



The Second Annual

DEVOLUTION
CONFERENCE

2015

2nd ANNUAL DEVOLUTION CONFERENCE



HELD AT TOM MBOYA LABOUR COLLEGE

KISUMU COUNTY

21st - 23rd April 2015

Foreword



“Appreciating and Strengthening Devolved Governance; Working Together to Realize the Objectives of Devolution”

Forward by H.E Hon. Governor Isaac Ruto
Chairman Council of Governors, Governor Bomet County

The Second Annual Devolution Conference coincided with a critical leadership transition at the Council of Governors, coming only one month prior to election of a new Chairperson of the Council. I am humbled and deeply honoured to have served as the first Chair of the Council of Governors for the last two years of devolution.

The objective of the Second Annual Devolution Conference 2015 was to review the progress made in implementing devolution over the two-year period under the overall theme “Celebrating the Gains of Devolution” and the guiding theme “Appreciating and Strengthening Devolved Governance; Working Together to Realize the Objectives of Devolution”

Consistent with the conference theme, and on behalf of the Council of Governors, I am glad to highlight key achievements worth celebrating and appreciating in the last two years of our devolved governance system. Similarly, I will highlight some of the main challenges that undermine devolution, key concerns and priorities for the Council as we move forward under a new leadership.

The following achievements have been realized as they relate to improving the enabling environment for effective devolution:

- i) *Institutional structures:* In line with the breakthroughs celebrated during the First Devolution Conference, the first year of implementing devolution saw the establishment of institutional structures necessary for facilitating devolution. We have 47 County governments that are fully functional independent/ autonomous entities and one national government. The County governments to a large extent mirror the structure of the national government, including the County Assembly, County Executive and County Public Service Commission among others.

ii) *Objects and principles of devolution are being implemented:* Judiciary the rule of law

I laud the judiciary as one of the key institutions in our new dispensation that has kept its fidelity to the Constitution by continually reminding us to adhere to Chapter Eleven on Devolved Government in ensuring the objects and principles of devolution are implemented, particularly by emphasizing the need for respect for the cardinal principle of separation of powers in its pronouncements including the contentious debate regarding management of the Constituency Development Fund, CDF.

iii) *Fight against corruption:* I laud the President for his initiative to fight corruption. We, as County Governments, are committed to the same. The Constitution envisages strong institutions that will guarantee the achievement of the ideals and principles set by the same Constitution. True to the Constitution, we're obliged to strengthen institutions and we must ensure transparency and accountability at both levels of government so that our country can be corrupt-free.

iv) *Devolved functions:* as we mark two years into devolution, key functions have been devolved. These include Agriculture, County health services, Pre-primary education and Village polytechnics, Trade development and regulation. Citizens in Counties are already benefiting from improved service delivery..

v) *Common purpose:* All Governors are focused with one clear, shared agenda, namely to steer development and improve delivery of devolved services to citizens in the respective counties. This is a common thread across the 47 counties, irrespective of political affiliation.

vi) Effective leadership of the Council of Governors and a vibrant Secretariat.

vii) Support of the Senate in advocating for the interest of Counties, including in ensuring that County Governments have adequate resources to enable them deliver both services and development to the citizens.

viii) *Partnerships with devolution stakeholders:* I applaud the role that development partners have played in supporting service delivery in the context of the new constitutional governance system. Many development partners have now aligned their support to recognize and respect the functions undertaken by the two levels of government. We are aware that functions that are devolved and assigned to a level of government indeed move with the relevant resources both financial and human. I would like to make a special mention of DANIDA for having spearheaded the efforts to streamline its support to the Health Sector which is a fully devolved functions whose key responsibility lies with the County Governments.

However, there are some issues and concerns that continue to undermine devolution:

i) *Pending functions:* Although key functions have been devolved, I note that there are functions that have been constitutionally assigned to County Governments but are yet to be transferred. These include County Roads; County Planning and Development including electricity and gas reticulation and energy regulation; and Public Amenities, specifically libraries.

ii) *Resource allocation:* County Governments are inadequately resourced to perform the functions allocated to them by the Constitution. Unfortunately, inadequate financing will push counties to use development funds to finance recurrent expenditure.

a) ECD: Provision for Early Childhood Development (ECD) is still inadequate. The allocation for ECD in the financial year 2015/16 is KES 3 billion which amounts to around KES 60 million per County. On average, each County utilizes over KES 300 million on ECD. The allocations provided cannot therefore be sufficient for payment of ECD teachers and the development of ECD infrastructure.

- b) Village Polytechnics: On the same breadth, the KES 946 million proposed for Village Polytechnics is too low as this figure translates into only a meagre KES 17 million for each County. This allocation must be increased significantly in the next year since both levels have a commitment to support the youth.
- iii) *Widespread insecurity*: Counties continue to fall victim to insecurity incidences from terror attacks. Insecurity has grossly eroded the confidence in the state as the protector of lives and property of citizens, which is the basis of a civilized state. The duty of the state is to protect citizens. We regret the loss of lives and damage incurred in the recent attacks by Al Shabab.
- iv) There is a misconception that Governors are always at war with the national government when we push for the interest of counties.
- v) *Corruption and integrity of leaders*: achieving “zero tolerance” to corruption is still a pipedream. There is need to sustain the fight against corruption objectively within the rule of law.
- vi) *Deadline for enactment of Constitutional legislations*: The Constitution also under the Fifth Schedule, places a timeframe of five years for all necessary legislation to be put in place for the implementation of the provisions of the Constitution. We are in the last year of this Constitutional deadline.
- vii) The Economic Stimulus Projects remain incomplete, and where these projects are completed, they are yet to be handed over to County Governments.
- viii) *Corruption*: As we acknowledge the efforts of the President to fight corruption, we also support an independent and clean Ethics and Anti-Corruption Commission (EACC) with tenure. County governments are concerned that the fight against corruption has been previously hampered because of weak agencies that have unpredictable tenure. We don't expect this scenario to occur in the next period of implementation of the Constitution. I therefore emphasize that corruption must be fought through institutions. Our approach to this vice must be done in accordance with the law.
- ix) *Concern regarding Emergency Fund*: We appreciate the inclusion of the Emergency Fund allocation for KES 5 billion which has been set aside for urgent and unforeseen needs in Counties that suffer from calamities, particularly on food security. However, we urge the Senate to ensure the increment of allocations noting the monumental functions that County Governments have been assigned to perform. The Division of Revenue Bill for the financial year 2015/16 proposed KES 4.5 billion for the increase in salaries and allowances for County officers.

The way forward for addressing the challenges, concerns and for propelling the next phase of the devolution process under the new leadership should focus on the following priorities:

Priorities for the Council of Governors

- i) Implementation of the Strategic Plan for the Council of Governors. Continued strengthening of the CoG Secretariat is a key aspect in this regard.
- ii) Challenge and influence review of legislations that undermine devolution.
- iii) Press for increased revenue allocation to Counties through the “Pesa Mashinani” initiative: We maintain that the minimum percentage of sharable revenue should be 45% of the preceding year's revenue, and that this must be anchored in the Constitution.
- iv) Following up full implementation of resolutions for Annual Devolution Conference with the respective duty bearers.
- v) Promoting inter-governmental cooperation through dialogue and sustained consultation.

Priorities for improving the enabling environment to be addressed in collaboration with the national government:

- i) Improving management and coordination of security drawing from lessons from the terrorist attacks: These appalling terrorist attacks have taught us that the National Government and the County Governments must engage in dialogue on how to manage security at the local level. It is a practice world over that management of the security function must have a local component. We must, at both levels of government, consult to see the role that needs to be played by County Governments in securing the people of this nation.

In the meantime, we urge the National Government security agencies to ensure that the forces are well equipped and well trained to enable them protect the citizens, our borders and our territory from aggressors. Similarly, it is time for both levels of government to rethink the role of the provincial administration and ensure that the same is restructured to conform to the devolved system of government as we approach the Constitutional set deadline.

- ii) Finalize transfer of functions: We are aware that the transition period was only three years, and it is soon coming to an end. It is our conviction that the Transition Authority and the Commission for the Implementation of the Constitution (CIC) must ensure that all functions will have been properly transferred before this transition period is over. The transfer of critical functions like County Roads is urgent so that trade and commerce is can be supported to thrive in the Counties.
- iii) Promote adherence to the rule of law: our Constitution places a high premium on the rule of law and even recognizes it as a national value and principle (Article 10) to be adhered to by all State organs, State and public officers. Everybody must obey the law without exception as this is what anchors Kenya as a nation that respects the rule of law. Kenya must show the world that there is full respect for the rule of law; that our Judiciary is independent and impartial; and that we strive to protect human rights- without which we shall be considered a failed state. Indeed we are obligated to obey and observe the rule of law as we implement devolution.
- iv) With counties being the new investment frontiers, the national government must manage the macro-economic indicators prudently in order to tame the cost of living and ensure the country and counties remain attractive for investment by both local and foreign investors-including inflation, weakening shilling and a rising cost of debt-without which we will not meet the 5.5 per cent revised growth plan in the current financial year.
- v) Support and strengthen the capacity of County level institutions to discharge their roles more effectively:
 - a) County Governments will support the institutions in the Counties, which should as much as possible mirror the National Government institutions. In this regard, we must now begin to actualize function 14 of the Fourth Schedule which obligates Counties to ensure and coordinate the participation of communities and locations in governance at the local level and assist communities to develop the administrative capacity in governance.
 - b) Further, there is need to strengthen the roles of the Governors, Deputy Governor and County Executive Members who implement laws and policies; and County Assembly members who have an oversight, representation and legislative mandate.
 - c) It is a good time to relook at the oversight role of the Senate and the oversight role of the County Assemblies.
- vi) We therefore urge our development partners to mirror the DANIDA Model while considering assistance for devolved functions.

In pursuing all these, we should always remember that in terms of our performance, we owe it to the electorate to deliver the results of devolution. This means that as leaders, behind all of us there is an electorate that continuously and consistently assesses our performance and questions our ability. I want to urge us to take these leadership positions seriously and build a sphere of influence for the sake of the future generations.

We cannot deny that we have challenges; but as leaders and pioneers of Devolution, we must make a commitment to continue dialoguing until our engagements become consistent with the expectations of the people of Kenya who trust us to deliver on the devolution promise. We must all rededicate ourselves to the principles of devolution.

Lastly, I thank all governors across the political divide for giving me the honour to serve as Chairman of the Council of Governors for the first two years of implementing devolution. I am also very sincerely grateful to the CoG Secretariat for effectively coordinating the very tight and time-sensitive agenda of the Council. Being the pioneers of the devolution process, it is encouraging that in view of the foregoing achievements and in spite of the challenges encountered, we can confidently conclude that devolution is on course with citizens realizing tangible benefits only two years on, many of which could not be achieved since independence. That majority of citizens supporting devolution as revealed by an independent survey (IPSOS) is worth celebrating and an opportunity we must ride on by enhancing citizens' participation in order for devolution to succeed, as we collectively monitor and ensure full implementation of the resolutions of this conference and all future devolution conferences. I wish the new leadership even greater success and pledge my full support in pursuing the full realization of the objects of devolution.



