

HONGU

**SESSIONAL PAPER  
ON  
DEVOLVED GOVERNMENT  
UNDER THE  
CONSTITUTION OF KENYA, 2010**

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## **Abbreviations and Acronyms**

<b>CBF</b>	<b>Constituency Bursary Fund</b>
<b>CCIC</b>	<b>Cabinet Committee on Implementation of the Constitution</b>
<b>CDF</b>	<b>Constituency Development Fund</b>
<b>CDTF</b>	<b>Community Development Trust Fund</b>
<b>CIC</b>	<b>Commission on Implementation of the Constitution</b>
<b>CIOC</b>	<b>Constituency Implementation Oversight Authority</b>
<b>CoK</b>	<b>Constitution of Kenya</b>
<b>CPC</b>	<b>Committee of Permanent Secretaries</b>
<b>CRA</b>	<b>Commission on Revenue Allocation</b>
<b>ESP</b>	<b>Economic Stimulus Projects</b>
<b>FPE</b>	<b>Free Primary Education</b>
<b>ICT</b>	<b>Information Communication and Technology</b>
<b>KRA</b>	<b>Kenya Revenue Authority</b>
<b>LATF</b>	<b>Local Authorities Transfer Fund</b>
<b>MDAs</b>	<b>Ministries Departments &amp; Agencies</b>
<b>PELF</b>	<b>Poverty Eradication Loan Fund</b>
<b>PWD</b>	<b>People with Disabilities</b>
<b>RELF</b>	<b>Rural Electrification Levy Fund</b>
<b>RMLF</b>	<b>Road Maintenance Levy Fund</b>
<b>WEF</b>	<b>Women Enterprise Fund</b>
<b>YEF</b>	<b>Youth Enterprise Fund</b>



## **FOREWORD**

On the 4th August 2010, Kenyans voted for the Constitution of Kenya 2010, which was subsequently promulgated on the 27th August 2010. The signing into law of the Constitution of Kenya 2010 provided the first step towards a journey of national renewal. Central to this renewal is a Kenya where all citizens have equal opportunity to effectively engage in all aspects of socio-economic and political transformation of our nation as encapsulated in the Constitution of Kenya, 2010 and Vision 2030.

In executing the process of putting in place Devolved Government, it is expected that County Governments shall be in the forefront of unleashing local economic development, through appropriate leveraging of local resources, with the requisite support, from the national government and other development agencies. The high growth, expected out of our national renewal, will be key to spurring the national growth effort, embodied in Kenya Vision 2030.

The process of devolution underpins and permeates every chapter of the Constitution. Our future prospects as a nation are intrinsically, linked in the minds of our people, to the promises of devolution; that of placing government, development and decision-making in the hands of the sovereign citizens of our great nation. Kenyans eagerly await the benefits of County Governments. These long yearned for governments will require to make hard choices hence this Sessional Paper raises many of those hard choices that must be made in order to build viable Devolved Government institutions, staffing them and resourcing them.

This Sessional Paper outlines the policy framework for devolution and Devolved Government in Kenya. It proposes implementation mechanisms for the devolved system of government as envisaged in the Constitution of Kenya, 2010. Consequently, it identifies the broad basic policy framework for legislation and administrative actions needed to implement Devolved Government. It also provides for benchmarking future institutional initiatives and actions on issues related to devolution in Kenya. It conceives devolution anticipated in the CoK 2010 as the system through which Kenyans will develop robust governance and economic institutions with appropriate capacities to foster a cohesive and united country. The context and promise of Devolved Government in our national ethos, the historical and constitutional foundations of devolution in Kenya; the recommendations on strategic policy issues; the road map to the implementation process and the resource and risk management framework are documented in this Policy Paper.

In formulating this Policy Paper extensive public participation through county consultation fora, workshops, international symposia, stakeholder forums and memoranda from the widest reach possible were conducted. This had to be done not only because of the need to capture citizen views to enrich formulation of policy, but also because public participation in policy making is now a constitutional requirement. Concurrently, relevant undertakings were carried out,

interpretation, researching, documenting, benchmarking on the constitutional principles that underpin governance and devolution; dialogue on cooperative governance and inter-governmental relations; functional distribution and service delivery at both levels of government; financial resources and management; leadership, representation, accountability and integrity; protection of minorities and marginalized groups; citizen participation and oversight, public communication and provision of civic education.

A collation of the inputs received from the many consultations resulted in policy proposals on the implementation of Devolved Government in Kenya, which form the basis of this Sessional Paper and the six proposed draft bills on Devolved Government. The six bills constitute proposals for the basic legislation required at the nascent stage in the implementation of Devolved Government in Kenya. Subject to future reviews further legislation to enhance the practice of devolved governance system in conformity within the letter and spirit of the Constitution of Kenya may be required.

In implementing this policy framework, there will be a critical need for a harmonious approach so that each sector does not implement a particular aspect of the constitution which relates to devolution without considering other aspects. In our view initial challenge will revolve around assignment of functions along with the constitutional requirement that resources follow functions. Seamless transfer of jurisdictions, functions, assets and staff particularly of the existing local authorities to the new Devolved Governments while being an initial challenge will provide a useful starting basis for the new governance structures.

In recommending this policy framework I have no doubt that Kenyans will rise to the challenges of implementing devolution. The resilience, farsightedness Kenyans showed in the deliberations leading enactment and promulgation of the constitution will certainly provide useful building blocks to a genuinely stakeholder society where everybody plays a role in governance.

Finally, this Policy Paper has been developed through the efforts of many Kenyans and support from our development partners. Special thanks go to the members of the Task Force on Devolved Government who worked tirelessly to solicit the views of Kenyans from all counties and segments of our population as well as from other Countries. Their long working hours and commitment to their motherland will forever be remembered by Kenyans. The members of the Steering Committee who provided the necessary policy guidelines and coordination of stakeholders did a great service to their country. Their prompt responses to all the requests by the Task Force helped to ensure the smooth execution of the key tasks.

Apart from the Task Force and the Steering Committee we received invaluable support from our development partners under the coordination of the UNDP. Their support in form of financial resources, provision of experts to share



experiences from elsewhere and sponsorship of study tours has been most invaluable. We thank them for their commitment to our reform process.

We also thank all the technical support staff who spent long hours working behind the scenes and, in particular, the drafters for their diligence. We assure them that their contributions are deeply appreciated by all Kenyans of good will.

A handwritten signature in black ink, appearing to read 'Musalia Mudavadi', with a large, stylized flourish at the end.

Hon. Musalia Mudavadi, EGH, MP  
Deputy Prime Minister and  
Minister for Local Government.



# CHAPTER ONE

## INTRODUCTION

### 1.1 Introduction

The clamour for constitutional reforms in Kenya has its roots in the desire to correct deficiencies in the post-independence governance framework, which was premised upon the highly centralized system, designed by the former colonial administration. The main objective of this struggle was the restoration of power to the people in order for them to manage their affairs, particularly matters of local development, free from poor governance emanating from the centre. In our history, poor governance has been evidenced by corruption, ethnic conflicts, insecurity, political tensions and poverty that have plagued this country and frustrated many people. Some of these negative outcomes emerge, in part, from an emasculated current local governance structure that is beholden to the center and hence has no real power to articulate the concerns of the local population.

The post-election crisis of 2007/2008 was largely, due to the weaknesses in key institutions of governance including the then prevailing constitutional framework, the judiciary, police, the executive, electoral system and Parliament. Weaknesses in these institutions can be traced back to the over centralization of power in the executive, through post-independence constitutional and legal amendments that have led to the monopolization of power. Over the years, this centralization and monopolization of governance led to the distortion of the original national goals of fighting poverty, disease and ignorance, which had been set by our forefathers at independence in 1963.

Consequently, the adoption of the Constitution of Kenya (CoK 2010) was aimed at fundamentally altering 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 the management of resources. If effectively implemented, the CoK 2010 in general, and devolution in particular, should lead to a revolutionary transformation of the Kenyan society and thus, facilitate the achievement of the goals of Kenya Vision 2030. Devolution, however, is the most complex and the least understood aspect of the CoK 2010 and permeates all spheres of society and organs of government. As such, effective implementation of devolution calls for the recognition of this fact and also, requires a comprehensive and well-coordinated system-wide strategy, based on consultations and cooperation among the various arms and departments of government.

To realize the benefits of CoK 2010, every government entity must utilize its mandates and utilize its resources within the agreed implementation strategy so that devolution is implemented holistically. Thus devolution in the Kenyan context can best be understood within the context of a clear appreciation of the concept of our new constitution. The process must begin with the understanding of the concept of a constitution and its role in governance. Such an understanding

governance and its most coveted spinoff of rising nationwide prosperity.

## 1.2 Constitutional Provisions

A constitution is the fundamental instrument or law that organizes governance and state power. It defines, distributes and constrains the power and provides a road map for the construction of the society and of the affairs of State. In the pursuit of this goal, there are two approaches to the organization of governance and management of State power. The *single-dimensional approach* which follows a single horizontal dimension in the organization and management of governance and State power. It provides a system and structure of government based on centralization and concentration of the power of the state. The second is the *multi-dimensional approach* which organizes and manages governance as well as State power along multiple dimensions. It defines, distributes and constrains the use of State power along multiple dimensions. It combines vertical and horizontal dimensions as well as forming the foundation for devolved systems and structures of government. It is founded upon the concepts of decentralization and devolution of power.

According to Article 10(2)(a) of the CoK, 2010, *devolution and sharing of powers* were identified as values and principles that should guide our governance system. This means that Kenyans settled for a multi-dimensional approach to the organization and management of governance and State power, hence the devolved system of government. In pursuit of this, Kenyans created two levels of government with assigned functions and resources, within one unitary State. The two levels of government are co-ordinate, but not subordinate to each other. Neither is an agent of the other, as the two are distinct in their constitutional functions, institutions, resources and legal frameworks. Distinctness in this sense rules out the concept of hierarchy as a relational principle.

In effect, each of the two levels of government must have the freedom to make decisions in the functional areas assigned to them by the CoK 2010 without undue interference from the other. Indeed the principle of interdependence requires a certain measure of mutual respect between the two levels of government. Article 189(1)(a) *requires the government at either level to perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of the government at the other level and, thus respects the constitutional status and institutions of government at the other level and in the case of county government, within the county level.* Each level is, thus, created and protected by the constitution, with the functions and resources to be used for their discharge being set out and defined by the Constitution.

The essence of the new structure is that at the local level, people are allowed flexibility within which they can make decisions that are unique to themselves

and their locality while at the national level, decision-making is shared, meaning that the people of Kenya organized in their different counties, share in the making of the decisions that affect the whole country and the whole population. The laws which are made at the national level should hence be applicable to and enforceable in the whole country. Given this structure, there must, of necessity, be some shared institutions through which shared decisions can be made and executed.

At the national level, the concept of cooperative government requires that there be *intergovernmental dialogue* on the basis of consultation and cooperation which may lead to the setting up of joint committees and joint authorities. Cooperative Devolved Government requires that as a country, we move away from the past adversarial approach to issues and embrace a system of consultation, negotiation and consensus building in the running of state affairs. This ties in with the expectations for a shift to issue based politics espoused by the Kenya Vision 2030. Both vertical and horizontal intergovernmental relationships, between national and county levels of government and among County Governments respectively, should be based on and informed by the principles of cooperative government.

### **1.3 Historical background**

The initial transition of modern Kenya took place in 1963 when we attained self-government from a centralized colonial administration to a self-determining republic founded on democratic multi-party parliamentary politics and a devolved system of government. It was a quasi-federal system of government, in design, with one national and seven operationally autonomous regional governments, each with its president. The city of Nairobi was classified as an extra-provincial region headed by an elected Mayor and a City Council. Regional governments at the time, like the County Governments in the CoK 2010, were assigned specific functions with a timetable for the transfer of the functions. The regional governments also had independent sources of revenue. Similarly, political representation in the regions was through regional assemblies at the local level and a Senate at the national level.

The difference between the Devolved Government at independence and the current devolved system is that the former was a by-product of negotiations for independence. Regional governments of 1963 were incorporated into the Constitution to safeguard the interests of the so called minority tribes, including the white settler community, after the country gained independence. This contrasts with the new system that was born out of a long struggle for constitutional change and sealed through a national referendum where all the voters were given a chance to decide on the structure of state power.

As Kenyans will recall, the regional governments of 1963 were dismantled soon after independence through a series of constitutional changes. The first amendment made Kenya a republic, while simultaneously emasculating regional

governments by reducing the powers and functions of regional governments over taxation, control of local authorities and concurrent functions, such as agriculture, education and housing. The second amendment replaced the regions with provinces and also, abolished the Senate. Subsequently, further diminution of taxation powers rendered the regions and local governments in general completely dependent on central government for finance. In summary, the regional governments were abolished within three years of independence and the local authorities that remained as units of governance at the local level lost most of their powers to deliver services and self-financing following the enactment of the *Transfer of Functions Act (1969)*.

The foregoing historical events informed the design of the current system of Devolved Government, particularly, the entrenched powers and functions of County Governments and, specifically, the sources of revenue. The experience of what befell the regional governments at independence should therefore inform the policies that will be developed to safeguard the independence of County Governments and promote their roles as provided by the Constitution.

Ultimately the Devolved Government envisaged by the CoK 2010 is a robustly structured democracy that is based on the five principles articulated by the Constitution. First, it recognizes the sovereignty of the people as the source of all authority to govern. Second, government is established and instituted by the people to serve their welfare. Third, those to whom authority of government is delegated do so at the pleasure of the people; for a limited period of time; and subject to their good behaviour. Fourth, openness, transparency, and accountability as opposed to secrecy in governance are central. Fifth, leadership ought to be based on the principles of integrity and service to the people.

