how the counties would be funded.

Induction of County Executive Members

In the FY 2013-2014, the TA together with the Public Service Commission (PSC) organized an induction programme for County Executive Members in charge of Public Service; County Secretaries; County Public Service Boards and heads of Human Resources Management in the Counties. The topics covered in this training were:

- ◆ Human Resource Management.
- ◆ Staff Administration and Management.
- ◆ Modalities of Engaging the Public Service Commission and CPSBs.



Consultative Forum for Newly Appointed County Public Service Boards and County Assembly Service Boards

During the FY 2013-2014, the TA organized consultative forums for County Public Service Boards and County Assembly Service Boards' which brought together their Chairs and members; and representatives of relevant government departments, commissions and other agencies. The forums reviewed the Boards' mandates, policies and procedures. They also examined common issues pertinent to the Boards' operations with a view to developing and sharing best practices among the members.

Training of County Officers for County Operations

Financial Management Information Systems

The Integrated Financial Management Information Systems (IFMIS) was installed and was functioning well in 39 counties as at the end of October 2013. The other eight counties: Nyandarua, Murang'a, Baringo, Laikipia, Narok, Uasin Gishu, Busia and Vihiga had difficulty in operationalising the system due to internet connectivity challenges. All the counties had embarked on a massive exercise of training their staff on the usage of IFMIS to enhance county efficiency in service delivery. More than 700 staff had received training.

Payroll Management System

In conjunction with the Ministry of Devolution and Planning, the TA oversaw the training of 222 staff from different counties in the management of the Integrated Payroll Personnel Database (IPPD). With the new computerized payroll system, counties will be able to detect and respond salary related issues promptly, enforce statutory deductions accurately, and process requests for loans and advances more efficiently.

Coordinating the Development of Performance Management Framework for the County Governments

The mandate given to the TA cannot be performed without taking stock of the progress being made in the counties. This necessitated the development and dissemination of performance management guidelines for the counties. By the close of 2013-2014, it was noted that the counties were progressing well with the guidance and facilitation of the TA.

The responsibility of oversight, insight, and foresight over the governance of county governments lies with the Public Sector Auditor. Oversight addresses whether public sector entities are doing what they are supposed to do and serves to detect and deter public corruption. Insight assists decision-makers by providing an independent assessment of public sector programs, policies, operations, and results, while Foresight identifies trends and emerging challenges. By the close of 2013-2014, the TA noted that the counties were progressing well with the guidance and facilitation of the TA.

CASE STUDIES

12 million

**Amount in Kenya
Shillings that will
be used to finance
healthcare per
month up from 1.8
million per quarter**

Garissa County Increases its Healthcare Budget 2000-fold after Transfer of Health Services to County Governments

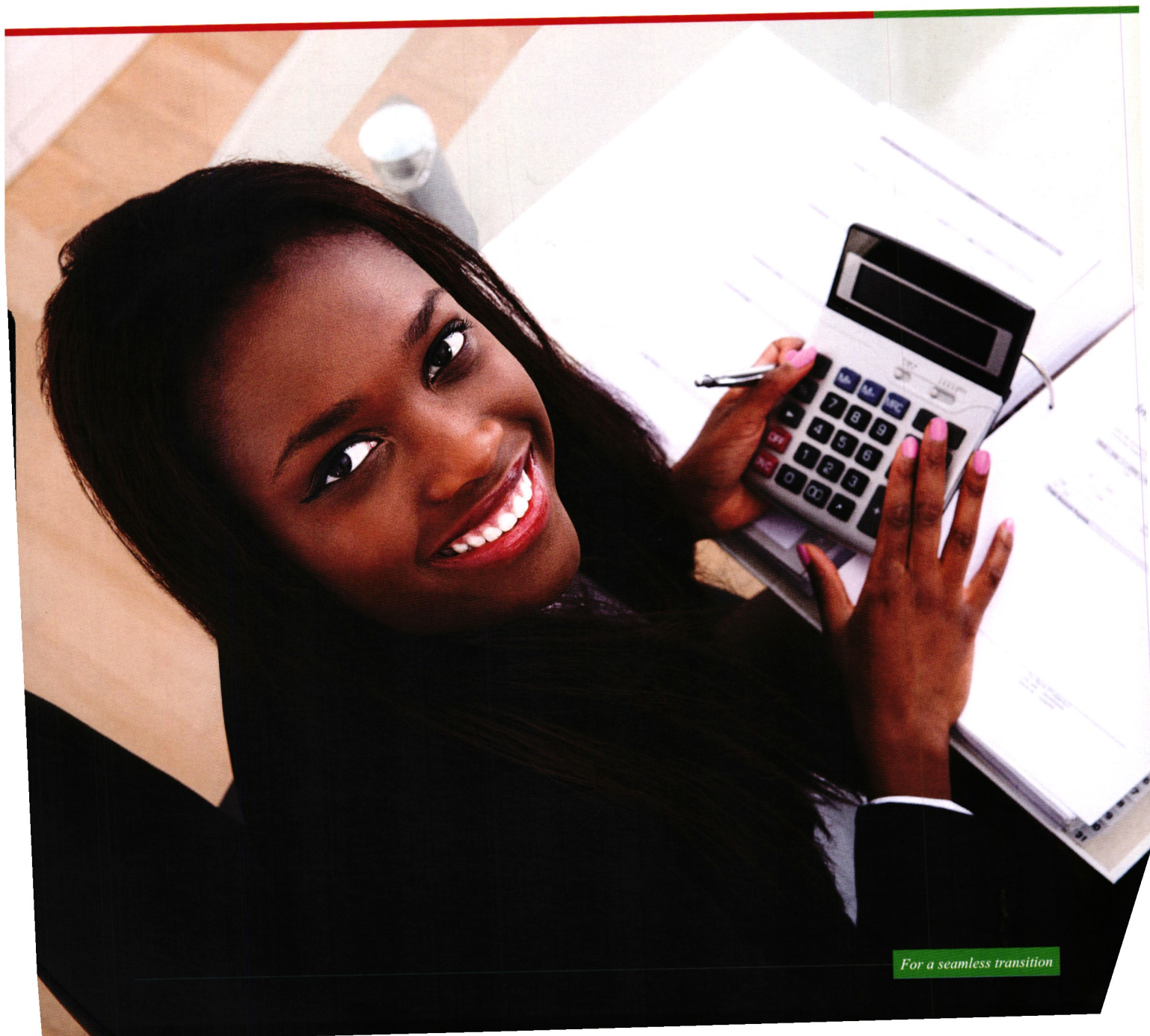
Over the years, most residents of Garissa County have relied on the Garissa Level 5 Hospital (formerly Garissa District Hospital), the largest and the only government hospital in the County. The Hospital caters for the over 90,000 households distributed across the vast and poorly networked region.

