



**TRANSITION AUTHORITY**

**REPORT ON THE STATUS OF  
DEVOLUTION:  
ACHIEVEMENTS, CHALLENGES AND  
LESSONS LEARNT**

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**June 2015**



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**The Transition Authority**  
Report on the Status of Devolution:  
Achievements, Challenges and Lessons Learnt  
June 2015

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# Acronyms and Abbreviations

AMIS	-	Asset Management Information System
AMS	-	Agricultural Mechanization Station
ASAL	-	Arid and Semi-Arid Lands
ATC	-	Agricultural Training Centre
CARPS	-	Capacity Assessment and Rationalization of Public Service
CASB	-	County Assembly Service Board
CEC	-	County Executive Committee
CETRAD	-	Centre for Training and Integrated Research in ASAL Development
CG	-	County Government
CGA	-	County Government Act
CIC	-	Commission for the Implementation of the Constitution
CIDP	-	County Integrated Development Plan
CLARION	-	Centre for Law and Research International
CoK	-	Constitution of Kenya
CPS	-	County Public Service
CPSBS	-	County Public Service Boards
CPST	-	Centre for Parliamentary Studies and Training
CRA	-	Commission for Revenue Allocation
CSO	-	Civil Society Organization
CTC	-	County Transition Coordinator
DIPOA	-	DICECE Programme Officers Association
DPSM	-	Directorate of Public Service Management
DICECE	-	District Centres for Early Childhood Education
ECD	-	Early Childhood Development
FBO	-	Faith Based Organization
FY	-	Financial Year
ICT	-	Information and Communication Technology
IED	-	Institute for Education in Democracy
IFMIS	-	Integrated Financial Management Information System
KBC	-	Kenya Broadcasting Corporation
KEGOSES	-	Kenya Governors Strategic Executive Support
KeRRA	-	Kenya Rural Roads Authority
KICD	-	Kenya Institute of Curriculum Development
KLRC	-	Kenya Law Reforms Commission
K-NICE	-	Kenya National integrated Civic Education
KSG	-	Kenya School of Government

KSMS	-	Kenya School of Monetary Studies
KURA	-	Kenya Urban Areas Authority
LAIFOM	-	Local Authorities Integrated Financial Operations Management System
LAPFUND	-	Local Authorities Pension Fund
LAPTRUST	-	Local Authorities Pension Trust
MDA	-	Ministries, Departments and Agencies
MoDP	-	Ministry of Devolution and Planning
MTF	-	Mechanical and Transport Fund
MTP	-	Medium Term Plan
NCBF	-	National Capacity Building Framework
NESC	-	National Economic and Social Council
NGO	-	Non Governmental Organizations
OLPADEP	-	Olmaa Pastoralist Development Programme
PE	-	Personnel Emoluments
PFMA	-	Public Finance Management
PSC	-	Public Service Commission
QRA	-	Quick Readiness Assessment
RBA	-	Retirement Benefits Authority
SHOMAP	-	Small Holder Opportunity Markets Access Programme
Summit	-	National and County Government Co-ordinating Summit
TA	-	Transition Authority
TDGA	-	Transition to Devolved Government Act
TIP	-	Transition Implementation Plan
TSC	-	Teachers Service Commission
UACA	-	Urban Areas and Cities Act
UNDP	-	United Nations Development Programme
UNES	-	University of Nairobi Enterprises and Services

# Foreword

One of the pillars of successful devolution is transfer of power and resources where Kenya's devolution paradigm has been variously described as the most ambitious. This has been operationalized through the enactment of various enabling legislations namely the Public Finance Management Act, 2012; and the various devolution laws which includes, the Transition to Devolved Government Act, (TDGA) 2012; the County Governments Act, 2012; the Urban Areas and Cities Act, 2011; the Intergovernmental Relations Act, 2012; and the County Governments Public Finance Management Transition Act, 2012.

The Transition Authority draws its mandate from the TDGA, 2012. Upon inception, the Authority drew an Eight Point Road Map which focused on establishing the devolved governments in Kenya according to Section 7 of the Act. This was later taken over by the Strategic Plan for the period provided in the Act.

This report gives the highlights of the achievements, challenges and emerging issues faced by the Authority while undertaking its responsibility as envisaged by the Act. It has also brought to the fore some of the challenges facing devolution and proposed areas where the Senate can intervene given its role as per Article 96(1) of the Constitution. This is to ensure the gains made are jealously safeguarded, protected, and defended to ensure sustainability of the devolved units.

In the course of discharging its duties, the TA has benefited from the support of various stakeholders both in terms of financial and technical assistance. We highly appreciate your continued support as you are playing a key role in ensuring the TA achieves the expected results.



Kinuthia Wamwangi, EBS  
Chairman





# Acknowledgement

**T**he Transition Authority would like to express its deepest appreciation to all those who contributed to the preparation of this report. Special gratitude to our development partner, UNDP whose contribution made it possible to hold the retreat with Senators by availing funds for the purpose.

The Transition Authority appreciates the support of TA leadership led by the Chair Mr. Kinuthia Wamwangi and TA members and in particular the chairpersons of its committees. TA also acknowledges with much appreciation the crucial role played by its staff and the staff of senate.

Special thanks go to the members of the Planning Team headed by Mr. Erastus Rweria, MBS assisted by Mrs. Angeline Hongo, MBS, Vice-chairperson of TA and comprising of Ms. Grace Kimitei, Ms. Margaret Kiema, Ms. Joy Bigambo, Mr. George Kimani, Ms. Florence Oduk, Mr. Ndungu Njoroge, Ms. Maggy Mwangangi, Ms. Brenda Ogembo, Ms. Christine Sagini, Ms. Kavata Musyoki, and Hassan Dubow. The contributions of Mr. Polycarp Oduol, Mr. Andrew Adera, Ms. Joyce Kariuki, and Mr. Joel Leposo who partly served in the Team are also acknowledged. The Team organised the retreat with Senators and also prepared this report within a very short time. Their effort and dedication is highly commendable and appreciated.

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Last but not least TA appreciates with gratitude the role played by its County Transition Coordinators who supplied the information for Chapter 4 of this report. TA pays homage and reverence to Sweet Lake Resort for hosting the Planning Team and for their nice hospitality and service.

To all of you, I say thank you.



**Stephen K. Makori**  
Secretary/ CEO

# Executive Summary

The Transition Authority (TA) is established under Section 4 of the Transition to Devolved Government Act (TDGA), 2012 pursuant to Section 15 of the sixth Schedule to the Constitution and with the core mandate of facilitating and coordinating the transition to devolved system of government.

Section 7 of the TDGA2012 provides the specific functions of TA and these functions have been implemented in consultation and partnership with government and non- state actors. The Authority has continued to achieve significant progress in the delivery of its mandate and has consequently provided guidance in addressing key emerging devolution challenges.

One of the main tenets and indicators of implementation of devolution and in particular transition is the effective analysis and transfer of devolved functions to the County Governments. Towards this end, TA developed a functional analysis framework to guide the analysis and unbundling process. The Authority has successfully carried out three phases of transfer of functions to County Governments viz: Legal Notice No. 16 of 1<sup>st</sup> February, 2013, Kenya Gazette Supplement No. 116 (Legal Notices No. 137 – 183) of 9<sup>th</sup> August 2013 and Legal Notice No. 33 of 17<sup>th</sup> March, 2014. The transfer of functions has not been without challenges and the TA has continuously facilitated key strategic interventions variously involving sector stakeholders to obviate emerging transition challenges related to functional definitions, and implementation for example betting, casinos and other forms of gambling and pre-primary education among other functional areas. Consequently, the TA has commenced engagements with the Regional Development Authorities to clearly unbundle their functions and the budgetary resources attached to them.

The TA inducted the Interim County Treasury teams on the constitutional and legal framework of public financial management, planning, budgeting, budget execution, accounting and reporting and issued several guidelines. The TA in collaboration with the former Ministry of Finance prepared the 2012/2013 (March - June 2013) budget for the county governments. Also the TA also facilitated the preparation of county profiles and ensured they are validated, published and publicized in all the counties. Also in consultation with the former Ministry of Planning National Development and Vision 2030, the TA prepared and issued guidelines on preparation of the County Integrated Development Plans (CIDPs) in May 2013. The guidelines assisted counties in their preparation of annual development plans, sectoral plans, and the CIDPs. In addition, in collaboration with the Physical Planning Directorate of the Ministry of Lands, Housing and Urban Development prepared guidelines for preparation of county spatial plans. Further, the Authority undertook the initial assessment of urban areas and cities.

The transfer of political and administrative power should be accompanied by sufficient financial powers to Sub-National Governments with a view to improving access, efficiency and responsiveness of service delivery, promote participation and empower citizens to demand accountability and performance. To this end, as a transitional measure although the resources were assigned based on the institutional arrangements prior to devolution, the TA has commenced the process of getting the realistic costs of service delivery. The process is currently going on in five sectors.

Concerning audit of assets and liabilities, a moratorium on Transfer of Assets was publicized in a bid to secure public assets during the transition period and a mechanism and criteria for transfer of assets and liabilities between the two levels governments was developed. An inventory of assets and liabilities of defunct local authorities have been compiled with assets worth ksh 140 Billion identified. The public participation and validation exercise is underway in all the Counties.

To operationalize the county governments and ensure a seamless delivery of services during the transition period, TA conducted a quick readiness assessment to establish county capacity needs and their preparedness for functions uptake .It also developed a national capacity building framework and released guidelines and advisories required to operationalize the County Assemblies. TA

also audited the staff for the defunct local authorities and the devolved functions and is currently involved in Capacity Assessment and Rationalization of the Public Service (CARPS) which aims at providing a well-organized structure at both levels of government based on mandates and functions. On establishment of county pension scheme, the Authority prepared and presented the report to stakeholders recommending establishment of an Umbrella Scheme through an Act of Parliament.