## CHAPTER TWO

# OBJECTIVES AND PRINCIPLES OF DEVOLUTION UNDER CoK 2010.

### 2.1 Objectives of the policy

Following many years of centralized governance that did not realize their dreams of eradicating diseases, poverty and ignorance Kenyans voted in large numbers for the CoK 2010 which promises them a more democratic and caring system of governance through a devolved system of government. Under Articles 174 the objectives of devolution are:

- (a) to promote democratic and accountable exercise of power;
- (b) to foster national unity by recognizing diversity;
- (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- (d) to recognize the right of communities to manage their own affairs and to further their development;
- (e) to protect and promote the interests and rights of minorities and marginalized communities;
- (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
- (g) to ensure equitable sharing of national and local resources throughout Kenya;
- (h) to facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and
- (i) to enhance checks and balances and the separation of powers.

Having experienced long years of poor governance, Kenyans see these objectives as the promises to deliver a new Kenya in which the government will become closer to the people, thus offering them renewed hope for the good life independence was expected to deliver. The realization of the above objectives will be pursued through the following principles:

- (a) County Governments shall be based on democratic principles and the separation of powers;
- (b) County Governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and
- (c) no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

The objectives and principles listed above will inform any architecture, future designs and workings of devolution in Kenya. Decentralization as required by Article 176(2) should, for instance, conform to these principles whilst the national legislation required to manage Urban Areas and Cities in Article 184 should also provide similarly, compliant structures that also deal appropriately with, issues emerging from the phenomenon of rapid urbanization in the management of our cities, municipalities and towns.

## **2.2 The urgency for change**

Kenya faces monumental developmental challenges that require a paradigm shift focusing on rapid and sustainable development. Evidence of this urgent need can be obtained from the county visit submissions to the Taskforce on Devolved Government. Citizens across the country made it clear that the mission of County Governments should be that of achieving positive and affirmative development outcomes for all. The pursuit of this mission will require that Counties leverage their local resources and competencies to enhance job creation while at the same time integrating the counties with the nation. County Governments, therefore, will have to commit themselves to focus on development, hence the need to stress on the concept of developmental Devolved Government.

The main challenge to be addressed by all of us will be to ensure faithful implementation of the devolution process in order to realize a national rebirth and to urgently address the major challenges facing our people. Indeed, the adoption of CoK 2010 and devolution, in particular, promises development to the people. The Constitution, also decrees a fundamental shift in the philosophy of governance and adopts a philosophy founded on solidarity and a development framework informed by the concept of resource equalization. This, in turn, demands that we identify our priorities well and focus on addressing the previously neglected groups and areas which now hold the potential for our future growth. The generation of more wealth and expansion of the common basket of resources to be shared, lies more in the exploitation of the potentials of the areas and segments of the population that were previously neglected. However, the areas where potential for growth has been encouraged and exploited should also be incentivized to realize their full potential for the common good of all Kenyans.

## **2.3 The challenges**

To appreciate the enormity of the challenges we face, it is prudent to have a brief examination of the population dynamics. According to the 2009 Population and Housing Census, Kenya's population was 38.6 million with a sex ratio of about 1:1, and an inter-censal growth rate of 2.6 percent. The population distribution shows that 53.6 percent of the total population is aged 15-64 years; 43.0 percent is aged below 15 years and 3.4 percent is above 64 years.



The Census data also shows that Kenya is rapidly urbanizing which together with rapid growth imply a momentous demographic transition to a large population size that is youthful, mobile and highly urbanized. The Kenya National Human Development Report 2009 recognizes the prominence of the youth in development, their challenges and potential contributions and opportunities to the development of the country. The report states that the youth account for about 60 percent of the total active labour force in Kenya but the majority are unemployed, a situation that is unlikely to change in the foreseeable future given the country's population pyramid. On the potential of the youth lessons from Latin America suggest that, the relative youthfulness of a population makes the transformation of its urban economies urgent if countries are have to positively reap the demographic dividend. However, this can happen only if the relevant economies generate high-productivity jobs for the large, young and urbanized workforce. This is a lesson that County Governments must pursue and actualize so that local economies can generate the required jobs.

In the process of developing productive urban areas, care should be taken to ensure that there is effective linkage between urban areas and the rural hinterlands, where many Kenyans still reside and which constitute the major sources of many of our raw materials. Therefore, this situation demands that an overarching *National Urban Growth and Development Policy Framework* be expeditiously put in place. This policy framework should seek to rationalize and coordinate urban development issues not only within and between counties but, also across the whole nation. Its key concerns should be to align service delivery to the desired developmental outcomes, focusing on ensuring that urban centres are competitive, have quality facilities, are well governed and facilitate effective citizen participation, to reduce growing frustrations.

To achieve this goal it is expected that the era when hospitals, schools and other facilities were built without the requisite operational resources to enable their full utilization must come to an end. Thus, there needs to be an intimate relationship between all the parameters and actors necessary for effective access to and utilization of public resources and services. This is the only way that developmental Devolved Government will deliver the outcomes anticipated by CoK 2010.

## **2.4 Political Governance**

In ushering in the new constitution, Kenyans were expressing a need for a different kind of governance. The current 175 local authorities combined have a totality of 3280 councilors countrywide. These large numbers have occasioned undue pressure in the process of reaching consensus on many issues of governance and in addition, made it difficult for councils to accurately remunerate the many civic leaders. This has led to the numerous instances of conflict of interests in most local governments, a situation that made Kenyans lose faith in their local leaders. It was due to such negative perceptions of local political leadership that majority of Kenyans opted for professional management of local

governance units, a situation that has been comprehensively addressed by the Urban Areas and Cities Act of 2011.

## **2.5 County Competitiveness**

Kenyans are emphatic that County Governments must leverage local competences and resources to spur rapid economic growth in order to address the challenges facing our country. Prudent utilization of local resources, supplemented by transfers from the National Government should translate into faster job creation, increased employment and rising incomes. In this regard, it is envisaged that all County Governments will endeavour to ensure conducive business environments within their areas of jurisdiction in order to remain, competitive and attractive to investors. It is therefore critical that Counties compete to attract investors and, in the process, ensure that the business environment both in the individual counties, regionally and nationally, is progressively made more attractive.

## **CHAPTER THREE**

### **CITIES AND URBAN AREAS**

#### **3.1 Introduction**

According to statistics from the national planning process, Nairobi alone accounts for between 40 and 50% of Kenya's Gross Domestic Product. All other urban areas combined produce nearly three quarters of Kenya's total wealth which validates the now established positive correlation between levels of urbanization and national economic development. As we consider our urban areas as centres of growth we note that Kenya's urban population increased from 750,000 in 1962 to 3.8m in 1989 and to 9.9 m in 1999 which constitutes 34% of the total population. Currently the urban population is estimated at 12 million which is 40% of the total population and is projected to grow to 50% by 2015, a growth of 1220% in 36 years, with the bulk of the urban population being found in principal municipalities of Nairobi, Mombasa, Kisumu, Nakuru and Eldoret. In this regard, our urban centres have grown from 34 in 1962 to more than 3000 centers, each with a population of at least 2000. These figures show the extent of the challenge as well as the opportunity facing Kenya in the process of fundamentally transforming the economy.

Unfortunately, rapid urbanization can occasion serious problems in the way it exerts enormous strains on services such as Housing, Education, Health, Water, Infrastructure and Employment. Slums and informal settlements are the clearest manifestation of the pressure which now poses serious social and economic problems including serious congestion and crime.

The challenges notwithstanding, the potential for greater wealth creation is enormous and should be exploited by all County Governments. In order to incubate, harness and grow this wealth creation potential, it is critical that urban areas and cities are given a special attention. Our constitution is explicit in its requirement, in Article 184, that national legislation provides for the principles of governance and management of urban areas and cities as well as participation by residents. Legislation is also required to establish criteria for classifying these areas into various categories. As such, by passing this constitution it is clear that Kenyans were dissatisfied with the present system of management of urban areas under which the governance of urban areas has tended to give greater prominence to political altercations than the public service delivery which the citizens wanted. It is for this reason, among others, that the constitution specifically called for distinct management structures that would address the concerns of urban residents.

#### **3.2 Structures for Management**

The legislation passed by Parliament has hoisted three approaches towards the implementation of the principles of management needed for the development of urban areas and cities. The first is the creation of management boards and

committees appointed through competitive process by the county governor with the approval of the County Assembly. The immediate offshoot of this is the depoliticization of the governance of cities and urban areas through professionalizing their management. All the boards for cities and municipalities and committees for towns will be required to mirror the requirements that apply to the governance of counties with an embedded consultative framework.

### **3.3 Recruitment of Managers**

The second approach is the requirement that boards for cities and municipalities and committees for towns be required to competitively recruit managers, which will be a radical departure from the past where chief officers have been public servants. In the governance structures envisaged, managers once recruited are accountable to the boards which will institute clear performance parameters that can be monitored and verified. Related to this is the third approach of legal and mandatory functional requirement that various services be delivered. In the past, functions of local authorities have been permissive, with many councils failing to fulfill the responsibilities required of them.

It is hoped that the professional structure put in place will enable the implementation of Chapter 6 on Leadership and Integrity, particularly on the selection of officers on the basis of personal integrity competence and suitability. The structured consultative framework will ensure that residents participate in decision making to enhance service delivery and accountability.

### **3.4 Metropolitan areas**

In this Policy Paper, metropolitan areas are identified as municipalities and urban centers cutting across established boundaries of counties and urban areas. In order for such urban areas to deliver efficient services such as water, sewerage, transport etc, to their clients, respective County Governments will need to form joint corporations or committees which will be assigned specific mandates. This matter should be addressed within the purview of intergovernmental relations. In addition, as part of their mandates counties involved in the development of metropolitan areas shall have obligations to provide for consultative forums between themselves over their areas of common interests.

## **CHAPTER FOUR**

### **EFFECTIVE PUBLIC SERVICE DELIVERY**

#### **4.1 Introduction**

The responsibility for staffing of county public services, under Article 235 of the CoK 2010, has been assigned to County Governments. Staffing in this context goes beyond the mere deployment of staff in the counties and includes the establishment and abolition of offices, appointments and confirmation of appointment, disciplinary control and removal of persons holding or acting in offices in the county public service. The CoK 2010 further requires that staffing be done within a framework of uniform norms and standards prescribed in national legislation, hence the need for such legislation before County Governments come into being.

The establishment and abolition of offices and appointments in the service of County Governments will be guided by the need to attain an optimal staff complements required to perform the functions assigned to these governments under the Fourth Schedule of the CoK 2010. In order to determine the optimum number of staff, respective County Governments will need to conduct workload analysis, which in turn makes it necessary for County Governments to develop organizational structures and staff establishments that are consistent with the assignment of functions.

#### **4.2 Norms and Standards**

Besides matching staffing with functions, other norms and standards in respect of staffing will include prescribed qualifications and fair administrative actions, which in our view should be articulated by the legislation that puts into effect Article 232 of the CoK 2010. Others will be benchmarks in the form of ratios or percentages that will form useful criteria in determining the number of offices to be established or abolished and the diversity of Kenyan communities in appointments made by respective County Governments. In order to ensure harmony and standardization at both levels of government, established norms and standards will be governed by applicable laws and regulations. In the process the key determinants of staffing levels must always, be the functions to be performed by those appointed to public offices.

#### **4.3 Challenges**

There are formidable challenges that could derail efforts to deploy a well structured and effective public service in counties. Effective staffing and performance in the county public services could easily be compromised by excessive discretion of County Governments, lack of transparent and accountable control systems, excessive bureaucracy and weak capacities. These if unchecked, will lead to the erosion of professionalism, corrupt practices or perceptions of corruption, abuse of office, negative ethnicity and cronyism in appointments, promotions and disciplinary control. In order to avoid these potential challenges,

an independent body to be known as the *County Public Service Board* should be established in each county before any recruitment is done. The Board will primarily perform, on behalf of County Governments, the responsibilities assigned under Article 235 of the Constitution. This will be provided for in national legislation. The Boards will be expected to develop consultative frameworks that will facilitate county public service delivery policy formulation and implementation, covering any local level specific needs.

It is critical that human resource management and development policies adopted by County Governments be required to reflect best practices. Relevant policies should be designed with the ultimate objective of optimal utilization of human resources and the personal development of public officers in their careers. However, unique circumstances in every county's public service may determine the human resource requirements and management approach that a county government may wish to adopt, bearing in mind that national legislation will apply throughout the county public service. In addition, international conventions on labour relations and practices will likewise, continue to apply in the management and development of human resources.

#### **4.4 Stability of Public Service**

Stability of the public service; matching staffing with functions; harmonization of terms and conditions of service and preservation and protection of pensions and other terminal benefits will be important factors in ensuring motivation amongst public servants at both levels of government. To ensure stability of the public service, national legislation will provide that public officers serving in counties on the date of the establishment of County Governments will be deemed to be on secondment from national government with their terms and conditions of service as at that date being maintained. The secondment of the officers to the counties will be for the purposes of respecting the constitutional responsibility of County Governments in the staffing of their counties; and the preservation of terms and conditions of service of the seconded public officers, including their pension rights pending redeployment to either level of government.

#### **4.5 Performance Management**

In executing the mandates of counties, performance management and evaluation plans will be developed to facilitate the implementation of county policies. Such plans will be complementary to any national performance management plans that may be applicable to the county public service. The county government performance management and evaluation plans may include such performance management tools as performance contracts and individual public officer's performance evaluation. National legislation will provide for performance management and evaluation plans for County Governments, however, a county government may formulate and implement a rewards and sanctions policy, which will provide for a framework of rewards for county public officers based on exemplary performance, productivity and sanctions for consistently poor

performance. In formulating the policy, County Governments shall consider the advice of the Salaries and Remuneration Commission on the matter.

The key evaluation system, inbuilt within the governance system, espoused by the CoK 2010, is the requirement that citizens be consulted and participates in both formulation and implementation of county programmes. In this connection, the Constitution provides broad functional guidelines which means that the development of any county specific policy on public service delivery will need citizens' participation.

