



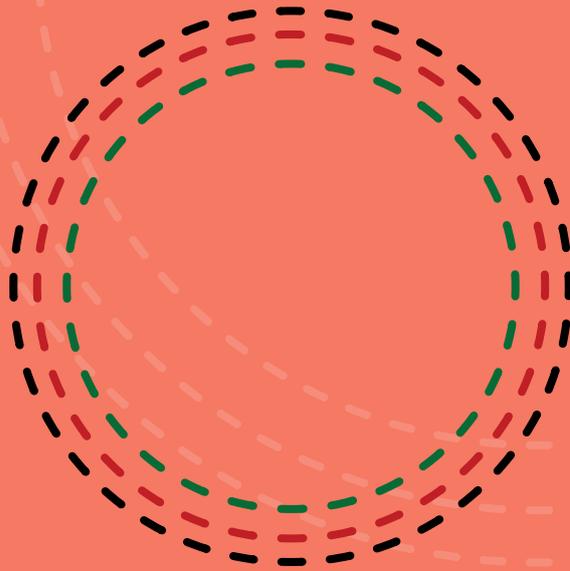
REPUBLIC OF KENYA

THE COUNCIL OF  
GOVERNORS

# STATUTORY ANNUAL REPORT 2015/2016.

NOVEMBER 2016





REPUBLIC OF KENYA

# THE COUNCIL OF GOVERNORS

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STATUTORY  
ANNUAL REPORT

1 July 2015 – 30 June 2016

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## List of Abbreviations

CoG	Council of Governors
IGRA	Intergovernmental Relations Act
CARPS	Capacity Assessment and Rationalisation of Public Service
TA	Transition Authority
CIC	Commission for the Implementation of the Constitution
IGRTC	Intergovernmental Technical Relations Committee
IGR	Intergovernmental Relations
SDGs	Sustainable Development Goals
FoF	Forum of Federations
KSG	Kenya School of Government
CoB	Controller of Budget
AHADI	Agile Harmonized Assistance to Devolved Institutions
SWG	Sectoral Working Groups
CIDPs	County Integrated Development Plans
UNVs	United Nations Volunteers
UNDP	United Nations Development Programme
DAI	Development Alternatives Incorporated
ECD	Early Childhood Development
GRB	Gender Responsive Budgeting
GEPMI	Gender and Economic Policy Management Initiative
NHIF	National Hospital Insurance Fund
KEMSA	Kenya Medical Supplies Agency
MoALF	Ministry of Agriculture, Livestock and Fisheries
NCAJ	National Council for the Administration of Justice
NSAC	National Security Advisory Committee
KLRC	Kenya Law Reform Commission
DPF	Development Partners Forum
IPOA	Independent Policing Oversight Authority
CPF	County Policing Forums
CPA	County Policing Authority
KEPSA	Kenya Private Sector Alliance
HRH	Human Resource for Health
COP	Conference of Parties
UNFCCC	United Nations Framework Convention for Climate Change
IDLO	International Development Law Organisation
KCSAP	Kenya Climate Smart Agriculture Programme



The 47 county governments collectively represent a fundamental transformation of governance in the country as a result of the Constitution of Kenya that was promulgated in August 2010. The objectives of devolved government are clear: counties are required to deliver essential services and ensure equitable access of those services, facilitate the people to choose their priorities in development and ensure that those choices are actually pursued. Furthermore, county governments are expected to be building blocks of nationhood and national unity.

While the constitutional objectives regarding devolution are clear, the actual implementation is a complex process that involves multiple actors and requires patience. Indeed, the establishment of bodies such as the Commission for the Implementation of the Constitution (CIC) and Transition Authority (TA) is testament as to the massive and complex process of transition that was envisaged. The CoG was established under the Intergovernmental Relations Act (IGRA) primarily as a forum through which county governments can consult and collectively engage with implementation. As the primary partners in county governance, the voice and input of counties was and is still needed as implementation of devolution takes root.

Throughout the transition period, the CoG established itself as an indispensable player in the implementation process. The CoG has represented the collective interests of counties in the development of legal, policy and institutional/administrative frameworks for the implementation of devolution. As a result, county governments have been facilitated to set up systems for delivery of services. Counties are beginning to make an impact in terms of enhancing access to essential services and development and part of this can be attributed to the CoG's efforts to have an effective transition at the national level.

The CoG's success can be attributed to the support and commitment that it has received from the counties, development partners, civil society, members of the public, and various other stakeholders. It is this support and commitment that has enabled us to put together a strong and effective Secretariat that is in managing and guiding activities and engagements. As the country moves into another transition period with the forthcoming general election of 2017, I am confident that the CoG will provide the much needed support and stepping-stones into the next phase of county governance.

Finally, while the formal transition period has come to an end, there are a number of substantive transition issues still remain to be addressed. The CoG will continue to engage with the national government and other stakeholders in order to ensure a vibrant system of devolved governance that adheres to the epithets of the Constitution.

***H. E. Peter Munya***  
*Chairman, Council of Governors*

## Note from the Chief Executive Officer

On behalf of the Secretariat of the Council of Governors, I would like to thank everyone who made the programmes and activities covered in this report possible. As this report, as well as previous statutory reports confirm, the CoG has grown from strength to strength to become a critical body in the country's political and governance structures. Like all institutions focused on devolved governance, the CoG commenced its operations at a time when there were no basic structures to support its operations. However, through the collective vision and leadership of their Excellency the County Governors, the CoG has developed institutional structures, systems and capacities required to push the mandate and responsibilities bestowed on it by law.

The focus, dedication, and the spirit to work together has enabled county governments to have effective engagements. This has further enabled counties to amicably settle disputes and other differences on various issues in a manner that enhances cohesion among county governments.

The overall goal of the CoG is to ensure effective consultation and harmony of action by counties in matters of collective and mutual interest. The CoG is the platform through which county governments collectively engage, negotiate, and demand for issues of collective interest to county governments. The specific issues range from sectoral laws, policies, capacity building, structures for consultation, public engagement, sharing of resources, lessons and information, etc. As this report demonstrates, the CoG and the Secretariat has, through various structures and processes, championed the course of counties by providing county inputs in implementation.

We have dedicated a chapter of this report to an analysis of the emerging results from the counties. While individual county governments have the direct constitutional mandate to provide services, the overall effectiveness depends on whether the counties have resources, policies, laws, and frameworks to deliver those services. It is the core business of the CoG to negotiate for that space for counties to carry out their functions. The CoG is on constant reflection on ways in which it can unlock the "national gridlocks" that hamper service delivery at the county level. The work of the Committees of the CoG and the Secretariat becomes critical in this respect since they focus on sector-specific challenges to service delivery.

Beyond engagements with national processes, the participation of the CoG in various regional and international forums on various issues has placed Kenyan counties on the regional and world map. The process of implementation of devolution in Kenya and the emerging lessons are of interest to countries in the region beyond. The participation of the CoG in platforms such as the East African Local Government Forum (EALGF), the Commonwealth Local Government Forum (CLGF) and the Forum of Federations (FoF) will gradually consolidate Kenya's place in the regional and global platforms on devolved governance.

With the forthcoming general election of August 17 approaching, we assure our counties, the public, development partners, and other stakeholders that the CoG Secretariat has developed the necessary capacities to provide critical support for the forthcoming transition to the next phase of county governance. There are many activities that the CoG is currently involved as part of preparations for forthcoming general elections. More importantly, the CoG, as a critical institution in devolved governance, is committed to the pursuit of the objectives and goals of devolution, beyond the August 2017 general election. It is our sincere hope that the next phase of county government leadership, our development partners, members of the public, and stakeholders in general will be dedicated to ensuring that devolution succeeds.



**Jacqueline Mogeni,**  
CEO Council of Governors Secretariat



# Acknowledgements

The Council of Governors is grateful for the cooperation and support that it received from various partners and stakeholders who made the activities that are covered in this report possible. The Council is particularly grateful to all the County Governments who continue to champion and support the activities of the Council of Governors. Through their support, the CoG has engaged in activities and programme meant to enhance the collective effectiveness of the counties. The CoG is also grateful to the National Government ministries, department and agencies with who service delivery and development is coordinated and shared. The CoG also remains grateful to development partners, civil society organisations, and members of the public who continue to support the activities of the Council of Governors.

Lastly, the CoG is grateful to the Secretariat that is in charge of planning and implementing the activities of the Council of Governors. Various Committees of the Secretariat provided information and data for this report. We are grateful to the members of the Secretariat that assisted with the development of this report. We are particularly grateful to: Rosemary Njaramba, Eva Sawe, Sharon Makena, Medline Murumba, and David Wanjohi, who coordinated the writing of the report. We also thank Dr. Conrad Bosire, the consultant who compiled this report.

***Council of Governors***

## Executive Summary

This report covers the activities of the Council of Governors (CoG) for the period 2015/16 (July 2015 to June 2016). The CoG is the apex of horizontal intergovernmental relations. The CoG is the primary platform through which county governments carry out cooperation and consultation both at the county level and collectively with the national level and other institutions. The specific mandate and responsibilities of the CoG are provided for under Intergovernmental Relations Act (IGRA) and these include: sharing information, resolution of inter-county disputes, facilitating capacity building, overseeing inter-county projects and engagements, among other functions.

In March 2016, the formal transition period came to an end with the winding up of the Transition Authority (TA) and the Commission for the Implementation of the Constitution (CIC). However, a review of the transition effectiveness shows that there are a number of key transition issues that are yet to be settled. These include: comprehensive unbundling and costing of functions (especially concurrent functions between the national and county levels), verification, audit, and subsequent transfer of reallocation of assets and liabilities between the two levels of government, among other functions. The Intergovernmental Relations Technical Committee (IGRTC) has been established and is charged with seeing the conclusion of the residual transition issues. The CoG welcomes effort to complete the pending transition issues in order to ensure effective devolved governance.

While the first term of the counties focused on transition to county governance, there is evidence of emerging results in terms of improved access to services and effectiveness and this is covered in the fourth chapter of this report. The ultimate effectiveness of counties in terms of local service delivery and development is, in turn, dependent on engagements with the national government on sectoral and general issues, which provide counties with ample space to pursue their mandate and responsibilities. The CoG activities are precisely geared at securing the optimal conditions for service delivery and development at the county level and this is in line with the mandate of the CoG.

The CoG was among the new institutions that were established shortly after the 2013 general election. The period when the CoG was established was characterised by confusion and uncertainty and anxiety of the transition process. The CoG has overcome the initial challenges and grown in strides to support County Governments in their quest to enhance services and local development. Activities of the CoG focused on goals and activities to fulfil its mandate as spelt out in the IGRA. This report covers activities of the CoG under the following areas:

- Inter-county activities
- Intergovernmental consultation
- Sectoral engagements
- Capacity building
- Resource mobilisation
- Regional and international engagements
- Dispute resolution
- Finance, Human Resources and Administration
- The role of the CoG in county service delivery and the emerging results

## Inter-county activities

While the 47 County Governments are diverse and have separate and unique mandates to communities in the different counties, the broader context within which the counties operate requires the counties to come together and identify common priorities and issues that are of collective interest. In the period covered by the report, the counties undertook a number of activities meant to enhance their collective interests and effectiveness. The third Annual Conference took place from 20th to 22nd of April in Meru County. The theme for the 2016 Annual Devolution Conference was **“The Promise of Devolution: Consolidating the Gains after Transition and looking into the Future”**. The Conference had the participation of a wide range of stakeholders who numbered over 6000 delegates. The participants included foreign and national dignitaries who graced the event. Discussions during the conference included commitment to funding of sectors that are critical for the delivery of essential services such as Agriculture, health and education.

Apart from the devolution conference, counties held a number of general and sectoral meetings on various issues during the period covered under the report. The pre-devolution conference meeting, usually held just before the Annual Devolution Conference, was, attended by 448 county executive and 300 other stakeholders. The meeting acts as a preparatory session for the main conference but is also a separate review of the goals and achievements set by the county executives. Other inter-county consultation activities took the form of sectoral meetings to develop a common position on policy and legislative proposals, meetings with development partners, trainings and capacity development, among other issues.

## Intergovernmental consultation

Effective implementation of devolved governance requires the two levels of government to interact. This is reflected in the constitutional principle of cooperation and consultation. Ineffectiveness of institutions structures put in place for consultation and cooperation slowed down the general progress. However, the establishment of the IGRTC, a body that is charged with administrative and technical support to intergovernmental relations, is an important step as this can ensure that all institutions and processes provided by law run smoothly. Furthermore, even with the incipient structures of consultation and cooperation, the two levels of government have managed to agree on some important issues. These include:

- Division of responsibilities and resources regarding roads and infrastructure
- Agreement on regulations and mechanisms for managing conditional grants
- Some level of consultation on development/ review of national laws and policies in various sectors
- Agreement on access to borrowing by County Governments for development projects
- Framework for county borrowing

The National and County Government Coordinating Summit, composed of the president and the 47 County Governors held its fifth Summit meeting at Sagana State Lodge in Nyeri County on 10 and 11 February 2016. The Summit is the highest decision-making organ in intergovernmental structures. Therefore, it presents an important opportunity for building consensus on issues of mutual interest between the two levels of government. Among the main issues that were discussed during the Summit include: management of county finances, division of functions between the two levels of government and the timelines and approaches, implementation of specific transition processes, among other issues.

## Sectoral engagements

Sectoral engagements form a critical part of the CoG activities since service delivery and development projects are planned and executed through sectors. In order to facilitate effective sectoral engagements, the CoG has organised itself into 18 committees on various issues. With the support of the CoG Secretariat, the committees managed to carry out various activities at the sectoral level. In summary, the main sectoral activities revolved around the following issues:

- Consultation with relevant sectoral ministries on policy and law reforms
- Division of sectoral roles and functions
- Resourcing and financing of national and County Government functions in the respective sectors
- Coordination of capacity building and training
- Consultation on national and county sector regulation
- Agreements on frameworks and modalities for sharing information between the two levels of government
- Joint study tours on sectoral issues that are of mutual interest

## Capacity building

The CoG has the duty to facilitate capacity building for County Governors. The CoG Committees have incorporated capacity building as one of the components of engagement with the counties. Through the facilitation of the CoG, different teams from different sectors have been taken through various training programmes and various capacity building initiatives. This has taken different forms: during the period covered by the report, the CoG facilitated study tours for representatives of County Governments. There have also been training sessions on various sectoral issues, also coordinated and managed by the CoG. The CoG has also negotiated with the national government on the content of the national policy frameworks, such as the National Capacity Building Framework (NCBF) in order to ensure a cohesive national plan with regard to capacity building.

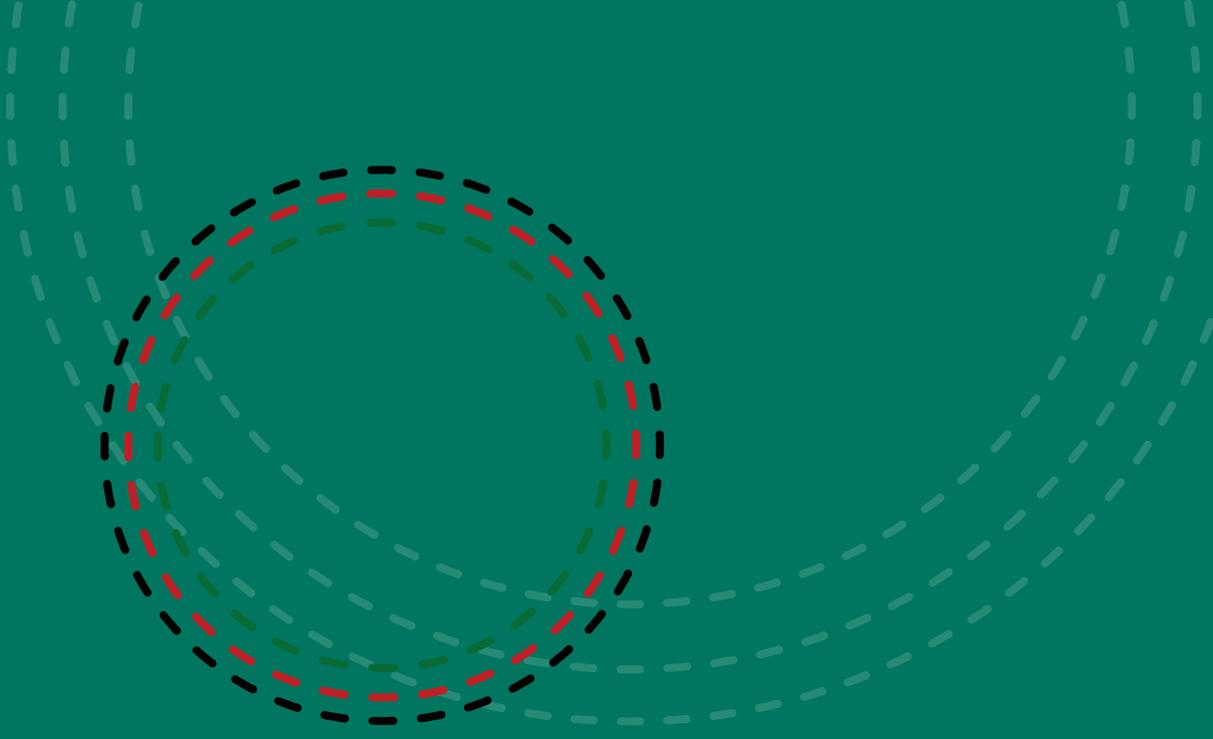
## Regional and international engagements

Kenya's devolved governance is part of what can be referred to as the great trend towards the decentralisation and sharing of powers and resources across the globe. Accordingly, Kenya has a lot to learn from the world as well as contribute to discussions on sub-national governance. The CoG has represented counties and participated various regional and international forums on devolved governance and other governance issues that are of concern to counties. The CoG is under discussions with the Forum of Federations (FoF) a global association of countries with devolved/ federal arrangements for possible membership. The CoG has also represented counties in the participated in the East African Local Government Forum (EALGF) and the Commonwealth Local Government Forum (CLGF). The CoG is thus gradually placing County Governments as important players in the regional and global arena. Other international and regional engagements (reported under Chapter 3) have facilitated the contribution and exposure of county governments in important regional and global processes. Furthermore, study tours have become a forum for skills addition and capacity development for county governments.

## **Service delivery in counties and the role of the CoG**

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The CoG activities are aimed at ensuring that appropriate legal, policy, and institutional frameworks are in place for counties to deliver their services. This objective has informed the CoG's sectoral engagements with the national government, development partners and other stakeholders in devolved governance. The support to County Governments through the work of the CoG has enabled counties to set aside resources and set up systems to ensure service delivery. Chapter 4 of this report is dedicated to the emerging results in terms of service delivery. There is evidence of increase in access to health facilities and services since 2013 as well as indicators of better healthcare such as a reduction in infant mortality rates. Similarly, there is evidence that pre-primary facilities and teachers have increased as a result of the entry of counties in the recruitment. Furthermore, County Governments have made vast investments in sectors such as Agriculture, roads and infrastructure, water and sanitation, etc. and there are indicators of improvement of services. Sectoral engagements by the CoG have laid a basis for counties to enter into service delivery leading to improvements noticeable across the service delivery sectors.



## Chapter one

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# Introduction



## 1.1 Background

This is the third annual report of the Council of Governors (CoG) covering the period July 2015 to June 2016. The report contains the activities and milestones achieved by the CoG in the third year of its operations. With the general election slated for August 2017 County Governments are in their final year of the first term in office. Implementation of devolution has, for the last three years, focused on transitioning from the previous to the current system of governance that envisages the dispersal of powers from the national level to the counties.

Accordingly, the activities of the CoG have revolved around facilitating a transition that will enable counties to collectively and individually pursue the constitutional goals and objectives of the devolved system of government. Specifically, critical steps of transition, as outlined in the relevant laws and policies, required the participation and consultation of counties in the shaping of the transition process. The CoG has gradually established the counties as a critical and indeed determining player in the implementation of devolved government. The role played by the CoG, as this and previous reports demonstrate, reveals the important stake that counties, through the CoG, have in ensuring an harmonious, cohesive, and effective pursuit of the goals of devolution.

Implementation of the devolved system of government in Kenya is not an isolated process. Different countries are at different stages of implementation of varied forms of multilevel governance. The issues, contexts and experiences in Kenya and elsewhere form an important learning process in the implementation of devolved governance. In this regard, the CoG has over the last three years participated in various regional, continental and global platforms with an objective of sharing Kenyan lessons as well as learning from other contexts. The CoG is currently in discussion with the Forum of Federations (FoF), a global body that brings together systems that have multilevel systems of governments that mirror federal systems, about the possibilities of Kenya joining this body. The CoG has also participated or has been represented in global forums whose main focus is subnational governance. The immediate impact of these activities is the recognition of the governance transformation that is taking place in Kenya regionally and internationally and useful lessons from other contexts for application locally.

## 1.2 Mandate of the Council of Governors

The mandate and specific responsibilities of the CoG are spelt out under section 20 of the Intergovernmental Relations Act. This is the basis of all the actions and approaches taken by the CoG in all its past, current and future engagements. The responsibilities vested in the CoG under the IGRA include:

- Consultation amongst County Governments sharing information on the performance of the counties in the execution of their functions with the objective of learning and promotion of the best practice where necessary, initiating preventive action
- Considering matters of common interest to County Governments
- Dispute resolution between counties within the framework provided under the IGRA
- Facilitating capacity building for governors
- Receiving reports and monitoring implementation of inter-county agreements on inter-county projects
- Consideration of matters referred to the council by a member of the public
- Consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties; and

- Performing any other function as may be conferred on it by this Act or any other legislation or it may consider necessary or appropriate



The Council of  
Governors Secretariat  
(Executive Boardroom)  
at Delta House,  
Westlands, Nairobi

The functions listed above place the CoG at a vantage point of ensuring that national level processes are streamlined in order to provide adequate space for County Governments to operate. The CoG has become the centre and indeed the locus of coordination for the 47 County Governments and has established itself as the reference point for all national matters that affect counties collectively. The CoG has, over the three years, become an active player in regional and international forums on sub-national governance. The involvement of the CoG in regional and international forums has led to learning and drawing of important lessons for application locally. Major milestones by the CoG in the year 2015/16 include:

- Negotiation of legal and policy frameworks at the national level that respect the constitution and specifically the division of powers between the two levels of government. This has mainly been achieved through sectoral committees of the CoG
- Agitation for more resources to county County Governments for service delivery and development. While counties are yet to be adequately funded to perform all their functions, there has been incremental growth in the funding to counties. The CoG's main focus has been to ensure an equitable division of resources between the two levels of government.
- Amicable resolution of some of the disputes between the two levels of government. The CoG has gradually become a indispensable forum for determination of issues that are common between the counties and the national government. Sectoral issues

and processes and issues that are of a common concern to counties have been ironed out through the CoG thereby smoothing relations between the two levels. An appropriate example here is the agreement on the classification of roads and division of responsibilities between the national and county level. The amicable settlement of this long drawn conflict between the two levels is evidence that it is indeed possible to resolve conflicts and achieve harmony and cohesion through consultation and cooperation. The two levels of government have also agreed on transition of human resources (through the Capacity Assessment and Rationalisation of Public Service (CARPS) report).

- Facilitation of important national forums on devolution (including the third annual devolution conference held in Meru County in April 2016) which have become important events for reflections and (re)focussing implementation of devolved governance in Kenya.
- The harnessing and channelling of capacity and assistance to the counties through the various development partners. Through the CoG, various programmes have been implemented in specific counties with the goal of enhancing service delivery
- Through participation and involvement in various regional and international engagements, the CoG has ensured representation of County Governments in regional and international forums where issues relevant to counties are discussed. This has enabled County Governments (through the CoG) to contribute to various regional and international forums and processes. With continued involvement in regional and international forums, Kenyan counties will establish themselves as important players in relevant international/ regional forums

It is important to note that these milestones have been achieved in the context of relatively weak structures of vertical consultation and cooperation (national and county). The National and County Government Coordination Summit meetings have in the past not been promptly convened to address emerging issues. It is in this regard that the CoG welcomes the operationalisation of the Intergovernmental Technical Relations Committee to ensure that Summit agendas, resolutions and plans are implemented effectively.

