



PARLIAMENT  
OF KENYA  
LIBRARY

*Paper Laid*  
*By Hon. A. Oduke (com) Du*  
*Thurs. 18/02/2016 (pm)*  
*Mmm*

---

**JUSTIFICATION FOR EXTENSION OF  
TRANSITION PERIOD  
AND  
MANDATE OF THE TRANSITION  
AUTHORITY**

---

**February, 2016**

## **Table of Contents**

1. BACKGROUND.....	3
2. TRANSITION AUTHORITY MANDATE AND EXPECTED ACCOMPLISHMENTS .....	3
3. ACCOMPLISHMENTS, PENDING ACTIVITIES, TIME FRAME FOR COMPLETION OF THE PENDING ACTIVITIES AND ESTIMATED BUDGET.....	3
4. CHALLENGES FACED IN EXECUTION OF TA MANDATE AND EMERGING ISSUES.	4
5. RISKS AND IMPLICATION OF END OF TRANSITION PERIOD AS AT 4 MARCH 2016	4
6. JUSTIFICATION FOR EXTENSION OF THE TRANSITION PERIOD.....	5
7. WHAT WILL BE ACCOMPLISHED DURING THE EXTENDED TRANSITION PERIOD	6
8. WAY FORWARD .....	7
9. ANNEX 1: ACCOMPLISHMENTS, PENDING ACTIVITIES, TIME FRAME FOR COMPLETION AND ESTIMATED BUDGET.....	8

# JUSTIFICATION FOR EXTENSION OF TRANSITION PERIOD AND MANDATE OF THE TRANSITION AUTHORITY

## 1. BACKGROUND

The Constitution of Kenya 2010 introduced a devolved system of governance for improved service delivery and socio-economic transformation. To give effect to this system, a number of Legislations were enacted by Parliament.

Specifically, the Transition to Devolved Government Act (TDGA) 2012, established the Transition Authority (TA). The overall mandate of TA is to facilitate and co-ordinate the transition to a devolved system of government pursuant to Section 15 of the Sixth Schedule to the Constitution of Kenya (CoK) 2010. TA is required to oversee the implementation of the transition to devolved system of Government in two phases:

- (a) Phase I: March 2012-March 2013;
- (b) Phase II: March 2013 - March 2016.

## 2. TRANSITION AUTHORITY MANDATE AND EXPECTED ACCOMPLISHMENTS

Transition Authority was operationalized in July 2012 upon appointment of the members. The specific functions are to:

- (i) Develop framework and facilitate, analysis, costing and phased transfer of functions to County Government
- (ii) Prepare an inventory and audit assets and liabilities of National Government, defunct Local Authorities and other public entities develop mechanisms for sharing and transfer to the relevant level of Government and effective management of public assets
- (iii) Audit Human Resources of the defunct Local Authorities and National Government and advise on effective deployment, management, pension and benefits, staff development and rationalization
- (iv) Facilitate the development of the initial county budgets, County development profiles and advise on a financial management system
- (v) Assess capacity of the national and county governments and recommend the necessary measures to ensure that national and county governments have adequate capacity to perform the assigned functions
- (vi) Establish the status of on-going reform processes, development programs and projects and make recommendations on the coordinated management, re-allocation or transfer to either level of Governments
- (vii) Assess and classify urban areas and cities
- (viii) Provide mechanism for closure and transfer of public records and information
- (ix) Facilitate civic education and ensure it is commenced and coordinated

## 3. ACCOMPLISHMENTS, PENDING ACTIVITIES, TIME FRAME FOR COMPLETION OF THE PENDING ACTIVITIES AND ESTIMATED BUDGET

The Transition Authority has achieved its mandate to a large extent despite the challenges experienced. **Annex 1** provides details of the same.

#### **4. CHALLENGES FACED IN EXECUTION OF TA MANDATE AND EMERGING ISSUES**

Despite the success achieved in implementing devolution, a number of **challenges** have been encountered that have hindered the full implementation of said process of devolution.