His Excellency Isaac Ruto, EGH

Chairman
Council of Governors



Group photo of H.E President Uhuru Kenyatta, Excellency Governors and HON. Raila Odinga.

Acknowledgement



Acknowledgment By Ms. Jacqueline Mogeni, Ag. CEO, Council of Governors.

We wish to acknowledge the support of individuals and organizations who contributed in making the Second Annual Devolution Conference a resounding success. Your support yet again helped in demonstrating the relevance of the conference as a forum for devolution stakeholders to converge, take stock of the process of implementing the devolution agenda, share experiences and draw lessons for improving performance and service delivery at both levels of government. The Council of Governors, having a key responsibility over knowledge management, has ensured that the conference report captures not only conference deliberations and resolutions, but also integrates information that serves to expand the knowledge of stakeholders regarding interpretation of the Constitution and devolution t large

We commend the exemplary work of the Conference Organizing Committee under the leadership provided by H.E Salim Mvurya, the Vice Chairman, Council of Governors and Co-chair of the 2nd Annual Devolution Conference Steering

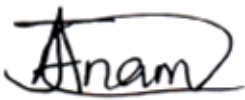
Committee. Likewise, we laud the role of all the 47 Governors in crystalizing the vision and objectives, leading to realization of the conference objectives. Our deepest appreciation goes to the Secretariat of the Council of Governors for working round the clock to ensure the success of the conference, which attracted the participation of 3,000 honourable delegates.

The Conference is jointly organized and convened in collaboration with the national government. In this regard, we sincerely appreciate the members of the Planning Committee from Office of the President, Ministry of Devolution and Planning as well as Ministry of Foreign Affairs and International Trade for participating in the weekly planning meetings with unmatched consistency.

Our special thanks goes to the Chief Guest H.E Hon. Uhuru Kenyatta, the President of the Republic of Kenya for presiding over the Official Opening of Conference and reaffirming the commitment of the National Government in ensuring that devolution succeeds in Kenya, thereby making the country a model for Africa and the rest of the world. We also thank the President for using the opportunity to launch the Lake Victoria Basin Economic Master Plan, covering the seven counties within the basin.

We are grateful to the Conference facilitators, speakers, panellists and moderators for successfully steering the plenum discussions leading to delivery of plenum objectives, recommendations and resolutions.

Convening a conference of such magnitude is definitely financially and logistically demanding. We are grateful to Kenya Power and Lighting Company Ltd who were the platinum sponsors for this conference. We extend our gratitude to USAID-AHADI, UNDP, UN Women, United Nations Volunteers, IDLO, World Vision, Africa Lead, Safaricom, CPE, Deloitte, SAP, Water Services Trust Fund, PWC, CMC, D Dobie, Altech-Sharp Kenya for their financial and technical support and for their substantial support to the Conference. The services of the Kenya Police Service in providing round the clock security is highly appreciated. We thank all exhibitors and appreciate the proactive role of the Kenyan Media in raising the profile of the event prior, during and even after the Conference. We are indebted to the management and staff of Tom Mboya Labour College and Victoria Primary School Kisumu for their warm hospitality and service during in the course of the conference.



Jacqueline Mogeni

Acting Chief Executive Officer
Council of Governors

1.1 Introduction

The devolution process in Kenya is already printing its own history with only two years of implementation in line with the Constitution of Kenya 2010. The First Annual Devolution Conference held in Kwale in April 2014 just after the first year of implementing the Devolution System resolved that the conference be held annually in order to keep close track of the devolution implementation process.

Consequently, the Council of Governors (COG) jointly with the Ministry of Devolution and Planning (MDP) convened the **Second Annual Devolution Conference in Kisumu from 21st to 23rd April 2015**. The Conference was anchored on the overall theme, *“Celebrating the Gains of Devolution”* and its guiding theme *“Appreciating and Strengthening Devolved Governance; Working Together to Realize the Objectives of Devolution”*.

The Conference marked the second anniversary since the coming into effect of a devolved Government in Kenya. The objective was to take stock of the milestones that have been achieved thus far within the framework of the principles and practice of good and responsible governance and to appreciate the challenges that have confronted the devolution process. The general inclination was toward fostering the ethos of working together between the National and County Governments, with the support of all devolution stakeholders.

The 2nd Annual Devolution conference was held in Tom Mboya Labour College, Kisumu City Kisumu County from 21st to 23rd April 2015. This brought together a total of 4,760 participants who included 2390 leaders consisting of: 47 Governors (male), 47 Deputy Governors (38 male and 9 female), 47 elected Senators, 20 nominated senators (18 female and 2 male), 7 Kisumu County MPs, 1450 elected MCAs (1370 male, 80 female), 772 Nominated MCAs (97 male, 675 female) and 2218 participants consisting of: devolution actors, development partners, civil society organizations, other county representatives, private sector, faith based organizations, participants from the academia and members of the public. There were also 152 exhibitors.

The official opening ceremony was presided over by the Chief Guest **H.E Uhuru Muigai Kenyatta**, President of the Republic of Kenya and Commander in Chief of the Defence Forces of Kenya, alongside **H.E Governor Isaac Ruto**, the Chairperson of the Council of Governors. Speakers and delegates commended the County Governments and the National Government for their efforts in improving the enabling environment for the realization of the objectives of devolution. They also acknowledged that more efforts should be made to safeguard the gains of devolution and address the challenges that undermine realization of the full benefits of devolution mainly through collaboration between both levels of government as well as through partnerships with citizens and devolution stakeholders.



H.E the President, Issuing his Key Note Address on Devolution

Overall, the conference concluded that only two years into implementing the devolution process, devolution had registered landmark gains especially in relation to improved service delivery, more so in the former marginalized areas. The gains of devolution were also reinforced by findings of an independent survey conducted by a research firm and released during the conference week, in which most Kenyans acknowledged that devolution was benefitting their lives directly. The survey revealed massive acceptance of devolution by citizens; that Kenyans were overwhelmingly behind devolution and were keen to see it succeed.

At the close of the Conference, the National Government, represented by the Principal Secretary, Ministry of Devolution and Planning and County Governments represented by the Chairman, signed a Joint Communiqué that reaffirmed the commitment of both levels of government in delivering on the devolution promise.

The Communiqué also outlined recommendations for action and the corresponding duty bearers both at the National and County Government level. Issues for urgent attention include addressing compliance with the two-thirds gender principle in order to avoid a constitutional crisis as per the High Court ruling and deadline of August 2015, finalizing transfer of functions to Counties, addressing insecurity and rationalizing revenue allocation to Counties.

The conference concluded that in spite of the emerging challenges, devolution was on track. It also resolved that the 3rd Devolution Annual Conference will be held in Meru in April 2016, during

which the agreed action points would also be assessed.

1.2 Progress on implementation of resolutions for the First Devolution Conference 2014

H.E Governor Evans Kidero, Chairman of the 1st Annual Devolution Conference and Governor Nairobi City County reported on behalf of the Council the milestones that had been realized from the resolutions of the 1st Conference. Some of the major milestones include institutionalization of the Annual Devolution Conference, improved Intergovernmental Relations and creation of an enabling environment for investment in Counties. A detailed report on the implementation of the Resolutions can be found as annex 1 of this report.

1.3 Synopsis of the report

The programme of the three-day conference was delivered through discussions divided into 14 plenums. Speakers during the three-day conference comprised of National and International Speakers who included Governors, Cabinet Secretaries from the National Government, Senators, Members of the National Assembly, Members of County Assemblies, Members of Constitutional Commissions, representatives of the private sector, civil society representatives and leading international experts.

The report is organized into an executive summary and four chapters corresponding to the four sub-themes of the conference. Each chapter/sub-theme discusses the outcome of a set of plenum sessions. Chapter 1 is the Executive Summary while Chapter 2 to Chapter 5 cover details of plenum discussions.

SUB THEME

1

CONFLICT RESOLUTION: INTRA-GOVERNMENT AND INTER GOVERNMENT

Plenum 1

Enhancing intergovernmental relations

Intergovernmental relations are mainly regulated by the Constitution of Kenya (2010), the County Governments Act, the Inter-governmental Relations Act, the Urban Areas and Cities Act and the Public Financial Management Act. These laws establish a framework for consultation and co-operation between the National and County Governments and amongst County Governments. This is through the establishment of various intergovernmental bodies like the National and County Governments Coordinating Summit, Intergovernmental Relations Technical Committee (IGRTC), the Intergovernmental Budget and Economic Council (IBEC), and the Council of Governors (COG).

The session did not take off as scheduled since H.E President Uhuru Mwigai Kenyatta had to attend to other pressing issues of national importance immediately after the Official Opening Ceremony. However, in his Key Note Address delivered during the Official Opening Ceremony, the President reaffirmed to Kenyans that the Conference was a testimony of the Government's commitment to Article 6(2) of the Constitution, which enjoined the National and County Governments, to conduct their mutual relations on the basis of consultation and cooperation.

The Conference also highlighted alternative ways of building consensus and resolving issues that arise from intergovernmental relations, while looking at structures that have been developed to provide harmonized coexistence between the two levels of government.



Cabinet Secretary for Devolution and Planning Issuing her Remarks during the opening ceremony

The Inter-governmental Relations Act lays out the principles of intergovernmental relations that apply to the National and County Governments with regard to dispute resolution mechanisms provided under the Act.

The following were identified as the key guiding principles for intergovernmental relations:

- 1) the recognition of the sovereignty of the citizens;
- 2) inclusive and participatory governance;
- 3) respect for the functional institutional integrity of the two levels of Government and;
- 4) promotion of national values and principles of governance provided for under Article 10 of the Constitution.

Emerging Issues

- There are functions that have been constitutionally assigned to County Governments but are yet to be transferred.
- County Governments have insufficient resources to perform the functions allocated to them by the Constitution. Counties maintain that the minimum percentage of sharable revenue should be 45% of the preceding year's revenue, and that this must be anchored in the Constitution.
- Both levels of government should cooperate in the execution of the security function.
- There is need to manage the emergent conflicts between the elected leaders including between the MCAs and Governors, Senators and Governors, MPs and Senators etc.
- Challenges of legislation that do not conform to devolution and lack of sufficient legislative structures for the transfer of functions should be addressed.
- Information sharing and 'good faith' are paramount during intergovernmental interactions.
- Corruption was considered to be a major factor that undermines effective intergovernmental relations.
- One critical area for enhancing intergovernmental relations was capacity building and technical assistance to the Counties, which is a National function under Part 1 (32) of the Fourth Schedule of the Constitution. The Conference underscored the need for the National government to roll out a comprehensive capacity programme for the Counties and put in place functional coordination framework.

In her opening remarks, the ***Cabinet Secretary for Devolution*** and co-Chair for the Conference ***Hon. Ann Waiguru*** confirmed that the mandate of the Ministry of Devolution and Planning (MODP) was to coordinate policy changes on devolution, provide technical support to the Intergovernmental Coordination Summit and to provide a framework for capacity building as well as a framework for civic education. In this regard, delegates were informed that the MODP was in the final stages of finalizing devolution policies and model laws. The Ministry was also in the process of finalizing the capacity assessment and coordination framework.

