REPORT OF THE 1ST ANNUAL COUNCIL OF GOVERNORS' DEVOLUTION CONFERENCE

HELD AT
LEISURE LODGE AND GOLF RESORT
KWALE COUNTY, 3RD & 4TH APRIL 2014





1ST ANNUAL DEVOLUTION CONFERENCE
2ND APRIL 2014


Strategic Plan for the
Council of Governors
2014 - 2017

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Annexes

ASAL	Arid and Semi-Arid Lands
CCTV	Close Circuit Television
CIC	Commission on the Implementation of the Constitution
CIDPs	County Integrated Development Plans
CoB	Controller of Budget
CoG	Council of Governors
CRA	Commission on Revenue Allocation
DFID	Department for International Development
DoR	Division of Revenue
ECD	Early Childhood Education
ECDE	Early Childhood Development and Education
EIA	Environmental Impact Assessment
FDI	Foreign Direct Investment
HELB	Higher Education Loans Board
HMIS	Health Management Information System
HR	Human Resources
ICT	Information Communication and Technology
IEBC	Independent Electoral and Boundaries Commission
IFMIS	Integrated Financial Management Information System
IT	Information Technology
KEMSA	Kenya Medical Supplies Agency
KERA	Kenya Rural Roads Authority
KLRC	Kenya Law Reform Commission
KMTC	Kenya Medical Training College
KURA	Kenya Urban Roads Authority
LA	Local Authority
LAIFOMS	Local Authority Integrated Financial Operations Management Systems
MCAs	Members of the County Assemblies
NGEC	National Gender and Equality Commission
NLC	National Land Commission
PFM	Public Finance Management
PPOA	Public Procurement Oversight Authority
PPPs	Public Private Partnerships
PSC	Public Service Commission
PSP	Parliamentary Strengthening Programme
PWD	Persons with Disabilities
SRC	Salaries and Remuneration Commission
SUNY	State University of New York
TA	Transition Authority
TSC	Teachers Service Commission
UNDP	United Nations Development Programme
VAT	Value Added Tax
WARMA	Water Resources Management Act
WDF	Ward Development Fund

Foreword

The First Annual Devolution Conference was a milestone in appreciating Kenya's historic constitutional transition. The Council of Governors is proud to have been the forerunner of perhaps the greatest pillar of the new political dispensation. Devolution, no doubt, transforms our society and manifests the recognition of our rich heritage of diversity even as it provides a platform on which to aggregate our aspirations for greater equity. As a governance tool, it is a pervasive value on which power and resources will be used in a more accountable and responsible manner.

The conference aptly titled **"One Year into Devolution: Celebrating the Milestones, Confronting the Challenges"**, marked one year of devolution and provided a forum to reflect on the past one year, assess what has been achieved, discuss challenges and re-strategise with all stakeholders. Essentially, the conference sought to initiate dialogue on devolution and reaffirm the commitment of all Kenyans in working towards and believing in the devolution promise as a key cornerstone of the Constitution.

The past one year has been a profoundly enlightening journey marked by the laying of foundations and structures on which devolved governance will thrive and which are responsive to the expectations of the people of Kenya. Established on the basis of a common heritage and shared destiny, the new governance system was deliberately purposed to transform the framework for national cooperation and sharing of resources.

The institutions tasked with ensuring the success of devolution have in the first one year proved their enthusiasm for the cause. Governors and the members of county assemblies have taken up their responsibilities together with the National Government to ensure the success of the implementation of the Constitution.

The immediate foundational areas of focus have been to: establish a structured framework of engagement with national institutions, conduct appraisal of county assets and liabilities, ensure a smooth transition of county institutions, establish responsive county planning processes and develop effective mechanisms for genuine public engagement and accountability. These long-term efforts have concurred with our efforts to respond to immediate needs, including provision of health services, establishing frameworks for delivery of early childhood education, expansion of infrastructure, facilitation of agriculture, trade and investments.

Our assessment of the first one year is that devolution has been a gratifying story of opportunity and change. We tell this story well aware of the lurking challenges. The structures for cooperation between the two levels of governance should be greatly enhanced based on mutual respect and good faith. A more deliberate unbundling and transfer of remaining functions should be undertaken. Proper assessment and assignment of liabilities carried over from the former local authorities owing to obligations procured by the National Government should be undertaken. Increased deliberate effort to align national legislation with the principles and objects of devolution should be sustained. Concerted effort should be undertaken by the two levels of government to ensure public engagement through effective civic education. Unnecessary steps aimed at clawing back or to frustrate the authority of the county governments through parallel structures should be avoided.

We are at a great moment in our history with corresponding risk of failure. We must guard against entrenching old ways under the new system. We must not breed apathy by substantiating apprehensions that the ambitions of the political leadership are not aligned to the needs of the people we serve. We must stay committed to the Constitution, learn lessons and make our common journey worthwhile.

The First Annual Devolution Conference was successful in reaffirming this commitment. It showed great teamwork between the national and county governments in organising the conference. We are also grateful for the support of friends and partners of devolution who have supported the transition process. We are particularly grateful to SUNY-Kenya, UNDP, LAPTRUST and the World Bank who were our key partners in planning and funding the conference.

As we progress into the second year of transition, our focus is to consolidate the gains and confront the remaining challenges. Our commitment is to the Constitution and the Kenyan people.

HE. Hon. Isaac Ruto, EGH
Chairman, Council of Governors

Acknowledgement

We wish to commend the various individuals and institutions that enabled us to realise the First Annual Devolution Conference. We worked together with many institutions through all the planning steps from conceptualisation to organisation of the conference. We worked long hours with people who are not staff of the Council to thrash out details, draw plans, work phones, reach out and build larger networks in order to make the conference a success. Even though it is impossible to name each of them here, we wish to commend you for the dedication of time and resources.

We are most grateful for the decisive leadership provided by H.E Hon. Evans Kidero who chaired the Conference Organising Committee. Indeed, the commitment by all the 47 governors ensured clarity of vision and objectives and enabled us achieve our conference objectives.

Much appreciation goes to the Council of Governors Secretariat who went beyond the call of duty and worked tirelessly to ensure the success of the conference. Special thanks go to the Kenya Police for their provision of round the clock security not forgetting County Chiefs of Staff, Commission for the Implementation of the Constitution, Commission for Revenue Allocation, Transition Authority and Civil Society Organisations for providing the much needed support and insight and ensuring that nothing was left to chance.

The Conference would not have succeeded without the substantial support from **USAID (SUNY-Kenya** and **AHADI), DFID, UNDP, UN Women, the World Bank,** and **LAPTRUST.** We are forever grateful to **Safaricom Ltd, East African Breweries Ltd, Standard Group, Kenya Commercial, Equity** and **Cooperative banks** and **Capital Markets Authority** for their support of this conference. We appreciate the unity of purpose by the Kenyan media houses who helped in raising the profile of the event. We are indebted to Leisure Lodge Resort management and staff for their exemplary hospitality and service during the conference.

Jacqueline Mugeni,
Ag. Chief Executive Officer
Council of Governors

1 Executive Summary

1.1 Introduction

1.2 On 3rd and 4th April 2014, the Council of Governors working together with the National Government held the first Annual Devolution Conference under the theme, "One Year into Devolution: Celebrating Milestones, Confronting the Challenges**".**

The Conference Planning Committee comprised officials from the National Executive, the Council of Governors, government agencies and independent constitutional commissions. Key partners for the conference were the State University of New York (SUNY-Kenya) with funding from DFID and USAID, the World Bank, the United Nations Development Programme, the private sector and leading Kenyan media houses.

The focus of the conference was to provide a forum for all stakeholders to appraise the achievements made during the first one year of transition, discuss challenges to the implementation process and consider opportunities for full implementation. The aim of the conference was to facilitate dialogue to create constructive synergies and restore sincere commitment of all Kenyans to devolution as a critical cornerstone of the constitutional framework.

The opening ceremony was presided over by Mr. Charles Nyachae, the Chairperson of the Constitution Implementation Commission, Governor Isaac Ruto, the Chairperson of the Council of Governors, Ms Nardos Bekele, Country Representative of UNDP, Mr Kinuthia Wamwangi, the Chairperson Transition Authority and representatives from diplomatic missions.

The speakers recalled the necessity of devolution to address historical weaknesses in governance. They also noted that the objects of devolution were fundamental and cross-cutting themes in the entire Constitution. They applauded the efforts of the national and county governments and the relevant institutions for the progress made in the first year. The second year will require increased commitment to consolidate the gains and develop sustainable frameworks to achieve full implementation.

1.3 Synopsis of the report

1. The programme of the two-day conference was delivered through panel discussions in town-hall formats under the main clusters of devolved functions.

2. **Chapter I** of the report covers the first session. The discussions considered the transitional issues under the theme **"Appreciating Devolution"**. Under this theme, the panellists and participants outlined the progress in the first year, the key milestones, challenges and opportunities. The panel presentations and discussions in plenary outlined the following recommendations:

   - The Transition Authority should urgently initiate the full transfer of outstanding functions
   - Costing of functions and sums to be allocated to the counties should be done by the Commission on Revenue Allocation with the key input of the National Assembly, the Senate and the National Treasury
   - Develop a policy for effective decentralisation of functions within the framework of devolution.

3. **Chapter 2** covers the second session titled **"Resourcing Devolution".** The programme focused on planning and budgeting, public financial management and management of the public service under the devolved system. The following key recommendations were made in the session:

   - Increase capacity in the counties to develop County Integrated Development Plans (CIDPs) and ensure alignment of budgets with county plans;
   - Develop effective regulations and systems for public financial management that integrates the use of technology;
   - Increased clarity on the roles of the various institutions in financial management in relation to planning, execution and oversight;
   - Effective system for revenue collection and management of the public debt;

- Develop effective framework for management of the national wage bill through consultation by relevant stakeholders;
- Develop effective mechanism for accountability, focusing on enhancing capacity and incentives for compliance.


Governors during the conference

4. **Chapter 3** on **Trade and Investment** covers the devolution of trade, commerce and investment functions. The panellists and participants considered regulatory, policy and administrative measures which have been undertaken to stimulate growth. The recommendations included:

   - Establish a good investment climate through appropriate legal and regulatory framework, provision of affordable energy, advancement in Information Communication and Technology (ICT) infrastructure, enhanced skilled human capital, expansion of infrastructure and improved public transportation;
   - The National Government should collaborate with county governments to review the legal framework for Public Private Partnerships (PPPs) and develop appropriate structures for capacity development and administration of the Public Private Partnerships Act;
   - Functions with concurrent National Government mandates on industrialisation and registration of businesses need to be harmonised with a view to decentralising particular elements to facilitate efficiency.

5. **Chapter 4** on **Social Services** covers devolution of Health, Education and ICT. Key policy recommendations include:

   - Propose and lobby for amendments to the Value Added Tax (VAT) Act to exempt donated medical equipment and commodities as this is a hindrance to healthcare development;
   - Streamline management of health professionals with appropriate incentives to facilitate posting to marginalised areas;
   - Lobby Parliament to amend the Teachers Service Commission (TSC) Act to remove the ambiguity over the responsibility for Early Childhood Development and Education (ECDE) teachers from the TSC to counties;
   - Develop a standardised ECDE curriculum – adopt the Montessori system throughout all counties;
   - Advocate for full devolution of the education to the county governments to enhance service delivery.