Prior to the transfer of the Health Services function to the County from the National Government, Garissa Level 5 Hospital was receiving a budget of KES 1.8 million per quarter from the National Government. Measured against the need, the amount was far from adequate considering the region's population. The TA, while exercising its mandate transferred the function of Garissa Level 5 Hospital to the Garissa County Government.

Since the transfer of the Health Services function to the Counties from the National Government, Garissa County has significantly increased its resource allocation to its main healthcare provider from KES 1.8 million per quarter to KES 12 million per month from the County revenue account. The more than 2000% increment has greatly helped the County to revamp its healthcare services. In FY 2013-2014, the County reported great improvements in provision of enhanced services and improved access to medical services by residents.

It is worth noting that the County has contracted an ambulance company to provide evacuation services in each of the four constituencies so as to increase reach and reduce preventable deaths. Maternal deaths and infant mortality, which have been a major problem due to the lack of enough medical facilities are being addressed. In addition, the County Government of Garissa has begun constructing a modern Maternity Unit and Mortuary to serve the residents.

Reports and Financial Statements



For a seamless transition

Foreword by CEO

It gives me great pleasure to present the 2013-2014 Transition Authority (TA) Financial Report. The Authority was established following a landmark report by The Taskforce on Devolution. Upon the establishment of the Transition Authority, the members were charged with the responsibility of “facilitating the realization of a devolved system of government through effective coordination of the transition process”.

The period under review (July 2013-June 2014) has been both challenging and productive for the Authority. This Annual Report summarizes the efforts made and results achieved by the Authority in carrying out its mandate, which was done against a backdrop of numerous new developments, and in the context of a rapidly evolving transition to a devolved system in Kenya.

This Financial report provides not only a short historical overview of the financial year 2013-2014 but also sets out the key activities undertaken by the Authority in the process of transiting the nation to a devolved system of government. The progress reported here is therefore, a culmination of the efforts of many individuals and stakeholders who provided their knowledge, expertise and capacity to ensure that the Authority delivers on its mandate.

During the 2013-2014 Financial Year, TA's Approved recurrent budget amounted to KES.659, 750,000. Under the same period, total expenditure was KES 659,732,296 leaving a balance of KES 17,704. This expenditure represents an absorption rate of 99.9%.

The funds were utilized as follows

I. Compensation to employees KES 384. Million.

II. Use of goods and services KES 276 million

We at TA are committed to ensuring that the Authority continues to undertake its mandate. We therefore intend to be even more engaged and visible to the citizens of Kenya and other key stakeholders during the months to come.

Detailed Key Achievements for the Entity

The 2013-2014 Financial Year was generally a successful one for the Transition Authority. Our success has been achieved by focusing intensively on embracing and managing devolution as it rapidly evolves in Kenya.

The Authority continued to collaborate closely with the Commission for the Implementation of the Constitution (CIC) and the Commission on Revenue Allocation (CRA), Office of the Auditor General, Ministry of Devolution and Planning, County Governments and other Government Ministries, Departments and Agencies (MDAs) to ensure a smooth transition to the devolved system.

On the whole, the transition to a devolved system of government has been well received and accepted by the general public in Kenya. Of note were the guidelines developed for the secondment of public officers to the County governments which were gazetted on 7th February 2014 and shared with the county governments. These guidelines provide a mechanism to be used in transferring the services of seconded officers to the county governments. They will also safeguard the terms and conditions of service of the seconded staff and ensure the human resource component is effectively managed during the transition period.

TA also in conjunction with other stakeholders formed the joint capacity assessment and rationalization of public service (CARPS) programme in accordance with the provisions of Section 7(2)(i) of the Transition to Devolved Government Act 2012 which requires TA to carry out an audit of all existing human resource.

The Authority continued to engage other stakeholders in audit and verification of public assets and liabilities especially the office of the auditor general, CRA and the state department on Devolution.

Ultimately, a zero draft report on management, transfer and audit of public assets and liabilities has been prepared and validation processes expected to be completed by 31st December 2014.

Other notable achievements over the period include the costing and transfer of delayed functions. The Authority therefore continued with consultations and provision of guidance with various stakeholders on

- ◆ Continued inventory and audit of assets and liabilities
- ◆ Preparation and dissemination of human resource audit report
- ◆ Provision of advisories on legal issues related to transition e.g Assets and Liabilities, Human Resource, Analysis and Costing of Functions, Planning and Budgeting
- ◆ Unbundled and transferred functions to counties as per schedule four of Constitution of Kenya 2010.
- ◆ Further unbundling and costing of functions
- ◆ Preparation and facilitation of the transition implementation plans (TIPS) by MDAs and County Governments
- ◆ Rationalization and deployment of staff framework
- ◆ Preparation of guidelines on classification of urban areas and cities
- ◆ Facilitation and coordination of capacity building programmes
- ◆ Facilitation and coordination of civic education
- ◆ Assessment and classification of urban areas and cities
- ◆ Facilitation on establishment of the County Public service Pension Scheme
- ◆ Participation in stakeholders meetings

Statement of Entity Management Responsibilities

Section 81 (1) of the Public Finance Management Act, 2012 requires that, at the end of each financial year, the accounting officer for a National Government Entity shall prepare financial statements in respect of that entity. Section 81 (3) requires the financial statements so prepared to be in a form that complies with relevant accounting standards as prescribed by the Public Sector Accounting Standards Board of Kenya from time to time.

The Accounting Officer in-charge of the Transition Authority is responsible for the preparation and presentation of the Transition Authority's financial statements, which give a true and fair view of the state of affairs of the Transition Authority for and as at the end of the financial year (2013-2014) ended on June 30, 2014. This responsibility includes: (i) maintaining adequate financial management arrangements and ensuring that these continue to be effective throughout the reporting period; (ii) maintaining proper accounting records, which disclose with reasonable accuracy at any time the financial position of the entity; (iii) designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements, and ensuring that they are free from material misstatements, whether due to error or fraud; (iv) safeguarding the assets of the Transition Authority; (v) selecting and applying appropriate accounting policies; and (vi) making accounting estimates that are reasonable in the circumstances.

The Accounting Officer in-charge of the Transition Authority accepts responsibility for the Authority's financial statements, which have been prepared on the Cash Basis Method of Financial Reporting, using appropriate accounting policies in accordance with International Public Sector Accounting Standards (IPSAS). The Accounting Officer is of the opinion that the Transition Authority's financial statements give a true and fair view of the state of the Authority's transactions during the financial year ended June 30, 2014, and of the Authority's financial position as at that date. The Accounting Officer in-charge of the Transition Authority further confirms the completeness of the accounting records maintained for the Authority, which have been relied upon in the preparation of the Authority's financial statements as well as the adequacy of the systems of internal financial control.

