

PROGRESS REPORT FOR THE MONTH OF JANUARY 2015

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ABBREVIATIONS

CARPS Capacity Assessment and Rationalization of Public Service

CPD Continuous Professional Development

COG Council of Governors

CTC County Transition Coordinator

MCA Member of County Assembly

MDAs Ministries Departments and Agencies

MOALF Ministry of Agriculture, Livestock and Fisheries

MTEF Medium Term Expenditure Framework

OCOB Office of the Controller of Budget

TIPs Transition Implementation Plans

AFFA Agricultural, Fisheries and Food Authority

TCTAL Technical Committee on Transfer of Assets and Liabilities

TWG Technical Working Group

RB Regulatory Boards

1. INTRODUCTION

The Transition Authority (TA) is a statutory body whose mandate is to facilitate and coordinate the transition to devolved system of government in Kenya as per the Transition to Devolved Government Act 2012 and the provisions under section 15 of the sixth schedule to the constitution. Section 7 of the Transition to Devolved Government Act (TDGA) mandates the Transition Authority to prepare monthly progress reports to provide regular update on the implementation of transition to devolved system of government.

This progress report covers the month of January 2015. In this month, the Authority implemented the following activities:

- Costing and further unbundling of functions;
- Inventory, management and handing over of existing public assets and liabilities
- Implementation of the Capacity Assessment and Rationalization Programme (CARPs).
- Coordination and facilitation of the development of civic education curriculum and manual

The detailed activities and outputs for the month are presented in section 2 of this report.

2. PROGRESS REPORT FOR THE MONTH

The Authority discharges its mandate through six operational committees chaired by board members namely: Functional Analysis and Competency Assignment, Legal and Intergovernmental Relations, Planning, Budgeting and Finance, Capacity and Capability Development, Assets and liabilities and Civic Education Committees.

2.1 FUNCTIONAL ANALYSIS AND COMPETENCY ASSIGNMENT

2.1.1 Costing Of Functions

The Technical Committee on the Costing of Functions whose overall mandate of the is to provide guidance to the costing of functions exercise for both levels of Governments was established. The specific terms of reference (TORs) of the technical committee are:-

- a) Prepare a detailed Concept note and detailed work plan indicating the detailed milestones, comprehensive costing and timelines and present to the same to the Steering Committee.
- b) Co-ordinate and consult with relevant ministries, departments and agencies in order to access all relevant information, documentation and studies relevant to enable the consultant(s) execute the assignment.
- c) Commission consultancies, studies or researches to institutions or individuals with requisite expertise, as required to undertake its tasks
- d) Recommend appropriate approaches to costing in line with the Constitution.
- e) Make monthly reports or as may be required by the Steering Committee.
- f) Present to the steering committee a final report on the costing of functions for both levels of Government for Kenya.

The Authority held an inaugural meeting for the Technical committee on 17th January, 2015 at the Intercontinental hotel. The objective of the meeting was to bring on board members of the committee on the background of the process and their specific roles in ensuring the successful completion of the costing process.

The Authority through the support of the UNDP, commissioned a consultancy to undertake the costing of functions. The preliminary meeting with the consultants was held with an objective of agreeing on the work plans and arriving at a common understanding of the scope of work, deliverables and timelines and also the roles and responsibilities of the parties involved. It was agreed that the consultants submit an inception report on 18th February, 2015, draft report on 8th April, 2015 and the final report on the costing of functions on 13th May, 2015.

2.1.2 Consultative Meetings on Emerging Issues on Transfer Of Functions

Secondment/deployment of Early Childhood Development Education (ECDE) Officers to County Governments

The Authority held a consultative meeting on secondment/deployment of ECDE Officers to County Governments on Wednesday 28th January, 2015 in the TA boardroom 8th floor, Extelecoms House. According to Section '9' Part II of the Fourth Schedule to the CoK, 2010 'Preprimary, Education' is a County Government function. The TA transferred this function to the County Governments vide legal Notice 16 of 1st February, 2013. Following the transfer of this function, the

requisite resources including but not limited to the Early Childhood Development Education Officers (ECDEO) and budget were not transferred to the County Governments contrary to the constitutional provision in Article 187 (2) (a), CoK, 2010.