Recommendations

- The fight against corruption should be spearheaded by both levels of government.
- Both levels of government to rethink the role of the provincial administration and ensure that it is restructured to conform to the devolved system of government before the Constitutional set deadline.
- The Ministry of Devolution and Planning should finalize the capacity assessment and coordination framework. This will assist strengthen the roles of the County Assemblies in their legislative and oversight mandate and the County Executive in its role to implement these laws and policies.
- There is need to foster dialogue and rededicate to the principles of devolution.
- There is need to address resource allocation and to enhance security, without which no development can take place.
- This should be addressed at the level of political parties as avenues used for consensus building and conflict resolution, in addition to other existing institutions for mediation and conflict resolution.

“Corruption and impunity are not devolved functions”, H.E Hon. Ekwe Ethuro, Speaker of Senate

Devolution is a process and as the country celebrated and reflected on the gains of devolution, priorities should be accorded to developing a framework for facilitating public participation, enacting legislations that promote effective devolution, improving security as well as developing an action plan for strengthening relevant institutions.



Speaker of the Senate Hon. Ekwe Ethuro issuing his remarks during the opening ceremony

Resolutions for enhancing intergovernmental relations

- 1) **THAT** the National Government and County Governments remain committed to delivering the “devolution promise” to the people of Kenya; and that when faced with challenges along the way, concerted effort by both levels of government must be aimed at ensuring that devolution works.
(**Action:** Ministry of Devolution and Council of Governors)
- 2) **THAT** challenges of insecurity; transfer of funds; lack of comprehensive frameworks for public participation; limited capacity for legislation at County level be addressed immediately.
(**Action:** Ministry of Interior and Coordination of National Government, Senate, Ministry Devolution, Council of Governors, National Treasury)
- 3) **THAT** all functions need to be devolved/transferred as per the Constitutional Time frames while respecting the principle that resources follow functions. This concern remains unaddressed since the First Devolution Conference.
(**Action:** Transition Authority)
- 4) **THAT** there is need to strengthen the link between the County and National Governments.
(**Action:** Council of Governors, Ministry of Interior and Coordination of National Government)



Delegates following proceedings

SUB THEME

2

DEVOLUTION AS A CONCEPT: TAKING STOCK OF THE IDEAL VS THE PRACTICE

Plenum 2

Implementation of the two-thirds gender principle

Introduction

The session focused on demonstrating evidence of representation of women and men in elective leadership positions, mainly through the general elections, Presidential appointments and other public offices, within the provisions of the Constitution. Under Article 81(b) of the Constitution of Kenya 2010, it is provided that “*Not more than two-thirds of members of elective public bodies shall be of the same gender.*” The panel on Implementation of the two-thirds Gender Principle, took stock of where both levels of government were with respect to the realization of Article 81(b) of the Constitution. The plenum also explored the measures that the National and County Governments should take to ensure that the two-thirds gender rule is attained.

Legal and policy framework on the two-thirds gender rule: provision of the Constitution and related policies

Article 10 (2b) of the Constitution outlines equality, non-discrimination and inclusiveness as part of the national values and principles of governance. Similarly, under the Bill of rights, Article 27 on equality and freedom from discrimination stipulates that every person is equal before the law. It outlaws discrimination against any person on any ground, including on the basis of sex. On representation of people, Article 81 defines the principles that the electoral systems shall comply with. Accordingly, Article 81 (b) obligates the electoral system to comply with the principle that *not more than two-thirds of members of elective public bodies shall be of the same gender.*

Article 81(b) Not more than two-thirds of members of elective public bodies shall be of the same gender

The current situation in Kenya: key issues, concerns and challenges in practice

Representation of women and men in leadership is an integral aspect of strategic gender roles in development at local, national and global level. Although the Equality Principle is well articulated in the Constitution of Kenya, disparities still exist with regard to women representation in social, economic and political spheres.

Although Kenya has made visible progress in an attempt to implement the two-thirds gender principle, there is glaring evidence that reveals a clear disconnect between the constitutional provision and actual practice at both levels of government. At national level, presently Kenya has only **20% representation of women in the Parliament** (National Assembly and Senate). Elected members of the National Assembly comprise of 94% male and 6% female. On the other hand, Nominated Members of the National Assembly comprises of 67% male and 33% female. In contrast, none of the elected Senators is a woman, as all (100%) of the 47 elected Senators are male. However,

the Senate demonstrates progressive leadership and adherence to the two-thirds gender principle (and in line with Article 98(b) on nomination of women by political parties) in that majority (90%) of Nominated Senators are female, with men representing only 10%.

Table 1. Representation of men and women in leadership in Kenya
(Source: NGECE Presentation in Second Annual Devolution conference , 2015)

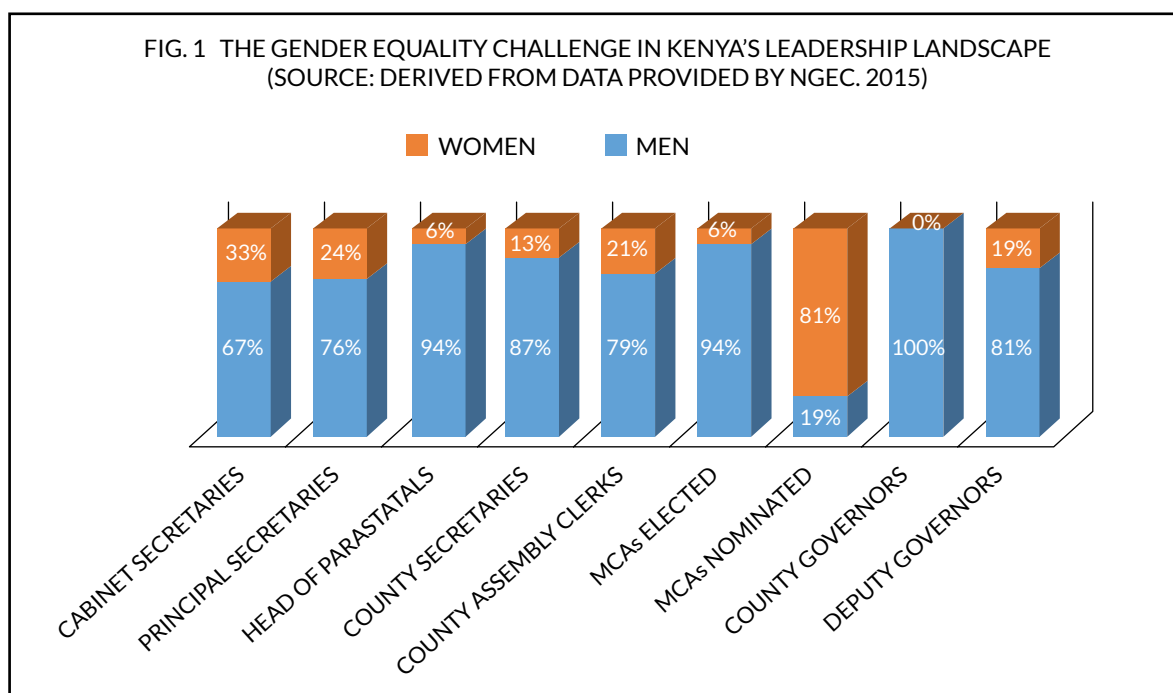
Position	Men	Women
Cabinet Secretaries	67%	23%
Principal Secretaries	76	24
Heads of Parastatals	94%	5%
County Secretaries	87%	13%
County Assembly Clerks	79%	21%
MCAs Elected	94%	6%
MCAs Nominated	19%	81%
County Governors	100%	0%
Deputy Governors	81%	19%

According to the National Gender Equality Commission (NGEC), out of 18 Cabinet Secretaries, 67% are male while women represent only 23%. For Principal Secretaries, 76% are male while 24% are female. Appointment of Heads of Parastatals is grossly skewed, with 94% male and only 6% being represented by female appointees.

The disparity is also replicated at County level as also summarized in table 1 and further illustrated in Fig.1. For example, 87% of County Secretaries are men while only 13% are women, 79% of County Assembly Clerks are male while 21% are women. Except for Nominated Members of the County Assembly (MCAs), the representation is predominantly tilted in favour of men. All of the 47 County Governors are men while women account for only 19% of Deputy Governors.

With respect to elective positions, existing disparities can be explained partly by the imbalanced participation of women and men in the electoral process. For instance, of all the candidates who vied for Presidential elections in 2012, only 13% were women while 77% were men. Likewise, of those who vied for Senate seats, only 6% were female, with men representing 94% of the candidates.

Some gains to celebrate can however be isolated. For Instance, parity (50%:50%) has been achieved in appointment of the Chairpersons of the two Independent Constitutional Offices, with one Chairperson being a man and one being a woman. Women account for 81% of the Nominated MCAs, while out of 90 Magistrates in Nairobi County, 57% are women. In Baringo County, 60% of the employees are female while 40% are male. This indicates that with commitment, women representation in leadership positions can be increased, as part of the journey towards achieving the two-thirds principle.



Plenum deliberations on the disconnect between policy and practice

Article 177 (b) of the Constitution also provides a window of opportunity for the realization of the two-thirds gender principle in County Assemblies. Failure to meet this threshold in the March 2013 elections led to the nomination of about 600 women across the country's 1,450 County Wards. The Conference confirmed that it was possible to meet the two-thirds gender principle at minimum cost for the counties.

Achieving the two-thirds gender principle would in itself be an affirmation of Article 27 of the Constitution, which speaks to equality and freedom from discrimination. It was further appreciated that there is unquestionable value-addition for the women nominated to leadership positions. Consistent with this view, the panel observed that it is important to get a formula that will make every gender benefit (women, youth and persons living with disability).

Agreeable to the entire panel was the fact that persistent omission of women in top decision-making platforms was responsible for the prevailing gender inequalities in the country and across County governments. Additionally, that devolved units need to support initiatives that seek to develop a formula to help achieve gender parity at all levels, noting that unyielding patriarchal political culture continues to undermine women's participation in competitive politics.

The panel suggested that in the implementation of the two third gender rule, reduction of the constituencies by half and encouraging Kenyans to elect both men and women for gender equity would be necessary. This is because there is need for proportional representation where these political parties must have certain nominations given to one gender. It was noted that Rwanda had succeeded in achieving high representation of women in elective positions through proportional representation. In Kenya however, proportional representation only applied in nominations, not in elective positions.

It was also emphasized that more women must proactively come out and seek elective positions, and that political parties must resolve to support women and encourage them to run for elective positions.

The session underscored the need for political parties to play a facilitative role toward the realization of the two-thirds gender rule. The Conference thus resolved that political parties need to convene an urgent summit to deliberate on strategies for fulfilling the two-thirds gender principle.

It was emphasized that the successful realization of the two thirds-gender principle by the state actors would be a result of a consultative process among all actors including civil society, political parties, development partners and County governments. It would also demand putting in place a combination of mechanisms that enhance the enabling environment for equal participation of men and women in competitive positions of leadership as well as fair and balanced appointments.