#### **4.6 Functional and Competency Assignment**

The functions of the County Governments are provided for in Articles 185, 186 (1) and listed in the Fourth Schedule. Article 21 (Implementation of Bill of Rights), Article 62 (2) and (3) (Vesting of Land in County Governments), and Article 235 (County Public Service), amongst others, delineate further functions, and impose obligations on both levels of government in the execution of their mandates. The CoK 2010 in Article 186 further classifies the functions of County Governments as exclusive, concurrent or residual. Annex III provides the distribution of functions between national and the County Governments as assigned by the CoK 2010. A review of the functions as articulated in the Fourth Schedule of the CoK 2010 indicates that the national government is largely assigned functions relating to policy development, standards, norms, regulatory and capacity building, while County Governments are assigned service delivery functions. Other functions and mandates of the County Governments are provided in Article 43. On the other hand, where the functions are not explicitly distinguished as exclusive or concurrent, these are classified as residual and assigned to the national government.

The process of providing clear definitions of each functional category and explicitly specifying the functional areas over which each level of government will have responsibility is, generally, referred to as functional and competency assignment. Clarity in this process is required for effective identification and allocation of resources such as staff and finances. Proper structuring and assignment of competencies/ responsibilities is necessary in order to ensure efficient and comprehensive service delivery to citizenry.

The assignment of functions and competencies between the national government and County Governments will be guided by certain principles and norms. For the assignment of functions to the two levels of government, it is generally agreed that policy formulation and the setting of national standards and norms will be the responsibility of national government while the implementation of the policies and standards is the responsibility of County Governments. The functions related to foreign affairs, defence and macroeconomic policies are assigned to the national government whereas 'social functions', including provision of health care, pre-school education, housing and agricultural extension services are assigned to the County Governments. In assigning functions the principle of

proportionality requires that a level of government is allowed only to take action to the extent that is necessary to achieve the stated objectives, regardless of those objectives.

Experience from elsewhere has shown that overlaps of functional jurisdiction are unavoidable even for exclusive functions because it is virtually impossible to define watertight compartments of exclusive jurisdictions. Similarly, concurrent functions, due to the nature of the assignments, involve joint tasks and overlaps in terms of functional jurisdiction. Rather than assigning, for example, primary education to the lowest level of government, in practice, only certain components or service delivery functions are assigned. Hence another intervention of functional assignment is to 'unbundle' services within sectors, particularly where the Constitution does not define specifically what services are contained in an assigned sector.

The functions assigned to the national and County Governments by the CoK 2010 are generally broad and non-specific, which is the trend observed in other countries. Article 186 and Schedule 4 provide for assignment of functions and powers between the national government and County Governments. The absence of clarity has the potential for tying up governments in disputes that would detract them from actual delivery of services or could lead to wasteful expenditures. Where functional assignment is not clear, effective public service delivery is affected through duplication of services, ineffective services, lack of service delivery, unfunded services, lack of accountability, and increased contestation over which level of government is responsible for what. Efforts should always be made to resolve any emerging disputes through dialogue so as to avoid delays or disruption in service delivery.

#### **4.7 Ethnic and Regional Balance in County Public Service Delivery.**

In order to protect and enhance Kenya's nationhood and to ensure that there is equity and ethnic balance in the recruitment and delivery of public services, it is proposed that County Public services Board be obligated to recruit at least one third (30%) of the professionals from outside the predominant community or communities in the county.



## **CHAPTER FIVE**

### **DEVELOPMENT PLANNING**

#### **5.1 Introduction**

Effective and comprehensive integrated development planning is necessary for achieving a clear determination of public service requirements. National and County Governments have clear service level gaps that need to be addressed, which requires that targeted interventions are put in place to increase the level of public investments and, ultimately value for money. This will entail the setting of targets and mechanisms for planning and financing of development. In our history, development planning has for a long time been highly problematic. First, there has been uncoordinated planning, for example, plans and projects are prepared and funded within a sector, at district, local government and constituency levels. Under these circumstances prioritization, accountability and effective monitoring of development plans would be a major problem in Devolved Government. It also means that funds would be thinly spread out in a manner that on application their impact is at best minimal. Finally, channeling finances to local areas through different routes creates a fertile ground for conflicts, duplication and undue competition.

Another major challenge of development planning has been the poor linkage between local planning and budgeting in a properly conceived medium term expenditure framework. Many infrastructure projects identified as priorities in various local development plans have never been undertaken due to lack of funding, and many that have been undertaken are not properly resourced for service delivery and maintenance. It is thus not surprising that many district development plans are formulated, but are hardly implemented. In terms of international best practice, local entities should have medium term development plans outlining the vision for the local development, a shorter term (three-year) rolling investment program that identifies priorities for the next few years in the context of some sense of the likely budget envelope, and an annual development budget for capital expenditures in the current budget year. In addition, the process of preparing an annual budget should take into account the recurrent expenditure needs associated with new facilities that are built under the development budget. Further, to avoid uncoordinated planning and development, it will be necessary to harmonize sectoral, national, local and term planning to effectively secure expected development outcomes. In this regard, institutional structures will be required to continually harmonize all development plans so that there is consistency both with regards to sectoral and county plans as well as nationally.

#### **5.2 Development plans and resource allocations**

Achieving integrated development planning will help the counties to cost effectively and progressively achieve their developmental mandates. In this connection, participatory and accountable government has meaning only if it addresses concrete issues or concerns, through its plans and resource allocations.

In pursuing integrated development planning nationally and within the counties, the following key challenges must be addressed. The challenges of:

- wealth creation through the limited resources available;
- the emerging demographic patterns including achieving productive urban- rural linkages;
- dealing with emerging challenges of urban sprawl, peri-urban areas;
- service provision across county boundaries;
- creation of supportive policy and institutional frameworks.

Further, it will be critical to provide for interventions in dealing with the implications of Kenya's settlement dynamics on the natural resource base, which is crucial to food security and sustainable development.

There is need to provide for flexible mechanisms to respond to differential population growth rates and the resultant changes in population distribution, given their implications for the functional boundaries for service delivery and therefore, the demand for variations in service delivery, electoral boundaries and consequently the systems of the demarcation of boundaries. The rapid growth of urban areas across political and administrative boundaries will mean that measures be taken to deal with service delivery, in an economical and efficient manner. It is also important that citizens of the various counties are facilitated and empowered to realize their highest potential. To avoid the challenges of uncoordinated planning and development, sectoral, national, localized, as well as term planning will need to be harmonized effectively to secure Kenya's development outcomes. It is for this reason that national legislation on intergovernmental relations has been proposed so as to establish institutional means for consultations and dialogue between the two levels of governments.

Under the CoK 2010, development planning is anticipated at various levels. Schedule 4 of the Constitution assigns various elements of development planning to national and County Governments. This Schedule assigns national economic policy and planning, national statistics and data on population, the economy and society generally, general principles of land planning and the coordination of planning by the counties to the national government. County Governments are assigned county planning and development, including statistics, land survey and mapping, boundaries and fencing, housing, electricity and gas reticulation and energy regulation. Other functions key to development planning assigned to County Governments include county transport, county agriculture, county health services, as well as trade development and regulation. Planning for these functions will be the responsibility of County Governments, however a major component of development planning, namely regional planning is not mentioned and could therefore be treated as a residual function hence a national government function. Regional planning that cuts across county boundaries will be

particularly critical to national development and will require national government's stewardship.

Overall there will be need to develop a legal framework for clarifying the assignment of exclusive, concurrent and residual functions in the constitutionally mandated cooperative system of government. However, it should be noted that assignment of functions and competencies is not a simple legal action of allocating public services from one level or unit of government to another. It requires to be undertaken within a legal, fiscal and institutional framework. To ensure an orderly assignment of functions and competencies, a *Functional and Competency Assignment Policy Paper* will need to be developed and approved by the National Government to guide the phases of the transfer of functions to the County Governments. This paper will lead to the development, through multi-stakeholder efforts, of *Sector Functional and Competency Assignment process that will continually guide the assignment of functions, in the transition period and beyond.*

### **5.3 Managing functional assignment**

As part of the important processes, clear assignment of functions should be implemented, led by the Executive, with the Commission on Implementation of the Constitution (CIC) and the Commission on Revenue Allocation (CRA) as per Schedule 6, Section 5 (6) a and Article 216 (2) of the CoK 2010, playing their roles. The development of a *Constitutionally Compliant Public Sector Policy* document aligning the sectors to the Devolved Government framework is critical as an imperative for effective assignment of competencies and functions in line with the CoK 2010. National legislation should guide the phased transfer of functions on the basis of the agreed criteria. In order to anchor this process and to accord with good international practices, it is critical that a national legislation covering the operations of Devolved Governments be formulated. The legislation should incorporate matters pertaining to transfer of functions, including the delegation of powers, criteria for transferring powers, costing of functions, structures and capacity to receive functions, transfer of assets and liabilities, and structures and institutions for effective service delivery at county level.

It is expected that the enactment and implementation of the legislation on Devolved Government will lay a firm foundation for the integration of economic, social, environmental and land-use planning in the counties into the national policy, plan, standards and norms. This will lead to comprehensive and coordinated planning with clear linkages between policy, planning and budgeting, as well as allowing for the leveraging, in as optimal a manner as possible, of the resources available to County Governments to address the needs of citizens. Ultimately, this should contribute to a more just and equal society for the Kenyan people and their progeny as envisioned by the CoK 2010.

Targeted public communication, advocacy and engagement strategy supportive of the goals of the functional and competency assignment exercise should be

formulated and implemented. The objectives of the strategy shall be to ensure that all stakeholders are aware of the importance of the functional and competency assignment exercise, its outputs and outcomes. Consequently, there will be a common ownership of the national planning and development process.

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## CHAPTER SIX

# COUNTY PUBLIC FINANCE MANAGEMENT

### 6.1 Introduction

Effective financial management is pivotal to the success of Devolved Government under the new Constitution. CoK 2010 provides that County Governments shall have reliable, stable and predictable sources of revenue to enable them to effectively perform their constitutional functions and to deliver services within their jurisdictions. County Governments are also required to observe the principles of public finance management outlined in the Constitution, including prudent utilization of financial resources, openness, accountability, public participation and clear fiscal reporting. They must also ensure that resources are applied in a manner that promotes equitable development, provides for marginalized groups and areas, and the use of resources and public borrowing, while ensuring that related burdens and benefits are shared equitably between present and future generations.

The Constitution provides frameworks for securing the financial health of County Governments in order to avoid the financial challenges that have plagued local authorities in past. The Constitution, for example, provides that revenues raised nationally shall be shared equitably among the national and the County Governments and that additional allocations may be made to them as conditional and unconditional grants. For purposes of clarity resources to be shared are stipulated in the Commission on Resource Allocation Act. In addition, the Constitution stipulates that where a function or power is transferred from one level of government to another, arrangements shall be made to transfer financial and other resources necessary for the performance of that function or exercise of the power. The Commission on Revenue Allocation may, when appropriate, also define and enhance the revenue sources of County Governments. The Commission will also be obligated to make recommendations on how counties can promote and institutionalize fiscal responsibility.

The key imperative here is that County Governments have access to secure, reliable, stable and predictable sources of revenue to enable them to effectively perform the functions assigned to them under the Constitution. The main revenues assigned to them under the Constitution are intergovernmental transfers and county generated revenues. It will be important to ensure that the intergovernmental transfers and county generated revenues are sufficient to finance the functions assigned to the County Governments.

### 6.2 Resources available to County Governments

The CoK 2010 has provided that not less than 15% of the revenues raised nationally, calculated on the basis of the most recently audited accounts of revenue received, as approved by the National Assembly, shall be allocated to County Governments. County Governments are also empowered to impose

property taxes, entertainment taxes and any other tax authorized by legislation and can also levy fees and charges for rendered services. They are also entitled to be given additional allocations as conditional and unconditional grants.

County Governments shall be required to determine the revenue potential from their own sources and institute innovative management practices to ensure maximization of revenue collection. In enhancing revenue collection counties will need to re-examine the current system of the assessment of property rate taxes which is based on unimproved site values, thus denying local authorities substantial amounts of revenue. This will require that all relevant legislations be amended to provide for the rating of properties based on both the improved and unimproved site values. Operational problems occasioned by exemptions on payment of rates to government ministries, departments, agents or any other person as is currently the case need to be a thing of the past.

Another important initiative would involve making the Kenya Revenue Authority (KRA) a shared institution, empowered through national legislation to collect tax revenues for both the national and County Governments. Alternatively, County Governments could collect taxes through their own departments or contract out the tax collection function either in whole or in part to KRA or to a tax revenue collection institution established to serve all the 47 counties.

The CoK 2010 requires Parliament to enact legislation that ensures that local communities and their economies benefit from resources and investments in their areas, while regulating the use of land. In the past, communities in many areas of the country have survived through the sustainable exploitation of forests, wildlife, marine and other natural resources in their areas. The exploitation of minerals and other natural resources within various counties will inevitably impact on the environment and livelihoods of local communities. In some instances, e.g. in case of water resources, the communities may be called upon to protect the catchment areas. For this reason, it should be the requirement that some royalties be levied not only to provide additional and reliable sources of revenue but also as a management process of the environment. This will serve as an incentive to communities to support initiatives geared towards sustainable utilization of the land resources.

### **6.3 Currently devolved funds**

Over the last few years, several 'devolved' funds have been established with the objective of providing financing to projects at the local level. Examples of such funds include the Local Authorities Transfer Fund (LATF), the Constituency Development Fund (CDF); the Road Maintenance Levy Fund (RMLF), the Youth Enterprise Fund (YEF), the Women Enterprise Fund (WEF) and the Poverty Eradication Loan Fund (PELF), the Free Primary Education (FPE); Constituency Bursary Fund (CBF); the Rural Electrification Programme Levy Fund (REPLF); the HIV/AIDS Fund; the Community Development Trust Fund (CDTF), the

Water Services Trust Fund (WSTF), among others. These funds are administered under separate management structures.