Most importantly, after three years of efforts to get the County Governments to get counties started, there are early/ emerging fruits in terms of service delivery. Of course, the clear outcomes and impacts in terms of service delivery will take a bit more time to be evident. However, there are early signs that devolution of power, resources, and responsibilities is bearing fruit. Chapter 4 of this report is dedicated to analysing the emerging evidence and outputs of investment in various services at the counties for the last three years. Counties have spent a considerable amount of resources in critical sectors such as health, education, roads and transport, water and sanitation, etc. Counties were at different levels of access to services and this initial investment will go a long way in addressing the existing inequities.

Finally, with the first term of counties coming to an end, the focus is now on the transition to the second term of County Governments. The CoG has put in place sustainable institutional structures and systems at the Secretariat that will facilitate a smooth transition after the August 2017 general election. Accordingly, the cumulative milestones and achievements made over the last three years will be carried into the next term of County Governments



H.E. Peter Munya,  
Chairman of the  
Council of Governors  
during stakeholders  
consultative meeting  
in preparation for the  
2017 general election

### 1.3 The structure of the Council of Governors

#### ***The Council***

The CoG is composed of the 47 County Governors. The IGRA requires the Governors to elect their own chairperson and vice-chairperson for a term of two years. The CoG has so far held its final election under the current term of County Governments on 27 May 2016. In order to discharge its functions more effectively, the CoG has established 18 committees that focus on various issues and sectors of governors as follows:

1. Health Committee
2. Agriculture Committee
3. Infrastructure and Energy Committee
4. Urban Development, Planning and Lands Committee
5. Tourism and Wildlife Committee
6. Water, Forestry and Mining Committee
7. Cooperatives and Enterprise Development Committee
8. Trade, Industry and Investment Committee
9. Education, Youth, Sports, Culture and Social Services Committee
10. Finance, Planning and Economic Affairs Committee
11. Human Resources, Labour and Social Welfare Committee
12. Legal and Human Rights Committee
13. Intergovernmental Relations Committee
14. Security and Foreign Affairs Committee
15. Resource Mobilization Committee
16. Information, Technology and Communications (ICT) Committee
17. Rules and Business Committee (oversees the operations of the Secretariat)
18. Arid and Semi-Arid Land (ASAL) Committee

The CoG is the highest decision-making organ and provides overall direction, leadership and guidance to the committees above. Decisions of the CoG are made in meetings of the CoG. Section 21 (1) of the IGRA requires the CoG to hold at least two meetings in a year. The CoG held eight (8) meetings during the year 2015/16.



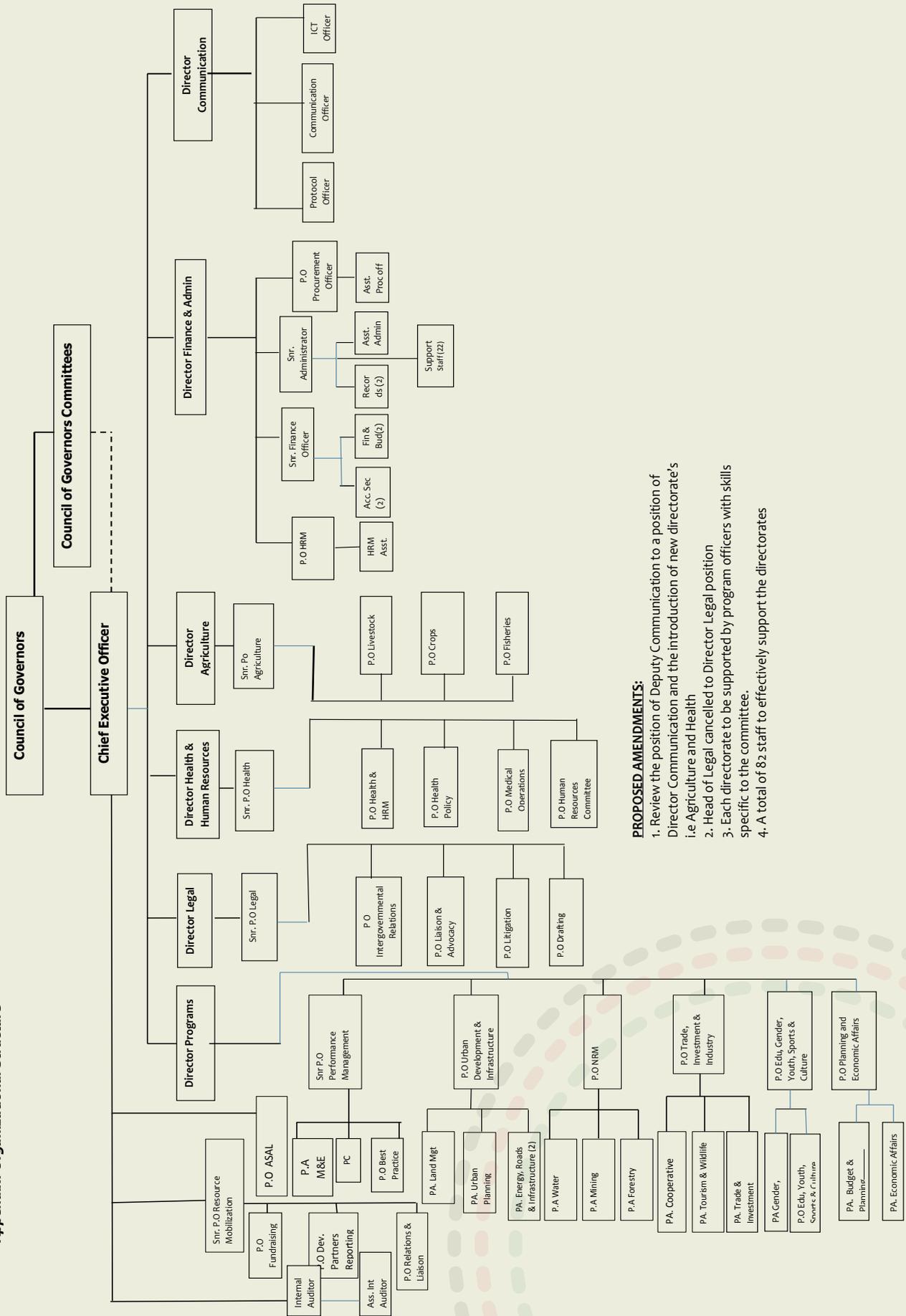
Governors launching the Devolution Torch during a meeting held on 17 June 2016

### ***The Secretariat***

The CoG established a Secretariat to implement and coordinate the activities of the CoG. The secretariat is responsible for administrative and technical support to the activities of the CoG and implements secretariat activities under the guidance and direction of the CoG and the respective committees. The Secretariat Staff that currently totals 51 persons is composed of the Chief Executive Officer who reports to the CoG, and directorates and departments that are in charge of programmes, administration and finance, corporate communications, sectoral issues, resource mobilisation, and legal affairs.

# Revised (proposed) organisational structure of the Council of Governors

## Appendix: Organizational Structure

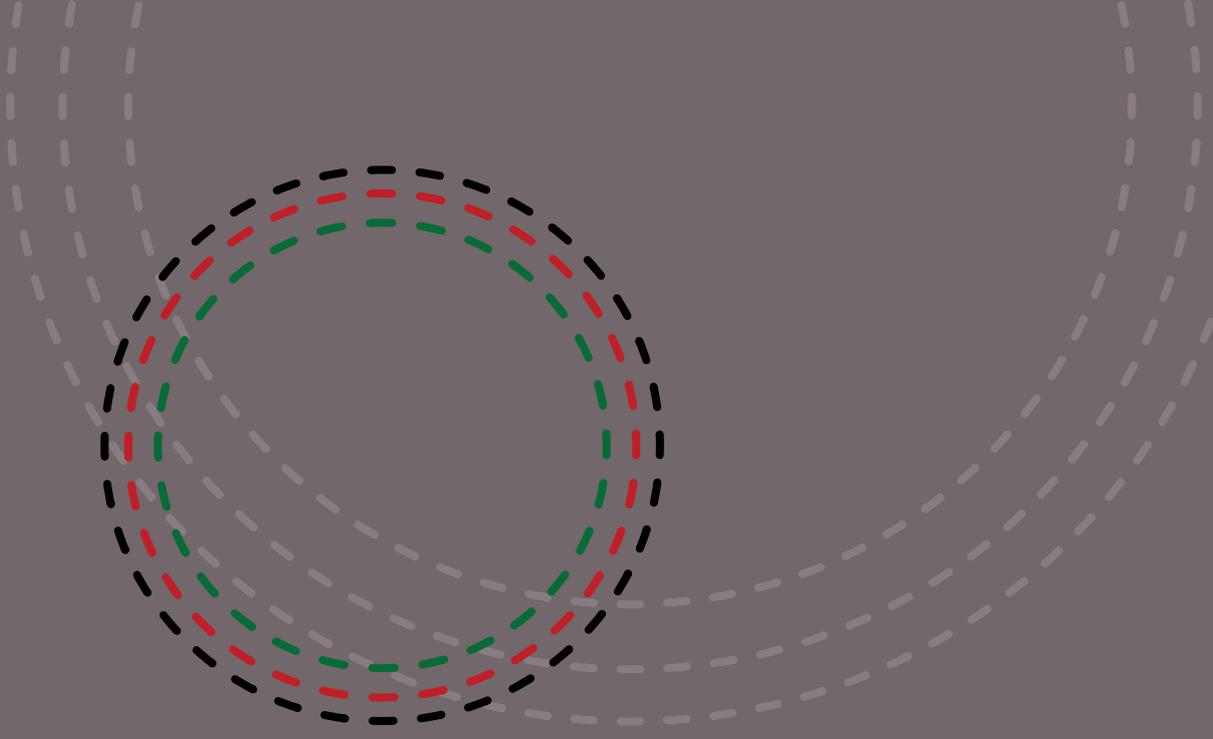


### PROPOSED AMENDMENTS:

1. Review the position of Deputy Communication to a position of Director Communication and the introduction of new directorate's i.e Agriculture and Health
2. Head of Legal cancelled to Director Legal position
3. Each directorate to be supported by program officers with skills specific to the committee.
4. A total of 82 staff to effectively support the directorates

Subsequent chapters of this report capture the specific activities that the CoG has undertaken in 2015/16 in pursuit of its mandate as specified under the Intergovernmental Relations Act.

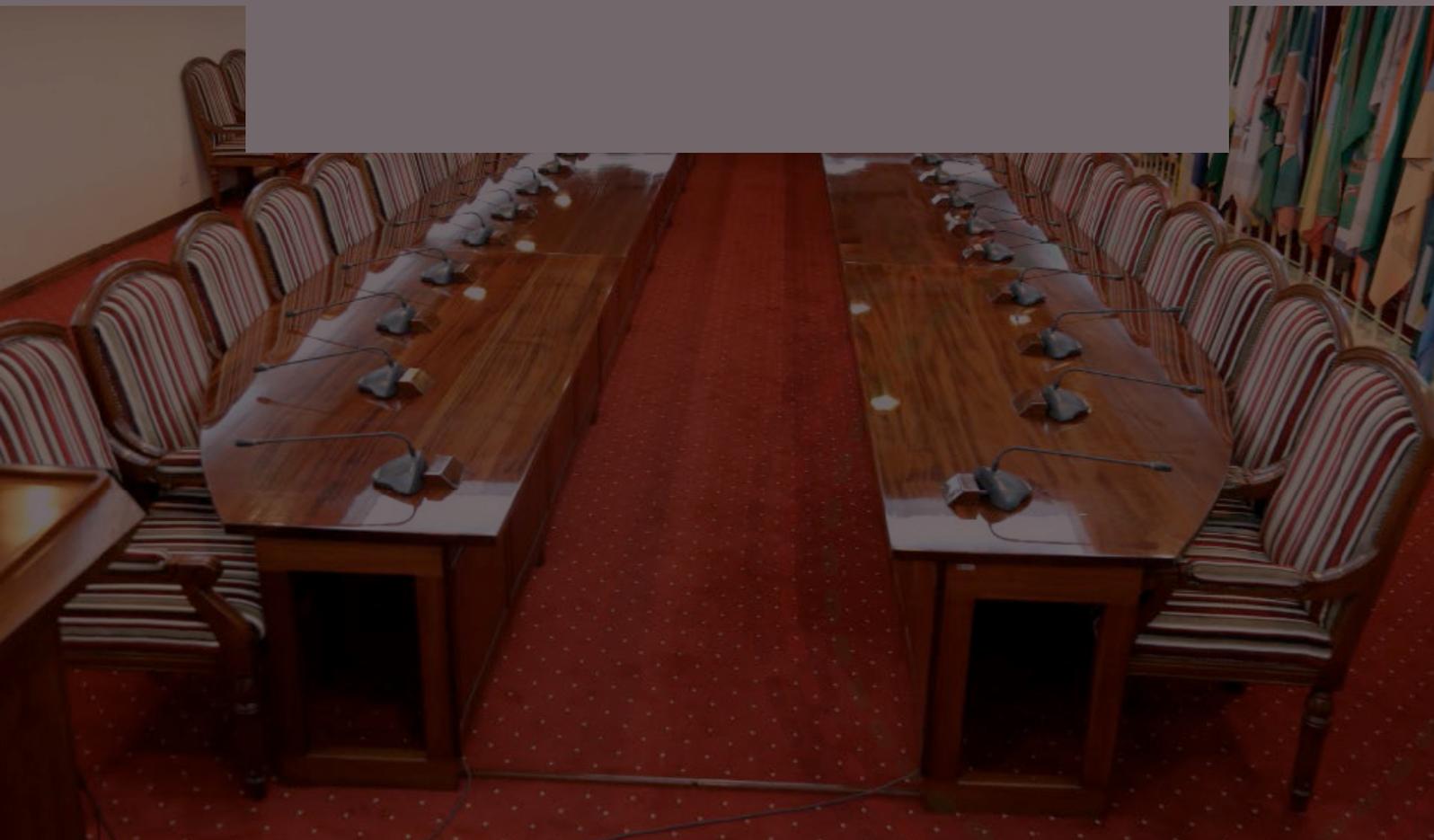
- Inter-county consultation, projects and activities
- Consultation with national government
- Capacity building and resource mobilisation
- Dispute resolution
- Public engagement
- Sectoral/ committee activities
- Finance and Administration



## Chapter two

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# Context and environment



It is not in doubt that the Constitution of Kenya 2010 has heralded a fundamental shift in governance structures in the country. More importantly, the new governance structures were a clear expression of the people that they wanted a break with the past and specifically the manner in which state power, resources, and functions were structured and performed. Specifically, the devolved system of government is meant to disperse resources (vertically and horizontally) for objectives and goals that are clearly mentioned in the Constitution and buttressed in enabling legislation and policies.

The transition period has provided an opportunity to translate the ideals and goals in the Constitution and laws into a reality. While there has been considerable progress with the implementation, varying factors have influenced the nature and pace of implementation of devolved governance. These include, the previous political governance culture that is recalcitrant to the governance culture, the nascent capacities of national and county institutions, general inadequacy of resources, vagueness of legal and policy frameworks, among other factors. While the formal transition period is over, there are many pending transition issues that will be carried over into the post-transition period and this will have a bearing on county effectiveness.

Another transition that is about to happen is through the next elections. Ideally, elections provide a platform through which voters can assess the performance of their elected leaders (as well as public officials) and make political choices through the ballot. While the approaching electioneering period will have a direct and indirect impact on County Governments, all counties have put in place planning and institutional frameworks to ensure that there is county stability that can withstand the impending transition through the general election. Indeed, the holistic focus of County Governments should now be on consolidating the gains made in terms of delivery of services and development at the county level over the last three years.

## 2.1 Transition

The formal transition period to County Governments came to an end in March in 2016 and was marked with the exit of the Commission for the Implementation of the Constitution (CIC) and the Transition Authority (TA). Evidently, a majority of efforts and resources were over the last four years dedicated to animating devolution structures, institutions and processes in order to ensure that essential structures and systems are in place for the implementation of devolution. New institutions, structures and systems have put in place to augment the devolved structure of government are gradually taking their place and role in the implementation of devolution. The early fruits of this are evidenced by the positive indicators of increase in the delivery of essential services across the sectors as demonstrated under Chapter 4.

While the formal transition period has come to an end, there are many transition issues that are still pending. These include:

- The unbundling and clarification of national and county functions, specifically the concurrent and residual functions
- Costing of all sectoral functions
- Transfer and rationalisation of functions, resources (human and financial) between the two levels of government.
- Finalisation and enactment of the remaining laws and policies, especially at the sectoral level
- Verification and audit of all assets and liabilities of the national and County Governments

While County Governments have made progress in the performance of functions, the incomplete transition process still clouds county planning and functioning with uncertainty in even critical sectors such as health, education, water and sanitation, among other sectors of county operation.

## **2.2 Institutional relations: gradual results but slow progress**

Many of the pending transition issues are partly due to the fact that the constitutional principle of consultation and cooperation and coordination is yet to be fully embraced by institutions at the national and county levels. The national and County Governments are required by the constitution and statutes to coordinate affairs in a mutual manner at the national and county levels. However, several challenges have arisen with the operationalisation of these structures and processes of consultation and cooperation. In some cases, intended joint structures have not been formed or where they exist, they are not meeting frequently.

While one conclusion that may be drawn from the above situation is that there is resistance that was alluded to earlier above, it is also possible that institutions are still grappling with understanding the meaning and utility of consultation, cooperation and coordination in practical terms. The Intergovernmental Technical Relations Committee (IGRTC) is tasked with ensuring proper coordination between institutions at the two levels of government and this will be an opportunity for national and county institutions to develop ways and mechanisms of working together to achieve the common goals and objectives of devolved governance.

Despite these circumstances, there are important scores that have been made between the two levels of government. Chapter 4 of this report provides numerous examples of where various issues have been ironed out either through the Summit or through sectoral consultation. The remaining step to be taken, perhaps through IGRTC structures, is to consolidate the processes behind the gains made and ensure certainty in both formal and informal IGR processes. In order to ensure certainty in relations and negotiations, it is important that all the content of all agreements reached between the national and County Governments is documented, signed by parties to the agreement, and deposited with the IGRTC. Given the role that the CoG Secretariat plays in the negotiations, copies of the documented agreements should also be deposited at the CoG Secretariat.

## **2.3 The August 2017 general election and after**

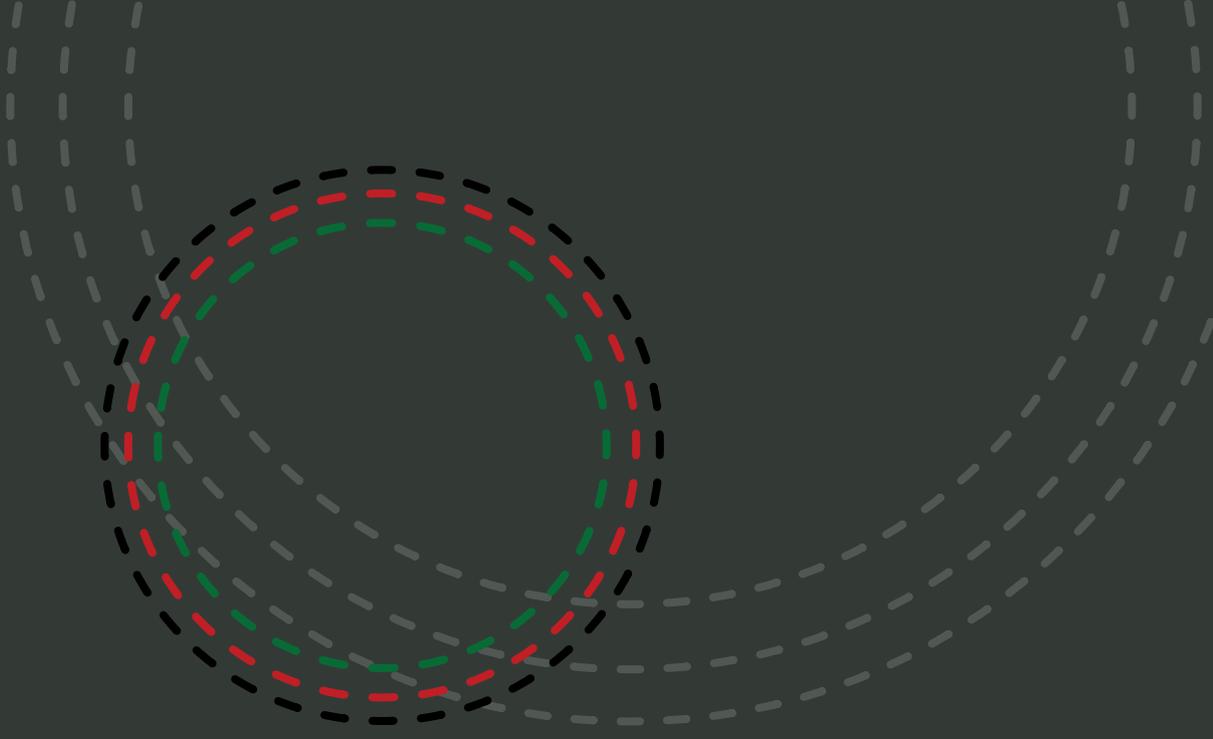
While elections are an avenue through which political leadership is determined, they are a “laboratory” for testing whether the country is really moving towards the constitutional ideal or regressing. Devolution objectives are, for instance, clear that the system of governance is meant to achieve national unity through recognition of diversity, protection of marginalised communities and minorities, equitable (re)distribution of resources, etc. Elections, such as the August 2017 general election, demonstrate whether such objectives are actually being met.

County Governments County Governments are the democratically constituted governance units that are closest to the people. The socio-political and developmental opportunities availed through counties are, thus, the first step in consolidating political stability in the country. The 47 counties are spread across the country and this offers every voter in the country to select a leadership of their choice. However, there are differences between counties and the political dynamics are not uniform in all the 47 counties. Furthermore, national politics, and specifically the presidential election, has proved to be a more volatile political process that County

Governments may not do much to prevent. It is the duty of national and county politicians to carry out peaceful campaigns and effectiveness of crucial institutions such as the Independent Electoral and Boundaries Commission (IEBC), election courts, the police, etc. to guarantee legitimate and peaceful elections.

Closer to the CoG, the clearest demonstration of national unity has been the cohesive approach of the CoG that is informed by the unity of the 47 County Governors. Through the CoG, the 47 County Governments have demonstrated that political differences can actually be put aside and a unifying agenda for County Governments pursued through collective action. The CoG has in the past three years held three successful elections that have seen three different chairs of the CoG and their deputies elected to the Council. Furthermore, the CoG has put in place an effective secretariat that will coordinate the collective activities for both the outgoing and incoming County Governments and this will ensure minimal disruption of CoG activities during the electioneering period.

Beyond the transition to county governance and the approaching general election of August 2017, county governance and devolution in general should be anchored in long-term plans and geared towards lasting impacts. The seed has been planted in the first term of County Governments. It is hoped that this will germinate and bear the fruits that Kenyans longed for when they overwhelmingly voted for the Constitution in August 2010.



## Chapter Three

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# Council of Governors activities for 2015/16



### 3.1 The Annual Devolution Conference

Devolution Annual Conferences have become an important annual event in the country as it provides a national forum for a wide range of stakeholders can assess the milestones as well as challenges in the implementation of devolution. The third Annual Conference was held from 20th to 22nd of April in Meru County. This followed the first two annual conferences that were held in Kwale and Kisumu counties respectively. In the first conference, it was agreed that the conference should become an annual event for reviewing and planning forward. Each conference has been organised around a specific theme. The first conference was on “Celebrating the milestones, confronting the challenges” while the second conference focused on “Appreciating and Strengthening Devolved Governance: Working Together to Realize the Objectives of Devolution”.