6. **Chapter 5** focuses on **Energy, Mining and Infrastructure**. The panellists and participants discussed the legal and regulatory framework, financing of infrastructure development, management of inter-county capital investments and environmental implications. The following recommendations were made:

   - Investments in energy and mining should be preceded by environmental risk assessment that involves the communities;
   - A framework for sharing of profits generated from mining and extractive industries should be developed to allow profits accrue to communities and consider improving the sharing of mineral resources between the National Government, county and community;

- An effective mechanism for corporate social responsibility and technology transfer should be developed and implemented;
- Complete devolution of parastatals involved in road development and management;
- Streamline regulatory frameworks for procurement and accountability.

7. **Chapter 6** covers the **Management of Agriculture, Land and Natural Resources** under the devolved system. The recommendations included:
    - Increased capacity in management of natural resources and resolution of resource based disputes;
    - Develop and implement a policy on urban development that is responsive to current realities;
    - Increased value addition, trade and agri-business;
    - Full implementation of the land policy and the legal framework to secure protection of rights relating to tenure and streamline land use planning.

8. **Chapter 7** covers the last session on **"County Legislative Agenda and Inter-governmental Relations".** The discussions in this session focused on: the roles of the several institutions created under the Constitution; their respective mandates; the legal framework for inter-governmental relations; the extent of inter-governmental coordination as envisaged in the Constitution; the extent of mutual cooperation between the two levels of government; and assessment of progress and challenges. The recommendations in this session emphasised the need to:
    - Strengthen the legal framework to protect devolution;
    - Develop coordination frameworks among the relevant institutions on devolution;
    - Increased clarity on the respective roles of institutions established under the Inter-governmental Relations Act, including a framework for resolution of disputes;
    - As a priority, facilitate the setting up of the Technical Committee to buckstop the work of the Summit and the other institutions;
    - Establish concerted efforts among organs and agencies to be involved in generation of legislation with implication on devolution;
    - The Senate should robustly discharge its constitutional role in protecting devolution through consultation with the county governments;
    - County governments should safeguard social accountability through meaningful public participation;
    - Focus on advocacy to resist attempt to claw-back devolved functions.

2 Session 1: Appreciating Devolution

2.1 Introduction

This session considered the scorecard on the first year of transition including sharing experiences, milestones and challenges in the transition period. The panellists highlighted the success stories and the challenges in various counties and made recommendations for achieving full transition to the devolved system. The discussions focused on the objectives of the devolved system of government, the impact of devolution in development and service delivery, fiscal devolution and the opportunities for greater decentralisation of national functions through devolved structures.

2.2 Milestones in the Transition Period

The success stories from several counties included equitable distribution of resources in the country; increased access to services by the people through the devolved units; enhanced provision of health services in different counties; improved agricultural outputs through provision of seeds and fertilizers; enhanced infrastructure development through improvement of access roads; improved water access through drilling of boreholes and water pans; public participation in devolved governance; devolution of leadership and opportunity; easing tensions of political contests; devolution providing a balanced opportunity for development and reinvestment.

Key success drivers have been the support given by development partners in rolling out the devolved system of governance and partnership with the several constitutional commissions and independent offices including the Commission for the Implementation of the Constitution (CIC), the Public Service Commission (PSC), the National Gender and Equality Commission and the Commission on Administrative Justice. The initial transfer of functions covered several areas including the provision of essential services like water, health care and roads. Devolution has been supported by a strong legal framework that will guarantee its success.

2.2.1 Summary of Key Milestones

Milestone	Achievement
Inauguration of the county governments	Successful inauguration of county governments in all the 47 counties. This was achieved partly through the assumption of office by county officials after the 2013 General Election.
Transfer of functions	Assignment and transfer of functions from the national to the county government. The transfer was not done at once. It is being done in an asymmetrical and gradual manner. The first transfer of local authority functions was effected in February 2013 and the second in August 2013.
Human resource audit	Guidelines on human resource audit prepared and shared with the respective government agencies. An integrated payroll and personnel data has been developed that puts all personnel in a common database.
Meeting the office infrastructural needs of counties	Identified offices for all incoming executives and assemblies. This was supported by the Treasury which allocated funds to facilitate rehabilitation and setting up of the office infrastructures.

Deployment of personnel to counties to facilitate transfer of functions	Teams dispatched to all counties to facilitate the transfer of functions and to coordinate the setting up of systems in the counties including but not limited to the following areas: administration, financial management, operation of county assemblies and others.
Induction of county officials	Formation of an inter-agency technical committee with line ministries and other partners to facilitate induction of the incoming leaders and other county staff to enhance their capacity.
County legal framework improved	Audit of all relevant county laws in collaboration with the Kenya Law Reform Commission to ensure that they facilitate the work of county governments.
Asset and liabilities audit	Undertook an assets and liabilities audit of all counties in collaboration with the Auditor General.
Asset inventory	Asset inventory system for counties developed.
Asset register	Register of transfer of all county assets developed.
Asset and liabilities system	System for identifying county assets and liabilities determined.
Urban development	Determined criteria for urban areas and cities, laws for setting up towns, municipalities and cities.
Staff rationalisation committee	Established a rationalisation committee, setting out guidelines for employment of staff in counties.

2.3 Pending Issues

The Chairperson of the Transition Authority (TA) outlined the areas that needed further action and reconsideration to make complete transition to devolved system.

2.3.1 Summary of Pending Issues

- Undertake comprehensive transfer of pensions, benefits and records of all personnel who have transited from the national to the county governments

- Develop and publish an assets and liabilities register for each county

Governors and other officials during the conference

- Analyse the functions of State corporations and determine how they relate to the counties. Prioritise the devolution of functions of particular parastatals in the road sector whose functions overlap those of county governments

- Undertake nationwide, comprehensive and effective civic education on devolution

- Develop and implement an effective mechanism for dispute resolution and conflict management

- Centrally managed functions like procurement of medical commodities through the Kenya Medical Supplies Agency (KEMSA) should be managed efficiently to ensure that counties access drugs on time

- Transfer of roads management, including immediate transfer of roads managed under the Kenya Wildlife Services and those under the Kenya Forestry Services

- Services related to rural electrification should be assessed and transferred. The Rural Electrification Authority should be reformed through joint discussions between the county and national governments

- Regional development authorities should be restructured as joint authorities between the national and county governments under Article 189 of the Constitution

- The Kenya Urban Roads Authority and the Kenya Rural Roads Authority should be transferred to the counties immediately

- Infrastructure development in primary and secondary schools to be transferred to counties to promote quality and efficiency in service delivery.

Effective contribution of the Senate is necessary to facilitate the transfer of the functions which are yet to be transferred. The Transition Authority should develop and implement a workable timeframe to ensure the transfer of functions in consultation with the national and county governments.

The Transition Authority and the Commission on Revenue Allocation (CRA) expressed their satisfaction in the manner in which transferred functions have been operationalised and executed in most counties. Where challenges have emerged, it is important to make an objective and constructive assessment of the causes. For instance, devolution of health functions in the counties has attracted unfair criticism because there are reports indicating that a crisis in the health sector pre-dated the transfer of functions. Adequate attention to accountability is necessary to avoid instances of abuse of devolved resources. Devolution is a process that will take time to succeed with support from all stakeholders and citizens.

2.4 Challenges Relating to Costing of Functions and Agenda for Decentralisation

Expeditious transfer of functions and finances has been achieved in the initial stages of devolution, but there are potential risks of reluctance in respect to the remaining functions or reversals. Devolution of resources to match transferred functions is hinged on the principle that resources should follow functions. This fundamental principle should not be compromised. The following considerations should inform this principle:

- Costing of functions and sums to be allocated to counties should be done by the Commission on Revenue Allocation with the key input of the National Assembly, the Senate and the National Treasury;

- The law should be amended to give the Commission on Revenue Allocation the power to determine the ratio of resource allocation to counties;

- In respect to county revenue, there needs to be a necessary balance to ensure that taxes do not impede enterprise development or weaken consumer power. In principle, the governors are committed to ensuring the taxes and rates levied by counties generally do not become a hindrance to the free movement of goods and services across counties;

- Under the Public Finance Management Act, all unutilised funds should be retained in counties even when not spent within the financial year in which the allocation was made. It is, therefore, unnecessary to engage in unplanned panic spending since any unspent funds in any financial year would still be allocated to the county in the new financial year in addition to the yearly allocation;

- The Equalisation Fund is a National Government fund, but its administration should involve counties especially since the functions to be performed by the fund are devolved functions under the Constitution. The fund earmarked for 14 marginalised counties is yet to be implemented and yet the financial year was almost coming to an end. This delay defeats the objective of the fund.

3 Session 2: Resourcing Devolution

3.1 Introduction

This session was delivered as cluster of three related topics, namely: county budgeting and planning; public financial management; and transition of human resource functions under the devolved system.

The session's objectives can be summarised as follows:-

- Assessing the extent to which County Integrated Development Plans (CIDPs) are aligned to national development goals and priorities and what bearing this has in resource allocation and utilisation at the county level;
- Identifying best practices for counties in public financial management;
- Making recommendations on how to improve devolution of resources to the counties;
- Examining the structure of the Public Service at both levels of government;
- Identifying strategies for counties to acquire the best workforce for service delivery; and
- Assessing the overall performance of counties in delivering services to the people.

3.2 County Planning, Budgeting and Development

This session considered the planning process in the devolved system of government, the experience of counties in generating their development plans, the role of the county assembly in scrutiny of county plans and budgets and the budget process. During the session, the panellists comprising governors, representatives of relevant devolution agencies and professionals shared experiences, lessons and challenges in the planning process and made recommendations.

3.2.1 Development of County Integrated Development Plans

Counties are required to develop their plans as the basis of their budgeting and expenditure. Counties have made significant efforts to develop CIDPs aligned to Vision 2030 within strict time and capacity constraints. The CIDPs developed in the first year were guided by the county development profiles and the Second Medium Term Goals of Vision 2030.

Challenges in development of the CIDPs include:

- Credible statistics at the county level that would facilitate the alignment of county planning, budgeting and development to the Vision 2030. Available data is segregated by districts, divisions and locations, not by county, sub-county and wards. Counties, sub-counties and wards are the planning and service delivery units of the devolved system;
- Appreciation of the connection between the CIDPs and county budgetting – CIDPs including sectoral plans – have not informed the development of 2014/15 budgets;
- Lack of consistency in ensuring public participation in the planning and budgeting processes;
- Increased capacity and effective engagement framework with county assemblies;
- Some counties have not established the County Budget and Economic Forum to facilitate public consultation on public finance and economic planning;
- The cost of public participation and generally low turnouts in consultative forums;
- Most counties have not established effective engagement frameworks with non state actors and private sectors in their counties;
- Establishement of specific planning authorities including creation of urban areas (cities, minicipalities and towns) have not been achieved;

- Inadequate public communication mechanisms to inform the public of the county planning and seek feedback on priorities.

3.2.2 Surmounting the Challenges in Planning

In order to ensure meaningful participation, county governments should establish mechanisms including sub-county and ward planning committees and where possible at the village level. Each county needs to develop its own model and customise it to the different "publics".

The Ghana case study on decentralisation of planning revealed that mobilisation and planning starts from the lowest level to the district assembly. Both councillors and administrative staff reach out to the people to get their views and interrogate the proposals made by the government. Meaningful participation by the people must result in their views informing tangible priorities in local planning. Lack of tangible results for people may create apathy especially where the public feel consultation is cosmetic and does not inform county priorities.