Although the above funds have been major drivers for service delivery and local development in general, they have equally experienced challenges and attracted complaints from stakeholders, including demands for their restructuring and reform. These challenges and criticisms include lack of coordination, jurisdiction overlaps and duplication, high administrative costs, inadequate public participation, confusion amongst citizens on how the funds are to be accessed, mismanagement, conflict of interest, nepotism, corruption and poor accountability, among others. The rationalization and clarity of the future administration and management of these funds will be critical since they will have a major bearing on the effective management and functioning of the County Governments.

#### **6.4 Financial Resource Management**

This Session Paper summarily identifies five aspects of financial management that will be pivotal to the transformation of the country as envisaged by the Constitution. These are as follows:

1. **Resourcing the County Budget.** The constitutionally guaranteed allocation of 15% of the revenue raised nationally, which according to the constitution "...shall be transferred to the County without undue delay and without deduction..." and the other grants. These resources give County Governments the basis for authentic budgets. For this reason any county government that fails to develop a coherent budget displays operational handicaps.
2. **Enhancement of resources.** Along this resourcing of a county budget is the imperative that County Governments enhance their revenue collection with resources from within their jurisdictions. This means streamlining their revenue generating strategies and systems and, in particular the process of valuation of properties, and others in order to ensure the maximum possible collection is realized.
3. **Ensuring Accountability.** All expenditure should be procedurally executed, with the process proceeding from the constitutionally required approvals by the Controller of Budget. The designated Accounting Officers will need to be accountable for all expenditures and to ensure that proper books of accounts are maintained with a strong Audit function as per the constitutional requirements.
4. **Borrowing.** This should be done under stringent conditions that require national guarantees. In this connection, the overriding policy imperative will be predicated not only on the ability to repay the monies borrowed but also on preclusion of borrowing for recurrent expenditure. This means that borrowing should be done for projects

that have income streams and on infrastructure projects, which have the capacity to spur economic growth in the county.

5. **Special attention to urban areas and cities.** The key policy initiative of ploughing back all revenues collected in Urban Areas and Cities should be to spur rapid economic growth. These areas are critical to the collective and robust economic growth. It is therefore critical that all taxes, revenues, fees and charges collected within these areas be used to provide quality services and investments in infrastructure so that they can continue to attract investments.

## **6.5 Intergovernmental Fiscal Relations**

The budgeting process raises the need for an interactive or consultative process, thus it is envisaged that County Governments will cooperate and consult with the national government and among themselves on matters relating to fiscal, budget and financial issues within the context of an institutional framework established under national legislation. For this reason, it is recommended that a national legislation be enacted to establish a **Budget** institutional framework e.g. a **Council** to provide a forum for cooperation, consultation and negotiations between the national and County Governments to consult on all issues relating to finance and the economy in general particularly those relating to the budget, sharing of revenues raised nationally, as well as conditional and unconditional grants, loans and loan guarantees and equalization fund appropriations.

To facilitate the establishment of an effective institutional mechanism groupings or clustering of counties may be instituted as a means to ease and intensify understandings among the various levels of government. Beyond budget issues consultations leading to joint initiatives and operating rules and regulations will need to be encouraged and enhanced. Other key issues may be those relating to the sharing of natural resources and services, execution joint programs in commonly structured economic sectors to enable economies of scale and productivity.

## **6.6 Public Participation in County Financial Management**

The Constitution requires citizen participation in all governance issues and particularly in public financial management. The views given by the public during county public participation forums on financial matters shall be heeded for accountability, and taken into account when making decisions, formulating policy and county legislation. Towards the realization of this goal, County Governments, in cooperation with the Senate will need to ensure effective public participation during the process of determining the basis for resource allocation among counties, and the share of revenue that is annually allocated to the county level of government. These consultations will need to be well structured, appropriately programmed and scheduled to give voice to every citizen and to enable attendance of all interested persons.



## 6.7 Financial Management Capacity Building

County Governments will continually need to formulate and implement financial management capacity building policies and programmes to cater for the needs of state and public officers, serving in county executives and county assemblies, which should be incorporated in county strategic and other plans and evaluated in under performance contracts. County Governments' financial management capacity building programmes will have to be comprehensive and holistic, focusing on key concerns such as human resource development, provision of equipment, tools, plant and information communication technology skills in order to empower such officers to deliver quality public services. Such capacity building programmes should also embrace, management information systems, broad spectrum of the discipline of the financial management function, financial risk management, finance management review systems, use of local and international financial innovations and trends, among others.

## 6.8 Resolution of Operational and Financial Problems

The Constitution provides for intervention in a County government where there are financial problems or anticipated problems in meeting its financial obligations. The policy framework relating to dealing with such eventualities should proceed from a perspective of preventing problems from occurring and be predicated on the following three initiatives:-

1. **STRESS TESTS.** All County Governments will be required to regularly conduct thorough examination of their financial positions to establish the capacities to meet their operational financial obligations as they fall due. This will call for an in-depth synthesis of the requirements and capabilities to fulfil such requirements promptly. In the event of mismatch between financial resources and county obligations both actual and anticipated, it will be critical that Counties desist from engaging in new financial commitments.
2. **BORROWING.** The Constitution requires that all borrowing be guaranteed by the national government. It is in this area where financial commitments to service loans are likely to be one of the most serious origins of financial problems. The policy should, hence, require that indebtedness be closely monitored and analysed to ensure:-
  - a most robust inventory of debts, with details of all obligations in terms of amounts, when due and the history of repayments
  - matching repayments with particular revenue streams.
3. **RECRUITMENT.** The single largest expenditure item in most Devolved Governments worldwide is personnel emoluments. Current local authorities have taken payroll commitments that are way above

their capabilities to pay and this has occasioned serious problems in meeting statutory obligations that emanate from such payrolls. This trend should not be allowed to happen in County Governments, thus, payrolls will need to be kept at reasonable levels of guaranteed revenues. This will entail ensuring that before any recruitment is effected it will be necessary to conduct analysis of capability to pay so as to preclude future financial distress in County Governments.

In spite of the above recommended vigilance on expenditure control it will be the County Governments' obligation to ensure expenditure tracking in order to reveal any serious financial problems. The responsible county government will be required to immediately seek solutions to emerging problems and, where necessary, notify the Cabinet Secretary responsible for Devolved Government and the Cabinet Secretary responsible for finance and any other relevant institutions. National legislation will prescribe the criteria for the determination of operational and financial problems and the conditions necessary for the initiation of national government intervention procedures. The legislation will also prescribe the objectives, approval, implementation, review, amendment and termination of County Governments' recovery plans.

## **6.9 Financial Recovery Service**

National legislation will provide for the establishment of the County Governments' financial recovery service and specify the qualifications and appointment of those to be appointed to implement recovery programmes. The functions of the county government's financial recovery service shall include assisting in the identification of the causes, making recommendations on best practices in resolving such problems and the preparation of financial recovery plans. On request by the Cabinet Secretary responsible for Devolved Governments, the County Governments' financial recovery service shall monitor the implementation of any financial recovery plans that it has prepared, and may recommend such amendments and revisions as are appropriate.

The Cabinet Secretary responsible for Devolved Governments may, in consultation with the Cabinet Secretary responsible for finance, engage the services of any financial expert or any suitably qualified person to perform any specific work for the service including the preparation of the financial recovery plan. The national government and its representatives shall have access to all information, records and documents for the purposes of identifying or resolving the operational and financial problems of a county government, if the national government intervenes in a county government, as provided for in the Constitution.

## **CHAPTER SEVEN**

### **INTERVENTION AND SUSPENSION**

#### **7.1 Introduction**

Article 190 (3) provides that Parliament shall enact legislation that will allow national government to intervene in order to ensure that County Governments perform their functions. Article 190 (4) details the steps for achieving this, including possible takeover by national government for performance of those functions. However, in Article 190 (5), the provisions suggest some level of measured intervention through a requirement that a notice be issued to the defaulting county government which allows the national government to take only those measures that are necessary. It further provides that the process be defined by which the Senate would bring such an intervention to an end.

In essence therefore, while the Devolved Governments structure envisages autonomy of County Governments, assignment of the functions of policy formulation and standards setting to the national government, has provided a limited measure of oversight over the county level of government that allows for intervention as contained in Articles 190,192 and 225.

#### **7.2 Conditions for Intervention**

Article 186 and Schedule Four of the CoK 2010 assign functions to national and County Governments, with each government being required to diligently its perform the functions to the satisfaction of the citizens. The Constitution also requires that County Governments be provided with sufficient resources to ensure adequate, affordable, reliable and high quality provision of services. County Governments are therefore required to establish and operate appropriate structures, policies, legislations, plans, strategies and management systems that will ensure satisfactory provision of services within their jurisdictions. Where a county government is unable to perform the functions assigned to it under the Constitution, the national government may pursuant to Article 190 (3) (a), intervene to ensure that such functions are performed satisfactorily.

The functions of a county government are performed either jointly or separately by the county assembly and/or the county executive committee. The inability of either or both of the two arms of the county government to perform their respective functions can lead to their failure to effectively deliver required services. The role of the county assembly will be to enact county bills into laws or by - laws, to consider and approve matters referred to them by the county executive including vetting of executive committee members and senior county public officials. The county assembly will also consider and approve strategic plans, annual budgets, audit reports, collection of local revenues, loans, grants, review investments and expenditure reports and related matters. In performing their functions, county assemblies may constitute committees whose reports will be tabled for consideration and adoption by the respective assemblies.

On the other hand, the county executive committee will be responsible for implementing county legislation and implementation of national legislation to the extent that the legislation so requires; managing and coordinating the functions of county administration and its departments; and performing any other function conferred on it by legislation. In addition, the county executive will be responsible for the formulation of county policies; preparation of strategic plans including plans for the management and exploitation of the county's resources as well as infrastructure investment plans; project planning and management; financial management including matters relating to revenues, budgeting, borrowing requirements, and loan guarantee requests; production of annual financial statements; responses and actions on audit queries, regular preparation of sector reports and their submission to the county assembly; preparation of reports requested by the county assembly, human resources management and capacity building, among others.

A county government will be considered unable to perform its functions if either the county assembly or the county executive or both fail to perform any of their functions. A county assembly will be deemed unable to perform its functions if it fails to meet, within a period of three months, to consider and make a decision on county legislation, approve the county budget by 20th of June of every year after having received the proposed budget two months before the end of the financial year; or within fifty days if the budget is received on a date later than 1st of May of every financial year or does not meet within thirty calendar days to consider and make a decision on county borrowing requirements, and loan guarantee requests. Also if it does not meet within thirty calendar days to consider and make a decision on the approval of persons nominated by the governor for appointment as executive committee members or county chief officers of departments and persons designated as accounting officers for county departments, urban areas and cities and county public entities.

It is also anticipated that the county assembly meets within a reasonable period to consider and make a decision on a matter necessary to facilitate the county executive to effectively and efficiently perform its functions. Further, the county assembly will need to meet to consider and approve the county strategic plan submitted to it by the county executive within three months of its submission.

In the case of a county executive committee, it will be considered incapable if it is unable to formulate key policies, and submit the same to the county assembly for approval or fails to appropriately guide the county in the efficient and effective performance of the functions assigned under the constitution. Also, a county executive committee will be deemed incapable if it fails to implement specific county and national legislation as required by the county assembly or has not developed effective structures and systems to administer and manage the affairs of the county, its urban areas and cities and county public entities or is unable to satisfactorily provide the requisite services to its citizens based on the standards

and norms developed by the national government and adopted by the county government.

Other considerations for the failure of county executive committee include inability to prepare the county's strategic plan for submission to the county assembly, for consideration and approval within nine months after the constitution of the county government. Other indicators will include failure to prepare the county budget and submit it to the county assembly two months before the end of the financial year, failure to implement projects included in the budget, and failure to prepare regular and annual sector reports including human resources management and capacity building programmes as required by the county assembly.

### **7.3 The Process of Intervention**

If the Cabinet Secretary responsible for Devolved Governments becomes aware that a county is experiencing operational problems that may hinder its ability to perform its functions effectively, the Secretary will promptly consult the governor of the county to determine the facts; assess the seriousness of the situation and the county government's response to the situation; and determine whether the situation justifies or requires an intervention in terms of Article 190 of CoK 2010. The Cabinet Secretary responsible for Devolved Governments may inform Parliament, national and the county government consultative forum of the failure of the county government to perform its functions. In the circumstances, the Cabinet Secretary shall promptly decide whether or not to intervene in that county.

If the Cabinet Secretary decides to recommend intervention, he or she will give a four week notice to the county government, conveying the national government's decision to intervene and outlining the measures that will be taken during the intervention period, including communication that the costs relating to the recovery plan shall be paid from the county revenues. Copies of the notice to intervene shall be given to Parliament, the Commission on Revenue Allocation and the Controller of Budget. The Cabinet Secretary will also appoint a competent person(s) or firm(s) with relevant expertise to prepare and implement a properly costed intervention plan with clear performance targets and timelines to ensure that the county government is able to perform its functions effectively. In addition, the Cabinet Secretary responsible for Devolved Governments will submit the recovery plan to Parliament, the Commission on Revenue Allocation and the Controller of Budget; and each of the institutions, may, within thirty days, make proposals and recommendations on the implementation of the recovery plan. Such recommendations will be taken into account in the development of the final recovery plan approved by the Cabinet Secretary.

The recovery plan and related costs will be approved by the Cabinet Secretary responsible for Devolved Governments and tabled before the County Assembly and Parliament, for information. The intervention plan will be for a period not

exceeding ninety days and every effort will be expended to ensure the administration and management of the affairs of the county reverts to the county government. The implementation period may however be extended by the Cabinet Secretary, with the approval of the Senate.

The person(s) or firm(s) responsible for implementing the recovery plan will be required to prepare monthly reports that will be submitted to the Cabinet Secretaries responsible for Finance and Devolved Governments and the County Government. Copies of the monthly reports will be submitted to Parliament, the Commission on Revenue Allocation and the Controller of Budget and any other relevant organ. The county government will be required to give all the necessary support to the person(s) or firm(s) responsible for preparing and implementing the recovery plan to facilitate them in their work including providing them with the requisite financial, personnel, legislative, office space, records, reports, and communication facilities.