Enforcing the two-thirds gender principle will import several advantages. It will eliminate the need to set aside special seats for women, broaden participation of women in leadership and increase the impact of their capacity to the country's development, accelerate the benefits of devolution, minimize or eliminate the need to engage in costly court processes owing to non-compliance and overall, it would serve to entrench the Bill of rights and demonstrate adherence to the rule of law.



Plenum Discussion on the Implementation of the Two-thirds Gender Principle

3.1.5 Recommended forward mechanisms to ensure adherence to the two-thirds gender principle

The Session recommended the following mechanisms for ensuring adherence to and realization of the two-thirds gender principle,

- a) Political parties need to convene an urgent Summit to deliberate strategies for fulfilling the two-thirds gender principle.
(**Action:** Senate, Registrar of Political Parties, Ministry of Devolution, National Commission on Gender and Equality).
- b) In recognition of the fact that women are central to development, policies at National & County levels must be streamlined to enhance participation of women in leadership and development.
(**Action:** Ministry of Devolution, Council of Governors).
- c) There is need to adopt proportional representation for National Assembly, Senate and County Assemblies.
(**Action:** National Assembly, Senate, National Commission on Gender and Equality, Attorney General, Ministry of Devolution).
- d) Entrench affirmative action by adhering to the Supreme Court decision on two-thirds rule.
- e) Establish a fund to support women to participate in leadership processes in collaboration with development partners.
- f) Enhance partnership between men and women as opposed to a confrontational approach to addressing gender issues.
- g) Systematically address challenges that undermine effective participation of women in leadership and development, including *inter alia* violence, limited resources and negative traditional practices.
- h) Enforce accountability by leaders to the two-thirds principal.
- i) Policy intervention through ordinary legislation: Enact legislations to enforce Articles that support the two-thirds principle, including Articles 97 on Membership of the National Assembly, Article 98 on Membership of the Senate, Article 100 on promotion of representation of marginalized groups, Article 177 (b) on membership of County Assembly.

Plenum 3

Enhancing the Rule of Law and Alternative Dispute Resolution Mechanisms in Devolved Governance

Introduction

The session focused on dispute resolution mechanisms and alternative ways of building consensus in the devolved system of governance. The deliberations asserted that disputes cannot be avoided but they can be minimized. The panelists underscored the need to adopt the principle of cooperation in dispute resolution by embracing Alternative Dispute Resolution (ADR) as the preferred method for inter-governmental dispute resolution, which is complementary to judicial mechanisms. ADR should thus be considered to mean complementary dispute resolution mechanisms and is fully entrenched in the judicial system in Kenya.

“Courts are not the first option for dispute resolution. This is because in Courts, there are only two persons-a winner and a loser. In contrast, in alternative dispute resolution (ADR) there should be no winners and losers.

ADR focuses on dialogue, negotiation and arbitration in conflict resolution and should be considered as the preferred method of dispute resolution.”

*Dr. Otiende Amolo Session
Speaker*

Interpretation and forms of ADR

Alternative Dispute Resolution (ADR) attempts to find non-confrontational ways of resolving disputes. It focuses on dialogue, negotiation and arbitration in conflict resolution and should be considered as the preferred method of resolving disputes. Conciliation and mediation are also other forms of ADR. It is critical that attempts on ADR be made before matters are taken to court, especially disputes within a County or disputes between County governments or between the two different levels of government.

Advantages and justification for entrenching ADR in Kenya

Alternative dispute resolution seeks to reduce acrimony in conflict situations and instead promote harmony, tolerance and peaceful coexistence between concerned parties. By promoting dialogue, ADR mechanisms avoid the winner-loser scenario that characterize conventional court processes by

promoting a win-win, give-and-take approach to resolving disputes. They are less intimidating, often involve broad-based participation of concerned parties and are relatively less costly financially. In contrast, conventional legal processes are costly, time consuming, often intimidating and import a winner-loser eventuality in dispute resolution, with high potential to breed long-term acrimony.

ADR is also important because the courts in Kenya are overwhelmed with a huge backlog of pending cases. The session speaker stated that in 2013, there were 657,000 cases pending resolution in the High Court alone. Resolving these cases, it was estimated, would require that judicial staff work for a minimum of 3 years continuously without going on leave and without any additional cases. This is not practical since the rate of new cases filed has increased as a result of devolution. This underscores the need for entrenching ADR mechanisms.

In terms of the capacity of the judicial system to expedite cases, in Kenya, one Judicial Officer serves 78,000 citizens, or a ratio of 1:78,000. This is among the worst scenarios globally. In comparison, this ratio is 1:42,000 for Rwanda, 1:10,000 for India and China while in most countries in Europe the ratio is a contrasting 1:1,500.

Policy framework for Alternative Dispute Resolution in Kenya

It is important to underscore the fact that ADR should thus be considered to mean complementary dispute resolution mechanisms and is fully entrenched in the judicial system in Kenya. The Constitution assumes that courts are not appropriate as the first option for dispute resolution. Thus any disputes between Counties for example, should first be subjected to ADR. Since the court system produces winners and losers, in intergovernmental relations we do not want winners or losers, for in both sides there are citizens. ADR seeks to find alternative ways where all citizens and parties involved in the dispute can feel that they have all won.

Instruments and structures for facilitating alternative dispute resolution are spread in diverse Acts of Parliament and structures:

- vii) The Constitution of Kenya 2010: Under Judicial Authority and Legal System, Article 159(2) (c) provides that in exercising judicial authority, the courts and tribunals shall be guided by the principle of promoting alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms provided they do not contravene the Bill of Rights.

Article 189(3) states that *“in any disputes between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation”*.

In addition, Article 189(4) states that *“National legislation shall provide procedures for settling inter-governmental disputes by alternative dispute resolution mechanism, including negotiation, mediation and arbitration.”*

- viii) The Intergovernmental Relations Act 2012: On measures for dispute resolution, Article 31 states that the National and County governments shall take all reasonable measures to (a) resolve disputes amicably and (b) apply and exhaust the mechanisms for alternative dispute resolution provided under this Act or any other legislation before resorting to judicial proceedings as contemplated by Article 189(3) and (4) of the Constitution.

On Dispute resolution mechanisms, Article 31(2) stipulates that *“Any agreement between the National government and a County government or amongst County governments shall (a) include a dispute resolution mechanism that is appropriate to the nature of the agreement; and (b) provide for an alternative dispute resolution mechanism with judicial proceedings as the last resort”*.

- ix) The National Government Co-ordination Act, 2013: Part IV of the Act refers to Collaboration and Dispute Resolution between the National and County Governments on Issues of Apparent Concurrent Mandate. Article 19(1) provides for constitution of a mediation team to deal with disputes in situations where a dispute arises as to the mandate or powers of any of the officers, or roles of respective officers of the County governments and those of the National Government. Article 19(5) on the other hand states that should the mediation team fail to resolve the dispute within the stipulated time, the matter may be referred to the Summit under the Inter-Governmental Relations Act, 2012 for resolution.
- x) Commission on Administrative Justice (CAJ): The Commission is also known as Office of the Ombudsman. It is an independent constitutional office established by the Commission on Administrative Justice Act 2011 pursuant to Article 59(4) of the Constitution of Kenya. A key function of CAJ is to work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration.
- xi) The Summit and The Council of County Governors: The Intergovernmental Relations Act 2012 establishes both The Summit and The Council of County Governors. Article 7 establishes the National and County Government Coordinating Summit. One of the functions of the Summit under Article 8(i) also in line with alternative dispute resolution is to consider issues relating to intergovernmental relations referred to the Summit by a member of the public and recommend measures to be undertaken by the respective County governments. Article 7 provides that The Summit shall comprise of the President or in the absence of the President, the Deputy President, who shall be the Chairperson, while the Chairperson of the Council of County Governors shall be the Vice-Chairperson.

Similarly, Article 19(1) establishes a Council of County Governors consisting of the governors of the forty-seven Counties. Under Article 20(d), a key function of the Council is dispute resolution between Counties within the framework provided under the Act.

- xii) The Senate and the National Assembly: Article 113(1) gives powers to Speakers of both Houses to appoint a joint mediation committee for the purpose of presiding over any outstanding issues arising from a Bill that should be passed by both Houses. Senate and National Assembly also have powers to call for evidence. Under, Article 125(1), either House of Parliament, and any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information. This provides a window for determining issues outside the courts.
- xiii) Commission for the Implementation of the Constitution (CIC): As part of its functions, Article 4(a) of the Commission for the Implementation of the Constitution Act, 2010 mandates CIC to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution. Likewise, Article 4(c) Mandates the Commission to work with each constitutional Commission to ensure that the letter and spirit of the Constitution is respected.
- xiv) The County Allocation of Revenue Act, 2013: With regard to resolution of disputes and payment of wasteful expenditure, Article 12(1) directs that *“any state organ involved in an intergovernmental dispute regarding any provision of this Act or any matter concerning the division or allocation of revenue shall, in accordance with Article 189(3) and (4) of the constitution, before approaching a court to resolve such dispute, make every effort to settle the dispute with the other state organ, including all alternative dispute resolution mechanisms provided for in the Intergovernmental Relations Act.”*
- xv) National Cohesion and Integration Commission (NCIC): The Commission was established by the National Cohesion and Integration Act No. 12 of 2008 to encourage national cohesion and integration by outlawing discrimination on ethnic grounds. Article 25(g) stipulates that one function of NCIC is to promote arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace.

The current situation in Kenya: key issues, concerns and challenges in practice

Key issue

The key issue in Kenya is inadequate use of ADR and its accompanying advantages in resolving disputes that relate to public interest. As a result, there is predominant reliance on expensive and time consuming court processes which promote a winner-loser outcome. The Conference came up with recommendations and opportunities for promoting the application of ADR.

Gaps in policy provisions for ADR: Example of the Intergovernmental Relations (IGR) Act 2012

It was argued that the Intergovernmental Relations (IGR) Act 2012 was incomplete and unworkable with regard to entrenching ADR. Some crevices within the IGR Act 2012 can however be explored. For instance, although under Article 33(1) the Act provides that in case of a dispute, an “intermediary” shall be appointed to handle the dispute, it does not specify the nature, character or other vital specifications of the implied intermediary. This

presents an opportunity for joint and collective efforts of statutory bodies to strengthen ADR. For instance, the joint Parliament and County Assemblies could caucus and determine the arbiters in the event that an intermediary is needed to handle a dispute. It was also argued that the Summit as constituted in the Act was difficult to operationalize. The same arguments were advanced regarding the practicability of implementing ADR under the National Government Coordination Act 2013.

