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COUNCIL OF  
GOVERNORS

**STATUTORY ANNUAL REPORT  
2013/2014**



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**October 2014**

## FOREWORD



This report is prepared in compliance with the requirements of the Intergovernmental Relations Act, which establishes the Council of Governors (CoG). It reflects the execution of the CoG's mandate as provided for by the law. The report records achievements on the implementation of devolution, over the last one-year while giving snap shot of the challenges that the Council has faced in its existence so far.

The CoG is an all inclusive and non-partisan body comprising of the forty seven (47) county Governors. Its main functions are: the promotion of visionary leadership; the sharing of best practices and; acting as a collective voice on policy issues; the promotion of inter – county consultations; the encouragement and initiation information sharing on the performance of County Governments with regard to the execution of their functions; the collective consultation on matters of interest to County Government. Through the Council, Governors identify priority issues and deal collectively with matters of public policy and governance at the County and the National levels

The devolved system of governance has brought many gains. Through public participation, decision-making is now closer to the beneficiaries. With the budgetary allocation to the 47 counties, resources are now closer to the people for service provision and delivery. Through the supply chain, many of the county governments have created employment opportunities as well as channels for economic empowerment. The equitable sharing of resources across the counties has spurred development through improved infrastructure such as roads, healthcare facilities, markets, water and sanitation facilities and industrial parks.

Each of the County governments has made commendable effort in addressing the needs of marginalized groups such as women, youth and people living with disabilities. This has been done through employment, targeted projects, and procurement. The county governments have re-energized trade and investment and spurred the growth of the cooperative movement by through the facilitation of group formation to improve economic and social well-being of citizens across the country. Counties have demonstrated ability to take on their development priorities through the integrated development plans and allocation of resources to priority areas. With stretched capacity, Counties have taken up the challenge of developing the necessary legislation to guide and enforce regulations necessary to support the envisaged development goals.

The Governors saw from the onset, the need to have more resources allocated to the Counties to support development and public service delivery. The Revenue Allocation formula in our view, never took the payment of salaries into consideration. In addition, the CoG believes that resource allocation should be commensurate or follow the devolved functions. More specifically, the CoG is keen to ensure that revenue sharing between the two levels of government is fully grounded in the Constitution leaving no room for political discretion or tokenism.

The Council notes a worrying trend on the legislative front. The two houses i.e. Senate and the National Assembly have in the recent past, considered and passed laws that are retrogressive to devolved governance and if not corrected, will claw back on devolution. A total of twenty-three (23) proposed bills now are at various stages of development, require a close review to identify and correct provisions that go against the spirit of devolution.

Despite the challenges and the hurdles, we continue to hold the hope and maintain our dreams and belief in the promise of the Kenyan Constitution, which provides for an effectively devolved governance structure, delivering for the people of Kenya.

I want to recognize the role that the National government ministries and agencies have played in ensuring that the two levels of government function in a manner that promotes the rule of law in line with the tenets of the new constitutional dispensation. Together, we have and continue to make substantial contributions in ingraining devolved governance into institutions rather than into offices. The spirit of constitutionalism and the rule of law in our country is the key to successfully achieving progress. The Council recognizes the importance of working with other State institutions to build a better and secure Nation.

As I conclude, I reiterate commitment to the effective execution of our mandate to ensure that devolution delivers its promise to Kenyans.



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**H.E. ISAAC RUTO, EGH**  
**CHAIR, COUNCIL OF GOVERNORS**

## ACKNOWLEDGEMENTS

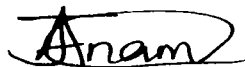
The Secretariat of the Council of Governors recognizes and appreciates the effort of all individuals, institutions and agencies that contributed to the drafting and production of this report. The support of the National Government Ministries and Agencies, Development Partners, the County Governments, other institutions and all the people of Kenya are specifically acknowledged. Our sincere gratitude goes to all stakeholders who have facilitated the Council's work, through technical, material and other means.

We reserve special thanks to the forty-seven Governors who, together, comprise the Council. Special mention of H.E Dr Evans Kidero, Governor Nairobi for guiding the production of this report on behalf of the Rules and Business Committee. We acknowledge the Deputy Governors, the County Executives, Chief Officers, County Secretaries, Chiefs of Staff, both the leadership and membership of the County Assemblies, for contributing to the development of this report.

Special thanks go to USAID/FIRM and UN Women for funding the development of this report and the Institute of African Developing Economies (IADE) for assisting us in the actual preparation and production of this report.

In a special way, we would like to appreciate the Secretariat staff for the hard work and commitment and specifically, their support towards the preparation of this report. I wish to single out for mention, the coordination effort of Roselyn Omolloh, Jackline Kerich, Sharon Makena, Rosemary Njaramba and Barbara Awuor.

To all who participated in one-way or another, we thank you and acknowledge your contribution.



.....  
**MS. JACQUELINE MOGENI**  
**AG. CHIEF EXECUTIVE OFFICER, COUNCIL OF GOVERNORS**

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## LIST OF ACRONYMS AND ABBREVIATIONS

ASAL	Arid and Semi Arid Lands
CAF	County Assembly Forum
CDF	Constituency Development Fund
CEC	County Executive Committee
CEF	County Emergency Fund
CEF	County Emergency Fund
CEO	Chief Executive Officers
CIC	Commission on Implementation of the Constitution
CIDP	County Integrated Development Fund
CoG	Council of Governors
CRA	Commission on Revenue Allocation
ECD	Early Childhood Development
ECD	Early Childhood Development
ICT	Information Communication and Technology
IEBC	Independent Electoral and Boundaries Commission
IGRA	Inter-Governmental Relations Act 2012
IFMIS	Integrated Financial Management Information System
KEMSA	Kenya Medical Supplies Agency
KNUT	Kenya National Union of Teachers
LMF	Loans and Mortgages Fund
MCA	Member of County Assembly
MRI	Magnetic Resonance Imaging
PFM	Public Finance Management
TA	Transition Authority
TSC	Teachers Service Commission
UN Women	United Nations Entity for Gender Equality and Women Empowerment



US	United States
WDF	Ward Development Fund
WDF	Ward Development Fund

## EXECUTIVE SUMMARY

The Constitution of Kenya 2010 heralds a new political dispensation for Kenyans. The Constitution spells out the devolved governance structure. It vests sovereign power at the National and County level. It stipulates two very important principles in the construction of the governance architecture for the national and county governments, i.e. that while the two levels of government are distinct and interdependent, their effectiveness is founded on the principles of consultations and mutual cooperation.

The Inter-Governmental Relations Act 2012, (IGRA), at sections 19 and 20, provides for the establishment of the Council of Governors (CoG). The Council provides a forum for:

- a) Consultation amongst County governments;
- b) Sharing of information on the performance of the Counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action;
- c) Considering matters of common interest to County governments;
- d) Dispute resolution between counties within the framework provided under this Act;
- e) Facilitating capacity building for governors;
- f) Receiving reports and monitoring the implementation of inter -county agreements on Inter -county projects;
- g) Consideration of matters referred to the Council by a member of the public;
- h) Consideration of reports from other intergovernmental forums on matters affecting National and county interests or relating to the performance of Counties; and
- i) Performing any other function as may be conferred on it by this Act or any other Legislation or that it may consider necessary or appropriate

The IGRA specifically requires that the CoG submit an annual statutory report to the Summit, Senate, National Assembly and County Assemblies at the end of every financial year. This first annual report, reflecting the activities for the period 2013/2014, provides a preliminary assessment of the progress made by CoG towards achieving its mandate. The Report, while providing an assessment of the various functions of CoG, also provides a comprehensive documentation on the Council's activities for the last financial year, highlights successes, challenges, lessons learnt and opportunities.

Collectively, the County Governments, through their established structures and activities, have ensured the smooth take off in the implementation of devolution. The Council of Governors and its entire membership are committed to laying a strong ground for participatory county planning. In so doing, care is taken to ensure compliance with the requirements for public participation, accountability, gender mainstreaming, equality, a rights based approach to service delivery. Pursuant to Article 227 of Constitution of Kenya, which requires the state to provide for preference categories in the allocation of contracts and the protection or advancement of persons, including categories of persons or groups previously disadvantaged by unfair competition or discrimination, the Council has embraced the national government's directive which requires all public procuring entities to reserve 30 per cent of the tenders to women, youth and persons with disability.

The drawback in the attainment of gender balance in the Council of Governors is in part a result of the manner in which Kenyans voted in the March 4, 2014 general elections. All the elected Governors are male and since the governorship is an executive position, there were no provisions for nominations to bridge the gender gap. Only 7 women were elected Deputy Governors out of 47. Sectoral Committees formed by the Council suffered the same gender imbalance because there were no women Governors who could be appointed Chairpersons. The gender imbalance has been mitigated by the position taken to have women County Executive Members to participate in these sectoral committees. Out of the CEC members countrywide, 151 are women and 297 are men. The Council of Governors has distributed women CECs in the membership of the 15 Sectoral Committees to comply with Article 27(8) of the Constitution.

The Council notes the gains made in implementing the devolved governance system so far. The successes have been complemented by the national government's approach on securing the lives of the citizens at the political, social and economic levels. However devolution faces challenges that directly affect service provision and progress in implementation.

*Council of Governors at a previous press conference.*



## **1.0 Introduction**

### **1.1 Background to Annual Report**

The Constitution of Kenya 2010 heralded a new political dispensation for Kenyans. The Constitution spells out the devolved governance structure. It vests sovereign power at the National and County level. It stipulates two very important principles in the construction of the governance architecture for the national and county governments; that while the two levels of government are distinct and interdependent, their effectiveness is founded on the principles of consultations and mutual cooperation.

The Inter-Governmental Relations Act 2012, (IGRA), at sections 19 and 20, provides for the establishment of the Council of Governors (CoG). The Council has mandate to provide a mechanism for consultation amongst County Governments, share information on performance of the counties in execution of their functions, facilitate capacity building for governors, and consider reports from other intergovernmental forums on national and county interests amongst other functions.

### **1.2 Objectives of the Report**

The objective of the Statutory Annual Report is to provide a comprehensive assessment of the Council's programs and activities in 2013/2014 financial while highlighting successes, challenges, lessons learnt and opportunities for implementation and success of devolution.

Specifically, the report provides an assessment of the various functions of the CoG as spelt out in sections 19 and 20 of the Inter-governmental Relations Act.

### **1.3 Approach and Methodology**

This report reflects the activities implemented for the financial year 2013/2014. To prepare this report, interviews and Focused Group Discussions were held with a mix of various county officials and citizens and a desk review of the documents and reports of the CoG. This approach aimed at generating views and gathering information on perceptions on the progress made in achieving devolution and the views on the role of the Council.

### **1.4 Structure of the Report**

The report is divided into five chapters. Chapter one looks at the background and context of the report including the legal basis and the objectives. Chapter two focuses on mandate of the CoG and its operations. Chapter three is on the performance of the CoG in relation to its functions as provided for in the IGRA highlighting the challenges and lessons learnt. Chapter four discusses the perceptions of devolution in the last one-year, while chapter five details the conclusions and the way forward for the CoG and by extension, devolution. This report presents a snapshot of activities for ease of understanding. However, detailed and sectoral reports of the Council's activities are available at the secretariat upon request.

## **2.0 Mandate and Functions of Council of Governors**

### **2.1 Mandate of the Council**

The 2010 Constitution of Kenya creates two levels of governments, which are distinct and inter-dependent. However, the Constitution is emphatic on the principle that the conduct of business relations at the two levels should be on the basis of consultation and cooperation.

Article 189 of the Constitution mandates the two levels of government to:

- a) Perform their functions, and exercise their powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;
- b) Assist, support and consult and, as appropriate, implement the legislation of the other level of government; and,
- c) Liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

The National Assembly has enacted various legislations including the Inter-Governmental Relations Act no. 2 of 2012, to give effect to the spirit of consultation and cooperation. The Act sets out the principles of Intergovernmental Relations, which apply to the national and county governments. It spells out the structures of inter-governmental relations while setting mechanisms for dispute resolution.

The Intergovernmental relations structures established by the Act include:

- a) National and County Government Co-ordinating Summit (sec 7);
- b) Intergovernmental relations Technical Committee (sec 11); and
- c) Council of County Governors.