During the intervention period, the Cabinet Secretary responsible for Devolved Governments may suspend or reassign some of or all the duties and responsibilities of the county government to the person(s) or firm(s) responsible for implementing the recovery plan. At the end of the intervention period the person(s) or firm(s) responsible for implementing the recovery plan, will prepare and submit a plan to the Cabinet Secretary responsible for Devolved Governments and the county assembly specifying actions that have been undertaken to address the operational weaknesses identified and recommendations for future governance, administration and management systems that shall be adopted and implemented by the county government to enable the effective performance of their functions.

The Senate may, after the review of appropriate progress reports submitted to it by the Cabinet Secretary responsible for Devolved Governments and satisfying itself that the objectives of the recovery plan have satisfactorily been achieved, resolve to terminate the national government's intervention at any time. The Cabinet Secretary responsible for Devolved Governments will submit the report on termination of the intervention to Parliament and National Government, the Commission on Revenue Allocation and the Controller of Budget, the county government, and the County consultative forum. It is expected that a successful intervention process will yield the identification of the weaknesses on governance, administration, management and other weaknesses inhibiting the subject county from the effective performance of its functions. It is also hoped that such interventions will produce useful lessons to inform policy and legislation to enable the minimization and prevention of governance, administration and management failures in County Governments.

The Constitution, establishes and recognizes County Governments as one of the two levels of government and protects them from dissolution by the national government. At the same time, the Constitution under Article 192 gives the President powers to suspend a county government on two grounds namely; in an

emergency arising out of internal conflict or war or in any other exceptional circumstances.

It can be argued that these grounds are justified by the sovereign and mutually interdependent and supportive system of government that is established by the Constitution and which places the entire nation under the general supervision of the President. However it must be emphasized that the powers of the President should be exercised democratically and not capriciously or arbitrarily. This will entail clear and exhaustive definitions of the essential elements of the grounds for suspension provided in Article 192 so that they are not subject to abuse. It also entails an elaboration of the procedures to be followed in exercising of the powers of suspension. Article 192 already provides for checks on the exercise of the President's powers, namely recommendation by an Independent Commission of Inquiry in instances where suspension is sought in exceptional circumstances, and secondly the approval and/or termination of suspension by Senate in all cases where the President seeks to suspend a County Government. Detailed procedures in this regard will be necessary.

#### **7.4 Management of the County during Suspension**

Under the Constitution, the period of suspension will not extend beyond a period of ninety days, and on the expiry of this period elections for the relevant county government must be held. During the period of suspension the Constitution provides that legislation shall make arrangements for the performance of the functions of a county government. The two main functions of the county government are legislative and executive functions. However, under the constitution the legislative functions can only be undertaken by the county assembly which leads to the logical conclusion that during the period of suspension the county assembly stands prorogued and no legislative processes can take place. Therefore, the only functions that can be exercised during suspension are the executive functions. It is proposed that for purposes of cost-effectiveness and continuity the county executive committee being the organ with political accountability be suspended, and an interim management board appointed by the President to manage the county with the assistance of the county administration.

#### **7.5 Intervention Plan**

While the Constitution provides for national government's intervention, if a county government is unable to perform its functions, such an intervention should be undertaken on the basis of a properly costed intervention plan with clear performance targets and timelines to ensure that the county government is back and able to perform its functions effectively. The intervention plan will be for a period not exceeding ninety days and every effort shall be expended to ensure the administration and management of the affairs of the county revert to the county government and lessons learnt are used to inform future policy and legislation to forestall any other such failures.

To guard against abuse of the provisions on suspension of county government it is recommended that legislation provides specific details on the grounds for suspensions given that Article 192 provides checks on the exercise of the President's powers, and elaborates on the procedures to be followed in exercising of the powers of suspension to ensure due process of law. During the period of suspension the proposed law should provide for efficient and cost effective management procedures, and also take due cognizance of the constitutional and legal status of the County Government.



## CHAPTER EIGHT

### CITIZENS' PARTICIPATION

#### 8.1 Introduction

In order for devolution to be understood and owned by all Kenyans, communication of the various policies and management systems on public affairs under the devolved system will have to be a key plank in governance. Citizen access to public information will help ensure effective participation and enhance mechanisms for accountability at all levels. In addition, given that devolved system of government is a new approach to governance, appropriate civic education programmes will provide citizens with the necessary knowledge confidence and skills to be able to internalize and apply the values and principles of devolution and, at the same time, engage meaningfully in the decision-making process.

The Constitution recognizes the role of public communication and access to information as critical components of public participation in development. Article 35 (1) of the Constitution, provides for access to information as a right which gives every citizen access public information. Article 33 (1), (2) and (3) ensure that every person has the right and freedom to seek, receive or impart information or ideas. In the past, the trend has been that public communication has been one-way, top-down, and focused on instructions from government to citizens. The content has also been about government activities and decisions rather than the exchange of ideas between citizens and government, and among citizens. This resulted in exclusion of citizens' contributions to decision-making process and influence in the development agenda. The centrality of public communication and access to information in the promotion of good governance through citizens' participation for successful implementation of devolution cannot be over emphasized. It is through public communication that citizens will understand and interrogate public policy and input into the decision-making process.

The core values of democratic governance are the presence of public debate about the distribution and execution of power in order to ensure that choices are arrived at through public policy debates, scrutinized and contested as is necessary. Thus the absence of such interactions in a society undermines democratic governance, which raises fundamental legal and policy questions on what needs to be done in and through the communication and information sector so as to address emerging challenges under the devolved system of government.

In a democracy and in particular, in a situation of major reforms as Kenya is in now, civic education is necessary to ensure that citizens understand their political system, their rights, the issues they would be expected to participate in and help decide upon, and how and where such decisions would be made. The understanding and appreciation of devolution by Kenyans is minimal despite their having voted for the new Constitution whose backbone is the devolution of power and resources to enable them participate in decision-making. The debate leading

to the referendum was dominated by presentations and interpretations that did not seek to explain the values, benefits and operational challenges associated with devolution in general and in Kenya in particular.

## **8.2 Provisions for Participation**

The constitution provides for “participation of the people” as a national value and principle of governance. This presupposes that the citizens ought, by right, to participate in determining how they are governed. Additionally, the Constitution emphasizes the rights and freedoms of citizens, in Article 33 (1) Article 33 (1) which provide for the freedom to seek, receive or impart information or ideas; and Article 35 (1) (3) which deals with access to information. Furthermore, Article 6 (3) states that a national state organ shall ensure reasonable access to its services in all parts of the Republic.

## **8.3 Role of Civic Education**

To ensure an informed citizenry that actively participates in the governance affairs of its society on the basis of shared knowledge and ownership, relevant civic education will be required to enhance citizens’ capacity for participation through improving understanding, appreciation and promotion of democracy; and holding institutions of governance accountable; mainstreaming of the bill of rights and national values; and engagement in the implementation of the devolved system of government. Civic education will also create linkages between the two levels of government and therefore promote national cohesion.

In order to ensure the realization of the objectives of civic education on devolution, national legislation will provide for national and county comprehensive civic education curricula that should be developed and delivered through the partnership of government and non-state actors. It is recommended that the relevant national legislation covers, among others, special initiatives targeting women, minorities, marginalized communities, the youth, persons with disabilities (PWDs), and others who are less likely to access information through mainstream delivery systems. Appropriate civic education initiatives, encouraging and promoting citizens’ full participation, with linkages between civic education and training of public servants; and monitoring and evaluation should ensure delivery of knowledge that embraces the promotion of constitutionalism, national development and nationhood.

## **8.4 Role of Public Communication**

Citizens need to have access to information to be able to contribute towards their own governance by influencing decision-making. In this regard, the role of public communication and information need to be seen and understood as cross-cutting in all government activities. Public communication and provision of information to citizens must, therefore, be integrated into the governments democratic and development agenda. It is further recommended that national and County Governments fully embrace the central roles of communication and provision of

information; and that efforts be made by the County Governments to create an interface between the existing public communication structures and channels such as the media and their roles in enhancing awareness creation and citizens' participation.

Critical and significant constitutional guarantees on press freedom, access to information and freedom of expression that anchor public communication will require the enactment of an overarching organic law that leverages the constitutional provisions on freedom of expression; freedom of the media; access to information; and freedom of association. It is also critical that County Governments establish communication structures, frameworks and mechanisms for promoting access to information. This will require the facilitation of relevant media of communication to be created at the county level with special attention being given to traditional media; preparation and adoption of plans for developing a human resource in ICT and the establishment of locally based low-cost and accessible internet services for purposes of increasing citizens' awareness, cohesion, and cooperation, with the objectives of empowering citizens to hold the institutions of governance to account. In this regard priority will need to be given to rural parts of counties, including villages; and capacity building for the marginalized groups such as women, youth, the aged and the minorities.

County Governments will also need to assess, analyze, and prioritize communication and information needs in order to determine the requirements and set up the necessary information and communication services in key sectors. Further, there will be need for dialogue with relevant stakeholders to build consensus on the regulation of editorial contents of the media and language of broadcast. Besides the observation of media ethics, standards and professionalism will continue to be critical to the success of the realization of the benefits of CoK 2010. It is recommended that the repeal and/or amendments of existing Acts of Parliament related to fundamental rights and freedoms of the media, communication and information sector be undertaken as a matter of urgency.

If well managed, the outcome of public communication, including civic education, will be a shared understanding, by all stakeholders, of the key foundations of Devolved Government as articulated in the CoK 2010. Consequently, stakeholders will know what to expect and their responsibilities in ensuring the building of a stable and more secure common future. It is also expected that this will generate more trust in and amongst the implementing organs and reduce or mitigate against conflicts. In providing for public communication it must be born in mind that one of the key challenges in rolling out Devolved Governments is the knowledge gap, intentional or otherwise, between and amongst citizens, including some of the key actors. The creation of a strong public communication and civic education programme will be critical in shielding the implementation of devolution from efforts to roll back the gains.



## **CHAPTER NINE**

# **STRATEGIC RISK MANAGEMENT**

### **9.1 Introduction**

Risk is the potential that a plan, activity or outcome may not be achieved due to undesirable or unplanned intervening circumstances or factors. Risk management entails the identification, assessment and mitigation of factors or occurrences that inevitably accompany human undertakings or transactions and more, so where change is the main goal. Appropriate identification and management of risks has been shown to generate desired benefits. The concerns include improving accountability and governance in relation to decision making and process outcomes; development of beneficial organizational cultures, key to providing guidance and direction to people and key organizations; achieving improvements in efficiency and overall institutional performance; preparing in advance, for unexpected and challenging events and outcomes and generally enhancing the planning processes to avoid unforeseen occurrences.

Devolution is one of the most transformative provisions of the CoK 2010 and if successfully implemented it can and will empower Kenyans to address the challenges we have experienced in our post-independence history. As such, we need to put aside the initial fears and concerns over the regional governments put in place at independence. However, it must be accepted that the implementation of devolution presents a leap into the unknown for many Kenyans. Therefore, prudent governance and management of the implementation process demands that challenges be anticipated. Subsequently, a strategic mitigation plan needs to be developed to ensure that risks do not undermine the full implementation and thus, expected outcomes.

### **9.2 Risks to Transition to Devolved Government**

A key intervention in the process of risk management lies in a careful identification of the risks that will affect the implementation process. In reference to Devolved Governments we classify the risks that are likely to emerge as strategic, operational, institutional and funding. Strategic risks are perceived to be those that adversely affect the future shape and form of devolution in Kenya, especially in terms of their effects on the anticipated outcomes, in relation to the provisions of the Constitution. These include misinterpretation of the provisions of CoK 2010 in relation to devolution, political posturing and the electioneering processes as well as inadequate stakeholder understanding of the provisions and their implications to devolution. On the other hand, operational risks relate to the aspects that impact on the efficacy of the implementation of identified provisions in relation to the devolution processes. These include lack of capacity, poor public communication interventions, half-hearted implementation efforts and poor networks amongst key stakeholders in the implementation process. The latter has of the greatest devastating effects to our joint efforts.

Institutional risks refer to the variables that affect the ability of the various institutions involved in the implementation to retain fidelity to the provisions of the CoK 2010 on devolution. They include development of policy frameworks inimical to the objects and principles of Devolved Government as provided by Articles 174 and 175 of the CoK 2010. Funding risks refer to risks arising out of poor resourcing of the process of implementing the devolution programmes. Risks could also emanate from misuse of resources allocated to the process of actualizing devolution.

### **9.3 Managing Change**

Transition from the current highly centralized system to a devolved form of government will not be easy. Changes and particularly monumental changes of the nature envisaged in CoK 2010 elicit all manner of resistance. It will, therefore, be necessary to design and deliver highly effective change management strategies that clearly communicate the imperatives of change, its nature and benefits to all of us. Such will include vigorous information and communication initiatives that deliver awareness on the anticipated benefits and the inevitability of implementing the new constitution.

### **9.4 Election and Political Climate**

The transitional process will begin in the run-up to the 2012 elections and many political leaders may be tempted to view the transition to Devolved Government in terms of the political opportunities or threats. Listening to Kenyans discussing the subject of devolution it is obvious that there are different interpretations of the provisions of CoK2010 depending on the interests of the various actors. Given these different views it is important that a programme to educate Kenyans on the provisions of Articles 6 and 131 as well as other relevant constitutional provisions on devolution be developed.

Another risk to the implementation of devolution is the election fever that often rises in the run-up to the next general elections and in which situation some of our politicians may be tempted to view the process of devolution diminishing the political opportunities for particular political parties or individual leaders. It will therefore be critical and necessary to as much as possible insulate the transitional process from the transient parochial interests of political parties and or political leaders. This should be done through a multi-faceted approach public education prior to the general elections.