To strengthen the capacity of the interim County treasuries, the TA inducted the Interim County Treasury teams on the constitutional and legal framework of public financial management, planning, budgeting, budget execution, accounting and reporting and issued several guidelines during the transition period. Further, the Authority undertook the initial assessment of urban areas and cities.

We have established an Inter- Agency Committee to spearhead civic education on devolution activities which plays a key role in enlightening the general populace. In addition, the TA has developed and piloted a curriculum on civic education on devolution and public participation, produced civic education/IEC materials on devolution, sensitized the public and a reference database for Government and Non- State Actors who wish to engage in civic education. The main challenge has been insufficient budgetary allocation, uncoordinated and incongruent initiatives by various Stakeholders.

Apart from the notable achievements observed in the Counties, a number of challenges have threatened to roll back the gains made in implementation of devolution. Major ones include emerging challenges have been recorded which include inadequate capacity by counties to perform assigned functions, intergovernmental relations issues, supremacy wars, political patronage especially in the human resource management and insecurity which has hampered smooth delivery of services.

In the execution of its mandate, TA also faces a number challenges which include late inauguration of the authority prior to the last general elections, inadequate budgetary allocation and slow submission of data on functions, costing and norms and standards from the national Government.

Given the above emerging issues and challenges, The TA has proposed a number of interventions by the senate which include increased budgetary allocation, pressing upon the national government to provide norms and standards, develop and finalize review of various polices, laws, regulations that touch on devolved functions. It's also urging the senate to intervene on a number of issues concerning Human resources like threats by county governments to return back personnel performing devolved government at the expiry of the secondment period. Some Counties have also rejected medical staff posted to the counties under internship; this needs urgent attention from the senate.

From the milestones achieved and given the provisions of our mandate, a number of pending activities have been prioritised. Firstly, Physical verification and auditing of assets and liabilities of defunct local authorities and Ministries, Departments and Agencies need to be finalized. Further, the development of a mechanism and transfer of public assets and inventory of projects, programs and reform initiatives under the defunct local authorities require completion.

Secondly, unbundling of functions which is a continuous process, costing the remaining 13 ministries and development of a framework to guide the analysis and performance of concurrent functions will be carried out.

Thirdly, TA will facilitate finalization of a mechanism for closure and transfer of public records and information. It will also give guidance on implementation of the pension scheme recommended by the interagency technical committee. Fourthly, an inventory of programs and projects and reform initiatives and recommendations on reallocation to either level will be done. Classification of urban areas will also be carried out. Lastly, a national framework on civic education will be developed coupled with development of IEC materials.

## CHAPTER ONE

# 1.0 Background

## 1.1 Introduction

The implementation of the Lancaster House Constitution was characterized by poor governance as evidenced by corruption, ethnic conflict, insecurity, political uncertainty and poverty. Some of the negative outcomes include the alienation of large portions of society from the mainstream economy, wasteful public investments, massive poverty, ethnic animosity, cut-throat political competition and intolerance.<sup>1</sup> As a result of this, there was clamour for constitutional reforms in Kenya in order to correct deficiencies of the post-independence governance framework. The aim of the Kenyan people was the desire to manage their own affairs, particularly, in matters of local governance and development.

The Constitution of Kenya, 2010 (CoK, 2010) fundamentally altered the governance framework through far reaching reforms. Of these, devolution of political power, responsibilities and resources has the most profound and transformative impact on governance and management of resources. However, it is the most complex and the least understood aspect of the CoK 2010, as it permeates all spheres of society and organs of government. Effective implementation of devolution is therefore crucial for our development as a country.

## 1.2 Objects and Principles of Devolution

The objects of the devolved system of government as provided under Article 174 of the CoK, 2010 includes:

1. the promotion of democratic and accountable exercise of power;
2. fostering of national unity by recognizing diversity;
3. giving of powers of self-governance to the people and enhancing of the participation of the people in the exercise of the powers of the state and in making decisions affecting them;
4. recognizing of the right of communities to manage their own affairs and to further their development;
5. protection and promotion of the interests and rights of minorities and marginalized communities;
6. promotion of social and economic development and the provision of proximate, easily accessible services throughout Kenya;
7. ensuring of equitable sharing of national and local resources throughout Kenya;
8. the facilitation of the decentralization of state organs, their functions and services, from the capital of Kenya; and
9. Enhancement of checks and balances and the separation of powers.

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<sup>1</sup> The Final Report of the Taskforce on Devolved Government: A Report on the Implementation of Devolved Government in Kenya, Office of the Deputy Prime Minister and Ministry of Local Government, (September, 2011), p.10.

Article 175 of the CoK, outlines the guiding principles of devolved governments namely:

- a. County Governments should be based on democratic principles and separation of powers;
- b. be availed reliable sources of revenue to enable them to govern and deliver services effectively; and
- c. must ensure that each of the two genders have at least a third of the members of representative bodies in the county.

## 1.3 Transition to Devolved System of Government in Kenya

Section 15(1) of Sixth Schedule of the CoK requires Parliament, by legislation, to make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them under Article 185. It further requires that the legislation mentioned in subsection 15(1) of the Sixth Schedule:

- a. provide for the way in which the national government shall:
  - i. facilitate the devolution of power;
  - ii. assist county governments in building their capacity to govern effectively and provide the services for which they are responsible; and
  - iii. support county governments;
- b. establish criteria that must be met before particular functions are devolved to county governments to ensure that those governments are not given functions which they cannot perform;
- c. permit the asymmetrical devolution of powers to ensure that functions are devolved promptly to counties that have the capacity to perform them but that no county is given functions it cannot perform; and
- d. provide mechanisms that ensure that the Commission on the Implementation of the Constitution can perform its role in monitoring the implementation of the system of devolved government effectively.

In order to operationalize these provisions, parliament enacted the TDGA, in 2012. As anticipated by the CoK, the object and purpose of the TDGA is to:

- i. provide a legal and institutional framework for a co-ordinated transition to the devolved system of government while ensuring continued delivery of services to citizens;
- ii. provide, pursuant to section 15 of the Sixth Schedule to the Constitution, for the transfer of powers and functions to the national and county governments;
- iii. provide mechanisms to ensure that the Commission for the Implementation of the Constitution performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively;
- iv. provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of:
  - a. assets and liabilities;
  - b. human resources;
  - c. government and local authorities; and
  - d. pensions and other staff benefits of employees of the any other connected matters;
- v. provide for closure and transfer of public records; and
- vi. provide for the mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.

## 1.4 The Mandate of the Transition Authority

The Transition Authority (TA) is established under Section 4 of the *Transition to Devolved Government Act* (TDGA), 2012 pursuant to Section 15 of the sixth Schedule to the Constitution and with the core mandate of facilitating and coordinating the transition to devolved system of government. The specific functions of TA as outlined in Section 7 of the TDGA include the following:

- a. Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule to the Constitution to the National and County Governments;
- b. Determine the resource requirements for each of the functions;
- c. Develop a framework for the comprehensive and effective transfer of functions as provided for under Section 15 of the Sixth Schedule to the Constitution;
- d. Coordinate with the relevant State organ or public entity in order to facilitate the development of the budget for County Governments during Phase One of the transition period;
- e. Establish the status of ongoing reform processes, development programmes and projects and make recommendations on the co-ordinated management, reallocation or transfer to either level of government during the transition period and ensure the successful transition to the devolved system of government;
- f. Coordinate the validation and publication of the County Governments and National Government functions;
- g. Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
- h. Provide mechanisms and make recommendations for the effective management of assets of the national and county governments;
- i. Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period;
- j. Pursuant to section 15 (2) (b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments;
- k. Oversee the transfer of functions from the National Government to the County Governments;
- l. Carry out an audit of the existing human resource of the Government and local authorities;
- m. Assess the capacity needs of National and County Governments;
- n. Advise on the effective and efficient rationalization and deployment of the human resource to either level of government;
- o. Recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions;
- p. Coordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- q. Submit monthly reports to the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation on the progress in the implementation of the transition to the devolved system of government; and,
- r. Perform any other function as may be assigned by national legislation.

The TDGA, 2012 specifies two transition phases: Phase One - from the commencement of the Act until the first election under the new Constitution, and Phase Two - three years after the first elections. The Transition Authority has continued to achieve significant progress in delivery of its mandate despite the many challenges it has faced.

During the First Phase, TA concentrated on laying the groundwork for the incoming of county governments, to ensure a seamless transition to the new system of government, while the Second Phase has been dedicated to facilitating and coordinating the operations of the county governments to ensure that, service delivery is not only un-interrupted but also enhanced.

These tasks have been implemented in consultation and with partnerships with the Senate, the National Assembly, national

Government ministries, departments and agencies (MDAs), county governments, the constitutional commissions and independent offices, including the Commission on Implementation of the Constitution (CIC), the Commission on Revenue Allocation (CRA), the Office of Auditor-General, the Office of Controller of Budget; development partners and Non-State Actors among others.

The law requires TA to report to Parliament on the progress made towards the realization of its mandate. This has been done continuously. For instance, during the First Phase, TA organized its first consultative meeting with chairmen of all departmental committees of the National Assembly. In 2013 TA held a consultative forum with the Senate. The objective of that retreat was to ensure that the Senate appreciates the role that the Transition Authority has played towards operationalization of the county governments as well as transfer of functions amongst other achievements. As a follow-up to this meeting, Transition Authority is organizing a second consultative retreat with the Senate.