### **2.2 Functions of the Council**

Section 20 of the Act provides for the functions of the Council as follows:

- a) Consultation amongst County governments;
- b) Sharing of information on the performance of the Counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action;
- c) Considering matters of common interest to County governments;
- d) Dispute resolution between counties within the framework provided under this Act;
- e) Facilitating capacity building for governors;
- f) Receiving reports and monitoring the implementation of inter -county agreements on Inter -county projects;
- g) Consideration of matters referred to the Council by a member of the public;
- h) Consideration of reports from other intergovernmental forums on matters affecting National and county interests or relating to the performance of Counties; and
- i) Performing any other function as may be conferred on it by this Act or any other Legislation or that it may consider necessary or appropriate

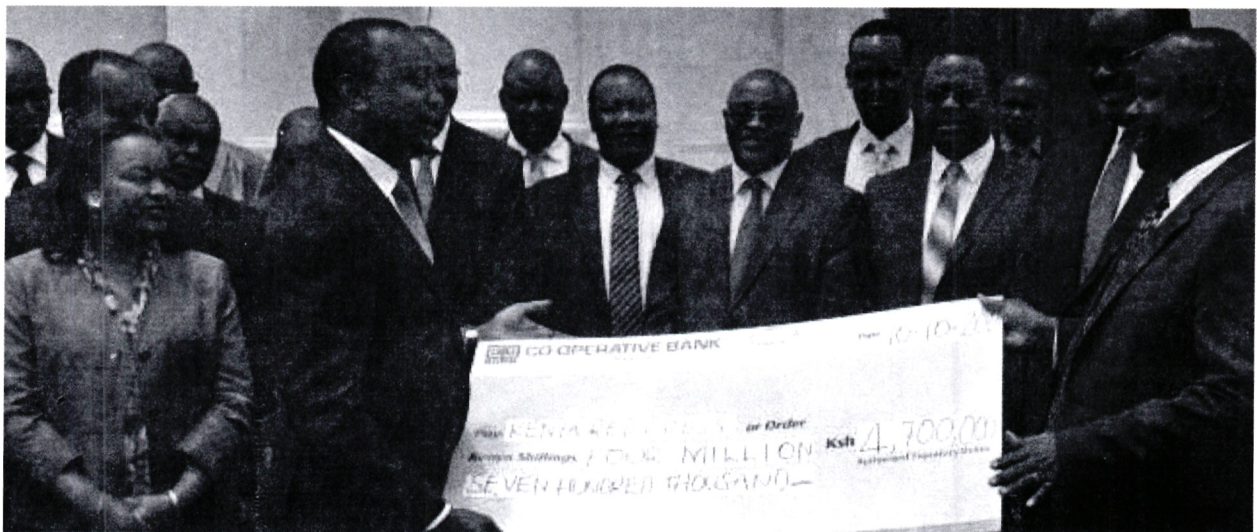
Through the Council, Governors identify priority issues and deal collectively with matters of Public Policy and governance at the County and National levels.

### 2.3 Operations of the Council

Sec 19(1) establishes the Council. It provides that, “*There is established a Council of County Governors which shall consist of the governors of the forty-seven counties*”. The Council comprises of all the County Governors from the forty-seven counties across the Republic of Kenya. The Act also empowers the Council to elect a chairperson and vice- chairperson among its members.

The CoG has now been in operation for slightly over one year. It has established itself both through the location of physical offices and the creation of thirteen committees informed by the following thematic areas (See Annex1 for details): Rules and Business; Legal affairs and Human rights; Energy, Roads and Transport; Finance, commerce and Economic Affairs; Education and ICT; Human Resource and social welfare; Health and Biotechnology; Agriculture and Land; Water, Mining and Natural Resources; Foreign Affairs; Security; Arid and semi arid land development; Trade and investment; Intergovernmental relations; and Urban Planning and Development.

To deliver on its mandate, the CoG is supported by a Technical Secretariat headed by a Chief Executive Officer and consists of programme and administrative staff. Being in the nascent stage, the secretariat is working on a staffing structure to develop relevant policies and a performance management system. The CoG receives funding from the exchequer as well as contributions from the county governments, which is inadequate to finance all its activities. To bridge this financing gap, the Council works in partnership with several development partners and other agencies to support its activities.



*Council of Governors present a Red Cross Donation to the President.*

## **3.0 Performance 2013/2014**

### **3.1 Introduction**

The CoG understands that devolution is meant to empower communities as well as take governance closer to the people. The Council is pleased to be part of the efforts aimed at ensuring that people at the grass roots take charge of their own affairs. The Council wishes to see citizens participate in the implementation of County Governments' activities while holding their respective county governments to account.

Over the past year, the CoG has engaged in various activities to ensure that the County Governments are supported to establish the requisite structures that will see the success of devolution and service delivery to the people of Kenya. This section presents a report on the various activities overseen or promoted by the CoG in line with its functions.

### **3.2 Establishment of consultative forums for County Governments**

Articles 6 and 189 of the Constitution provide for co-operation and consultation between the national and the county governments and amongst county governments. The CoG provides a forum through which consultations between the two levels and amongst counties takes place. For the past year, the following forums were convened: -

- a) The First Devolution conference was held in Kwale in April 2014.
- b) Several consultative workshops have been held with National Government Ministries and other key players in the Devolution arena including: The Senate, The Commission on The Implementation of The Constitution, the Commission on Revenue Allocation; the Transition Authority, Commission on Administration of Justice, Office of The Controller of Budget,
- c) The Council held two sectoral forums on the Devolved functions. These fora were useful in ensuring structured engagement between the two levels of government and ensuring that the policy at The National level informs practice at the County level and vice versa.
- d) The Council in conjunction with Kenya Women parliamentary Association held a joint meeting for Governors, all Women Senators, and all Women MCAs as a response to the issue of gender mainstreaming in County leadership.
- e) Other Consultative Meetings were held with Foreign Missions and Development Partners and the Private Sector.

The forums realized many outcomes including: Resolutions and communiqués issued specifically on various pieces of legislation. This created an enabling environment for involvement of women and youth; model laws; roles of Senators and Deputy Governors; for investments; security among others. These issues have been communicated to the relevant stakeholders. Discussions and agreements were reached on the proposed pieces of proposed legislation. Some of the challenges to the effective implementation of devolution noted during the fora included inadequate financing, inadequate capacity in terms of numbers and sector-specific as well as devolution-specific skill sets and competencies.

### **3.3 Sharing of Information on the performance of the counties**

Sharing of information on the performance of Counties in execution of their functions is aimed at enhancing learning and promotion of best practices as well as initiating preventive or corrective action. During the year under review, the CoG: -

- a) Developed a Strategic Plan 2013-2016 to guide its operations and engagement with other stakeholders.
- b) Established the CoG website from where the public can access information on COG and County updates, tenders, and job vacancies and officers of the counties through these websites. The public can also make inquiries, access services and download important information directly from the website.
- c) Enabled Counties to learn from each other on best practices in agriculture, health, water, infrastructure, legislative drafting, environmental management, and youth and sports and tourism promotion.
- d) Enabled information sharing through various county stakeholder forums. Two Study tours to the USA, the first one in September 2013. In their interaction with ICMA, COG learnt the importance of creating excellence in local governance by developing and fostering professional government management.
- e) Established a mechanism to provide technical and management support, training, and information resources in the key areas of performance measurement, community and economic development; environmental management; and technology.
- f) Shared reports on each sector's progress and best practice. The various CoG committees discussed the sector reports to identify best practices and lessons learnt.

The CoG however encountered some challenges that included lack of a robust ICT system for the CoG to provide a platform for all the good practices and lessons to be shared and replicated across counties. In addition, there was no clear reporting framework for Counties to share information and best practices.

In response, the COG is currently developing a robust monitoring and evaluation framework that would assist counties monitor progress on implementation of various programmes and identify the lessons learnt therein.

### **3.4 Matters of common interest to the County Governments**

In May 2013, the COG was part of the Task Force that was appointed to identify the challenges facing devolution. The task force identified the following issues, which required urgent attention: Delay in transfer of functions; Pending legislation on devolution; Perceived control of the transition process; Textual conflict of laws relating to devolution; Budgeting and public finance management; Staffing and structure; Operationalization of intergovernmental relations structures; Implementation of the president's policy agenda in counties; Representation of the presidency in national functions at the county level; Operationalization of the county gazette; Funding and implementation of educational infrastructure; Government infrastructure (roads maintenance) and Management of water resources.

Most of the recommendations made on the above issues are yet to be implemented. The effect of the non-implementation is the negative impact on the success of devolution for



many Kenyans. The Council has identified the following additional issues, which require urgent attention, as matters of common interest to the county governments: -

- a) Some of the land allocated to the National Government before devolution has been grabbed hindering further expansion and physical planning in the counties. In addition, land adjudication and registration is still part of the National government. National government officials in charge of land matters are reluctant to cooperate with their counter parts in the counties.
- b) The natural resources like minerals and other similar assets are classified as national resources. While the counties retain an interest, most of the decisions on natural resources are made at the national level without adequately involving the counties.
- c) Civic education on devolution could best be delivered and hosted by the County Governments. However, the National Government seems to be running with the agenda with little facilitation and involvement from the County Governments.
- d) Revenue collection and tax collection remains weak; the question of which tax should be collected by the national government and which tax category falls under the docket of the county governments is still a subject of debate.
- e) The County Governments on the one hand, have bloated human resources of largely unskilled workforce inherited from the defunct local authorities. On the other hand, they lack a number of skilled staff in various sectors such as health, veterinary services, infrastructure and finance.
- f) Insecurity is experienced within the counties. As it is, the County Governments have limited role in addressing security issues. The CoG calls for further discussion on how to involve counties on security matters at the County and below in the spirit of delegation as anticipated in the constitution.
- g) Liabilities inherited from the defunct local authorities continue to burden county governments.
- h) The National Government continues to perform some of the devolved functions. It is our submission that these functions and the resources that support their performance should be devolved.

In an effort to find solutions, key actions have been taken. These include, With the support of the relevant National government organs such as the TA to devolve the functions to the County Governments, consultative forum has been established for example on the issue of civic education but the two levels of government should hold more and regular meetings between National Government officials and the County Governments to agree on implementation of devolved functions; and the National Government has devolved some functional assignments without adequate resources such as such health services.

### **3.5 Capacity Building for County Governors**

The CoG has undertaken the following capacity building initiatives for governors: Facilitated the smooth transition for the Governors and Deputy Governors into their offices; Facilitated study tours to other countries such as the US, to study the issue of County governance, industrialization, how to attract investments and enhance people's participation; Establishing a forum for experience sharing and learning where speakers such as the Rwandan President and the Ambassador of Slovakia have been guest speakers. Governors have been able to learn from other parts of the world through these forums. The

CoG has also trained Governors on various issues such as public finance management, budgeting, and management of health services. Partners such as the Transition Authority, the CIC, CRA, National Government Ministries and development partners have supported these trainings. These skills and experiences have been cascaded downwards to the CECs, County Attorneys and other county officials. Counties have seen improved planning, improved financial management, improved legislation and increased efficiency in service delivery.

### **3.6 Monitoring Mechanisms for inter-county agreements on inter-county projects**

The CoG is yet to establish monitoring mechanism for inter-county agreements and inter county projects. However, we received reports from different sectors across the counties with some information on inter-county projects. Additionally, Counties are yet to enter into formal inter-county agreements and projects. We are working on modalities for the implementation of these agreements and projects.

### **3.7 Systems and Mechanisms in Place for Receipt of matters from the public**

The CoG is mandated to establish mechanisms for receipt of petitions, representations or complains from the public on issues of devolution and service delivery. This is yet to be done. Most counties have not developed citizen service delivery charters. However, the CoG has received only a few matters from the public through the use of its websites, letters, emails and personal visits. With a physical location and brand publicity, more public engagement is expected.

### **3.8 Mechanisms Established for Actions on reports from other Intergovernmental Forums**

According to the IGRA, the CoG is required to receive and discuss reports from other intergovernmental forums on matters affecting national and county interests. These forums include the National and County Government Coordinating Summit, and Intergovernmental relations Technical Committee.

In the past year, the CoG received one report from the Summit. The report was discussed and the recommendations implemented as required.

### **3.9 The Institutional Effectiveness of CoG to execute its mandate**

The CoG works through thematic committees. The committees keep a constant check on the activities of the National Government and monitor implementation of Service delivery across the 47 Counties to encourage and share best practice. Through the committees, the Council engages with the line Ministries of the National government to offer policy guidance to the Intergovernmental sectoral Committees as provided by law. The committees have power to interrogate, investigate, and question the national government administration and service delivery under the various thematic areas. The committees contribute to informed policy-making and legislative processes and help the Council to access a wide range of shared expert opinion and better informed of issues and perception across the 47 County Governments.

The work of the various committees is summarized below: -

### **3.9.1 Agriculture and Lands Committee**

The mandate of the Agriculture Committee is among others: To make proposals for subsidy and farm inputs for farmers; to monitor value addition for farmers; to make proposals with respect to food security issues; to promote sustainable agricultural practices; and to support the clustering of specific crop producing counties.

Given that agriculture is fully devolved under the Fourth Schedule of the Constitution, this committee has been very active. It has been involved in reviewing laws and policies for effective uptake of agricultural activities in the counties<sup>1</sup>. Some of the bills that the committee reviewed included the following:

- a) Pyrethrum Act, No 22 of 2013
- b) The Veterinary Professionals and Paraprofessionals Act, 2011
- c) Agriculture, Fisheries and Food Authority Act, 2013
- d) Fertilizers and Animal Foodstuffs Act, 2012
- e) Kenya Plant Health Inspectorate Service Act, 2012
- f) The Kenya Agricultural and Livestock Research Act, 2013

The committee made general recommendations on how the county governments could move forward on the agriculture agenda in the devolved context. A meeting with the Senate was convened to deliberate on the laws that seek to undermine devolution and engagement amongst counties on agriculture. Both the Senate and the COG agreed to have a harmonized approach to policy and legislative reviews.

Regarding the Community Land Bill, 2014, the overriding position was on the platform that the recommendations made earlier, were not considered and acted upon. Members made a recommendation on the need to include/co-opt county officials as ex-officio members of Community Land Boards, especially the sub-county/ward Administrators.