### **9.5 Capacity Constraints**

Under the fourth schedule, County Governments have been given heavy responsibilities of delivering most of the essential public services at the local level, including provision of health, water, transport and agricultural services, pre-school education. To deliver these services at the level required by the Constitution will not be easy, at least not in the initial stages and in all counties. It will require adequate infrastructure such as hospitals, water, schools etc which

are lacking in many places yet the public expects immediate results, after the County Governments are established. Even where infrastructure exists, most of it is in serious conditions of disrepair. Adequate trained personnel will be another challenge especially in the more distant places from urban areas, thus capacity gap assessments for the delivery of services should be done in all counties within one year of the establishment of County Governments, It would however be ideal if this process commences before the next general elections are done.

## **9.6 Managing Recurrent Expenditure**

The devolution of power and resources, in CoK 2010, requires the establishment of requisite institutions of governance, many of them new. The funding of these institutions, in addition to the many independent commissions already created by the Constitution, creates a real danger of high recurrent expenditure, undermining investments in development. For this reason, it is recommended that devolved institutions be lean, efficient and effective. Efforts must also be made to ensure that only institutions that are absolutely essential are created and that there is no duplication of functions amongst the various institutions.

## **9.7 National Cohesion**

If not carefully implemented, devolution of power and resources, can easily lead to separatism, ethnic nationalism, and clan loyalty which are inimical to national unity and prosperity. Measures to enhance national consciousness and unity must, therefore, be part and parcel of the constitutional implementation process. To realize this objective, civic education will be important in the inculcation of the common values that bind Kenya and Kenyans as articulated in the preamble and Article 10 of the Constitution. In this regard, civic education should be delivered through a nationally approved curricula and materials which enjoy stakeholder confidence to avoid the propagation of separatist views or interests. In addition, recruitment by County Governments must be strictly monitored to ensure that they meet the minimum threshold of non-local personnel in the public service.





## **CHAPTER TEN**

### **MANAGING THE TRANSITION**

#### **10.1 Introduction**

The devolved system of governance provided for under CoK 2010 is a major departure from the centralized system of governance to which Kenyans are accustomed. It is further noted that many Kenyans are not aware of the devolved system of government at independence, which was not well institutionalized and which was abandoned at its infancy due to the fears over separatist and ethnic concerns. Consequently, the transition into Devolved Government is a fairly new phenomenon and experience that requires extreme care and commitments to its implementation and success as our national system of governance.

#### **10.2 Transition to County Governments**

Transition matters are given special attention in the provisions of Chapter Eighteen, and the Fifth and Sixth Schedules of the Constitution. The Constitution requires that the laws on Devolved Government provided for in Chapters Eleven and Twelve and the Sixth Schedule be fast-tracked, within the period of eighteen (18) months after the promulgation.

The County Governments Bill envisages an inter-institutional mechanism that comprises the key government ministries through the force of law to manage the transition issues particularly in the initial stages. Constitutionally this mechanism will report to the CIOC as the oversight institution of the implementation of the CoK2010. Section 4 of the Sixth Schedule of the Constitution in particular provides for CIOC to monitor the implementation of the Constitution through regular reports by CIC. The reports are expected to provide updates on the progress on the process of establishing the infrastructure required for the operations of each County, locating of offices and assemblies; establishment and transfers of staff to counties; and devolution of powers and functions to County Governments. The Commission on Revenue Allocation has also been given the constitutional mandate to make recommendations on and any other matter related to revenue allocation between the county and national governments and also the monitoring of the enactment of laws on Devolved Governments. Section 15 of the Sixth Schedule provides for legislation to empower CIC to effectively monitor the implementation of the system of Devolved Government.

The functioning of legislation on Devolved Government is deferred until after the first election of County Assemblies and Governors (Section 2 (2) of the Sixth Schedule), however, it is imperative and prudent that the transition process starts with focused administrative actions. This is critical for the following reasons.

- transfer of functions from the national to County Governments takes place over a three year period from the first elections under the Constitution;

- assistance and support by national government necessary to build the capacity of County Governments to govern and effectively deliver services related to the functions assigned to them;
- criteria for consultations between county and national governments on when and how transfer of functions should be effected; and
- allowing for asymmetrical devolution of powers and functions.

It is imperative that immediately County Governments are inaugurated, after the next general elections, they get the capacity to exercise control over institutions under their jurisdiction. This will require that the relevant institutions, which may include government departments and existing local authorities, are in the next one year, before elections are prepared to play their roles in the transition period. It is therefore crucial that a certain minimum set of structures are put in place to facilitate smooth transition to County Governments immediately after the 2012 elections. The necessary preparations include infrastructural facilities being developed or rehabilitated to be ready and available to the County Governments for immediate use in their day-to-day operations.

The National Government and other relevant institutions, including the Judiciary and constitutional commissions should prepare to be of service to County Governments at their nascent stages. It would be necessary therefore, to mobilize all these institutions to play their relevant roles in laying a strong foundation for County Governments. This will entail undertaking preparatory work of putting in place institutional frameworks and necessary infrastructure to prepare for smooth operations of County Governments. To achieve this goal will require a well coordinated programme that brings all the institutions together.

### **10.3 The Transition Programme**

It is envisaged that the transition to County Governments will be in three phases, with the first phase (shown in annex VII) being the period prior to the inauguration of County Governments after the next general elections. The second phase (shown in Annex VIII) is the period of three years after the next general elections, as provided for in Section 15 (1) of the Sixth Schedule of the Constitution. The last phase starts after the end of phase two and will continue until all the County Governments are fully in control of their affairs.

#### **Phase I**

There are currently two sets of public servants working within the counties, the majority of them belonging to government ministries and departments. Other officers include those employed by local authorities who will be without an employer after the next election as a result of the repeal of the *Local Government Act Cap. 265*, after the enactment of County Governments Bill 2011.

As provided by Article 235 of the Constitution, County Governments will be responsible for establishing their own public services, but before then the staff of the national government and current local authorities will continue to provide services to County Governments on secondment. In order to effectively deploy staff in County Governments, under secondment and redeployment, the audit of all staff referred to needs to be carried out long before the next elections take place.

In addition to staff audit, the audit of assets and liabilities of local authorities on the one hand, and assets and infrastructure of the national government in the counties on the other, is a key aspect of this phase of the transition. This is necessary to determine how existing assets and liabilities of local authorities will be apportioned and managed; and how the physical infrastructure, particularly buildings and other assets located in the counties will be shared between the national government and County Governments. This issue is particularly pertinent for local authorities because once the liabilities are determined there will be need for a policy decision on how the liabilities should be handled. Secondly, the audit is necessary to ensure that local authority assets are safe during the transition period. In this respect any further dealings on such assets by local authorities should remain halted where such audit has not been undertaken conclusively.

As required by the Urban Areas and Cities Act 2011 urban areas will be reclassified into cities, municipalities and towns. There will be need for fresh demarcations of these areas for the purpose of their classification, planning and governance. This is a critical exercise which needs to be done before the 2012 general elections.

There is also the need to review on-going policy reforms, programmes and projects being implemented by central government and local authorities to establish those to be transferred to County Governments. These would include, for example projects related to functions that have been assigned to County Governments by the Constitution but are currently funded by central government under various funds e.g. CDF and ESP etc.

One of the most critical activities in the whole process of devolution is the transfer of functions from the national government to County Governments. The process leading to this activity will start with the assessment of assignment of functions by ministries, departments and other public entities. The purpose of this exercise will be to separate and define the functions that fall under each level of government. In the process there will be need to review legislations and policies governing all the functions to be devolved. It is estimated that about 700 pieces of legislation will have to be amended, a most exacting task to accomplish.

The process of analyzing the assignment of functions will be under the supervision of the Cabinet Committee on Implementation of the Constitution (CCIC) supported by the Committee of Permanent Secretaries (CPS). The CPS will work through a Technical Working Group comprising of experts from MDAs

and stakeholders from the non-state sector. Reports and technical papers produced through this process and approved by the Cabinet will be the basis for the transfer of functions to County Governments.

For County Governments to do development planning there will be need to underpin their decisions on solid data bases. In this respect, it will be important for the national government to collect the necessary profiles of each county that provide data usually found in District Development Plans. The profiles may be extended to include estimation of macroeconomic data such as revenues, gross domestic product and inflation rates. Historical analysis of the cost of providing public services in each county will be an important component of this process and should be initiated through functional analysis.

There is also need for an agreement to be reached on the budgeting for and the level of budgets to be allocated to County Governments for the 2012/13 fiscal year. This is important because even though County Governments may not immediately take over all the functions before the end of the relevant fiscal year, they will all have financial requirements from the day election results are announced and most counties are likely to have assumed responsibility for some functions before the end of 2012/13 fiscal year. It is expected that CRA will be instrumental in this undertaking and also in guiding the capacity building process.

One of the pressing activities to be carried out during this phase of the transition is civic education on Devolved Government. This will be necessary to promote a better understanding by Kenyans on their roles in the new governance under County Governments and the role of these governments with respect to the delivery of public services. This aspect calls for the institutionalization of civic education through legislation, and the immediate amounting of a national civic education programme.

## **Phase 2**

Activities in this phase will focus on institutional capacity building and assumption of powers and functions by County Governments, from the national government, as provided for and assigned under Article 186 and the Fourth Schedule of the Constitution. The role of the national government and other actors in supporting County Governments in building their capacities will be essential, particularly as County Governments take on more functions.

Immediately after the first general elections, under the CoK 2010, County Governments will need support for the following purposes: the swearing-in of the governors, deputy governors and the members of the county assemblies; the election of speakers of the county assemblies; and, the appointment of clerks. Support in form training of county executive committees and initial core county staff will be essential. Thereafter, the counties will require assistance to recruit and build capacities of the county public service boards. It is expected that as the County Governments recruit their staff, the national government will avail its training institutes to build capacities for the county staff to prepare them to

deliver county services effectively. It would be appropriate, however, if current capacities in Kenya Institution of Administration and other relevant institutions are augmented through enhanced financial and personnel support to be ready to serve the needs of County Governments.

Once the county executive committees are established and functional, all public officers providing services related to the functions assigned to County Governments should be considered as seconded to County Governments and therefore reporting to county executive committees. Thereafter, when a county government has recruited its public officers, the fit of any officers of national government and those from local authorities who will not have been absorbed into the county public services will need to be determined. The national government will need to make contingency plans to re-absorb such staff or deal with them as appropriate under their terms and conditions of service. This issue is of such importance that planning for it should start in Phase 1.

Assets previously belonging to local authorities and those of the national government whose transfer to County Governments has been decided by agreement shall be divested to County Governments after the 2012 General Elections. Other required physical infrastructure and facilities will be developed jointly by the national and County Governments with the oversight of the relevant Commissions and Parliament. Priority in the development of county infrastructure will require substantial use of conditional grants.

A major activity involving both levels of government will be the process of transferring of functions to County Governments. This activity must be done and concluded within the three year transition period provided by Section 15 of the Fourth Schedule. Criteria need to be developed to guide the process of transfer of functions with special attention being paid to the capability of a county government to perform transferred functions. If the transfer of functions is to be as smooth as expected, the criteria for hand over must be clear and objective to avoid the politicization of the process.

Civic education at this stage will be needed to entrench the principles of public participation and promotion of access to information to enhance the involvement of citizens in governance, particularly in decision-making. In the provision civic education at this stage emphasis will be focused on citizens' right to participate and the need to create citizens fora.

It is also important at this stage of the transition that the performance of both levels of governments is continuously monitored and reviewed. In this respect, all activities by both levels of government, particularly planning and budgeting and delivery of public services will be required to have monitoring and evaluation components to facilitate identification of best practices and the emerging challenges. Service delivery plans will need to be accompanied by workplans with measurable outcomes and with clearly identified actors. The aim will be to

develop a culture of accountability in service delivery by public officials that will apply beyond the transition period.

### **Phase 3**

It is expected that all County Governments will have assumed all the powers and functions after phase 2. In all likelihoods this may not be achieved as some County Governments may not be able to take over all the transfers planned to take place. It is proposed that this eventuality becomes the main activity in phase 3, which should start immediately phase 2 ends on August 14, 2015. Some of the issues likely to be under consideration at this stage will be: any remaining functions to be transferred from national government to County Governments; further capacity building and support to County Governments; transfer of some of the national functions to County Governments as may be necessary; and development and coordination of programmes between the national government and County Governments.

#### **10.4 Expected Outcomes**

During the first phase it is expected that debts and liabilities of each local authority will be established and the assets of the central government and the number and categories of staff of central government and local authorities in each county determined. It is further expected that the following will have been achieved during this period:

- Commencement of nationwide civic education on devolution;
- The initial budget of each county government developed and agreed;
- Profiles of counties produced and printed;
- Definition, analysis and plans for transfer of functions published;
- Boundaries of cities, municipalities and towns demarcated and delimited as necessary.

More importantly, all the laws necessary to effectively implement devolution will have been passed or reviewed and amended.

In Phase 2, the second tranche of enabling legislations for County Governments should have been enacted and the first batch of elected leaders at county level will have assumed their responsibilities. The initial induction process for all the leaders will also have been executed. In addition to these, the following milestones will have been achieved:

- Identification of the most suitable vertical share of equitable shares (minimum 15% as per the Constitution). This vertical share should be based on relative expenditure needs of county and national governments, depending on the assignment of functions and the determined minimum affordable standards.

- Clear definition of the 15% of National Revenues which will be used as the base for the Equitable Shares. (Which revenue sources are to be included in the national revenue pool? —taxes, customs and charges, fees, etc.)
- Determination of the expenditure needs of County Governments based on an analysis of the current public sector spending for the functions which will be devolved to the county level.
- Detailed analysis for developing the allocation formulae for the “equitable shares”.
- Clear establishment on how existing intergovernmental transfers (eg, LATF, CDF, and RML) will be incorporated into the new equitable share system.
- Establishment of alternatives to continue the “performance” incentives to improvement in governance, budgeting, service delivery, revenue mobilization and debt payment, among others.