Forms of disputes in the two-tier devolved governance structure

The process of implementing the devolution agenda through intergovernmental cooperation involves the participation and interaction of a complex matrix of actors and institutions with the mandate to facilitate realization of the objects of devolution and its desired results. These interactions yield both cordial relations as well as disputes. For the two years since the roll-out of devolved governance, the most evident forms of disputes in Kenya are mainly between the following interfaces:

- i) Counties and National Government
- ii) Counties and other Counties
- iii) Governors and County Assemblies
- iv) County Executives and County Assemblies
- v) Senate and the National Assembly
- vi) Senate and County Assemblies

Emerging question:

Is the Intergovernmental Relations Act 2012 and the National Government Coordination Act 2013 incomplete and unworkable with regard to their ability to facilitate alternative dispute resolution effectively?



Prof. Margaret Kamar and Prof Karuti Kanyinga (Conference facilitators)

Plenum deliberations on the disconnect between policy and practice

Factors that determine an effective dispute resolution in Kenya

In the context of Kenya, effective dispute resolution must consider a number of factors. When dealing with unresolved historical injustices, some minimum ADR mechanisms can be applied. The level of community awareness and the opinion of concerned communities should be considered. Likewise, a comprehensive legislation on ADR is paramount. However, such legislation must not contravene the Constitution.

Predominant approach to dispute resolution in Kenya/court cases and their disadvantages

Although various statutes provide for alternative dispute resolution, resolving disputes through court processes still feature as the most predominant form of resolving disputes. Most court cases take long and are very costly, thereby delaying service provision and locking up resources that could have otherwise been invested in tangible public-interest development projects and services, if ADR was to be adopted instead. *Petitions that have been expedited are reflected in the website of the Council of Governors (<http://cog.go.ke/>).*

There is a likelihood that disputes will continue to emerge at different levels but if the trend in pursuing court processes continues, the process of realizing the promise of devolution will be adversely undermined. *Emerging disputes that can benefit from ADR mechanisms include Kisumu County & Vihiga County Boundary dispute on the location of Maseno.*

Efforts of mandated institutions in embracing ADR so far

The Conference acknowledged the efforts of the various structures that were actively promoting ADR in their approach to dispute resolution. Some practical examples are as follows:

- i) Over the two years of devolved governance, Senate Public Accounts Committee has invited 16 Governors to respond to issues of alleged corruption in their respective Counties and provided advice accordingly. Most of the issues relate to alleged flouting of procurement processes and misuse of public funds.
It is unfortunate however that some Counties that did not appear before the Committee and ended up with expensive court processes through the Office of the Director Public Prosecution (DPP).
- ii) The Commission on Administrative Justice (CAJ) has facilitated resolution of over 20 cases within the two years of devolution based on the provisions of the CAJ Act 2011.

Opportunities for enhancing use of ADR

"We expected The Summit to be the best option for dispute resolution. We are lucky that so far, Counties have not encountered very serious disputes." H.E Issa Timami, Governor, Lamu County

The Conference also observed that a lot can be done to enhance the use of ADR. For instance, although the Summit was a very strategic structure in promoting ADR, it would accelerate the devolution process by convening regularly and playing a more active role in resolving disputes at the National government-County Governments interface.

Delegates were informed that Senate was in the process of preparing a Bill on alteration of County boundaries consistent with implementation of Article 188 of the Constitution.

Limitations of ADR

We should however be cognizant of the limitations of alternative dispute resolution. It is worth noting that even courts cannot solve some disputes. ADR has both leverage and limitations. It cannot be used for example in resolving disputes related to amendment of the Constitution while it has limited use in resolving boundary disputes, disputes related to historical injustices and in situations where concerned parties are unable to resolve a dispute after all forms of ADR have been explored.

Note on Experience of Counties in Alternative Dispute Resolution

The panelists concurred that Counties appreciate dialogue and alternative dispute resolution. Delegates were informed that some disputes had cost Counties several millions of shillings that could have otherwise been used to improve service delivery to citizens. Such disputes have also tarnished the public image of the Counties and should be addressed through ADR.

Alternative Dispute Resolution too need not be seen as finality because in case of any discontent, one can always appeal to the courts, and in the spirit of keeping in line with the rule of law, court orders must always be respected.

Separately, the Conference acknowledged that conflicts related to boundaries of Counties and constituencies were widespread across the country and that such disputes need to be amicably resolved. Delegates learnt that without addressing boundary conflicts as a matter of national importance, boundary issues were bound to transform into a national crisis.

In the provisions of Article 188 of the Constitution, boundaries of a County can only be altered after an independent commission has investigated, and by resolution of Senate, the matter is legislated on. Boundaries such as those of constituencies are under the jurisdiction of IEBC, while boundaries of Counties are under the supervision of the Senate.

Article 2(6) and its provision and the wisdom of the principle of cooperation and consultation must be embraced for successful ADR. Aligned to this, decisions of judicial and quasi-judicial platforms must be respected.

The success of the rule of law is dependent on human behavior. There must be a conscious resolve on the part of leaders to obey court decisions. This is premised on the fact that Article 6 of the Constitution makes the rule of law a national value. While the judiciary must ensure expeditious disposal of cases, it must be the duty of every citizen to obey the law.

There have existed different kinds of disputes in the past two years. For instance, disputes regarding pecking order (protocol among leaders). It is further disputable that Senate or the National Assembly can objectively legislate on issues such as this, in which they stand to benefit, thereby introducing an element of conflict of interest.

Conclusions of the Session

Disputes can be very costly. If not handled promptly and amicably, they can grossly disrupt harmony and undermine the gains of devolution. *Courts should not be the first option for dispute resolution.* Alternative dispute resolution focuses on dialogue, negotiation and arbitration, and should be considered as the preferred method of dispute resolution. Courts should therefore be the last option.

“You cannot avoid disputes but they can be minimized. Adopt the principle of cooperation in dispute resolution by embracing Alternative Dispute Resolution (ADR) as the preferred method for inter-governmental dispute resolution-which is complementary to judicial mechanisms-while acknowledging its strengths and limitations”.

Dr. Otiende Amolo (Session Speaker)

Factors that inhibit adoption of ADR such as lack of respect of the rule of laws (including disrespect for court orders), unresolved historical injustices, hostility and lack of consultation should be addressed in order to promote adoption of ADR by riding on its advantages while acknowledging its inherent limitations. Developing and implementing a comprehensive legislation on ADR, ensuring consistent respect for the rule of law, consultation and cooperation as well as civic education are therefore fundamental prerequisites for entrenching alternative dispute resolution in the devolved system of governance in Kenya.

Recommended forward mechanisms to realizing adoption of ADR

In view of the foregoing challenges and advantages, the Conference advanced the following recommendations for realizing effective adoption of ADR:

- a) Develop comprehensive legislation on Alternative Dispute Resolution.
- b) Declare boundaries issue a national crisis and undertake boundary dispute resolution as a matter of national importance (IEBC for Constituency Boundaries, Senate for County Boundaries).
- c) Entrench the culture of rule of law (which is a national value in Article 6 of The Constitution) by ensuring that all court orders are respected. This can be done partly through attitude transformation and by levelling charges against contempt of court.
- d) Enhance consultations between National and County Governments, between Counties and within Counties.
- e) Judiciary role: Judiciary can support in entrenching the rule of law by ensuring expeditious disposal of cases relating to devolution, including electoral petitions and impeachments as well as by enhancing the quality of judgement. There should be impeachment of members who fail to implement judicial decisions.
- f) Fast-track introduction of County Attorney Bill.
- g) Enhance capacity building and civic education.

Conference resolutions for enhancing mechanisms for alternative dispute resolution

- 1 **THAT** there is need to undertake boundary dispute resolution as a matter of national importance.
(**Action:** IEBC, Senate)
- 2 **THAT** it is important to entrench the culture of rule of law (which is a national value in Article 6 of The Constitution) by ensuring that all court orders are respected and also expeditious handling of cases.
(**Action:** Judiciary, National Police Service).
- 3 **THAT** the introduction of County Attorney Bill should be fast-tracked.
(**Action:** Senate)
- 4 **THAT** capacity building and civic education should be enhanced.
(**Action:** Council of Governors, Ministry of Devolution and Planning).

Plenum 4

Role of National Government and County Governments in Security in Kenya and emerging issues therein

Introduction

Article 239 of the Constitution establishes three national security organs being the Kenya Defence Forces (KDF), the National Intelligence Service (NIS) and the National Police Service (NPS). Under the Fourth Schedule, national security is explicitly the function of the National Government. This includes the use of the National Defense services as well as Police services.

Kenya has been experiencing an insecurity surge over the recent years. While Police Services are a function of the National Government, the National Police Service Act has put in place structures, the County Policing Authorities and Community Policing Committees, allowing counties to have a role in policing matters.

The Panel explored means of collaboration between the two levels of government in security and also discussed nascent issues related to security. This was against the backdrop of growing insecurity including terrorist activities in various parts of the country, adversely affecting many Counties. The basic question therefore was, “how can the National Government and County governments collaborate in enhancing security in view of the escalating insecurity?”

Policy framework on the role of National government and County governments in security in Kenya

Under the Fourth Schedule, national security is the function of the National Government. Article 187 however provides for transfer of functions and powers between levels of government by agreement if the function or power would be more effectively performed or exercised by the receiving government. On the other hand, Article 6 (2) provides that both levels of government shall conduct their mutual relations on the basis of consultations and cooperation while in Article 6(3), a national State organ shall ensure reasonable access to its services in all parts of the Republic.

On the other hand, Article 118 of the Constitution makes provision for shared services in that a County government may enter into an agreement with the national government, another County government or an agency of the national government, to provide or receive any service that each County participating in the agreement is empowered to provide or receive within its own jurisdiction.

Some questions raised for Cabinet Secretary

1. Security is a shared function. What roles and duties must the governors play jointly with national government to enhance security?
2. Can security be upgraded both in training and service delivery?
3. What can be done to the law so that matters of protocol do not affect effective service delivery and issue of command in the police service?
4. Do the government officers/stations have the capacity to deal with the security issues?
5. When deploying officers to various stations, what kind of unit (s) are deployed? Are the units specialized to deal with the cases at hand?
6. Since security starts with an individual, what capacity are we giving the electorate?
7. What strategies have we adopted to deal with issues to do with insecurity in Kenya currently?

Article 7 of the Intergovernmental relations Act 2012 establishes the National and County Government Coordinating Summit which is the apex body for intergovernmental relations. The Summit should provide a forum for consultation and co-operation between the National and County governments. It should also promote national cohesion and unity and evaluate performance of national or county governments and recommend appropriate actions. By extension, this function should also apply to the handling of security matters.

The current situation in Kenya: key issues, concerns and challenges in practice

Security is a fundamental prerequisite for the success of devolution and the realization of sustainable development. However, the conference observed that in Kenya a number of factors undermine effective delivery of security services. Increased acts of terrorism targeting civilians and business premises in various Counties, infringement on Kenyan territory through foreign aggression, increasing radicalization of young men and women into terrorism, increased activity of local militia groups, delayed response to insecurity incidences by security forces and increased incidences of crime in the form of cattle rustling among other forms.

The plenum was highly charged, being that the Conference was being held only one month after approximately 147 people, students and workers were killed by terrorists in the Garissa University.