The committee has also been involved in the development of various policies including the Veterinary Policy and Cooperatives Policy.

There have also been various intergovernmental engagements with the Ministry of Agriculture, Livestock and Fisheries to harmonize the activities of the agricultural sector in accordance with devolution including transfer of agricultural staff and agricultural assets (i.e. ATCs and AMSs). There have also been engagements with other stakeholders including the private sector for value addition and support of agribusiness in the counties.

### **3.9.2 Arid and Semi-Arid Lands (ASAL) Committee**

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<sup>1</sup> See Annex 3

The mandate of this committee includes: To offer policy and legal proposals on issues of food security; to advocate for the release and proper use of the Equalization fund; to support and advocate for the formulation of the Draught management policy; to lobby for ASAL counties to manage food distribution as a disaster management measure; to offer leadership in examining the irrigation policy; and To encourage the sharing of information with respect to best practices in irrigation and food security management.

In the last year, the group was involved in coordinating disaster management in the various counties. It was convened to among others, review the proposed Disaster Management Bill. The committee pointed out a number of flaws in the proposed National Drought Management Bill.

Several recommendations were made which included the following: -

- a) Urgent development of a legal and policy framework at the county level on disaster management to guide the development of legislation on the same at the county level.
- b) There is need for cooperation between the National and County Government on the classification and distinction of disaster risk management at the National and County levels.
- c) That the CoG works with relevant CSs and CEC's and stakeholders in charge to review both policy and draft legislations at the National and County Levels.

The Committee further proposed amendments to the ASAL Policy so as to recognize the role of the county governments in ensuring food security.

### **3.9.3 Energy, Roads and Transport Committee<sup>2</sup>**

The mandate of this committee is among others, to evaluate policies and laws on Energy, Roads and Transport and assess their relevance and effects within various Counties; to encourage clustering and joint development projects that is trans-County in relation to each individual County Integrated Development Plan; to advise on a joint resource Mobilization program infrastructure development and ensure standardization of tender conditions for Inter-County and Inter-Governmental infrastructure development.

In the last year, the committee engaged the Ministry of Energy and Petroleum on a number of consultative meetings. In addition, development partners such as the World Bank have been actively engaged with the Ministry pertaining to the draft Energy Bill to develop a comprehensive framework for the regulation and standardization of the energy sector in Kenya. The national validation workshop was organized to review the Draft National Energy Policy and Energy Bill, 2014. The purpose of the national validation workshop was to primarily highlight the salient features of the two documents and invite comments from the various stakeholders in the energy sector. There has been a renewed attempt by the

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<sup>2</sup> For the detailed outcomes and progress, see Annex 2.

Ministry of Energy and Petroleum to engage the County Governments and stakeholders in the oil and energy sector in the private sector on the prevailing contentious issues.

The Committee is also mandated to develop viable proposals for County Governments in regard to the management of the roads sector in the country. There are on-going deliberations between the County Governments and the Ministry of Transport and Infrastructure. The committee considered the Roads Bill 2013 and made various recommendations. The recommendations were generally on the classification of roads in that, the roads within the authority of the County government and those within the Authority of the National government.

### **3.9.4 Finance, Commerce and Economic Affairs**

This committee has a mandate to seek and share best practice on modes of revenue collection for the sustainability of the counties; to explore and advise on effective procurement processes in conformity with the Public Procurement rules and regulations; to advice on budget and economic frameworks that ensure the efficient use of funds; to help establish a County specific PPP framework that is beneficial to devolved governance; to advise on County specific monitoring and evaluation policies and practice.

In the past year, the committee looked at the challenges in accessing finance, promoting commerce, and economic activities<sup>3</sup>. The committee engaged several stakeholders including the National Assembly, Senate, the CRA, Controller of Budget and the Auditor General among others. One of the central issues that occupied the deliberations of the committee was the challenge of accessing finances in good time and the need for factually correct reports. The Committee reviewed and made recommendations on several bills. These included: -

- a) The Public Finance Management (Amendment Bill) 2014 - Senate Bill no.11
- b) The Public Finance Management (Amendment Bill) 2014 -National Assembly Bill no. 14
- c) County Division of Revenue Bill 2014
- d) Public Procurement and Disposal (Amendment) Bill, 2013
- e) County Government (Amendment) No. 2 Bill, 2013
- f) The Constitution of Kenya (Amendment) (No. 2) Bill, 2013
- g) The Public Finance Management Act - Arrangement of Regulations

### **3.9.5 Human Resource and Social Welfare Committee**

This committee has a vast and challenging mandate. It exists to look into the modalities of seamless transfer of services and staff to the county governments; to streamline capacity building framework for County Governments and realize provision of demand driven training; to look into sustainable systems required in the county governments to ensure operationalization of the payroll; to seek information from stakeholders and other ongoing

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<sup>3</sup> See Annex 7.

reports on staff rationalization and recommend overall staffing levels; to examine capacity shortfalls in the County governments and find collective solutions to the same; and to explore solutions for releasing excess workforce within County Governments with due regard to the ramifications of the same.

In conjunction with the Ministry of Devolution and Planning and other stakeholders, the Council developed the National Capacity Building Framework. The capacity building framework aims to provide the philosophy and systematic approach to strengthening the capacity of both the national and county governments. Further, the framework provides the strategic outlook and concrete steps for capacity building that can be used to formulate, implement, monitor and evaluate capacity building interventions. It recognizes that the capacity building needs may vary over time in line with changing conditions and based on feedback and lessons learnt from national and County governments while carrying out their mandate and responsibilities. The framework is a dynamic and a living document that responds to the real needs of different stakeholders involved in implementing devolution.

The Council also played a part in the formulation of the rationalization strategy. The joint rationalization exercise between the National and County governments involves restructuring, staff redeployment, transfers and separation. It seeks to facilitate optimal utilization of staff and continuity of service delivery at the two levels of government. The rationalization programme is based on the need for optimal staffing in line with organizational mandate, and priority needs and may not necessarily lead to retrenchment unless so required at the two levels of government. The programme covers the public service at the national and county levels excluding state corporations, independent commissions and the disciplined service.

The Framework for the Capacity Assessment and Rationalization Programme was constituted and gazetted. A joint meeting agreed to have the recruitment of new staff –for existing positions- put on hold until the CARPS programme is finalized at the two levels of Government. Counties were encouraged to carry out suitability tests for the staff serving in the respective Counties as opposed to advertisement of positions in the Counties.

The guidelines for deployment of staff during the Transition period was gazetted to provide for the proper administration of the transfer of service of seconded officers to county governments, mechanisms and processes for the deployment and redeployment of seconded officers between the national government and county governments, among county governments and between the county governments and the national government. .

### **3.9.6 Water, Mining and Natural Resources Committee**

The committee's mandate includes: To make policy and legal proposals with respect to the issues related to water, natural resources and mining; Develop guidelines, regulations and make legislative recommendations specific to devolution in the three sectors; ensure there exists a framework for sharing of inter - County resources; and develop a structure for Community inclusion in management of natural resources.

The committee considered and reviewed the Climate Change Bill, 2014 and made recommendations for the review of the said Bill. The recommendations were specifically on the involvement of the County government on climate change mitigation.<sup>4</sup>

### **3.9.7 Urban Development and Planning Committee**

This committee dealt with all matters relating to the management of urban areas and cities within counties. The committee considered Policies and laws affecting urban development; as well as International best practices for the management of urban areas and cities.

### **3.9.8 Education and ICT Committee**

The committee has the following mandate: To review and make recommendations to the Council on Standards and Policies with respect to Education and ensure that these are availed and adopted in all Counties; to establish frameworks for mainstreaming ICT in County Government processes for efficiency and uniformity; to promote the development of an innovative environment in each county with regard to education and ICT; to establish a framework for civic education on devolution in County Governments; and to promote effective public communication mechanisms for timely dissemination of information among the 47 Counties.

In the last financial year, the committee reviewed various bills and existing legislation on education. On the Teachers Service Commission Act, 2013, the COG called for the review of the Act. In addition, the CoG initiated a suit in the court of law with the TSC over the issue of who has the authority to recruit and manage Early Childhood Development teachers. The CoG's position is to have the Act amended to cohere with the requirements of devolution.

Under the Basic Education Act, 2013, particular concern was that the Legal Framework does not recognize County Government and should be substantially revised to align it to the devolved system to ensure efficiency and decentralization. There is need to also consider the function of the County Governments in relation to the Youth Polytechnics.

In general, provision and management of education services is one whole area for the county governments to work closely with the National government. The constitution vests most of the responsibility for education provision and management with the national Government when most of these facilities would do better with the support and collaboration of the county governments.

### **3.9.9 Health and Biotechnology Committee**

The mandate of this committee includes: To monitor adherence with international standards of health services in counties; to make policy and legal proposals with respect to health services; to monitor and ensure that there is sustainable funding/financing for health services; and to monitor general establishment of health facilities at the counties.

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<sup>4</sup> See Annex 4

The committee held several sessions to among others, consider and review various Bills. The Council's general position on health and related issues consensus is that any authority established on health and biotechnology should work in harmony with the County structures and also secure representation of county officials in the regulatory bodies.<sup>5</sup>

The Committee considered the following Bills-:

- a) Kenya Medical Supplies Authority (KEMSA) Amendment Bill, 2013 and Kenya Medical Supplies Authority Act, 2013.

Notable here was the proposal to include the CoG and other professional bodies on the Board. Under clause 6(e) of the Bill the members proposed that the CoG should, through a competitive recruitment process nominate those persons for appointment

- b) Pharmacy and Poisons (Amendment Bill) 2014

The committee called for the Bill to be more representative and include membership from the counties. The team proceeded to propose various amendments to the Bill.

- c) The Alcoholic Drinks Control (Amendment) Bill 2014

The outstanding proposal was to align the Bill to be in tandem with the devolved functions and this was the gist of the various amendments that the members proposed on the Bill.

- d) Diabetes Management Bill 2014

Key is the inclusion and involvement of the county government when it comes to the implementation of the proposed law and consultation between the two levels of government before the enactment of the legislation.

- e) Physiotherapist Bill 2013

The need to include the County government in the regulation of the profession was underscored.

- f) Mental Health Care Bill 2012

Inclusion of the County government on mental health including consultations, administration of mental health facilities, the proposal was made to have county membership on the board through the CoG.

- g) Kenya National AIDS Authority Bill 2014

Proposal for representation of the County Governments on the Board

### **3.9.10 Intergovernmental Relations Committee**

The committee has an important mandate to execute. Its mandate includes: To develop a model advocacy charter for advocacy services; to establish ways of funding advocacy

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<sup>5</sup> See Annex 5



services; to ensure constant dialogue on matters of interest between the two levels of government; to undertake advocacy on matters of interest to the county governments; to Initiate Dispute Resolution frameworks at both levels of government; and to ensure compliance with the provisions of the Intergovernmental Relations Act.

The Committee considered proposals for the amendment of the Intergovernmental Relations (Amendment) Bill, 2014 were put forth and considered as follows. The committee did not find it necessary to have the establishment and formation of a Council of Deputy Governors and Council of the County Assemblies. Their formation would be in conflict with the CoG and create an impression of disunity amongst the county governments. However, the matter was discussed further at a forum between Governors and Deputy Governors and a working committee was formed to look at ways in which Deputy Governors can be more involved in management of county affairs.<sup>6</sup>

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<sup>6</sup> See Annex 6.

#### 4.0 Feedback from Counties

To obtain feedback on the effectiveness of COG in executing its mandate, county officials and citizens were also asked to give their opinions on whether devolution has worked, what they consider to be the success stories of devolution and suggestions on the role of CoG. Their responses are summarized below: -

##### 4.1 The Success of devolution so far

Majority believe that devolution is succeeding or has been a success so far, for the following reasons:

- a) They see the government near them. They do not have to go to the head offices in Nairobi. They simply go to the county headquarters and receive answers to their questions or the services that they require.

Optimism is high, as one leader aptly put it “Devolution is the best thing that has happened in Kenya and the Nation was wrong to have killed it after 1963; we would be at the same level as Singapore and Malaysia; but give us just 10 years now and we will be there”

- b) It has provided employment opportunities to the people in the county. Every ward or village at least has a person or more who have been employed by the county government. This is set to expand because the Counties intend to employ village elders and about village care givers in the next financial year.
- c) There is participatory governance in the counties. The public discusses and have opportunity to interact with the County Government. They give their views on the priorities they want to see being implemented and the county governments give consideration and implement them. The County Governments have appointed Sub-County and Ward administrators from among the local people (In other Counties, they appoint locally but shuffle so that no one serves in their own ward but each ward has their son or daughter sent somewhere for service; this eliminates possible nepotism and favouritism). They feel a sense of pride for being served by their own people.
- d) Some Counties have introduced scholarship funds to combat the high illiteracy levels and also secure good secondary and university education for eligible and deserving cases. The scholarships have enabled students to join national schools and pay for those who join universities under Joint Admission Board.
- e) ECD centres have been built and equipped in the County and some Counties have introduced school feeding programme whereby the children are provided with porridge. This has encouraged parents to release their children to attend early child hood education. This is something that was not there before the county governments came into being. Emphasis is being put on improving the level of education to make the Counties’ Human resource competitive.
- f) The County Governments have revived cultural activities, e.g. cultural dancing, cultural artefacts, etc. for both economical and social benefits. Competitions are

held from the ward level to the National level. This enables everyone from the Counties to participate.