This report therefore captures the achievements, challenges, pending work and areas of intervention by the Senate in view of its role as provided for in Article 96 of the Constitution.



## CHAPTER TWO

## 2.0 Achievements Made by the Transition Authority

The sub-sections below list the achievements of the TA as per the mandates as listed under section 7 of the *Transition to Devolved Government Act, 2012*.

### 2.1 Functional Analysis and Competency Assignment

The Transition Authority developed a functional analysis framework which is under implementation. The framework outlines guidelines for unbundling and transferring of functions. Templates for preparation of transition implementation plans (TIPs) were developed and disseminated to be used by MDAs pursuant to section 16 of the TGDA, 2012.

The unbundling of functions was done in line with the above framework. In July 2013, TA engaged the respective ministries on functions listed in Part 2 of the Fourth Schedule of the Constitution and unbundled most of the functions. This process helped to inform the subsequent transfer of functions.

#### 2.1.1 Analysis/Unbundling of functions

The devolved system of governance is about achieving improved public service delivery and ensuring accountability in the processes. Therefore, realization of developmental devolved government in a manner that supports the overall objectives of the Constitution of Kenya, 2010 will require efforts aimed at strengthening those in existence and building new institutions. This process required a clear and transparent effort to assign as well as clarify functions, competencies and responsibilities to the two levels of government. Key issues in respect of service delivery based on the functional assignment are as follows:

- Achievement of clarity in the functional assignment through unbundling/clarifying them and assigning competencies between the national and county governments;
- Determination of the service level gaps in respect of each competency;
- Determination of the expected performance level;
- Allocation of funds to levels of government according to their service delivery mandates;
- Identification of capacity and capability constraints;
- Development of a short, medium to long term capacity building programme; and,
- Review the organization of national government to reflect the assignment of functions under the CoK 2010.

The Transition Authority unbundled the functions of both level of government and prepared a comprehensive report on the same. However, it's important to note that unbundling is not a one off activity but rather a continuous policy dialogue.

## 2.2 Phased Transfer of Functions

### 2.2.1 Phase One: Gazettement of the Initial Functions for Transfer Ahead of the March 2013 General Elections

Section 23 (1) of TDGA required the TA, by notice in the Gazette at least thirty days before the first elections under the Constitution, to identify functions which may be transferred to the county governments immediately after the first elections under the Constitution. TA identified the functions for the initial transfer to the county governments to be those which were being undertaken by the defunct local authorities. These functions did not require a lot of new infrastructure, structures and mechanisms to deliver services to the public. The transfer was effected through Legal Gazette Notice No.16 of February 1, 2013 (Appendix to this report).

### 2.2.2 Phase Two of the Transfer of Functions

The TA undertook the second phase transfer of functions on August 9, 2013 vide *Legal Notices No. 137-183*. Despite the numerous challenges, political pressure and the decision of the National and County Government Co-ordinating Summit (Summit) to transfer all functions, TA was able to delay the transfer of a number of functions that were deemed not ready for transfer. Notably, the management of Agricultural Training Centres and Agricultural Mechanization Stations as well as the personnel emoluments for all the transferred functions were delayed for six months. Other functions that were delayed included the roads function (pending agreement on classification), the mechanical and transport equipment functions, and electricity, gas reticulation and energy regulation among others. The national government continued performing these functions on behalf of the county governments as efforts to provide the necessary capacity continued.

### 2.2.3 Phase Three of Transfer of Functions

This entailed the transfer of the management and assets of Agricultural Training Centres (ATCs) and Agricultural Mechanisation Stations (AMSs) under the agricultural sector. TA developed guidelines for sharing of the ATCs and AMSs and agreements were reached by the two levels of government on the governance and management of the facilities. The guidelines included definition of the relationships between the host counties and the neighbouring ones using the facilities. The transfer was effected vide *Legal Notice No. 33* of 1 March 17, 2014 (Appendix to this report).

### 2.2.4 Transfer of Appealed Functions

The Authority delayed the transfer of certain functions during the second transfer resulting to County government's displeasure with the decision of TA which resulted in their lodging of appeals to the Senate, in accordance with section 24 of the TDGA.

The Senate determine the matter in favour of the counties. The Transition Authority prepared a gazette notice which it forwarded to the Attorney-General with the aim of transferring the functions which were the subject of the appeal. However, the Attorney-General declined to gazette the functions citing inconsistencies in the decision by the Senate. As a result, the functions were not transferred to the counties which led to Council of Governors instituting legal proceedings against the Office of the Attorney General. The matter is still in court pending determination.

## 2.3 Strategic Interventions on Emerging Challenges Following the Transfer of Functions

TA has continued to provide guidance on key emerging challenges following transfer of functions. For instance, TA successfully facilitated a consultative forum on the secondment of Early Childhood Development (ECD) officers to County Governments (CGs). The objective of the forum was to build consensus on the secondment of the ECD Officers to the County Governments to continue performing the devolved pre-primary education function. TA provided the requisite guidance in line with Article 187 of the CoK, and the Teachers Service Commission (TSC) released the ECD officers to the county governments. Subsequently, the DICECE Programme Officers Association (DIPOA) withdrew the court case it had instituted against the Commission.

TA also facilitated a consultative forum on the future position of the Centre for Training and Integrated Research in ASAL Development (CETRAD). The purpose of the forum was to forge a mutual understanding on the future of CETRAD in view of its core mandate, namely, research and training, considering that the seconded staff from the former Ministry of Water, Environment and Natural Resources had been devolved to Laikipia County. In addition, TA also spearheaded the transfer and absorption of Youth Polytechnic instructors under the Economic Stimulus Programme (ESP) by the County Governments.

**Table 1 below presents a broad summary of the status of transfer of devolved functions to the County as at 1st June 2015.**

	Functions as listed in the Fourth	Transferred	Pending Transfer	Remarks /Justification
1	Agriculture, including— (a) crop and animal husbandry; (b) plant and animal disease control; and (c) fisheries	a) crop and animal husbandry; (b) plant and animal disease control; and (c) fisheries	N/A	N/A
2	County health services, including, in particular	(a) county health facilities and pharmacies (b) ambulance services (c) promotion of primary health care (d) licensing and control of undertakings that sell food to the public; (e) veterinary services (excluding regulation of the profession) (f) Refuse removal, refuse dumps and solid waste disposal	N/A	N/A
3	Control of air pollution, noise pollution, other public nuisances	Control of air pollution, noise pollution, other public nuisances	N/A	N/A
4	Cultural activities, public entertainment and public amenities, including:	(a) Casinos and other forms of gambling (b) racing; (c) cinemas; (d) video shows and hiring; (e) libraries; (f) museums; (g) sports, cultural activities and facilities.		There has been emerging issues concerning delivery of services relating to Casinos and betting function due to its concurrency. A court case is ongoing on the same.
5	County transport, including:	a) Access Roads b) Street lighting c) Traffic and parking d) County Road including Primary roads linking all sub-county headquarters and minor roads linking markets and administrative centres	Management of some Roads currently managed by KURA and KERRA.	TA unbundled and classified the roads function. the two levels did not achieve concurrence on the classification of roads  Current laws governing Road Management for KURA and KERRA to be realigned to the CoK 2010 and pending roads classifications and agreements between the two levels of Government. A court case is ongoing on the same.

	Functions as listed in the Fourth	Transferred	Pending Transfer	Remarks /Justification
6	Animal control and welfare	a)Licensing of dogs b)Facilities for the accommodation, care and burial of animals	N/A	☐ N/A
7	Trade development and regulation, including:	a)Markets b)Trade licenses(Excluding regulation of professions) c)Fair trading practices d)Local Tourism e)Cooperative societies	N/A	N/A
8	County planning and development, including:	a)statistics; b)Survey and Mapping (c) boundaries and fencing; (d) housing	electricity and gas reticulation and energy regulation	The counties face challenges in delivering the survey, mapping, housing functions Counties have an agreement schedule with REA on implementation of rural electrification projects during the transition period
9	Pre-primary education, village polytechnics ,home craft centres and child care facilities	Pre-primary education, village polytechnics ,home craft centres and child care facilities	N/A	N/A
10	Implementation of specific national government policies on natural resources and environmental conservation,	a) soil and water conservation; and (b) Forestry.		All the specific policies are in draft stages
11	County public works and services, including:	a)storm water management systems in built up areas b)water and sanitation services	N/A	N/A
12	Firefighting services and disaster management	Firefighting services and disaster management	N/A	N/A
13	Control of drugs and pornography	Control of drugs and pornography	N/A	N/A
14	Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.	Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level	N/A	There has been challenges emerging from ambiguity, concurrency and definition of functions after the transfer of this functions

Source: Transition Authority

## 2.4 Determination of the Cost of Devolved Functions

One of the mandates of the Transition Authority under section 7(2) (b) of the Transition to Devolved Government Act, 2012 is to determine the resources required to perform the functions.

In order to implement this mandate, historical allocations to the functions were used to map out resources as allocated before devolution. This resulted to a total of KShs. 210 billion being mapped out and transferred to the 47 county governments in partial fulfilment of the requirements of Article 187(2) of the CoK, 2010.

The Transition Authority, the Commission on Revenue Allocation and the National Treasury also estimated the costs of setting up new institutions at the county level. To this end, costs were assigned to the County Assemblies and County Executives in terms of personnel emoluments, administrative costs, and the cost of setting up public financial management systems and for County Public Service Boards. This was meant to provide resources to enable counties set to up critical administrative structures in order to ensure uninterrupted service delivery.