3.2.3 Budget Implementation and Absorption

The Controller of Budget identified the challenges which the counties were facing in improving their absorption capacities. These include:-

i. Inconsistencies and delays in procurement and implementation.

ii. Clarification of roles between the levels of government on implementation especilally of special funds.

iii. Poor Connectivity and inadequate integration of technology in financial management.

To tackle these challenges she recommended the capacity of the County Treasury and departmet to be developed in terms of staffing numbers and skills set in preparing and executing budgets. Recruitment of key personnel in counties should also be hastened and the necessary training done. In this regard, the devolution capacity building framework needs to be rolled out and effectively coordinated between the various actors.

3.2.4 Plenary Discussions and Recommendations

The plenary comments and responses outlined several considerations and proposals including:

- Inadequate attention to the principle of separation of powers especially in the control of the Constituency Development Funds (CDF) by Memebers of Parliament (MPs). This has triggered the calls to empower Members of the County Assembly (MCAs) to administer the proposed Ward Development Fund (WDF). The Controller of Budget indicated that since the matter of MPs roles relating to the administration of CDF was the subject of an ongoing court case her comments are precluded by the rules on sub judice.

- Counties have the power to establish the WDF in accordance with section 116 of the Public Finance Management Act. Under the principle of separation of powers, the MCAs should participate in prioritising the projects but recognise that it is the mandate of the Executive to implement county plans.

- In the implementation phase, the proper role of MCAs should be to provide oversight. Effective oversight would be undermined if MCAs are involved in performing Executive roles.

- On cash flow and exchequer management, the CoB noted that the money is transferred when requested by the county and any delays should be resolved on a case by case basis.

3.3 Public Finance Management

3.4 Introduction

This session focused on the challenges in public financial management in the transition period, the legal and institutional framework, international best practices in fiscal decentralisation and recommendations for improved prudence and accountability.

3.4.1 Challenges in Public Financial Management

The panellists highlighted the following challenges in management of public finance under the devolved system:

- The staff of former district treasuries were experienced in managing expenditure but budget making remained a centralised matter at the Treasury;
- There was no clarity on revenue allocation due to the delays by the National Assembly to approve the Division of Revenue Bill;
- Delays in unbundling and transfer of functions;
- Lack of financial management systems;
- The counties inherited weak systems of fiscal management from the former Local Authorities.

3.4.2 Recommendations

- To ensure sustainability in the financing of counties, it is important to explore means of building county revenue bases. One option is by raising property taxes based on a revised valuation of property especially in urban areas. However, the prefered strategy should be focus on growing the economy by investing in agriculture especially irrigation and agri-business;
- The counties should improve their financial systems by taking decisive and timely action on audit reports and recommendations;
- Counties should establish an effective financial management framework that integrates the use of technology. Counties are currently using dual system – Integrated Financial Management Information System (IFMIS), used by the Central Government, and Local Authorities Integrated Financial Operations Management System (LAIFOMs), adopted from the former Local Authorities which creates a challenge to responsible reporting;
- The Council of Governors (CoG) should advocate for the Accounting Standards Board to be established so that it can publish the minimum standards for accounting and reporting.

3.5 International Lessons

Paul Smoke, a professor of Public Finance and Planning, present at the conference, shared three international lessons and best practices on financial decentralisation, local revenue generation and sustainability of Sub-National Governments.

These include:-

i. Finance follows functions: Effective decentralised governance units must of necessity have broader mandates and in many cases implicit expectations to deliver functions at local level. By being closer to the people, they receive more demands than what the statutes allocate them. There is need for financial allocations to functions to take cognisance of this fact. The transition should aim at providing services where there was none and think beyond what the central government used to do. The end goal is to apply available resources to reach more people.

ii. Fragmentation: There is much fragmentation of the various efforts of implementing PFM reforms at the transition period. Different laws are often in piecemeal, thereby increasing opportunities for inconsistencies, delays and potential for disputes.

iii. Ownership leads to cost recovery: On local revenue generation, no one prefers to pay but by providing services efficiently one can make people want to pay more. There is evidence that countries where local units raise more revenues locally spend more resources on service delivery and not on administrative costs. A caution though because this could lead to establishment of multiple taxes that might create conflict.

Domestic lending presents opportunities and risks for counties. County governments must consider borrowing as a last resort and explore creative ways to finance captital projects through public-private partnership arrangements. County governments should work with the National Government to design their own frameworks for PPPs and enhance inhouse capacity to implement partnership projects.

The legal and institutional framework for accountability should take into account the devolved system. An effective system is one that integrates accountability at the policy and operational levels with the aim of facilitating prudence, efficiency and value for money. Care should be taken when accountability is used as an excuse for witch-hunt or to prematurely agitate for claw-backs of devolved functions. There might be much more to be gained by creating incentives for compliance instead of more rules and regulations.

3.6 Plenary Discussions

Manual systems and lack of controls in revenue collections have direct influence in efficiency and accountability. Panellists commended innovative practices in several counties including: direct payments through banks, mobile money transfer systems, seasonal payments, proper record keeping, identifying rate payers and updating of their debtors' ledgers in time.

The challenges to prudence and accountability are partly due to the objectives and the principles of the Constitution and its transformative agenda. The devolved system is a good opportunity to enhance accountability because of closer scrutiny and public participation. For instance, in Wajir County, the cost of drilling boreholes dropped from an average of Kshs. 8 million under the Central Government to Kshs. 4 million under the County Government.

3.7 Resourcing Devolution and Human Resource Management

3.7.1 Introduction

The discussions focused on how counties worked with the National Government to secure the financial resources for effective service delivery, the revenue allocation formula, and public debt management. Philip Ryneveld, an expert in public policy, shared the experience of the City of Cape Town in generating revenue. The second part of discussions focused on the management of the public service under the devolved system.

Key considerations in the panel discussions included:

- The priority in the first one year emphasised on attaining equity in sharing revenue as provided under the Division of Revenue and County Allocation of Revenue Acts 2013;

- The DoR Act has been a contentious issue. It is largely focused on how much each county is getting but the Council of Governors position is that all functions devolved should be followed by all resources allocated to them. The question of the sum of devolved funds should therefore be incidental;

- The Commission on Revenue Allocation noted that the formula has been implemented successfully in the first year to achieve increased equity. Counties that were initially marginalised are the major beneficiaries;

- Capacity in planning, budgeting and financial management is a continuing challenge;

- There is a risk of reluctance by the National Government to allocate sufficient funds to the counties or to decentralise functions within the devolution framework without unnecessary multiplicity of resources;

- As a last resort, a constitutional amendment may be considered to raise the threshold for sharing of revenue to a minimum of forty per cent to counties.

The Cape Town Case Study

South Africa went through Local Government reorganisation that saw many "black" and "white" local authorities merged. During the transition, no new taxes were introduced. Cape Town engaged in modernisation of its property tax that took several years.

The key lessons for success are to use available resources prudently, manage existing staff and programmes and avoid the temptation to increase taxes. The strategy involved intensive communication, sharing of administrative resources and pension restructuring to ensure that no one was disadvantaged. The city introduced IT systems in revenue collection and expenditure management. As a result, in 10 years, they were able to reduce the staff from 42,000 to 24,000. The amount saved in this rationalisation was more than what could have been raised through higher or new taxes.

County government in Kenya can learn three things from Cape Town experience: Leadership, Strategy and Ability to implement. The National Government should, as a priority, work with county administrations to enhance innovativeness by giving them the capacity and space to implement their plans.

3.7.2 Public Debt Management
Smoke observed that it is important for counties to be in a position to borrow. However, there must be a clear framework for borrowing and fiscal responsibility at sub-national level. Lack of appropriate frameworks has invariably led governments to financial crisis as was the case in Southern America countries.

Secondly, it is important to manage exposure of the county governments to liabilities incurred by their predecessor local authorities. Smoke advised that debts inherited by counties especially those that were infrastructure based should be written off or adopted by the National Government since they were the result of management weakness of the former Central Government. The reasoning being that that the local authorities and National Government had a mutual indebtedness where the Central Government didn't pay for their contribution in lieu of rates. Under the old system, debt obligations were shared and in some instances liabilities incurred in consultation with the National Government.

3.7.3 Management of the Public Service
County public service is composed of about five categories of staff: those seconded from the National Government; those from former local authorities within the county; the transition teams hired by the Transition Authority; those from water services boards and the new staff recruited by the counties. Majority of the staff especially from the local authorities had low qualifications and thereby posed a challenge in allocation of work and disrupting resource planning.

The counties have taken steps to manage the human resource collectively by harmonising the terms and conditions so as to manage costs. Counties are also looking at superannuation between non-contributory and contributory schemes between national and local authority staff. A final focus is on establishing the staffing gaps so as to recruit appropriately. Attracting and retaining highly qualified personnel has been a challenge due to resource limitations.

Efforts by the Public Service Commission in dealing with the HR challenges include:-

i. Rationalisation programme that is based on needs, mandates, functions and job description. In the past, staff had schedule of duties and not job descriptions, leading to duplication and wastage of resources.

ii. Building capacity to deliver services starting with a job evaluation.

iii. Institutionalising labour productivity as a measure for remuneration based on a performance management system.

The Salaries and Remuneration Commission (SRC) Chairperson, Mrs. Sarah Serem, highlighted the objectives of managing the public wage bill guided by the principles of sustainability, attractiveness of the public service and ability to retain competent staff. The SRC determined the value of each position based on job evaluation for all state officers and determined the salary scales for them. That has not been acceptable by all actors and negotiations are ongoing. The next step involves the setting of salaries for public oficers through revised job descriptions aligned to applicable salary scales. The focus is to ensure that compensation is based on responsibility.

Kenya has been on a course of implementing Results Based Performance and improved systems in the public sector. This requires attitude change and transformation in accordance with the principles of public service. Counties are faced with the same challenge and will need to customise their solutions. Counties need to set up HR management strategies including performance appraisals aligned to their respective policies. There is need to train and build capacity of county staff and create value.

3.7.4 Summary of Recommendations

Key recommendations made in the session were:

i. Counties need to develop their localised “Vision 2030” so as to fully customise the flagship projects in the Kenya Vision 2030.

ii. Counties should establish clear frameworks of public participation and communication so that there are clear feedback loops to avoid a perception that nothing is being done.

iii. There is need to establish a financial framework for counties as currently there is a dual system – IFMIS and LAIFOMs – and this is creating a strain in reporting standards. Accounting Standards Board to establish the minimum standards for accounts and reporting in both levels of government should be set up.

iv. To ensure better financial accountability, there is need for incentives for compliance and capacity building as opposed to adversarial witch-hunt. This would also apply in revenue collection.

v. Financial management will be effective through leadership, strategy and ability to implement.

vi. To improve local revenues, counties should concentrate on growing the economy by among other things investing in irrigation and agri-business.

vii. Job evaluations for public officers to be done at county level so as to harmonise tasks and remuneration. This would also help identify the optimum level of staffing needed to effectively deliver services.

viii. There is need for more open consultations to reach consensus on a solution for the growing wage bill.

4 Session 3: Trade and Investment

4.1 Introduction

This session covered the devolution of trade, commerce and investment functions. The panellists and participants considered regulatory, policy and administrative measures which have been undertaken to stimulate growth. Key issues considered included the financing of capital investments, improvement of value addition in county enterprises, public participation and engagement with the private sector.