- g) In the Agricultural sector, the Counties have focused on the mechanisation element through purchase of tractors, provision of fertilizers and pesticides to farmers for their farming purposes. They have also initiated programmes to improve livestock farming and rearing e.g. some bought Galla goats, which are drought resistance for the farmers in the ASAL Counties. They have provided hybrid cattle to improve on dairy farming in other Counties.
- h) They are improving markets in the counties for people to access markets easily. This is a boost to village enterprise and general rural economic development.
- i) An opportunity has arisen through devolution for county professionals living in Nairobi and other big Cities and the diaspora to contribute to their Counties development. This is being done through mentorship programs to children and also through professional guidance to the County Governments in developing their integrated development plans.

#### **4.2 Benefits of Devolution**

There is more equitable distribution of resources as described below: -

- a) There is better resource penetration to the youth, the aged, people with disability and the public in general. For instance, children/youths benefitted from County government scholarships in the last financial year.
- b) Some counties have established youths' talent centres to help in tapping and developing various youth talents, especially for those who are not in school. This is to assist the youth for social and economic reasons.
- c) The agricultural mechanisation through the wards is targeting the deserving cases to enhance agricultural outputs.
- d) For the elderly, the County Governments are benefiting people in different wards across the counties.
- e) The County Governments are considering or have established a youth, women and people with disability fund to offer loans to the youths, the old, people with disability to help them engage in businesses.
- f) Women funds are being considered to support women to take up business.
- g) Some Counties have established SACCOs per ward for the Youth, Women and other disadvantaged groups like persons living with disability.
- h) Counties have set aside 30% of the procurement tenders to women, youth and people with disabilities.
- i) Women have many official jobs either as Deputy Governors, or Chief Officers, and CECs or members of the County Assemblies.
- j) Most respondents were of the view that at the moment, almost 50% of people in the Counties across the nation have benefitted from devolution in one way or another.

#### **4.3 Public Participation ensured**

The Council notes that Counties are varied. Some are vast, some are small with dense population, and others have a better road network while others have real road and transport challenges. The Council is encouraged to see Public participation upheld through

the use of social media like Facebook; Use of notice boards and through partnerships with the Civil society groups.

The council has prioritized the development of model public participation policies and law to give guidance on how public participation should be done.

#### **4.4 Learning between Counties**

Some cross learning among counties continues to take place. There has been learning from foreign countries about infrastructure planning. Other areas of interest and local learning from other counties are the beautification programs for towns and urban areas. Other areas of learning are community and investor agreements.

#### **4.5 Performance of the Council of Governors**

According to the feedback from various stakeholders interviewed, the CoG was effective in the last one year. It was observed that Counties could not have been where they are, if CoG had not held ground and stood firm to uphold the spirit of devolution. The CoG has articulated its voice on issues that could have otherwise, slowed down the devolution process. Through collective bargaining, the CoG has supported the development of County Government policies and legislative framework.

#### **4.6 Challenges in Implementing Devolution**

Some of the challenges the Council and its membership faces include: -

- a) Inadequate funding by the National Government. The Council has inadequate funding and personnel, as are the Counties, which did not received adequate funding to perform their functions and funds transfers from the National Government.
- b) There were delays in recruitments due to lack of clear framework and guidelines from the Transitional Authority.
- c) Inadequate skilled human resources in the Counties affecting service delivery in various County governments.
- d) Where there are human resources, essential skills are lacking among some staffs especially from the former local authorities to manage the resources properly.
- e) The issue of the escalating and unmanageable wage bill as the budgets seek to accommodate new County staffs; personnel seconded from the National Government and the former Local Authorities employees. There is disparity in wage bill for similar tasks and a lot of people are not qualified for the jobs they were hired to do. There is hope that the on-going rationalisation exercise may address this wage bill issue.
- f) Reluctance in part by sections of the National Government to devolve some functions such as infrastructure (specifically roads), has led to constant strains between the National Government and the County Governments. The National Government should devolve all the functions assigned to the County

Governments. They should also be provided with adequate funding for those devolved functions. The need for cooperation between the two levels of government to avoid the often conflicts is also critical.

*Governor Evans Kidero making a presentation at the Devolution conference.*



## 5.0 Reflection, Challenges, lessons learnt, Opportunities and Conclusion

### 5.1 Reflections on Devolution

One year down the line, the Council of Governors has achieved much in supporting the work of the 47 Counties. Our work has been complemented by the National government's approach on securing the lives of the citizens at the political, social and economic levels. However, success has been coupled with challenges. The Council and its membership have noted several challenges that affected the smooth implementation of the devolved governance. Some governors have faced impeachment while others have been slowed by threats of impeachment. The relationships between the Governors and MCAs, between the Governors and the Senate could have better. The support to counties could have been better with resources fully allocated to follow the devolved functions.

The CoG started off together in the first year, in a non-partisan spirit in the service of the people and devolution agenda. We need to maintain that spirit to improve on our collective bargaining without being hindered by our political party affiliations. We take the view that all is well, like any Kenyan, the CoG believes that accountability, transparency and public participation are not just buzz words but rather, the basic constitutional threshold for any government whether at the National or the County levels.

### 5.2 Challenges

The Council of Governors is concerned about the current challenges facing devolution and the system of County Governments. The Council has formed the view that devolution is under threat. Amongst the myriad issues that the Council highlights are: -

- a) That the conditional grant for level 5 hospitals was inadequate to cater for the needs of these hospitals. The CoG is of the view that money should be availed to fund level 5 hospitals operations for at least twelve months.
- b) The CoG is of the view that the National Government should allocate funds to the county governments in view of the fact that resources should follow functions. The National Government should ensure that where functions have been devolved, resources should be allocated to execute the county government functions, which are already devolved.
- c) In the meantime, the runaway insecurity, calls for a collaborative effort on matters security between the National Government and county Government. For now, the little effort to cover security by the county governments consumes their meager resources allocated for the devolved functions.
- d) The Council wishes to see allocations to the counties based on the latest audited accounts. We therefore call on a speedy action from the Public accounts committee of the National Assembly. In the meantime, the National Government's assertion that it has allocated 43% of the national revenue to County Governments is incorrect. The said analysis is based on audited and approved accounts of the year 2010/2011 which is revenue based on five years ago.
- e) The Executive, the Senate and the National Assembly have proposed and in some instances Parliament has passed legislation that undermines devolution.

Examples include but are not limited to the following: The Mining Bill, the Water Bill, the Energy Bill, the Forestry Bill, the Roads Bill, the Forestry Bill, the Order Precedence Bill, the Fertilizer and Animal Food Staffs Bill, the Potato Produce and Marketing Bill, the Kenya National Aids Authority Bill, and County Industrial Development Bill.

### 5.3 Lessons Learnt

- a) **Prudent Financial Management:** With the challenge of inadequate financing and delayed release of funds, Counties have started to develop mechanisms to increase the locally generated revenues to finance some of the recurrent expenditures. This has enabled most counties to meet service delivery obligations. Additionally, the CoG has built capacity of its members in ensuring that budgets comply with set guidelines and is based on available resources.
- b) **Improved Service Delivery:** The development of CIDPs for the counties has provided an opportunity for counties to prioritize their own development and service delivery needs. This has enabled counties to plan effectively for service delivery based on felt needs and local priorities. Additionally, the sharing of local and international good practices across the counties has seen a great deal of learning and improvement in service delivery.
- c) **Improved Governance and Consultations:** With constrained relationship between the different arms of County governments, the CoG has promoted dialogue amongst the various players. This has led to improved relations between the various arms of government. Additionally, the CoG has been in constant consultations with the National Government, Constitutional Commissions, Parliament and the Summit. The consultations have discussed various matters affecting devolution and some of the constraints have been addressed. The involvement of the public in county governance has seen an increase in public confidence as well as development of projects that address local needs. With increased public awareness and participation, citizens are beginning to appreciate devolution as well feel part of governance at the local level.

### 5.4 Youth, Gender and Persons with Disability within the Devolved System

The Council of Governors is committed to the realization of Article 227 of the Constitution of Kenya 2010 that requires the state to provide for categories of preference in the allocation of contracts. In addition, it requires the state to protect or advance the interests of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination.

Pursuant to Article 227, the Government issued a directive in 2013 requiring all public procuring entities to reserve 30 per cent of the tenders to women, youth and persons with disability. Subsequently, the Government issued three Legal Notices namely:

- 1) Legal Notice no 58 of 2011 commonly known as the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011
- 2) Legal Notice no 114 of 2013 commonly known as the Public Procurement and Disposal (Preference and Reservations) (Amendment) Regulations, 2013.

Through the National Treasury Circular No 14 of 2014, procuring entities were required to set aside 30 percent of their certain tenders to women, youth and persons with disability who are prequalified by the National Treasury. The Council and its membership of the 47 counties have largely embraced this directive. However, the bidders in the target categories have serious capacity gaps that require concerted efforts by the national, county and other actors to build the capacity of enterprises owned by women, youth and persons with disability. Some Counties have mitigated these gaps by offering support through Local Purchase Order financing with guarantees from the county governments.

During the 2013/2014 Financial Year, County Governments implemented public procurement reservations for supply and delivery of flowers, provision of cleaning services, provision of garbage collection services, supply of newspapers, journals and magazines, supply and delivery of mobile phone airtime, provision of printing services, provision of labor contracts, provision of repair services for office equipment and machine, event organizing, delivery of branding materials, photocopy and videography in compliance with the law. Counties also have implemented preferences for courier services, taxi services, painting and contract for small works.

In line with Article 27(8) of the Constitution the Council of Governors has taken measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. To begin with, out of the 33 members of staff of the Council, 19 are women while 14 are men. The optimum staff establishment of the Council is yet to be attained. Future recruitment by the County will comply with the gender balance principles as provided for in the Constitution.

**Table 1: Gender Representation within County Structures**

Position	Male		Female		Total
	No	%	No	%	
Governors	47	100	0	-	47
Deputy Governors	43	91	4	9	47
County Executive Members	297	66	151	34	448
Members of the County Assembly	1,467	66	755	34	2,222
County Assembly Speakers	43	91	4	9	47
County Assembly Clerks	43	91	4	9	47

### 5.5 Opportunities and Recommendations

Learning from the last financial year, and having had the benefit of lessons learnt, the Council is making a case for better funding and resource allocation to follow devolved functions. The council has engaged all stakeholders including the people of Kenya and the national Government with the hope that an amicable solution can be found.

The CoG identifies opportunities under devolution and makes the following recommendations:



- a) Article 203 of the Constitution needs to be amended to provide for at least 45% of the latest Exchequer Accounts to give counties adequate resources to fund their functions.
- b) The Kenya National Audit Office's capacity could be enhanced for a faster audit of all the 47 Counties and present the reports in good time.
- c) That a role for Counties be created in matters of security while maintaining National Command Structure. In addition, we seek to have the role of the Counties in the management of environment, forestry, land and natural resources is revisited in light of the experience of devolution so far.
- d) That there be a clearinghouse for legislation to take care of the National and County government interests to avoid unnecessary duplication and conflict with devolution.
- e) That there should be more structured engagement with the County Assembly Forum (CAF) for learning and creating a unified voice in matters devolution.
- f) County Assemblies and development partners should support the establishment and organizations of women MCAs into associations at the County Level. The Kenya Women Parliamentary Association as a model should be replicated in all the 47 County Assemblies in Kenya.

#### 5.6. Conclusion

The Council of Governors applauds the progress made on devolution in the last one year despite the challenges. Our belief is that with more consultations, commitment and support by the various actors in the devolution process, the County Governments can enhance their service delivery to the people of Kenya. The Council remains steadfast in delivering its mandate as provided by the law, serving the needs of its 47 members and in engaging the national government on matters affecting devolution with the sole purpose of seeking lasting solutions.

## **ANNEXES**

### **Annex 1: TERMS OF REFERENCE FOR THE COUNCIL OF GOVERNORS COMMITTEES**

#### **OVERVIEW**

The Council of Governors committees offer the mechanism to keep a constant check on the activities of the National Government and monitor implementation of Service delivery across the 47 Counties to encourage and share best practice. Through the committees, the Council engages sectorally with the line Ministries of the National government to offer policy guidance to the Intergovernmental sectoral Committees as provided by law. They have powers to interrogate, investigate, and question the national government administration and service delivery under the various thematic areas. The committees contribute to informed policy-making and legislative processes and help the Council to access a wide range of shared expert opinion and be better informed of issues and perception across the 47 County Governments.

#### **GENERAL TERMS OF REFERENCE FOR THE COMMITTEES**

- To consider, review and monitor policy and legislation on matters relating to the thematic area/s of the committee and make relevant recommendations to the committee.
- To monitor implementation and adherence of international standards and national policy and legislation at the county level and make appropriate recommendations.
- To advise the committee on legislative amendments and intervention areas therein on all sectoral matters relating to the committee.
- To act as a liaison between the committees, national government agencies and counties.
- To advise county governments, on a need basis, on matters of policy and legislation with respect to county functions.
- To act as a secretary to the committee.
- To develop, in consultation with the Legal team, rules of business for the committee, and further ensure compliance of the same.
- To facilitate and coordinate committee meetings and develop reports after the committee meetings.
- To update the Chair of the committee, through the Chief Executive Officer of the Council, on emerging trends and best practices with respect to the committee's thematic areas.
- To receive and review implementation reports, in consultation with the Legal team, and advise the committee accordingly.
- To disseminate information, through the Chief Executive Officer of the Council, to the committee and other entities of the County Executive arms.
- To prepare sectoral position papers and briefs for the committee on matters affecting counties.
- To make regular reports on status of legislation and policy.