- (a) Inadequate funding to achieve the TA mandate. TA vote was removed and placed under Ministry of Devolution and Planning contrary to section 28(2)(3) of TDGA.
- (b) Unavailability and slow response from Ministries to provide requisite data for TA to undertake its functions especially information on assets, liabilities and devolved functions.
- (c) Duplication and overlapping mandates between TA and Ministry of Devolution and Planning.
- (d) Political interference especially during the clamour for transfer of functions.
- (e) Inadequate capacity: Due to limited resources, TA was only able to bring on board technical officers in June 2013, almost a year after the Authority was established.
- (f) The 'Big Bang approach to devolution' and the time allocated for transiting power, functions and resources remained a big challenge to the Authority.
- (g) Absence of sectoral norms and standards affected analysis and costing of functions.
- (h) Delay by Parliament to enact some laws to facilitate transition activities, e.g. County pension law, amendment to Urban Areas and Cities Act 2011 and review of existing laws to align them with the constitution.
- (i) Numerous litigation and judicial proceedings

#### **5. RISKS AND IMPLICATION OF END OF TRANSITION PERIOD AS AT 4 MARCH 2016**

**(a) Assets and liabilities:**

- *Absence of moratorium* will mean a great loss of government assets due to illegal transfers by unscrupulous officers.
- *Lack of audited inventory*- country will not know its net worth and assets can easily be lost.
- *The country will not be able to comply with International Financial Reporting Systems and Standards which require the actual value of the assets and liabilities.*
- The audit envisaged in the TDGA is that which audits the assets and liabilities of both National and County Governments which includes: the Auditor- General, the National Treasury, the Ministry of Devolution and Planning. These are the public entities that were mandated in the old dispensation, with the management of public assets and liabilities. This calls for an independent public entity with Mandate such as that of Transition Authority to avoid conflict of interest.

**(b) Human resources**

- Counties will return staff of devolved functions and Local Government to national governments using the provisions of County Governments Act (CGA) 2011, Section 38 (5). This has the potential of industrial instability and protracted litigation.
- Limited deployment and rationalization activities.

- Idle capacity at all levels and increase in wage bill.
- (c) Lack of harmonized pension scheme for county government would delay transfer of services for seconded staff and may result into loss of pension benefits.
- (d) Lack of harmonized pension scheme will delay the declaration of County Governments as “Public Service”.
- (e) County government structures are not properly constituted given that urban areas and cities have not been assessed and classified. This has hampered services delivery, revenue collection and general growth and development of the cities and urban areas.
- (f) Since Public records and information have not been appraised to facilitate closure and transfer, critical documents and other valuable public records will be lost e.g. log books and land title deeds etc.
- (g) Incomplete Analysis and Costing of Functions will lead to disputes in both resource allocation *and* service delivery
- (h) The lack of an Operational National Capacity Building Framework, has led to uncoordinated capacity building initiatives, duplication and unequal distribution of opportunities for skills development, leading to poor service delivery. Further it makes it difficult to coordinate technical assistance.
- (i) Lack of civic education has resulted in poor public participation and social accountability which are key in good governance

## 6. JUSTIFICATION FOR EXTENSION OF THE TRANSITION PERIOD

In view of the above challenges, risks and pending activities, there is need for Parliament to consider an extension of the transition period for a term not exceeding three years. This will ensure the completion of the transition process which is critical to the nation in terms of facilitating the devolved system of government. The compelling reasons for the extension are:

- (a) The lapse of the transition period before the completion of key transition activities shall negate the gains made this far, and further jeopardise the entrenchment of devolution. Extension of the transition period will guarantee the sustenance of the devolution momentum.
- (b) The end of the transition period will mark the lapse of the TDGA, 2012 as provided in Section 37(2) and with it all the powers, the authority and enabling mechanisms for the smooth transition. For example, the moratorium for safeguarding public assets, rationalization, deployment and transfer of human resources.
- (c) The pending work is **core and not residual** as is envisaged in section 12(b) of *Inter-Governmental Relations Act, 2012*. Residual functions are functions left over at the end of a process. In this case, the transition process is not completed as envisaged by the law.

- (d) The fact that the audit and transfer of public assets and liabilities have not been completed exposes them to risk of illegal transfer and subsequent loss.
- (e) In the light of the investment thus far, the exit of TA at this point in time, when there are core pending work critical to successful transition, it will not be prudent and cost-effective to the country. This calls for institutional memory, technical know-how, experience and independence which TA has gained over time.
- (f) The two levels of government need an impartial arbiter to midwife the transition process and TA is that arbiter. The role of an independent arbiter during the transition to the devolved system of government cannot be over-emphasized.
- (g) Drawing from the three-year experience in facilitating and co-ordinating the transition process, adequate time is required to complete the pending work and handle the emerging issues in transiting to a devolved system of government
- (h) The trust and rapport that TA has built with the two levels of government will also be lost in the management of the core transitional activities that are still pending, if the transition period is not extended.
- (i) There is a need to manage the transition from the current National and County administration to the next following the 2017 General Elections.