The Accounting Officer in-charge of the Transition Authority confirms that the entity has complied fully with applicable Government Regulations and the terms of external financing covenants (where applicable), and that the entity's funds received during the year under audit were used for the eligible purposes for which they were intended and were properly accounted for. Further the Accounting Officer confirms that the Transition Authority's financial statements have been prepared in a form that complies with relevant accounting standards prescribed by the Public Sector Accounting Standards Board of Kenya.

Report of the Independent Auditors' on the Entity

We have audited the accompanying financial statements of Transition Authority for the year ended June 30, 2014, which comprise: (i) a statement of receipts and payments; (ii) a statement of financial assets and liabilities; (iii) a statement of comparative budget and actual amounts; (iv) a statement of pending bills as at June 30, 2014; and (v) a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

The Transition Authority's Management is responsible for the preparation and fair presentation of the financial statements in accordance with International Public Sector Accounting Standards, and for such internal control as the management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on the financial statements based on our audit. We conducted our audit in accordance with the International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Transition Authority's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the entity as at June 30, 2014, and its receipts and payments, as well as cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

Statement of Receipts and Payments

	Note	2013-2014	2012-2013
		KES	KES
Receipts			
Exchequer Releases	1	659,750,000.00	758,000,000.00
Reimbursements and Refunds	2	2,148,330.00	-
Other Receipts	3	-	1,231,000.00
Total Receipts		661,898,330.00	759,231,000.00
Payments			
Compensation of Employees	4	385,061,493.00	236,847,341.5
Use of Goods and Services	5	271,995,332.00	333,429,700.45
Other Grants and Transfers	6	1,146,870.00	981,741.60
Social Security Benefits	7	1,528,600.00	-
Acquisition of Assets	8	-	161,345,756.00
Other Expenses	9	-	22,618,584.00
Total Payments		659,732,295.45	755,223,123.55
Surplus/Deficit		2,166,034.55	4,007,876.45

Statement of Assets

	Note	2013-2014	2012-2013
		KES	KES
Financial Assets			
Cash And Cash Equivalents			
Bank Balances	10A	451,374.30	1,337,036.00
Cash Balances	10B	-	527,962.00
Outstanding Imprests	10C	1,714,659.60	2,142,880.00
Total Financial Assets		2,166,033.90	4,007,878.00
Represented By			
Surplus/Deficit for the Year		2,166,034.55	4,007,876.00
Net Financial Possition		2,166,034.55	4,007,876.00



Statement of Cashflow

Receipts for operating income			
Transfers from National Treasury	1	659,750,000.00	758,000,000.00
Reimbursements and Refunds	2	2,148,330.00	-
Other Revenues	3	-	1,231,000.00
Payments for operating expenses			
Compensation of Employees	4	385,061,493.00	236847341.50
Use of goods and services	5	271,995,332.00	333429700.00
Other grants and transfers	6	1,146,870.00	981,742.00
Social Security Benefits	7	1,528,600.00	-
Other Expenses	9	-	22,618,584.00
Adjusted for:			
Adjustments during the year		-	-
Net cash flow from operating activities		2,166,035.00	165,353,632.00
Cashflow from Investing Activities			
Acquisition of Assets	8	-	161,345,756.00
Net cash flows from Investing Activities		-	161,345,756.00
Net Increase in Cash and Cash Equivalent		2,166,035.00	4,007,876.00
Cash and cash equivalent at Beginning of the year	10	-	4,007,876.00
Cash and cash equivalent at End of the Year	10	2,166,035.00	4,007,876.00

Significant Accounting Policies

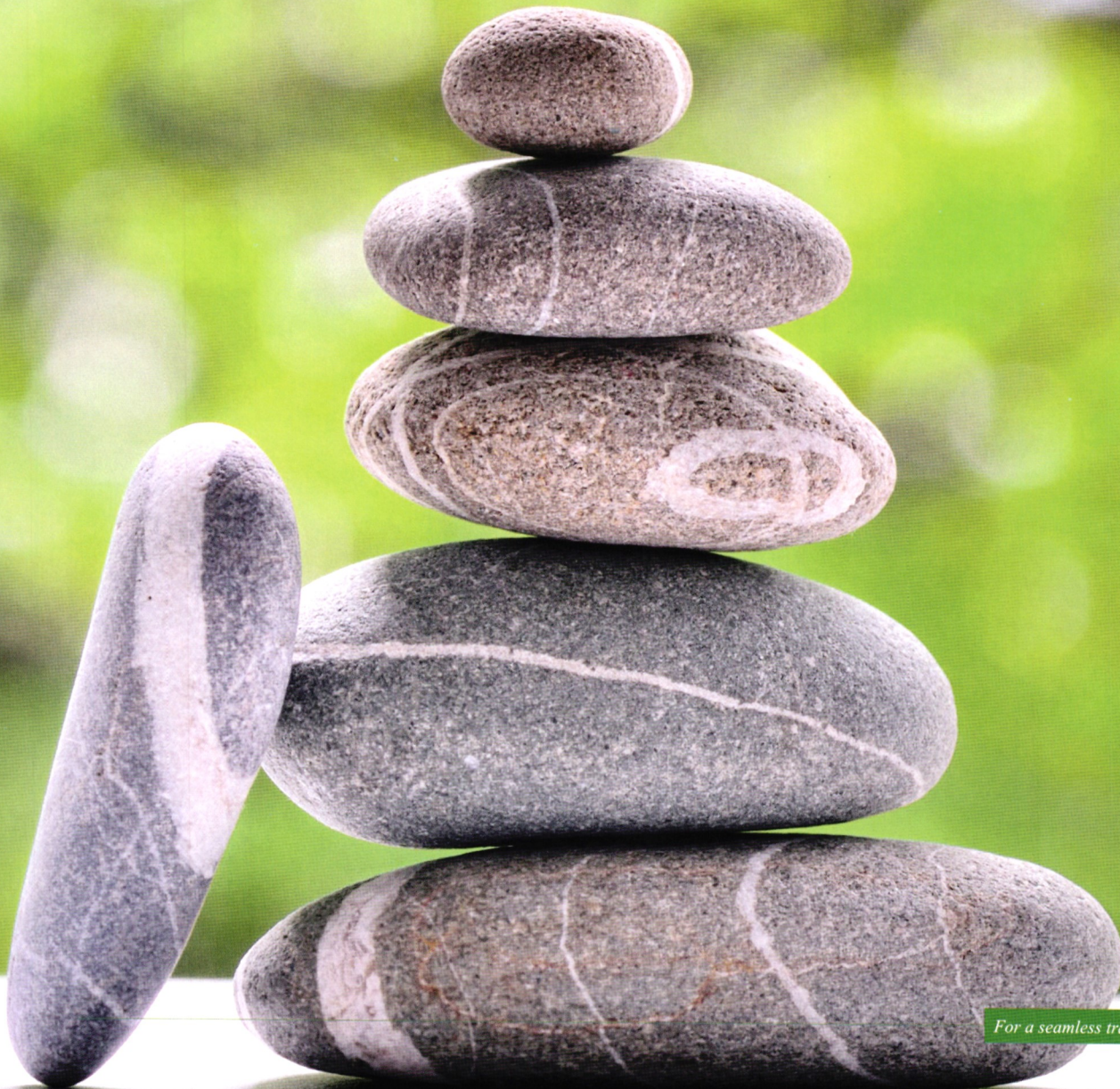
The principle accounting policies adopted in the preparation of these financial statements are set out below:

- ◆ **Statement of compliance and basis of preparation** - The financial statements have been prepared in accordance with and comply with International Public Sector Accounting Standards (IPSAS) with particular emphasis on Cash Basis Financial Reporting under the Cash Basis of Accounting. The financial statements comply with and conform to the form of presentation prescribed by the Public Sector Accounting Standards Board of Kenya. The financial statements are presented in Kenya Shillings, which is the functional and reporting currency of the *Transition Authority* and all values are rounded to the nearest thousand (KES'000). The accounting policies adopted have been consistently applied to all the years presented. The financial statements have been prepared on the cash basis following the Government's standard chart of accounts. The cash basis of accounting recognises transactions and events only when cash is received or paid by the *Transition Authority*.
- ◆ **Recognition of revenue and expenses** - The *Transition Authority* recognises all revenues from the various sources when the event occurs and the related cash has actually been received by the *Transition Authority*. In addition, the *Transition Authority* recognises all expenses when the event occurs and the related cash has actually been paid out by the *Transition Authority*.
- ◆ **In-kind contributions** - In-kind contributions are donations that are made to the *Transition Authority* in the form of actual goods and/or services rather than in money or cash terms. These donations may include vehicles, equipment or personnel services. Where the financial value received for in-kind contributions can be reliably determined, the *Transition Authority* includes such value in the statement of receipts and payments both as revenue and as an expense in equal and opposite amounts; otherwise, the contribution is not recorded.
- ◆ **Cash and cash equivalents** - Cash and cash equivalents comprise cash on hand and cash at bank, short-term deposits on call and highly liquid investments with an original maturity of three months or less, which are readily convertible to known amounts of cash and are subject to insignificant risk of changes in value. Bank account balances include amounts held at the Central Bank of Kenya and at various commercial banks at the end of the financial year. For the purposes of these financial statements, cash and cash equivalents also include short term cash imprests and advances to authorised public officers and/or institutions which were not surrendered or accounted for at the end of the financial year.
- ◆ **Pending bills** - Pending bills consist of unpaid liabilities at the end of the financial year arising from contracted goods or services during the year or in past years. As pending bills do not involve the payment of cash in the reporting period, they recorded as 'memorandum'

or 'off-balance' items to provide a sense of the overall net cash position of the *Transition Authority* at the end of the year. When the pending bills are finally settled, such payments are included in the statement of receipts and payments in the year in which the payments are made.

- ◆ **Budget** - The budget is developed on the same accounting basis (cash basis), the same accounts classification basis, and for the same period as the financial statements. The *Transition Authority's* budget was approved as required by Law and as detailed in the Government of Kenya Budget Printed Estimates. A high-level assessment of the *Transition Authority's* actual performance against the comparable budget for the financial year under review has been included in an annex to these financial statements.
- ◆ **Comparative figures** - Where necessary comparative figures for the previous financial year have been amended or reconfigured to conform to the required changes in presentation.
- ◆ **Subsequent events** - There have been no events subsequent to the financial year end with a significant impact on the financial statements for the year ended June 30, 2014.

Annexes



Annex 1: List of Transferred Functions

Below is a summarized list of the functions that were transferred during the 2013 -2014 Financial Year under the phase two of the transition process.

1. Agriculture

- i. Crop Husbandry
- ii. Animal Husbandry
- iii. Fisheries

NOTE: All the above functions were transferred except the management of agricultural training centres and agricultural mechanization stations, which are shared assets and would be transferred after six months to enable auditing, verification and putting in place the requisite structures and mechanisms by the Transition Authority.

2. County Health Services

- ◆ The county health functions comprise the County health facilities and pharmacies including those in county and sub-county hospitals, rural health centres, dispensaries, rural health training and demonstration centres.
- ◆ Licensing and control of undertakings that sell food to the public including food safety and control;
- ◆ Veterinary services Enforcement of Waste Management Policies, standards and regulations

NOTE: All the above functions were transferred except **the procurement of essential medical commodities by the Counties which were delayed.** This follows an earlier agreement between the County Governments and the National Government that this will be from the Kenya Medical Supplies Authority (KEMSA) except where a particular commodity required by a county government is not available at KEMSA. KEMSA is being restructured to handle pooled procurement by the Counties. In 2013/14, the counties are expected to have virtual budgets and drawing rights for the consignment held at KEMSA.

3. Control of Air Pollution, Noise Pollution, and Other Public Nuisances

- ◆ Implementation of nationally set ambient air quality standards
- ◆ Licensing (for persons exceeding the permissible noise levels)
- ◆ Noise mapping and the development of Action plans

NOTE: All the above functions have been transferred except implementation of nationally set ambient air quality standards, will be delayed and transferred to County Governments within the transition period.



4. Cultural Services Public Entertainment and Public Amenities

These include – Casinos and other forms of gambling; racing; cinemas; libraries; museums including Garissa (Garissa), House of Coloums(Kilifi) Jomo Kenyatta Public Beach (Mombasa), Kabarnet Museums (Baringo), Kisumu Museum (Kisumu), Kitale Museums (TransNzoia), Loiyangalani Desert Museum (Marsabit), Mama Ngina Drive (Mombasa), Meru Museum, Narok Museum (Narok) and Wajir Museum (Wajir) ,CFCU Ukunda (Kwale) and CFCU Gede/Kilifi (Kilifi), County sports and cultural activities and facilities,) County parks, beaches and recreation facilities.