**SPECIFIC TERMS OF REFERENCE FOR COG COMMITTEES AND THEIR RESPECTIVE COMMITTEE CLERKS**

Committee	What The Committee Considers	What The Committee Clerk Deals With
<p><b>Health and Biotechnology</b></p>	<p>All matters relating to county health services, medical care and health insurance. The Committee will seek to promote the right to the highest attainable standard of health in counties as envisaged in Article 43 of the Constitution.</p>	<ol style="list-style-type: none"> <li>1. International best practices and emerging trends and technologies on healthcare delivery;</li> <li>2. Current Bills before National Assembly, Senate and County Assemblies affecting health services;</li> <li>3. Reports affecting county health care;</li> <li>4. Funding for healthcare services;</li> <li>5. National policies dealing with health care delivery;</li> <li>6. Establishment of healthcare facilities.</li> </ol>
<p><b>Agriculture and Land Committee</b></p>	<p>All matters relating to sustainable agricultural practices; poverty eradication by utilisation of high value inputs and equipment; value addition for farmers; food security and drought management; production and marketing; fisheries development; and adoption of technological advancements in agriculture. The Committee will encourage clustering of similar crop producing counties to boost production and value. The Committee will also address matters related to land survey and mapping and seek out transparent, sustainable and accountable solutions for subdividing and transferring of land.</p>	<ol style="list-style-type: none"> <li>1. Current Bills before National Assembly, Senate and County Assemblies affecting agriculture and land;</li> <li>2. National agricultural policies;</li> <li>3. International best practices and emerging trends and technologies with respect to agriculture;</li> <li>4. Inter-county agreements relating to production and marketing of produce.</li> </ol>
<p><b>Water, Mining and Natural Resources Committee</b></p>	<p>All matters relating to sustainable water management; mining; climate change; environment management and conservation; forestry;</p>	<ol style="list-style-type: none"> <li>1. Current Bills before National Assembly, Senate and County Assemblies relating to all the above matters;</li> <li>2. National policies relating to the above;</li> <li>3. International best practices and</li> </ol>

	natural resources; pollution and waste management.	<p>emerging trends and technologies with respect to the above;</p> <ol style="list-style-type: none"> <li>4. Inter-county agreements relating to resources shared among counties;</li> <li>5. Natural Resources Management at the community level.</li> </ol>
<b>Media, Liaison and Communication Committee</b>	All matters relating to the image of the Council of Governors; liaison offices; public communication; civic education and public participation.	<ol style="list-style-type: none"> <li>1. Position of the Council of Governors;</li> <li>2. Media coverage of the Council of Governors;</li> <li>3. Service Charter for the Council of Governors;</li> <li>4. Advocacy on matters of interest to the counties;</li> <li>5. Liaison offices of the Governors;</li> <li>6. Dissemination of information to the Council and the Executive arms of the counties;</li> <li>7. Coordination of operations of committees;</li> <li>8. National and county policies and laws dealing with civic education and public participation.</li> </ol>
<b>Human Resource, Labor and Social Welfare Committee</b>	All matters relating to manpower and human resource planning; labour; trade union relations; national heritage; cultural activities; public entertainment; and public amenities.	<ol style="list-style-type: none"> <li>1. National policies dealing with human resource management at the county level;</li> <li>2. Management of the transition with respect to staffing;</li> <li>3. Legislation affecting labor and social welfare;</li> <li>4. Capacity building for county staff;</li> <li>5. International best practices in relation to pension schemes, health insurance and other benefits for county personnel.</li> </ol>
<b>Finance, Commerce and Economic Affairs Committee</b>	All matters relating to Public finance; resolutions and Bills for appropriations; share of national revenue among the Counties and all matters concerning the National Budget; pricing policies; tourism promotion and management; planning and	<ol style="list-style-type: none"> <li>1. Revenue collection and allocation in counties;</li> <li>2. Procurement and asset disposal at the county level;</li> <li>3. County Planning and Budgeting;</li> <li>4. Public Private Partnerships;</li> <li>5. National and county legislation relating to Public Finance and compliance thereto;</li> </ol>

	development policies.	<ol style="list-style-type: none"> <li>6. National policies on Public Finance that affect management of county funds;</li> <li>7. Budget oversight and accountability.</li> </ol>
<b>Trade and Investment Committee</b>	All matters relating to trade development and regulations; and investment and divestiture policies.	<ol style="list-style-type: none"> <li>1. Current Bills before National Assembly, Senate and County Assemblies relating to the above matters;</li> <li>2. National policies relating to trade and investment;</li> <li>3. Global competitiveness of counties;</li> <li>4. Promotion of information and communication technologies for development;</li> <li>5. Promotion of stable environments for investment at the county level.</li> </ol>
<b>Education and ICT Committee</b>	All matters relating to devolved education systems and training; Information Communications Technology (ICT) development at the county level.	<ol style="list-style-type: none"> <li>1. Current Bills before National Assembly, Senate and County Assemblies relating to the above matters;</li> <li>2. National policies relating to education and ICT;</li> <li>3. International best practices for ICT development and innovation.</li> </ol>
<b>Intergovernmental Relations Committee</b>	All matters relating to the relationship between National Government and County Governments; dispute resolution between the two levels of government; and intergovernmental relations bodies.	<ol style="list-style-type: none"> <li>1. National legislation that affects relations between the two levels of government;</li> <li>2. Coordination of policies and laws between the two levels of government;</li> <li>3. Dispute resolution between the two levels of government;</li> <li>4. Compliance with the Intergovernmental Relations Act.</li> </ol>
<b>Rules and Business Committee</b>	All matters relating to rules for the orderly and effective conduct of Committee business.	<ol style="list-style-type: none"> <li>1. Development of Rules and Guidelines for the conduct of committee business with approval of the Governors;</li> <li>2. Development of a Calendar with the approval of the Governors;</li> <li>3. Development of budgets for the Committees;</li> <li>4. Implementation of the Committee business and programmes;</li> <li>5. Coordination of Committee work.</li> </ol>

<b>Legal Affairs and Human Rights Committee</b>	All matters relating to constitutional affairs; the organization and administration of law and justice; elections; promotion of principles of leadership, ethics and integrity; and implementation of the provisions of the Constitution on human rights.	<ol style="list-style-type: none"> <li>1. Legal support for the Committees on matters of interest to the counties;</li> <li>2. Follow up on litigation instituted by the Council;</li> <li>3. Availability of resource materials usable for the Committees;</li> <li>4. Advocacy for respect, promotion and protection of human rights in all the counties.</li> </ol>
<b>Energy, Roads and Transport Committee</b>	All matters relating to county transport; and development, production, maintenance and regulation of energy.	<ol style="list-style-type: none"> <li>1. National laws and policies affecting the above matters;</li> <li>2. Promotion of clustering and joint development projects;</li> <li>3. Promotion of joint resource mobilization programs for infrastructure development and standardization of tender conditions;</li> <li>4. International best practices and standards relating to Energy, Roads and Transport.</li> </ol>
<b>Arid and Semi Arid Lands Committee</b>	All matters relating to development of Arid and Semi Arid Lands (ASALs).	<ol style="list-style-type: none"> <li>1. Policy and legal proposals on issues of food security and drought management in ASALs;</li> <li>2. Equalization fund;</li> <li>3. International best practices.</li> </ol>
<b>Security Committee</b>	All matters relating security functions at the county level.	<ol style="list-style-type: none"> <li>1. National and county legislation and policies affecting security;</li> <li>2. Intergovernmental forums on security;</li> <li>3. International best practices.</li> </ol>
<b>Urban Development Committee</b>	All matters relating to the management of urban areas and cities within counties.	<ol style="list-style-type: none"> <li>1. Policies and laws affecting urban development;</li> <li>2. International best practices for the management of urban areas and cities.</li> </ol>
<b>Youth, Sports, Gender and</b>	All matters relating to gender; culture; sports; youth;	<ol style="list-style-type: none"> <li>1. Policies and laws affecting the above social development issues;</li> </ol>

<b>Culture Committee</b>	national heritage; indigenous issues; and persons with disabilities.	<ol style="list-style-type: none"> <li>2. Seamless transfer of functions affecting the above issues;</li> <li>3. Promotion of inter-county activities with respect to the above.</li> </ol>
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ANNEX 2 ENERGY, ROADS AND TRANSPORT COMMITTEE REPORT

KEY ISSUES OF CONCERN	MAJOR GAPS IN THE ROADS BILL	RECOMMENDATIONS
Classification of roads	The Bill does not capture the letter and spirit of the Constitution on this point	<p>Use the Constitution to benchmark the proposed classification of roads: -the Constitution provides for only two types of roads: -national trunk roads and county roads</p> <p>The Bill should clearly define both national and county roads</p> <p>Roads D and below should be vested to counties</p>
Institutional and implementation frameworks (Roles of existing institutions-KRB, KENHA, KURA, KERRA, Constituency Roads Committees)	<p>The Draft Roads Bill attempts to revive KERRA and KURA, the management of rural and urban roads is a function of counties</p> <p>Attempts to insulate KERRA and KURA from being reformed to comply with the Constitution</p>	<p>Implement the constitutional provisions on county and national trunk roads</p> <p>The legal framework for roads sector should establish one National Trunk Roads Authority</p> <p>Counties to be represented in the Board of the proposed National Roads Authority -the Council of Governors will nominate a representative from the roads sector to represent the sector in the proposed authority</p>
Resource allocation to the devolved level	<p>Inventory for national trunk roads missing</p> <p>Sharing of the RMLF is skewed</p> <p>Page 28 of the Roads Bill provides for a different allocation of roads that does not accord to the Constitution</p>	<p>Fuel levy fund should be dispersed to counties</p> <p>A framework for sharing of fuel levy</p> <p>Explore the possibility of using equalization fund to construct roads in counties</p> <p>Equitable distribution of national resources</p> <p>Cass for road maintenance should be channeled for prescribed use.</p> <p>Revenue accrued from the county roads to be paid to counties. Revenue from the national trunk roads to be paid to the national roads agency</p>
Coordination between the Cabinet Secretary and the Governors		The Bill should be amended to provide a strong framework of consultation and cooperation in the road subsector



<p>Devolution of the Mechanical, transport and plant services department</p>	<p>According to the draft Bill this function remains under the national government contrary to then Gazette Notice No_- (9<sup>th</sup> August 2013) - that provided for devolution of this function</p>	<p>Fully devolve this function</p> <p>Counties to set up an institutional framework to implement this function</p> <p>Ensure equal sharing of the equipments/machinery and revenue generated among all the 47 Counties</p> <p>Mechanical, transport and plant services department Fund should also be devolved</p>
<p>Section 78 of the proposed Roads Bill sets up the Interim Transition Advisory Committee</p>	<p>Interim Transition Advisory Committee does not represent the interests of Counties</p>	<p>The Governors Council should be represented in the proposed Interim Transition Advisory Committee</p> <p>Review the entire bill to ensure adequate county government representation in the entire institutional framework in the bill</p>

### Annex 3. MEMORANDUM ON POLICY AND LEGISLATIVE AMENDMENTS TO THE LEGISLATION CONCERNING AGRICULTURE SECTOR

From

AGRICULTURE AND LANDS COMMITTEE, COUNCIL OF GOVERNORS

To

THE NATIONAL ASSEMBLY AND THE SENATE

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (Hereinafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part,

In recognition of the fact that the Fourth Schedule of the Constitution has placed the function of agriculture under county governments;

In further recognition of the need to align national legislation that affects the agriculture sector with the Constitution of Kenya, 2010; and

Aware of the need for coordinated action between the national and county governments to ensure that national legislation properly responds to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process,

The Council recommends as follows:

Pyrethrum Act, No 22 of 2013

Enacted in 2013, the Pyrethrum Act repealed and re-enacted the former Pyrethrum Act and provides for the development, regulation and promotion of pyrethrum industry. The Act also provides for the establishment, functions and powers of the Pyrethrum Regulatory Authority.

Specific recommendations on the Act are as follows:

That the functions under section 4(g) and (j) which assigns to the National Government the functions to monitor the domestic and international market with a view to identifying and advising the Government and interested parties on any distortions and trends in the pyrethrum market; and collect, collate and analyze pyrethrum industry statistics and maintain a data base for the pyrethrum industry; should be sustained as functions of the national government.

The Authority in consultation with the national government should perform the function under section 4(c) to coordinate stakeholders in the industry.

The function under section 4(f) be deleted and replaced by a provision for effective extension serviced as a mandate of the County Government.

Effective stakeholder coordination framework that takes into account the farmers, private sector, inter-county relations should be established.