The theme for the 2016 Annual Devolution Conference was “The Promise of Devolution: Consolidating the Gains after Transition and looking into the Future”. With the end of the transition period in March 2016, the conference provided a timely opportunity to review the challenges and progress under the transition period. As observed earlier in this report, the transition process has characterised most of the activities of national and county institutions. The specific objectives of the devolution conference included:

- i) To take stock of the accomplishments made in the transition period and establish pending work (if any) and make recommendation of how to handle what was should have been accomplished but was not;
- ii) To celebrate and share the emerging lessons and best practice by both levels of government;
- iii) To examine approaches that have been used to empower citizens while delivering the devolution promise;
- iv) To share experiences, challenges and solutions from countries that have a similar or near similar model of devolution including those that may be considering one and have important experiences with other types of devolution, decentralization, or federations;
- v) To identify opportunities for technical cooperation in strengthening institutional capacity for devolution.

The Conference saw the participation of a wide range of stakeholders. There were over 6000 participants at the Conference. The participants included the Prime Minister of Namibia Rt. Hon. Dr. Saara Kuugogelwa-Amadhila, the Former Prime Minister of the Republic of Kenya Rt. Hon. Raila Odinga, cabinet secretaries, 10 ambassadors and representatives from different countries, County Governors and deputy County Governors, members of county executives, members of county assemblies, among other persons. The President and the Deputy President of the republic of Kenya had their key messages delivered through their respective representatives at the Conference.

Specific issues of discussion during the Conference discussions included: sustainable policies in governance and ensuring diversity in governance, the role of state corporations and regional development authorities in relation to County Governments, resourcing of counties for service delivery and development, the progress with the performance of county government functions, sustainable urbanisation, civic education for public participation, the role of ICT in economic growth, and the mainstreaming of Sustainable Development Goals (SDGs) among other issues.

The Conference benefited from national and regional experiences in each of the issues discussed including how countries were able to countervail similar challenges.

Among the specific areas of governance that featured in the conference discussions centred around commitment (and especially financial) to funding of sectors that are critical for the delivery of essential services such as Agriculture, health and education. The conference emphasised the need to adhere to regionally and internationally set benchmarks for sector budgeting in order to ensure adequate resources for delivery of services. The discussions also highlighted the slow and difficult legislative and policy reforms across sectors that are inhibiting service delivery. It also became clear that across sectors, the use of technology for better productivity and delivery of services is yet to be fully embraced. Different countries where service delivery and development has improved were cited as examples that could be followed locally. Participants urged better coordination between the two levels of government and within the two levels of government in order to ensure efficiency in the use of resources and the delivery of services. Increased social spending was identified as one of the means of attaining SDGs.

At the end of the conference, the stakeholders and participants agreed on a number of action points that will ensure more effective implementation of devolution. There was a renewed commitment to ensure that gains made through devolution are safeguarded. County Governments and national institutions all affirmed their commitment to embrace technology for better delivery of services. Counties perform a majority of the functions that are directly linked to attainment of SDGs and it was agreed that increased funding to counties would be a major step into the achievement of SDGs. Delayed funding to counties was also identified as a major challenge and it was agreed that measures should be taken to ensure prompt remittance of county moneys in order to minimise disruption of services. The two governments also committed themselves to streamline and restructure functions that are performed by institutions at both levels of government. Political and socio-economic inequity was one of the reasons that led to establishment of the devolved system of government. The national and County Governments therefore committed to pursuing policies of inclusivity during the forum.

A Pre-devolution conference meeting between county executives is usually held before the main conference. This year's conference was attended by the 448 county executives and more than 300 stakeholders bringing to total of 700 people. The Pre-Devolution Conference identified some of the issues and agenda for discussion during the main conference.

Retired Chief Justice Dr. Willy Mutunga speaks at the Third Annual Devolution Conference that was held at the Meru Technical Training Institute in Meru County





Chair of the Council of Governors, HE Peter Munya, during one of the sessions of the Third Annual Devolution Conference



Chairman of the Council of Governors, HE Peter Munya, Coalition for Reforms and Democracy (CORD) leader, Rt. Hon. Raila Amolo Odinga, and HE Salim Mvurya, Governor of Kwale County, during the Third Annual Devolution Conference



HE Kinuthia Mbugua speaks in a panel discussion on Information, Communication, and Technology during the Third Annual Devolution Conference

### 3.2 Intergovernmental Consultation

The CoG exists primarily as a forum for consultation and coordination between the County Governments. In delivering this core mandate, the activities that the CoG has carried out in the pursuit of its mandate enables it to be the best suited platform through which consultation with the national government can take place. The two levels of governments are required to cooperate in the performance of their mandates and this is especially critical in areas where there are concurrent or shared sectors of service delivery or functioning between the two levels.

#### *Institutional frameworks for National and County Government consultation*

Among the initial challenges that faced consultation and cooperation was the ineffectiveness of institutions and processes that were put in place to facilitate consultation and cooperation. Institutions that were established by law have either been inactive or not yet established. However, there is gradual improvement with regard to consultation and cooperation. The existence of the IGRTC, a body that is charged with administrative and technical support to intergovernmental relations, is an important step as this can ensure that all institutions and processes provided by law run smoothly. The IGRTC is gradually taking over responsibilities regarding the planning and preparations for Summit meetings as well as follow up on implementation of resolutions.

Furthermore, even with the incipient structures of consultation and cooperation, the two levels of government have managed to agree on some important issues. These include:

- Division of responsibilities and resources regarding roads and infrastructure
- Agreement on regulations and mechanisms for managing conditional grants
- Some level of consultation on development/ review of national laws and policies in various sectors
- Agreement on access to borrowing by County Governments for development projects
- Framework for county borrowing

Two Summit meeting was held in the last year and the discussions and agreements from the meetings are discussed in detail below.

#### *The National and County Coordinating Summit*

The National and County Government Coordinating Summit, composed of the president and the 47 County Governors, is an important body in IGR since it forms the apex of IGR. However, the Summit has not been effective and the CoG has in its two previous annual reports cited concerns relating to the Summit including: lack of implementation of Summit resolutions from previous meetings, failure to hold the Summit meetings in order to address emerging challenges in the implementation of devolution. The operationalisation of the IGRTC, which is the Secretariat of the Summit, is an important step towards ensuring that Summit meetings are held and that there is adequate follow-up on the implementation of decisions and are resolutions reached at the Summit.

The fifth Summit meeting was held at Sagana State Lodge in Nyeri County on 10 and 11 February 2016. This was the third Summit meeting, after the two previous ones that were held on 8 December 2014 and 18 December 2015. During the Summit, a number of important issues were discussed and a general consensus reached.

It was reported during the Summit that the Public Finance Management Regulations (PFMA) have been gazetted. The regulations are meant to guide on important issues of fiscal relations that include: county borrowing, provisional county spending, delays in the disbursement of funds to County Governments, and other policy/ legislative reforms necessary to streamline the financial management operations of counties. The Summit also agreed on the finalisation and disbursement of moneys under the Equalisation Fund.

The IGRTC also laid out its planned activities that included: an advisory on the implementation of the devolved system of government, roll-out of civic education, and the implementation of the Capacity Assessment and Rationalisation of Public Service (CARPS) report. The IGRTC also reported that it is looking into the development of a framework for alternative dispute resolution between and within the two levels of government. Lastly, the IGRTC informed the Summit that it is developing a comprehensive framework that will guide the conduct of intergovernmental relations in Kenya.

Other issues that were agreed at the Summit meeting include:

- Extension of the period for manual procurement pending implementation of the e-procurement rules
- Direct disbursement of conditional funding to County Governments
- Restructuring of the team working on the report on conditional grants and finalisation of the report
- Immediate disbursement of any pending moneys at the national level that are due to County Governments
- Finalisation of report on conditional grants
- Transfer of immunisation/ vaccination function to County Governments
- Restructuring of the Kenya Medical Supplies Agency (KEMSA) board in order to ensure representation of counties
- Postponement of implementation of CARPS to 2018
- An agreement that counties will be represented in the National Hospital Insurance Fund (NHIF) and that national and county public service staff will be under one medical insurance scheme
- Establishment of the county pension scheme

While there are challenges related to the incipient structures of IGR such as the Summit and the IGRTC, there is also a need to ensure that both levels of government adopt a genuine spirit of consultation and cooperation. There are a number of important decisions that have been made through the Summit and other IGR structures which are evidence of progress as has been highlighted above. However, there are also other issues where consensus during negotiation is reached but negated through subsequent actions of institutions required to implement. A proper example here is the Roads Bill that is currently before parliament. It negates the classification of roads and sharing of resources that was agreed between the two levels of government. There are resolutions that were reached in previous Summits but have not been implemented partly due to a demonstrable lack of political and institutional willingness to implement. Accordingly, while the lack of effective implementation structures may be hampering implementation of IGR decisions, the lack of goodwill from both sides may be a contributing factor to the very weakness of IGR structures.



Chairman of the Council of Governors H.E Peter Munya with H.E President Uhuru Kenyatta, Deputy President HE William Ruto, Cabinet Secretary for Devolution and Planning and Planning Hon. Mwangi Kiunjuri, and Governors HE Governor Salim Mvurya (Kwale County) and HE Governor Ahmed Abdullahi (Wajir County) during the closing ceremony of the Summit at Sagana State Lodge



Head and CEO of the CoG Secretariat, Ms. Jacqueline Mogeni makes a point on the second day of deliberations during the National and County Government Coordinating Summit

### 3.3 Sectoral Committee activities and consultation

The sectoral committees of the CoG are the main avenues through which the CoG engages in consultation with the national government and other national-based institutions. The committees coordinate and facilitate discussions and consensus on sectoral issues. Engagements with the 47 counties are usually geared at building a common county government position on sectoral issues and this may involve the governors, the county executive members, or other officials from sectoral departments of the counties. The consultation process with the counties ends with a common position that is then championed by the respective CoG committee. Specific issues that are handled by the CoG committees range from: legal and policy reforms, division of functions between the two levels, capacity building, and division of resources, among other issues.

### **Agriculture Committee**

In the Agriculture sector, the CoG Committee in charge of the Agriculture sector held a number of consultations with the ministry and other sectoral institutions. The main engagements with national government institutions included:

- An intergovernmental meeting to on the levying and management of agricultural levies and licenses between the two levels of government. During the meeting, it was agreed that both levels of government to exercise licensing and other regulatory role as per the respective constitutional mandates.
- Meeting on the privatisation of sugar companies. The meeting was meant to determine the modalities and approaches to privatisation of sugar companies in line with the devolved system of government. It was resolved that a case on the privatisation of sugar companies should be filed on behalf of the affected counties.
- An intergovernmental meeting on agricultural research, legal reforms, extension and monitoring and evaluation, privatisation of sugar companies, donor/ government funded projects
- Intergovernmental consultation on agricultural insurance to all counties. The CoG and the Ministry agreed that this was a mutually beneficial project and it was agreed that both levels of government should jointly pursue and implement this project in a manner that is inclusive to both levels.
- Intergovernmental meeting on Kenya Climate Smart Agriculture Project (KCSAP) to develop project appraisal documents. The meeting led to development of a joint proposal for the project.
- Intergovernmental meeting on mechanisation and milk cooler project. Information on the project was shared between the two levels of government and follow-up meetings were planned.
- Meetings on crop licensing and the Warehouse receipt Bills, memorandum on the Bills were prepared and shared with both the Senate and the National Assembly.

The engagements of the committee led to various outcomes that are important for streamlining of the sector and harmonising operations between the relevant departments and institutions in charge of agriculture. Among the main outcomes from the consultative processes include:

- Agreement on the respective licensing powers of the two levels of government
- Consensus reached on the disbursement of funds meant for construction for maintenance of agricultural roads
- Framework for sector coordination and sharing of data agreed between the two government
- A preliminary agreement between the two levels of government that regulations developed by the Ministry of Agriculture, Livestock and Fisheries (MoALF) will be subjected to consultation with the counties before gazettelement and adoption



**Left:** H.E. Salim Mvurya, Governor of Kwale County during an Agriculture Committee Meeting.  
**Right:** A meeting by the Trade, Industry and Investment Committee to review the draft Trade and Investment Policy

### Legal and Human Rights Committee

The Legal and Human Rights Committee offers legal support and guidance to the Council and the other committees. Accordingly, the Committee is required to engage with proposed laws, policies, and regulations on devolved government as well all issues dealing with promotion and protection of human rights. In 2015/16, the Committee facilitated the following activities:

- Meeting of county attorneys, county secretaries, and CECs in charge of public participation, to review the Draft Devolution Policy
- Convened a meeting between the CoG and stakeholders (Civil Society Organisations, counties, private sector, etc.) to discuss election preparedness
- Training of attorneys from county assemblies and the county executive on policy formulation at the Kenya School of Government (facilitated by the Kenya Law Reform Commission (KLRC) and the International Development Law Organisation (IDLO))
- The representation of the CoG in a total of 41 litigation matters that are at various stages where the Council is involved
- Developed two publications (devolution law report and devolution case digest) in collaboration with the National Council for Law Reporting
- Preparation of a CoG-National Council of Administration of Justice (NCAJ) framework for collaboration and a working document developed
- Review and comment on various national laws and Bills (See Annex 2)
- Development of model county laws (see Annex 2)

Some of the laws passed by the National Assembly and the Senate have taken comments from the CoG on board. Laws that have reflected CoG include: the National Cereals and Produce Board Bill. While the CoG has in the past made inputs in practically all the national laws and policies that affect counties, the views and position of the CoG have not always been taken on board. In such circumstances, the CoG has always pursued other channels such as the Summit or where necessary litigation.

The Intergovernmental Relations Committee participated in the preparation for the National and County Government Coordination Summit meeting described earlier above. The Committee also participated in talks with the Forum of Federations (FoF) on the possibility of the CoG becoming a member of the organisation. The Committee is at the forefront of representation of the CoG in formal intergovernmental relations with the national government and other external institutions.

### Security and Foreign Affairs Committee

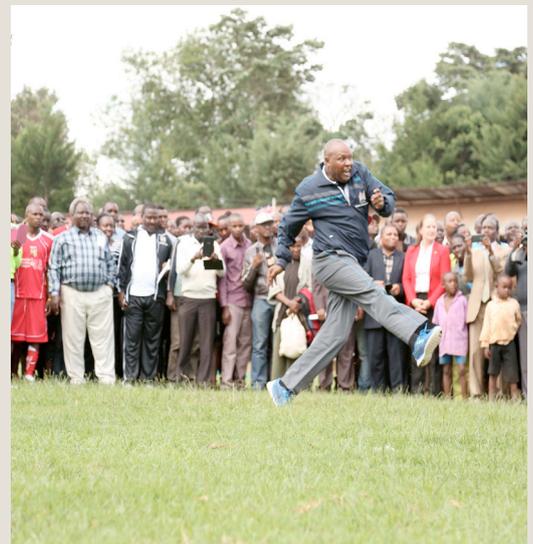
The Security and Foreign Affairs Committee also engaged in a number of issues that touch on its mandate (coordination and security and national affairs). The Committee reviewed the Independent Policing Authority (IPOA)'s proposed decentralised structure and submitted views on revisions of the structure. The Committee also reviewed and submitted comments to the CIC on the progress report by the Ministry of Interior on the restructuring of the Provincial Administration (PA). The Committee also engaged with the National Security Advisory Committee (NSAC), the Ministry of Devolution and Planning, and the Senate Committee in charge of Security on the role of counties in the provision of security.

While the majority of security functions are vested in the national government, there is an increased recognition by both levels of government about the need to ensure a collaborative approach to addressing both the direct and underlying causes of insecurity in the country. Indeed, the counties are now vested with the powers to establish County Policing Authorities (CPAs) and County Policing Forums (CPFs), which are basically oversight bodies on the police services at the county level. Through the Committee, County Governments have presented their proposals to various institutions at the national level and there is a general agreement to cooperate and support each other in the provision of security services to the citizens. The Committee has also communicated to the Ministry of Foreign Affairs to ensure representation of counties in regional or international engagements that concern devolved governance.

### Education, Youth, Sports, Culture and Social Services

In 2015/16, the Education, Youth, Sports, Culture and Social Services Committee held two intergovernmental meetings. The first was on Intergovernmental Sectoral Forum on Education and the second on Intergovernmental Sectoral Forum on Gender, Youth and Culture. Both meetings were held in April 2016 and were aimed at enhancing relations and more effective sectoral coordination between the two levels of government.

H.E. Peter Munya,  
Chairman of the  
Council of Governors  
and H.E. Paul  
Chepkwony at the  
Maisha County League



### **Trade, Industry and Investment Committee**

The Trade, Industry and Investment Committee represented the CoG in a number of forums on trade and investment and facilitated/ participated in a number of forums on the theme of trade and investment. These included:

- Participation in the launch of Kenya Industrial Transformation Policy
- Facilitation of Kenya Private Sector Alliance (KEPSA) county executives retreat on improving business environment
- Participation in the Kenya International Investment Conference
- Meetings with the Cabinet Secretary in charge of East African Affairs
- Representation and participation in the Multi-sectoral Committee in Innovation and Entrepreneurship
- Participation in the Conference on the ease of doing business in Eastern and Southern Africa
- Review of the National Investment Draft Policy

Sectoral activities have been characterised by negotiation and development of legal and policy frameworks as well as other sectoral transition issues. The Committee is dedicated to ensuring an all-inclusive sectoral transition. The launch of the Kenya Industrial Transformation Policy is an important initial step in the development of a new framework. The engagement with KEPSA members also ensured that the private sector, which is at the centre of sectoral activities, is involved in policy and legal frameworks development. Regional engagements included participation in the Conference on the ease of doing business, an important platform that can ultimately lead to harmonisation of the business regulatory environment in the region.

### **Health Committee**

The Health Committee focuses on health sector engagements that are of a collective interest to the 47 counties. Being one of the critical sectors for county service delivery, the Committee plays an important role in facilitating the County Governments to access opportunities to enhance efficient and quality provision of health services at the county level. The health sector receives the highest total allocation of funds by counties. It is important that these resources are used in a manner that can optimise service delivery. The Committee assists counties by mobilising and channelling resources and capacity to the counties, reviewing of proposed health laws and policies in order to ensure county concerns are addressed, sharing lessons on successes among the counties, etc.

During the period, the Committee organised and facilitated quarterly meetings for the CECs in charge of health. The quarterly meetings are an important platform through which the CECs discuss and agree on the overall and common agenda for the County Governments in the health sector. The Committee participated in intergovernmental meetings on Universal Health Care Coverage (UHC), and meetings focusing on Human Resource for Health (HRH) that included a one-week county visit in September 2015. The Committee also launched a publication titled “Integrating constitutional principles in implementation of health” in January 2016. Launch of Advisor team, facilitation of launch of Health Services Charter in Kitui, Nyeri, and Bungoma counties. The Committee also participated in the assessment of the implementation of the system for “Gavi” (a global health alliance that is focused on vaccines). Other engagements of the Committee included: study tour of Japan. During the Annual Devolution Conference, a session

was dedicated to Health sector discussions and this provided an opportunity for the Committee to highlight activities that the Committee and the counties are currently undertaking as well as the challenges that they are facing.

The Committee held meetings with the national Ministry of Health that focused on various sectoral issues that affect or are of mutual concern between the two levels of government. Issues that were discussed during meetings with the Ministry of Health include:

- The finalisation of transfers of maternity user fees to counties claims owed to counties by the Ministry
- Management of level 5 hospitals
- Coordination and joint planning for national and County Governments on healthcare financing

There have been various challenges with the health sector and the meeting with the Ministry provide an avenue to develop mutual solutions. The Ministry committed to timely disbursements of funds to counties and also agreed to a joint and coordinated mobilisation of resources for health services.

#### **Finance, Planning and Economic Affairs Committee**

The Finance, Planning and Economic Affairs Committee handles matters relating to public finance and these include, review and monitoring of policies and legislation related to public finance, budget analysis and engagements, and coordination of matters of fiscal relations between the two levels of government, and general engagements on matters of financial management and planning.

In 2015/16, the Committee carried out a number of activities concerning public finances. These included review of laws and policies on public finance that touch on County Governments, trainings for County Governments, model legislation. Among the laws that the Committee reviewed include the Public Finance Management (Amendment Bill) 2014, the Public Procurement and Asset Disposal Bill 2014 and the development of a memorandum, the Division of Revenue Bill 2016, and the County Allocation of Revenue Bill 2016. The Committee prepared memoranda for each of the proposed laws and shared the same with the respective committees of Parliament. The Committee also reviewed guidelines on the Equalization Fund and sent a memorandum to the Senate, National Assembly and Treasury. The Committee developed guidelines for the management of conditional grants as well as model legislation (revenue legislation) for use by County Governments.

Some of the views and comments on laws were taken on board by Parliament and this essentially means that some of the laws took care of the collective concerns of County Governments. There was an increment in the overall allocation to county governments as a result of the comments and inputs by the Committee on the Division of Revenue Bill. The model legislation prepared for county governments has also ensured that counties have developed sound legislation on finance issues.

#### **Infrastructure and Energy Committee**

The Infrastructure and Energy Committee plans and executes the CoG's engagements and activities in the infrastructure and energy sector. The Committee facilitates intergovernmental

consultation (between counties and with the national government and other sectoral players). Specifically, the Committee facilitates collective decision-making among the counties and engagements with the national governments and other stakeholders on the basis of collective positions taken by counties. Among the core concerns of the Committee are sectoral policies and laws, which have a collective impact on all the counties. The Committee also facilitates sectoral technical assistance to counties.

Activities of the Committee focused on county-level engagement, intergovernmental activities as well as regional/ international. The Committee met with CECs in charge of energy in November 2015 to analyse the status of implementation of the energy function allocated to counties. Counties assessed the challenges as well as the successes in the transition in the energy sector. Transfer of the roads function had become one of the complex transition issues. The Committee facilitated a meeting of CECs in charge of roads in January 2016 to review reports on the classification of roads. This meeting was a build-up to the consensus on the classification and division of roads between the national and County Governments.

The Committee also facilitated a number of joint activities with the national government where various sectoral issues and matters were discussed. Among the intergovernmental activities that the Committee facilitated during the period covered by this report include:

- A meeting with the Inter-ministerial working group on land access matters affecting petroleum and electrical energy projects. The objective of the meeting was to prepare guidelines to address land access issues that contribute to cost and delays in the implementation of sectoral projects
- A meeting with the Ministry of Transport to discuss the transfer of equipment held under the mechanical and transport fund (MTF). During the meeting, it was agreed that 80 percent of the MTF equipment shall be surrendered to the County Governments on the basis of “where is, as is” irrespective of the status of the equipment. It was also agreed that staff operating the equipment shall remain at the national level and counties may make request for staff based on individual needs.
- The Committee participated in a national scoping workshop for the strategic environmental and social assessment for the petroleum sector. During the forum, the Committee presented county concerns on the policies, plans and programmes on the proposed petroleum sector development.
- The Committee also held discussions with the Ministry of Energy in order to discuss the off-grid solar project funded by the World Bank. The objective of the meeting was to ensure accessibility to electricity for all Kenyans.
- In October 2015, the Committee facilitated a meeting with other stakeholders in the Transport sub-sector to review the Kenya Roads Bill 2015. A common position on the Bill (for all the counties) was adopted during the meeting.

The Committee also participated in a regional meeting (Africa) on oil, gas, specifically investments in the sector and the role of governments and other stakeholders. The meeting, which took place in Cape Town on 21-31 October 2015, provided an opportunity for the counties and the Committee to reflect on the role of counties in spurring investment in the energy sub-sector.

### **Urban Development, Planning and Lands Committee**

Urban governance and development is critical to Kenya's growth and development. The rapid urbanisation across the country requires an effective response through provision of efficient urban services to facilitate and support urban development and to cater for the growing urban population. This entails a broad range of issues, from planning, land management, and other supporting processes. The Urban Development, Planning and Lands Committee was established to among other things, coordinate policy and legislative proposals related to urban development, planning and general land matters, engage with the national government and other institutions on urban governance and general land matters.

The activities of the Committee revolved around advocacy and lobbying for legislative and policy reforms related to urban development, land, and planning. During the reporting period, the Committee reviewed and prepared comments on the Community Land Bill (2015), the Land Laws (Amendment) Bill 2015, the Physical Planning Bill 2015 and the National Urban Development Policy. The meetings and consultation on the proposed Bills led to development of CoG proposals for inclusion. CoG recommendations for the National Urban Development Policy were finally incorporated in the Policy. The Committee also participated in a consultative forum on affordable housing. Being an area that County Governments are yet to fully implement (as required in the Fourth Schedule to the Constitution), the forum formed an important avenue for reflecting on how counties can best implement this function.