## **7. WHAT WILL BE ACCOMPLISHED DURING THE EXTENDED TRANSITION PERIOD**

Despite the above achievements, TA has major core outstanding activities which include the following:

- (a) Auditing of public assets and liabilities for the defunct Local Authorities, for the devolved functions, Ministries, Departments and Agencies (MDAs).
- (b) Validation of the inventory of the public assets and liabilities for the devolved functions, and those of MDAs.
- (c) Transfer of the assets and liabilities to the relevant levels of government.
- (d) Analysis and clarification of transferred functions as per the Fourth Schedule to the Constitution and those performed by state corporations including Regional Development Authorities and Water Service Boards.
- (e) Determination of the resource requirements (costing) for functions for the remaining sectors.
- (f) Management of emerging issues from transfer and implementation of functions.
- (g) Establishment of the County Pension Scheme to safeguard staff benefits and facilitate transfer of service.
- (h) Assessment and classification of urban areas and cities.
- (i) Rationalization and redeployment of staff.
- (j) Establishment of the status of on-going reform processes, projects and programs and recommending on transfer and management to either levels of government.
- (k) Implementation of the civic education curriculum on devolution.

- (l) Facilitation of closure and transfer of public records and information to either level of Government.
- (m) Capacity building of national and county governments.

## **8. WAY FORWARD**

- (a) **Recognizing** the gains the country has made toward implementation of the Constitution of Kenya 2010, and specifically transition to devolved system of government,
- (b) **Cognizant** of the multiple and complex transitions,
- (c) **Acknowledging** the constitutional 3 year transition period and recognizing the reality and magnitude of the work to be accomplished by the Transition Authority,
- (d) **Being aware** of the risks attendant to non-completion of the transition process,
- (e) **Desirous to sustain the gains and momentum of devolution** it is recommended as follows:
  - That the National Assembly extends the transition period and the mandate of the Transition Authority for a period not exceeding three years.
  - That National Assembly provides the necessary support, enabling legislative environment, protection and resources to ensure that the transition period is successfully completed and Transition Authority accomplishes the remaining core activities.

## 9. ANNEX 1: ACCOMPLISHMENTS, PENDING ACTIVITIES, TIME FRAME FOR COMPLETION AND ESTIMATED BUDGET

EXPECTED ACCOMPLISHMENTS	STATUS	PENDING ACTIVITIES	TIME FRAME FOR PENDING WORK	ESTIMATED BUDGET FOR PENDING ISSUES
<b>Function 1: Develop a framework and facilitate, analysis, costing and phased transfer of functions to County Government</b>				
(a) Develop a framework for phased transfer of functions to County Government	Framework developed and applied	Development of Framework for analysis of concurrent and residual functions	To be completed by 1 March, 2016	30 Million
(b) Analysis of functions assigned in the Fourth Schedule to the COK 2010	All functions the Fourth schedule (national and County Governments) and Regional Development Authorities and Water Service Boards	State corporations and National Government	One year	50 Million
(c) Costing of functions	<ul style="list-style-type: none"> <li>o costing of devolved functions using historical budget allocation</li> <li>o Costed functions for five (5) sectors of national government. Agriculture, health, infrastructure, environment and foreign affairs</li> </ul>	Thirteen (13 ) sectors are yet to be costed	One year	125 Million
(d) Phased transfer of functions to County Government	All the fourteen functions transferred in four phase	Transfer / clarification of devolved functions performed by State corporations to County Government and National Government	Two years	45 Million
<b>Function2: Prepare an inventory and audit assets and liabilities of National Government, defunct Local Authorities and Other Public Entities, develop mechanisms for sharing and transfer to the relevant level of Government and effective management of public assets</b>				
Prepare an inventory and audit assets and liabilities of <ul style="list-style-type: none"> <li>o National Government</li> </ul>	data collection of twenty five of forty one state departments has been completed	Sixteen state departments are remaining	Six months	50 Million
o Local Authorities	inventories of all 175 defunct local authorities prepared	None	None	0
o Other Public Entities / State Corporations	Data collected for one hundred and thirty eight (138))	One hundred and fifty nine (159) remaining	One year	30 Million
o audit assets and liabilities	None of the inventories discussed above have been audited	<ul style="list-style-type: none"> <li>o forty one state departments</li> <li>o 175 defunct local authorities</li> <li>o two hundred and ninety seven (297)</li> </ul>	Two Years	1.8 billion
o mechanisms for sharing transfer to the relevant level of Government and effective management of public assets	<ul style="list-style-type: none"> <li>o asset management information system has been operationalized</li> <li>o Mechanisms developed and operational</li> <li>o Developed regulations on management and transfer of assets and liabilities</li> </ul>	<p>Development of policy and legislation on national and County asset and liabilities management framework</p> <p>Parliament to fast track Legislation</p>	<p>One year</p> <p>Six months</p> <p>One month</p>	100 Million