#### The Veterinary Professionals and Paraprofessionals Act, 2011

The Act was enacted in 2011 to among other things, make provisions for the training, registration licensing of veterinary surgeons and veterinary paraprofessionals, to provide for matters relating to animal health services and welfare, and for connected purposes.

Specific recommendations are as follows:

Section 4(1) of the Act relating to the composition of the membership of the Board should be recast to provide for representation of the counties.

Empower the County Director to oversee all veterinary services in order to ensure mechanisms for selling drugs and the cooling chain.

Revise the Act to include effective mechanisms to ensure proper facilitation of public awareness and education, for instance, regarding animal health activities and the need for responsible ownership.

#### Agriculture, Fisheries and Food Authority Act, 2013

The Act is consolidation legislation on the laws relating to the regulation and promotion of agriculture generally, and makes provisions for the establishment of the Agriculture, Fisheries and Food Authority, the respective roles of the national and county governments in agriculture excluding livestock in the furtherance of the relevant provisions of the Fourth Schedule to the Constitution of Kenya.

Specific recommendations are as follows:

The legislation should be repealed or substantially revised to align it to the Constitution.

There is need to have a legislative framework to regulate investment in the sector.

At the county level, each county should develop its policies, which are in tandem with its circumstances, county agricultural potential and outlines appropriate investment model. The county policies should be informed by the national policy on Agriculture as a framework but designed specifically to respond to county situations.

#### Fertilizers and Animal Foodstuffs Act, 2012

The Act is intended to regulate the importation, manufacture and sale of agricultural fertilizers and animal foodstuffs and substances of animal origin intended for the manufacture of such fertilizers and foodstuffs.

It is noted that the Act contains unnecessary restraints on county mandates and therefore:

The Act should be repealed and counties enabled to enact their disparate legislations on the subject. The Board established under Section 2 of the Act duplicates functions, which should properly be performed by the counties.

#### Kenya Plant Health Inspectorate Service Act, 2012

The Act established the Kenya Plant Health Inspectorate Service as a regulatory body for the protection of plants, seeds and plant varieties and agricultural produce and mandates the Service to administer several other relevant laws on matters incidental to its mandate.

Specific recommendations are as follows:

The Board should be reconstituted as envisaged under Section 8 of the Act to include representation of counties and that county representation should be eight persons respecting regional balance.

The Kenya Agricultural and Livestock Research Act, 2013

The Act provides for the establishment of the Kenya Agricultural and Livestock Research Organisation, governance of the organisation and for coordination of agricultural research activities in Kenya.

Considerations and recommendations on the Act include the following:

Section 5(2) (d) of the Act which stipulates that the board regulates, monitors and ensures that the research of all agricultural research institutes and other institutions undertaking agricultural research be consistent with the national priorities specified in the relevant policy documents.

There is reservation relating to section 6(1) (i) of the Act which provides that four members of the Board shall be appointed by the Cabinet Secretary.

Counties should be represented on the Board; county ministers should work out a framework to determine the way they will be represented. The number of people as stated in section 6(1) (i) should be increased to from four to six so as to accommodate two representatives from the counties.

Section 6(h) should be a nominee from the Kenya Industrial Property Institute (KIPI).

The secretariat provided in section 6(2) (3) should come from the counties and should be competitively recruited.

#### Conclusion

The Agriculture and Lands Committee at the Council of Governors intends to form a consultative technical committee forum to bring together all concerned parties to review activities in the agriculture sector (including legislation) and establish a mode of consultation and cooperation between the two levels of government.

The Committee has held discussions with the Senator Kiraitu Murungi (Chairperson Agriculture Committee Senate) with a view to organizing a meeting, which will include the relevant National Assembly committee and other stakeholders working in the agriculture sector.

**Annex 4: POLICY AND LEGISLATIVE MEMORANDUM ON VARIOUS MEASURES CONCERNING REGULATION OF THE ENVIRONMENT AND NATURAL RESOURCES UNDER THE DEVOLVED SYSTEM**

To  
THE NATIONAL ASSEMBLY AND THE SENATE

From  
SECTORAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

MINISTRY OF ENVIRONMENT, WATER AND NATURAL RESOURCES, a Government of Kenya Ministry charged with the mandate to promote, monitor, conserve, protect and sustainably manage the environment, forestry, wildlife and water resources for national development of P. O. Box Number 49720- 00100, Nairobi (Hereinafter referred to as “the Ministry”, which expression shall where the context admits so include its successors and assigns) on the one part.

-and -

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (Hereinafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part.

In recognition of the fact that the right to a clean environment is a constitutionally recognized fundamental right of every Kenyan and that the government, both at the national and county level is the primary duty bearer in ensuring the promotion of this right;

In further recognition of the need to align the legislation that affects the environment with the Constitution of Kenya, 2010.

Aware of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

The Council recommends as follows:

Climate Change Bill, 2014

The Bill seeks to provide for the legal and institutional framework for the mitigation and adaptation to the effects of climate change; to facilitate and enhance response to climate change; to provide for the guidance and measures to achieve low carbon climate resilient development and for connected purposes. The functions under the legislation should be clearly demarcated to provide for policy formulation at the National Government level while implementation should be at the County level.

Specific recommendations for review of the Bill include the following:

#### Part I: Preliminary

Part I of the Bill should be revised as follows:

Clause 2: Define the County Executive member in charge of Climate Change

The Ministry in charge, should it be under the Office of the Deputy President or under the Ministry of Environment, Water and Natural Resources

Clause 3 (2): Superfluous and should be deleted all together

#### Part II: Establishment, Powers and Functions of the National Climate Change Council

Part II of the Bill should be revised as follows:

Clause 4(3): National Climate Change Council headquarters to be in Nairobi.

Clause 5: There is a duplication of functions; therefore the National Council's role should be Policy Formulation and Advisory while for the County government function should be Implementation.

Clause 7: Include 'Polluter pays principle and pre-cautionary principle' under the Guiding Principles.

Clause 8(1): Board of the council should only have 11 members. Changes include:

Merge b (i) and b (iv) To have one civil society organization responsible for co-ordination of climate change at national level. National government to name the specific civil society

b(ii) Have the university slot open to all universities in Kenya dealing with issues on Climate Change. The university council has an option of choosing the specific university

(c) Have two governors or their designees from the Council of Governors

Change 1(j) to read Secretary of the Board instead of CEO

Remove (d) and (g)

Clause 8(2): Remove and (c)

Clause 8(4): Remove and (c)

Clause 8(5): Remove and (c)

Clause 8(7): The chairperson's term should be extended to 4 years for continuity but the members' term remains at 3 years

Clause 14(4): Include 'and the County Government' because the Council is also accountable to the counties

#### Part IV: Duties Relating to Climate Change

Part IV of the Bill to be revised as follows:

Clause 22(1) Provide for guidance to public and private entities changes to 'Guidance to National Government, County Government and private entities

Clause 24-2(a): Needs clarification on the individuals or institutions carrying out the monitoring and investigation

#### Part V – Financial Provisions

Further clarity should be introduced in this part as follows:

Clause 26: is ambiguous and should be defined to accord with subsection II.

The manner in which they are disbursed and their use should be tracked for accountability

The Council should allocate some of the funds acquired for the purposes of administration.

#### Part VII: Delegated Legislation

The following provisions should be included to clarify the mandate of the county governments:

Mainstream and Integrate Climate Change in the CIDP as a mechanism at the county level.

A CEC member should be in charge of Climate Change (preferably Environment)

County Climate Change Committees should be created under legislation determining the functions of these committees.

The county should provide legislation on how Climate Change plans will be implemented.

The county governments to submit a report on climate change for review and debate at the end of the financial year

#### First Schedule

Provisions on public consultation: Mechanisms for proper consultants should be included in relevant county legislation.

#### The Forest Conservation and Management Bill, 2014

The Bill proposes a legislative framework to provide for the establishment, development and sustainable management, including conservation and rational utilization of all forest resources for the socio-economic development of the country.

#### Part I – Preliminary

**Clause 4 (c):** Add, 'Counties sharing this natural resource should cooperate/collaborate in the management', to the statement.

Clause 7 (j): Add, 'In collaboration with the county government', at the beginning of the sentence.

#### Part II- Administration

Section 10: Include roles in the statement: Policy Making National Government, Implementation County Government.

Section 8: The Counties through the COG should have at least one representative.

The service/board should work in collaboration with the existing county government structures.

Clause 20 3(a): Advise the board and the county governments.

Clause 21 1 (f): Monitor the management of community and public forests.

2(a): Should also advise both the CG and NG through KFS.

#### Part III- Financial Provisions

Clause 28 (2): A provision should be made for implementation of the policy at the county level

#### Part IV- Conservation and Management of Forests

Clause 31 (3): recast to introduce clarity as to what amounts to a county forest and what amounts to a community forest

Clause 32 (1): replace with the sentence with 'All public forests in Kenya are vested in the state in trust for the people of Kenya.'

Clause 45: No concession granted to any 'The county government should give its consent to any concession.'

The members of the public should also be consulted

Section 47: Simplify the registration process for Community Forest Associations

## Part VI- Incentives for Increasing Tree Cover

Section 55: Percentages for benefit sharing (75, 20, 5).

Communities sharing resources should collaborate.

Communities should account for funds received.

## Part VII - Licensing and Trade in Forest Products

Clause 59 1 (a): An inclusion should be made how to protect the communities in trade of forest products.

## The Mining Bill, No.8 2014

The Bill proposes an Act of Parliament to give effect to Articles 60, 62 (1)(f), 66(2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes.

The specific recommendations are listed below to amend the following clauses in the Bill:

### Part II Ownership of Minerals

Clause 8 (1): Rights of pre-emption. The role of the County Government should be defined.

### Part IV – Mining Institutions and Bodies

The following are the recommendations:

Section 12 (1): include the County Government

Section 12(2) - Add Article 174, which includes the County Government

Section 13 2(b): add County Government

Section 14: Concurrence from the County Government

Section 15: The Cabinet Secretary should have concurrence

Section 15: (b) Add County Government

Section 21 (h): Add County Government involvement

### Part VI – General Provisions on Mineral Rights

Section 31 (1): In consultation with the County Government in that area

Section 34 (d): Remove “within a town, municipality or trading centre”

Section 36: Add paragraph (c): obtain consent of the Governor of the County

Section 45 (1): Subsidiary legislation as to how Kenyans will be given employment

Memorandum of Objects and Reasons: Paragraph II: The Bill does not clearly explain how the community benefits from these resources.

National Pot to be equitably shared in the county.

County gets a percentage: a direct benefit from the mineral.

### Detailed Amendment for EMCA

The Act should be substantially revised to align it with the obligations set out in the Constitution. Specific recommendations for review include the following:

The National Environment Council and Tribunal should have independent funding

All other environmental acts/bills should be subsidiary acts to EMCA

Section 4 (f): And chapter 6 on integrity

Section 41a(1): Change ‘Authority’ to ‘Board’

Section 41a(2): In respect to the recommendations, more consultations and collaborations between the parties should be done. An improvement of approach is required.



In the area of natural resources, it would be ideal to have one condensed committee to deal with all the natural resources under the environment. This will ensure a common approach and save on costs and time used on decision-making.

Sub-committees under this committee would include but not be limited to sectors: Water, Climate Change, Forests, and Mining etc.

Section 24: revise to create a functional link between Net Fund and the National Government: Certain activities of Net Fund should be funded at the county level. A clause should also be included to provide that that Parliament allocates funds from the consolidated fund

Introduce clarity relating to the appointment, powers and obligations of trustees.

Section 34: Radio announcement should be made in vernacular or a local radio station in the county. Environment Impact Assessment reports should be availed at the county environment office

The EIA reports should also be made known via the local print media

Section 129 (4): The High Court should be able to decide on whether a project should go on as the individuals await confirmation from the tribunal

The prosecutorial power of the authority should be clarified.

An environmental impact assessment association comprised of experts should be created for regulation and standardization.

No general penalties, each offence should be specific with the specific charges

Second Schedule

Category I:

Transportation: Add, (h) Ports- Sea or Lake

Dams, Rivers and Water Resources: Add, (f): Dealing with canals for water diversion or water pipelines

Category III: Projects in place require Environmental Audits.

Fines should be issued on the consumer too as a disincentive

Plans requiring an EIA plan should also have a carbon reduction plan in place.

All people doing sand harvesting and quarrying should be required to be part of an association.

## **Annex 5: POLICY AND LEGISLATIVE MEMORANDUM CONCERNING MEASURES UNDER THE HEALTH AND BIOTECHNOLOGY SECTOR**

To  
THE NATIONAL ASSEMBLY AND THE SENATE

From  
HEALTH AND BIOTECHNOLOGY SECTOR COMMITTEE OF THE COUNTY GOVERNMENTS

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (Hereinafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part;

In recognition of the fact that the right to health care services is a constitutionally recognized fundamental right of every Kenyan and that the government, both at the national and county level is the primary duty bearer in ensuring the promotion of this right;

In further recognition of the need to align the legislation that affects the health with the Constitution of Kenya, 2010; and

Aware of the need for coordinated action between the National and County Governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

The Council recommends as follows:

Kenya Medical Supplies Authority (KEMSA) Amendment Bill, 2013 and Kenya Medical Supplies Authority Act, 2013.

The Bill seeks to amend the Kenya Medical Supplies Authority Act, No.20 of 2013, as follows:

Expand the membership of the Authority to include persons representing the County Governments.