The objectives included how to:

1. Appreciate trade commerce and investment opportunities available to counties at the national and international level.

2. Assess the framework of trade and investment in county governments.

3. Appraise opportunities in international instruments for county governments.

4. Map the risks of entering into investment arrangements.

5. Map the functions of the National Government in facilitating foreign direct investments and international trade.

6. Recommend innovative methods to promote trade and investments.

4.2 Expansion of Trade and Investments

County governments have taken initiative to increase trade and investments. Success stories in the first one year include: refurbishing of local markets for fresh produce, livestock etc.; undertaking investment forums and marketing strategies outside the counties and strategic engagement with the private sector and the general business community. These have resulted in remarkable pre-commitments. For example, in Garissa, Toyota is considering establishing a showroom to serve the northern part of the country.

Examples of innovative marketing strategies were noted in Siaya, Homabay and the counties at the Coast which have taken the initiative to undertake exchange activities to look for international markets for local produce. In Baringo, the county government has established a mass auction for livestock which brings premium and provides a market for the residents.

There is also greater emphasis and activity aimed at increasing productivity and value addition especially to expand agri-business. These initiatives have coincided with discoveries of potential for new industries such as the opportunity for oil production in Turkana, iron ore in Kitui and other rare minerals. There is need to ensure coordination with county governments to exploit the old and new opportunities. Structured initiatives must be undertaken to create suitable and/or conducive investment environments that will facilitate market expansion.

4.3 Regulatory Reforms

The reforms in procurement regulations, particularly the proper implementation of the 30% preference rule for women, youth and persons with disabilities, has enhanced inclusivity. Each county should develop investment strategies; identify key sectors of its economy and bar entry of investment in the sectors that require local protection. There is need for a structured inter-county collaboration during the development of the County Government Integrated Development Plan. Internal processes should be facilitative to encourage investment. The Public Private Partnership Law is under review and representations from the counties were recommended. Counties should also document their initiatives to implement the provisions of Public Procurement Oversight Authority (PPOA) so as to speed up implementation of development programmes and increase internal capacities.

In addition, counties should integrate ICT in their administrative systems. For example, effective use of ICT application in processing of licenses and registration of businesses would facilitate timely service delivery. Regulation of imports should be responsive to policy needs to minimise trade barriers.

4.4 Financing

Many counties have supported development of cooperatives to increase opportunities in the provision of finance loans and Sharia compliant facilities. In Garissa, for instance, the county government has taken proactive steps in engaging the business community, organising business forums including inviting the diaspora community to get involved in the county development and developing the facilitative structures in the first one year.

Capital Markets present an opportunity for increased funding, especially of infrastructure projects. County governments should build capacity and appreciate the legal framework that allows the issuance of local bonds. The processes must be consistent with the legal framework and appreciate the risks of using debt instruments. The initiatives should be done in consultation with the National Treasury and the Capital Markets Authority. The law has provided sufficient ground and opportunities for funding development. Particular counties have taken initiatives to test the PPP framework and these should be used as lessons to develop workable procedures and methodologies.

4.5 Public Participation

Counties consider the business community as partners and they have taken meaningful steps for constructive engagement. Most counties have organised investment forums and frameworks for regular feedback. In some instances, the business communities have established associations for advocacy and to sustain structured engagements.

There are significant opportunities for diaspora involvement in financing local development. There are presently over three million Kenyans in the diaspora and they have considerable willingness to invest back in their respective counties. A clear policy framework should be established to permit the initiative by county governments to maintain liaison bases or an office abroad to market the counties as ripe for investment.

Public participation in budget planning.

4.6 Private Sector Development and Foreign Direct Investment (FDI)

Counties should undertake resource mapping to identify their comparative strengths and put in place incentives for private sector investment. Proper incentives which guarantee good investment climate were recommended. Incentives should focus on simplifying administrative procedures and lowering the cost of doing business. The need to encourage counties to attract investments was recommended in order to increase job opportunities.

County governments should build internal capacity and take caution to comply with the national policies and laws governing FDIs. There is need for greater consultation with the National Government on the subject to minimise opportunities for controversy. For example, a story in the media about one of the governors who opened a liaison office abroad in seeking partnerships prompted reaction by the National Government that this is not a county function.

4.7 Summary of Recommendations

The discussions in plenary and responses made the following recommendations:

1. Create a good investment climate through revision of laws, provision of affordable energy, developing ICT infrastructure, enhancing skilled human capital and developing infrastructure and transportation network.

2. Rationalise internal procedures and lower the cost of doing business – rationalisation of taxes and regulatory fees, levies and charges.

3. County governments should undertake resource mapping, develop a priority investment list and appreciate their comparable advantage.

4. County governments should hold consultations on inter-county investment and develop necessary regulations and procedures.

5. County governments should collaborate with the National Government to facilitate their participation in public private partnership arrangements.

6. Counties should develop internal PPP models which are consistent with the national laws.

7. Functions with concurrent National Government mandates on industrialisation and registration of businesses need to be harmonised with a view to decentralising particular elements to facilitate efficiency.

5 Session 4: Social Services

5.1 Health, Education and ICT

5.1.1 Introduction
This session was facilitated as a cluster to consider the various social service functions including health, education and ICT within the devolved system.

5.2 Health
Health is a critical devolved function and has been used as a prominent yardstick to measure the success of devolution. Significant activities undertaken have been undermined by the crisis in the management of health professionals during the transition period. This session considered the transition process and shared experiences in developing necessary infrastructure; management of costs; management of health professionals and provision of adequate supplies.

The objectives of this session were:

a) Sharing experiences on challenges faced by county governments in delivery of healthcare services.

b) Identifying opportunities for improving the efficiency and cost-effectiveness of healthcare services in a devolved system.

c) Evaluating the progress of partnerships, resource mobilisation and healthcare financing in a devolved system.

5.2.1 Health Services Infrastructure
Invariably, counties do not have sufficient healthcare facilities. Most do not have Level V referral facilities. As a result, they have taken steps to invest in upgrading Level IV facilities in their respective regions to referral status. This involves building additional in-patient capacity, construction of laboratories, purchasing of new medical equipment and increasing personnel. County governments have taken steps to invest in new facilities to bring health services closer to the people as well as completing or improving the dispensaries built using Constituency Development Funds.

Long distances and lack of appropriate modes of transport have a direct influence in the provision of health services. Patients, including expectant mothers, are often taken to hospital using bodabodas and other improvised modes of transport. To mitigate this, nearly every county has started an aggressive programme to procure ambulances. As a result, counties expect to significantly reduced mortality for treatable illnesses and emergencies. Additionally, counties are rebuilding dispensaries to make them suitable to offer maternity services.

5.2.2 Cost of Health Services

Cost is a direct factor in accessing healthcare. For the longest time, Kenya has had a cost-sharing concept where the government subsidises the cost of medicines and services while patients pay nominal fees which are used to supplement government's contribution. Depending on the level of the facility, this fee ranges from between 20/= in dispensaries to 600/= in Level V hospitals. More often than not, most patients cannot afford to pay this amount. This has discouraged a lot of people from seeking healthcare services even where the facilities are within their reach. County governments are evaluating this framework and in some instances have taken the initiative to waive hospital charges. The experience in the one year is that where the fees have been waived, patient numbers have almost tripled.

5.2.3 Health Professionals

There is a major shortage of specialists (consultants) in most counties. In fact, some counties in rural areas do not have any specialists at all. Counties in marginalised areas like Mandera not only lack specialists but also do not have enough medical officers. To deal with this problem, county governments have taken steps to work closely with training institutions and the National Government to increase funding for specialists.

County governments inherited problems in the management of healthcare professionals, especially the problem of "ghost workers". For example, the Kisumu County Government discovered and "dismissed" 350 ghost workers in the health sector alone. This has freed up the payroll and enabled the county hire more health workers to serve the people. All counties have invested heavily in hiring of trained healthcare workers. This has in turn improved service delivery especially to people who were previously not served.

For over nine months, the payroll for health workers was handled by the National Government. This led to a myriad of complaints from healthcare workers who often went for months without pay. When counties started taking over the payrolls, a lot of challenges were faced with several healthcare workers reporting reduced or missing pay. This challenge has, however, been surmounted in all counties.

Living conditions in the different parts of the country has also influenced movement of professionals. Notably, health workers are reluctant to be deployed in rural areas, which is often where their services are needed most. Counties are developing incentives to attract health personnel to rural areas. County governments are also engaging with training institutions to encourage them to send in-service trainees to rural areas to enable them acclimatise with the conditions in these areas so as to make it easier for them to seek posting in those areas.

County governments are partnering with medical training colleges (especially the Kenya Medical Training College - KMTC) to expand facilities within their counties and increase opportunities for training of healthcare personnel to deal with the shortage.

In addition, counties have taken the initiative to set up revolving funds to support training of essential technical personnel in healthcare. This funds aim at improving access to healthcare training by capable but poor students. County governments are investing in and encouraging development of social services around health facilities to make it easier for health workers to live in the counties.

5.2.4 Supplies and Utilities

One of the biggest problems in hospitals has been shortage of essential commodities and supplies. The problem has been experienced in many health facilities which regularly suffer stock-outs of life saving medications. This has often been as a result of underfunding and the unreliability of supplies from the Kenya Medical Supplies Authority (KEMSA).

County governments have heavily invested in essential commodities over the last one year. KEMSA has also made great strides in improving its logistical systems. This has majorly been as a result of the reliable and timely payment by the counties which have in turn enabled them to better plan for procurement and supplies management.

In instances where the old procurement system resulted in under-supply or supply of un-required or expired medicines (based on a system of allocating hospitals a fixed drawing right), counties have held the procurement authority accountable for every order made and undelivered. In several instances, KEMSA has been forced to issue debit notes for undelivered orders.

The other problem faced has been theft of medical commodities by hospital workers. This has been cured by having closer supervision and strict sanctions where malpractice is discovered. Counties have taken steps to put in place tighter monitoring and evaluation frameworks to ensure pilferage is reduced or eliminated. The hiring of trained professionals has also contributed to a significant reduction of pilferage as they are bound by professional ethics compared to the casual labourers that handled medical stores previously.

5.2.5 Measures Undertaken by the County Governments in the Past One Year

Other measures and activities counties are investing in to improve service delivery in healthcare include:

- Dealing with the transitional issues relating to the devolution of the management of health workers. This posed challenges and labour strikes by health workers countrywide, putting provision of healthcare at risk. The county governments have negotiated with healthcare professionals and worked with the National Government to resolve the controversies;
- Developing a uniform payroll for all the 47 counties;
- Investing in ICT to establish uniform Health Management Information Systems (HMIS) for the facilities within the counties. This will go a long way in improving efficiency in provision of services and monitoring & evaluation of disease burden in the counties;
- Upgrading services in most of the facilities to offer 24-hour services where there was none by among others, investing in more healthcare workers and provision of electricity.

5.2.6 Continuing Challenges

Despite these positive developments, provision of healthcare in counties still faces some challenges that need to be addressed. These include:

- Delays in costing of devolved functions which have made it difficult for counties to allocate adequate resources for these services. Heath services especially workers' emoluments face the greatest challenges. Even though a lot of the challenges have been surmounted, the National Government still seems reluctant to provide adequate costing for these functions;
- There is insufficient funding to Level V hospitals with the National Government still holding their votes. The governors observed that even the conditional grants for these facilities were not forthcoming.
- High cost of healthcare owing to the VAT charge on medical equipment or supplies donated by partners. Most governors have managed to successfully lobby for donations of medical equipment from well-wishers outside Kenya. However, the VAT Act, 2013, imposed VAT on the donations which is an additional burden on counties or acts as a disincentive. Governors are lobbying Parliament to amend the VAT Act to remove this bottleneck. The other hiccup in law to donations is the imposition of a 0.5% Railway Development Levy. This also needs to be removed to allow for donations of expensive life-saving drugs and equipment like those used for treatment of cancer.