### 2.4.1 Break Down of Indicative Financial Resources for Devolved Functions Financial Year 2012/2013

The determined costs for the earmarked county functions included the cost of specific devolved functions, the cost for operationalization of county governments and personnel and administration costs.

From the computations, a total cost of about KShs. 210 billion was realized from the budget of the 2012/2013 financial year. Out of the KShs. 210 billion, KShs. 107.4 billion was recurrent expenditures while KShs. 102.6 billion was for development expenditure.

The historical costing approach allocates resources to produce goods and services regardless of sufficiency and the resources are allocated using the existing institutional arrangements. Services are determined depending on who does it. This therefore perpetuates historical skewedness /inequity in resource allocation. There is also the possibility of leaving some of the functions assigned to a given level of government continuously remaining unfunded.

### 2.4.2 Comprehensive Determination of Resource Requirements for Functions

It is important to note that this initial costing was a transitional measure and the Transition Authority in collaboration with the Commission on Revenue Allocation (CRA) is currently undertaking a comprehensive costing of functions. The objective is to examine and determine the realistic quantum or proportion of funds and other resources for performance of functions assigned to the national and county governments.

This is in recognition of the key mandate bestowed to the two institutions in relation to costing of functions and resource allocation. The process is currently on course and for phase 1, functions of five (5) sectors namely, Agriculture, Livestock and Fisheries; Health, Transport and Infrastructure; Water and Environment and Foreign Affairs and International Trade are being costed. The first four sectors were identified during a stakeholder consultative session as the mostly devolved while foreign affairs were picked as an exclusive national government function. In line with the CoK, the following functions which are within the five sectors are being costed:

- i. Foreign affairs, foreign policy and international trade;
- ii. Transport and communications;
- iii. Public works (infrastructure); protection of the environment and natural resources;
- iv. Health policy; Agricultural policy;
- v. Veterinary policy; Agriculture;
- vi. Health services;

- vii. Environment and natural resources;
- viii. Water and sanitation and;
- ix. Animal control and welfare.

With support from the United Nations Development Programme (UNDP), a consultant (University of Nairobi Enterprises and Services Ltd. (UNES)) was contracted to undertake the assignment. The consultant has been on board since the end of January 2015. The data for the five sectors has been collected at the national level and county level. The consultant is currently undertaking in-depth data analysis to enable them to prepare the final report to be submitted in mid-July 2015.

The costing approach adopted is highly consultative and is based on the real costs of service delivery. It ensures value for money with constrained resources, informs resource allocation decisions and achieves productivity required by the government as well as providing guidance on determining proper pricing for user charges.

Information is being provided by the ministries and departments at both national and county levels. Purposive sampling was used to select the five sectors and the eighteen counties based on representation from each region and poverty rate. This formed a sample of nineteen which is inclusive of the National Government. The sampled counties include: Mombasa, Makueni, Meru, Garissa, Nairobi, Kisumu, Kisii, Homa Bay, Bomet, Turkana, Uasin Gishu, Nyeri, Muranga, Kilifi, Mandera, Nakuru, Kakamega, Lamu and Bungoma. The collection of data was also done in Kitui County on the request of the County Government.

## 2.5 Inventory, Audit and Transfer of Public Assets and Liabilities

The Transition to Devolved Government Act, 2012 in section 7(2)(e), (f), (g) and (h)(ii) listed the functions of TA in relation to securing, management, audit and transfer of public assets and liabilities during the transition period. The following are the achievements:

### 2.5.1 Phase One of Transition to Devolved Governments (July 2012-March 4, 2013)

During this period, the following were TA achievements:

- i. Conducted County Infrastructure Readiness Assessment which informed on the status of infrastructure in the counties and arising from the identified gaps;
- ii. Identified and publicized Interim County Governments Offices and;
- iii. Collected unaudited data on assets and liabilities of the defunct local authorities.

### 2.5.2 Phase Two of Transition to Devolved Governments- (5th March 2013 to 2nd June 2015)

During part of the second phase, the following are the achievements:

1. Publicized the moratorium on transfer of public assets which was meant to secure public assets and liabilities during the transition period;
2. TA installed an Asset Management Information System (AMIS) where data on public assets, liabilities and staff is captured with capabilities for data protection, remote access to the data using a laptop, desktop, mobile phone from anywhere on the globe via the internet on user rights basis;
3. Populated with the incoming data on assets, liabilities and staff from ministries, departments and agencies;
4. Developed mechanism and criteria for transfer and sharing of all existing public assets and liabilities has been;

5. Transferred assets and liabilities of all (24) agricultural mechanization stations and agricultural training centres (34) to county governments;
6. Verified six out of nine projects attached to Small Holder Opportunity Markets Access Program (SHOMAP) from the Ministry of Agriculture, Livestock and Development. The six projects were in Bungoma, Kericho, Kisii, Meru, Nyandarua and Tharaka Nithi counties;
7. Verified fish processing plants from the Ministry of Agriculture, Livestock and Fisheries Development in three (3) counties namely: Kakamega, Meru and Nyeri;
8. Facilitated the transfer and sharing of equipment held under the Mechanical and Transport Fund (MTF) to county governments,
9. The data on assets and liabilities from the defunct local authorities was shared with the county governments upon taking office as an initial unaudited register of assets and liabilities that they were taking over,
10. The TA has facilitated the handing over of assets and liabilities of the defunct local authorities in 31 counties. This is an administrative exercise that was meant to enable the county governments secure the assets and liabilities of the defunct local authorities in custody pending verification, audit and transfer of the same.
11. The TA also developed and publicized the procedures for disposal of boarded public assets during the transition period.
12. Using the aforementioned procedures, the TA granted approvals for disposal of boarded public assets by MDAs.
13. The TA undertook a nationwide physical verification of assets and liabilities of all 175 defunct local authorities and prepared unaudited inventory of all existing assets and liabilities. The TA has resolved some of the warehoused issues from the nationwide exercise so that it can have a validated (verified and audited) inventory of all existing assets and liabilities of the defunct local authorities.
14. TA has continuously offered advisories to ensure effective management of public assets and liabilities during the transition period.

## 2.6 Capacity and Capability Development

The Constitution underscores the importance of capacity building for the realisation of effective devolved system of government. Section 7(2) (l) of TDGA mandates the TA to facilitate the provision of support and assistance to the national and county governments, in building their capacity to govern and provide services effectively during the transition period. TA has undertaken various activities with respect to capacity and capability development. The key achievements are described in the sub-section below.

### 2.6.1 Establishment of the County Governments

Before the Governors assumed office, TA in collaboration with other key stakeholders identified and provided funds for refurbishment and renovation of suitable offices to accommodate the incoming county governments on an interim basis. TA also published the locations of county executive and assembly headquarters and the location of county treasuries in the print media.

TA conducted a county infrastructure readiness assessment which informed on the status of infrastructure in the counties. Arising from the identified gaps TA requested the National Treasury for funds and KShs. 3.2 billion was allocated to TA. The Transition Authority disbursed the funds to all the 47 counties to put in place supporting infrastructure, including renovation of offices, acquisition of Hansard recording system for county assemblies, mace and expenditure for swearing of governors, speakers and members of county assembly.

After the county governments were established a Quick Readiness Assessment (QRA), exercise was conducted to establish the preparedness of counties to perform assigned functions. It was also meant to determine the magnitude and scope of capacity building required by counties to perform the assigned functions. The assessment revealed that there were huge capacity gaps requiring long term interventions in terms of time, resources and effective coordination. The assessment also pointed to serious



human resource gaps in technical, professional and administrative capacities; lack of systems, processes and procedures as well as lack or inadequate infrastructure.

## 2.6.2 Capacity Enhancement

TA developed transitional mechanisms to provide technical support in establishing basic structures, systems and processes. These included identification, induction and deployment of county transition teams and TA County coordinators; transition laws, standing orders, governors guidebooks, frameworks, profiles, guidelines, budgets, financial and human resource management systems, induction and training manuals among other initiatives.

In conjunction with the National Economic and Social Council (NESC), TA facilitated a pre-election induction for gubernatorial candidates to sensitize them on the devolved governance structure and particularly the expected role of Governors once elected while other induction courses were conducted for their deputies. Induction courses were speakers and their deputies, Interim Clerks of County Assemblies, interim County Secretaries and County Transition Committees. TA achieved this through the support of NESC, CPST, KSG, National Treasury, KSMS, and LAPTRUST among others.

In an effort towards ensuring that the necessary structures for transition to devolved governance were in place in the counties, TA identified and recruited over 600 County Transition interim public officers to lay the foundation in the newly established county governments. The Public Service Commission of Kenya seconded the officers to Transition Authority which deployment. The teams were instrumental in laying down administrative, financial, human resource, information communication technology, procurement and other structures for smooth take-off of county governments.

TA also facilitated preparation of guidelines and advisories required to operationalize the county assemblies. In addition other instruments such as standing orders, maces and the relevant statutes were provided to the county assemblies and executive.

## 2.6.3 Induction of County Public Service Boards (CPSB) and County Assembly Service Boards (CASBs)

Logistical and administrative challenges being experienced by most CPSBs and CASBs cut across the counties and thus the need for a common and coordinated approach to leverage synergies in efforts to realize the devolution dream. TA organized various capacity building fora for both CPSBs and CASBs which was facilitated by the Directorate of Public Service Management (DPSM), the Public Service Commission (PSC), the Retirement Benefits Authority (RBA), the Council of Governors, the County Assemblies Forum and the National Gender and Equality Commission-Kenya. The Fora provided a platform for strengthening the human resource management bodies in the counties in executing their mandates.