In addition, the Teachers Service Commission (TSC) issued a directive vide letter Ref. No. TSC/256420/161 dated 30th December, 2014 to deploy the ECDEOs to the National Government to perform teaching duties. This caused a major concern and unwarranted unrest in the sub-sector. As a result, the Chairman, DICECE Programme Officers Association requested the TA to intervene vide letter dated 14th January, 2015 and at the same time moved to court to petition the decision of the TSC. The matter also attracted the attention of other organs of government including the Office of the Deputy Speaker of the Senate who urged the TA to mediate vide letter Ref. GEN/CORR/Dep./SS/2015/VOL. III(I) dated 16th January, 2015.

It was against this backdrop, that the TA invited the following key stakeholders to the above consultative meeting to discuss and come up with an amicable way forward to ensure that there were no service delivery gaps in the sub sector.

- Teachers Service Commission (TSC)
- Kenya ECD Officers Association
- DICECE Programme Officers Association
- Ministry of Education, Science and Technology
- Public Service Commission
- Directorate of Public Service Management
- Council of Governors
- Commission on Implementation of the Constitution
- CTC, Machakos County

Key outcomes

The following were the key outcomes of the above meeting:-

- i. That the DICECE Programme Officers Association withdraws the Court case soonest possible.
- ii. That TSC withdraws its directive to deploy the ECD Officers to schools and colleges and instead operationalize the secondment of these Officers to the County Governments to ensure effective and professional delivery of this function.

- iii. That TSC continues to pay the personnel emoluments of the ECD Officers until the end of the financial year.
- iv. That further engagements be held with the National Treasury, Commission for Revenue allocation (CRA), CoG among other key stakeholders to deliberate on the financial implication of seconding the ECD Officers to the County Governments in view of the current teachers shortage.
- v. That the TSC prepares and submits to TA a Transition Implementation Plan (TIP) to clarify on the exclusive roles of each level of government, concurrent functions, policies, assets among other components to ensure continued and improved service delivery in the sector under the devolved system of government.
- vi. That there was need to establish the transition issues, if any, affecting the ECD trainers in the former municipalities of Nairobi city, Mombasa, Kisumu, Thika, Nakuru, Eldoret and Kitale Municipal councils to which the Minister for Education had entrusted the management of primary education and hence were employing their own trainers.

2.2.2 Betting, Casinos and other forms of Gambling Function

The Authority held consultative meeting on Betting, Casinos and Other forms of Gambling on 9th January, 2015 at TA Boardroom. The purpose of this meeting was to discuss and provide direction on the process of resolving the contentious issues on devolution of Betting, casinos and other forms of gambling owing to its concurrent nature. It is important to note that the TA in a bid to bring clarity on the assignment of this function had held various consultative meetings with the relevant stakeholders culminating to the constitution of an Inter-agency Technical Committee to among other tasks provide a comprehensive unbundled report of the function. A validation workshop of the Technical Committee report was held on 19th September, 2014 at Serena Hotel, but there was no consensus on 'licensing of casinos (Public Gaming License). Moreover, the Association of Gaming Operators Kenya (AGOK) moved to court and sued the Nairobi City County for demanding the payment for business permits by the gaming operators.

This consultative meeting brought on board the following commissions who have no direct interest in the sub-sectors:-

Commission on administrative justices Commission on revenue allocation
Commission on implementation of the constitution
Kenya law reform
Office of the deputy president
Office of the Attorney general
Controller of budget office
Ministry of devolution & planning

Key outcomes

The following were the key outcomes of the above meeting:-

- a) TA to enjoin the suit between the association of gaming operators and the Nairobi city county with a view to request for more time for consultation and settlement of the matter out of court.
- b) Urgent review of the policy, legal and regulatory regime
- c) Convene the intergovernmental sectoral forum as soon as possible to build consensus on devolution and operationalization of the function
- d) Hold county civic education for a to inform the counties on the various component/activities of betting casinos and other forms of gambling
- e) Incorporation of the schedule of unbundled functions to the betting bill by the team drafting the bill in order to clarify the role of each level of government
- f) TA to consider gazetting the function of BCLB once the contentious issues on the unbundling are ironed out.