At the international level, the Committee organised counties to prepare their participation in the Habitat III Conference that will be held in Quito, Ecuador between 17 and 20 October 2016. The preparatory meetings by counties were focused on contributing to sustainable development goal no. 11 whose objective is to have safe, inclusive, resilient and sustainable cities. The preparatory meetings facilitated by the Committee resulted in a formal statement by the CoG that was presented at Habitat III. The Committee chair also participated in a study tour (as part of the Kenyan government delegation) to Glasgow in Scotland to learn about smart city and planning.

### **Tourism and Wildlife Committee**

The Tourism and Wildlife Committee focuses on CoG activities concerning the tourism and wildlife sectors. The Constitution divides responsibilities in this sector between the national and County Governments. The core role of this Committee, like the other committees of the CoG, is to facilitate avenues through which can engage on sectoral issues such as tourism policy and legal reforms. Other responsibilities include, technical assistance to counties and sharing of best practices.

The Tourism and Wildlife Committee facilitated a number of activities during the period covered by this report. The main activities included meetings to prepare for the annual "Miss Tourism" pageant. An activity that provides an opportunity for counties and the national government to showcase Kenya's tourism sector. The Committee also facilitated tourism branding meetings between counties and the Ministry of Tourism. With regard to sectoral policies and laws, the Committee held meetings with the national Ministry to develop a tourism strategy, a tourism policy, and county branding.

### **Water, Forestry and Mining Committee**

The Water, Forestry and Mining Committee facilitates the engagement of County Governments with all matters concerning management of water resources and services, environmental issues,

natural resources, and other related areas. The Committee's mandate revolves around policy, legal and institutional frameworks that touch on county functions in the respective sub-sectors, technical and capacity development of counties, consultation between counties and with the national government amongst other related roles.

The Committee engaged in a number of activities during the period covered by this report in the pursuit of its mandate. Its activities included facilitation of inter-county sectoral activities between the 47 counties, engagement with the national government and other national-based institutions in the respective sectors, and regional and international engagements. Consultation with the national government mainly focused on the pending sectoral transition issues that have proved an obstacle to the full implementation of county functions in the respective sub-sectors that are under the Committee.

In early February 2016, the Committee and the World Bank facilitated a meeting on commercial financing for water utilities, in an effort to come up with innovative means of sustainable provision of water services. The Committee also facilitated a water sector transition and reforms meeting in March 2016 to discuss reforms to the water sector under the proposed laws and policies. The Committee also discussed forestry transition implementation plans. In the same month (March 2016), the Committee discussed the water towers climate change and adaptation programme that covered 10 counties in the Cherangany and Mt. Elgon catchment areas.

In the month of April, the Committee held wide-ranging consultations with the national government on various issues under the Intergovernmental Sectoral Forum on Water and Environmental Issues. The main sectoral issues covered during the meeting were:

- The role of Regional Development Authorities in unbundled and transferred functions and projects
- Development of framework for engagement of Regional Development Authorities with County Governments
- Deployment of staff (transferred functions)
- Valuation of assets and liabilities and mode of transfer to county governments (transferred functions)
- Capacity building of County Governments in relation to transferred functions
- Framework for flow of direct finance of donor resources to County Governments for direct funded projects
- Framework for partnership and implementation of national government projects and shared functions
- Monitoring and evaluation of implementation of recommendations from intergovernmental consultative forums
- Revenue sharing formula between national and County Governments on wildlife and forest service
- Availability of land for creating conservancies and national reserves for communities
- Secondment of Kenya Forest Service officers to counties
- Budget facilitation for sectoral consultation forums
- Livestock infestation in parks and conservancies
- Development of county forest strategies (cascade national forest programmes)
- Reclassification of forests, national parks and national reserves
- The role of the National Environmental Management Authority (NEMA) and relations with County Governments

With regard to international engagements, the Committee was represented in the Global Clean Tech Summit that was held in Helsinki, Finland from 8-10 September 2015. Members of the CoG Secretariat attached to the Committee also participated in the Conference of Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) that was held in Paris, France from 30 November 2015 to 11 December 2015. The details of the forums are covered in section 3.5 of the report below under the section “regional and international engagements”.

### **Information, Technology and Communications (ICT) Committee**

The Information, Technology and Communications Committee (ICT) manages and oversees all communications by the CoG. This entails facilitation of media coverage for the CoG as well as dissemination of public information. The Committee also handles public complaints/ inquiries by members of the public regarding the CoG. The Committee has designed a system for receiving and processing general and specific enquiries that are received at the CoG Secretariat. Where a member of the public seeks general information or other information that is available to the Committee, the information is given to the member of the public. However, where the nature of inquiry requires a technical response, the matter is referred from the information desk to the relevant Committee or department. Physical visits to the CoG offices/ Secretariat usually exceed a monthly average of 660 people.

Apart from physical visits, the Committee has established other channels of information dissemination and engagement. Information desks are usually set up in all major forums or events organised or facilitated by the CoG. These include: the annual devolution conferences, public engagement forums, etc. During such forums, materials and information about the CoG and its activities are usually disseminated to members of the public and members of the public seeking specific information are usually assisted at the information desk.

There is also a strong and effective online presence by the CoG. The CoG has an official website that is regularly updated ([www.cog.go.ke](http://www.cog.go.ke)), a Facebook page, and twitter account @KenyaGovernors. As at the end of the period covered by this report, there were 44, 100 followers on the official twitter account of the CoG, and 12, 496 subscribers on the official facebook page of the CoG. The website statistics reveal a monthly visit of around 60 000 with sections such as “job vacancies” and “governors profiles” receiving the most hits. The Committee also maintains a separate website that is exclusively dedicated to the Annual Devolution Conference where materials and other information related to the annual conferences are posted.

Initially, there was a lot of mis-information about the work of the CoG and counties generally. There is low public knowledge and understanding of the work and mandate of the CoG. Often, county-related challenges and issues are attributed to CoG without an appreciation of the separate but related roles of the counties vis-à-vis the counties. The ICT Committee has endeavoured to inform the public about the general mandate of the CoG and the different organs of the CoG such as the CoG and CoG Secretariat. Furthermore, public engagements through the online forums and platforms as well as physical interactions have led to a more informed citizenry about the role and place of the CoG in devolved governance. Press statements, which are usually an average of 10 a month, have particularly helped to clear public confusion and by providing accurate information to the public.

### 3.4 Capacity building

One of the first challenges that County Governments faced soon after the March 2013 general election was the lack of capacity. The fact that the devolved system of government was new and many of the institutions were set up for the first time meant that County Governments had to go through the motions of setting new processes, systems and their attendant capacities in order to enable them perform their functions efficaciously. Capacity building, in turn is a function shared between various institutions.

The CoG is empowered under the IGRA to carry out capacity development for County Governments. The CoG has coordinated various capacity building for the 47 County Governors as well as various categories of officials in the county executive. The national government too has a duty to develop the capacity of county governments. The CoG participated in the development of the National Capacity Building Framework (NCBF) under which some of the capacity building for counties is currently being implemented. The CoG has specifically become a forum through which various efforts to build the capacity of counties are channelled and implemented. The respective sectoral committees coordinate capacity building for county governments. The following capacity building activities were carried out:

- 58 County technical officers from County Agriculture departments were on 7th December 2015 trained on data collection, management and analysis. The training was aimed at ensuring that the officers understand components of a functioning M&E system and evidence-based policy design and implementation. One of the capacity gaps that have been identified at the county level relate to M&E and this training sought to fill this gap.
- On 14 January 2016, and 16th and 19th February, county directors of livestock, and county hides and skin officers as well as slaughter managers and traders and tanners numbering 127 were trained on skin quality improvement. The exercise was aimed at understanding hides and skins quality improvement and production process as well as value chain addition.
- 36 CECs in-charge Agriculture, Livestock and Fisheries, Directors Of Livestock from the ASAL counties held a two day workshop on 8 and 9 February 2016 livestock in ASAL counties which was aimed at assessing the economic contribution of the livestock sector and strategies for enhancing production of livestock and a sectoral plan on the same.
- On 24 and 25 February 2016, the CECs in charge of Gender affairs from the 47 counties participated in a two-day workshop on gender responsiveness budgeting at the county level
- On 31 March 2016, CECs in charge of gender affairs participated in a one-day workshop where gender priorities in the MTP and the CIDPs were identified for county budgeting processes. The workshop aimed at understanding the international gender obligations on gender issues and how they relate to county budgeting.
- In November 2016, the CoG facilitated the establishment of a Gender Advisory Committee to support counties on a need basis
- The Finance, Planning and Economic Affairs Committee facilitated a training of the 47 County Governors on e-procurement
- The Finance, Planning and Economic Affairs Committee facilitated training of the 47 County Executives and 47 county chief officers on e-procurement

- The Committee facilitated the training of 400 county officials on the PFM and county assembly processes
- The Finance, Planning and Economic Affairs Committee facilitated training for 94 county chief officers and county accountants on internet banking
- The 47 Governors and CECs in charge of environmental affairs participated in a training on executive urban leadership facilitated by the International Centre for Local Democracy (ICLD). The training enabled the counties to prepare for UN Habitat III.

### 3.5 Resource mobilisation

The responsibilities bestowed upon the CoG require resources in order to ensure effective implementation. As mentioned in previous reports, resources have been a constant challenge for the CoG at two levels. First, there are resource needs that the CoG Secretariat requires in order to carry out its facilitative role with regard to the collective activities of counties at the CoG level. Secondly, individual County Governments require both financial and non-financial resources for their effective functioning. The CoG has responded in different ways to these two kinds of demands: first, the CoG has become a coordination and reference point for seeking partnerships with external institutions for purposes of mobilising and channeling resources and assistance to counties from potential development partners.

As a result, the CoG has managed to plan and implement resource mobilisation strategies based on county needs that have led to channeling of resources to both the CoG Secretariat and individual County Governments. An important initial step in this regard was the setting up of the Resource Mobilisation Committee of the CoG that has coordinated the implementation of resource mobilisation activities. The resource mobilisation activities that were carried out in 2015/26 under the Resource Mobilisation Committee include:

- During the 2015 Devolution Conference, the Resource Mobilisation Committee facilitated meetings with the private sector, that included a roundtable with development partners, UN Agency heads, Civil Society Organisations (CSOs) with the main agenda of seeking partnership and targeted assistance to the CoG and the County Governments
- The Resource Mobilisation Committee held various meetings with the World Bank under the Kenya Devolution Support programme (Programme for Results) that is aimed at strengthening service delivery in counties in the following sectors:
- The CoG coordinated and facilitated discussions with the European Union (EU) under the “EU-IDEAS” Programme. The project is aimed at providing grants to 15 select counties to spur local economic development through funding the implementation of some of the programmes and projects in the respective County Integrated Development Plans (CIDPs)
- Meetings between county development partner liaison officers from the 47 County Governments to discuss and share experiences, lessons, and opportunities for resource mobilisation in the counties
- Participation in the Development Partners Forum (DPF) meetings that are held bi-annually between the two levels of government and the development partners and usually focus on specific themes. The CoG attended a meeting in 2015/16 that focused on youth employment
- Participation in the Devolution Sector Working Group, a forum that brings together public institutions in the devolution sector and development partners. Specific

institutions include: the IGRTC, the Kenya School of Government (KSG), Controller of Budget (CoB), Ministry of Devolution and Planning (MoDP), and donor institutions working in the devolution sector. The SWGs are usually held on a quarterly basis.

- The Resource Mobilisation Committee participated in the review of the medium term interventions under the National Capacity Building Framework (NCBF)
- The CoG participated in the steering committee meetings of AHADI and UNDP that support various initiatives within the CoG.
- The CoG (through the Resource Mobilisation Committee), mobilised resources that facilitated County Governments to review their CIDPs by integrating the Sustainable Development Goals
- The Resource Mobilisation Committee continued with the coordination of placement of United Nations Volunteers (UNVs) at the county level in specific areas such as Monitoring and Evaluation, Statistics, public finance management in the 47 County Governments.
- The Resource Mobilisation Committee mobilised 17 ambulances from Hurrion Valley Ambulance, an American “not-for-profit” organisation. This included subsidised medical equipment from World Medical Relief Agency that included” beds and ICU equipment
- The CoG partnered with the Galilee Institute to provide 20 scholarships per county on various areas of devolved governance
- The CoG negotiated a new programme titled “Climate Smart Agriculture” with the World Bank that is to support agriculture programme in select County Governments.
- The CoG negotiated with “Big Win Philanthropy” to establish a data dashboard at the resource centre of the CoG
- AHADI was also mobilised to provide resources and equipment, both technical and physical to the CoG Secretariat



The Council of Governors during a meeting with UNICEF Kenya to discuss support to Early Childhood Education to counties.



H.E. Godana Doyo, Governor of Isiolo County, receives one of the tractors donated by the Turkish Cooperation and Coordination Agency.

Resource mobilisation activities have had great outcomes impacts to the CoG and the counties. The resource mobilisation activities have led to increased resources (human and financial) at the disposal of the CoG and the County Governments. The CoG's human and financial resources have been enhanced by partners who have come on board as a result of efforts of resource mobilisation.



**Left:** Chairman of the Council of Governors after discussions with the ambassador to the kingdom of the Netherlands Frans Makken after discussions on partnership in the water sector with counties. **Right:** the chairman of the Council of Governors with the German ambassador to Kenya, Mrs Jutta Frasch during a courtesy call to the CoG Secretariat offices.

There are specific arrangements that have led to the placement of human resource (such as statisticians, Monitoring and Evaluation specialists, legal drafters, etc.) in the various counties that are direct and indirect beneficiaries of activities out of resources mobilisation activities, e.g. the EU-IDEAS and SymbioCity programmes that are implementing activities in select counties. Increased funding to the CoG and the counties: direct and indirect. The longer-term impact will be increased local development in the target counties.

### 3.6 Regional and international engagements

Sharing of powers between the national level and other levels below the national government is a global trend. Many countries, including those that had a strong tradition of centralisation, are gradually dispersing powers to devolved units for service delivery, development and other related objectives. This makes the experience of other countries an important and relevant one for Kenyan counties. While the prevailing contexts in other countries may be different from the Kenyan one, engaging with them in different platforms may enrich the local context. In the period covered, the CoG participated in various regional and international platforms.

Furthermore, the CoG facilitated or participated in a number of study tours that focused on various. These activities had not only the impact of raising the profile of County Governments at the regional and international level but also enhancing the capacity and knowledge of counties and the CoG. Specific regional and international activities included:

- The Water, Forestry and Mining Committee was part of a Kenyan government delegation to the Global Tech Summit that took place in Helsinki, Finland between 8th and 14 September 2015. The Summit, which was themed on three issues, (Global Cleantech Strategies, Global Cleantech Conference, and Cleantech Innovations in Mineral productions) discussed various issues ranging from climate change, sustainable development goals, and Kenya's continued cooperation with Finland on implementation of SDGs and other assistance to achieve technological development in clean technologies. The Summit laid a basis for exploring further cooperation and collaboration. Counties are an integral part in achievement of SDGs and participation in the Summit assisted the counties and the Committee to focus on global goals when planning and executing activities.
- Governors and members of the CoG Secretariat attended the Conference of Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) that took place in Paris, France from 30 November 2015 to 11 December 2015. The objective of the forum was to secure a legally binding agreement that would provide a blue print for mitigation, adaptation and financing measures on climate change. The forum provided an opportunity for counties to contribute to the climate change agenda and to develop strategies and partnerships that can facilitate climate change solutions at the county level.
- The Chairman of the Land Planning and Urban Development Committee was part of a Kenyan government delegation that did a "Smart City and town planning" in Glasgow, Scotland in the United Kingdom (UK). The objective of the study tour was to expose the participants to the practicalities of Glasgow's Smart City in practice and to explore possibilities of research collaboration with Strathclyde University's Institute for future cities.

- The Roads and Infrastructure Committee participated in the 22nd Africa Oil Week Conference that was held in Cape Town. The Conference brought together players in the energy sector (government, private sector, investors, etc in the petroleum, oil, and gas sector) with a focus on how investment in oil exploitation affects governments. The forum provided a platform for Kenyan counties to discuss and strategise on how to engage with investments in the energy sector.
- Part of a Kenyan delegation (drawn from key state/ public institutions and a few non-state agencies) to Morocco between 15 and 22 May 2016 to assess and learn from Morocco's success in institutionalisation of Gender Responsive Budgeting (GRB)/ Gender and Economic Policy Management Initiative (GEPMI)
- Participation in the 60th Session of the Commission on the Status of Women that was held in New York in March 2016.



The Chief Executive Officer/ head of the CoG Secretariat Ms Jacqueline Mogeni with other delegates during a breakaway session at the Conference of Parties on the UN Framework for Climate Change (UNFCCC).



Mombasa County Governor HE Ali Hassan Joho and Cabinet Secretary in charge of Water Affairs during one of the COP sessions.



Kenyan and Moroccan government officials during the study tour to Morocco on Gender responsive budgeting (GRB) and Gender and Economic Policy Management Initiative (GEPMI)

### 3.7 Dispute resolution

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The Constitution requires an amicable settlement of disputes between the counties or between the two levels of government. Furthermore, there is a constitutional requirement that parties in intergovernmental disputes exhaust all avenues before approaching courts. The CoG has set up internal mechanisms to resolve formal and informal disputes between County Governments. The full Council usually establishes committees on an ad hoc basis depending on the nature of scale of dispute with clear terms and timelines of working. The committee then reports to the full council that adopts or varies the determination of the committee. Previous disputes dealt with in this manner include: boundary disputes between counties, finances, etc. Furthermore, potential disputes between the national County Governments have been resolved through negotiation.

However, there are also a number of disputes that are currently in courts of law. There are a total of 41 cases where the county is involved. Among the cases include: Appeal from the decision of the High Court on County development Boards, summoning of County Governors to the Senate, removal of members of the county executive, disbursement of the equalisation fund, among other cases. The cases are at different stages of hearing.

The IGRTC has proposed in its Strategic Plan (2016 - 2022) to facilitate the development of a framework for Alternative Dispute Resolution (ADR). While disputes between counties and between the national and County Governments have been resolved through informal dispute resolution channels, the anticipated framework will bring matters to a formalised and definite process. The lack of a formal framework for resolution of disputes has contributed to the rise of cases filed in courts of law. The CoG, therefore, welcomes the development of the framework and will participate and provide input.

### 3.8 Finance, Human Resource and Administration

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The CoG Secretariat, as explained in Chapter 2 of this report, is the technical and execution arm of the CoG. The Secretariat provides administrative support systems that enable the County Governments to collectively pursue the mandate of the CoG. Throughout the last three years, the CoG has continually improved the Secretariat in order to enhance efficiency and productivity in terms of the CoG functions and expected impacts. The CoG has however faced resource constraints that hindered it from achieving optimal staffing levels at the secretariat as well as financial resources to carry out all the planned activities.

#### ***Human Resource and Administration***

The revised organisational structure of the CoG has a target of 88 members of staff. However, due to the challenges indicated above, there are currently 56 members of staff meaning that there is an actual staff shortage of 32 staff members. The CoG employs 27 of the members while the rest are seconded or supported from the national government and development partners (UNDP, AHADI, INTRAHEALTH, and DAI). The number of staff members employed directly by the CoG increased from 13 in 2014/15 to 27 in 2015/16 financial year representing a more than 100 percent increase in the number of direct employees.

The CoG has endeavoured to ensure diversity of the secretariat and the composition of the staff represents the diversity of communities from across the county. There are 25 male and 26 female staff members representing an almost 50-50 percent gender representation in the Secretariat. Furthermore, the majority of the Secretariat (32) are youth who are the age of 35 and below.

During the period, the CoG also managed to revise the organisational structure (provided under chapter 2 of the report), and internal reorganisation, including reporting lines for the members of staff. The Human Resource Department has also managed to review the performance appraisal system and has set clear performance system and key result areas for members of staff, including a performance management framework that is meant to evaluate and assess performance of staff.

Among the planned activities for the human resource department include: staff placement in accordance with the approved revised organisational structure, implementation of career progression, review of the human resource policy manual, development of staff capacity and welfare, development of coaching and mentoring programmes, and development of succession planning policy.

In order to achieve the above, the Human Resource Department has planned a number of strategies based on available resources. These include: implementation of the reward system, competitive remuneration, staff capacity development (communication and welfare matters), adequate institutional infrastructure, implementation of three year contracts, and automation of office operations.



CEO and head of Secretariat of the Council of Governors, Ms. Jacqueline Mogeni at a past event.



Part of the Secretariat during one of the charitable events held as part of Corporate Social Responsibility (CSR) for the Council

### **Finances**

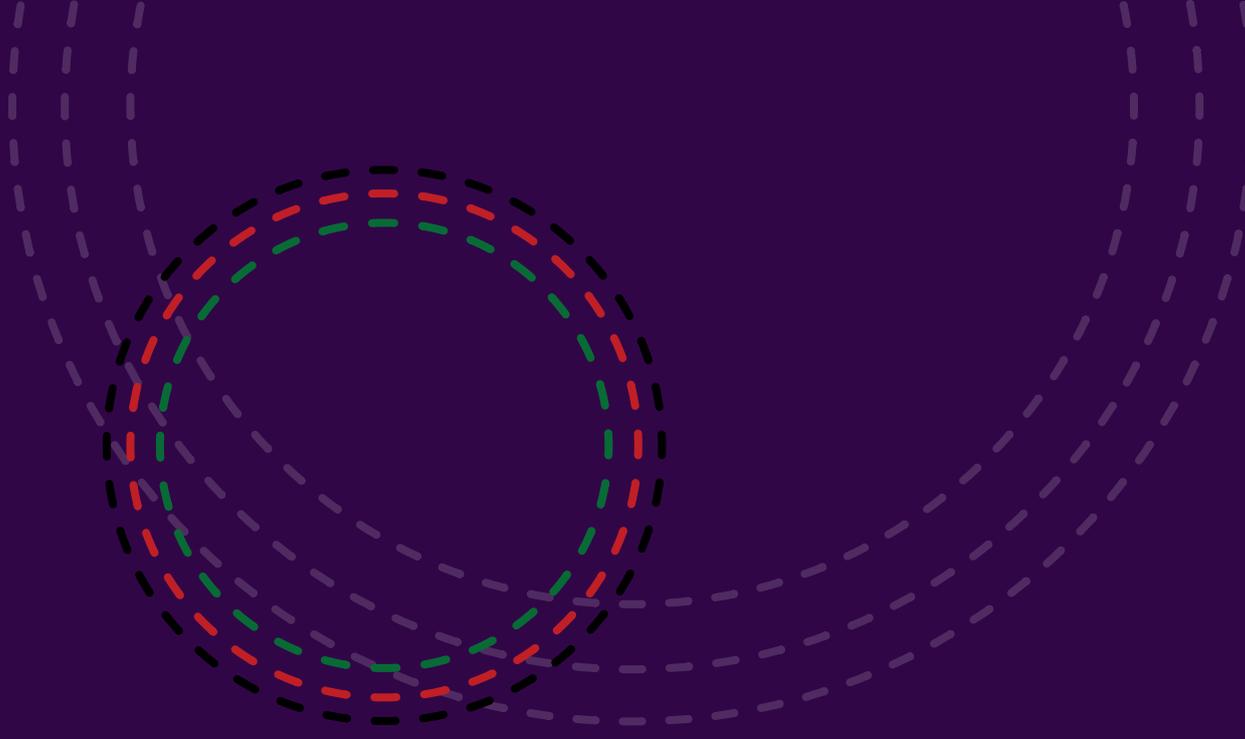
The finance department of COG plays a pivotal role by coordinating and ensuring efficient use of resources availed to the CoG Secretariat. Accordingly the finance department supports the activities of all the structures established under the CoG Secretariat. Section 37 of the Inter-Governmental Relations Act (IGRA) stipulates that the Council will run its own operations as per the mandate outlined under Section 20 of the IGRA. Section 37 (d), it is specified that the CoG can establish sectoral groups so as to carry out its mandate effectively. Furthermore, it states that the operations of the Council and its working groups are to be funded by the national government.