The Transition to Devolved Governments Act requires TA to assess the capacity of both the national and county governments and to ensure that they have the necessary capacity to carry out their functions. In this respect, TA has conducted various capacity building initiatives for county governments. In the first phase, TA organized an induction workshop for all officers in the county assemblies. The objective of the sensitization was to orient the county government officials with their new offices and to give them a snapshot of their mandates and expected challenges.

## 2.6.4 National Capacity Building Framework (NCBF)

TA developed a NCBF meant to guide on the management of capacity building initiatives for devolved system of governance. The framework has an inbuilt monitoring and evaluation mechanism for the capacity and capability building activities.

The three broad areas NCBF addresses include human resource development which aims at ensuring both levels of government and especially counties have adequate skilled and competent staff to perform the assigned duties effectively. It also addresses organisational development which focuses on strengthening and developing strategies, structures, systems, processes, procedures

and infrastructure. Other activities include institutional development aimed at enabling legal, policy and regulatory environment which include laws and regulations, norms and standards necessary for effective implementation of functions and delivering services.

## **2.6.5 Establishment of Pension Scheme for County Governments**

TA together with relevant stakeholders prepared a technical report to guide on the best pension scheme for the county governments and the report was presented to stakeholders in September 2013. The report recommended setting up of a new umbrella pension scheme for the counties after merging the administrative services of LAPFUND and LAPTRUST.

## **2.6.6 Development of guidelines on human resource management**

TA issued Guidelines for transition of staff to counties (Gazette Notice No.825 of February 7, 2014) to guide on the management of human resource in the transition period. The guidelines address among other issues the:

- a. Administration of the transfer of service of seconded staff to county governments.
- b. The process for deployment and redeployment of seconded officers between national and county governments, among counties and between county governments and the national government among other matters.

## **2.6.7 Preparation of Report on Staff Audit for Defunct Local Authorities and Staff Performing Devolved Functions**

Section 7(2) mandates TA to carry out an audit of the existing human resource of the government and defunct local authorities. The TA therefore prepared a report on human resource of defunct local authorities and staff performing devolved functions (December 2013). The report gave numbers in terms of gender, age, educational qualification and ethnicity. It was shared with the national and county governments.

## **2.6.8 Capacity Assessment and Rationalization of the Public Service (CARPS)**

The Transition Authority co-chairs the inter-agency steering committee and the secretariat of the CARPS programme. The objective of the programme is to provide a well organised structure at both levels of government that are based on given mandates and functions. The programme is expected to establish the existing human resource capacity at both levels of government and make recommendations on the optimal staffing levels based on the realigned structures. The expected outcome of CARPS is a transformed public service for efficient and effective service delivery at the national and county levels. The County CARPS reports have been shared with the county leadership and the national government. The consolidated report is awaiting public input before adoption by the Summit.

## **2.6.9 Development Mechanism for Closure and Transfer of Public Records and Information**

In order to achieve its mandate of developing a mechanism for closure and transfer of public records, TA in conjunction with the inter-agency committee deemed it necessary to establish all the records previously held by the abolished/restructured institutions. This was to inform on records requiring to be transferred to the relevant units and agencies for institutional memory and preservation and to determine which of those records should be closed or disposed. This process will lead to proper management of records which is vital in ensuring efficiency in the management of the national and county governments.

In the process of developing a mechanism for closure and transfer of public records, TA conducted a nation-wide records survey between February and March, 2015 covering all the 47 counties to inform on status of records, categories of records, formats, and identification of vital records. The survey exposed serious challenges requiring to be addressed in building capacities of counties in records management including inadequate space, lack of record management skills and lack of resources for management of records.

### **2.6.10 Facilitated the Development of Budget for County Governments for 2012/14 Financial Year**

The TA in collaboration with the former Ministry of Finance prepared the 2012/2013 (March - June 2013) budget for the county governments and even itemized them as required by law.

### **2.6.11 Facilitated the Preparation, Publication and Publicization of County Profiles**

The TDGA required TA to facilitate the preparation of county profiles, to ensure that the profiles of counties are produced published and publicized. In collaboration with the former Ministry of Planning, National Development and Vision 2030, the TA facilitated in the establishment of County forums in all the 47 counties for purposes of validating the profiles in line with the provisions of the Constitution 2010. The county profiles were prepared, validated, published and publicized in all 47 counties.

TA in consultation with the former Ministry of Planning National Development and Vision 2030 prepared and issued to counties, guidelines on preparation of the County Integrated Development Plans (CIDPs) in May 2013. The guidelines assisted counties in their preparation of annual development plans, sectoral plans, and the CIDPs. In addition, in collaboration with the Physical Planning Directorate of the Ministry of Lands, Housing and Urban Development prepared guidelines for preparation of county spatial plans.

The TA in collaboration with other stakeholders undertook trainings during the months of July and August 2013 for 10 officers in every county on how to use the county profiles in preparation of CIDPs. Counties were able to come up with zero draft CIDPs at the end of the training.

TA also teamed up with the Directorate of Physical Planning of the Ministry of Lands, Housing and Urban Development and issued guidelines for the preparation of county and urban areas spatial development plans.

### **2.6.12 Facilitated the Development of County Public Finance Management Systems**

In collaboration with other partners TA prepared the *County Governments Public Finance Management Transition bill, 2013* which was enacted to operationalize the transition county treasuries. The TA posted and deployed officers seconded by the Public Service Commission to counties. These officers were crucial in the operationalising of county governments. TA assisted the county governments in opening of the required three county bank accounts in Central Bank of Kenya. In addition TA carried out initial training on planning and budgeting for the interim public finance management officers. It also issued advisory on the closure of the defunct local authority bank accounts.

TA in consultation with other stakeholders advised the counties to adopt the use of Integrated Financial Management Information System (IFMIS) and facilitated the integration of Local Authority Integrated Financial Operations Managements System (LAIFOM) to IFMIS and the use of GPAY. TA issued an advisory to counties reminding the Governors the requirement to establish County Budget and Economic Forums (CBEF) as required by the PFMA and the establishment of the County Planning Units.

## 2.7 Fiduciary Mock Reviews

In partnership with the Public Financial Management Reform initiatives, TA undertook fiduciary mock reviews. The reviews provided first-hand information on the status of transition to devolved governments and further inform on the possible gaps and challenges that might require urgent intervention by the stakeholders. The areas of focus included:

- 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 ;
- viii. social accountability structures
- ix. staffing and capacity needs assessment;
- x. corruption prevention mechanisms;
- xi. funds flow arrangements;
- xii. procurement arrangements;
- xiii. reporting;
- xiv. external auditing, and;
- xv. value for money considerations.

The findings informed the capacity building efforts to support the county governments in the areas of budget and audit. The outcomes of the mock reviews also informed the preparation of the county budget and internal audit manuals for training of the county treasury officers.

Additionally, given the status of the transition, there was a necessity to conduct a quick mock review in the counties to know how far the county governments have been operationalized and also facilitated the assumption of the functions assigned.

## 2.8 County Assemblies Capacity Building/County Legislation Capacity Building

In the second phase, TA organized capacity building workshops for specific assemblies as well as for specific caucuses. For instance, TA organized training for all members of the County Assembly budget committees. TA also conducted two consecutive training programmes for legal officers in legislative drafting. In addition, TA has interacted with speakers with a view to building their capacity to carry out their respective functions. Individual Counties have also been trained on various topics, at their own request.

## 2.9 Assessment and Classification of Urban Areas and Cities

Section 54, of the Urban Areas and Cities Act (UACA), 2011 provides that, during the transition period, an assessment shall be undertaken on the existing urban areas and cities and classification be done accordingly.

Upon its establishment TA, with the support of the former Ministry of Planning, National Development and Vision 2030 commenced collection of data on capacity by urban areas to effectively and efficiently deliver essential services to its residents as provided in the First Schedule of UACA. TA analysed the data and information based on the criteria required in Sections 4, 9, 10

and the First Schedule of the Act. The shocking finding of the analysis was that based on the criteria provided for in the Act, except for the three cities created by the Act (Nairobi, Mombasa and Kisumu), no urban area qualifies for classification. Among others, one of the findings is that the Act does not provide for how the boundaries will be determined or delineation and by whom? The Act is weak on governance of urban areas and cities.

To effectively and professionally handle the matter, TA decided to constitute a technical committee of experts from the Ministry of Lands, Housing and Urban Development, the UN-Habitat, the University of Nairobi, State Law Office, Kenya Law Reform Commission and urban development experts to address the problem. The technical team prepared a report on assessment and classification of urban areas and cities based on the criteria as set out in the Act. The same team has worked on the amendments which were subjected to various stakeholders including members of Parliament for input. The exercise was completed and the Urban Areas and Cities (Amendment) Bill, 2015 was forwarded to the Cabinet Secretary, Ministry of Lands, Housing and Urban Development; the National Assembly and the Senate on 16<sup>th</sup> February, 2015 for further action.

At the early stages of the working of the technical committee it held a stakeholders forum at Six Eight Hotel in October 2013 in which members of Parliament were invited. Among those who attended was Hon. Kazungu, member of National Assembly. Hon. Kazungu requested to be given a soft copy of the proposed amendments and he was given a copy. Using those draft amendments Hon. Kazungu has tabled a private bill in Urban Areas and Cities (Amendment) Bill, 2015 in National Assembly. The Attorney-General has been requested to request to withdraw the bill and substitute it with the one prepared by the technical team.