2.2 AUDIT OF ASSETS AND LIABILITIES

The Transition Authority (TA) is mandated among other functions, to prepare and validate an inventory of all the existing assets and liabilities of Government, other public entities and local authorities (defunct). This is provided for in Section 7 (2) (e) in the Transition to Devolved Government Act (TDGA), 2012. The activities of this function which include audit of assets and liabilities of the defunct local authorities is contained in Section 1 (b) & (c) of the Fourth Schedule of the TDGA, 2012.

During the month, the audit team continued with the evaluation of the audit verification reports from the counties.

2.3 CAPACITY AND CAPABILITY DEVELOPMENT

Section 7 (2) (m) mandated TA to advise on the effective and efficient rationalization and deployment of human resource to either level of government. During this reporting period, emphasis was put on the ongoing CARPS programme and the closure and transfer of public records.

2.3.1 Closure and transfer of public records

The Transition Authority is charged with the responsibility of providing for a mechanism for closure and transfer of public records and information. This has resulted from the setting in and restructuring of the devolved system of government.

The Authority held several consultative meetings discussing modalities of developing a mechanism for closure and transfer of public records. The inter- agency committee on closure and transfer of public records undertook a pilot survey in Nakuru, Makueni, Kajiado, Nakuruand Nairobi City counties to map out the records that were previously under the care of local authorities and the re-structures provincial administration offices. County specific reports have been prepared and survey findings showed that:

- Infrastructure and storage space for records was inadequate
- Records belonging to defunct local authorities have been physically relocated from their original place of custody to other designated areas because of competition for space as a result of expanded functions at the counties
- There are limited inventories of records and therefore difficult to know the records held by various offices

Based on these findings, it was recommended that adequate space and infrastructure should be availed for storage of physical records. These include the following:

- Skilled and qualified records management personnel
- Appropriate and adequate space and equipment for records management
- Establishment of a county records centre or archives for management of semi and non-current records
- Provision of adequate allocation of resources for records management
- Counties to put up proper systems, procedures and practices for the management of records

- Integration of IT with records management and constantly seek for technical and professional guidance
- Systematize the handing/taking over of records of devolved or defunct public entities/functions through ensuring that in the event that it is deemed necessary to move records from one location to another, the receiving
- entities establish and maintain proper documentation (Registries/inventories) of the consignment.
- Where public offices have been abolished, the successor offices should administratively close all the existing files/records and open new ones reflecting the name and status of the succeeding office.
- Records manages in the county governments need to be capacity built and other staff sensitized on the need for proper records management.
- There is urgent need for the records management exercise aimed at appraising and disposing of vast accumulations of closed records of the defunct local authorities.
- There is need for an inventory of all records of county offices.

2.4 FACILITATION AND COORDINATION OF CIVIC EDUCATION

Vide section 1 (g) in the Fourth Schedule of the Transition to Devolved Government Act 2012, the Transition Authority is mandated to facilitate civic education, to ensure civic education on devolution is commenced and coordinated.

The Authority has been facilitating and coordinating activities on public participation and civic education through establishment of a committee of the board on civic education whose membership include; Ministry of Devolution and Planning, Office of the Attorney General and Department of Justice, Commission for the Implementation of the Constitution and Civil Society Organizations (Uraia Trust, and Amkeni Wakenya). The committee meets on monthly basis to review planned activities and provide platform for sharing civic education activities by the members. At county level, TA has county transition coordination mechanism where TA has coordinators in all the counties who are supporting counties in matters transition including civic education.

The following progress was made:

 Ministry of Devolution and Planning has requested for funding for Consultant to develop Civic Education framework from UNDP and are waiting for their response.