NOTE: All the above functions have been transferred because they were being performed by the defunct local Municipals which are part of the County Governments now, except the **Kenya National Library Services (KNLS)** because its services are not present in most Counties.

5. County Transport

County transport entails county roads including primary roads linking all sub-county headquarters, minor roads linking markets and administrative centres, Kenya Urban Roads Authority (KURA), Kenya Rural Rods Authority (KeRRA), Kenya Wildlife Service (KWS) and Kenya Forest Service (KFS), Mechanical and transport equipment, public road transport on licensing of public service vehicles operations; and ferries and harbors including development, maintenance and operations of ferries and harbors operating in inland lakes and waters.

- ◆ The functions transferred include primary roads linking all sub-county headquarters, minor roads linking markets and administrative centres. Maintenance and operations of ferries and harbors operating in inland lakes and waters, specific to Kisumu, Mombasa, Kwale and Homa Bay were also transferred.
- ◆ The functions delayed include Kenya Urban Roads Authority, Kenya Rural Roads Authority, Kenya Wildlife Service, Kenya Forest Service, Mechanical and transport equipment. The reason for the delay is that the current laws governing road management for KURA, KeRRA, KWS and KFS have not been amended or repealed.
- ◆ The mechanical and transport equipment is a shared function among the counties and the assets need to be audited and verified before the transfer is done hence shall be retained by the National Government for a period of six months during which the Transition Authority (TA) shall develop modalities of sharing the mechanical and transport equipment.

6. Animal Control and Welfare

The function was transferred under Legal Notice No. 16 of 2013

- ◆ Trade Development and Regulation (including fair trade practices and Cooperative Societies)
- ◆ County Planning and Development (CPD)

The function of County Planning and Development (CPD), which includes: Statistics, Survey and Mapping; boundaries and fencing; Electricity and gas reticulation as well as Energy Regulation, has been devolved to the counties.

The function has been further unbundled as below:

- ◆ **Economic Planning & County Statistical Services (EPCSS)**
 - ◆ **County Statistical Services (CSS)**
 - ◆ **Physical Planning** including formulation of County specific physical planning policies and guidelines, Preparation of county spatial and Local physical development plans, Development control and implementation of approved development plans;
 - ◆ **Mapping and surveys** including Title Surveys, Topographical Surveys, Provision of 3rd Order Geodetic Network, Mapping of Infrastructure, Utilities and Natural Resources, Any other Thematic Mapping within the County;
 - ◆ **Boundaries and fencing** - Determination of Property Boundaries, Solving of Property Boundary Disputes, Showing of Property Boundaries, Ensure Fencing and development Properties, Finalization of surveying of Administrative Boundaries within the Counties;
 - ◆ **Housing** - Management of Appropriate Building Technology (ABT) centres; Management and maintenance of houses that belonged to county, municipal and city councils, Prevention and Implementation of slum upgrading programmes (except for ongoing projects), Management of all offices and institutional houses whose functions have been transferred to the county.
- The County Governments Act, 2012 and The Urban Areas and Cities Act, 2011 assign physical planning functions to the counties thus the function is transferred to the County governments.
- ◆ **Electricity and gas reticulation and energy regulation** - Identification and implementation of the Rural Electrification Projects; Management of the Rural Electrification Fund; Development of isolated diesel stations; and Identification of the Renewable Energy Sites for development.

In general the function of County Planning and Development is a concurrent function between the National and County governments.

7. Pre-Primary Education, Village Polytechnics, Home Craft Centres and Child Care Facilities

The unbundled functions under the education function are:

- i. Pre-primary education
- ii. Village polytechnics
- iii. Home craft centres
- iv. Child care facilities.

Pre-primary education, home craft centres and child care facilities were transferred to county Governments under legal notice No. 16 of 2013 during Phase One and village polytechnics have been transferred under Phase Two.

8. Implementation of Specific National Government Policies on Natural Resources and Environmental Conservation, Including Soil and Water Conservation and Forestry

- ◆ This function entails soil and water conservation including implementation of county specific water conservation and forestry policies through water resource users, water pollution control, and borehole site identification and drilling.
- ◆ All this function has been transferred to county governments.
- ◆ Forestry which entails farm forestry extension services and forest and game reserves formerly managed by local authorities have been transferred except forests currently being managed by KWS, KFS and the National Water Towers (NWT).

9. County Public Works and Services

This entails the following: Public works including designing, documentation, post contracting, project management of construction and maintenance of public buildings and other infrastructural services, construction of footbridges; water and sanitation services including rural water and sanitation services, provision of water and sanitation service in small and medium towns without formal service providers, water harvesting (specific to counties), urban water and sanitation services with formal service provision including water, sanitation and sewerage companies, Water Service Boards, Water Services Regulatory Board (WSRB) and Water Resources Management Authority (WRMA).

All the above functions have been transferred except Water Service Boards, Water Services Regulatory Board and Water Resources Management Authority. These are bodies which cover more than one county and provide regulatory and framework services hence shall remain as functions within the national government.

10. Fire Fighting Services and Disaster Management

The above function was transferred under legal notice 16 of 1st February, 2013

11. Control of Drugs and Pornography

The above function was transferred under legal notice 16 of 1st February, 2013

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



This is a cross cutting function undertaken by various ministries and state departments. Its objective is to ensure Local participation in Governance issues and hence its transfer is immediate. Structures systems, processes need to be established at all levels from the county to the village.

13. Classification of Roads

To define, classify and allocate county roads, The Authority engaged all key Stakeholders and Development partners in the sector including but not limited to the Ministry of Transport and Infrastructure, National Assembly committee on Transport and Infrastructure, Roads and Civil Engineering Contractors Association (RACECA), Association of Consulting Engineers Kenya (ACEK), Registration of Engineers Board Kenya, Matatu Welfare Association (MWA), International Budget Partnership, Japan International Cooperation Agency (JICA) and the World Bank. Arising from the stakeholder engagements above, the Transition Authority recommended the following:

- ◆ National trunk roads should be classified as roads in Part A (Classes A, B and C) and County roads be classified as Rural Roads in Parts B and Urban Roads in Part C of the First Schedule to the Kenya Roads Act (No. 2 of 2007). This will be effective subject to realignment of all current legal provisions in the roads sector to define, classify and allocate all public roads to the National government and County governments as provided for in the Constitution of Kenya, 2010.

Table 1.1: Part A – National Roads

Class	Description
CLASS A	International trunk roads linking centres of international importance and crossing international boundaries or terminating at international ports.
CLASS B	National trunk roads linking nationally important centres.
CLASS C	Primary roads linking provincially important centres to each other or two higher roads.