5.3 Education and Information Communication and Technology (ICT)

5.3.1 Introduction

Objectives under the Education and ICT topic included:

a) Assessing the opportunities of the ICT sector in the counties.

b) Evaluating the standards and policy framework for Early Childhood Education and Development (ECDE) at the county level.

5.3.2 Cost of Education

In spite of the introduction of free primary education, poverty continues to have a direct influence in access to education particularly by girl pupils in marginalised areas. Most parents are too poor to afford paying school fees for their children post-secondary. Some counties, like Nandi, have passed a law establishing an education fund that offers support for training of needy students, giving priority to technical areas. They have partnered with the Higher Education Loans Board (HELB) to administer the fund.

Under the partnership programme, HELB has undertaken to match shilling-for-shilling the amount of money the county put up to establish this revolving fund. Going forward, the focus will be on creating awareness on the fund through MCAs to increase its uptake. To maximise on the benefits for the county, one option is to develop a system where the people who benefit from the funds help the county for a set period of time or are bound by their respective county governments before they can leave for greener pastures.

5.3.3 Framework for Implementation of Early Childhood Development and Education

Speakers noted the lack of early childhood development and education programmes in the public school system even though the Constitution requires pre-primary school to be free and compulsory. To this end, all county governments have embarked on the hiring of ECDE teachers in accordance with their constitutional mandate. However, the biggest challenge is the TSC Act that requires that the employment and supervision of all teachers, including for ECDE, be done by the TSC. The County governments have proposed the amendment of the TSC Act to remove this function from TSC in accordance with the constitutional provisions.

Constitutional obligations necessitate development of ECDE programmes in the public school system given that it is a fundamental right. The panellists underscored the need to have a standardised ECDE curriculum and a framework for training and hiring teachers for the whole country so that children across the country get standardised care.

5.3.4 Mid-level Technical Institutions

Emphasis on university education has undermined development of mid-level technical institutions. The emerging crisis is that most counties lack technical personnel in relevant sectors required to bring social services to the people like water (plumbers), building works including roads (masons, civil engineers) and electricity (electricians). These skills are required to enable counties build a local workforce to support development. It is for this reason that counties have taken the initiative to set up education funds to train their own personnel to bridge this shortage.

5.3.5 Opportunities to Work with Higher Education Loans Board

The HELB representative, Mr Paul Ringera, outlined an agenda aimed at helping counties to establish their own sustainable funds for education in partnership with HELB. Under this scheme, counties which administer their education funds through HELB are able to access matching amounts for disbursement. The funds are strictly meant for the individual counties that establish these kitties and awards made on the recommendation of the county governments. HELB has over Kshs. 400 million unutilised funds which can be made available for disbursement through the partnership scheme.

Additionally, HELB had, with the help of USAID, established a middle-level health workers training fund for counties known as **Afya-Elimu.** The fund had benefitted from a seed capital of USD 1,000,000 given by USAID and matched by Kshs. 50,000,000.00 given by HELB. Mr. Ringera urged counties, through MCAs, to encourage their constituents to take up the loans for training of healthcare personnel.

5.3.6 Plenary discussions

- Education should be wholly devolved so that counties can manage transition better;

- Counties are working on upgrading village polytechnics to offer technical training. The only bottleneck is the controversy with the National Government relating to village polytechnics owing to the move to re-classify the institutions as youth polytechnics;

- There is need to increase the disbursement schedule for devolved funds so that counties can use the money properly;

- The current exchequer rules make it impossible to engage in meaningful development with the current monthly schedules;

- Proactive steps should be taken to increase inclusivity by ensuring that ECDE facilities are disability-friendly. It is also necessary to ensure that all new facilities in the counties have provisions for disability-friendliness.

5.3.7 Recommendations

1. Lobby Parliament to amend the VAT Act to exempt donated medical equipment and commodities as this is a hindrance to healthcare development.

2. Lobby Parliament to amend the TSC Act to remove the confusion over responsibility for ECDE teachers from the TSC to counties.

3. Standardised ECDE curriculum – adopt the Montessori system throughout all counties.

4. Fully devolve education to counties to manage transition and service delivery.

5. Increase the disbursement schedule for devolved funds so that counties are able to better plan their development activities.

6. County governments should create special incentives for marginalised areas to attract and retain healthcare workers.

7. Governors should consider providing funding for post-graduate training to doctors to enhance the nationwide capacity to provide quality healthcare.

8. Counties should partner with the private sector to build world-class health facilities to take advantage of the huge opportunities for health tourism to attract revenue and improve the quality of health.

9. Counties should, as a policy consideration to improve local enterprise especially in the informal jua kali sector, have a preference for locally-available commodities and minimise importation of products that can be made locally.

6 Session 5: Infrastructure, Energy and Mining

6.1 Introduction

Development and infrastructure are priorities to national economic development and achievement of the Vision 2030. Kenya has made significant capital investments in infrastructure. Given the scope of the investments, greater collaboration between the National Government and the counties and among counties is necessary. Kenya has potential for substantial growth in geothermal, wind, solar, gas, oil and biomass energy among others. This progress presents opportunities for both national and county governments.

The objectives of the session were outlined along these four key areas:

1. Identify progress and priorities in infrastructure development.
2. Develop frameworks for collaboration with National Government and among counties in large capital investments.
3. Share experiences and identify priorities for achieving quick wins in the sector.
4. Identify challenges to infrastructure investment and make recommendations.

6.2 Roads and Infrastructure

6.2.1 Legislative Framework

The panel discussions highlighted the following priorities in infrastructure development:

- The need to develop a national legal framework and align the disparate county legal and regulatory frameworks for development and management of infrastructure. They underlined the need for a national transport policy that regulates the usage of county roads. The lack of a regulatory framework has led to difficulty in roads' maintenance because any vehicle with any type and/or weight load is permitted to traverse the counties regardless of the grid or gradient of the road;
- Develop appropriate legal frameworks that facilitate financing of infrastructure by counties. Such legislation would allow county governments to independently mobilise funding. Public Private Partnerships (PPP) are an important way of raising income and generating partnerships. The PPP office should aim at building internal capacities in county governments to limit the need for counties to facilitate efficiency and ability to directly engage with partners;
- Facilitate the development of inter-county legislative framework that allows for joint financing for the construction of inter-county link roads;
- Develop and implement a regulatory framework to enable counties regulate the public transport particularly in urban areas. Such a framework will facilitate counties to map the roads needed within the county and between counties to decongest traffic as well as encourage use of higher occupancy vehicles;
- The National Government should devolve the work of agencies with mandates in management of county roads such as KERA and KURA and allow county governments construct their roads.

6.2.2 Cost Management of Capital Investments

High cost was identified as a big challenge in infrastructure development. Counties have taken initiatives to innovatively manage costs. Many counties have successfully addressed this challenge in three main ways:

1. Addressing bureaucracy and cost of outsourcing particularly through using in-house staff to design all major plans. Machakos County has used its engineers to design plans and that has enabled them significantly reduce costs as well as the time it would take to approve an outsourced plan.

2. Proper planning is critical in reducing cost and delays. Machakos County ensures the project money is debited in the county accounts before they commission projects. This has helped them avoid complications that come with delayed payments which result in cost reviews and delays.

3. Compliance with procurement regulations. The procurement regulations had been amended to allow 35 days as the minimum period from advertisement to tender and even shorter period for prequalified firms where only 14 days are required. These changes will limit the procurement delays.

6.2.3 Recommendations

The following recommendations were made by the panellists and in plenary:

- The national and county governments should regularise their procurement systems in accordance with the law and explore innovative options such as the use of reserve price tendering and open bidding to bring down the costs of road construction;
- Increased clarity in respect to the respective mandates of the national and county governments;
- Increased capacity in the national and county governments to use PPP as a way of raising income and generating partnerships;
- Assessment of county roads through mapping and proper planning to ensure objectives of decongesting traffic;
- Devolution of relevant road development authorities including KERA and KURA to county governments to allow them construct roads.

6.3 Energy and Mining

6.3.1 Environmental Risks in Energy and Mining Development

The Constitution imposes significant obligations on protection of the environment. Environmental Impact Assessment (EIA) is a legal requirement that must be observed by both national and county governments in undertaking major projects.

Critical considerations include:

- Environmental implications of large power generation projects. For instance, wind turbines can both disrupt migratory routes for animal species as well as generate noise pollution;
- Mining projects have implications on human safety and health, animals, ecology; property rights as well as the need to design appropriate plans for post-mining land restoration;
- Give due attention to the principle of sustainable environmental management to ensure that investments do not negatively impact on future generations.

The national and county governments were urged to collaborate on policy and legislative development. Currently, the Energy Bill is under consideration by Parliament. Significant issues relating to the establishment of a framework for sharing of profits from mining and extractive industries, and the need for mandatory consultation with communities before licenses are awarded by the National Government should be considered jointly. Consultations with local communities will also facilitate protection of their rights and resolution of disputes without resorting to litigation. The current formula for sharing profits generated from mining is 80:15:5 in favour of the National Government, County Government and community respectively. The Senate is considering a proposal to increase the ratio to 75:20:5.

Effective mechanisms for engagement with private sector are essential for planning and infrastructure development. Some counties have taken initiatives in partnership with Laptrust to develop solar energy powered street lights. This progress can be significantly increased with proper private sector partnerships. Laptrust has created a model of solar street lighting called Smart Lights. They use both wind and solar to power the lights but go beyond that to connect counties via fibre optic cable as well as add on features such as CCTV cameras to enhance security. The lights will provide many benefits including improved security, increased revenue and job creation.

6.3.2 Recommendations

- Investments in energy and mining should be preceded by environmental risk assessment that involves the communities;
- An effective post-mining land restoration should be a mandatory condition to agricultural use of land;
- A framework for sharing of profits generated from mining and extractive industries should be developed to allow profits accrue to communities and consider improving the sharing of mineral resources between the National Government, county and community; An effective mechanism for corporate social responsibility and technology transfer should be developed and implemented;
- With specific regard to the Energy Bill before Parliament, it is important to ensure that no licenses are awarded by the National Government before enactment of the proposed law and without community consultation;
- Increased use of solar energy powered street lights and participation of the private sector should be encouraged.

7 Session 6: Agriculture, Land and Natural Resources

7.1 Historical Considerations

Since independence, agriculture has been the backbone of Kenya's economy. In a primarily agricultural country like Kenya with an expanding urban development, it is important to develop an effective policy framework that is dynamic and facilitates growth. Land use management in some counties with large, rich, arable land like Kericho are influenced by historical considerations. For instance, Kericho County has large arable land divided in four sets of tenure structure (private, crown and community land). The crown land initially had a lease of 999 years, which was later scaled down to 99 years; most of which is under multinational leases.

7.2 Transitional Issues

The Transition Authority had undertaken a comprehensive assessment of all the counties to establish the assets in each county and that credible information is available to inform planning. The TA, through its Chairperson, indicated that it will propose amendments to the Transition to Devolved Governments Act to classify areas and help review the present state of counties, including their assets and facilities.