## CHAPTER 11

### 11.1 CONCLUSION

As discussed throughout this policy paper the CoK 2010 has given Kenyans renewed hopes for a better and more prosperous Kenya that cares equally for all its citizens, with a more democratic political system and a robust economy. To realize the benefits of the CoK 2010 and thus, meet the high expectations of Kenyans, there is an urgent need for all those involved in the implementation of the CoK 2010 to display the highest standards of trusteeship and stewardship. However, many challenges are also likely to emerge especially those relating to the growing numbers of unemployed youth and the rapidly growing urban population. The latter presents great potential for our country but also a major challenge, given the frustrations the unemployed youths go through in their daily lives. For this and other reasons the current reform agenda and tempo must be maintained and enhanced, through effective Devolved Governments, in order to deliver positive changes for all. Since Devolved Governments will be closer to the people and, with resources to deliver services, there is no reason why people should not see immediate positive changes particularly through their active participation in decision making.

As we move forward we should all accept that devolution of power and resources has given us a window of change to address the challenges of development that our post independence history has gone through, It offers us an opportunity to empower our people to participate in their own development and thus shift the paradigm from nationally directed investments to people driven development.

As articulated in this policy paper, Kenyans are entering into a new constitutional and political dispensation. On their part, all those who aspire to be leaders in this new dispensation must rethink, reevaluate and restructure their campaigns and leadership strategies. Without all of us committing ourselves to the ideals of CoK 2010 and potential benefits, we are likely to derail the realization of the many promises in the Constitution and thus increase anxieties and frustrations amongst the people.

To avoid the generation of mass frustrations and resentments let all be guided by the words of our national anthem and in particular, "service be our earnest endeavour and our homeland of Kenya, Heritage of Splendour, Firm may we stand to defend."

*God bless Kenya.*

1. The first part of the document  
describes the general situation  
of the country and the  
state of the economy.  
It also mentions the  
main problems that  
the government is facing.

2. The second part of the document  
describes the measures that  
the government has taken  
to solve these problems.  
It also mentions the  
results of these measures.

3. The third part of the document  
describes the future plans  
of the government.  
It also mentions the  
challenges that the  
government is facing.

4. The fourth part of the document  
describes the role of the  
private sector in the  
economy. It also mentions  
the measures that the  
government has taken to  
support the private sector.

5. The fifth part of the document  
describes the role of the  
public sector in the  
economy. It also mentions  
the measures that the  
government has taken to  
support the public sector.

6. The sixth part of the document  
describes the role of the  
international community  
in the economy. It also  
mentions the measures that  
the government has taken  
to attract foreign investment.

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# ANNEXES

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## Annex I – Glossary of Terms

<b>Borough</b>	A borough is an administrative division in various countries.
<b>Conditional Grants</b>	Moneys allocated by the national government to a county government for the funding of specific projects and programs.
<b>Contingency Fund</b>	A fund to cater for urgent and unforeseen needs for which there is no other authority or provision
<b>County Administration</b>	This is the proposed organizational unit created to manage the functions and services of the county including provision of information and recommendations with respect to policies and financial requirements of the Executive Committee. It will consists of Central Agencies providing support to the County Executive and Line Departments delivering services to the county residents.
<b>County Legislation</b>	This is law enacted by the County Assembly and applicable within a county.
<b>Civic Education</b>	In the context of devolution, civic education is a continuous and institutionalised process aimed at disseminating information on the new constitutional changes including; the rights and responsibilities of citizens, legal, structures of governance and the involvement of citizens in governance at all levels of government and holding national and county government accountable.
<b>Citizen Participation</b>	The people's collective and individual participation in the affairs of a State including; policy-making, law making, oversight, monitoring implementation, of polices and development projects at national and county levels.
<b>Devolution</b>	Statutory granting of powers from the central government of sovereign state to government at a sub national level such as a regional, local or state level.
<b>Equalisation Funds</b>	Funds to finance basic services such as water, roads, health facilities and electricity to marginalized areas.
<b>Executive Sub-Committees</b>	These are Sub-Committees established to ensure decentralisation of the functions of the Executive Committee and charged with the responsibility of analysing proposals and recommendations for appropriate by action to the Executive Committee. It is proposed that they be chaired by members of the Executive Committee with co-option of specific expertise as required.

## Annex I – (Contd.)

<b>Fiscal Decentralization</b>	Comprises the financial aspects of devolution to regional and local Governments, division of spending responsibilities and revenue sources between levels of government and is also the amount of discretion given to regional and local governments to determine their expenditures and revenues.
<b>Horizontal Allocations</b>	This the correction of disparities between the per capita revenue bases and spending needs of individual local governments.
<b>Intergovernmental relations</b>	Intergovernmental relations are institutional mechanisms for bilateral and multilateral interaction within and between levels of government for co-ordination of government policies and functions.
<b>Local economic development</b>	Local economic development offers local government, the private sector, the not-for-profit sectors and the local community the opportunity to work together to improve the local economy. It aims to enhance competitiveness and thus encourage sustainable growth that is inclusive.
<b>Marginalized Community</b>	Communities that have been unable to fully participate in the integrated social and economic life of Kenya as a whole. For example traditional communities who have not integrated into social and economic life due to a desire to preserve their unique culture and identity from assimilation. Historically, youth, women and persons with disabilities are some of the marginalised.
<b>Minorities</b>	Can be defined as groups that are disadvantaged based on; ethnic, religious, social, linguistic or cultural basis and who are smaller in number than the rest of the population. Minorities are best defined based on either national or county demographics.
<b>National revenue</b>	Includes grants and appropriations in aid collected by ministries and departments, audited accounts.
<b>Primate city</b>	A primate city is the leading city in its country or region, disproportionately larger than others in the urban hierarchy.
<b>Unconditional Grants</b>	Moneys allocated by the national government to the county government without reservations or conditions imposed regarding the use and there are no set limits on the subsequent actions.

## **Annex I – (Contd.)**

<b>Urban governance</b>	Good urban governance is characterized by interdependent principles of sustainability, equity, efficiency, transparency and accountability, security, civic engagement and citizenship.
<b>Vertical allocations</b>	Correction of disparities between the cost of services devolved to local government and the potential yield of its direct revenue.
<b>Vetting</b>	This is aimed at establishing civic trust and legitimizing public institutions through a process of assessing the suitability of a person for election or employment to public office. It includes an appraisal of an individual's conduct, leadership and integrity qualities.
<b>Veto powers</b>	This power is given to the Governor to withhold assent to a Bill passed by the County Assembly if it contravenes national law, is illegal or in violation of the Constitution. Such Bill should then be returned to the County Assembly for further deliberations and consideration of the Governor's recommendations.

## Annex II – Anticipated Maximum Sizes of County Assemblies

County	Number of Constituencies	Five Wards per Constituency	Marginalized special seats nominated	Gender special seats nominated	Anticipated Maximum Size of County Assembly
Lamu	2	10	4	3	17
Isiolo	2	10	4	3	17
Tharaka-Nithi	3	15	4	5	24
Tana River	3	15	4	5	24
Samburu	3	15	4	5	24
Laikipia	3	15	4	5	24
West Pokot	4	20	4	7	31
Embu	4	20	4	7	31
Elgeyo / Marakwet	4	20	4	7	31
Kirinyaga	4	20	4	7	31
Kwale	4	20	4	7	31
Nyamira	4	20	4	7	31
Taita Taveta	4	20	4	7	31
Marsabit	4	20	4	7	31
Trans Nzoia	5	25	4	8	37
Bomet	5	25	4	8	37
Nyandarua	5	25	4	8	37
Vihiga	5	25	4	8	37
Kajiado	5	25	4	8	37
Narok	6	30	4	10	44
Turkana	6	30	4	10	44

## Annex II - (Contd.)

Nandi	6	30	4	10	44
Makueni	6	30	4	10	44
Wajir	6	30	4	10	44
Baringo	6	30	4	10	44
Siaya	6	30	4	10	44
Mandera	6	30	4	10	44
Garissa	6	30	4	10	44
Nyeri	6	30	4	10	44
Kericho	6	30	4	10	44
Uasin Gishu	6	30	4	10	44
Mombasa	6	30	4	10	44
Murang'a	7	35	4	12	51
Busia	7	35	4	12	51
Kilifi	7	35	4	12	51
Kisumu	7	35	4	12	51
Kitui	8	40	4	13	57
Homa Bay	8	40	4	13	57
Migori	8	40	4	13	57
Machakos	8	40	4	13	57
Meru	9	45	4	15	64
Bungoma	9	45	4	15	64
Kisii	9	45	4	15	64
Nakuru	11	55	4	18	77
Kakamega	12	60	4	20	84
Kiambu	12	60	4	20	84
Nairobi	17	85	4	28	117
Total	290	1450	188	483	2,121

## Annex III: Mapping of Functions from the Fourth Schedule, Constitution of Kenya, 2010

<i>NATIONAL FUNCTIONS</i>	<i>COUNTY FUNCTIONS</i>
<b>FOREIGN AFFAIRS</b>	
1. Foreign affairs, foreign policy and international trade.	
2. The use of international waters and water resources.	
<b>NATIONAL SECURITY (Defence, Internal Security and Home Affairs)</b>	
6. National defence and the use of the national defence services. 3. Immigration and citizenship. 7. Police services, including— (a) the setting of standards of recruitment, training of police and use of police services; (b) criminal law; and (c) correctional services.	13. Control of drugs and pornography.
24. Disaster management.	12. Fire fighting services and disaster management
<b>JUSTICE</b>	
8. Courts.	
4. The relationship between religion and state.	
26. National elections	
<b>ECONOMIC POLICY &amp; PLANNING</b>	
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations. 33. Public investment. 35. Tourism policy and development.	8. County planning and development
9. National economic policy and planning.  11. National statistics and data on population, the economy and society generally.	8. County planning and development, including— (a) statistics; (b) land survey and mapping; (c) boundaries and fencing; (d) housing; and (e) electricity and gas reticulation and energy regulation..



### Annex III – (Contd.)

<b>TRADE AND INDUSTRY</b>	
<p>12. Intellectual property rights.</p> <p>13. Labour standards.</p> <p>14. Consumer protection, including standards for social security and professional pension plans.</p>	<p>7. Trade development and regulation, including—</p> <p>(a) markets;</p> <p>(b) trade licences (excluding regulation of professions);</p> <p>(c) fair trading practices;</p> <p>(d) local tourism.</p>
<b>EDUCATION</b>	
<p>15. Education policy, standards, curricula, examinations and the granting of university charters.</p> <p>16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.</p>	<p>9. Pre-primary education, village polytechnics, homecraft centres and childcare facilities.</p>
<b>HEALTH</b>	
<p>28. Health policy.</p> <p>23. National referral health facilities.</p>	<p>including, in particular—</p> <p>(a) county health facilities and pharmacies;</p> <p>(b) ambulance services;</p> <p>(c) promotion of primary health care;</p> <p>(d) licensing and control of undertakings that sell food to the public;</p> <p>(e) cemeteries, funeral parlours and crematoria; and</p>

### Annex III – (Contd.)

	<p>(f) refuse removal, refuse dumps and solid waste disposal.</p> <p>6. Animal control and welfare, including—</p> <p>(a) licensing of dogs; and</p> <p>(b) facilities for the accommodation, care and burial of animals.</p>
<b>INFRASTRUCTURE</b>	
<p>18. Transport and communications, including, in particular—</p> <p>(a) road traffic;</p> <p>(b) the construction and operation of national trunk roads;</p> <p>(c) standards for the construction and maintenance of other roads by counties;</p> <p>(d) railways;</p> <p>(e) pipelines;</p> <p>(f) marine navigation;</p> <p>(g) civil aviation;</p> <p>(h) space travel;</p> <p>(i) postal services;</p> <p>(j) telecommunications; and</p> <p>(k) radio and television broadcasting.</p>	<p>5. County transport, including—</p> <p>(a) county roads;</p> <p>(b) street lighting;</p> <p>(c) traffic and parking;</p> <p>(d) public road transport; and</p> <p>(e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.</p>
<p>19. National public works.</p>	<p>11. County public works and services, including—</p> <p>(a) storm water management systems in built-up areas; and</p> <p>(b) water and sanitation services.</p>
<p>20. Housing policy.</p>	<p>8. County planning and development, including—</p> <p>(d) housing;</p>
<b>ENERGY</b>	
<p>31. Energy policy including electricity and gas reticulation and energy regulation.</p>	<p>(from above) 8. County planning and development, including—</p> <p>(e) electricity and gas reticulation and energy regulation.</p>

### Annex III – (Contd.)

<b>LAND &amp; NATURAL RESOURCES</b>	
21. General principles of land planning and the co-ordination of planning by the counties.	<i>(from above) 8. County planning and development, including— (b) land survey and mapping; (c) boundaries and fencing;</i>
22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular— (a) fishing, hunting and gathering; (b) protection of animals and wildlife; (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and (d) energy policy.	3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising. 10. Implementation of specific national government policies on natural resources and environmental conservation, including— (a) soil and water conservation; and (b) forestry. <i>(from below) 4. Cultural activities, public entertainment and public amenities, including— (i) county parks, beaches &amp; recreation facilities.</i>
<b>AGRICULTURE</b>	
29. Agricultural policy.	1. Agriculture, including— (a) crop and animal husbandry; (b) livestock sale yards; (c) county abattoirs; (d) plant and animal disease control; and (e) fisheries;
	7 (e) cooperative societies.
30. Veterinary policy.	2 (e) veterinary services (excluding regulation of the profession).