- The Authority is still in the process of pursuing the development of the National Policy for Public Participation in collaboration with the Department of Justice in the Office of the Attorney General.
- The Ministry of Devolution and Planning in collaboration with TA, World Bank, TISA and other Stakeholders reviewed the Guidelines on Public Participation. This will be validated on 26th February, 2015 in a multi stakeholder forum consisting of Ministries, Departments, Agencies and County Governments.

2.5 PLANNING, BUDGETING AND FINANCE COMMITTEE

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

2.5.1 Amendments to the Urban Areas and Cities Act, 2011

The draft amendments on the *Urban Areas and Cities* (Amendment) Bill, 2014 were forwarded to the CS/Lands, Housing and Urban Development. The Ministry acknowledged and proposed further amendments including proposal to create an Urban Areas and Cities Fund (UACF) to finance urbanization and urban development. Comments from the Council of Governors were also received.

2.5.2 Analysis of the fiduciary mock reviews

The review exercise focused in the critical areas of financial management and non-financial areas that have the potential of impairing financial management arrangements. They include (i) Strategic Plan issues (ii) Planning and budgeting (iii) accounting systems (iv) transaction reviews (v) internal control (vi) effectiveness of management oversight functions (vii) institutional risk management framework (viii) social accountability structures (ix) staffing and capacity needs assessment (x) corruption prevention mechanisms (xi) funds flow

arrangements (xii) procurement arrangements (xiii) financial reporting (xiv) external auditing and (v) value for money considerations.

The fiduciary mock reviews were also to provide first-hand information on the current status of transition to devolved governments and further inform on the possible gaps and challenges that might require urgent intervention by the stakeholders.

2.5.3 General findings/ emerging issues from the fiduciary mock reviews

Accounting and Accountability

It is observed that all the counties reviewed did not operate exchequer cash books or use the approved official and miscellaneous receipt books for collection and accounting for revenues. Most of the counties were operating through 'county imprest bank accounts' which circumvented the County Revenue Fund Accounts system. On IFMIS, it is partially rolled out in the counties (only cashbook and payable modules). A number of other critical modules such as budgeting, procurement, fixed assets, general ledger, payroll, debt management and tax/fiscal modules are not fully operational. As a result, IFMIS is yet to become a useful tool for county budgeting, accounting, procurement and financial reporting. There is need also to include project accounting and reporting module.

The donor funded projects also lack a standard/effective computerized accounting, procurement and financial reporting package.

Budgeting Coordination and Monitoring

The counties reviewed experience budget constraints including inadequate and untimely flow of funds. Procurement plans had not been prepared. This meant that annual budgets were not based on approved procurement plans and work plans for inclusion in the printed estimates. As a result, performance monitoring becomes difficult. There also weak or inadequate performance monitoring and coordination of county activities as well as slow setting up of county departments and other administrative structures to lead in the budgeting process for the devolved functions.

Internal Control, Staffing and Oversight

There is chronic understaffing and high staff turnover, especially by those who were on secondment from the national government. Due to high staff turnover and lack of

sustainable staff training programs there is limited knowledge of government disbursement/procurement procedures. The internal audit coverage is inadequate despite the existence of an internal audit function in all implementing county departments.

Procurement and value for money

Many activities had issues related to non-compliance with procurement regulations; poor procurement documentation; non-competitive procurement through single sourcing; different procurement procedures for the same activity; material amounts in procurement of goods and services being done on cash basis;

Non-compliance with timelines and legislation

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

Other emerging issues

Other issued noted include poor records management and filing systems and lack of Coordination of information flow.

2.5.3.7 General Recommendations and way forward

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

- d) The National Treasury in consultation with the Ministry of Devolution and Planning should ensure that there is effective performance monitoring units in the counties.
- e) The Internal Audit should adopt risk-based approach and ensure adequate project coverage in their annual work plans. Also, internal audit should conduct half yearly 100% post payment vouching of all payment vouchers, periodical returns, and procurement contacts, and issue a report to accounting officers and Audit Committees within two months.