The mandate and responsibilities of the CoG are spelt out in the IGRA and activities undertaken by the CoG have been elaborated in the previous chapters. Among some of the activities supported by the resources at the disposal of the CoG include: establishment of a resource centre to share best practices with the counties, facilitation of meetings for county executives on various issues, capacity building activities for various categories of county officials, development of model legislation, among other initiatives that have been reported in detail in the preceding chapters. The CoG has also organised three devolution conferences with the support of the UNDP, AHADI, IDLO and DAI among other partners.

The achievements above were a culmination of the efforts of many individuals and stakeholders who provided their expertise and capacity in support of the work of the Council. During the 2015/2016 Financial Year, the Council did receive an allocation of Ksh. 30.5M and a further Kshs 64 M from the supplementary budget of 2015/2016. However, the CoG also mobilised resources from other partners to support various activities and programmes.

<b>Name of Donor</b>	<b>2015 – 2016 (Kshs)</b>
Contribution from County Government	597,257,254.50
UNDP	102,781,539
AHADI	34,627,447
Lap Trust	120,000
Delloitte	1,500,000
Co-operative Bank of Kenya	500,000
UN-Women-UNDP	8,831,700
Price Waterhouse	700,000
Nether land Development Organization	150,000
SALAR Symbiocity Development project	111,488,659
IDLO	4,300,000
UNCEF	1,200,000
National Bank of Kenya	5,000,000
Telkom	130,000
D.T.Dobie	510,000
UNFPA	<b>500,000</b>

Asset class	Historical Cost (Kshs)	
	2015/16	2014/2015
Land		
Buildings and structures		
Transport equipment	<b>23,098,086</b>	<b>17,294,532</b>
Office equipment, furniture and fittings	<b>31,038,577</b>	<b>53,626,350</b>
ICT Equipment, Software and Other ICT Assets	<b>6,096,085</b>	<b>17,587,758</b>
Other Machinery and Equipment		
Heritage and cultural assets		
Intangible assets		
<b>Total</b>	<b>60,232,748</b>	<b>88,508,640</b>



## Chapter Four

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# Service delivery in the counties and the role of the CoG:

Emerging results and  
achievements



#### 4.1 The context of county service delivery

The first three years of county existence were mostly dedicated to ensuring an effective transition to county governments. The CoG was thrust into the midst of negotiating for enabling environment for counties to deliver services and pursue their mandate. While most efforts and resources were spent in putting in place institutions and processes required by the respective constitutional and legal framework, the transition period has had a profound effect on the actual delivery of services at the county level. Much energy, time, and resources to put in place institutional structures and the results, in terms of service delivery, are beginning to emerge.

As this and previous reports have demonstrated, the CoG made a number of important scores in ensuring smooth transition and these included: participation in the development of national legal and policy frameworks, consensus building amongst counties on transition issues, assessment and facilitation of capacity development, advocacy for resources and powers to the counties in specific areas of service delivery, etc. However, and as noted in the earlier chapters of this report, while the formal transition period ended in March 2016, there are many pending transitional activities that will hopefully be addressed by the IGRTC and other bodies that took over residual responsibilities from the now defunct TA and CIC.

Yet, even if counties were to be judged on their incremental provision of services from the first day, many of the challenges with regard to service delivery long preceded the counties and the challenges were the main motivation for the establishment of the devolved system of government. Decades of centralised governance led to bureaucratic inefficiencies and disparities in the provision and access to essential services in this country, a case in point is the health sector that had basically collapsed. Local governments were systematically denied resources and powers over essential areas of service delivery. Instead, central government institutions that were neither accountable to the people nor well coordinated were left to discharge essential functioning. These challenges extended to specific sectors such as Agriculture, Health, Education and social development. Roads and infrastructure development was also taken from the local authorities and centralised in district roads boards that had neither capacity nor resources to carry out the mandate. The criteria used to allocate resources were not transparent and mainly relied on the individual discretion of accounting officers of sectoral ministries. The end result was the decline in the quality and access to essential services across the sectors and a concomitant decay of local authorities, the only level of government that was formally accountable to local communities.

Accordingly, County Governments found themselves in an environment where there was not only an unclear legal and policy framework but also challenges and problems that have accumulated over the years. However, counties have commendably established the fundamental structures for service delivery over the four years of their existence. Evidence that is emerging across the sectors shows that counties are making steady progress in enhancing access to essential services and spurring local development at the county level. Specifically, surveys and studies done in sectors such as education, health, and agriculture, reveal an incremental growth in institutions, structures, and service provision channels that are meant to enhance specific essential services. In other sectors, such as health for instance, there is demonstrable evidence that there is increased access to essential health personnel, primarily as a result of the efforts and focus of counties in this critical sector of service delivery. The sections below briefly discuss the emerging outputs and outcomes in terms of service delivery as a result of County Governments.

#### 4.2 County resources and sectoral priorities

Counties have received three allocations from revenue raised nationally. The county equitable share forms the largest and most important share of county revenues to finance service delivery. In 2013/14, counties received Kshs 261.1 billion that was increased to Kshs. 313 billion in 2014/15 and finally to Kshs. 361.13 billion in 2015/16. County reports over the years have given an indication of the budgetary and expenditure priorities over the years showing the aggregated priorities of the counties in the first term of office for the counties.

The health sector received the largest allocation by the counties receiving an average of 21-25 percent of the resources for the last three financial years. The second largest aggregate allocation was the Public Works, Transport and Infrastructure Sector with an approximate average allocation of 13-15 percent, followed by Finance and Economic Planning sectors at an average of 10-14 percent. Other sectoral allocations were as follows:

- Education, Youth Affairs and Sports, 8.2 -12 percent
- Agriculture and Livestock Sector, 6.6 - 8 percent
- Water, Energy and Environment, 6.5-7.5 percent
- Physical Planning, Lands and Housing, 4.9-6 percent
- ICT and e-Government, 1.3-2 percent

The allocation by counties to the sectors as highlighted above was informed by various factors. The institutions and systems inherited by counties required initial capital investments, such as, building of health facilities, transport infrastructure, and other initial investments with cost implications. These initial investments were necessary as part of the first steps in service delivery by laying down the essential infrastructure for the effective delivery of services across the sectors.

Counties faced several challenges related to the budgetary and expenditure process during the last three years. Most of these challenges have been highlighted in the previous sections of this report as well as previous reports of the CoG. Main challenges that counties have collectively faced included:

- Inadequate resources to ensure effective service provision
- Irregular and delayed disbursements from the National Treasury
- Capacity challenges in planning and monitoring of performance in implementation, lack of clear legal and policy frameworks at the national level, among other challenges.

For each of the general challenges above, the CoG has employed specific means and strategies of ensuring that these challenges are addressed and the obstacles for county service delivery at the national level are unlocked. Among the specific successes that the CoG can claim with regard to resourcing of counties for delivery of services and development include:

- Securing an agreement to have efficient and prompt disbursement of resources from the National Treasury to the County Governments
- Postponement of the application of e-procurement guidelines that were threatening to paralyse service delivery
- Review of Bills and policies at the national level that impact the manner in which counties manage their finances. This includes the Division of Revenue Bill that determines the overall county share

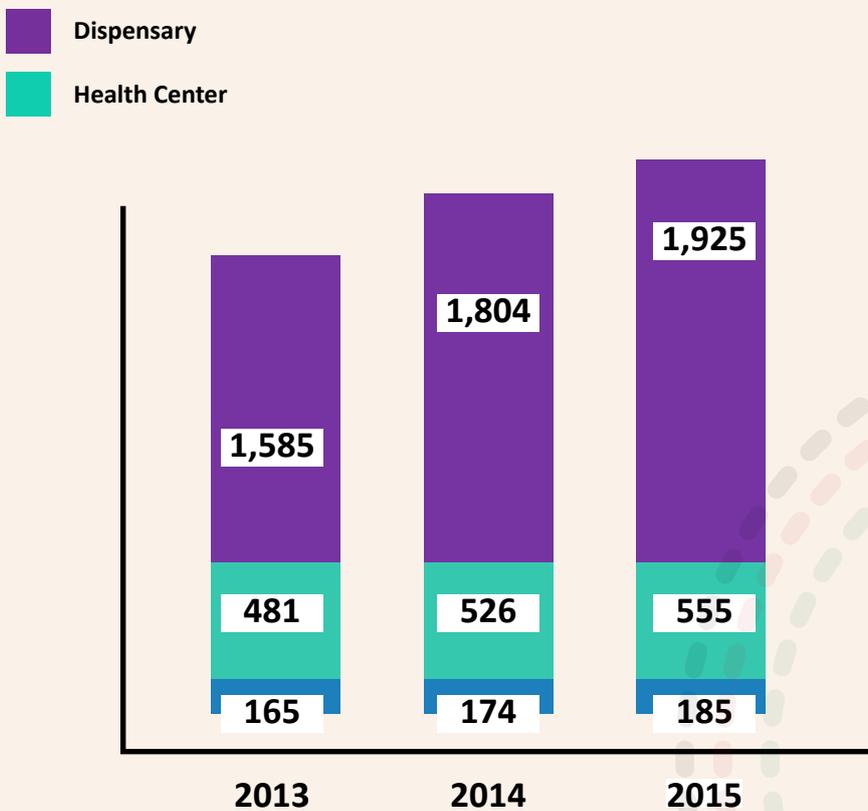
The ultimate result is that counties have been progressively able to plan and utilise resources in a manner that responds to needs of communities in the respective counties.

### 4.3 Sectoral performance

#### Health

A healthy population guarantees a working population that grows the economy. This makes the health sector and the services offered one of the most critical sectors in service delivery. Sector allocations grew from 54.81 billion shillings to 65.8 billion and finally to 75.8 billion across the counties representing the above noted average of 21 to 25 percent. This means that counties were well above the recommended minimum of 15 percent allocation to the health sector in the Lagos Plan of Action that requires governments to dedicate at least 15 percent of their budgets to the health sector. While the sector spending was one of the highest, a breakdown of the sector budget also reveals within-sector spending trends. Development expenditure remained relatively low compared to recurrent expenditure. The highest expenditure item in the recurrent budget was salaries and personnel emoluments that were at a high of 69 percent in 2014/15.

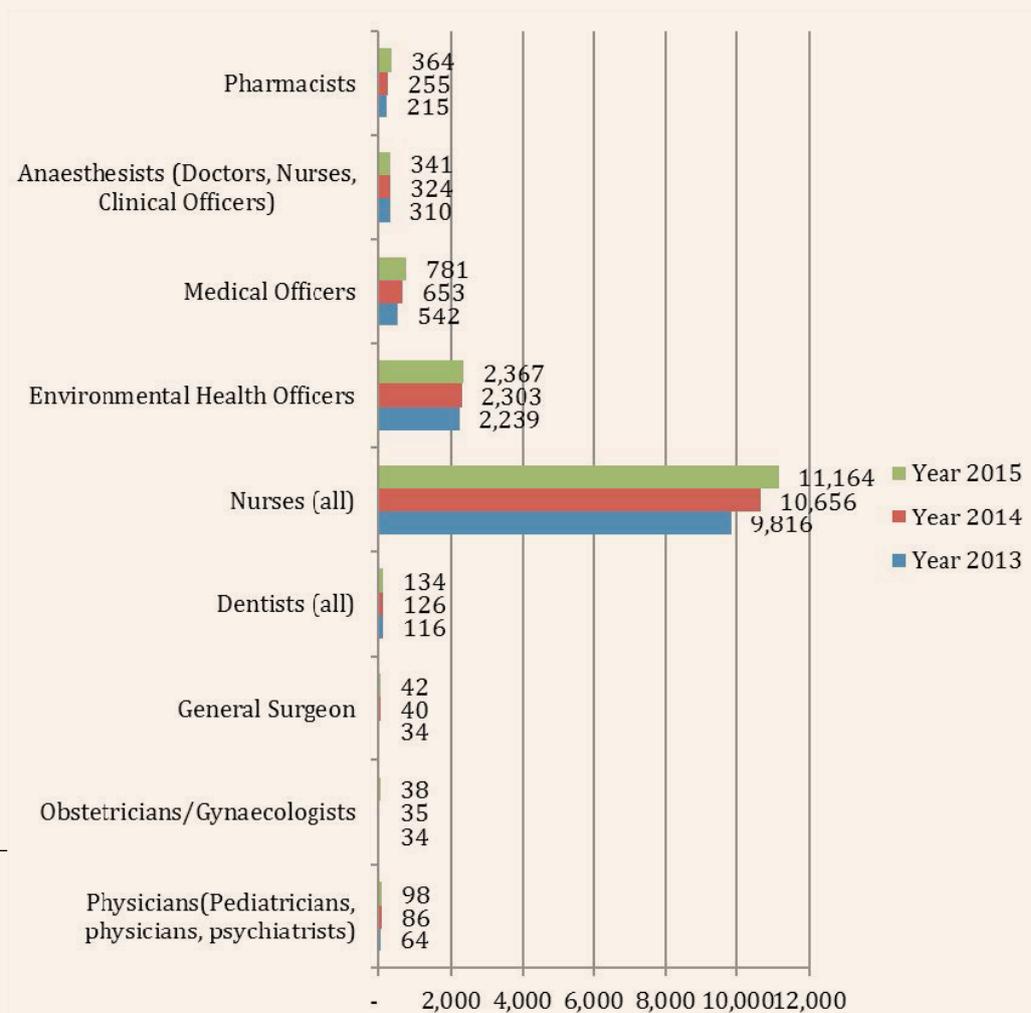
The investments in the health sector have seen a remarkable rise in health infrastructure. From just over 8500 public health facilities (dispensaries, health centres, and hospitals) in 2012, the number has risen over the last four years to 10 032 facilities. The graph below shows the rise in each category of facilities between 2013 and 2015.



Source: Council of Governors 'Communicating County Results' (Consultant's report) (June 2016)

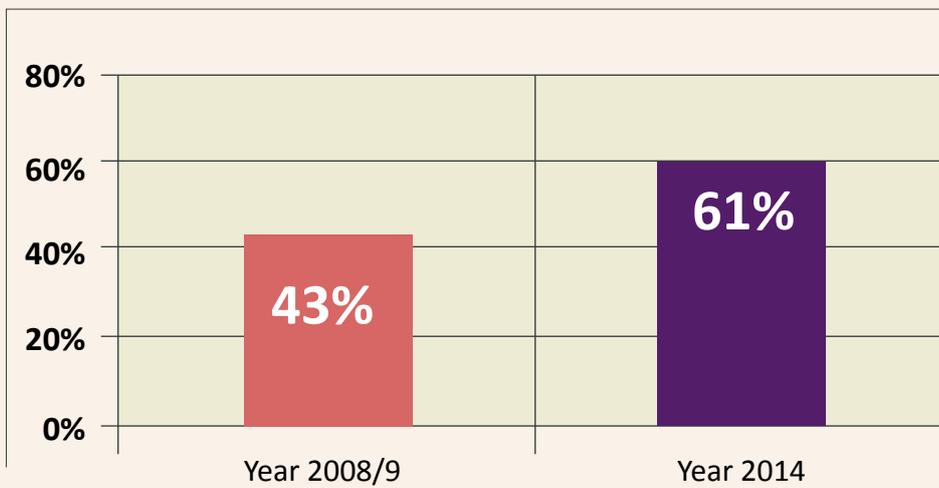
In addition, the sector has seen more professionals hired to provide health services and this has arguably enhanced access to health services. What is remarkable is that the increase of facilities is balanced across the 47 counties and is actually more pronounced in rural areas where the counties have managed to focus their resources and efforts.

Among the objectives of devolved government was to enhance access to basic services in marginalized areas of the country. Mandera County, for instance, has had the first delivery by caesarean section in 50 years after independence. There are also significant changes in health workforce; the nurses have, for instance, increased from 51 to 175 representing a 243 percent change. Mandera is in the North-Eastern region that has been marginalized and is now having gains under devolution. This trend is replicated across all counties. The figure below the changes in numbers of the different health professionals nationally between 2013 and 2015



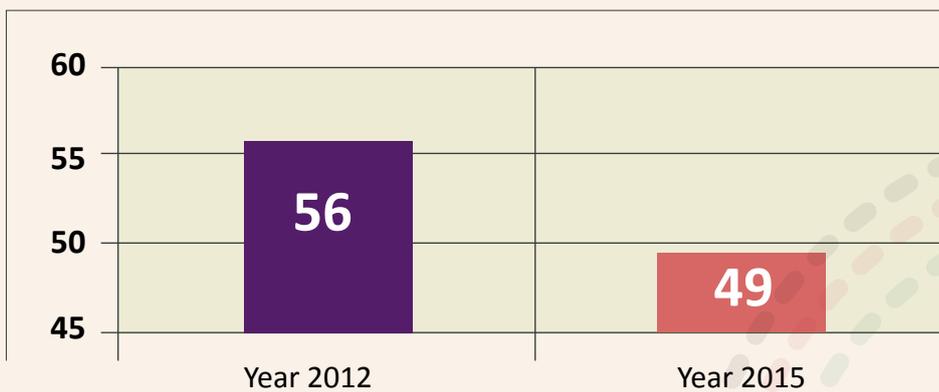
**Source:** Council of Governors 'Communicating County Results' (Consultant's report) (June 2016)

The initial investments by County Governments in the health sector have contributed to actual improvement of specific health services. For instance, there is a significant increase in the number of deliveries in health facilities across the country since 2014. Number of children born in health facilities has increased from 43 percent in 2008/9 to 61 percent in 2014. Furthermore, there is a significant drop in child mortality rates from 56 percent in 2008/9 to 49 percent in 2014. These general improvements can be partly attributed to the investments that the counties have collectively made in the delivery of health services.



**Source:** Council of Governors 'Communicating County Results' (Consultant's report) (June 2016)

Drop in child mortality per 1,000 live births



**Source:** Council of Governors 'Communicating County Results' (Consultant's report) (June 2016)

The CoG's Health Committee has since its inception sought to address the challenges facing the delivery of services at the county level, the Committee's activities are covered under Chapter 3 of this report. While there are positive indicators of growth in health services, there are a number of sectoral challenges that the Committee has sought to address. For instance, the Health Sector

is one of the main sectors that are yet to have a substantive legal and policy framework at the national level. This has, in many cases, led to confusion in the division of resources and responsibilities between the two levels of government. The Health Bill is nearing completion and it will provide a basis for further clarity in the division of responsibilities within the sector. Current engagements by the Health Committee that seek to enhance service provision include:

- Participation in negotiations with partners and stakeholders on the roll-out of Universal Health Coverage (UHC)
- Partnerships to mobilise resources for service delivery to counties
- Policy discussions to ensure that Human Resources for Health (HRH) are allocated optimally in order to ensure efficient, equitable and quality provision of health services
- Facilitating quarterly planning for county executives in charge of health to identify county sectoral priorities and to set goals and objectives for the sector
- Development of materials and publications on the right to health for public information and dissemination
- Coordinating and facilitating capacity building for counties

While the counties have made significant steps in the delivery of health services, there is a need for continued engagement with the national Ministry of Health and other stakeholders in order to ensure even better results from the counties in terms of delivery of health services.

### **Education**

Education is one of the crucial sectors for service delivery in the country. County Governments share functions in this sector with the national government. The former local authorities played a minimal role in the sector with only the few and larger local authorities (such as the former Nairobi City Council) having some limited functions in the education sector. The entry of the 47 counties in the education sector has seen marked improvement in the provision and access to educational services in a variety of ways. First, County Governments have been allocated powers over pre-primary education and tertiary educational institutions. There was a general neglect of these sectors in the period before devolution: 65 percent of children (mostly in rural areas) did not have access to pre-primary educational facilities.

Equally, the tertiary education sector was a neglected area of education before devolution. The challenges included inadequate financing to village polytechnics, low motivation, and lack of basic instruction facilities and inadequate staffing across the country. Furthermore, while the national government had established a number of educational bursaries, these were hardly enough to cater for demands.

The above challenges led to a prioritisation of education sector in county budgeting and planning across the 47 counties. Aggregate County spending in education amounted to an average of 8.2 of total county sector allocations. This amounted to Kshs. 21.4 billion in 2013/14 and Kshs. 25.69 billion in 2014/15 and further rising to Kshs. 29.6 billion in 2015/16. There has been general improvement in ECD, tertiary education, and bursary facilities in the 47 counties.

Counties have, in total, hired approximately 30 000 teachers for ECD facilities and built 6000 ECD centres across the 47 counties. One of the obvious outcomes of this initial investment is the rise of the number of admissions into ECD facilities across the country: from 1 691 286 admitted to ECD in 2013, the number has seen a sharp rise to 2 074 061 total enrolments of children into ECD facilities across the country in 2016.

Many counties constructed new village polytechnics and refurbished the existing ones. Counties also hired new instructors during the same period. This has seen an increased enrolment of students into village polytechnics from 59 635 in 2013 to 80 905 in 2016. Furthermore, all the 47 counties have made a provision for educational bursaries to local and foreign institutions.

The Education, Youth, Sports, Culture and Social Services Committee is leading the CoG engagements in the Education Sector. The challenges main challenges faced by counties in the sector include:

- Inadequate resources and funding to counties for the effective provision of sector services
- Policies that are not aligned to the Constitution of Kenya 2010, a case in point is the ECD Policy that the Committee has facilitated meetings for its review
- Delayed rationalisation of personnel and human resources between the national and county levels
- Challenges in cooperation to review education sector laws that do not conform to the Constitution of Kenya 2010

The Education, Youth, Sports, Culture and Social Services Committee has over the last financial year carried out activities to address the challenges identified above.

### ***Roads and Transport***

The roads and transport sector is a critical sector as it supports the movement of people and goods which is important for the development of the economy. County Governments have over the last three years dedicated resources to the development of transport and infrastructure. The resources went into: rehabilitation of existing roads, construction of bridges and culverts, and grading of new roads. Counties have responsibility over 121 113 kilometres of roads against the 39 995.1 kilometres under the national government. Of the roads under the counties, approximately 87 000 kilometres of roads have been made fully functional by the counties.

It is notable that the roads and transport function has resulted in the expansion of this important infrastructure in marginalised areas and regions of the country. For instance, the County constructed the first tarmac road in Mandera County after 2013. In the neighbouring Marsabit County, there was only 2 kilometres of tarmac in the pre-devolution era but this has been expanded to 226 kilometres of tarmac, including an additional 1842 kilometres that has been graded in the county.

The Infrastructure and Energy Committee of the CoG provides technical assistance to county governments and facilitating sharing of information, innovation and technology in infrastructure development. The Committee has also facilitated discussions on the division of responsibilities in the roads sub-sector through the classification of county roads.

### ***Agriculture***

Agriculture is the highest contributor to the country's GDP and is also the highest employer in the country with most of the employment. Majority of Kenya's population, which is rural based, is dependent on agriculture as their mainstay. It is therefore an important sector for the national and County Governments if they are to improve the quality of lives of majority of the people. County Governments have prioritised the agricultural sector: agriculture and livestock account for 6.6 percent of county spending for the last three years of county allocations.

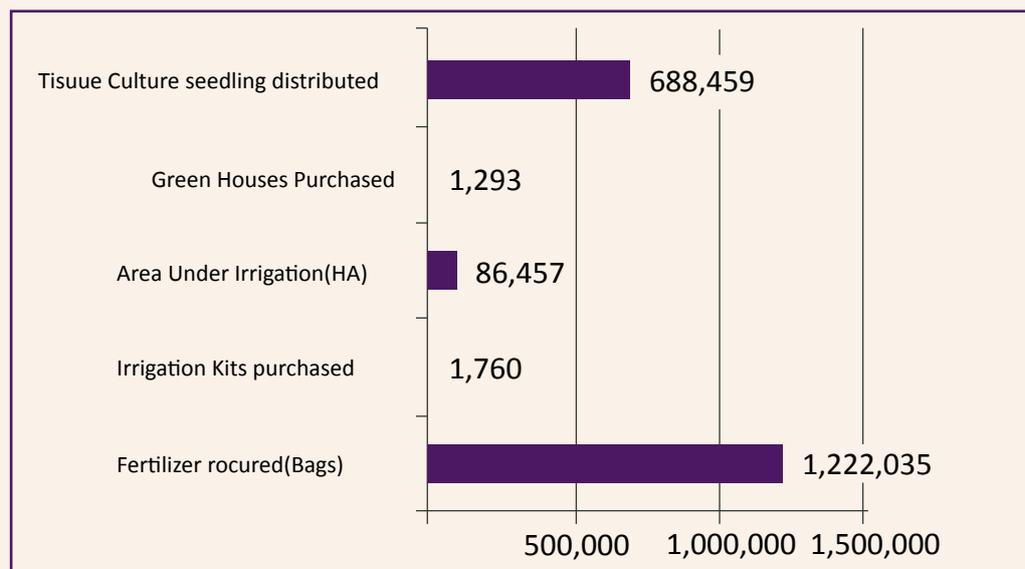
In the year 2013/14, the sector received Kshs. 17.23 billion rising to Kshs 20.6 billion in 2014/15 and further rising to Kshs. 23.8 billion in 2015/16.