Plenum deliberations on the disconnect between policy and practice

3 messages from Development Partners:

1. Insecurity is a shared threat. Terrorism is a shared global challenge and any country would find it difficult to address, unless we stand together.
2. Kenya gets enormous development assistance to support security programmes
3. You cannot beat terrorism unless you work with communities. It is communities that fight terrorism.

Dr. Turner, for Development Partners

In the Constitution of Kenya 2010, the Bill of Rights guarantees the freedom and security of every person. Article 29 of the Constitution provides that this includes the right not to be subjected to any form of violence from either public or private sources, the right not to be subjected to torture in any manner, whether physical or psychological and the right not to be treated or punished in a cruel, inhuman or degrading manner. Against this background, proliferation of incidences of insecurity denies affected persons the rights to freedom and security.

Article 30(3)(d) of the County Governments Act 2012 stipulates that the governor shall promote peace and order within the County. The Conference was concerned that the governor cannot promote peace and order effectively without playing a central role in coordinating security matters within the County, with the security function being vested in the national government. Delegates felt that cooperation between Counties and National government in managing security was therefore obligatory.

The session advanced a number of arguments and generated pertinent questions. It was argued that it is the role of the government to safeguard the safety of the people at all times. Further, that security is a shared concern and a shared responsibility at the two levels of government. This

introduced the question, *“what roles and duties must the governors play jointly with national government to enhance security?”* Delegates also isolated an array of questions for response by the Cabinet Secretary for Internal Security.



Plenum Discussion on the Role of National and County Governments in Security in Kenya and Emerging Issues

The panelists emphasized that all counties face the same threat of insecurity including terrorism, and that all forms of insecurity, terrorism included, can be overcome by working with communities.

Insecurity is a shared threat, which makes security a shared concern, as a result of which security should be a shared function. However, there are no law enforcement agents specifically attached to County governments. For effective management of security affairs in the country, Governors should play an active role jointly with national government to enhance security in their respective Counties.

To effectively address insecurity and fight terrorism, the national government and Counties must implement an effective mechanism for working with communities within a partnership framework. In this regard, the government was commended for a number of efforts aimed at improving security. For example, it would be useful to enhance and fully implement the community policing policy, popularly known as *Nyumba Kumi* initiative which is implemented at village level and whose success is mainly hinged on collaboration between national government and County governments. The efforts to increase recruitment of Security Officers in order to improve the number of citizens served by one security officer were also commended.

“When there is security in the Counties, the President does not need to worry about national security.”

Overall, there is an urgent need to address issues that undermine effective delivery of security services in Kenya. Some of the chronic challenges include the inability to deploy security personnel promptly, dealing with bureaucracy in the security chain of command, employing adequate, well-trained and well-equipped personnel, completing restructuring of security forces (security structures are still working independently). This could be made possible by enhancing independence of County Policing Authorities.

Conclusion

Insecurity remains a major concern across all the 47 Counties in Kenya. While security is a function of the National government as per the Fourth Schedule of the Constitution, Article 30(3)(d) of the County Governments Act 2012 expects that the governor shall promote peace and order within the County. Effective management of security and entrenchment of law and order can be achieved if there is strong collaboration between both levels of government. Governors command a lot of respect and influence due to their large support base in their respective Counties, which is an important asset in promoting peace and order. This advantage is yet to be tapped, with the risk that the use of force and a struggle to enforce compliance are likely to predominate as the main mechanisms for achieving peace and order.

The National government should strengthen collaboration with the County governments with the aim of ensuring that the County governments play an active and structured role in managing security matters. In so doing, both levels of government should take advantage of the diverse provisions of the Constitution and legislations that facilitate devolution. These include Article 187 of the Constitution that provides for transfer of functions and powers between levels of government by agreement, Article 6 (2) that emphasizes consultations and cooperation, Article 6(3) that compels a national State organ to ensure reasonable access to its services in all parts of the Republic, Article 118 of the Constitution makes provision for a County government may enter into an agreement with the national government and Article 7 of the Intergovernmental relations Act 2012 that establishes the National and County Government Co-ordinating Summit which is the apex body for intergovernmental relations.

At the same time, the National government should urgently address the key factors that undermine effective delivery of security services across the country.

Recommended forward mechanisms to enhance collaboration between the National and County governments in improving security

The plenary made the following recommendations:

- i) There is an urgent need to address issues that undermine effective delivery of security services in Kenya.
- ii) That there is need for the National government to acknowledge Counties as the key stakeholders in national security.
- iii) That the Governor should play a key role in security management at County level in collaboration with the National government in order to enable the Governor's Office to effectively promote peace and order as per Article 30(3)(d) of the County Governments Act 2012. Proposals cited were that the Governor should chair the County Security Committee; by having a security unit attached to the Governor's Office; by having an Officer specifically assigned to handle security matters in the Governor's Office; and by ensuring that the Governor has regular intelligence briefings to enable the Counties respond to insecurity issues promptly and to enable effective coordination and management of security matters.
- iv) That there is need to fast-track establishment of the County Policing Authority.

Resolutions and responsible actors

The Conference made the following resolutions:

- i) **THAT** the challenge of insecurity be addressed immediately.
(**Action:** Ministry of Interior and Coordination of National Government)
- ii) **THAT** there is need to strengthen the link between the County and National Governments with regard to coordination of security matters.
(**Action:** Council of Governors, Ministry of Interior and Coordination of National Government)

CHAPTER /SUB THEME

4

ROLE OF PUBLIC PARTICIPATION IN GOVERNANCE

Plenum 5

Appreciating the role of public participation in governance

This session provided a platform to discuss the role of public participation as envisioned in the Constitution and the progress made thus far. The session covered three Plenums namely; *Appreciating the Role of Public Participation in Governance*, *Managing Change for Food Security and lastly, Democracy and Accountability*.

4.1.1 Introduction

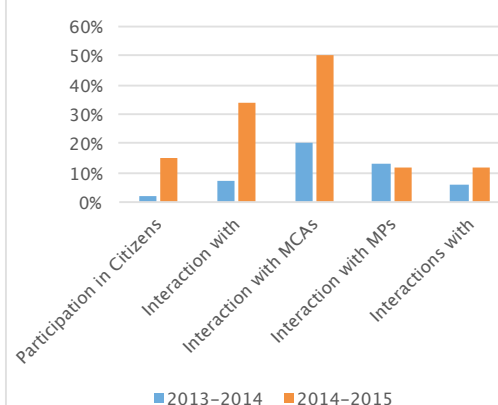
The main objective of the session was to share experiences, lessons and best practices and explore ways of improving public participation in the Counties.

It was observed that overall, as also illustrated in Fig. 2; public participation in the devolution process had improved over the two years of implementing the devolution agenda, particularly with regard to participation in Citizens Consultation Forums and interaction with leaders. The plenary concluded that there was need to sustain and improve citizens' participation, including in the budget making process.

4.1.2 Policy framework on Public Participation

Public participation is not a choice but a constitutional obligation. Article 10(2)(a) of the Constitution outlines participation of the people as one of the national values and principles of governance. The involvement of citizens in political processes is an essential part of democracy. In order to achieve a successfully decentralized society,

Fig. 2 Progress in Public Participation (Devolution at a Glance, CoG, UNDP 2015)



it is important to expand community self-governance whereby, local residents can be involved in community development. Access to information, civic education and public communication are critical components required to strengthen participation of citizens in local governance and decision making.

Article 87 of the County Governments Act 2012 gives a number of principles of citizen participation in County governments. One of them is that citizen participation should be based on timely access to information, data, documents, and other information relevant or related to policy formulation and implementation.

Secondly, citizen participation demands that there should be reasonable access to the process of formulating and implementing policies, laws and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance targets. In this regard, the session speaker discussed participation of citizens in the process of developing Community Integrated Development Plans (CIDPs), based on the experience of the Republic of South Africa.

In addition, in Article 88 of the same Act, citizens also have the right to petition the County government on any matter under the responsibility of the County government. Article 89 obligates the duty bearers being the county government authorities, agencies and agents to respond expeditiously to petitions and challenges from citizens. A county government may also conduct a local referendum on diverse local issues including county laws and petitions (Article 90).

In ensuring that there are clear mechanisms that define the enabling environment for effective public participation, Article 91 compels the county government to establish structures for citizen participation including information communication and technology based platforms, town hall meetings, budget preparation and validation for a, notice board (announcing jobs, appointments, procurement, awards and other important announcements of public interest), development project sites.

Article 125 of the Public Finance Management Act 2012 outlines the County government budget process and stipulates that the County Executive Committee member for finance shall ensure that there is public participation in the budget process.

With regard to participation of peoples' representatives, the main avenues include but are not limited to members of National Assembly and Senate, while counties are expected to establish citizen fora at county and decentralized units. Likewise, Article 95 of the County Governments Act 2012 compels a county government to establish mechanisms to facilitate public communication and access to information in the form of media with the widest public outreach in the county, which may include television stations, information communication technology centres, websites, community radio stations, public meetings and traditional media.

4.1.3 The current situation in Kenya: key issues, concerns and challenges in Practice

Public participation has improved over the two years of implementing the devolution agenda, particularly with regard to participation in Citizens Consultation Forums and interaction with leaders. 34 out of the 47 Counties have established functional public participation forums. According to Afrobarometer Survey of 2014/2015, 58% of Kenyans have confidence in their county leadership and approve of their performance. Trust and approval ratings are higher in rural than in urban areas.

There are however an array of issues that undermine effective public participation in processes at national and county level. The Afrobarometer Survey revealed that 8/10 Kenyans (80%) say it is difficult to participate in key county activities and access information on county budgets, legislation, and project plans. The factors limiting effective participation of citizens include but are not limited to inadequate access to information as well as low level of awareness of citizens on their obligation and right to participate in processes that relate to management of public affairs at both levels, including the right to petition. There is a perception that investing financial resources in public participation processes either does not require funds or is a waste of resources. The need to provide adequate funding is therefore largely lacking, resulting in inadequate budget allocation and a huge funding gap.

“Insanity is:
Doing the same thing
over and over again and
expecting different results!”
Albert Einstein

There is no legislation to guide public participation. Of particular importance is the need to have minimum criteria for gauging effective public participation and minimum quality for determining a good Bill for Public Participation at County level.

Case study on County Integrated Development Plans (CIDPs): Public participation in planning

Relevance, strengths and limitations of CIDPs

Successful devolution is a function of three components, namely; transformational leadership, credible planning (and CIDP) and thirdly, effective implementation. In this regard, credible planning and effective implementation call for active public participation.

Article 220 (2) of the Constitution provides that national legislation shall prescribe the structure of the development plans and budgets of counties. County Integrated Development Plans (CIDPs) are five-year plans that provide the critical foundation for accelerated, inclusive and sustainable development of the 47 counties. They serve as the blue prints for steering implementation of the devolved functions and are informed by the Constitution of Kenya 2010, the Kenya Vision 2030 and its Medium Term Plans (MTEFs) as well as the County Development Profiles. Development of CIDPs has been institutionalized in Kenya, with each of the 47 Counties actively undertaking the process of implementing their first CIDPs.