## 2.10 Coordination mechanism for Civic Education delivery established

During the first phase of transition, the Authority established an adhoc committee to coordinate civic education on transition and devolution. The membership of the Committee comprised the Permanent Secretaries in the ministries of Local Government, Ministry of State for Public Service and the Ministry of Justice and Constitutional Affairs. The Committee worked in liaison with the Kenya National Integrated Civic Education Programme (K-NICE) under the Ministry of Justice and Constitutional Affairs which provided the national civic education coordination and delivery framework. .

After the March, 2013 general election and the formation of new government ministries/department, an Interagency Committee on Civic Education was established. The membership of the committee includes: Ministry of Devolution and Planning (MoDP), Office of the Attorney-General and Department of Justice in the, CIC and civil society organizations (Uraia Trust and Amkeni Wakenya). The committee meets frequently to review planned activities and to provide platform for sharing civic education activities with other stakeholders. At the county level, the TA has County Transition Coordinators who are supporting counties in matters transition including civic education.

## 2.11 Civic Education Materials Production and Dissemination

TA in collaboration with the Ministry of State for Public Service and now Directorate of Public Service Management (DPSM) produced a training manual “Public Officers and Public Service in the Devolved Government” for sensitizing public officers. This guided the officers in implementing their mandates and prepared them of inauguration of county governments. Other documents produced and disseminated by TA for sensitizing the leaders, public officers and the general public include:

- a. “Understanding the Transition to Devolved Systems of Government in Kenya: Frequently Asked Questions”. This booklet provides quick answers to questions on transition and devolution at large.
- b. “A Guide to the Mandates and Procedures of County Governments in Kenya”. The book gives detailed mandate of county governments as provided by the constitution and related laws.
- c. “A Guidebook for Governors”. The book mainly provides questions and answer related to public finance management.

## 2.12 Civic Education Curriculum on devolution and Public Participation Developed

TA facilitated and coordinated the development of the civic education curriculum on devolution and public participation in collaboration with the Ministry of Devolution and Planning (MoDP), Office of the Attorney General and Department of Justice, Council of Governors, Uraia Trust, with the technical support of the Kenya Institute of Curriculum Development (KICD). This curriculum will be used alongside the KNICE one which covers the entire constitution. A training manual to operationalize the curriculum has been developed, validated and piloted in Nakuru, Meru, Kitui, Garissa and Tana River counties.

The curriculum has been shared with CIC as stipulated in section 137(2)(b) of the CGA, 2012 to ensure the content of the curriculum reflects the letter and spirit of Chapter 11 of the Constitution who have agreed that it meets the standards.

The following support materials were also developed:

- a. PowerPoint presentations for Trainers to use during the implementation of the curriculum and training manual.
- b. Information, Education and Communication booklet to be used by participants during and after the trainings.

## 2.13 Facilitation of civic education delivery through workshops, public fora and media

Before the March 2013 election, TA facilitated public fora in 43 out of the 47 counties in Kenya which gave education on devolution and the transition process. Through this mechanism TA was able to sensitize public officers on the Constitution and transition to devolved government. This was accompanied by media campaigns on devolution and transitional issues in which millions of Kenyans were reached especially through the media.

From the foregoing it is obvious that TA engaged in opportunistic civic education mainly, using fora organized by other institutions. Among others, the institutions include: Kenya Governors Strategic Execution Support (KEGOSES) consortium programme which sensitized county leaders on public participation, display and distribution of civic education materials during the Kenya @ 50 celebrations exhibition and first Devolution anniversary celebrations Conference organised by the Council of Governors.

Media stations also offered programmes as corporate social responsibility. Cases in point is the Citizen Radio programme “Darubini ya Ugatuzi” which TA was slotted in for one hour programme per week for six weeks, mainly covering devolution topics. Citizen Radio also invited TA to a Public Fora in Kapenguria which was aired live on radio. TA was able to respond to questions from the over 300 participants. Others include Radio Waumini on their talk show “Mdahalo wa Ugatuzi” to educate citizens on devolution.

In September 2014, TA ran presenter mentions in all radio stations ran by KBC on the Capacity Assessment and Rationalization Programme for the Public Service (CARPS). This has helped mobilize public servant for the exercise as well as provided information to the public on the programme.

## 2.14 Facilitation of Development of Civic Education Framework

TA facilitated the development of the civic education framework together with the Ministry of Devolution and Planning and the Council of Governors. The terms of reference were prepared and proposal for resourcing the activity is ongoing. The completed

framework will give the following outputs:

- i. Proposal for institutional framework for civic education delivery by national and county governments;
- ii. Proposed strategies for delivery of civic education at national and county level including development of messages, delivery and financing;
- iii. Propose key consideration for civic education law to be adapted at national and county level and;
- iv. A civic education monitoring and evaluation framework.

## 2.15 Civic Education Providers Profile Database

TA has developed the civic education provider's profile database and shared with stakeholders who include MDA, county governments and civil society organizations. This database contains contact information and location of active civil societies in the counties. The database is continuously being updated.

It is a reference document for stakeholder engagement by government and non-state actors who wishes to engage in civic education.

## 2.16 Stakeholder Engagement and Coordination to Facilitate Civic Education

TA has engaged and provided guidance on civic education to a number of civil society organizations. Among others, they include the Independent Electoral and Boundaries Commission, Hekima College, Uraia Trust, the Institute for Social Accountability, the Centre for Law and Research International (CLARION), the Institute for Education in Democracy, Sisi ni Amani which run SMS based civic education on devolution and land matters, the Olmaa Pastoralist Development Programme (OLPADEP), among others.

## 2.17 Facilitated and Advocated for Development of Public Participation Policy

Together with the Office of the Attorney-General and Department of Justice, TA is facilitating the development of a National Public Participation Framework. A joint steering committee with a secretariat has been constituted to carry out this activity. The Committee includes CIC, Kenya Law Reforms Commission (KLRC), the Ministry of Devolution and Planning, Uraia Trust and Amkeni Wakenya. The process has been fast tracked and a concept paper for the policy has been shared with a Consultant with a view to determining its practicability.

TA, the Ministry of Devolution and Planning and Stakeholders with support of World Bank are developing guidelines on public participation which have already been validated and finalised. These guidelines are intended to be rolled out in the Counties to assist the County government in developing their public participation Legislations as the policy is being finalised.

## 2.18 Civic Education by County Transition Coordinators of TA

The County Transition Coordinators of TA took the opportunity to carry out civic education on the transition process in events organized by county governments and civil society organizations in their respective counties. With limited resources, the coordinators are mainly engaged in opportunistic activities.

## CHAPTER THREE

# Challenges Faced by TA in Executing its Mandate

Albeit the notable milestones achieved by the TA, a number of challenge both internal and exogenous have slowed down effective execution of its mandate.

## 3.1 Internal Challenges

The following are the challenges experienced by TA internally:

- a. Inadequate funding/resources: Budgetary allocation constraints have hampered implementation of planned TA programmes and activities. In addition, most of the activities such for validate an inventory of all the existing assets and liabilities and their identification, verification and audit require technical expertise because the scope of work covers both national and county governments;
- b. According to the Transition to Devolved Government Act, 2012 the mandate of TA is to facilitate civic education, to ensure civic education on devolution is commenced and coordinated. As such, TA cannot implement civic education and has to rely on other ministries and non-state actors for implementation of civic education; and
- c. Inadequate capacity to perform assigned responsibilities by some committees due to shortage of staff.

## 3.2 External Challenges

The external challenges being faced include the described in the following sub-sections.

### 3.2.1 Delay in Reviewing or Re-alignment of Policy and Legislative Frameworks

The delay in the amendment of the various legislations and policies that relate to devolution and delivery of services for functions which been devolved has been a key impediment in the implementation process. For example, it has taken more than two years to amend the *Urban Areas And Cities Act, 2011* and this has affected the assessment and classification of urban areas and cities. In the appeal by Governors the Senate ruled that legislation for classification of roads be enacted but there is no evidence that the national government has drafted the relevant bill.

### 3.2.2 Numerous Litigation and Judicial Proceedings

There have been numerous litigation attempts concerning the mode of the transfer of functions and delivery of concurrent functions. The various court cases in the health and roads sector depict this trend. Most cases against the national and the county government TA are always enjoined.



### **3.2.3 Problems of Concurrency of Functions**

Delivery of concurrent functions has marred the implementation of some functions. This has been common in cases where revenue generation is involved or some benefits accrue to a level of government is assigned a certain sub-component of the concurrent function. A good example is the licensing of casinos.

### **3.2.4 Slow Pace in Consultations and Consensus Building**

The slow pace of consultations, consensus building and reaching of agreements in relation to performance of some functions has been a key challenge. This has slowed down the pace of unbundling and transfer of functions in some sectors. A good example is the roads sector.

### **3.2.5 Reluctance to Provide Norms and Standards for Service Delivery**

The ministries, departments and agencies of the national government have been reluctant in providing requisite norms and standards that guide in the delivery of services for transferred functions. This tends to indicate that MDAs are wanting counties to fail in the delivery of services.

### **3.2.6 Lack of Coordinated Implementation of Capacity Building Framework by the National Government**

The Constitution mandates the national government to provide technical assistance and capacity building to the county government to foster their capacity in delivering devolved functions.

### **3.2.7 Implementation of the Recommendation of the Technical Committee on the Best Pension Arrangement**

Implementation of the recommendation of the technical committee on the best pension arrangement for the counties has not been finalized because of vested interests by different players.