2.5.4 Policy issues during the county mock audit

From the mock reviews, there was lack of or delays in formulating clear policies and legal frameworks to develop strategic plans, work plans, procurement and cash flow plans. This has resulted to poor execution of county mandates. Without key priorities, Counties could not ensure the most effective use of resources. There is also lack of a synchronized policy between Counties and the Ministries of National Government.

There is non-compliance with the use the approved official accountable and non-accountable standard documents like receipt books for collection and accounting for revenues, payment vouchers; cashbooks; vote-books; imprest warrants and registers; collection and continuity control sheets. In some instances the documents in use were not procured from Government Printers, which was the institution mandated to print accountable documents. There were no continuity control measures in the serial numbering and accountability of receipt books.

Assets Management

From the reviews, there is failure to institute prudent asset management policies and programs. Asset registers were not updated, assets were neither coded nor tagged and no officer was assigned the function to manage asset registers. Handing over-taking over records were not available;

Cash Management

From the reviews, there is failure to practice prudent cash management policies. Substantial cash were in imprest and held at hand. There is also the misconception that Government Financial Regulations and Procedures and Treasury instructions are not applicable to the operations at the Counties.

From the reviews, there were substantial ineligible expenditures. This is further exacerbated by the fact Counties had not put in place transparent mechanisms to receive, review, evaluate and process financial documents submitted from sub-units and sections, resulting in questioning the authenticity, validity and integrity of the documents submitted from sub-units and sections to account for expenditures and receipt. Payments are poorly supported

The process of initiating, processing and executing payment in the LAIFOMS were inconsistent because there are cases where payment vouchers and warrants were authorized by one person and in some cases executed without appropriate supporting documents.

Regarding the legislature, the County Assembly lacked adequate staff in the accounts section. This was evidenced by lack of internal checks and balances within the system, thus resulting to inaccurate bank reconciliations statements, poor maintenance of the cashbook.

Planning

The annual budgets were not based on approved annual procurement plans and work plans for inclusion in the annual Printed Estimates. This makes performance monitoring difficult to achieve.

Sectoral plans, spatial plans, cities and urban areas plans were yet to be prepared

Accounting and Accountability Issues

Poor keeping of cash books and vote books. In all the Counties, vote books and cash books are posted and balanced at the end of the month, instead of on daily basis.

- (a) The County Treasuries lacked the main cash books for the day to day operations.
- (b) Bank reconciliation statements did not conform to the conventional format and generally accepted accounting principles.
- (c) Cash book for revenue collections account that could be used for the purpose of reconciliation and debt management are not up-to date.
- (d) Substantial ineligible expenditures;

Procurement and value for money issues

Many activities had serious procurement – related issues such as: (i) general non-compliance with procurement regulations; (ii) poor procurement documentation; (iii) non-competitive procurements through single-sourcing; (iv) different procurement procedures within the same activity; (v) material amounts in procurement of goods and services being done on cash basis; and (vi) long procurement procedures adversely affecting costs;

- (a) Procurement from non-tax complaints companies;
- (b) Construction works without Bill of Quantities
- (c) Unaccounted Fuel Expenditure
- (d) Failure to prepare and follow procurement and cash flow plans to guide on the processes of procuring goods and requisitioning funding in the most prudent, economical and efficient manner.

Internal control, staffing and oversight

There is weak or non-existent internal oversight functions including audit and finance committees. County Departments did not have audit and finance committees. This is contrary to the PFM Act, 2012

Weak or non-existent social accountability structures and anti-corruption safeguards.

Internal audit coverage is inadequate or non-existent despite the existence of an internal audit function in all implementing county departments. Some counties had only one Internal Auditor which is way below the recommended minimum number of 5. This resulted to low coverage and impact of County based Internal Audit

The counties also lack corruption/fraud prevention policies and strategies, and weak institutional capacity within to deal with irregularities, corruption and fraud. There is no Integrity Committee in place and Integrity Officers appointed have not been started working.