The Agriculture Committee of the CoG has identified and engaged the national government and other sector agencies on issues meant to enhance county service delivery in the sector. The Committee has reviewed policies and laws to ensure their compliance with the Constitution of Kenya 2010. The Committee has also participated in the establishment of intergovernmental structures for consultation and cooperation with the national government. This has in turn ensured continuous consultation on sectoral issues.

Most of these funds have been directed to investments geared at increasing productivity, value addition, and market access. Counties have invested mechanisation of agriculture through provision of agricultural machinery to farmers at subsidised costs. The counties have also provided extension officers who offer services on improved farming methods. The Committee has also facilitated the clustering of counties into specific sub-sectors in accordance with their productivity. The Committee also organised and coordinated joint procurement of fertilizer with the MoALF. These efforts by the CoG have led to creation of a suitable environment for the provision of agricultural services at the county level.

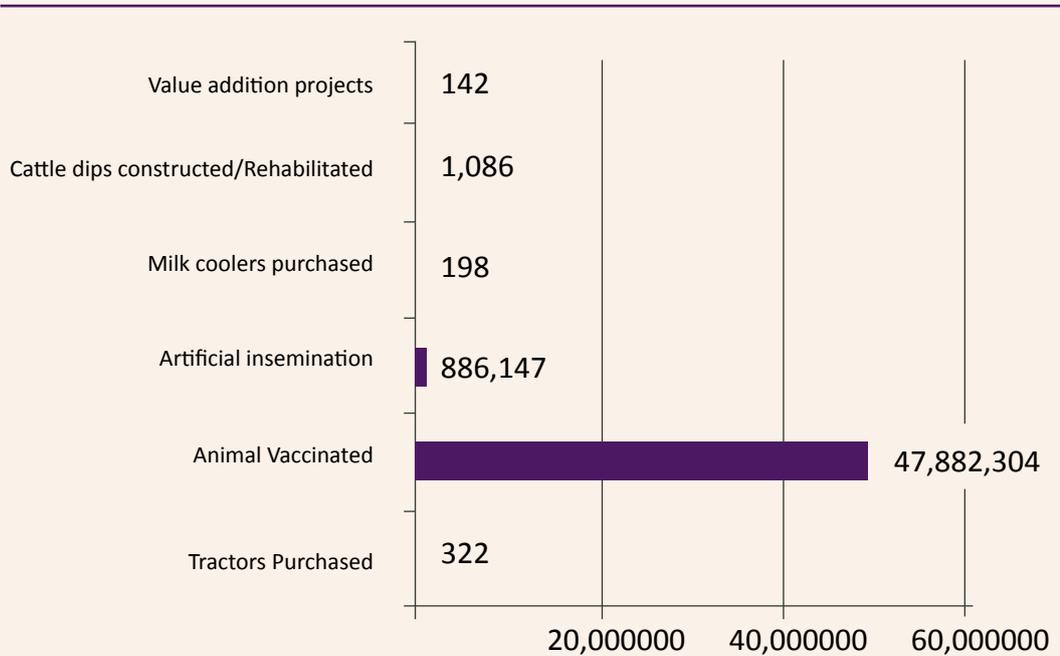
More importantly, county investments in Agriculture have led to expansion and increased productivity in areas that were considered to be less productive in the era before devolution. For instance, areas such as Ukambani that were known as agriculturally unproductive have improved as a result of investments in the sector. The land under cultivation has since increased and soil erosion and degradation is on the decrease in the region.

#### Indicators of crop production



**Source:** Council of Governors 'Communicating County Results' (Consultant's report) (June 2016)

**Indicators for livestock and dairy production**



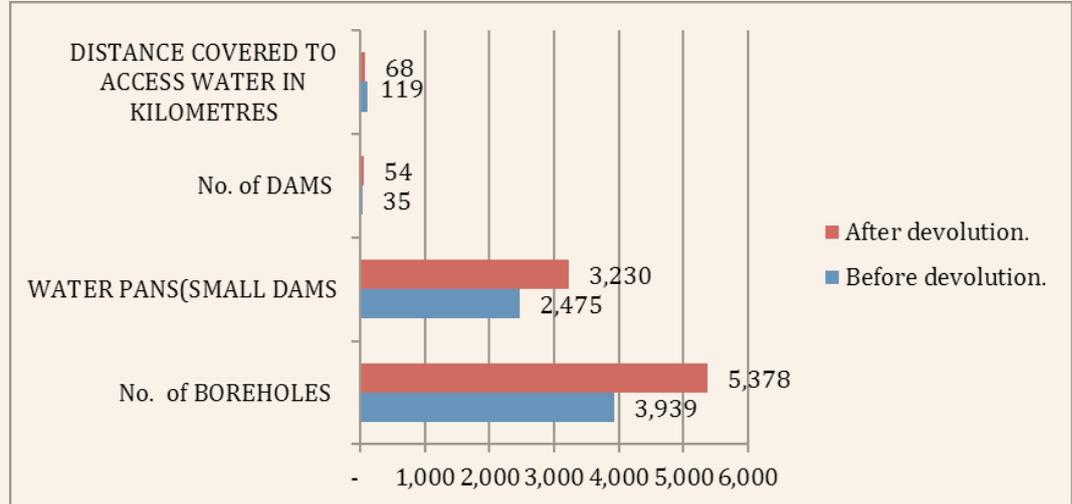
**Source:** Council of Governors 'Communicating County Results' (Consultant's report) (June 2016)

**Water, Forestry, Mining and Environmental Sectors**

Under the Fourth Schedule to the Constitution, County Governments are responsible for water conservation, storm water management in built-up' areas, and water and sanitation management. The National Government, on the other hand, is in charge of protection of the environment and natural resources, provides water protection, secures sufficient residual water, and oversees hydraulic engineering and the safety of dams. This is in addition to policy-making and regulation for water resource management; Counties are responsible for implementing these policies.

There has been a consistent improvement in the access to water services from 55 percent in 2007 to 57 percent in 2015. Counties have generally prioritised water services leading to the increase in the access to water across the country. In 2014/2015, County Governments allocated over Kshs. 14.37 billion to water and sanitation. Total spending on water and sanitation has grown consistently since 2007. The result is that there has been consistent increase in the provision of water services as demonstrated below.

### Provision of water services: indicators



**Source:** Council of Governors 'Communicating County Results' (Consultant's report) (June 2016)

Apart from water and sanitation services, counties are also keen to invest in the expansion of forest cover. The national target for forest cover is 10 percent and counties aim at ensuring that this target is met. There are various county programmes that are focused on increasing forest cover and this has led to a slight increase in the national forest cover: from 6.99 percent before 2013 to the current 7.24 percent national cover. With the right focus, effort, and resources, the target of 10 percent national coverage will be achieved.

The Water, Forestry and Mining Committee has been heavily involved in the negotiation of various legal and policy frameworks at the national level in order to guarantee county space in the sector. While the main legal and policy frameworks are not yet in place, the CoG has presented the collective position of County Governments through various processes. Furthermore, the CoG Committee has negotiated for the representation of County Governments in the various sector institutions, such as the National Environmental Complaints Committee. The functions in this sector are shared with the county governments and a county voice is required in critical structures that address various sectoral issues.

### Other sectors

Other sectors that County Governments have had an impact include the trade and investment sector where counties have invested in the provision of trade and investment infrastructure such as the construction of market stalls. The number of markets has almost doubled from 362 in the period before devolution to the current 651. Counties have also come together under regional economic blocs in order to leverage their collective strength in trade and development. Similarly, the number of cooperatives as well as the number of people who are members of cooperatives has increased since the adoption of devolution.

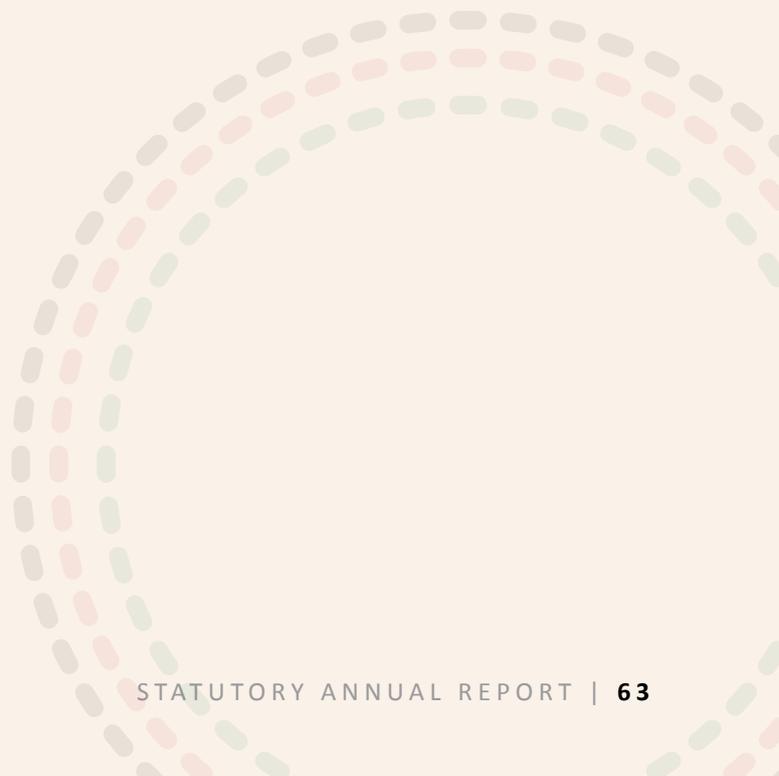
County Governments have developed policies and laws to mainstream youth and women issues in all spheres of governance. There are specific and general programmes across the 47 County Governments targeting women, the youth, and persons with disabilities (PWDs) in specific areas such as procurement, micro-enterprise support, training of women and youth groups, etc. Counties have also made various investments in county tourism and cultural activities. Counties have developed various pieces of legislation and opening of new tourism and leisure activities such as recreation parks, nature trails, conservancies, safety and navigation sites, camping facilities, museums and sanctuaries, etc.

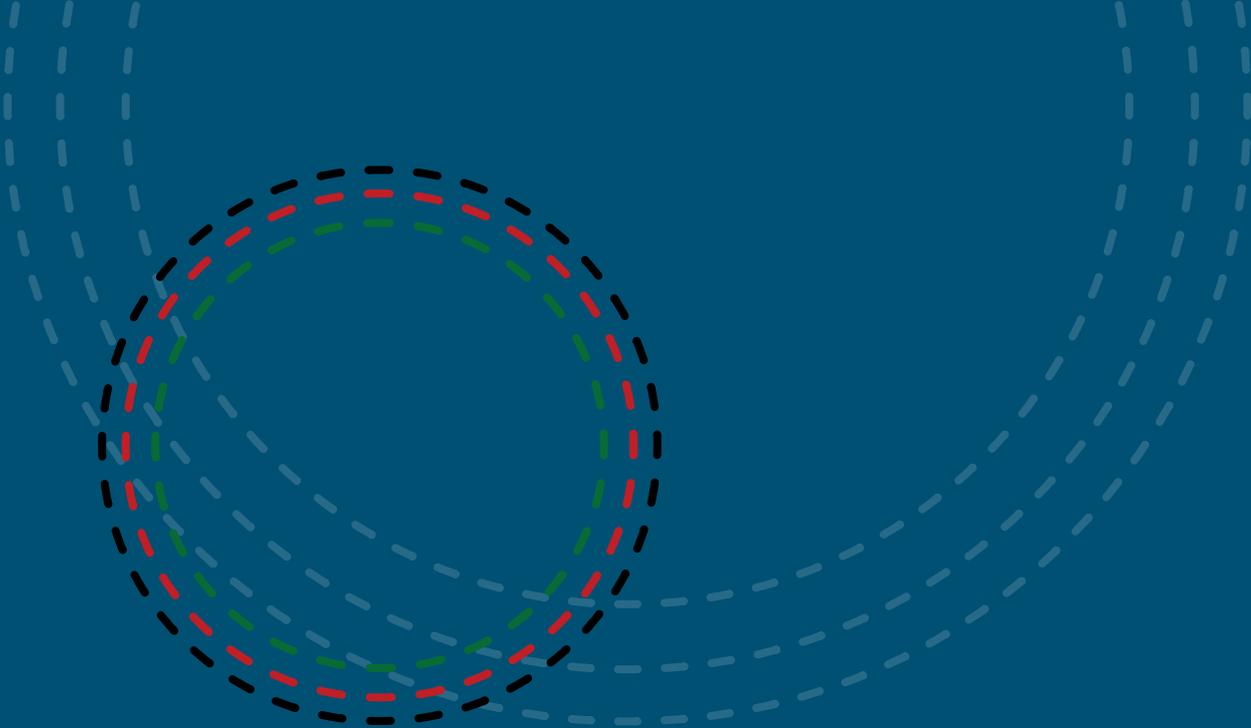
#### **4.4 The role of the CoG in county service delivery and development**

As the apex body of horizontal intergovernmental relations, the CoG has played a significant, but often indirect, role in the emerging results from the counties. The transition challenges alluded to earlier in this report had a potential to negate many of the service delivery processes in the counties. The CoG has managed to engage with the national level in general matters as well as specific sectoral issues that have opened space for counties to enhance service delivery. First, the vagueness of the framework for the division of national and county functions has a potential to disrupt service delivery due to the lack of clarity on the nature and extent of county mandates. However, through the CoG, a number of sectoral functions have been clarified paving way for actual implementation by counties. An appropriate example here is the transport and roads sector where classification of functions between the two levels has been mutually agreed.

Public finance management at the national and county levels is usually affected by a number of national level processes that include: delays in disbursements to counties, national regulations (such as e-procurement), and lack of consultation of counties. The direct impact of such processes is a disruption of county services. The CoG has managed to tackle each challenge and arrived at various mutually agreed ways to streamline important national level processes that have a direct impact on county finances. Specific examples here include: development and adherence to county disbursement schedules, agreement on framework for the management of conditional grants, suspension of the rules on e-procurement, etc. These negotiations carried out under the auspices of the CoG have enabled the counties to carry out activities that have contributed to the results discussed in this section.

The CoG has focused on developing the capacity and skills of counties in different areas in order to enhance productivity and better results. This has involved training of county staff, seconding professionals to counties based on county requests, mobilisation of resources for counties in specific areas, etc. The direct impact of these efforts is better quality services at the county level.

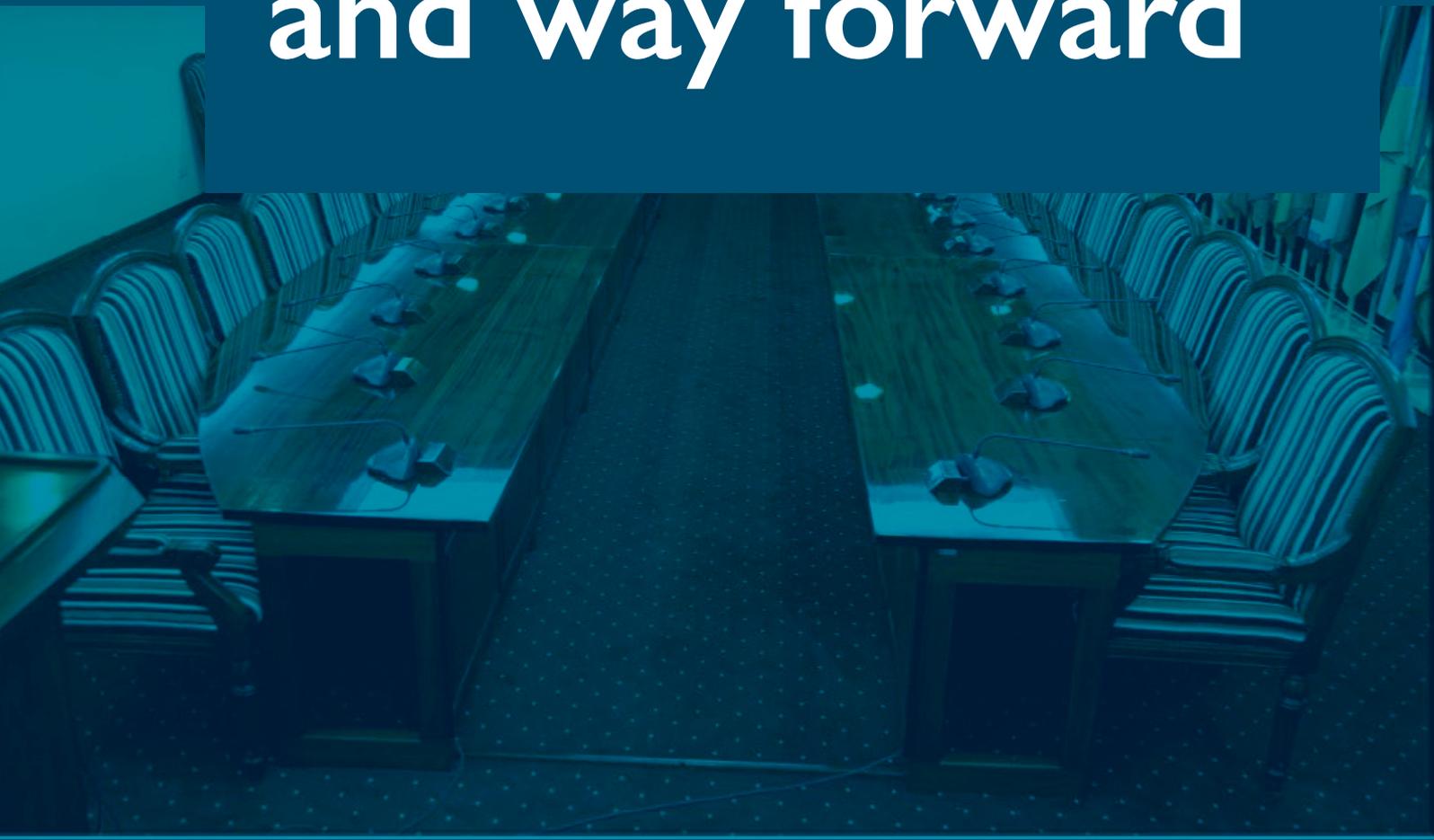




## Chapter Five

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# Challenges, recommendations, and way forward



After the March 2013 general election, County Governments began from the scratch by building basic systems and structures. However, the counties were also confronted with “external challenges” related to the national-level transition process. The CoG became the platform through which the counties could collectively participate and give input in the national level processes. Accordingly, the first term of the County Governments provided vital experience and lessons. The CoG has put together an effective Secretariat to facilitate effective transition in matters of county relations and other issues of collective interest to counties at the national level.

Despite the efforts above, many challenges still abound in the implementation of devolved governance. Many of the specific challenges have been highlighted in specific sections of this report and these include: incomplete transition, resourcing of counties, management of resources meant for county functions, among many other challenges. While most of these challenges have specific impacts in each of the 47 counties, they are issues of common concern that counties have tried to collectively address through the CoG platform. This section of the report discusses, in a summary form, the main challenges that counties have faced and the opportunities that exist to ensure that the challenges are addressed.

## 5.1 Challenges and recommendations

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### ***Incomplete transition***

Incomplete transition remains one of the main challenges as the counties come to the end of their first term. It was hoped that institutions and systems put in place would clarify the transition issues and facilitate a smooth and complete transition. However, many of the critical issues have not been addressed. The incomplete transition continues to impact negatively on the functioning of County Governments. For instance, the full extent of county functions in shared functional areas has not been conclusively determined. The main pending issues in the transition include:

- Unbundling and clarification of functions
- Costing of functions for all sectors
- Transfer of remaining functions (and resources)
- Verification and audit of assets and liabilities of national and County Governments
- Laws and policies (especially at sectoral level) to be completed

The IGRTC, the body that is the successor in title to the TA, has begun its operations and should immediately commence the completion of the transition. The CoG will cooperate and provide necessary technical inputs and assistance to the IGRTC as it completes the residual and remaining tasks that were carried over from the now defunct TA.

### ***Resourcing County Governments***

A persistent challenge that has faced County Governments in service provision relates to resources. The previous chapter has demonstrated how counties have managed with the little resources to improve access to essential services. The CoG has been involved in various efforts to ensure that counties can access timely and adequate resources to enable them carry out effective delivery of services. While there is some success in this regard, counties still face various challenges related to finances and resources that include:

- Delayed disbursements from the national government which, in most cases, hampers service delivery in the counties
- Inadequate overall share (equitable share) that is given to counties which makes it difficult for counties to ensure adequate access to services and development
- The tendency of the national government to hold onto and control conditional funds meant for delivery of county services

There is no doubt that the resource-related challenges are interconnected with the incomplete transition issues discussed earlier. For instance, a number of national or national-based parastatals perform functions that have been allocated to counties under the fourth schedule. Comprehensive costing and transfer of functions (and accompanying resources) that belong to counties can, for instance, enhance the resource base for County Governments to provide services.

#### ***Intergovernmental consultation***

While the Constitution and enabling have set up various structures and processes to facilitate consultation and cooperation between the different institutions, the progress and outcomes are uncertain. IGR meetings have not been held as frequently as necessary, or even as required by law. The general effect is that matters arising that require the joint attention of the two levels of government (such as the Summit) are not handled over a long period of time. The CoG welcomes the operationalisation of the IGRTC and hopes that there will be prompt and timely engagements on crucial matters of intergovernmental relations, especially at the Summit level. Furthermore, the IGRTC is tasked with follow up and implementation of Summit resolutions. The lack of follow up and implementation of agreements and resolutions reached at the Summit has, on several occasions, been pointed out as a challenge. The CoG will cooperate and work with the CoG in the implementation of all resolutions reached by the Summit. The CoG recommends the following measures in order to ensure effective IGR between the national and County Governments:

- National and county institutions should embrace the culture of consultation and cooperation and thus ensure that institutions and processes put in place by law actually serve a substantive purpose in implementation of devolution
- The IGRTC should focus on establishing systems and processes for managing and implementing summit decisions and general management of IGR processes. The starting point in this regard should be follow up and implementation of resolutions of the Summit.
- The are emerging practices of IGR that should inform further reforms to the law and policies of IGR, there is need for a review of the current laws and policies and possible reforms to strengthen IGR
- In order to ensure formality and certainty of intergovernmental relations, the IGRTC should design systems that will ensure all agreements and consensus on various issues are filed by the bodies involved for purposes of reference and follow-up.

#### ***County relations***

As the outcomes and impact of CoG activities have shown, it is important for counties to present a united and common stand in the negotiations and dealings with national government.

While the 47 counties have differing priorities and different circumstances across the counties, there are common issues that bring the counties together. These include: sharing lessons and experiences, capacity building, negotiations with the national government and other public institutions, resource mobilisation, etc. This and previous chapters have shown how counties have worked together under the auspices of the CoG and the outputs and outcomes therefrom. In order to strengthen effectiveness, the CoG makes the following proposals:

- Commitment from counties to CoG activities of the CoG through consistency in participation is important. This will enable the CoG to have an accurate and representative position of all the counties in the activities of the Council
- Implementation of CoG resolutions at the county level is important as the counties are the direct and final consumers of CoG activities and engagements at the national level

### ***Support to the CoG***

The effective execution of the mandate of the CoG requires support in terms of resources, both human and financial. The different partners who support the CoG have made the activities that the CoG has been able to carry out over the past year possible. The County Governments have played an important role by supporting the CoG with resources (human and financial) to enable its operations. As indicated in the financial report in Chapter 4, the CoG also receives funding from the national government. Development partners have also supported various activities of the CoG and made it possible to pursue the objectives of the CoG.