Makes proposals for coordination between the County Governments and the Authority including procurement of warehouses at the counties to facilitate distribution of medical supplies and agreements for transfer of particular functions of the County Governments to the National Government.

Specific recommendations:

Develop structured framework for procurement and supply of medical supplies that sustains KEMSA as a supply Authority to the Counties but providing the opportunities for Counties to procure through other alternatives. Where procurement agencies opt for any of the permissible alternatives to KEMSA they should be obligated to use the numerous government quality control labs to ensure the quality of the drugs in accordance with the provisions of section 19 (g) of the Act.

Inclusion of Council of Governors and professional bodies in the representation of the Board. With regard to Clause 4 (e) of the Bill, KEMSA should provide sole support to the County governments on the drawing rights only where necessary. (5e) Should come from the professional bodies (LSK, ICPAC, ICPS and KPPB).

In regards to Clause 6, there is need to escalate the representation to 50%.

In Clause 6 (e) the Council of Governors shall nominate those persons for appointment, which should be through a competitive recruitment process and later gazetted.

#### Pharmacy and Poisons (Amendment Bill) 2014

The purpose of the Bill is to make some necessary changes to the Pharmacy and Poisons Act by, among other things, transforming the Pharmacy and Poisons Board into an effective and semi-autonomous poisons Authority and creating more punitive penalties relating to the offences under the Act.

It is generally recommended that a person representing the Counties should recast the Bill to be more representative and include membership. Participants also recommended powers of the County Government to include inspection in accordance with the standards set by the national government.

The following are the specific recommendations:

Clause 3 (a) is revised to read: advise the national and county government agencies in all matters relating to the safety, packaging and distribution of medicines.

Clause 3(j) revised to separate the functions of (a) licensing professionals and premises and allocate the same to the relevant government.

(b) Inspection function should be separated- there should be provision on the inspection to be delegated and done by the county governments in accordance with the standards set by the national government in the main Act.

Clause 3(r) should read-advise the Cabinet secretary and Governors on matters relating to control, authorization and registration of medicinal substances.

Clause 3B (1) (a) should read-a non-executive Chairperson appointed by the Cabinet Secretary.

Clause 3 B with reference to the constitution of Board of the Authority it was recommended as follows; Clause 3 B (1) (c) be deleted; Clause 3 B (1) (f) iv be retained but delete the word Public to read-one person nominated by the universities teaching pharmacy.

Clause 3 B (1) (f) vi be retained but add Institute of Public Certified Accountants to read-one person with accounting and financial knowledge nominated by the Institute of Public Certified Accountants.

Further consideration to be made between (i) (iii) one out of the two should be retained and not both. (vii) Does not have to be on the Board the legal service can always be outsourced.

Clause 3 B (4) should be deleted.

Clause 3 C (4) reduce the term to three years to read- The Director- General should hold office for a term of three years, but eligible for reappointment for one more term.

Clause 3 C (5) to read- A person shall not be appointed the Director-General unless that person possesses a basic university degree pharmacy or pharmaceutical quality control and a post graduate degree in a relevant field and has at least five years management experience.

Clause 10 insertion of section 23 A should be in tandem with the changes recommended at clause 3A (j) and reflect the terms the Authority or its agent to reflect both governments.

Clause 17 section 35 F the following is noted on this. The Board of Management of the Laboratory should be autonomous and functions clearly isolated to reflect this. The amendment should be completely recast to introduce required independence or an independent statute be proposed to make provisions for the regulation of the Board. Provisions should provide for clear distinction between the Board and the Authority and include county representation.

The Bill should include the standards to be looked into when importing drugs during emergencies this should be cross-referenced with CAP 242 to ensure there is no overlapping.

Clause 21 is amended to be in line with the recommendation made under clause 3A and reflect the devolution agency such that the powers being given here should also be given to the agency.

It is recommended that there should be a Food and Drug Authority Act as the main Act that deals with all related issues and should consolidate standardization under one framework for ease of administration.

#### The Alcoholic Drinks Control (Amendment) Bill 2014

The Bill seeks to amend the Alcoholic Drinks Control Act 2010. The forum considered the proposed amendments and made recommendations to align the Act in tandem with the devolved functions.

Specific recommendations include the following:

Clause 5 (e) be revised to read- provide support and assistance to county governments in implementation of national standards and policies technical support and capacity building. The rest of the clause should be deleted as they are already County function and need not restated the again.

Clause 6A (1) should read-Pursuant to Article 207 of the Constitution, a County Government may establish a County Alcoholic Drinks Control Fund.

Clause 8, which introduces section 6A, was highly criticized for its validity. The clause is prescriptive and dictates what the County Governments should do.

Clause 9 on licensing is superfluous and should be deleted. The question of priority in respect to devolved functions is covered within the ambit of the Constitution.

Clause 12 replaces Minister with Cabinet Secretary.

Clause 12 amend section 8 to read-Where a County establishes a County Committee or Authority the members shall be appointed by the County Government. They must include;

The officer commanding police services in the county

One officer appointed by the Kenya Bureau of Standards.

Delete clauses 14 – 31. Clause 36 should be deleted and entire section 50 of the main Act be repealed.

Clause 37 (a) insertion should be made to use both national and county govern

Section 65 (5) of the main Act is repealed.

In the fifth schedule an omnibus statement to be included at the bottom of the list to read- (10) National Public Health Laboratories (11) any other laboratory that may be approved from time to time by the Cabinet Secretary.

#### Diabetes Management Bill 2014

The object of the Bill is to provide a legal framework for prevention, treatment and control of diabetes. The Bill also seeks to reduce type 2 diabetes by addressing the lifestyle that people live and create awareness about the causes and methods of prevention.

The following are the specific recommendations:

National legislation should provide authority for policy development, regulation, capacity building, research, and procurement of commodities. Other functions relating to the implementation of the Act should be reserved to the County Government.

Adequate consultations on the Bill should be undertaken between the County Governments and the National Assembly before enactment.

#### Physiotherapist Bill 2013

The Physiotherapist Bill 213 proposes a legislative framework for the training, registration and licensing of physiotherapists, to regulate their practice, to provide for the establishment, powers and functions of the Physiotherapy Council of Kenya.

The following are the specific recommendations:

Clause 4(1) be revised to read the object and purpose for which the Council is established is to exercise general supervision and control over the training and practice of physiotherapists in Kenya and to advise the National and County governments in relation to all aspects thereof.”

Clause 4 (2) (j) revised to read “cause to be published in the Kenya and County Gazette every calendar year or such other period as may be prescribed, the names of all registered physiotherapists.”

#### Mental Health Care Bill 2012

The Bill proposed a legislative framework to provide for the care, treatment and rehabilitation of persons with mental illness; to provide for the procedures for admission, treatment and general management of persons with mental illnesses; and to provide for the establishment of the Mental Health Care Board.

The following specific recommendations are made:

Clause 51(b) is revised to read- “advise and make recommendations to the National and County governments on the state of mental health and mental health care facilities.”

Clause 51 (e) is revised to read- “assist, where necessary, in the administration of mental health facilities to provide technical and capacity building.”

Clause 51 (f): include at the end of the sentence “or recommend to the Cabinet Secretary, any remedial action in consultation with the respective regulatory body.” Clause 51(g) to be deleted.

After clause 51 (h) there should be a new section 52 with a preamble. The membership in section 52 should include:

A county representative appointed by the Council of Governors.

A legal practitioner to be appointed by the Law Society of Kenya and should be a person with experience in human rights or medical issues.

#### Kenya National AIDS Authority Bill 2014

The objective of this Act is to provide a legal framework for the establishment, powers and functions of the Kenya National AIDS Authority. The Authority is established as a successor

to the National AIDS Control Council. In its current state the National Aids Control Council is a State Corporation established vide the National AIDS Control Council Order published in legal Notice No 170 of 1999.

**Specific Recommendations:**

The counties are in support of the change of the Authority to replace it with the Council. Representation of counties in the Board. This would give emphasis of AIDS prevention as a national priority and providing a framework for administrative and financial decentralization.

**General Recommendations**

The Committee is also concerned with the delays in the finalization of the Health Bill and the Health Policy, which is supposed to form the basis of the legislation that will be, enacted both at national and county level. It urges that these be fast tracked in consultation with the County Governments.

## **Annex 6: POLICY AND LEGISLATIVE MEMORANDUM ON INTER-GOVERNMENTAL RELATIONS**

From

COUNCIL OF GOVERNORS COMMITTEE ON INTER-GOVERNMENTAL RELATIONS

To

THE NATIONAL ASSEMBLY AND THE SENATE

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (Hereinafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part;

In recognition of the fact that there are two distinct levels of governments which need to operate in consultation and cooperation; and

Aware of the need for coordinated action between the national and county governments to ensure that these legislation governing intergovernmental relations properly respond to the key issues facing various sectors, and further reflects the spirit and purpose of the devolution process,

The Council recommends as follows:

**Intergovernmental Relations (Amendment) Bill, 2014**

This Bill seeks to amend the Intergovernmental Relations Act to specifically make provision for the establishment of Council of Deputy Governors and Council of County Assemblies.

Specific considerations and recommendations are as follows:

The Amendment to have Council of Deputy Governors is not justified as the same would inevitably be in conflict with the Council of Governors and create an impression of disunity in the role of Governors and their Deputies.

The coordinate functions of the County Assemblies and County Executive are founded on the Constitution and therefore purported institutionalization through the Council of County Assemblies under statute would engender unnecessary confusion.

**County Government (Amendment) (No. 2) Bill, 2013**

The principal object of the Bill is to amend the County Government Act, No 17 of 2012 to insert in the Act a new section providing for the establishment of a County Development Board in each County chaired by the County Senator with the Governor as its secretary. The function of the Board shall be to provide a forum for consultation between the national government and the county governments.

The Boards are also expected to coordinate and harmonize the County Development plans and projects, and to consider and adopt the county integrated development plans and county budgets before they are tabled in the county assemblies.

Specific recommendations are as follows:

The proposed amendment offends the constitution and specifically provisions on the role of Senators under Article 96, which are clear. By elevating the Senate as heads of the boards undermines the oversight and accountability framework provided under the Constitution and inevitably created conflict of interest.

The amendment seeks to fetter the role of the Governor who is the Chief Executive Officer of the county as per the Constitution by making the office a secretary of the board thereby making the proposal a mockery of the objects of devolution.

#### County Governments (Amendment) No. 3 Bill, 2014

This Bill seeks to provide for the election of a Deputy Speaker from amongst the members of the County Assembly, for further clarity regarding the functions of the Deputy Governor and for a procedure for removal of a Deputy Governor.

Specific recommendations are as follows:

The amendment to include the position of Deputy Speaker is justified to ensure that there is a substantive officeholder to deputize the Speaker.

The Amendment should be reworded to give Deputy Governors a coordination of government functions role instead of a portfolio.

Amendment of Section 33(7) of the County Governments Act to exclude nominated senators from having a voting power on impeachment proceedings. The same is unconstitutional and unjustified. It is however noted that the procedure of impeachment is weighty and ought to be considered further in a more participatory manner.

#### The Constitution of Kenya (Amendment) (No. 2) Bill, 2013

The Bill makes provisions for the administration of the equalization fund established under Article 204 of the Constitution.

The Council opines that the Bill lacks clarity relating to the authority to manage the fund thereby introducing ambiguity on the possibility that the fund will be managed under the Constituency Development Fund structures. The management of the fund must be aligned with the functions or services for which the fund is assigned including water, roads etc. which are direct county functions.

#### The Private Security Regulation Bill, 2013

The Bill seeks to provide a statutory framework to provide for the regulation of the private security industry, to provide for a framework for cooperation with National Security Organs.

The Bill should cite in clearer terms the relationship between private security and the county government. It is recommended that the role of the county governments in regulating private security should be outlined and that this role should not be left to the national government in its entirety as the private security firms will run their operations in the counties. Representatives from the Council of Governors should also be included in the Private Security Regulation Authority.



There is no need of having such a body at each county, as it would amount to duplication of functions.

#### The Order of Precedence Bill, 2014

This Bill makes provision for the order of precedence for officials at diplomatic, official and social state functions within Kenya and abroad. It also identifies the state officers to fly the national flag on their official vehicles.

Specific recommendations are as follows:

The office of the Governor commands greater jurisdiction and responsibilities as compared to members of parliament therefore Governors come second after the office of presidency (which includes the deputy president).

Article 1(4) of the Constitution, which identifies the national level and the county level as the two levels where the sovereign power of the people will be exercised. The heads of the two levels are the president and the governor and therefore they recognised as such.

Section 3(d) as a provision that sought to usurp the mandate of the Salaries and Remuneration Commission.

The Bill does not foresee Kenya having a female president. This is because it fails to provide the title of a female president and the title of her male spouse. The same is extended to the title of the deputy president and his or her spouse.

The Bill concerns county governments and therefore falls for consideration by the Senate.

#### The Statute Law (Miscellaneous Amendments) Bill, 2013

##### The Cancer Prevention and Control Act

The Council supports proposed amendments to the Cancer Prevention and Control Act as it affects the health sector in a positive way and it recognizes the role of the county governments

##### The National Transport and Safety Authority Act

The Bill should provide for consultation with the County Government in regulating transport safety.