There is lack of coordination between procurement committees, procurement officers and the accounting units. There are cases of payments above quotation and this has resulted in substantial loss for the counties.

ICT

There are delays in installing and computerizing ICT. Some of the Counties continue to operate financial and accounting systems that resulted in delays in the production of accurate and timely financial reports. There is also risk of loss of financial and accounting data and information when computerization is completed and hence continuity may not be assured when data and information is lost.

Counties have either chosen LAIFORM (Defunct Local Authority System) or IFMIS (National Government), creating inconsistencies. Local authority integrated financial operations management system (LAIFOMS) is incapable of producing summary financial reports. e.g. quarterly reports, imprest status report. IFMIS, being an Internet based system has frequent interruption problems, lack of a standard/effective computerized accounting, procurement and financial reporting packages. Some counties operate the two systems Local Authority Integrated Financial Operations Management System (LAIFOMS and the Integrated Financial Management Information System (IFMIS) concurrently. There is therefore need to integrate the two.

Revenue Control Weaknesses

There is lack of control in printing, issuance and use of revenue receipt books. The source documents i.e. receipt books and collection control sheets for control of revenue collection and accounting are not being used notwithstanding declining revenues.

2.6 LEGAL AND INTERGOVERNMENTAL RELATIONS

The Legal and Intergovernmental Relations thematic area is charged with advising, overseeing and coordinating the legal and intergovernmental aspects of the Authority's mandate.

2.6.1 Development of legislative guide for the two levels of Government

TA in collaboration with the Kenya Law Reform Commission, the Commission on Implementation of the Constitution and the Ministry of Devolution and Planning is currently developing a guide on the legislative process. This guide will assist County Governments, the National Government as well as any other users by illustrating a step by step process of developing a law as well as give a procedural guide on key Constitutional and legal requirements.

2.6.2` Training of legislative drafters

In collaboration with the Council of Governors and the Ministry of Devolution, TA undertook a second phase of training for County Attorneys. The main aim of these trainings is to impart on the County Attorneys the requisite legislative drafting knowledge and skills which they require to adequately conduct their functions as well as to fulfill the National Governments obligation to provide support and build the capacity of County Governments.

2.6.2 Court cases

Defending the Authority in Courts of law.

The Authority moved Court after the Salaries and Remuneration Commission communicated to TA on their decision to review the salaries of its employees downwards. This matter is in Court and the Authority is seeking orders That:

The Advice /review of the SRC is unconstitutional and violates the provisions of Article 2(2),10(2),41(1) 47(2),220,230(4),230(5)(b) (c)(d) and 236 of the Constitution.

An order of Prohibition do issue restraining the SRC from implementing the review. An order of Prohibition restraining the SRC from in a manner reducing and reviewing the salaries and remuneration of TA staff.

- The orders sought by TA were granted.
- The court ordered that the decision of the SRC be stayed pending a full hearing of the matter.
- The matter is in Court for hearing on 19th February 2015.

3. KEY ACHIEVEMENTS FOR MONTH

- A Consultancy to undertake the Costing of Functions was commissioned.
- Inventory and verification of Assets and Liabilities in the 47 Counties report
- Capacity Assessment and Rationalization of the Public Service Programme is progressing well in the counties.
- Draft curriculum and Manual for implementation of Civic Education.

4. PROJECTED ACTIVITIES FEBRUARY

TA will continue to undertake the following activities during the month of February:

- i) Undertake comprehensive inventory of Assets and Liabilities of the former LAs.
- ii) Costing of all the government functions (both devolved and national government functions).
- iii) Developing the mechanism and policy on closure and transfer of public records

5. CONCLUSION

The Authority has accomplished substantive milestones and it is expected that the outputs of the above elaborated activities will have a far-reaching effect especially on the management and operationalization of the counties. The Authority will continue to fast-track the establishment of administrative units, audit of human resources and implementation of devolved functions in the counties. Key activities such as audit of assets and liabilities and costing of functions will also be fast tracked.