However, despite the commitment from the counties, the national government, and development partners, the resources are inadequate to support all planned activities of the CoG. As an IGR institution established by statute, the CoG should receive funding from the national government in order to carry out its functions. Furthermore, County Governments should remain consistent and committed to support the CoG. The CoG makes the following suggestions to enhance capacity:

- The national government should ensure adequate funding to IGR institutions (such as the IGRTC/ Summit, CoG, IBEC, and other structures), as provided for in the law, in order to ensure facilitation of consultation
- County Governments should set year-to-year targets on how to support the operations of the CoG
- The CoG calls for a consolidated and coordinated approach to engagement of development partners as this will ensure more representative priorities to counties

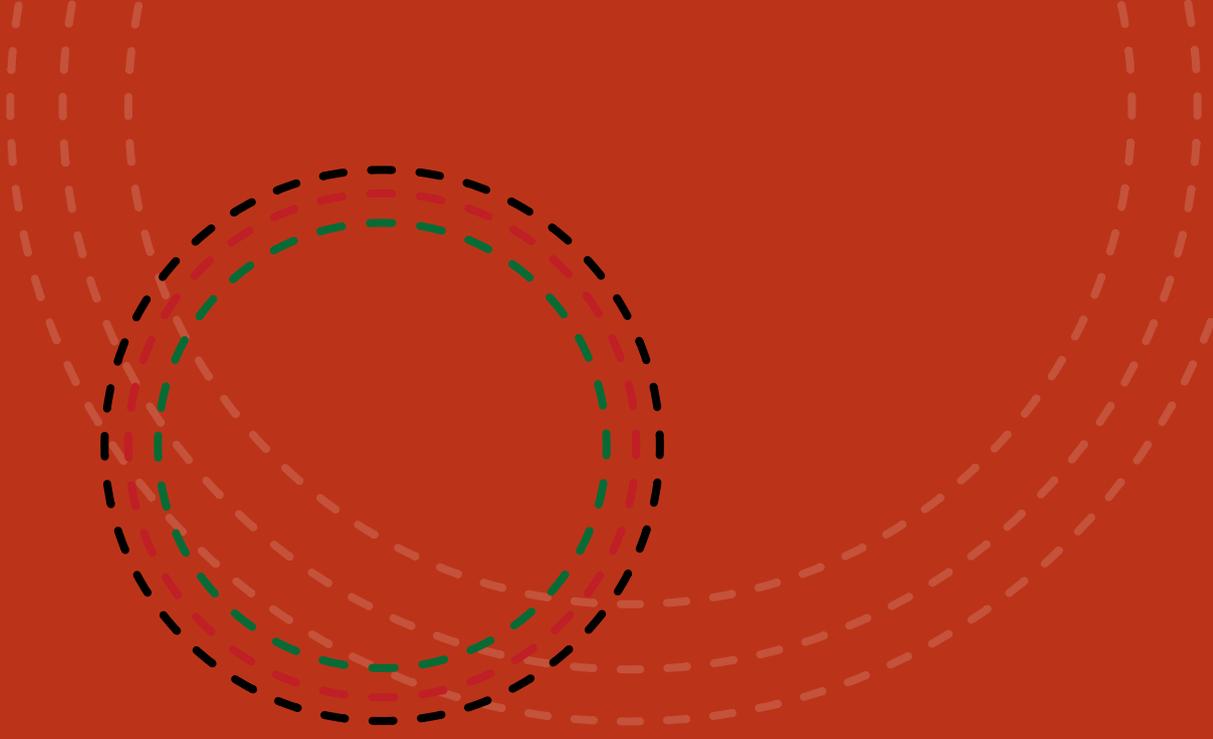
## **5.2 Way forward**

Unlike the first transition that was characterised by confusion and uncertainty, the CoG now has valuable experience from the previous transition. Specifically, there is a ready and effective secretariat to manage the transition after the August 2017 general election. The CoG will tap on this invaluable experience earned over the first term. The position that the CoG take on implementation issues are based on lived experiences of the counties over the last few years and this is itself an opportunity to develop further and consolidate the place of counties in the country's advancement and development.

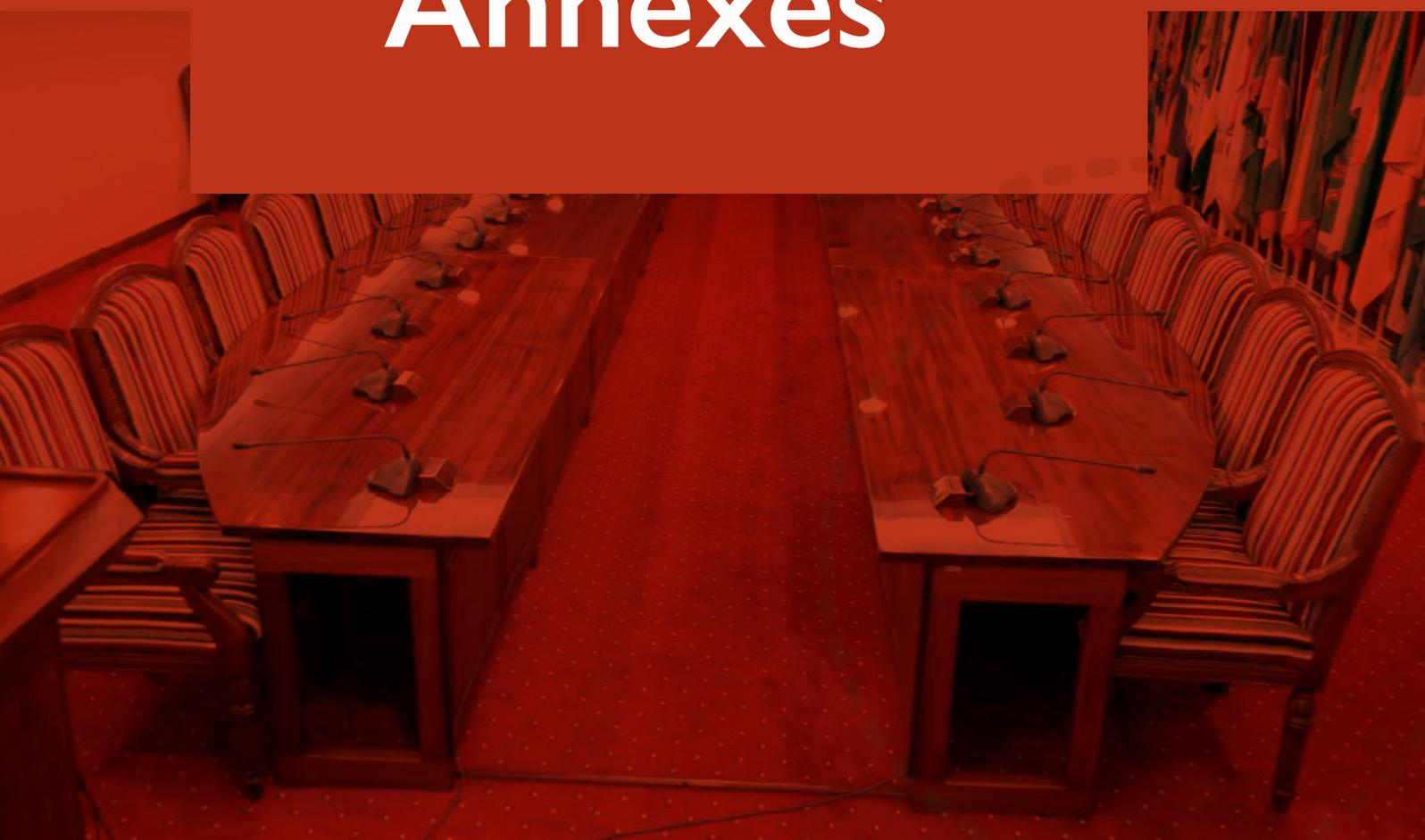
More importantly, the county system of governance is entrenched in the Constitution, which provides the CoG and any other "champions of devolution" with the armoury to defend devolution

and its objectives. The full implementation of devolution is a constitutional imperative that the CoG, counties, the national government, and all other partners and stakeholders should pursue to achieve. In turn, any legal, policy, institutional measures taken to implement devolution must give effect to the Constitution of Kenya 2010.

Public support for devolved governance remains consistent and high. This support has, in turn, legitimised the demands and actions by the CoG with regard to implementation of devolution. The emerging results from county service delivery and development Counties will continue focusing on results in order to meet public expectations with regard to services and development.



# Annexes



## Annex 1:

### Committee Meetings 2015/16

#### July 2015 – December 2015 (first half)

Committee	July	August	September	October	November	December
Health	CECs Quarterly Planning Meeting	Inter-governmental forum for health	HRH taskforce to harmonise HRH across the counties (1 week county visit)	Health Committee planning meeting  CECs Quarterly meeting  HRH Meetings on management of HR  County Executives for Health Retreat on Health Care Financing <b>15-16 October 2015</b>	Intergovernmental meeting on health  Intergovernmental meeting to design the World Bank UHC Project	Intergovernmental team- retreat to finalise the UHC Project
Agriculture	Licensing meeting with Agricultural and Food Authority (AFA) <b>1 July 2015</b>	Kenya Australian Investment conference <b>12 to 16<sup>th</sup> August 2015</b>	Kenya Israel Agribusiness Forum <b>7 September 2015</b>  Meeting on privatization of sugar companies <b>14 September 2015</b>  Meeting of the CEs Agriculture and County Attorneys to discuss the model Agricultural Licensing Bill <b>23 September 2015</b>		Meeting on Warehouse Systems and Receipt Bill on <b>4 December, 2015</b>  Monitoring and evaluation training <b>7 December, 2015</b>	
Infrastructure and Energy		Meeting to deliberate on the SE4ALL Action Agenda and Investment prospectus. <b>5<sup>th</sup> August 2015</b>	Meeting with the Africa Oil, gas and energy to discuss the landscape of oil and gas focussing on the current investment opportunities and potential risk <b>5<sup>th</sup> September 2016</b>		Meeting with CECs-Energy to analyse the status of implementation of the County energy function <b>22<sup>nd</sup> November 2016</b>	

Committee	July	August	September	October	November	December
Urban Development, Planning and Lands		<p>Consultative meeting between CoG and the Ministry of Lands and Physical Planning to review planning Bill <b>4 August 2015</b></p> <p>Consultative meeting between Land Planning and Urban Development Committee and Directorate of Urban Development on the National Urban Development Policy <b>17 August 2015</b></p>	<p>Smart City and town planning study tour to Glasgow in the UK attended by Committee chair <b>5-12 September 2015</b></p> <p>First Executive Urban Leadership training by International Centre for Local Democracy (ICLD) <b>28 September 2015</b></p> <p>National Civil Society Urban Conference <b>9 September 2015</b></p>	<p>Consultative forum on affordable housing in Kenya <b>1 October 2015</b></p>	<p>Second executive Urban Leadership training by International Centre for Local Democracy (ICLD) <b>2-3 November 2016</b></p>	
Tourism and Wildlife	<p>Meeting for preparation of miss tourism Kenya <b>6 July 2015</b></p> <p>Meeting with min of tourism <b>15 July 2015</b></p>			<p>Tourism sector meeting with CECs <b>1 October 2015</b></p>	<p>Tourism meeting on county government branding <b>9 November 2015</b></p>	
Water, Forestry and Mining	<p>Water Services Trust Fund Meeting</p>					
Cooperatives and Enterprises Development						
Trade, Industry and Investment		<p>Cable Aerial Cars – National Workshop Agreement <b>26 – 28 August 2015</b></p> <p>Consultative meeting on Sectoral Green Growth Programme <b>24 August 2015</b></p>	<p>Official Launch of the Kenya Industrial Transformation Programme <b>16 September 2015</b></p>		<p>Attended the 40<sup>th</sup> Annual Congress of the African Travel Association <b>9 – 14 November 2015</b></p> <p>Facilitation n of the KEPSA – County Executives Retreat on Improving the Business Environment <b>26 – 28 November 2016</b></p> <p>Attended the Kenya International Investment Conference 2015 <b>23 – 25 November 2016</b></p>	<p>Attended the official opening of the 5<sup>th</sup> Edition of the Kenya CHEMEX 2015 Business Exhibition <b>7 – 9 December 2015</b></p> <p>Sensitization Workshop on Green Growth <b>8 – 9 December 2015</b></p> <p>Attendance to the Co-operative Leaders Conference for the Model County Co-operative Society Act <b>16 December 2015</b></p>

Committee	July	August	September	October	November	December
Education, Youth, Sports, Culture and Social Services Committee				Meeting on the redeployment of sports officers at the PSC Offices <b>13 October 2015</b>  Meeting on the review of the ECD Policy in Nakuru <b>29 and 30 October 2015</b>	Planning meeting for CECS Sports for the KYISA games  <b>19 and 20 November 2015</b>	KYISA Games  <b>29 November 2015 to 4 December 2016</b>
Finance, Planning and Economic Affairs Committee		Consultative meeting on PFM with the Cabinet Secretary National Treasury <b>5 August 2015</b>  PPP Manual review workshop <b>20 August 2015</b>  County Executives Committee members for Finance training on IFMIS e-Procurement <b>24-25 August 2016</b>  County Executive Committee Finance Consultative Workshop <b>27-28 August 2015</b>	Kenya/ Japan bilateral annual policy consultations for economic cooperation for the financial year 2015/16 <b>9 September 2015</b>  Conference to support formulation of a policy framework for enhancing county own revenue <b>23-24 September 2015</b>		Technical preparatory meeting on hosting of the 2 <sup>nd</sup> High Level meeting of the Global Partnership for effective development cooperation in 2016 <b>9-10 November 2016</b>	
Human Resources, Labour and Social Welfare Committee						
Legal and Human Rights Committee				Meeting of county secretaries and county attorneys to review the Draft Devolution Policy  <b>12 October 2015</b>		Launch of Devolution Law Report and Case Digest  <b>16 December 2015</b>
Intergovernmental Relations Committee						
Security and Foreign Affairs Committee						

Committee	July	August	September	October	November	December
Resource Mobilization Committee	<p>Meeting with Development Finance International Inc. to develop an economic blue print for the Mount Kenya &amp; Aberdares counties BLOC <b>20 July 2015</b></p> <p>Meeting with the European Union to carry out a county selection for IDEAS with MODP <b>22 July 2015</b></p>	<p>Workshop co-facilitated with UNICEF on communication for social and behaviour change capacity needs assessment validation <b>19-20 August 2015</b></p> <p>Dinner meeting with the Chair of Committee and Governors in the Water, forestry and mining subsector at the Israeli ambassador's residence <b>31 August 2015</b></p>		Third World Forum of local economic development in Turin, Italy, facilitated by ORU-Fogar <b>13-16 October 2015</b>	<p>Meeting with Department for International Development (DFID) Kenya's sustainable economic development team to discuss their current support to the counties and forward plans to support counties, meeting facilitated by UKaid</p> <p>Meeting with officials of Slovak Republic to discuss possible collaboration between the CoG and the Slovak Republic <b>18 November 2015</b></p>	
Information, Technology and Communications (ICT) Committee						
Rules and Business Committee (oversees the operations of the Secretariat)						
Arid and Semi-Arid Land (ASAL) Committee			Intergovernmental technical committee meeting <b>10 September 2015</b>			

## January 2016 – June 2016 (second half)

Committee	January	February	March	April	May	June
Health	<p>Launch of two publication (Integrating constitutional principles in implementation of health</p> <p>Health Services Charter: Kitui, Nyeri, and Bungoma Counties</p> <p>Launch of Advisor team</p> <p>Study tour to Japan on UHC</p>	<p>Follow up with DANIDA audit</p> <p>Global Restructuring proposal</p>	<p>Health Advisory team planning retreat</p>		<p>Assessment of implementation system for GAVI</p>	<p>Counties consultative meeting on restructuring of Global Funds</p>
Agriculture	<p>Skin quality training on <b>11 and 16 January 2016</b></p> <p>Intergovernmental meeting on levies and licensing <b>11 to 17 February 2016</b></p>	<p>Skin quality training <b>19 February, 2016</b></p> <p>Intergovernmental meeting on levies and licensing <b>4<sup>th</sup> February 2016</b></p> <p>Intergovernmental meeting at Kilimo on agricultural research, review of agricultural laws, agricultural extension, monitoring &amp; evaluation, privatization of sugar companies, donor/GoK funded agricultural projects <b>29 February, 2016</b></p> <p>ASAL county livestock workshop <b>8 and 9 February, 2016</b></p>			<p>Insurance consultative meeting <b>20 May 2016</b></p> <p>Intergovernmental meeting on NAGRIP <b>10 June 2016</b></p>	<p>Intergovernmental meeting on and KCSAP <b>8 to 17 June 2016</b></p> <p>Intergovernmental meeting on levies and licensing on 27<sup>th</sup> June 016</p> <p>Intergovernmental meeting on mechanisations and Milk cooler project <b>28 and 30 June 2016</b></p>

Committee	January	February	March	April	May	June
Infrastructure and Energy	Committee meeting to review reports on Classification of roads	Meeting to discuss the transfer of equipment held under the mechanical and transport fund (MTF) <b>19<sup>th</sup> February 2016</b>		Meeting on the Inter ministerial working group on land access matters affecting petroleum and electrical energy project <b>27<sup>th</sup> June 2016</b>	Meeting with stake holders on the industrial baseline study results on the local Content <b>5<sup>th</sup> May 2016</b>  Meeting with the ministry of energy to discuss the Off-Grid Solar Project funded by world bank <b>16<sup>th</sup> May 2016</b>	National scoping workshop for the strategic environmental and social assessment for the petroleum sector in Kenya <b>30<sup>th</sup> June 2016</b>
Urban Development, Planning and Lands		National consultative forum on Urban Development Policy <b>17 February 2016</b>	Consultative meeting with the National Land Commission on the proposed county spatial planning guidelines <b>18 March 2016</b>	County trainings on urban boards, integrated development planning Handbook and sensitization on the National Urban Development Policy <b>25-30 April 2016</b>	County trainings on urban boards, integrated development planning Handbook and sensitization on the National Urban Development Policy <b>1-20 May 2016</b>	Participated in the National Spatial Plan and Draft Land Use Policy <b>9 June 2016</b>
Tourism and Wildlife	Tourism branding meeting with national government <b>5 June 2016</b>			Tourism sector meeting with CECs and directors tourism <b>15 April 2016</b>		
Water, Forestry and Mining		World Bank meeting on commercial financing of water utilities <b>5 February 2016</b>  Water Sector Transition and Reforms Consensus Building <b>22-26 February 2016</b>	Consultative meeting on Forestry Transition Implementation Plans <b>7 March 2016</b>  Water Towers Climate Change and Adaptation Programme Meeting for 10 counties (Cherangany and Mt. Elgon Escarpment) <b>8 March 2016</b>			
Cooperatives and Enterprises Development						
Trade, Industry and Investment						

Committee	January	February	March	April	May	June
Education, Youth, Sports, Culture and Social Services Committee		3 <sup>rd</sup> Annual County Executives Devolution Conference <b>22 - 23 February 2016</b>	Quarterly Sectoral Meeting for County Executives in charge of Sports and Culture <b>15 March 2016</b>  Quarterly sectoral meeting for County Executives in charge of Education	4 <sup>th</sup> annual Devolution conference <b>19 -23 April 2016</b>	Launch of the Maisha County league in Kericho County <b>18 May 2016</b>	CECs meeting on the National Policy on Gender and Development <b>3 June 2016</b>
Finance, Planning and Economic Affairs Committee	Meeting of the Intergovernmental Committee on IFMIS to review performance of e-Procurement by county governments <b>5 January 2016</b>  Negotiations in respect to the proposed Kenya Devolution Support Programme for results operations within World Bank <b>28-29 January 2016</b>  National Steering Committee on preparations for the second High level meeting (HLM2) of the Global Partnership for effective development Cooperation (GDEPC)  eProcurement Joint Technical Committee Consultative meeting <b>25 January 2016</b>					
Human Resources, Labour and Social Welfare Committee						

Committee	January	February	March	April	May	June
Legal and Human Rights Committee				Consultative meeting between CoG and the National Council on Administrative Justice <b>April 2016</b>		Meeting with national government, civil society, counties, private sector on election preparedness <b>7 June 2016</b>  Training of county attorneys on policy formulation <b>27 – 30 June 2016</b>
Intergovernmental Relations Committee		National and County Government Coordinating Summit <b>10-11 February 2016</b>	Meeting with Forum of Federations (FoF) on possible entry into membership <b>16 March 2016</b>			
Security and Foreign Affairs Committee						
Resource Mobilization Committee	Meeting to discuss support for the Annual Devolution Conference and a meeting with all USAID Technical officers and implementing partners	Dinner meeting with International Labour Organisation to discuss how to showcase job opportunities, successes and crucial lessons learnt so far in the green building and construction industry project. 6 Governors (Pastoralist counties) and the DP's office <b>18 February 2016</b>  Meeting with governors from beneficiary counties under the USAID-AHADI project <b>25 February 2016</b>	Annual Consultation meeting between Sweden, Kingdom of the Netherlands, Implementing Partners and UNDP <b>22 March 2016</b>	Kenya Humanitarian Partnership Team (KHPT) meeting <b>7 April 2016</b>  Consultative meeting with Plan International on study that will inform the development of a child friendly booklet on Roles and Responsibilities of various actors in reporting and managing child sexual abuse and exploitation cases in Kenya <b>11 April 2016</b>  VII Summit of Intermediate regional governments in Rio de Janeiro-Brazil <b>14-15 April 2016</b>	Briefing meeting between the UNDP and the 8 Counties added in the UNDP support programme <b>5 May 2016</b>  NDP meeting with implementing partners to discuss implementation of the GoK –UNDP programme <b>5 May 2016</b>  Meeting with UNICEF to discuss CoG Partnership <b>26 May 2016</b>	
Information, Technology and Communications (ICT) Committee						

Committee	January	February	March	April	May	June
Rules and Business Committee (oversees the operations of the Secretariat)						
Arid and Semi-Arid Land (ASAL) Committee		ASAL County Livestock Workshop <b>8-9 February 2016</b>	Intergovernmental technical committee meeting <b>8 March 2016</b>			Intergovernmental steering committee meeting <b>20 June 2016</b>

## Annex 2: List of proposed laws reviewed

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### National Bills

- Parliamentary Powers and Privileges Bill, 2014
- Order of Precedence and Titles Bill 2014
- County Governments (Amendment) Bill 2015
- Health Bill 2015
- The Kenya National Aids Authority Bill 2014
- Reproductive Health Care Bill, 2014 (Sen. Bill No. 17)
- Access to Information Bill 2015
- Water Bill 2015
- Land Bills Amendments
- Protection of Traditional Knowledge and Traditional Cultural Expression Bill 2015
- Division of Revenue Bill 2015
- The County Early Childhood Education Bill, 2014
- The Self-help Associations Bill, 2015
- The Basic Education (Amendment) Bill, 2014
- The Protection of Traditional Knowledge and Traditional Cultural Expressions Bill, 2015
- Kenya Roads Bill, 2015
- Petroleum (Exploration, Development and Production) Bill, 2015
- Community Land Bill, 2015
- Energy Bill, 2015
- Physical Planning Bill, 2015
- Land Laws (Amendment) Bill, 2015
- County Governments (Amendment) Bill, 2014
- The Statute Law (Miscellaneous Amendments) (No.2) Bill, 2013
- The County Assemblies Services Bill
- The Climate Change Bill, 2014
- National Environmental Policy, 2013
- The Forest Conservation and Management Bill, 2015
- The Mining Bill, 2014
- The Natural Resources (Benefit Sharing) Bill, 2014
- The Environmental Management & Co-ordination (Amendment) Bill, 2014
- The Public Finance Management (Amendment) Bill, 2015
- The County Industrial Development Bill, Senate Bill No. 7 of 2014
- Public Finance Management (Amendment) Bill, 2014 (Sen. Bill No.11)
- The Potato Produce and Marketing Bill, 2014 (Senate Bill No. 22 Of 2014)
- The Warehouse Receipts System Bill, 2015
- The Food Security Bill