Table 1.2: Part B – Rural Roads

Class	Description
CLASS D	Secondary roads linking locally important centres to each other, to more important centres or to higher class roads.
CLASS E	Any link to a minor centre.
CLASS F	Forest roads.
CLASS G	Roads serving Government institutions.
CLASS K	Roads accessing coffee growing areas.
CLASS L	Roads accessing settlement scheme areas.
CLASS P	National park roads.
CLASS R	Roads accessing rural areas.
CLASS S	Roads accessing sugar growing areas.
CLASS T	Roads accessing tea growing areas.
CLASS U	Unclassified rural roads including mining roads etc.
CLASS W	Roads accessing wheat growing areas.

Table 1.3: Part C – Urban Roads

Class	Description
CLASS UA	Urban Arterials.
CLASS UC	Urban Collectors including primary distributors, district distributors.
CLASS UL	Urban local roads including minor distributors, local streets, residential stand accesses, commercial and industrial stand accesses, shopping streets.

- ◆ Appropriate mechanisms to be established to facilitate a participatory process to define, classify and allocate all public roads to the two levels of government within the transition period.
- ◆ A balanced approach should be embraced on the transfer of roads function that blends both the technical and political dimensions.
- ◆ The Ministry of Transport and Infrastructure should provide service norms
- ◆ Standards relating to roads construction and maintenance.
- ◆ National government to provide capacity building to the County governments.
- ◆ Existing contractual agreements should be safeguarded and a mechanism should be developed to enjoin the county governments.
- ◆ The budgetary allocations to the roads sector should be increased to sustain and support the infrastructural development in the country.



Classification and Allocation of Roads to the National and County Governments

Further to the classification of roads, the Authority engaged Kenya Roads Board (KRB) and the Ministry of Transport and Infrastructure and has prepared a comprehensive report on the;-

- ◆ List and names of roads to be done by the National Government in each county
- ◆ List and names of roads to be done by the County Governments in each county ; and
- ◆ Establishment and operationalization of the interim/ transitional County Roads Committee.

The report was submitted the Senate, and presented to the Senate Standing Committee on Energy, Roads and Transport. (See Annex 4)

Annex 2: Gazette Notice on Regulations for Transfer of Assets and Liabilities

SPECIAL ISSUE

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Kenya Gazette Supplement No. 35

22nd February, 2013

(Legislative Supplement No. 13)

LEGAL NOTICE NO. 45

THE TRANSITION TO DEVOLVED GOVERNMENT ACT

(No. 1 of 2012)

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

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

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

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Transition to Devolved Government Act, 2012;

“asset” means a thing, whether tangible or intangible owned by public entity;

“Committee” means the technical committee established under regulation 4 of these Regulations;

“market value” means the price of an asset in an open and competitive market;

“public entity” includes a national government entity, county government entity, a State organ, public office or a local authority;

“public participation” means the involvement of the public in the decision making process; and

● “transfer” means the handing over of legal possession or control of an asset or liability.

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

Establishment of
Technical
Committee.
Membership of
Committee.

4. (1) The Committee shall consist of—

- (a) two members of the Authority;
- (b) the Principal Secretary for the time being responsible for matters relating to devolution;
- (c) the Principal Secretary for the time being responsible for matters relating to finance;
- (d) the Principal Secretary for the time being responsible for matters relating to land;



- (e) the Chairperson of the Revenue Allocation Commission;
- (f) the Chairperson of the Commission for Implementation of the Constitution;
- (g) the Attorney-General;
- (h) the Chairperson of the National Land Commission;
- (i) the Chairperson of the Ethics and Anti-Corruption Commission;
- (j) the Director-General of the Public Procurement Authority;
- (k) the Auditor General; and
- (l) two persons, who shall not be public officers and shall be appointed by the Authority.

(2) The members of the Committee under sub-paragraphs (b) to (k) of paragraph (1) may designate an officer from their respective State department to represent them.

(3) The Authority may co-opt any other members into the Committee as may be necessary.

Functions of the
Committee.

5. The functions of the Committee shall be to—

- (a) facilitate an audit of public assets and liabilities and to advise the Authority;
- (b) prepare, validate and submit an inventory of public assets and liabilities to the Authority;
- (c) advise the Authority on the transfer of shared assets and liabilities; and
- (d) recommend to the Authority the review or reversal of irregular transfer of assets and liabilities by public entities during the transition period.

Powers of the
Committee.

6. The Committee shall have the delegated powers of the Authority to—

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

7. (1) The Authority may engage a qualified person or firm to carry out the audit of assets and liabilities in public entities.

Audit of public assets and liabilities.

(2) A person or firm engaged to carry out the audit of assets and liabilities shall prepare and submit the inventory of the public assets and liabilities to the Authority.

(3) The Authority shall publish an inventory of all public assets and liabilities in the Gazette.

8. (1) A public entity shall make an application, to transfer a public asset or liability, to the Authority in the Form set out in the Schedule to these Regulations.

Application to transfer a public asset or liability.

(2) An application under this regulation shall be accompanied by the following additional information—

- (a) information that there has been public participation in making the decision to transfer the asset or liability;
- (b) a summary of the comments received from the public under sub-paragraph (a);
- (c) the value of the asset to be transferred;
- (d) the value for which the asset is proposed to be transferred;
- (e) an independent valuation of the asset, by a registered professional;
- (f) a statement of the original purpose for which the asset or liability was acquired;
- (g) the implication of the proposed transfer of the asset or liability; and
- (h) information on how the public entity has complied with legal requirements for transfer of public assets and liabilities.

9. (1) Subject to section (8), the Authority may approve the transfer of an asset or liability, where—

Instances where an application may be considered for approval.

- (a) the Court has made an order for the transfer of the asset or liability;
- (b) there is a legal charge or mortgage over the asset and the person to whom the asset is being transferred has followed due legal process; or
- (c) the transfer is in public interest.

(2) The Authority shall not approve an application to transfer a public asset or liability where the obligation arose during the transition period.

10. (1) A person may petition the Authority to review or reverse an irregular transfer of a public asset or liability.

Review or reversal of irregular transfer.

(2) A petition under this regulation shall be made in writing and shall state, as far as possible, all the details regarding the transfer of the asset or liability.

(3) The Authority shall carry out preliminary investigations to ascertain whether there were any irregularities in the transfer of the asset or liability.

(4) The Authority shall provide a copy of the petition to the public entity and may request the public entity to respond to the petition, in writing.

(5) Where after investigations the Authority determines that the transfer was irregular, the Authority shall review or reverse the transfer and shall—

- (a) notify the petitioner of its decision, in writing; and
- (b) publish the decision in the Gazette.