EXPECTED ACCOMPLISHMENTS	STATUS	PENDING ACTIVITIES	TIME FRAME FOR PENDING WORK	ESTIMATED BUDGET FOR PENDING ISSUES
		Gazetment of regulations on management and transfer of assets and liabilities		
Moratorium on transfer of assets during transition period	<ul style="list-style-type: none"> <li>○ Publicised the moratorium to and developed mechanisms for seeking approvals for transfers</li> <li>○ Approved requests for transfer of obsolete/ boarded and unserviceable goods</li> </ul>	Extension of the effective life period of the Moratorium to secure assets and liabilities	Three months	Parliament
<b>Function3: Audit Human Resources of the Local Authority and National Government and advise on effective deployment, management, pension and benefits, staff development and rationalization</b>				
Audit Human Resources of the (a) Local Authority	Audited, final report disseminated	None	--	-
(b) National Government	Audited and reports submitted to the National and County Government Coordinating Summit	<ul style="list-style-type: none"> <li>○ State Corporations and Other Public Entities</li> <li>○ And consolidation of any work done by individual institutions</li> </ul>	One Year	30
advise on effective deployment and rationalization of staff	Advisory Guidelines for transition of staff to the Counties Gazetted and disseminated	None	None	0
	<ul style="list-style-type: none"> <li>○ Facilitated and coordinated capacity assessment</li> <li>○ Developed a capacity assessment and rationalization of public service -(CARPS) Framework</li> <li>○ Related program and institutional arrangements</li> </ul>	Implementation of CARPS	Two years	210 Million
Advise on staff pension and benefits for County Governments	In close collaboration with relevant agencies i.e. RBA, Treasury, SRC , County Governments etc. prepared report on the establishment of a County Staff Pension Scheme	Implementation of the recommendations of the report	Two years	150 Million
	prepared and submitted to Senate the County Government Pension Scheme Bill	Enactment of the County Government Pension Scheme Bill / Parliament	Six months	
<b>Function 4: Facilitate the development of the initial county budgets, County development profiles and a financial management system</b>				
Facilitate the development of the initial county budgets	Necessary laws enacted and County budget prepared	None	None	--
County development profiles	County development profiles developed and disseminated  guidelines for preparation of county integrated development plans (CIDPS) and spatial plans.	None	--	--
Facilitated development of a	Transition Public Finance Management Law enacted and	None	--	0