Meru Governor, Peter Munya, highlighted the inconsistencies in legislation enacted before the Constitution and underscored the need to restructure old institutions to align them with the devolved structures. There is need for counties that share resources to create institutions that will guide equitable utilisation of resources.

7.3 Land Policy and Development in Arid and Semi-Arid Lands (ASALs)

Arid and semi-arid lands are the next frontier of Kenya's development. The areas sustain up to 80% of Kenya's livestock and 80% of wildlife. Contrary to popular perception, the Sessional Paper No 10 of 1965 did not facilitate development of ASALs. This left them largely marginalised in the post-independence period. Devolution presents a timely opportunity to solve the ASAL problems.

Arid lands are increasing due to climate change and environmental degradation. It is therefore necessary to establish a policy framework and county strategies which include increasing water supply throughout the country and percentage reduction of demand for water. ASAL areas must develop plans to improve accessibility to water through increased piping and effective management. This should be complemented by exploring and utilising surface water and ground water for agricultural purposes and to put in place mechanisms that would ensure water wastage is drastically reduced.

County governments in the ASAL areas were urged to consider increasing crop farming and encourage agro-forestry to diversify farming methods and outcomes. To support sustainability and environmental protection, the governments should increase crop farming and encourage forestry. County governments should also intensify the role of agriculture in the lives of the local communities.

7.4 Land Governance

County governments should take necessary caution in designing frameworks for land rates and taxation in a manner that facilitates land use. A county like Kericho, for instance, has taken a cautious approach and is committed not to increase land rates. There is need for the Transition Authority to facilitate the transfer of outstanding functions and to develop a comprehensive inventory and valuation of assets within the counties in consultation with county governments. There in need to develop adequate structures and capacity to facilitate land administration.

High remittances to the Water Resources Management Authority (WARMA) and attendant taxes are ultimately shouldered by consumers.

The panellist recommended the need for the National Government to come up with a master plan to regulate the water sector and offer guidance to the county governments. Additionally, it is important to create a water trust fund and ensure non-interference in the running of water service providers and water boards, based on the initial contractual agreements entered prior to the commencement of county governments.

7.5 Public Participation

County governments have the responsibility of making sure that the county residents and communities are involved and represented in decision making, especially in relation to agriculture, land rights and environmental management. Progressive policies on agro-forestry will assist local communities to claim benefits from carbon payments.

7.6 Management of Cross County Natural Resources and Management of Resource Based Conflicts

The panellists noted that natural resources transcend county boundaries and their utility unavoidably leads to disputes. It is important to establish a legal and institutional framework for natural resource management, public participation and resolution of disputes. For instance, the Inter-governmental Relations Act gives direction on how to share and utilise natural resources across counties.

Some counties have taken a proactive approach to manage and mitigate the potential for resource based disputes. For example, the counties bordering Mount Kenya have established a cross-county management strategy called Mt Kenya Ecosystem Forum to consider mechanisms for sharing natural resources. The Central Upper Eastern Trade Inter-Counties Forum has also been established to guide the counties on sharing resources and to resolve attendant conflicts. The forum is composed of Meru, Tharaka Nithi and Embu counties. The terms of reference of the forum are to outline guidelines and resolutions which inform policies in the respective counties. Regional authorities continue to guide the management of shared resources like the Ewaso Nyiro North Development Authority and Ewaso Nyiro South Development Authority.

Management of forests in Kenya is under the National Government which should take leadership to engage county governments for effective management. There are significant collateral benefits of forestry. For instance, Kericho has about 240 acres of forest with rich indigenous trees where traditional medicines are found.

Land rights and tenure necessarily lead to many conflicts. Counties should take collaborative efforts of land rights management especially for border communities. For instance, Meru and 50 Nithi have established a joint forum to resolve land ownership challenges. Isiolo and Meru boundary issues are being addressed with the assistance of the National Land Commission (NLC) and the Independent Electoral and Boundaries Commission (IEBC). There is need for cooperation between national institutions and counties to resolve trans-county disputes relating to land and natural resources.

7.7 Protection of Community Land and Trust Land

The panellists emphasised the need to appreciate the connection between land tenure and land use systems to develop integrated community decision-making mechanisms to protect the rights of communities, including generational rights. Devolution and reforms in land governance should help to guarantee community rights.

Laikipia Deputy Governor Gitonga Kibugi emphasised that land use planning is crucial. He regretted the lack of a national system of spatial planning, especially because counties are expected to operate within a framework that engenders consistency. It is an important element of community land and therefore necessary to have a complex and diverse mix of management systems or approaches of community land.

7.8 Land Management and Climate Change

The Land Act mandates the National Land Commission to put in place mechanisms to check climate change. The NLC should work through consultations to achieve proper water as well as land use management. As a priority, the commission should facilitate the mainstreaming of climate change functions to their land use strategies.

The commission should also develop a framework for integrated land rights and tenure for effective land use.

7.9 Land Management and Urban Development

The Urban Areas and Cities Act, 2011, gives residents the right to contribute to the decision-making processes of the city or urban area. The Act provides for management and governance of urban areas and cities and for the naming or formation of cities and urban areas as anchored in Section 5 of the Act.

The Act enables full participation of residents in the governance of urban areas and cities. The public can participate in executive committee consultative meetings to develop policies on urban development. Regrettably, the Act is silent on how small urban areas can be managed in the devolved system of government. Planning and development of urban areas are critical to development of counties. It is important to review the legislation and provide for a more realistic threshold for classification of cities and urban areas. A recommended threshold based on population is that towns with a minimum of 250,000 residents may be defined as urban areas. It is clear that urban areas will absorb future population growth.

7.10 Recommendations

1. There is need to recognise the urban development sector as a stand-alone sector and recognise it as such in the CIDPs by all county governments.

2. County governments should develop capacity for management of towns and urban areas.

3. Urgency to increase training in trade and finance.

4. Establish a committee to oversee the implementation and coordination of the Act and the attendant developments.

5. Empower county decentralised units. This will help to manage municipalities across the country.

6. Need for effective town planning across the counties.

7. It is necessary for the private sector to have space through which they can play their roles and effectively engage with the county governments.

8 Session 7: Legislative Functions and Inter-governmental Relations

8.1 Introduction

The discussions in this session focused on the roles of the institutions created under the Constitution; their respective mandates; the legal framework for inter-governmental relations; the extent of inter-governmental coordination as envisaged in the Constitution; the extent of mutual cooperation with a view to full implementation of devolution and assessment of progress and challenges.

The panellists and participants emphasised the need to strengthen the legal framework to protect devolution; develop a working interface between institutions on devolution; increase clarity on the respective roles of institutions established under the Inter-governmental Relations Act including a framework for resolution of disputes; set up a technical committee to buck stop the work of the Summit and the other institutions and establish concerted efforts among organs and agencies to be involved in generation of legislation with implication on devolution. Panellists also emphasised that the Senate should robustly discharge its constitutional role of protecting devolution through consultation with county governments and the importance of the county governments to safeguard social accountability through meaningful public participation.

8.2 Panel Discussion

The panellists outlined the normative and structural features of inter-governmental relations, appreciated the progress made in the transition period and the remaining challenges. They noted that effective inter-governmental relations are at the core of the constitutional framework and require good faith, mutual respect and commitment among relevant institutions.

The key considerations included the following:

- The Constitution establishes the National Assembly and the Senate and the two institutions jointly make up the National Houses of Parliament and the County Assemblies as the legislative assemblies at the county level;
- The functions of the Legislature include: law making, oversight and representation. Executive roles relating to development are not within the purview of the Legislature and therefore advocacy on management of particular funds are arguably inconsistent with the Constitution;
- Engagement in Executive roles by the Legislature would undermine separation of powers and the oversight roles of the Legislature;
- Article 6 of the Constitution defines the relationship between the two tiers of government. The two are distinct but are expected to conduct their relations through mutual consultation and cooperation. The Inter-governmental Relations Act sets up a structure for collaboration between the two. Arguably the most critical institution under the Act, the Summit, has not been formally convened;
- In some instances, Parliament had passed laws that negated the spirit of devolution without seeking the views of county governments. Particular examples include: the Water Act, the Division of Revenue Act and legislative proposals to revert control of health services to the National Government;
- Constrained relationships among institutions have been influenced by lack of understanding of the respective constitutional roles;
- Constitutional commissions have approached the courts to bring clarity in particular instances. For instance, the CIC opted for litigation to break the deadlock on the roles of the two houses on the Division of Revenue Bill;

- Under Article 189, the Constitution provides that in carrying out their mandates, each institution must respect the functional and institutional status of other institutions;
- The establishment of the Technical Committee on Transition is a priority to facilitate inter-governmental relations;
- The Senate has a critical role in protecting counties and must robustly exercise its authority by avoiding opportunities for acting at cross purpose with county institutions. In some instances, individual statements of commitment to protect devolution have been overshadowed by collective action of the Senate;
- There is a risk to claw back on devolved powers through legislation. For instance, the County Development Board Bill will inevitably have the effect of undermining county governments;
- The relationships between the county executives and county assemblies have been curtailed by lack of consistent approaches to consultations. It is also important to increase capacities of the executive departments and the assemblies to appreciate their respective roles and the need for cooperation.
- The national and county governments should, where necessary, approach the Supreme Court to activate its jurisdiction under Article 163 of the Constitution without perceiving such action as adversarial;
- Accountability is a primary role of the assemblies, so they should insist on high standards and that duties are performed in a timely and accountable manner;
- Capacity building initiatives have emphasised training of assemblies while little has been dedicated to the training of county executives. There should be urgent and more intensive measures to carry out trainings of the Executives;
- There has also been failure to develop laws on the roads sector to bring clarity to the roles of the national and county governments;
- The counties have urged for the establishment of the loans and grants council to facilitate the development of a coherent policy on public debt management.

8.3 Opportunities for Public Engagement in Policy and Legislative Development – The Ugandan Experience

Meaningful public participation is critical to the successful implementation of the Constitution and devolution. The Constitution has a strong normative foundation that put citizens at the centre of decision making under devolution. Uganda used to lead in decentralisation but the process was politicised through lack of good faith and has since failed. Kenya was cautioned against going through the same route that Uganda took which made devolution fail.

The civil society should be involved in the development of county laws and governance as a critical partner. There are provisions for pursuing court interventions where public engagements are ignored. Adequate safeguards should be put in place to prevent the tendency of the National Government to undermine devolution by dividing the people or the governors. It is fundamental for the governors to work in concert in defending devolution. Pro devolution advocates should map counties' populations and identify persons who are champions of devolution and adversaries with a view to finding strategies of engagement with both.

The default strategy of the national and county governments should be to pursue honest dialogue and negotiation in dealing with contentious issues. Hasty confrontation or an adversarial stance is likely to be met by disproportionate impulse for resistance which would be counterproductive to the desired change. The county governments should provide civil society groups with opportunities as critical partners in supporting devolution. These measures must be anchored through effective framework for social accountability to communities to secure the self-governance objectives of devolution and give meaning to the people.