Present Limitations of CIDP-based planning at county level are diverse and include lack of long-term planning; Weak content, being compliance-driven and they lack plans for capital investments; Weak spatial alignment. This is manifested by lack of multi-disciplinary teams, lack of inter-governmental, inter-County and intra-County teams and the reality that there are no maintenance plans for capital and development investments; Weak resource mobilization plan and lastly, the CIDPs do not integrate annual procurement plans (procurement projections).

CIDPs should be credible. There are three categories of the first-generation CIDPs: most of them are non-compliant, a few are compliant while very few are credible. It is also apparent that most CIDPs were modified from County Profiles and do not pass the test of compliance and credibility. However, through the participation of citizens in participatory processes like CIDP development, the interaction of county citizens with MCAs and Governors has improved tremendously compared to their interaction with MPs and Senators.

4.1.4 Plenum deliberations on the disconnect between policy and practice

Public participation and consultation is an obligation for both National and County Governments alike, and not an obligation of County Governments only. Therefore, both National and County Governments must support public participation.

To facilitate public participation, there must be a forum through which County governments offer explanations of programmes, projects and expenditure to the people. In essence, therefore, public participation is not just about money, but about enhancing accountability. It follows therefore that the success of public participation is hinged on access to information by the public.

In demonstrating transformational leadership which is a fundamental component of successful devolution, it would require therefore that governors spearhead accountability initiatives at the County level, while the President spearheads it at the national level.

Presently, Senate has not yet developed a law that guides public participation. The existing provisions on public participation captured in the Public Finance Management Act are limited. Key constitutional bodies such as the Commission on Implementation of the Constitution (CIC) should facilitate and monitor the necessary implementation of the Constitution, and in this case, with regard to Article 6, appreciating the necessity of public participation.

Effective public participation will necessitate that County structures must be established, strengthened and remain fully functional in order to enhance the participation of the public. Leaders at the County level need to consultatively engage in the planning and designing of development blueprints, in the form of the former National Economic and Social Council.



Plenum Discussion on Appreciating the Role of Public Participation in Governance

In this regard, it is necessary to ensure effective public participation in planning (of CIDPs), in resource mobilization, implementation, monitoring of indicators of performance. This is regardless of the existing funding gap in public participation ventures. However, to address funding the gaps, there should be deliberate effort to increase funding for public participation. This can be done by developing a County Budget Review policy paper, a fiscal strategy paper and draft budget estimates.

4.1.5 Recommended forward mechanisms to address the issues

The plenum made the following recommendations with regard to strengthening of mechanisms for public participation.

- i) Strengthen forums for public participation.
- ii) Improve mechanisms for public consultations.
- iii) The Senate and National Assembly should fast-track the draft Bill to guide public participation processes.
- iv) Participation should be inclusive and integrate persons living with disabilities and diverse interest groups
- v) It would be helpful to have a yardstick for public participation through functional legislation that would give direction on how to:
 - a) apply minimum criteria for gauging effective public participation (developed by CIC) and minimum quality for determining a good Bill for Public Participation at County level and
 - b) address factors that undermine effective public participation.
- vi) Strategically with regard to improving the compliance and credibility of CIDPs, there is need to improve participation of citizens in their development. Further, counties should have at least a 10-year strategic plan per County, in which a long term vision is well articulated. From the strategic plans the Counties would derive two forms of annual plans: for non-capital investments and annual development plans. This would be followed by development of a performance management system to track performance and then implementation of the annual plans. Lastly, CIDP development processes should aim at developing credible plans and ensuring their full implementation, with adequate financing for public participation throughout the project cycle.

Resolutions for improving public participation and responsible actors

The session made the following resolutions for improving public participation

- 1 **THAT** capacity building and civic education should be enhanced.
(Action: Council of Governors and Ministry of Devolution)
- 2 **THAT** the role of public participation in governance and budget making shall be enhanced and the funding gap on public participation addressed
(Action: Ministry Devolution National Treasury, Commission on Revenue allocation, CRA and Council of Governors)
- 3 **THAT** the Bill on Public Participation shall be fast-tracked.
(Action: Senate)

Plenum 6

Managing change for food security

6.1 Introduction

This plenum was aimed at considering ways of managing seasonal food security in Kenya with the main objective of providing a comprehensive overview of agriculture sector performance, food security and nutrition status in the country. The sessions therefore highlighted challenges and opportunities arising from devolution and the crucial role of transformative leadership in promoting food and nutrition security for both County and National Governments.

Discussions

Revisiting the concept of food security

Food security refers to the safety and freedom of the individual, group and whole communities from hunger and malnutrition. It also includes freedom from fear, anxiety, uncertainty and doubt about the availability of food.

Food insecurity is not only a threat to the achievement of sustainable development and poverty reduction but has the potential to adversely reverse the gains of devolution. Transforming the sector will require sustained and coordinated participation of all stakeholders, including governments, development partners, private sector, farmer organizations and civil society. Therefore transformative leadership is a key ingredient of managing the change from a state of food insecurity to one of sustainable food security. Consistent with the deliberations of Plenum 5 (public participation), transformational leadership is one of the pre-conditions for successful devolution. Delegates noted that for example, Israel and Singapore attained food security and water security status due to commitment of leadership. It is for the same reason that Singapore is a global economic hub.

Status and challenges of food security in Kenya

According to the World Bank, over 10 million Kenyans suffer from chronic food insecurity. Food insecurity is closely linked to poverty, which is estimated at 42% nationally. Consequently, 2-4 million people require emergency food assistance.

While 80% of Kenya's population resides in rural areas where agriculture dominates, 60% of people involved in farming activities in Kenya are women.

51% of Kenyans lack access to adequate food while about 30% of Kenya's children are classified as undernourished. Similarly, the prevalence of stunting in children under 5 years is 35.2%, while the prevalence of underweight children under 5 years is 16%. Unfortunately, Kenya is not on course to meet World Health Assembly targets to reduce under-5 stunting and wasting.

Food security remains a challenge 50 years after independence in Kenya. This is grossly manifest at county level and none of the 47 Counties is

Impact of malnutrition in Kenya

1. In Kenya, 2.4 Million children are stunted.
2. 19,000 child lives are lost every year due to being underweight
3. 10, 000 child lives are lost every year due to vitamin A deficiencies
4. 11,000 child lives are lost every year because of inadequate child feeding practices
5. 400,000 children suffer from mental retardation every year because of iodine deficiency

self-sufficient in meeting its food needs. Key challenges that undermine food security in Kenya include but are not limited to the following

- 1) Systemic issues: poverty, lack of recognition and support to women as major producers in agriculture, land tenure challenges;
- 2) Poor leadership: uncoordinated interventions by various actors;
- 3) Lack of enabling policy and legislative framework for the alleviation of hunger;
- 4) Climatic challenges: Variability of production due to climate change, drought, floods;
- 5) Social economic and cultural factors;
- 6) Conflict, insecurity and crop failure;
- 7) Weakening of the Kenya Shilling

Policy framework on food security in Kenya

Agriculture is a fundamental sector in the food security equation of Kenya and most developing countries. Article 43(1)(c) of the Constitution of Kenya 2010 on the economic and social rights provides that every person has the right to be free from hunger, and to have adequate food of acceptable quality. Agriculture is a devolved function as outlined under the Fourth Schedule. This presents an opportunity for counties to innovate and focus on products and services that respond to their needs and that enhance their competitive advantage.

The Agricultural Sector Development Strategy (ASDS) 2010-2020 is the overall national policy document for the sector ministries and all stakeholders in Kenya. The overall development and growth of the sector is anchored in two strategic thrusts namely:

- i) increasing productivity, commercialization and competitiveness of agricultural commodities and enterprises and
- ii) developing and managing key factors of production.

Effective leadership is key to the execution of the above strategies and realization of sustainable food security. Globally, the pursuit of the Millennium Development Goals (MGDs) over the last 15 years (yr. 2000 to 2015) has proved that elimination of poverty and extreme hunger (MGD no. 1) has been elusive for most developing countries including Kenya.

After the elapse of the MDGs, the Sustainable Development Goals (SDGs) have launched a fresh journey towards achieving sustainable food security as outlined in SDG no. 1. With the devolution of agriculture, the key towards the country's food security lies within the ability of countries to enhance food security through improved technologies and innovation, agri-business and inter-county trade. The national government can play a key role in improving the enabling environment for enhancing food security. This includes formulating and implementing policies that lead to reduced cost of production, including through lowering taxes within the food security value chains.

Overlooked issues related to food security initiatives

1. The role of the very poor
2. The importance of gender
3. The importance of Nutrition
4. The impact of climate change and environmental degradation on agricultural development
5. The impact of physical, mental or emotional disabilities

"In Africa we make excellent presentations in big conferences, and with eloquent English but our people still remain hungry, why?"

Prof. Vincent Anigbogu-
Transformational Leadership
Expert, Nigeria

Disconnect between food policy and practice

Some facts from research

As stated above, the basic components that define food insecurity are hunger (which related to availability of food) and nutrition status. AfricaLead presented the following evidence from research conducted in 2014 by Kenya National Bureau of statistics (KNBS) in partnership with University of Nairobi shed some light on the severity of food insecurity in Kenya.

- *Hunger:* The research revealed that in Kenya, the proportion of people who slept hungry at night because there was not enough food ranged from **2.1% in the most food-secure County to 48.1% in the most food-insecure County**. This indicates a diverse variation between the Counties in terms of food security and therefore vulnerability to hunger.
- *Malnutrition: Stunted growth or stunting* is a reduced growth rate in human development and is caused by malnutrition during fetal development. Stunting is based on height in comparison to age (WHO) and causes impaired brain cells, with the greatest impact occurring during the first two years of a child's growth. In adults, stunting lowers productivity and reduces adult income by 20%.
- *Food production:* 11% of Kenya's land produces 70% of the country's agricultural output. However, increasing food production alone is not enough. High potential zones have attracted large populations, resulting in sub-division of land, decreasing productivity and high densities of impoverished and malnourished Kenyans. Unfortunately, strong maize producing regions **still suffer very high rates of child stunting** and anaemia, because a maize-based diet **lacks critical vitamins and minerals**.



Plenum Discussion on Managing Food Security for Change

Role of leadership in enhancing food security

A study conducted by the agriculture sector revealed that over KSh. 300 billion has been invested in agriculture in the last 5 years. The main question is, “to what extent has this investment enhanced the food security situation?” Achieving sustainable food security requires a major change in the form of transformational leadership.

A **transformational leader** changes an organization by developing a **vision** for it, **communicating** that vision to members of the organization and **mobilizing** them to **accept**, help **achieve** and **institutionalize** the **changes**. Transformational leaders will ensure that the country has nutrition-friendly agriculture and livestock policies and programmes, and programmes that will transform large tracks of what seems to be non-arable land into productive land through technology and agribusiness.

Some breakthroughs towards enhancing food security and agribusiness

In the Agriculture sector, many Counties have been able to make extension services more accessible to farmers and further, farmers are accessing subsidized fertilizer and farm inputs to improve their productivity. In addition, several Counties have been able to supply machinery like milk coolers and tractors, as well as improved technologies like tissue culture, soil testing, genetic improvement programs, provision of drought resistant seeds and improved fishing and aquaculture methods.