(7) Where the Authority acts on its own motion, the same procedure shall apply with necessary modification.

SCHEDULE

FORM

(r.8(1))

APPLICATION TO TRANSFER PUBLIC ASSET OR
LIABILITY

Name of applicant.....
P.O. Box.....
Tel.....

1. Description of Asset or Liability to be transferred (registration number, location and other relevant details).
2. Value of the asset or liability as at date of proposed transfer (attach valuation report).
3. Evidence of ownership of the property.
4. Date and value of asset on acquisition.
5. Name of the entity to which transfer is being made.
6. If there exists a contractual obligation attached to the asset or liability. (attach all documentation relating to the contract).
7. Justification or reason for the transfer of asset or liability.

*Where necessary please attach supporting documents.

Application made by:

Name.....
Designation.....
Signature.....

Official Stamp

Date

FOR OFFICIAL USE ONLY

Approved

Not Approved

Reasons for approval or disapproval

Made on the 12th February, 2013.

KINUTHIA WAMWANGI,
Chairman.

LEGAL NOTICE No. 46

THE CATTLE CLEANSING ACT

(Cap. 358)

PRESCRIPTION OF EFFECTIVE TICK DESTROYING AGENTS

IN EXERCISE of powers conferred by section 2 of Cattle Cleansing Act, the Director of Veterinary Services prescribes the following preparation details of which are specified in the schedule, to be an effective tick destroying agent for the purposes of the Act.

SCHEDULE

A suspension in water of DUODIP® 55% EC brand of Cypermethrin: Cyano (3-phenoxyphenyl) methyl 3 (2,2-dichloroethenyl) 2,2-dimethyl-Cyclopropanecarboxylate and Chlorpyrifos: 0,0-diethyl 0-3,5,6-trichloro-2- pyridyl phosphorothioate containing not less than 0.055 per cent of the active principle when such a suspension is used for cattle cleansing by hand spraying only at intervals of not more than seven days.

Dated the 7th February, 2013.

P. M. ITHONDEKA,
Director of Veterinary Services.

Annex 3: Projected Activities for Next Financial Year

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

- ◆ Audit of Assets, Liabilities and on-going and stalled projects and programmes.
- ◆ Costing of functions for county and national governments
- ◆ Further Unbundling of the devolved functions by the Ministries, Departments and Agencies.
- ◆ Evaluating, Monitoring and provision of the Transition Implementation Plans.
- ◆ Coordinating and facilitating the implementation of Civic Education on Devolution.
- ◆ Collaborating with National Government Institutions in Capacity building activities for the County Governments.
- ◆ Provision of Advisories and guidelines on the emerging transition issues.
- ◆ Rationalization of national and county government public service staff.
- ◆ Review of the urban Areas and Cities Act 2011.
- ◆ Assessment and classification of urban areas and cities
- ◆ Recommendation of the appropriate pension arrangements for the County Governments.

Annex 4: The Transition Authority Advisories on Public Assets and Liabilities

DAILY NATION
Friday July 11, 2014

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TRANSITION AUTHORITY

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+254-0710287090
E-mail: info@transauthority.go.ke
www.transauthority.go.ke

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P.O. Box 10736-00100
NAIROBI

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

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

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


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

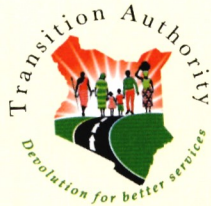
The following is the procedure for disposal of boarded public assets by County Governments, National Government's Ministries, Departments and Agencies (MDAs) during the transition period. This procedure in addition to the Public Procurement and Disposal Act:

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

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

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


KINUTHIA WAMWANGI, EBS
CHAIRMAN



TRANSITION AUTHORITY

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

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

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

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

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

**KINUTHIA WAMWANGI, EBS
CHAIRMAN**



TRANSITION AUTHORITY

REQUEST FOR TRANSFER OF PUBLIC ASSETS AND LIABILITIES

1. Name of public entity (transferor)

P.O BOX

Tel

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

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

4. Evidence of ownership of the property

5. When the asset/liability was acquired

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

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



TRANSITION AUTHORITY

ADVISORY ON ASSESSMENT AND CLASSIFICATION OF URBAN AREAS AND CITIES

The Transition Authority is established under Section 4 of the Transition to Devolved Government Act 2012 with the broad mandate of facilitating and coordinating the transition to devolved system of government.

Prior to the coming into effect of the Constitution of Kenya 2010, cities and urban areas were managed under the Local Authority Act, Cap 265. Upon promulgation the Constitution of Kenya 2010 and pursuant to the provisions of Article 184, the management of urban areas and cities moved from the Local Government to County Governments through the enactment of the Urban Areas and Cities Act, 2011.

The Urban Areas and Cities Act, 2011 outlines the procedure for the conferment of a city, municipality or town status. Sections 5(1), 9(3) and 10(2) of that Act lays down the criteria for classification for conferment with the status of a city, municipality and town, respectively. Section 5(2) provided for conferred with the status of special purpose city under the Act if an urban area has significant cultural, economic or political importance.

Under Section 54, the Act provides that, during the transition period assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under the Act, and shall be classified accordingly. Under section 7 of the Transition to Devolved Governments Act 2012, the Transition Authority is mandated to inter-alia "facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the Constitution". This means that during the transition period it will be the responsibility of Transition Authority to undertake the assessment and classification of urban areas and cities.

The Transition Authority has noted that some county governments have advertised and publicized the vacancies for Municipal Managers and Town Administrators while others have appointed Interim Municipal Managers and Town Administrators before their urban areas have been assessed and classified as required by the law. Except for Nairobi, Mombasa and Kisumu which were declared cities by the Act, all other urban areas have to be classified in accordance with the criteria laid down by the law.

It should be noted that among the key classification requirements under sections 5(1), 9(3) and 10(2) of the Urban Areas and Cities Act, 2011 is existence of an urban area or city integrated development plan in accordance with the Act. It is the responsibility of the county government to prepare integrated development plans for their urban areas under their jurisdiction.

Assessment of Urban Areas

While awaiting the preparation of integrated development plans by county government, the Transition Authority constituted a Technical Team with membership drawn from the ministries of Devolution and Planning, Lands, Housing and Urban Development, the Kenya Law Reform Commission, the Kenya Municipal Programme (KMP) formerly in Ministry of Local Government, the UN-Habitat, and the Transition Authority to assess urban areas on the basis of the criteria provided for in the Urban Areas and Cities Act, 2011 pending the preparation of the required plans and to make recommendations based on the assessment. The finding by the technical team is summarized below.

i) Resident Population Thresholds

The Act requires that for conferment to city status there should be at least five hundred thousand residents according to the final gazetted results of the last population census, at least two hundred and fifty thousand residents for a municipality and at least ten thousand residents for a town. In 2009 the National Bureau of Statistics undertook census for 215 urban areas. Based only on the resident population, the assessment revealed that, Kenya would have three cities (Nairobi, Mombasa and Kisumu), only two municipalities (Nakuru and Eldoret), 130 townships and 80 unclassified urban areas. The detailed results can be accessed on TA website: <http://www.transauthority.go.ke>.