8.4 Priorities for Full Implementation of the Devolved System

In the second year of devolution, emphasis should be made on the following in order to drive the devolution agenda:

- County leadership should take steps to negotiate over contentious issues that may derail devolution;
- The Technical Committee should be established as a priority in accordance with the Inter-governmental Relations Act;
- The Summit should be convened frequently – at least once every quarter – in the formative years of transition;
- Establish a Council of Governors Committee on urban development to oversee implementation of the Cities and Urban Areas Act;
- Political expediency should not inform the setting up of institutions to support devolution;
- There is need to develop structures for effective public participation;
- Counties to dedicate resources to civic education and empowerment;
- Monitoring framework for development and implementation of legislation in respect to devolution;
- Better structured engagement between county assemblies and county executives is critical;
- The relationship between the two levels of government and among the organs in the two levels should be based on respect without the tendency to be overbearing or to intimidate;
- Gender and diversity agenda of devolution should be integral to legislation, planning and implementation.

ANNEXURES

COMMUNIQUE AT THE END OF THE FIRST DEVOLUTION CONFERENCE HELD ON 3RD AND 4TH APRIL 2014

One year on, we can confidently say that it has been a long, challenging but very fulfilling year both for county and national governments. The foundations have been laid, the plans are work in progress and the journey has begun. The participants at this conference have expressed commitment to delivery of service, full implementation of devolution through good governance, inter-county coordination, intra-county coordination, accountability and cooperation with county and national governments.

To deliver on the **Devolution Promise** for the year under Review, the conference considered and made the following recommendations:

1. THAT the conference reaffirmed its commitment to implementation of devolution in the coming years.

2. THAT the conference reaffirmed the commitment of county governments to accountability to both the people of Kenya and the relevant oversight institutions as by law established.

3. THAT it is necessary to ensure prompt and full transfer of all pending functions respecting the principle that resources follow functions.

4. THAT constitutional commissions with responsibilities relating to devolution committed to take concrete steps to protect the objectives of devolution through closer consultation to enhance harmonised approach with the National Government, Parliament, county governments and other stakeholders.

5. THAT while maintaining and respecting the autonomy of the distinct county governments, there is need to share experiences, best practices and standards in legislative development.

6. THAT the Legislature at national and county levels must play a facilitative role in implementation while maintaining their oversight responsibilities.

7. THAT parties under the Inter-governmental Act should recommit themselves to the objectives of the Act and that there is need to convene the Summit more regularly to iron out issues which may be in contention. In this connection, the conference calls on all holders of public offices to foster greater harmony in order to speed up the implementation.

8. THAT the conference supports the initiative to give car grants to County Assembly members by the National Government and acknowledges the endorsement by H.E The President of the same.

9. THAT the conference acknowledges the work undertaken so far by the Transition Authority and notes that certain functions should have been transferred by end of January and urges that such functions should be transferred by end of April. In this regard, the conference supports the continued existence of the Transition Authority to undertake its work to completion as established by existing law.

10. THAT the conference disapproves the establishment of County Development Boards as it contradicts the principles of devolution and separation of power and attempts to usurp the work of the County Assemblies and County Executives in the execution of their constitutional mandate.

11. THAT the conference notes the delays in releasing of funds and recommends timely and efficient disbursement to enable counties undertake their functions without undue delay.

12. THAT implementation of the Equalisation Fund in the current financial year in the 14 identified counties has been unnecessarily delayed. Counties expressed commitment to cooperate with the National Government to facilitate administration of the Equalisation Fund under a framework which ensures that the fund is managed through the county governments.

13. THAT county governments are committed to working with the audit and accountability institutions appreciating that an effective audit framework is a management tool that strengthens systems within institutions not tools for witch-hunt.

14. THAT there is need for a comprehensive public debt management framework that does not simply burden county governments with liabilities which impede service delivery. The conference urges the immediate establishment of a Loans and Grant Council to manage the ballooning public debt in disregard of the principle of equitable sharing of the national burden in current and future generations.

15. THAT the conference urges the Salaries and Remuneration Commission to urgently conclude ongoing process of wage determination affecting both County Assemblies and the Executive based on a professional evaluation that considers the cost of living and other parameters to allow county governments to budget effectively for the next financial year.

16. THAT the conference commits to implement an effective social security framework for county governments.

17. THAT the conference reaffirmed the enhancement of civic education and public engagement to ensure full implementation of devolution and forestall opportunities for unjustified claw-backs.

18. THAT county governments are committed to working closely with development partners in providing technical and financial support that will enable counties deliver their functions.

19. THAT the conference urges the expedited approval of programmes that support community development. That all levels of government should respect the principles of public participation in the design of policies, legislation and programmes in support of community development.

20. THAT county governments will create an enabling environment for private sector to undertake business development and investment.

21. THAT the conference recommends the establishment of the Committee on Urban and Social Development by the Council of Governors to ensure the Urban Areas and Cities Concern are urgently addressed.

22. That this conference will be held annually.

SIGNED

ANNEX TWO:

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	George Muruli	CRA
	Roselyn Omolloh	CoG Secretariat
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	Amb. E.M Barine	Ministry of Foreign Affairs
	Agnes Mugane	ACGOK
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	Nelly Waweru	CoG Secretariat
	Linda Khakali	CoG Secretariat
	David Wanjohi	CoG Secretariat
	Sharon Makena (taking notes)	CoG Secretariat

ANNEX THREE:

REVIEW OF BILLS

Covered Bills

1. Alcoholic Drinks Control (Amendment) Bill
   The bill is in its second reading in Parliament.
2. Climate Change Bill 2014
   The bill is in its second reading in Parliament.
3. Constituency Development Fund Act 2013: The Act was repealed by the judgement of justices Lenaola J, Ngugi J and Majanja J in the court case – Institute of Social Accountability & another v National Assembly & 4 others [2015] eKLR. The judges declared the Act unconstitutional and invalid on 20th February 2015, but they suspended the order of invalidity for 12 months from the date of judgment.
4. County Government (Amendment) Act 2014
   The bill is in its second reading in Parliament.
5. County Industrial Development Bill 2014
   The bill is in its first reading in Parliament.
6. Diabetes Management Bill 2014
   The bill is in its first reading in Parliament.
7. Draft Policy on the Roads Sub-sector
   The National Treasury had invited general and specific comments on the Draft by 4th February, 2015.
   The National Treasury is still finalising the document before seeking Cabinet approval.
8. EMCA Proposed Amendments
   Published 2014.
9. Inter-governmental Relations (Amendment) Bill 2014
   The bill is in its third reading in Parliament.
10. Order of Precedence Bill 2014: It is already passed by the National Assembly and is awaiting presidential assent.
11. The Mining Bill 2014
12. The bill was passed by the National Assembly and forwarded to the President for assent. The President returned it to the Senate for review.
13. Physiotherapist Bill 2013: The bill has already been passed into law.
14. **Scrap Metal Bill:** The bill has already been enacted into law. The Scrap Metal Act No. 1 of 2015 was assented on 7th January 2015 and commenced on 23rd January 2015.
    The following bills are still being discussed in Parliament:
15. Kenya Medical Supplies Authority (KEMSA) Amendment Bill 2013 and Kenya Medical Supplies Authority Act, 2013.
16. Kenya National AIDS Authority Bill 2014.
17. Kenya Roads Bill 2014.
18. Mental Health Care Bill 2012.
19. National Drought Management Bill.
20. Pharmacy and Poisons (Amendment Bill) 2014.
21. Physical Planning Bill 2014.

22. Statute Law (Miscellaneous Amendment) Bill 2014.
23. The Alcoholic Drinks Control (Amendment) Bill 2014.
24. The Community Land Bill 2013.
25. The Constitution of Kenya (Amendment) No. 2 Bill of 2013.
26. The Disaster Risk Management Bill.
27. The Environmental Management and Coordination (Amendment) Bill 2014.
28. The Forest Conservation and Management Bill, 2014.
29. The Government Proceedings (Amendment) Bill 2014.
30. The Private Security Regulation Bill 2013.
31. Water Bill 2014.

EXCLUDED BILLS

1. **Public Procurement and Asset Disposal Bill**:

   The principle objective of the bill is to give effect to Article 227 of the Constitution, which requires procedures for efficient public procurement and for assets disposal by public entities; and for connected purposes.

   The Public Procurement and Asset Disposal Bill 2014 fails to recognise county governments as independent constitutional governments. As much as county governments are public entities and procuring entities, it is important to note that they are constitutional governments and should be treated as such. This bill makes provisions that apply across all public entities which include county governments. We find such provisions unconstitutional in as much as they purport to apply to county governments without any modifications to suit the county governments. We recommend a review of the provisions on compliance which tend to make county governments answerable to organs of the National Government.
2. **Public Audit Bill 2014**: The bill is not contentious.
3. **The Employment (Amendment) Bill 2014**: The bill is not contentious, but it will affect the employment policies of County Public Service Boards.
4. **The Special Economic Zones Bill 2015**: The purpose of the bill is to provide for the establishment of special economic zones for the promotion and facilitation of global and local investors. The bill fails to recognise counties as governments. It does not provide for consultation with county governments when the Cabinet Secretary is gazetting special economic zones.
5. **The Constitution of Kenya (Amendment) Bill 2015**: The purpose of the bill is to change the Election Date from the second Tuesday in August to the third Monday in December. It affects counties as it amends Article 177 on the election of county assembly members and Article 180 on the election of the county governor and deputy governor.
6. **The Public Finance Management Amendment Bill 2015**: The bill has various contentious clauses that are contemptuous of the spirit of devolution. For instance, under the current Act, only the County Assembly's approval is required in the declaration of a County Government entity. The bill adds an extra tier of parliamentary approval.
7. **The National Youth Employment Authority Bill, 2015:** The bill provides for the establishment of the National Youth Employment Authority and gives effects to Articles 55 (c) and 56 (c). One of the objects is to facilitate increased employment of the youth in the County Government and County Government entities.
8. **The County Assemblies Powers and Privileges Bill 2014:** The bill provides for the powers, privileges and immunities of county assemblies, their committees and members. The bill is not contentious as it gives effect to Article 196 (3) of the Constitution that provides that Parliament shall enact legislation providing for the powers, privileges and immunities of county assemblies, their committees and members.

9. **The Reproductive Health Care Bill:** The bill provides for the recognition of reproductive rights and connected purposes. The bill is not contentious.
10. **The Public Appointments (County Assemblies Approval Bill) 2014:** The main objective of the bill is to provide a legislative framework through which nominees for appointment to public offices, for which the approval of a County Assembly is required under the Constitution or any other law, are vetted and approved for appointment by the county assemblies. The bill is not contentious.
11. **The Parliamentary Service (Amendment) Bill 2014:** The bill proposes the creation of committees to promote the efficiency of the Parliamentary Service Commission in delivering services to the National Assembly and the Senate and, in turn, promotes the oversight role played by the Senate over the counties. The bill is not contentious.
12. **The Potato Produce and Marketing Bill 2014:** The bill establishes the National Potato Council which is mandated to implement the provisions of the Act, in particular to promote production, standardised packaging and regulation of the marketing of both seed and ware potatoes. It also establishes the County Potato Committee which is to operate under the guidance and direction of the council. Agriculture is fully devolved therefore counties should play a more pronounced role. The bill diminishes the role counties should play in the production and marketing regulation of potatoes.
13. **The Food Security Bill 2014:** The object is to provide a framework and mechanisms for the coordinated implementation of the national policy, programmes and plans on food security by the county governments.
14. **The County Retirement Scheme Bill 2014:** The principal object of the bill is to establish the County Retirement Scheme as a mandatory scheme for all County Government officers; provide for the establishment of the scheme's Board of Trustees and provide for the scheme's management and administration. The bill is not contentious.
15. **The County Assembly Services Bill 2014:** The principal object of the bill is to establish a legal framework for County Assembly Service Board which is established by the county governments Act, 20l2. This is intended to enhance the independence autonomy of the County Assembly from the County Executive to improve the oversight role of the Assembly over the Executive. The bill is not contentious.
16. **The Public Fundraising Appeals Bill 2014:** The principal object of the bill is to provide for the establishment of regulatory mechanisms at the national and county levels which oversee the conduct of fundraising appeals.
17. **The National Police Service (Amendment) Bill 2014:** The bill provides for improved facilitation and compensation for police reservists in recognition of the fact that County Governments require enhanced security to execute functions.
18. **The Universities (Amendment) Bill 2014:** The principal object of this bill is to amend the Universities Act, No. 42 of 2012, so as to provide for liaison and coordination between the Commission for University Education and the county governments on matters of provision of university education at the county level of government. The bill also proposes the establishment of public universities in each of the counties.
19. **The County Early Childhood Education Bill 2014:** The principal object of the bill is to provide a framework for the implementation of early childhood education by the County Government in line with its functions as set out under the Fourth Schedule of the Constitution.