EXPECTED ACCOMPLISHMENTS	STATUS	PENDING ACTIVITIES	TIME FRAME FOR PENDING WORK	ESTIMATED BUDGET FOR PENDING ISSUES
financial management system in the counties	implemented			
	Coordinated the initial roll-out of IFMIS	<ul style="list-style-type: none"> <li>○ Implementation of all IFMIS Modules</li> <li>○ Set up of IFMIS infrastructure</li> <li>○ Capacity building of staff on IFMIS usage</li> </ul>	Two Years	100
	Trained County Staff on Planning, budgeting and Public Finance Management	Deepened, monitored and sustained capacity building and tools	Two Years	
<b>Function 5: Assess capacity of the National and county governments and recommend the necessary measures to ensure that national and county governments have adequate capacity to perform the assigned functions</b>				
Assess capacity of the national and county governments to perform the assigned functions	Functions Readiness assessment conducted and report disseminated	Transition period end term assessment on uptake of functions and capacity needs (in progress)	March 2016	0
	Status and allocation of interim County Offices to accommodate County Governments	Conduct assessment of County Offices status	Two Months	0
	National Capacity building Framework for results developed	To be reviewed and implemented in light of lessons learned and emerging issues	Two years	TA to lead the Implementation during the Transition Period 20 Million
National and County Results Readiness	Concept note developed but not executed	Integrated Performance Management and Accountability Framework for results	One year	Parliament, 300 Million
		Assessment of status of devolution and its impact on service delivery improvement and social economic transformation	One Year	
		Assessment and capacity building of Citizen engagement and social-accountability mechanisms in/ for devolved system of Government	Two years	
Public Service Values, Standards and Norms	Issued Advisories to County Governments	Facilitate and ensure Public Service Values, Standards and Norms are developed and operationalized	One Year	Parliament to enact laws 30 million
<b>Function 6: Establish the status of on-going reform processes, development programs and projects and make recommendations on the coordinated management, re-allocation or transfer to either level of Governments</b>				
Establish the status of on-going reform processes, development programs and projects	assessment of on-going reform processes, development programs and projects is on-going	Completion of the assessment  Make recommendation on coordination and delivery mechanisms	Six months	30 Million
---	----	re-allocation or transfer	Two Years	30 Million

EXPECTED ACCOMPLISHMENTS	STATUS	PENDING ACTIVITIES	TIME FRAME FOR PENDING WORK	ESTIMATED BUDGET FOR PENDING ISSUES
		to either level of Governments		
<b>Function 7: Assess and classify urban areas and cities</b>				
Initial Assessment of urban areas and cities using the criteria of Urban Areas and Cities Act 2011	Assessment completed and no urban area qualified as city, municipality or town except the cities saved by the Act (Nairobi, Kisumu and Mombasa)	None	---	---
	Drafted Amendment to the Law and forwarded it to the Ministry of Lands, Housing and Urban Development and Parliament	Enactment of the Amendment to the Act	Six Months	Delayed by Parliament
Upon Enactment of the Amendment to the Act	----	Assessment and classification of urban centres	One and a half years	300 million
<b>Function 8: Provide mechanism for closure and transfer of public records and information</b>				
Provide for policy and operational mechanism for closure and transfer of public records and information	Guidelines on closure and transfer of public records and information developed and disseminated to both levels of Governments	None	--	---
	Regulations and implementation Mechanisms developed and sent to AG for review	Validation and gazette of the Regulations and delivery mechanisms	Three Months	10 million
	Survey on the status of public records and information conducted in the 47 Counties and reports disseminated to the County Governments  Conducted survey of the status of public records and information of National Government Records in the 47 Counties	Facilitation of Implementation of the recommendations of the County Surveys  Complete Status survey of the status National Government Ministries at Headquarters and Other Public Entities	One Year	100 million
Facilitate Closure and Transfer of records and information	Staff records on devolved functions have been transferred to County Governments	Sector specific program management records  Appraisal of records and information to facilitate closure and transfer	One Year	100 million
<b>Function 9: Facilitate civic education for citizen engagement and participation to ensure civic education is commenced and coordinated</b>				
Coordination of civic education	During Phase 1 of transition the Kenya National Integrated Civic Education Program provided coordination platform	The program ended in June 2013	--	0
	Term of reference developed for institutional framework for coordinating and delivery Civic Education and handed over to Devolution and Planning in November 2014	Development of an institutional framework for coordinating and delivery Civic Education yet to be completed	One Year	30 million
Civic Education Curriculum and delivery	Civic education curriculum, training manual and information, education and communication (IEC) materials developed, validated and ready for implementation	Printing of all the said documents Program roll-out	Two years	50 million

EXPECTED ACCOMPLISHMENTS	STATUS	PENDING ACTIVITIES	TIME FRAME FOR PENDING WORK	ESTIMATED BUDGET FOR PENDING ISSUES
	Minimal civic education targeting public officers and general public	Deepen and scale up to the whole country	Two Years	100 million
	Printed and disseminated limited Information, education and communication (IEC) materials			30 million
	Developed and disseminated to the County Governments a data base of civic education capacity building institutions	Information, education and communication (IEC) strategy	Two Years	50 million