It should be noted that 38 former municipal councils would be downgraded to townships, 36 formerly unclassified urban areas would qualify for classification as townships while one former municipal council (Karatina) and one town council (Wote) would not be declassified. It should also be noted that whereas cities and municipalities will be body corporate the management of towns will not be.

ii) Existence of Integrated Urban Area or City Development Plans

As noted above, any assessment of urban areas and cities and their classification will not be completed until county governments prepare the required plans.

iii) Demonstrable Ability to Generate Revenue to Sustain Operations

Sections 5(1)(c) and 9(3)(d) of the Act require that an urban area have demonstrable capacity to generate sufficient revenue to sustain its operation to qualify for classification into a city and municipality respectively. Section 10(2)(b) requires an urban area to have demonstrable economic, functional and financial viability to qualify for classification as a town. Analysis of revenue sources for former City Council of Nairobi, former municipal and town councils by the Technical Team revealed that, in the last three financial years, they were heavily dependent of the Central government. The revenue collection for the financial year 2011/2012 is in Annex 2 which can be accessed on TA website: <http://www.transauthority.go.ke>.

This means that the criterion is currently not attainable by any of the existing urban areas. However, the technical team also noted that, even in other jurisdictions/countries the national government supports the urban areas and cities in terms of financing some of their operations. Indeed, this criterion tends to contradict section 43 of the Act which provides that among others, funds of a board shall consist of monies allocated by a county assembly for the purposes of the management and service delivery of the city or municipal board.

iv) Demonstrable Revenue Collection or Revenue Collection Potential

As report pointed out above, analysis of past revenue sources revealed that all urban areas and the current three cities received a large amount of their revenue from the central government (now national government) ranging from 16% for Mavoko to 87% for Nyamache during the 2011/2012 financial year. It is a well known fact that there were massive leakages in the revenue collection by the defunct local authorities and that there is high potential to collect more revenue. However, until a detailed assessment is undertaken it is difficult to determine the exact potential. The Authority will undertake the analysis on revenue collection potential for urban areas across the country.

v) Demonstrable Economic, Functional and Financial Viability

Among the criteria for qualification for classification as a town is that an urban area must have a demonstrable economic, functional and financial viability (Section 10((2)(b)). Again this is an area which requires detailed assessment especially for urban areas which were not town councils but currently have a resident population which qualify them for conferment of the status of towns.

vi) Ability to Provide Services

In classifying an area as a city, municipality or town, the law requires that regard shall be had to the ability to provide the services listed in the First Schedule to the Act. Analysis of data and information collected by the Authority revealed that no urban area or city has the capacity to effectively and efficiently deliver all the required essential services. However, the Technical Team observed that some of the outlined services are not entirely necessary. For instance, it is not necessary to have an air port and airstrip or municipal stadium and a stadium. Equally, it is not possible for every city or municipality to have a marine water front.

vii) Infrastructural Facilities, Including But Not Limited to Roads, Street Lighting, Markets, Fire Stations, and an Adequate Capacity for Disaster Management

The Team noted that all these facilities and services are among the ones listed in the First Schedule to the Act and therefore, it was not necessary to have them as specific criteria.

viii) Institutionalised Active Participation by Residents in the Management of Affairs

Until the promulgation of the Constitution of Kenya 2010, public participation in the management of public affairs was not an explicit requirement. In addition to the new constitution, Section 12(d) of the Urban Areas and Cities Act, 2011, on principles of governance and management of urban areas requires them to institutionalise active participation by their residents in the management of the urban area and city affairs. Being a legal requirement it should not have been made a criterion for classification.

ix) Sufficient Space for Expansion

The technical team observed that the criterion of having sufficient space for expansion should not be a key criterion because, urban areas can expand irrespective of their current space status and therefore it should not be used as a classification criterion.

Overall Observations

The technical team concluded that, the classification of urban areas and cities as required by the the relevant pieces of legislation (UACA2011) is not achievable under the prevailing circumstances. None of the urban areas meet all the criteria for classification. Additionally, the county governments have not completed the preparation of their urban areas and cities integrated development plans as required by the Act and also the urban areas do not have the ability to provide the services listed in the First Schedule to the Act.

It would appear that the criteria for classification of urban areas and cities as contained in the Act was crafted without consultations of the technocrats and professionals in the areas of urban policy and urban settlement who would have given professional advice. Furthermore, the resident population threshold provided for in the Act is considerably higher than the one recommended by the Task Force on Devolved Government (TFDG) which was 250,000 and above for cities, 75,000 - 249,999 for municipalities and 10,000 - 74,999 for townships.

Moreover, although they will play important political and economic role the Act does not provide for classification of county headquarters. Based on the recommendations of the TFDG resident population threshold, Kenya would have five cities, 36 municipalities and 93 townships as listed in Annex 3 which can be accesses on TA website:<http://www.transauthority.go.ke>

Recommendations

- 1) The Technical Team was of the view that the law should be reviewed to reduce the resident population thresholds, provide more realistic services in the First Schedule and take into account further decentralized urban units in order to give a hierarchical chain of urban development in the future.
- 2) As in the case of section 5(2) which allows for an area to be conferred with the status of **special purpose city**, that section should be replicated under section 9 and 10 with reference to municipalities and towns respectively to take into account special purpose towns arising from special cultural events which were not considered in the Act.
- 3) Both the national and county governments should set aside funds to support the urban areas and cities because these units unlikely to develop capacity to generate sufficient revenue to sustain its operations in the near future.

Invitation for public participation

In line with the Constitutional provisions on governance and decision making process, the Transition Authority wishes to encourage all stakeholders to participate actively in the debate over the classification of urban areas and cities. You may send your comments to info@transauthority.go.ke over the next seven (7) working days.

County Governments are advised to desist from appointing municipal boards and town committee or appointing Municipal Managers and Town Administrators without following the due process of the law. Currently, unless the Urban Areas and Cities Act, 2011 is amended as suggested above, Counties have no legal basis for constituting management structures and systems for their unclassified urban areas.

KINUTHIA WAMWANGI
CHAIRMAN



For a Seamless Transition

TRANSITION AUTHORITY

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