- The Agriculture, Fisheries and Food Authority (Amendment) Bill, 2015
- The National Cereals and Produce Board (Amendment) Bill, 2015
- The Fisheries Management and Development Bill, 2014
- The Seeds and Plant Varieties (Amendment) Bill, 2015

**County Model Laws**

- County Drinks Control Bill
- Health Services Bill
- County Access to Information Bill
- County Outdoor Advertising Bill
- County Sand Harvesting Bill
- County Water and Sanitation Bill
- County Waste Management Bill
- County Tourism Bill
- County Early Childhood Education Bill

**Annex 3: Status of litigation matters involving the Council of Governors**

CASE NUMBER	CASE STATUS	NEXT STEPS
High Court of Kenya at Nairobi, Petition No. 368 of 2014:- The County Assemblies Speakers’ Forum v The Commission on Revenue Allocation, The Attorney General, Controller of Budget and the Council of Governors as an interested party	<p>This Petition was filed by the County Assemblies Speakers’ Forum on 23<sup>rd</sup> July 2014. The petitioners were seeking an order of certiorari to quash the circulars by The Commission on Revenue Allocation imposing ceilings on financial allocations to County Assemblies in County Budgets for the financial year 2014/2015.</p> <p>The judgment was delivered by Honourable Mr. Justice Isaac Lenaola on 20<sup>th</sup> February 2015. The Honourable judge dismissed the petition. He ordered the judgment to be binding on petitions 417 of 2014 and 242 of 2014. No order as to costs was made. The Attorney General (3<sup>rd</sup> Respondent) is dissatisfied with the judgment and intends to appeal. The Honourable Attorney General filed a Notice Appeal on 5<sup>th</sup> March 2015 and served it on us on 12<sup>th</sup> March 2015.</p>	The Attorney General has filed a notice of appeal but is yet file the record of appeal.
High Court of Kenya at Nairobi, Petition No. 381 of 2014:- The Council of Governors v The Senate, The National Assembly, The Forty Seven Counties and The Attorney General as an interested party( Civil Appeal No. 200 of 2015)	<p>This petition was filed by the Council of Governors on 31<sup>st</sup> July 2014 for a declaration that the establishment of County Development Board is unconstitutional, null and void.</p> <p>We attended Court on 10<sup>th</sup> July 2015 as the matter was coming up for judgement before Lenaola J. The Honourable Judge ordered that the County Development Board as established is unconstitutional and upsets the framework of devolution.</p> <p>We attended Court on 5<sup>th</sup> October, 2016 when the matter was coming up for hearing of the Appeal. Unfortunately, Parties had not filed submissions and the matter could not proceed.</p>	Appeal to be heard on notice from the Registry.
High Court of Kenya at Nairobi, Petition No. 413 of 2014:- The Council of Governors v The Senate  Civil Appeal Number 204 of 2015.	<p>This petition was filed by the Council of Governors on 19<sup>th</sup> August 2014 on the question as to whether the Senate can summon governors to appear before it to answer questions on County Government Finance.</p> <p>Judgement on this matter was delivered on Wednesday, 24<sup>th</sup> June 2015. The Court ruled that the Senate can summon Governors. We have filed the memorandum and record of Appeal. On 22<sup>nd</sup> of October, 2015 We withdrew our application for stay pending appeal and we sought hearing date for the Appeal itself.</p> <p>We attended Court on 17<sup>th</sup> October, 2016 when the matter was coming up for hearing of the Appeal. Unfortunately, Parties had not filed submissions and the matter could not proceed.</p>	Appeal to be heard on notice from the Registry.

<p>Petition 127 of 2014: Kenya National Union of Teachers v The Honorable Attorney General; The Cabinet Secretary for Education; The Teachers' Service Commission; and the Council of Governors as an interested party.</p>	<p>This petition was filed by the Kenya National union of Teachers on 20<sup>th</sup> March 2014 for a declaration that the recruitment and employment of Early Childhood Education teachers by County Governments is unconstitutional.</p> <p>The matter came up for Highlighting of Submissions on 13<sup>th</sup> April, 2016.</p>	<p>Judgment to be issued notice from the Registry.</p>
<p>High Court of Kenya at Nairobi, Petition No. 298 of 2014:- National Flags, Emblems and Names (Amendment) Act The Council of Governors v The Inspector General of the National Police Service; The Director of Public Prosecutions; The National Assembly; and The Honorable Attorney General</p>	<p>This petition was filed by the Council of Governors on 2<sup>nd</sup> July 2014 seeking a declaration that the provisions of the National Flags, Emblems and Names (Amendment) Act which prohibit governors from flying the National Flag within the Republic of Kenya are unconstitutional, null and void.</p> <p>Judgement was delivered on 11<sup>th</sup> September, 2015. The Court dismissed the Petition and held that County Governors should not fly national flags, they can only fly County flags if they so wish.</p>	<p>The Appeal will be mentioned for case status conference on 18<sup>th</sup> November, 2016.</p>
<p>High Court of Kenya at Nairobi Petition No 124 of 2015, Okiya Omtatah &amp; Anor V Council of Governors &amp; 2 Others</p>	<p>This Petition was filed by Okiya Omtatah Okoiti and Nyakina Wycliffe Gisebe on 30<sup>th</sup> March 2015 seeking a declaration that 'Executive Order No. 6 of 2015' issued by the President is Constitutionally valid and binds all public officials irrespective of whether they are elected or appointed.</p> <p>On 27<sup>th</sup> July, 2016 the matter was supposed to come up for highlighting of submissions. However, the same was not listed.</p>	<p>We are in the process of taking a new date for highlighting of submissions from Registry.</p>
<p>Cause No. 387 of 2015 Kenya National Union Of Nurses –V- Council of Governors &amp; 4 Others</p>	<p>The Memorandum Of Claim was filed by the Kenya National Union of Nurses on 16<sup>th</sup> March 2015 seeking orders that the Council Of Governors and the 4<sup>th</sup> Respondent should not implement the Kenya Gazette Supplement No. 19 dated 20<sup>th</sup> February 2015 upon members of the Claimant Union.</p> <p>We attended Court on 7<sup>th</sup> July, 2015 as the matter was coming for ruling on the Claimant's Application for stay dated 13<sup>th</sup> March, 2015, before Wasilwa J. The Judge granted orders staying the implementation of the Kenya Gazette Supplement No. 19 dated 20<sup>th</sup> February, 2015. No agency fees or union dues should be collected by the 3<sup>rd</sup> Respondent (The Union of Kenya Civil Servants) pending the final determination of the matter.</p> <p>On 16<sup>th</sup> February, 2016 we attended Court for the Mention of this matter. The Respondents were given 14 days to file their responses to the main Cause.</p> <p>The matter was scheduled for mention on 23<sup>rd</sup> May, 2016 for further directions but was taken out of the cause list since the judge was attending an official function.</p>	<p>Matter to be mentioned for directions on 10<sup>th</sup> November, 2016.</p>
<p>Petition No. 99 of 2015 ILCG &amp; Council of Governors -V- Ministry of Health &amp; Others.</p>	<p>This Petition was filed by the International Legal Consultancy Group (ILCG) on 16<sup>th</sup> March 2015 seeking orders <i>inter alia</i> that the national government cannot procure for health services/equipment and undertake devolved health care functions without executing requisite intergovernmental agreements as required by Article 187 of the Constitution.</p> <p>The Council of Governors were enjoined as the 2nd Petitioner.</p> <p>On 9<sup>th</sup> November, 2015 the matter proceeded by way of highlighting of submissions. The matter is scheduled for judgement on 20<sup>th</sup> January, 2016. However, the Judge did not sit on the said day.</p> <p>We attended court on 17<sup>th</sup> March, 2016 when the matter came up for judgment. The Petition was dismissed.</p>	<p>We have filed the Appeal. We are waiting for the Court of Appeal to serve us with a hearing date. We are at the mercy of the Registry on when this matter can be heard</p>
<p>Petition 187 of 2015 Council Of Governors –V- Senate</p>	<p>This Petition was filed on 8<sup>th</sup> May 2015 together with an application seeking temporary orders prohibiting the Senate from examining the legality and constitutionality of the Kiambu Finance Act 2014.</p> <p>On 30<sup>th</sup> September, 2015 The matter came up for mention for directions before Justice Odunga. The Respondent confirmed that they had been served with the pleadings and requested for more time to respond. The court ordered the respondents to file their responses within 14 days after which we will have seven days to file our submissions.</p> <p>The matter had initially been fixed for mention on 28<sup>th</sup>, September 2016 but could not proceed as the Judge did not sit.</p>	<p>We are in the process of taking a new date for highlighting of submissions from Registry.</p>
<p>Civil Appeal No.194 of 2015 Martin Nyaga Wambora V County Assembly of Embu &amp; 3 Others (Appeal in Embu Constitutional Petition Nos. 7 &amp; 8 of 2014-Consolidated)</p>	<p>This Appeal was filed on 13<sup>th</sup> August, 2015 against the Judgment of Hon. Justice Richard Mwangi, Korir J and Odunga J delivered on 12<sup>th</sup> February, 2015 which judgment rendered Honourable Martin Wambora unfit to hold the office of the Governor for Embu County having been lawfully impeached.</p> <p>The Appeal was heard on 22<sup>nd</sup> of October, 2015.</p> <p>On 11<sup>th</sup> December, 2015 the Court Of Appeal delivered its judgement.</p>	<p>Court of Appeal delivered its judgement on 11<sup>th</sup> December, 2015.</p> <p>The Appeal by Governor Wambora was allowed and the High Court judgment set aside.</p>

<p>Petition 271 of 2015: The Council of Governors –V- The Senate (With the Controller of Budget and The Commission on Revenue Allocation as Interested Parties).</p>	<p>The petition was filed under a certificate of urgency on 2<sup>nd</sup> July 2015 seeking interim orders staying the Senate’s decision to amend the ceiling budget for the year 2015/2016. We attended the court on 9<sup>th</sup> July 2015 as the matter was coming up for an inter-parties hearing of the Application dated 1<sup>st</sup> July, 2015 in which we are seeking interim orders before Lenaola J.</p> <p>The Judge directed that the speaker’s forum be enjoined subject to the filing of their affidavit indicating the list of officials.</p> <p>The matter had initially been fixed for mention on 26<sup>th</sup>, September 2016 but could not proceed as the Judge did not sit.</p>	<p>We are in the process of taking a new date for highlighting of submissions from Registry.</p>
<p>Petition no. 229 of 2015: The County Government of Kiambu &amp; The Council of Governors –v- The Senate &amp; 17 others.</p>	<p>This Petition was filed on 2<sup>nd</sup> June, 2015 seeking orders to restrain the Senate from examining the process of enactment, legality and constitutionality of the Kiambu County Supplementary Appropriations Bill No. 3 of 2015. The Petition was filed together with an Application seeking temporary orders to restrain the Senate from probing the passage of the Kiambu County Supplementary Appropriations Bill No. 3 of 2015</p> <p>The matter came up for mention on 18<sup>th</sup> August, 2015. The Respondents served us with their submissions in court. We sought more time to comprehensively respond to the submissions. The Respondents sought leave to respond to our submissions. Both requests were granted.</p>	<p>We are in the process of taking a new date for highlighting of submissions from Registry.</p>
	<p>The matter had initially been fixed for mention on 26<sup>th</sup>, September 2016 but could not proceed as the Judge did not sit.</p>	
<p>High Court of Kenya at Nairobi Petition No. 593 of 2013: Okiya Omtatah &amp; Another v The Attorney General &amp; 2 Others.</p>	<p>The judgment was entered in our favour. It was subsequently appealed and is currently pending at the Court of Appeal. On 13<sup>th</sup> October, 2016, we attended Court for the hearing of the Appeal. However, the hearing could not proceed as not all Parties had filed submissions.</p>	<p>We are waiting for the Court of Appeal to serve us with a fresh hearing notice.</p>
<p>ELRC Petition No. 51 of 2015: Kenya National Union Of Nurses V The Chair Person Salaries And Remuneration Commission &amp; 4 Others.</p>	<p>The petition was filed on 15<sup>th</sup> June 2015 seeking an interim injunctive order restraining the 1<sup>st</sup> Respondent from linking her exercise of job evaluation to the final completion of the Applicants/Petitioners pending Collective Bargaining Agreements (CBAs) inter alia.</p> <p>On 29<sup>th</sup> June, 2015 the matter came up for hearing of the claimant’s application dated 15<sup>th</sup> June, 2015, before Honourable Lady Justice Wasilwa. The Court granted an adjournment to enable the respondents to file and serve their responses to the Application. On 28<sup>th</sup> October, 2015 the judge directed parties to file their written submissions to the Petition. On 20<sup>th</sup> January, 2016, the parties that had not filed their written submissions were directed to do within 7 days.</p> <p>On 18<sup>th</sup> February, 2016 the Court delivered its Judgement in this matter. It found that the Council had been improperly enjoined and did not issue any orders against them.</p>	<p>The matter has concluded as no orders were issued against COG.</p>
<p>Nakuru Cause 169 of 2015: The Kenya National Union of Nurses –V- The Council of Governors &amp; 6 Others</p>	<p>The matter was filed under certificate on 9<sup>th</sup> June 2015 seeking interim orders directing the 1<sup>st</sup> Respondent to ensure implementation of inter-governmental resolutions in respect of Health Workers inter alia.</p> <p>On 30<sup>th</sup> July, 2015 the matter came up for a mention. The matter was marked as withdrawn against the 3<sup>rd</sup> Respondent. The 6<sup>th</sup> &amp; 7<sup>th</sup> Respondents indicated that we need to check their list of documents and file further replies.</p> <p>On 10<sup>th</sup> December, 2015 we highlighted our submissions in the matter. The matter was scheduled for judgement on 18<sup>th</sup> March, 2016.</p>	<p>Judgement was delivered on 23<sup>rd</sup> March, 2016 and court ordered that the Council of Governors ensure that the resolutions arrived at on 11<sup>th</sup> February, 2015 in regard to the ESP staff are implemented by all its member counties.</p> <p>An appeal is unnecessary owing to the fact that a majority of counties have already absorbed ESP staff.</p>
<p>ELRC Petition No. 1025 of 2015: The Kenya National Union of Nurses –V- Council of Governors &amp; 4 Others</p>	<p>The memorandum of claim was filed on 15<sup>th</sup> June 2015 seeking an order directing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> &amp; 4<sup>th</sup> Respondents to stop implementing the new NHIF contributions inter alia.</p> <p>We attended Court on 10<sup>th</sup> February 2016 for the highlighting of submissions on the Application in this matter. However, the same did not proceed. The Court allowed the Respondents 7 days to review the Claimant’s submissions and file their responses.</p> <p>Parties highlighted their submissions to the Application on 30<sup>th</sup> March, 2016 and the Court issued its Ruling for 31<sup>st</sup> May 2016.</p>	<p>The Application for interlocutory orders was denied. We have written to the Registry and are awaiting communication of a date for hearing of this matter.</p>
<p>Eldoret, Civil Appeal No 336 of 2014, County Assembly of Bungoma &amp; 2 Others Versus Stephen Nendela &amp; 4 Others</p>	<p>The Council of Governors was included as a party in the matter. The High Court’s judgment that declared County Assemblies have no powers to impeach CECs is being challenged in this appeal. The Council has been requested to support the respondent in this case. We attended Court on 4<sup>th</sup> October, 2016 for the hearing of the Appeal. Parties highlighted submissions.</p>	<p>The Judgement to be issued on 9<sup>th</sup> December 2016.</p>

<p>Constitutional Petition no. 418 of 2015: Rowlands Ndegwa &amp; Others –Versus- County Government of Nyeri &amp; Others.</p>	<p>This Petition was filed in the high court at Nairobi on 30th October, 2015 seeking inter alia declarations that the licensing of scheduled crops (coffee) is the mandate of the national government and that county governments have no licensing power with regards to scheduled crops such as coffee, and accordingly the purported issuance of a license with respect to scheduled crops by a county governments is null and void. On 2nd December 2015 the Court directed that the Council of Governors be enjoined as an interested party and that the respondents and the interested party to serve responses within 30 days.</p> <p>Both the Chair of the Council of Governors and the Chairperson of the agriculture committee have called us and instructed that we represents the interests of the county governments sued in this case but the Secretariat is yet to finalize the procurement process. . In the meantime, we have been attending court to protect the interests of the counties.</p> <p>On 26<sup>th</sup> February 2016 we attended Court for the mention of this matter. All parties were directed to file their responses to the three judge bench certification application within 30 days.</p> <p>The matter was to come up for mention on 21<sup>st</sup> September 2016 but did not proceed as the Judge did not sit.</p>	<p>We are in the process of obtaining a further date from the Registry.</p>
<p>Petition 561 of 2015: Wycliffe Oparanya &amp; Another –v- The DPP &amp; Another</p>	<p>This Petition Challenges seeks to quash the criminal proceedings instituted against the Petitioner by the Respondents under section 131 of the Penal Code for disobedience of lawful orders.</p> <p>We attended Court on 18<sup>th</sup> July, 2016 for the hearing of this Petition. The 2nd Respondent applied for an adjournment so that it can file an application under Article 165 (4) of the Constitution. The application for adjournment was opposed by DPP but ‘reluctantly’ allowed. The Court ordered that the Article 165 (4) Application be filed within 10 days and be heard on 17th August 2016.</p>	<p>Hearing of the Application for three judge bench on 25<sup>th</sup> October, 2016.</p>
<p>Commission of Inquiry into the Petition to suspend Makueni County Government</p>	<p>The Commission of Inquiry was appointed by President Uluru Kenyatta to look into the possible dissolution of Makueni County. We were tasked with representing the council of Governors interests in the commission.</p>	<p>The report by the commission was forwarded to the president who resolved not to suspend the County Government of Makueni.</p>
<p>The proposed Omnibus Petitions. (PT 552 of 2015- COG v AFFA and 13 Others: Agriculture Petition)</p>	<p>The Division of Revenue Act, 2015, provides for the equitable division of revenue raised nationally between the national and county governments in the 2015/16 financial year. Of the above amount, about Kshs. 280 Billion has been retained by the National Government to fund parastatals and agencies clearly undertaking devolved functions in competition with counties. The proposed Petition adopts the CDF approach. It seeks to sue over 73 state corporations that are funded to undertake devolved work with a view to declare the underlying legal framework unconstitutional. The Petition is huge and will require massive documentation. It is the first of its kind in sub-national systems of governance worldwide. It will significantly change governance in Kenya.</p> <p>We have filed the Agriculture Petition and are awaiting approval for the other petitions by the other Counsel before filing.</p> <p>We are in the process of finalizing and filing the other sector petitions. A mention date for Petition 552 of 2015 has been procured.</p> <p>On 21<sup>st</sup> September, 2016 the matter did not proceed as the Judge did not sit then.</p>	<p>We are in the process of obtaining a further date from the Registry.</p> <p><b>(Other sector petitions to be filed soon once Issa Mansour finalizes and forwards them)</b></p>
<p>Judicial Review No. 440 Of 2015: The Transition Authority Vs. Privatization Commission</p>	<p>The Transition Authority has challenged the privatisation process of the sugar factories. This matter impacts directly on the constitutional devolution of agriculture in Kenya. As such the outcome of this suit will not only affect the sugar factories involved but also agriculture in all the 47 counties of the Republic of Kenya. The determination of this matter will result in a novel precedent that will guide both the national and county governments in the privatisation process of other state companies in the agricultural sector.</p> <p>We have filed and served the Council’s Application for enjoinder as an interested Party.</p> <p>The matter was mentioned on 29<sup>th</sup> February, 2016 and further mention date of 3<sup>rd</sup> march, 2016 was given. However, it was advised that this case be withdrawn in view of the coming to an end of the mandate of the Transition Authority on 4th March, 2016.</p>	<p>The matter was mentioned on 3<sup>rd</sup> March, 2016 and it was marked as withdrawn in view of the coming to an end of the mandate of the transition authority.</p>
<p>Petition 119 of 2016: Council of Governors Vs. Privatization Commission (now Consolidated Petition 187 of 2016)</p>	<p>The Council of Governors has filed a suit challenging the constitutionality of the privatization of the five sugar companies. The matter is coming up on 7<sup>th</sup> July, 2016 for mention before the new Judge to take hearing date of the Application for reference of the matter to a three judge bench.</p> <p>On 9<sup>th</sup> August, 2016, the Application for a three judge bench was denied.</p>	<p>Hearing of the main suit on 16<sup>th</sup> November, 2016.</p>

Petition 458 of 2015: Mwangi Wa Iria Vs. County Assembly of Muranga & Others	The matter was filed to challenge the impeachment of the Governor. The Court issued its judgment on the Application on 3 <sup>rd</sup> November, 2015 denying the prayer for conservatory orders.	We have filed our Application to appeal out of time and are waiting a fresh date from the Registry.
Petition 178 of 2016:Wanjiru Gikonyo & Anor vs. National Assembly & Others	The Petition is challenging the allocation of funds to NGCDF as contemplated by the Division of Revenue Bill, 2016. The Application is seeking to bar the Cabinet Secretary Treasury from releasing funds allocated to NGCDF for the Financial Year 2016-2017. Ruling on Application for stay issued on 4 <sup>th</sup> July, 2016. The matter was certified for formation of a three judge bench and the National Government limited to only releasing up to Kshs. 25 Billion until matter heard and determined.	The Petitioners to take a date and serve us with the same.
ELC Petition 598 of 2016: COG vs. Cabinet Secretary, Lands Ministry	The Petition challenges the constitutionality of the powers of the land control boards and indeed the entire Land Control Act itself.  The matter came up for inter-parties hearing of the Application on 21 <sup>st</sup> July, 2016. The Judge refused to stay orders and instead directed the Respondents to file their response and parties to come back for a proper hearing. On 24 <sup>th</sup> October, 2016 we attended Court and withdrew our Application for stay to avoid further delay as the Respondent did not attend. Parties were directed to proceed direct to the main suit.	Inter-parties mention of the main suit on 15 <sup>th</sup> December, 2016.
Council of Governors vs. Leisure Lodge Resorts Limited	This matter is for the recovery of Kshs. 2,004,163/= that COG paid to Moneva Consulting which amounts should have been paid by Leisure Lodge.  Matter has already been filed and served.	We are in the process of obtaining a date from the Registry for the matter.
Petition 252 of 2016: COG vs National Assembly and Others	The Petition challenges the division of Revenue between the National and County Governments.  The matter came up for Ruling on the P.O by the Respondents on 3 <sup>rd</sup> October, 2016. The P.O was allowed by the Judge.	We are in the process of filing an Appeal on the Ruling to allow the P.O
Judicial Review No 291 of 2016: Council of Governors V AFFA and 2 Others	The matter was filed to challenge the Gazettement of Coffee Regulations by the Cabinet Secretary without proper participation from the relevant stakeholders and approval by Parliament. The Matter came up for ex-parte hearing of the Chamber Summons brought under Certificate of Urgency on 12 <sup>th</sup> July, 2016. Leave was granted to file the substantive notice of motion to be filed and served within 21 days (from the 12 <sup>th</sup> July, 2016). The leave to operate as stay of the implementation of the Regulations.  Matter was supposed to come up for hearing of the main suit on 24 <sup>th</sup> October, 2016 but did not proceed as the Judge did not sit.	We are in the process of obtaining a fresh date from the Registry.
Nyeri Petition 14 of 2016: Nderitu Gachagua vs Senate and Anor	The Petition challenges the process that led to the impeachment of the Governor by the County Assembly of Nyeri.  The Senate has since overturned the impeachment but the Petition is still live as it seeks substantial declarations on impeachment that will impact other Governors in the future.	We are in the process of obtaining a fresh date from the Registry for the hearing of the Petition.





REPUBLIC OF KENYA

**THE COUNCIL OF  
GOVERNORS**

# **STATUTORY ANNUAL REPORT 2015/2016.**

**NOVEMBER 2016**

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