    The bill addresses the disputes raised in 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, particularly the claim that that the recruitment and employment of Early Childhood Education teachers by county governments is unconstitutional.

    The bill has various contentious issues. Legislating on Early Childhood Education is a preserve of the county governments as espoused by paragraph 9 of Part 2 of the Fourth Schedule of the Constitution.

Passage of this bill would undermine devolution as it will be taking away a legislative preserve of the counties. Further, setting up a national framework will deny counties the flexibility necessary to address local issues unique to each county. The bill has given the County Education Boards the power to register, deregister and regulate early education service providers, a function that should be conducted by a body established by each county and which is cognizant of local education issues unlike County Education Boards which are National Government apparatus. Therefore, the Senate should not purport to exercise legislative powers over areas reserved for county assemblies.

20. **The County Hall of Fame Bill 2014:** The purpose of the bill is to provide an avenue by which exceptional persons in each county are recognised and honoured by their counties. The bill is not contentious.
21. **The Natural Resources (Benefit Sharing) Bill 2014:** The principal purpose of the bill is to provide a legislative framework for the establishment and enforcement of a system of benefit sharing in resource exploitation between resource exploiters, the National Government, county governments and local communities and to establish the Natural Resources Benefits Sharing Authority. The bill is vague on the precise formula of sharing between the National Government and county governments.
22. **Office of the County Printer Bill 2014:** The principal object of the bill is to establish the office of the County Printer in each of the 47 counties. The establishment of this office is necessitated by the provisions of the County Governments Act 2012 which makes reference to publication of Bills, Acts and other documentation in a “county gazette”.
23. **The Senior Citizens Care and Protection Bill 2014:** The bill imposes some obligations on counties with regard to the care and protection of senior citizens. The care of senior citizens is a duty of the National Government under section 14 of Part 1 of the Fourth Schedule.
24. **The Business Registration Service Bill:** The principle object of the bill is to establish the Business Registration Service to ensure effective administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms, the laws relating to individuals and corporations carrying on business under a business name. The bill is anti-devolution as it fails to recognise the role county governments play in the issuance of business permits and trade licences pursuant to section 7 of Part 2 of the Fourth Schedule.
25. **The Traffic Amendment Bill 2014**: The principal object of the bill is to amend the Traffic Act (Cap. 403) to make provision for the safety of children on roads around learning institutions or when using school transport. The bill purports that it does not affect counties but it ought to since section 5 of Part 2 of the Fourth Schedule mandates county governments with county traffic and parking.
26. **The Basic Education (Amendment) Bill 2014**: The bill proposes to include members of Parliament to the membership of County Education Boards. County assembly members ought to have membership rights. The bill also establishes sub-county education boards. It proposes to amend the Act to enable private schools follow different curriculums and not necessarily one approved curriculum. This will discriminate and disadvantage students in public schools.
27. **The Fisheries Management and Development Bill 2014**: The bill is contemptuous of the constitutional mandate given to counties over fisheries per Section 1 (e) of the Fourth Schedule of the Constitution. The proposed board of the Kenya Fisheries Service does not have representatives from county governments. The proposed Fish Marketing Authority does not have representatives from the county governments. In the memorandum of objects, the bill purports to be a bill not concerning county governments. We recommend that the bill undergoes thorough and comprehensive review of all clauses as it is substantially unconstitutional.
28. **The Traditional Health Practitioners Bill**: The principal object of the bill is to provide for the training and licensing of traditional health practitioners, so as to regulate their practice. The bill purports to not concern county governments yet county health services are a mandate of county governments.

29. **The Statute Law Miscellaneous (Amendments) Bill 2014**: The bill proposes to amend the Public Financial Management Act 2012 to require parliamentary approval prior to the declaration of a county corporation or other body to be a County Government entity. The proposal should be rescinded as the sole approval of county assemblies suffices.
30. **The In-Vitro Fertilisation Bill 2014**: The bill purports to be not affecting counties. However, county health is a function of county governments and they are in charge of level 4 and 5 hospitals. The bill should provide for the role of county governments in in-vitro fertilisation. The proposed Authority under the bill should contain a member to represent the interests of the county governments. Clauses 5 (f) and 39 (1) of the bill, in which the In-Vitro Fertilisation Authority has been empowered to grant, vary, suspend and revoke licenses, are encroaching on the constitutional preserve of county governments. Clauses 26, 42, 43, 45 and 47 of the bill should be amended by replacing “Authority” with “County Governments”. Licensing should be left to county governments.
31. **The Public Service (Values and Principles) Bill 2014**: The principal object of the bill is to give effect to the provisions of Article 232 of the Constitution regarding the values and principles of public service. The bill is not contentious.
32. **The Health Bill 2014**: The bill does not acknowledge that it is counties that should legislate on health service providers operating at the county level. It is ironic to expect the county governments to be in charge of all health facilities but limit the vital function of licensing. To allow the National Government to take over other county healthy institutions in future, the First Schedule allows the Director General to upgrade facilities from Level 2-5. Such discretion is open to risk of abuse such as taking over well performing institutions into which counties have begun pouring resources. Clauses 25 (b), (c) and 26 do not respect the functional and institutional integrity of the county governments by seeking to deny them management of Level 5 hospitals at present and possibly others in future through unilateral upgrade of existing county facilities.

We recommend that the above clauses be amended to bring them in line with Articles 6 (2) and 189 (1) of the Constitution.

His Excellency

Hon. Uhuru Kenyatta, C.G.H

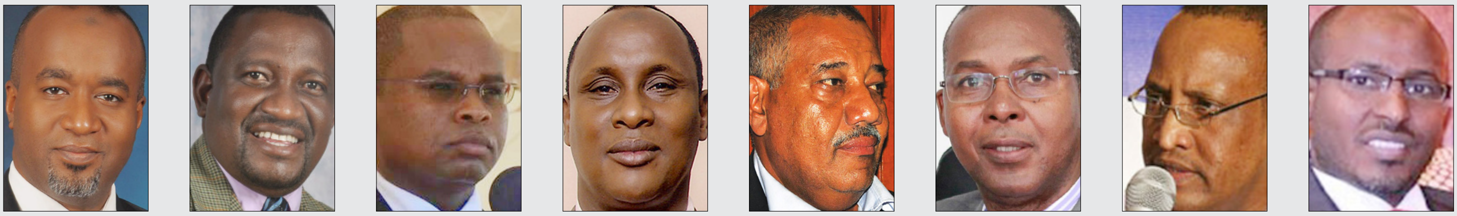
President & Commander - In - Chief
of the Defence Forces of the Republic of Kenya

Chief Guest

Hon. Isaac Ruto, E.G.H

Chairman, Council Of Governors,
Governor, Bomet

Host



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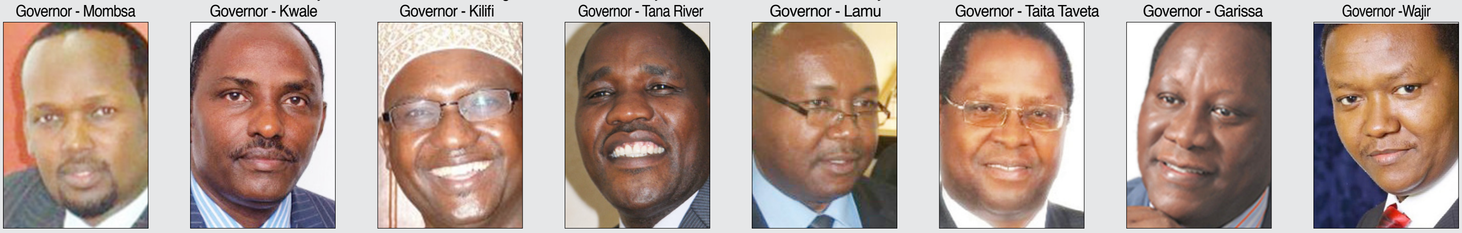
Hon. Ahmed A. Mohammed
Governor -Wajir



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Governor - Mandera

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Governor - Isiolo

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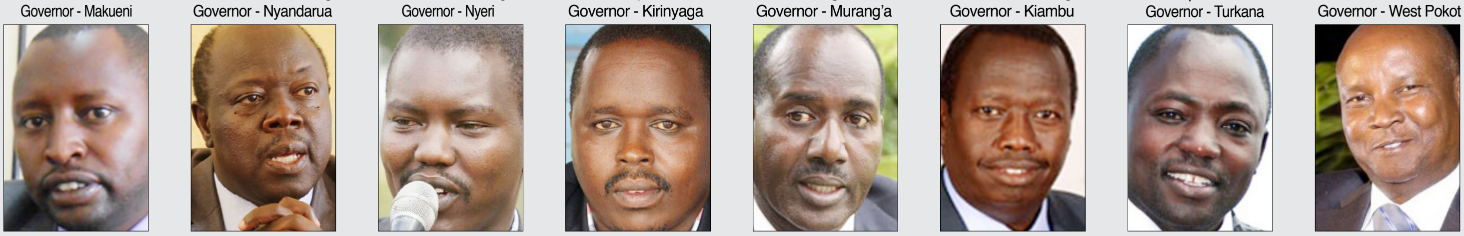
Hon. William Kabogo
Governor - Kiambu

Hon. Josphat K. Nanok
Governor - Turkana

Hon. Simon K. Kitalei
Governor - West Pokot



Hon. Moses K. Lenolkulal
Governor - Samburu

Hon. Patrick S. Khaemba
Governor - Trans Nzoia

Hon. Jackson K. Mandago
Governor - Uasin Gishu

Hon. Alex T. olgos
Governor - Elgeyo Marakwet

Hon. Dr. Cleophas Lagat
Governor - Nandi

Hon. Benjamin Cheboi
Governor - Baringo

Hon. Joshua W. Irungu
Governor - Laikipia

Hon. Kinuthia Mbugua
Governor - Nakuru

Hon. Samwel K. Tunai
Governor - Narok

Hon. Dr. David Ole Nkendienye
Governor - Kajiado

Hon. Prof. Paul K. Chepkwony
Governor - Kericho

Hon. Wycliffe Oparanya
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Governor - Vihiga

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Governor - Siaya

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Governor - Migori

Hon. James O. Ongwae
Governor - Kisii

Hon. John O. Nyagarama
Governor - Nyamira

Hon. Dr. Evans O. Kidero
Governor - Nairobi

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