##### The National Authority for the Campaign Against Alcohol And Drug Abuse, No. 14 Of 2012

This Act should be revised and realigned with the Alcoholic Drinks Control Act.

##### Sports Act, 2013

The amendment recognizes that sport is a function of the county government.

Specific recommendations are as follows:

The Act should provide adequate consistency with the norms of international sports and recognize international sports institutions.

The possibility of decentralization of national sports bodies into the devolved system needs to be explored. This would ensure that counties achieve their mandate with regards to sports as set out in the Fourth Schedule of the Constitution.

##### The Prevention, Protection And Assistance Of IDPs And Affected Communities Act, 2013

Disaster management is shared responsibility between the two levels of government. There should be a comprehensive policy on disaster management.

#### The National Honours Act

There should be members of the Council of Governors nominated to remove ambiguity on the method of selection.

#### Alcoholic Drinks Control (Amendment) Bill

The Bill aims to amend the Alcoholic Drinks Control Act, No.4 of 2010 so as to make the Act conform to the practical challenges in implementation arising, out of its enactment and implementation. Secondly, the Bill seeks to harmonize the Alcoholic Drinks Control Act, 2010 with the provisions of the new Constitution.

Specific recommendations are as follows:

The licensing mandate should be assigned to the county governments to provide a source of revenue.

Outdoor advertising should be a role of the county government and the county governments through county statute or regulations should govern not NACADA and it.

A clear framework for appropriation of revenue should be outlined in the Bill.

A clear enforcement mechanism should be established under the auspices of the County Security Committees chaired by the Governors.

#### The Government Proceedings (Amendment) Bill, 2014

This Bill seeks to amend the parent Act in order to extend its application to the county governments.

Specific recommendations are as follows:

Comparable protection regarding state orders accorded to the national government by the parent Act should apply to government proceedings at the County Level.

#### Executive Order No 3 of May 15<sup>th</sup> 2014

Recommendations on the above are as follows:

There is need for clarity of roles of county commissioners, offices of the cabinet secretaries and the counties. Decisions of the Committee should not be subject to veto vide the executive power.

The Council takes reservation concerning section 8(f) of the order, which implies that decisions of the county commissioners are supreme over those of other committee members. The proposed decisions of the committee under this order should be by voting and no one should have veto power.

The coordination committee under this order created a parallel structure as that established under the County Government Act and should be recast to align it to the devolved system.

**Annex 7: POLICY AND LEGISLATIVE MEMORANDUM CONCERNING MEASURES RELATING TO PUBLIC FINANCE MANAGEMENT BY THE COUNTY GOVERNMENTS**

To  
THE NATIONAL ASSEMBLY AND THE SENATE

From  
SECTORAL COMMITTEE ON PUBLIC FINANCE

THE COUNCIL OF GOVERNORS, a non – partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act, of P.O. Box Number 40401-00100, Nairobi (Hereinafter referred to as “the Council”, which expression shall where the context admits so include its successors and assigns) on the other part;

In recognition of the fact that the Constitution sets out the principles of public finance and that the Public Finance Management Act, 2012 generally provides the legislative framework for the management of public finance at the National and County level;

In further recognition of the need to align the legislation that affects the public finance for effective implementation in the counties; and

Aware of the need for coordinated action between the national and county governments to ensure that these legislations properly respond to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

The Council recommends as follows:

The Public Finance Management (Amendment Bill) 2014-Senate Bill No.11 OF 2014

The Bill seeks to amend section 15(2)(a) and section 107(2)(b) of the Public Finance Management Act, 2012 (PFM) in order to provide, as a county government fiscal responsibility principle, that a minimum of sixty percent of the budget of the county governments be allocated to development expenditure.

Specific recommendations are as follows:

The proposed 60:40 formula undermines service delivery, which is the essence of the devolution. The Bill is based on unprincipled excuse for cost cutting and is motivated by Constituency Development Fund the management frameworks which do not consider the recurrent expenditure. For instance some county development portfolios are labour and service intensive thereby requiring significant recurrent expenditure. There is need to re-define development expenditure to make it realistic. The presumptions in the Bill are based on the CDF framework, which does not capture the recurrent expenditure.

The intended amendment is unnecessary restraint on the powers of the County Government and is not feasible, as it does not appreciate the reality of running a government.

Wage still a burden to Counties especially in light of workers absorbed from the National Government.

Ensure that the Bill appreciates how operational expenditure relates with Capital Projects.

The Public Finance Management (Amendment Bill) 2014-National Assembly Bill no. 14

The Bill introduced in the National Assembly seeks to amend provisions of the PFM Act. The proposed amendment seeks to introduce provisions relating to issuance of sovereign securities to raise public finance.

Specific recommendations are as follows:

The proposed amendment contradicts section 144 of the PFM act on issuance of securities by the county governments and therefore should not be adopted.

The new definition of external government security in the amendment excludes counties from being able to raise securities externally.

The proposed definition of loan therein contradicts section 144 of the PFM Act and by extension rules out the issuance of security by County Governments.

Amendments to section 50(7) by inserting paragraphs (c) and (d) contravenes the Constitutional principles of Public Finance Management outlined in Article 201 of the constitution.

New section 53A excludes County governments and should be replicated for Counties.

County Division of Revenue Bill 2014

The Bill, proposed by the Treasury seeks to enact legislation to provide for the equitable division of revenue raised nationally between the national and county governments in 2014/15 financial year, and for connected purposes. The Bill seeks to implement Article 218(1) of the Constitution and section 191 of the Public Finance Management Act, 2012. The Bill contains a schedule for division of revenue and explanation memorandum of the proposals contained in the Bill.

Specific recommendations:

In the spirit of separation of powers, the Senate should not have power to direct the spending priorities of the county governments.

Additional information on parameters for sharing resources as indicated in the revenue sharing formula should be provided.

Section 88 of the County Government Act is contradicted by section 4 (2) and (3) and section 6 of the amendment which deems any costs incurred by the county government in approaching the court in a matter that had been decided by the Senate as wasteful spending and such costs will be recovered without delay from the official involved.

Public Procurement and Disposal (Amendment) Bill, 2013

The principal object of this Bill is to make necessary amendments to the Public Procurement and Disposal Act, 2005 so as to ensure that at least thirty per cent of the annual procurement by public entities is allocated to the youth in accordance with such conditions as the Cabinet Secretary may prescribe.

Specific recommendations:

The definition of the accounting officer should be streamlined to be in line with the PFM act section 148.

The Amendment should include a more elaborate criterion for identifying disadvantaged groups.

The Amendment needs to reflect the reality and structures created post devolution and still refer to Local Authorities and related offices.

### County Government (Amendment) No. 2 Bill, 2013

The principal object of the Bill is to amend the County Government Act, No 17 of 2012 to insert in the Act a new section providing for the establishment of a County Development Board in each County chaired by the County Senator with the Governor as its secretary. The function of the Board shall be to provide a forum for consultation between the national government and the county governments. The Boards are also expected to coordinate and harmonize the County Development plans and projects, and to consider and adopt the county integrated development plans and county budgets before they are tabled in the county assemblies.

#### Specific recommendations:

The proposed amendment offends the Constitution and specifically provisions on the role of Senators under Article 96, which are clear. By elevating the Senate as heads of the boards undermines the oversight and accountability framework provided under the constitution and inevitably created conflict of interest.

The amendment seeks to fetter the role of the Governor who is the CEO of the county as per the Constitution by making the office a secretary of the board thereby making the proposal a mockery of the objects of devolution.

The amendment blurs the concept of the separation of powers in that the Senator, MP and Women Rep, who in principle form part of the national government, are now interfering with the operations of the County.

### The Constitution of Kenya (Amendment) (No. 2) Bill, 2013

The Bill makes provision for the administration of the equalization fund established under Article 204 of the Constitution.

The Bill lacks clarity relating to the authority to manage the fund thereby introducing ambiguity or the possibility that the fund will be managed under the Constituency Development Fund structures. The management of the fund must be aligned with the functions or services for which the fund is assigned including water, roads etc which are direct county functions.

Amend of Article 204 of the Constitution of Kenya to remove the disbursement of the Equalization Fund from the purview of the national government to the constituencies is a resource control initiative by the MPs which is unconstitutional.

#### Public Finance Management Act

##### Specific Recommendations:

Section 107 – in the era of Program Based Budgeting (PBB) there ought to be a clause therein that states;

*a) Revenue and Expenditure estimates shall be accompanied with measures on cost, cost control and evaluation of results of programmes financed with budgetary resources. This clause will help with reduction on the incidences of foreign travel (ejusdem generis rule applies)*

Section 129 (3)(4) – there is no exact role of the County Secretary for Finance in the budgetary process as indicated therein. Their views are not binding and can easily be ignored. In the event that the estimates as presented do not tally with the County Fiscal Strategy Paper, then there is enough room for his/her views to inform the process in terms of advising on changes to those estimates as presented.

Section 131 –the Budget approval process ought to be relooked including the role and extent of assembly review of the estimates presented before them. The power to increase or decrease must be informed by background data and the limits that shall already have been set in the CFSP et al.

The PFM Act ought to be amended to enhance Article 216 (2) of the Constitution to provide for the binding nature (though which room for explained/detailed variation) of the CRA recommendations on financial management by counties. The recommendations ought to inform the county budget process especially on the setting of county entity expenditure ceilings.

PFM Regulations should specify a formula for costing/determining the recurrent, operation and development needs of counties including room for deviations

The Public Finance Management Act-Arrangement of Regulations

Specific recommendations to Regulation 25(b) and (d):

Setting up of a limit on the county government's expenditure on wages and benefits for its public officers at 35% has no legal basis. Many counties already spend over 50% of their revenue on wages as a result of inherited staff when functions were devolved.

Setting up a regulation that public debt shall never exceed 15% of the county governments' total revenue is not tenable as some have already exceeded 15% and from the definition of public debts, inherited debts stand to be counted. A similar percentage needs to be applied to the national government or parliament needs to set ceilings and quotas for both levels of government that are sustainable and based on objective criteria.

#### GENERAL RECOMMENDATIONS

It is important to review the law for purposes of calibrating the extent and limits of county assemblies in the budget process. County assemblies are to be limited to approving the level of appropriations within each expenditure area so as to maintain expenditure ceilings at a decided level. This is aimed at reducing the size of county assembly amendments to the government's budget.

**Annex 8: MEMORANDUM OF PROPOSED AMENDMENTS TO THE PRIVATE PUBLIC PARTNERSHIP ACT**

From  
FINANCE SECTOR  
To  
THE NATIONAL ASSEMBLY AND THE SENATE

**PREAMBLE**

MINISTRY OF FINANCE, a Government of Kenya Ministry charged with the mandate to pursue prudent economic, fiscal and monetary policies and effectively coordinate government financial operations for rapid and sustainable development of Kenya of P.O BOX Number 30007-00100, Nairobi (Hereinafter referred to as “The Ministry” which expression shall, where the context admits so, include its successors and assigns) on the one part.

-and-

THE COUNCIL OF GOVERNORS, a non- partisan organization established in accordance with the provision of Section 19 of the Intergovernmental Relations Act, of P.O BOX Number 40401-00100, Nairobi, (Hereinafter referred to as “The Council”, which expression shall, where the text admits so, include its successors and assigns) on the other part.

**SECTION 1**

**Article 1**

Conscious of the role that the Private Public Partnership Act, 2013 has in ensuring that agreements between private entities and contracting authorities run smoothly;

In further recognition of the need to align the Private Public Partnership Act, 2013 with the Constitution of Kenya, 2010 and in further subject to the stakeholder input hence the justification of the consultative meeting between the respective County Executive Committees and the Council of Governors held on the 4<sup>th</sup>-6<sup>th</sup> June, 2014, at the Safari Park Hotel and Casino, Nairobi;

This memorandum is the outcome of the above consultative meeting. The details of the proposed amendments to the Private Public Partnership Act, 2013 are annexed to this memorandum;

Aware of the need for coordinated action between the National and the County governments to ensure that the Private Public Partnership Act, 2013 properly responds to the key issues facing the sector, and further reflects the spirit and purpose of the devolution process.

**IT IS HEREBY AGREED AS FOLLOWS:**

**Article 2**

**PRIVATE PUBLIC PARTNERSHIP COMMITTEES**

The Private Public Partnership Committee that is established under the Act ought to be abolished.

#### Article 3

##### PROCEDURES FOR COUNTY GOVERNMENTS

There is established under the Private Public Partnership Act, a Unit whose role is to screen, the financial, technical and legal feasibility of a project.

There is a need to provide certainty as to what the Private Public Partnership agreements entail.

There is a need for organizational structure with regard to the involvement of the National Government in agreements between County Governments and the Private Investor Companies.

#### Article 4

##### COUNTY PROJECTS AND FEASIBILITY STUDIES

That there is no limit as to how big a project is.

It is recommended that County governments identify as many projects as they can and send such to the Unit for approval.

The Council needs to dedicate some resources to establish a panel of people to identify capacity for feasibility tests at county level.

#### Article 5

##### IMPLEMENTATION

There ought to be established a set of guidelines at County level for the implementation of the Act.

#### Article 6

##### LAW

This Memorandum of Understanding is governed by the Laws of Kenya.





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