### **3.2.8 Others Challenges**

Other challenges include but are not limited to the following:

1. County governments are lagging behind in the implementation of public participation, particularly, adoption and implementation of appropriate legislation, establishment of County Budgetary and Economic Forums;
2. Hyped Public Expectation - As political leaders engaged the public during the campaigns for the last general elections, unattainable promises were made which the leaders cannot be able to satisfy. Consequently, the public appear disillusioned by the devolution process;
3. The county assemblies lack appropriate systems of disseminating information to the public for public participation,.
4. Counties are unwilling to implement civic education,
5. Competition for resources between the National and the County Governments, and within the county government departments,
6. Centralization of resources at the county headquarters leaving the sub-counties without resources, and
7. Failure to budget for the urban areas and cities.
8. Creation of institutions clawing back devolved functions e.g. the AFFA, Kenya Tourism Authority.

## CHAPTER FOUR

# 4.0 Emerging Issues and Challenges Facing Devolution

Although the County Governments have achieved key milestones towards delivery of devolved functions and improved service delivery, devolution has faced a number of challenges. Among the challenges are the ones presented in the sub-sections below:

## 4.1 Inadequate Capacity

Insufficient capacities have been observed in the following areas:

- a. Formulation of county specific policies, laws and regulations;
- b. Development and management of programmes; and
- c. Skills and competencies especially in running of county treasuries and managing county affairs.

## 4.2 Intergovernmental Relations

A number of issues have emerged that relate to intergovernmental relations. They include:

- i. Delay in release of county funds by the National Treasury;
- ii. National government and county government – the procurement of medical equipment by the national government is case in point;
- iii. Inadequate funding for the health function and misallocation of conditional grant for level 5 hospitals by counties;
- iv. Conflicts between staff of national and county governments in operationalization of housing and roads function at the County level;
- v. Overlapping roles by staff from both levels of government; and
- vi. Supremacy battles and political wrangles. The wars are between:
  - a. The Governors and County Commissioners;
  - b. National Assembly and the Senate;
  - c. Governors and the members of Parliament;
  - d. The two arms of County Government – Executive and County Assembly.

## 4.3 Human Resource Management

After the transfer of management of human resources for devolved functions was affected in January 2014, a number of challenges have been observed. The major ones include:

- a. Discrimination, nepotism, tribalism, cronyism patronage and victimization in the recruitment of county staff.
- b. Failure by the national government to prepare bills and regulations on devolution. The following are two examples how the national government is frustrating the performance of county governments:
  - i. Among the functions and powers of a County Public Service Board, in section 59(1)(i) of CGA, is to advise county government on implementation and monitoring of the national performance management system in counties. There exist no such national performance management system.
  - ii. To give effect to the county integrated development plan, section 113(3) of CGA requires that “Notwithstanding the provisions of subsection (2), the performance management system shall conform to nationally applicable guidelines on the matter.” The required guidelines are yet to be prepared.
  - iii. Section 108(1)(c) of CGA states “There shall be a five year county integrated development plan for each county which among others shall have provisions for monitoring and evaluation.” The national government which the CoK tasked with the responsibility for capacity building in counties but it has not rolled out the Monitoring and Evaluation System, if any exist.
- c. Failure to adhere to the 30% recruitment rule on the dominant community as provided for under CGA, 2012.
- d. TA has received numerous complaints from seconded staff performing functions that have been transferred to the counties. Key among them are:
  - Discrimination against seconded staff;
  - Continued recruitment by County Government for posts already filled by seconded staff creating parallel offices/duplication;
  - Violation of the principles of public service;
  - Threats by County Government to return seconded staff (those from the defunct local authorities and those performing transferred functions) back to the national government; and
  - Fragrant violation of the law in the recruitment of staff.
- e. Integration of the various categories of staff e.g. former Local Authorities, devolved functions and newly employed staff is not yet achieved.
- f. There are glaring disparities in remuneration and promotion between the staff with the newly appointed staff and those of the defunct local authorities enjoying better remuneration and job grades.

## 4.4 Retention of Resources for Functions Devolved

The Fourth Schedule to the Constitution of Kenya, 2010 has assigned functions to the two levels of government and the Transition Authority is required to analyse and transfer the functions in phases as well as determine the resources requirements to perform these functions.

Through a consultative process, the MDAs were engaged to analyse the function as listed in Part 2 of the Constitution using a framework (Transition Implementation Plans) developed by the TA. The outcome of the exercise informed the transfer of functions. As a transition measure before undertaking the realistic costing of functions, all the items coded 098 (as per the advice of the National Treasury) in the 2012/2013 financial year budget were earmarked for transfer. This was arrived at as per the institutional arrangements prior to devolution.

Resources for all the functions transferred should ideally form part of the resources to be transferred to the counties. From the analysis of the Programme Based Budget for the National Government, some of the programs and sub-programmes budgeted for are within the functions assigned to the county governments.

Some of the functions in the table below are budgeted for by the national government but are assigned to the County Governments as per the Constitution.

**Table 2: Summary of the Devolved Functions budgeted for by the National Government**

Ministry/State Department	Program /subprogram	Comments
State Department of Devolution Under the Arid and Semi-Arid Lands (ASAL) Development Program.	Development of integrated Spatial Plans for the ASAL counties provided under the programme on Arid Resource Management Program.	Counties are required to prepare own spatial plans as per the County Governments Act, 2011 and the Urban Areas and Cities Act, 2011. These are therefore county government functions.
Regional Development Authorities	Construction of medium sized dams and large dams.	There is need for clarity on what medium sized dams are. Medium sized dams such as water pans are a function of the county governments. This will however be more clear once the unbundling of RDAs functions is completed
Agriculture, Livestock and Fisheries: Headquarters - Land and Crop Development Services.	Crop Development and management under output on Agricultural Support Services under the crop development delivery unit.	Provision of subsidies to the farmers in terms of seeds and other farm inputs and the distribution of the seeds. These are county functions and the related resources should be transferred to the county governments.
State Department of Livestock	Under range Land Ecosystems Development services: the establishment of holding sites	Establishment of livestock holding sites is a county function.
Small scale livestock development project	The construction of livestock sale yards and hay stores	These are functions assigned to the County Governments.
State Department for Environment and Natural Resources: National Environmental Management	Protection of the riparian zone – the production of tree seedlings and the nurturing of the seedlings	There is need for further discussion and unbundling in the agency.
Subprogram: Housing Estate Management.	District government estate management.	To await finalization of audit of Assets and Liabilities by the TA.
Social infrastructure under urban infrastructure.	This is under the metropolitan planning and infrastructure Development- Construction of fresh produce markets and the rehabilitation of Kamkunji recreational grounds.	Construction of fresh produce markets and the rehabilitation of Kamkunji recreational grounds are county functions.
Urban infrastructure; Urban Development and Planning services	Construction of bus and lorry parks, storm water drainage, construction of solid waste sites and roads construction.	Construction of bus and Lorry parks, storm water drainage, construction of solid waste sites and roads construction are county functions.
Urban social infrastructure and utilities	Urban infrastructure- Construction of social halls, markets and dispensaries.	These are devolved functions.
Ministry of Labor, social security and social services. Programme- social development and children services- and the sub programme on community mobilization and development	Registration of self-help groups and community based organizations.	These are county functions.
Ministry of Health- Health Infrastructure.	Wajir District Hospital-From the Programme Based Budget, the National Government is providing beds.	The hospital is a county facility unless otherwise. There is need for further scrutiny.
Free Primary Health Care.	This in under the delivery unit of rural health care and dispensaries.	This is a county function.
State Department of Infrastructure : Program- Road Transport	Construction of other roads	Use of 'Other' roads needs to be clarified

Source: Transition Authority

The unbundling of functions of the RDAs is currently ongoing and functions will be transferred once completed. The functions identified were identified as county functions after the consultative meetings with the ministries and the attendant resources should have followed the functions after the transfer. This therefore indicates that some of the functions although they are already being performed by the counties, attendant resources were retained at the National level.

## 4.5 Civic Education

Civic education being one of the integral avenues for citizen empowerment has been marred by the following challenges:

- i. Inadequate understanding of the Constitution and other attendant devolution laws;
- ii. Lack of national policy on public participation;
- iii. Inadequate funding for civic education activities;
- iv. Inadequate operationalization of the civic education structures under section 100 of the CGA, 2012; and
- v. Uncoordinated and duplication in civic education activities by the executive and the assembly.

## 4.6 Corruption

Rampant corruption especially in procurement and employment has been reported in majority of counties. This has hampered effective service delivery.

## 4.7 Insecurity

This has led to spiral effects which include:

- a. Interruption in service delivery. For instance, many schools and hospitals have been closed in north eastern region;
- b. hampering attraction and retention of professionals;
- c. Scaring away investors and tourists.

## 4.8 Political Interference

Issues of political patronage and interference have been identified as one of the bottlenecks affecting success of devolution in the counties.

## 4.9 Challenges with Reference to Pension Scheme

Various institutions have been developing parallel bills related to county pension scheme. For instance, the National Treasury, LAPFUND and the Council of Governors have all developed separate bills. This confusion has negatively impacted on the development of a pension scheme for the counties.

## 4.10 Linking Plans to Budgets

The annual budgets are not based on approved county integrated development plans, annual procurement plans and work plans. This makes difficult to monitor implementation of plans, programmes and projects. Budget priorities are not drawn from the County Integrated Development Plans. In addition, sectoral plans, spatial plans. Many counties have not prepared urban areas integrated and spatial plans which mean that when the Urban Areas and Cities (Amendment) Bill, 2015 is passed by Parliament, very few urban areas will qualify for classification.