### Annex III – (Contd.)

<b>CULTURE</b>	
<p>5. Language policy and the promotion of official and local languages.</p> <p>17. Promotion of sports and sports education.</p> <p>25. Ancient and historical monuments of national importance.</p> <p>34. National betting, casinos and other forms of gambling.</p>	<p>4. Cultural activities, public entertainment and public amenities, including—</p> <p>(a) betting, casinos and other forms of gambling;</p> <p>(b) racing;</p> <p>(c) liquor licensing;</p> <p>(d) cinemas;</p> <p>(e) video shows and hiring;</p> <p>(f) libraries;</p> <p>(g) museums;</p> <p>(h) sports and cultural activities and facilities; and</p> <p>(i) county parks, beaches and recreation facilities.</p>
<b>CAPACITY BUILDING</b>	
<p>32. Capacity building and technical assistance to the counties.</p>	<p>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.</p>




## Annex IV: Proposed Sector Clustering

No.	SECTOR	MINISTRIES/DEPARTMENTS
1	Health	<ul style="list-style-type: none"> <li>• Medical Services</li> <li>• Public Health &amp; Sanitation</li> <li>• ODPM/Local Government</li> </ul>
2	Education	<ul style="list-style-type: none"> <li>• Education</li> <li>• Higher Education, Science &amp; Technology</li> <li>• ODPM/Local Government</li> <li>• Youth Affairs &amp; Sports</li> </ul>
3	Trade and Industry	<ul style="list-style-type: none"> <li>• Trade</li> <li>• Industrialization</li> <li>• East African Community</li> </ul>
4	Finance, Economic Policy & Planning	<ul style="list-style-type: none"> <li>• ODPM/Finance</li> <li>• Planning, National Development &amp; Vision 2030</li> <li>• Local Government</li> <li>• Lands</li> </ul>
5	Agriculture	<ul style="list-style-type: none"> <li>• Agriculture</li> <li>• Livestock Development</li> <li>• Fisheries Development</li> <li>• Co-operative Development &amp; Marketing</li> <li>• Water &amp; Irrigation</li> <li>• Regional Development Authorities</li> <li>• Development of Northern Kenya &amp; Other Arid Lands</li> </ul>
6	Tourism & Wildlife	<ul style="list-style-type: none"> <li>• Tourism</li> <li>• Forestry &amp; Wildlife</li> </ul>
7	Local Government & Urban Development	<ul style="list-style-type: none"> <li>• ODPM/Local Government</li> <li>• Nairobi Metropolitan Development</li> <li>• Housing</li> <li>• Lands</li> </ul>
8	Knowledge Management	<ul style="list-style-type: none"> <li>• Information &amp; Communications</li> <li>• Higher Education, Science and Technology</li> </ul>
9	Infrastructure	<ul style="list-style-type: none"> <li>• Energy</li> <li>• Transport</li> <li>• Roads</li> <li>• Public Works</li> <li>• Housing</li> <li>• Local Government</li> <li>• Nairobi Metropolitan</li> <li>• Development of Northern Kenya &amp; Other Arid Lands</li> <li>• Regional Development Authorities</li> </ul>
10	Justice	<ul style="list-style-type: none"> <li>• Justice, National Cohesion &amp; Constitutional Affairs</li> <li>• State Law Office</li> </ul>



### Annex IV – (Contd.)

11	Foreign Affairs	<ul style="list-style-type: none"> <li>• Foreign Affairs</li> <li>• East African Community</li> <li>• Trade</li> </ul>
12	National Security	<ul style="list-style-type: none"> <li>• Defence</li> <li>• NSIS</li> <li>• OVP/Home Affairs</li> <li>• Provincial Administration &amp; Internal Security</li> <li>• Immigration &amp; Registration of Persons</li> <li>• Special Programmes</li> </ul>
13	Culture & Social Development	<ul style="list-style-type: none"> <li>• National Heritage</li> <li>• Gender, Children &amp; Social Development</li> <li>• Youth Affairs &amp; Sports</li> </ul>
14	Land & Natural Resources	<ul style="list-style-type: none"> <li>• Forestry &amp; Wildlife</li> <li>• Environment &amp; Mineral Resources</li> <li>• Water &amp; Irrigation</li> <li>• Lands</li> <li>• Regional Development Authorities</li> </ul>
15	Human Resource Development	<ul style="list-style-type: none"> <li>• OPM</li> <li>• Public Service</li> <li>• Labour</li> <li>• Education</li> <li>• Higher Education, Science &amp; Technology</li> <li>• Public Service Commission</li> </ul>

## Annex V - Recommended National Planning Framework


Level of Government	Planning Tier	Planning Instrument	Content of Plan	Legal Basis	Policy Player/s	Legal Impact	Time Horizon or Scale
National	National Planning Vision & Strategies 	National Vision & Strategies	Medium term and Long term national vision and strategies including overall resource mobilization framework	National Planning Law National Land Commission Law	Parliament Conference or Forum of Ministers of Planning (national and county)	Binding on all planning authorities	10 years, 30 years or more
	National Sector Planning 	National Sector Plans & Strategies	National sector goals and strategies including resource mobilization frameworks	National Planning Law National Land Commission Law National Sector Laws	Parliament Conference or Forum of Sector Ministers (national and county)	Binding on all planning authorities	10 years and reviewed every 5 years Continuous as need arises
	National Spatial Planning 	National Spatial Policy and Plan	Principles and guidelines for spatial planning to realize long term national vision	National Planning Law National Land Commission Law	Parliament Conference or Forum of Ministers of Planning (national and county)	Binding on all planning authorities	10 years and reviewed every 5 years

**Annex V – (Contd.)**


Special Regions	Regional Planning (National and County Planning) 	Special Regional Plans & Strategies Functional Metropolitan Plans	Specific goals for sectoral or multisectoral, Special regional development requirements including resource management and mobilization frameworks	National Planning Law National Sector Laws Devolved Governments Laws	Parliament County Assemblies Conference or Forum of Sector Ministers (national and county)	Binding on all planning authorities	10 years and reviewed every 5 years 1:100.000 1:25.000
County	County Planning 	County Integrated Development Plan	County development vision, priorities and strategies and will form the basis for development of county sectoral, institutional and spatial plans	Devolved Governments Act National Planning Laws	County Assembly County Forum on Planning All Municipalities in a County	Binding on all planning authorities	Five years, with mid-term reviews
	County Sector Planning	County Sector Plans	Provide detailed sector plans and strategies including measures to integrate implementation of national level priorities within the county	Devolved Governments Act National Sector Laws	Five years, with mid-term reviews	Binding on all planning authorities	10 years and reviewed every 5 years Continuous as need arises



## Annex V – (Contd.)

	County Spatial Planning	County Spatial Plans	Provide a spatial expression of the social and economic development programme of the county, with clear statements of how it is aligned to and at the regional and national level	Devolved Governments Act	County Assembly County Forum on Planning All Municipalities in a County	Binding on all planning authorities	10 years. reviewed every five years 1:50.000
City/ Municipal	City/Municipal Planning	City/ Municipal Land Use Plan	Basic form of types of land uses envisaged for the entire municipal area in accordance with intended developments linked to the county and national frameworks	Devolved Governments Act National Planning Law National Building Code	City/Municipal Council City/Municipal Planning Forums County Assembly	Binding on all planning authorities	Five years and reviewed mid-stream 1:10.000
		City/ Municipal Building Plan	Clear statement on the arrangements for urban and rural development and order in the form of legally binding designations for specific parts of the territory of the municipality	Devolved Governments Act National Planning Law National Building Code	City/Municipal Council City/Municipal Planning Forums County Assembly	Binding on all planning authorities	Five years and reviewed mid-stream 1:1.000 1:500

**Annex V – (Contd.)**

		<p><b>Ward Zoning Plan</b></p>	<p>Detailed legally binding designations for specific parts of the territory of the municipality</p>	<p>Devolved Governments Act National Planning Law National Building Code</p>	<p>City/Municipal Council</p>	<p>Binding on all planning authorities</p>	<p>Five years and reviewed mid-stream 1:1,000 1:500</p>
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## Annex VI - CEPOD Implementation Plan

<b>Strategic Intervention Area</b>	<b>Facilitative actions</b>	<b>Responsibility</b>	<b>Timelines</b>
<b>Establish Expert Committee on CEPOD</b>	<ul style="list-style-type: none"> <li>• Set out criteria for membership</li> <li>• Invite applications and shortlist</li> <li>• Interview and appoint members</li> <li>• Provide working space</li> <li>• Allocate resources for functioning of Committee</li> </ul>	ODPM & MoLG	September 2011
<b>Design instrument of collaboration</b>	<ul style="list-style-type: none"> <li>• Draft a collaboration document setting out principles of engagement between governments and civic education providers</li> </ul>	ODPM & MoLG	September 2011
<b>Mapping and Contracting of Civic Education Providers at the County Level</b>	Map out the counties in terms of; <ul style="list-style-type: none"> <li>• Venues for CEP at the Counties</li> <li>• Invite applications for County civic education providers and shortlist</li> <li>• Interview and appoint</li> </ul>	ODPM & MoLG	October 2011
<b>Capacity Building of civic education committees and providers</b>	Develop training manuals for Civic Education Providers and Committees	ODPM & MoLG	October 2011

**Annex V – (Contd.)**

<b>Development and Enforcement of CEPOD code of ethics</b>	Preparation of codes and ethics that guide the process of civic education in the field and control the civic education officers in the field	ODPM & MoLG	October 2011
<b>Establishment of County Civic Education Committees</b>	Prepare contact list with contact persons	ODPM & MoLG	October 2011
<b>Design Development, Publication and Dissemination of CEPOD</b>	<ul style="list-style-type: none"> <li>• Development of a common civic education provider's guide</li> <li>• Common source book</li> <li>• Pamphlets in Kiswahili, English and county language, simplified version of the constitution and its official translation into Kiswahili and county languages</li> </ul>	ODPM & MoLG	November 2011
<b>Design, develop and implement an effective media strategy</b>	<ul style="list-style-type: none"> <li>• Develop newspaper pullouts and gazette supplement</li> <li>• Radio host programmes</li> </ul>	ODPM & MoLG	December 2011
<b>Undertake Mass Awareness on constitution and devolution</b>	<ul style="list-style-type: none"> <li>• Conduct civic education in the county governments</li> </ul>	ODPM & MoLG	January 2012 – March 2012
<b>Design and Apply M &amp; E tool for CEPOD</b>	<ul style="list-style-type: none"> <li>• Develop an M&amp;E tool</li> </ul>	ODPM & MoLG	March 2012 – June 2012

## Annex VII – Transition Period Phase I

ACTIONS	JUSTIFICATION	ACTOR(S)	OUTCOME	TIME FRAME
AUDIT OF ASSETS AND LIABILITIES OF LAs	Clearing of outstanding financial obligations of LAs	ODPM/MoLG, LAs, Transition Secretariat	Debts and liabilities of each L.A established	May 2011-June 2012
AUDIT OF LA INFRASTRUCTURE COUNTIES	Vesting of plant & equipment to county governments	Ministry of Public Works, LAs, ODPM/MoLG and Transition Secretariat	Number and functionality of plant & equipment established	July 2011-March 2012
AUDIT OF CENTRAL GOVERNMENT INFRASTRUCTURE IN COUNTIES	Vesting of some plant & equipment to county governments	MoPW, MDAs and Transition Secretariat	Number and functionality of plant & equipment established	July 2011-March 2012

**Annex VII – (Contd.)**

<b>AUDIT OF CENTRAL GOVERNMENT STAFF IN COUNTIES</b>	Secondment of central government staff to county governments	MoSPS and other MDAs	Number of staff in each county by cadre, grades, gender, age & qualification	March 2011- December 2011
<b>AUDIT OF LA STAFF IN COUNTIES</b>	Secondment of LA staff to county governments	ODPM/MoLG, LAs & Transition Authority	Number of LA staff in each county by cadre, grades, gender, age & qualification	July 2011- March 2012
<b>CIVIC EDUCATION</b>	Sensitisation of the public on Acts related to county governments	ODPM/MoLG, MOJCA, and stakeholders	Civic education on devolution started	August 2011- June 2012
<b>COUNTY BUDGETS</b>	Agreement on initial budgets for counties	ODPM/MoF, CRA, CIC & Transition Secretariat	Initial County budgets agreed	March 2012
<b>COUNTY PROFILES</b>	Establishment of basic data and framework for data collection and analysis in counties	MoPND & VISION 2030	Profiles of counties produced and printed	May 2011- Dec 2011

**Annex VII – (Contd.)**

ANALYSIS OF FUNCTIONS	Development of understanding & framework for devolving functions to counties by MDAs	All MDAs	Definition and plan for distribution of functions published & necessary Acts amended	Sept. 2011- March 2012
CLASSIFICATION OF URBAN AREAS	To re-establish cities, municipalities and towns	Transition Authority,  MoLG	Gazettement of new cities, municipalities and towns	Jan. 2012 – Aug. 2012

## Annex VIII – Transition Period Phase II

ACTIONS	JUSTIFICATION	ACTOR(S)	OUTCOME	TIME FRAME
Formation of county governments	Swearing in of Governor and Deputy Governor	Presiding Judge of the County High Court	Governor and Deputy Governor sworn in	Aug. 2012
	Swearing of County Assembly	Presiding Judge of the County High Court	County assembly sworn in	Aug. 2012
	Appointment and swearing in of Speaker of County Assembly	County Assembly & County Executive & Presiding Judge of the County High Court	Speaker appointed	Aug. 2012
	Appointment of Clerk of County Assembly	County Assembly & County Executive	Clerk of the National Assembly appointed	Aug. 2012
	Appointment, confirmation and swearing in of County Executive committee	Governor & County Assembly	County executive committee appointed and sworn in.	September 2012
	Establishment of county public service board	County executive committee County assembly	County public service established	Nov. 2012
	Appointment of county public service staff	County Executive	County public service staff recruited	March 2013



**Annex VIII – (Contd.)**

	Appointment of staff for County Assembly	County Executive	County public service staff recruited	September 2012
Capacity Building	To develop capacity of county governments	National government County governments Transition Authority	Capacity of county governments developed.	August 2012 – August 2015
Transfer of functions	To transfer functions from national government to county governments	National government ministries County governments Transition Authority	Functions transferred to county governments	August 2012 – August 2015

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