## 4.11 Procurement and Value for Money Issues

There is general non-compliance with public procurement and Disposal Act and its regulations. There is also poor procurement documentation, non-competitive procurements through single-sourcing, bid rigging while different procurement procedures have been used for the same activity. Other inconsistencies include procurement from non-tax compliant companies; construction works without bill of quantities; failure to prepare and follow procurement and cash flow plans to guide on the processes of procuring goods and requisitioning funding in prudent manner among others.

In summary, there are much fraudulent procurement some of which include bid rigging, payment for undelivered goods and services or for shoddy jobs, county officials trading with their governments, payment for inflated priced goods and services etc.

## 4.12 Stalled National Government Projects

At the time of the General elections in March 2013, the national Government was implementing many projects in all counties. After the election and the coming of the counties some ministries of the national government abandoned implementation of the project which have stalled after spending colossal amount of money. Most of the projects include markets which were being constructed by the former Ministry of Local Government, currently under the Ministry of Devolution and Planning. There were also projects which were being implemented by the former Ministry of Special Programmes, also now under the Ministry of Devolution and Planning. Furthermore, there are numerous projects under the Economic Stimulus Programme which were under implementation by many ministries.

The national government reason for not completing the implementation of the stalled projects is that, the functions for which the projects fall were devolved. The ministries expect the county governments to complete the projects, which are assets but TA has not transferred assets and liabilities. The ministries entered into contracts with contractors which they are bound to honour. Otherwise, if ministries cannot complete the projects they should transfer the money to the county governments to enable their completion.

An example of stalled projects is the Trauma Centre (photograph below) within the premises of Nakuru Level 5 Hospital, which was being constructed under the former Ministry of Special Programmes. Instead of completing the project the Ministry of Health is planning to construct another Trauma Centre at Salgaa only 23Km. from Nakuru town.



*Figure 2 Stalled Trauma Centre within the premises of Nakuru Level 5 Hospital*

## CHAPTER FIVE

# 5.0 Pending Works

## 5.1 Introduction

Despite the success in executing its mandate, the TA has encountered a number of challenges and bottlenecks that include inadequate funding, slow review/realignment of laws touching on devolved functions, slow response on request for data on various functions, disagreement and delayed consensus building on pertinent issues like county pension scheme and court cases concerning functional definitions and assignment of concurrent functions like Roads, betting.

The above challenges have led to the TA to have pending works in relation to the tight transition timelines. This chapter details the pending works as at June 2015.

## 5.2 Assets and Liabilities

The outstanding activities related to assets and liabilities include the following:

- a. Resolving of the warehoused issues emanating from the nationwide physical verification of assets and liabilities of the defunct local authorities through expertise like forensic auditors, surveyors, engineers, lawyers and actuaries among others.
- b. Compilation of inventory of assets and liabilities from Ministries, Departments and Agencies that have not yet submitted their data to TA.
- c. Handing over/ Taking over of assets and liabilities of the defunct local authorities to County Governments in the remaining sixteen (16) Counties.
- d. Verification, Validation and Audit of all existing assets and liabilities of all MDAs.
- e. Public participation on the developed mechanism and criteria for transfer and or sharing of public assets and liabilities before its implementation.
- f. Publishing in the Kenya Gazette the validated inventory of all public existing assets and liabilities
- g. Transfer of all existing public assets and liabilities to the correct entity to bear responsibility and benefit thereof.
- h. Conversion of the Asset Management Information System into a data Centre and linking it with all the existing information systems in government.

## 5.3 Functional Analysis and Transfer and Costing of Functions

Outstanding activities related to functional analysis and transfer include:

- a. Unbundling the functions of state corporations, Regional Development Authorities and remaining MDAs;
- b. Transfer of delayed functions to the National and County Governments;
- c. Developing of framework to guide the analysis and performance of concurrent functions;
- d. Monitoring the uptake and performance of transferred functions during the transition period;
- e. Completion of data collection on costing of functions in the five sectors, in a number of counties which had some challenges. Data on livestock (Mandera, Lamu and Garissa counties), payroll data (Nairobi County) are still outstanding;
- f. Data analysis on estimation of the unit cost is expected to commence during the first week of the month of July 2015;

- g. Preparation of the report on the five sectors currently being costed;
- h. Costing in the remaining thirteen Ministries/Sectors and departments. These are functions falling under the Ministries of: Energy and petroleum; the National Treasury; Devolution and Planning; Education; ICT; Lands and Housing; Tourism, Commerce and East African affairs; Mining; Sports, Culture and the Arts; Industrialization and Enterprise development; Labor and Social Services; Interior and Coordination of National Government.

## 5.4 Civic Education

Civic education activities that are yet to be completed include;

- a. Finalization of the civic education curriculum and the training manual
- b. Printing, launching and dissemination of civic education curriculum and training manual in the Counties
- c. Training of trainers on the curriculum and the training manual for implementation.
- d. Production of Information, Education and Communication materials on transition and devolution
- e. Facilitate and coordinate finalisation of civic education framework
- f. Facilitate development of public participation framework
- g. Support to county governments to develop civic education legislature and civic education units.

## 5.5 Status of On-going Reform Initiatives, Projects and Programs

The following activities are pending in this area:

- a. Preparation of inventory of the projects, programs and reform initiatives under the defunct local authorities and MDAs.
- b. Development of a mechanism for recommendations on the management, reallocation or transfer to either level of government.

## 5.6 Urban Areas and Cities

The outstanding activities include in relation to the urban areas and cities include:

- a. Finalization of amendments to the Urban Areas and Cities Act, 2011 and regulations to the Act
- b. Assessment and classification Urban areas and cities in Kenya
- c. Preparation and publication and dissemination of urban areas and cities regulations.

## 5.7 Capacity Building

Pending work related to capacity building entail the following activities:

- a. Facilitate transfer of service of national government staff performing devolved functions from national to county Government.
- b. Facilitate enactment of legislation for establishment /implementation of a County Pension Scheme for county public service
- c. Finalize development of a mechanism for closure and transfer of public records and information
- d. conduct comprehensive capacity needs assessment at both levels of government
- e. Review and facilitate the implementation of NCBF
- f. Continuous capacity building
- g. Facilitate Implementation of CARPs.
- h. Facilitate development of guidelines for a performance management system for the counties



## CHAPTER SIX

## 6.0 Areas Requiring Senate Intervention

In the light of the emerging transition challenges, pending work and the critical period in the implementation of devolution, a closer and stronger collaboration between the TA and the Senate is of paramount importance. In cognizance of the role of the Senate as provided for in Article 96(1) of the Constitution and in order to safeguard the gains achieved and ensure sustainability of the devolved units, the TA requests the intervention of the Senate in the following areas:

1. Despite a successful transfer and uptake of functions by County Governments, a number of policies and laws have not been reviewed to conform to the new system of government. Therefore senate is requested to fast-track the finalization of policies and legislations to conform to the devolved system of governance.
2. Intervene and give guidance on the pending court cases on transfer of functions: roads and betting, Casinos and Gambling to ensure that service delivery is not disrupted during the transition period.
3. Fast-track the amendments to the Urban Areas and Cities Act 2011 to facilitate the classification of urban areas and cities. There is also need for amendments to the County Governments Act, 2012.
4. The Senate to prevail upon the national government to provide service norms and standards.
5. Enact laws to operationalize the Mechanism and Criteria for the Transfer of Public Asset and Liabilities.
6. Fast-track the enactment of a law to provide for the county pension scheme.
7. TA has received numerous complaints from county governments regarding the publication of bills by the Government Printer. This service needs to be decentralized.
8. For TA to carry out its mandate, it requires proper facilitation in terms of resources.
9. The Senate to press upon the National and County Governments to operationalize the following sections:
  - a. Section 73 to substitute **secondment** with **transfer**. This will deter county governments from returning officers performing devolved functions to the national government;
  - b. Section 98 of the County Governments Act, 2012 considers civic education a crucial element in governance;
  - c. Section 100 specifically requires county governments to design and implement appropriate civic education programmes and establish a civic education unit. The national and county governments are also obliged to establish a national design and framework, determine the content of curriculum, and facilitate the implementation of a civic education programme; and
  - d. Section 109 to remove the inconsistency whereby, the county sectoral plans are to be component parts of county integrated development plans, which are five year.
10. Senate to intervene in the attempt by county governments to send back to the national government, the staff performing devolved functions and those from the defunct local authorities.
11. Senate should demand that the national government prepare, publish and publicize the National Performance Management System and the Monitoring and Evaluation System which counties are required to adhere to.
12. Demand that the national government fast-track the finalization of CGA Regulations which have been in draft form since 2011. This would clarify Section 138 which has been subject to misinterpretations. This section needs to be read in light of Article 187 which provides that once functions are transferred arrangements shall be put in place to transfer resources necessary for performing those functions. Furthermore the regulations would put sanity in the many impeachments by members of county Assembly.

13. Counties have violated section 60 of the CGA which provides criteria for creation of offices and filling of vacant position. The counties have created parallel structures. Seconded versus newly recruited rendering the seconded staff redundant.
14. Senate to put pressure on the National Government to fast track development of a Public Service Management Policy to address myriad challenges affecting the public service in the devolved system of governance including, recruitment, promotion, career progression, accrued promotion arrears, training and development including internship and scholarships.
15. Senate to support implementation of Capacity Assessment and Rationalization of the Public Service.
16. Senate to compel Machakos County to undertake CARPS to facilitate rationalization and deployment of staff. Machakos County opted out of the exercise.
17. The senate should impress upon the national government to complete the stalled projects which they were implementing prior to March 2013 General Elections.

**The Transition Authority**

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