We note that since the inception of County Governments, our farmers have more linkages to International markets for products like livestock, avocado, tea and coffee. A case in point is Nyeri County which has seen a revolution in the coffee industry through its Joint Marketing Strategy. The grading and milling losses previously experienced by farmers have significantly reduced. Farmers are now directly participating in the production and marketing process and they are able to follow their products from the farm to the selling point. Co-operative societies are also being transformed into accountable and transparent entities that will be vehicles of economic growth in the county. In effect, over KES 2.5 billion has been injected into the Nyeri economy from this initiative.

Recommended forward mechanisms to enhance food security

- i) There is need to cultivate transformational leadership culture in realization of sustainable food security and reduction of poverty.
- ii) Adoption of policies that are inclusive and fair to spur agricultural production and promote agribusiness.
- iii) Counties should invest in infrastructure to improve access to markets by farmers.
- iv) There is need for commitment to addressing key factors that undermine food security, including corruption. There should be a strategic deliberate effort by both levels of Government geared towards addressing the key drivers of food insecurity in the country.

Conference resolutions and responsible actors

- 1 **THAT** the Conference recommends adoption of transformational leadership culture for the realization of sustainable food security and reduction of poverty.
(**Action:** Council of Governors, Ministry of Agriculture)
- 2 **THAT** the Conference acknowledges the positive growth in agriculture due to budgetary allocation, but recommends that the agricultural function should be fully devolved.
(**Action:** Transition Authority, Council of Governors)
- 3 **THAT** Counties should diversify agricultural products and consider horticulture as well as other products for growth.
(**Action:** Council of Governors)

Plenum 7

Democracy and Accountability

7.1 Introduction

Accountability is a noun that describes accepting responsibility, and it can be personal or very public. A government has **accountability** for decisions and laws affecting its citizens; an individual has **accountability** for acts and behaviors. Sometimes, though, taking **accountability means** admitting you made a mistake.
<https://www.vocabulary.com/dictionary/accountability>

Instead of objective of the session we do an introduction like other sessions

This session serves to highlight the interpretation of democracy and accountability. With the benefit of internet resources, it also appreciates the global perspectives and instruments (policies, programmes, international declarations among others) for facilitating democracy and accountability mainly drawing from the framework of United Nations and The World Bank. We finally highlight the outlook of democracy and accountability in the Kenyan context within the provisions of the Constitution of Kenya 2010, and within two years of implementing devolution, also in line with the international instruments that the country also subscribes to.

Interpretation of democracy

According to the UN General Assembly¹, “democracy is a universal value based on the freely expressed will of people to determine their political,

economic, social and cultural systems and their full participation in all aspects of their lives.”

From the Guidance Notes of the UN Secretary-General, the majority of States in the world today describe themselves as democratic. However, democracy is a dynamic social and political system whose ideal functioning is never fully “achieved”. Democratization, furthermore, is neither linear nor irreversible and thus both state institutions and citizens must monitor and maintain oversight of this process. Accordingly, all countries, as well as the international community itself, could benefit from continued strengthening of, and support to, their democratic processes.

¹ <http://www.un.org/en/globalissues/democracy/>



Plenum Discussion on Democracy and Accountability

The Democracy Barometer² is a new index of democracy that measures the subtle differences in the quality of established democracies. The barometer stipulates that democracy rests on three principles namely freedom, control and equality. In turn, measuring fulfilment these three democratic principles is done by monitoring nine functions of democracy, namely:

individual liberties, rule of law, public sphere, competition, mutual constraints, governmental capability, transparency, participation and representation.

Gender and Democracy³

The UN is committed to addressing gender inequalities in all democracy assistance across agencies. The Guidance Note on Democracy says: 'Empowering women and promoting women's rights must form an integral part of any United Nations democracy assistance, including through explicitly addressing gender discrimination that Democracy Support through the United Nations contributes to women's exclusion and the marginalization of their concerns'. UNDP and the UN Development Fund for Women (UNIFEM) in particular address gender and democracy issues.

Interpretation of Accountability

Accountability is a process for holding individual actors or organisations to account for their actions. Accountability requires transparency, answerability, and enforceability between decision makers and citizens (Menocal & Sharma, 2008)⁴.

² http://www.democracybarometer.org/concept_en.html

³ Norad (2011). Democracy Support Through the United Nations. Literature review: What have we learnt about donors' support for democratic development? Report 10/2010 – Evaluation. Pg 14.

⁴ Quoted in GSDRC, 2014. Voice, Empowerment and Accountability, pg 4.

According to The World Bank⁵, the concept of accountability involves two distinct stages: answerability and enforcement. Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement on the other hand suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behavior. As such, different institutions of accountability might be responsible for either or both of these stages.

On the importance of accountability to governance, The Bank stipulates that evaluating the effectiveness of public officials or public bodies ensures that they are performing to their full potential, providing value for money in the provision of public services, instilling confidence in the government and being responsive to the community they are meant to be serving.

Bruce Stone, O.P. Dwivedi, and Joseph G. Jabbara⁶ list 8 types of accountability, namely: moral (ethical), administrative, political, managerial, market, legal/judicial, constituency relation, and professional accountability. Political accountability is the accountability of the government, civil servants and politicians to the public and to legislative bodies such as a congress or a parliament, (and in the case of Kenya, Senate and National Assembly). Recall elections for instance, can be used to revoke the office of an elected official.

Global perspective of democracy and accountability

Democracy is a universally recognized ideal and is one of the core values and principles of the United Nations. Democracy provides an environment for the protection and effective realization of human rights. These values are embodied in the Universal Declaration of Human Rights and further developed in the International Covenant on Civil and Political Rights, which enshrines a host of political rights and civil liberties underpinning meaningful democracies⁷.

In 2015, the world nations adopted 17 UN Sustainable Development Goals (SDGs). The aim of SDG 16 is to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. The fundamental sub-goals that make up SDG 16 as they relate to promotion of democracy and accountability are:

- 16.6 Develop effective, accountable and transparent institutions at all levels
- 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels⁸

Five key governance principles that are important and should underpin good governance practice include; Accountability, Transparency, Non-discrimination, Participation and Efficiency. According to Norad (2011)⁹ however, democracy promotion today is only one aspect of a much broader international agenda to support ‘good governance’.

5 Rick Stapenhurst & Mitchell O'Brien (World Bank Institute), in <http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf>

6 <https://en.wikipedia.org/wiki/Accountability>

7 <http://www.un.org/en/globalissues/democracy/>

8 <http://www.fdsd.org/ideas/sustainable-development-goal-sdg-16-democratic-institutions/>

9 Norad (2011). Democracy Support Through the United Nations. Literature review: What have we learnt about donors' support for democratic development? Report 10/2010 – Evaluation. Pg xi.

10 <http://www.un.org/en/globalissues/democracy/>

Implementation of democracy and accountability: Case of the United Nations¹⁰

Realization of democracy and accountability is supported through policies and programmes.

United Nations activities in support of democracy and governance are carried out through the United Nations Development Programme (UNDP), the United Nations Democracy Fund (UNDEF), the Department of Peacekeeping Operations (DPKO), the Department of Political Affairs (DPA), the Office of the High Commissioner for Human Rights (OHCHR), and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), among others. Such activities are inseparable from the UN's work in promoting human rights, development, and peace and security, and include:

- assisting parliaments to enhance the checks and balances that allow democracy to thrive;
- helping to strengthen the impartiality and effectiveness of national human rights institutions and justice and security systems;
- helping to develop legislation and media capacities to ensure freedom of expression and access to information;
- assisting to develop policies and legislation to guarantee the right to freedom of association and of peaceful assembly;
- providing electoral assistance and long-term support for electoral management bodies;
- promoting women's participation in political and public life.

Implementation of democracy and accountability: Case of the United Nations¹⁰ (continued)

The UN supports women's political participation, including efforts to increase the share of women elected into office and to build women's capacity as effective legislators once elected. In July 2010, as part of a resolution on system-wide reform, the United Nations General Assembly created UN Women, mandated to coordinate the gender mainstreaming work of the UN System. In doing so, UN Member States took an historic step in accelerating the Organization's goals on gender equality and the empowerment of women.

The International Day of Democracy

On 8 November 2007, the General Assembly proclaimed 15 September as the International Day of Democracy, inviting Member States, the United Nations system and other regional, intergovernmental and non-governmental organizations to commemorate the Day. The International Day of Democracy provides an opportunity to review the state of democracy in the world.

Democracy is as much a process as a goal, and only with the full participation of and support by the international community, national governing bodies, civil society and individuals, can the ideal of democracy be made into a reality to be enjoyed by everyone, everywhere.

Democracy and Accountability in the Kenyan context under devolution

At this juncture, and against the background of the global context, we make a well-deserved attempt to highlight past experiences, learn from them and explore ways of enhancing democracy and accountability in Kenya, at both levels of government.

Constitutional provisions for democracy and accountability

Right from the Preamble, the Constitution of Kenya 2010 expressly describes ours as a country and a people governed by democratic principles, while appreciating our diversity. The Preamble *recognizes the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.* These elements mainly relate to the functions of democracy that are discussed above, and which are also monitored by using the democracy barometer.

From a dictionary definition¹¹, *democracy is a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system.* In this light, Article (1) of the Constitution places the sovereignty of power on the people of Kenya and state that “All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.” Similarly, Article (2) confirms that “The people may exercise their sovereign power either directly or through their democratically elected representatives.”

¹¹ <http://www.dictionary.com/browse/democracy>



Governor for Baringo, H.E Cheboi participating in plenary



Chairman of the Council of Governors issuing his Remarks during the opening ceremony

Democracy and devolution in Kenya

Article 1 (4) of the Constitution confirms that “The sovereign power of the people is exercised at the national level and (b) the county level.” In terms of political democracy, Article 4(2) states that “The Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance referred to in Article 10.” These national values and principles, as relates to democracy and accountability, are populated in Article 10(2) and include- devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; good governance, integrity, transparency and accountability; and lastly, sustainable development.

According to Dr. Mutakha Kangu (2015), devolution as the major paradigm shift was thus adopted not as an end in itself but a means to an end. Its major drivers and main objects were to:

- promote and advance democracy and accountability;
- promote and advance development and service delivery;
- promote and advance equity and inclusiveness; and
- limit and constrain national government and centralization generally.
- give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- enhance checks and balances and the separation of powers.

Instruments and Institutions that facilitate accountability in Kenya under devolution

The rationale for the creation of the various independent institutions: Ethics and Anticorruption Commission (EACC), Office of the Auditor General (AG) and Office of the Controller of Budget (OCB) under the Constitution of Kenya was to address the demand by the public for separation of financial management functions, that is; controlling and reporting on budget implementation from the auditing function. The need for strong expenditure controls has become even more critical as the country moves towards a devolved governance system. The devolved system establishes 47 County governments and the National government. This implies there will be many more centers of authority since the 47 county governments are distinct, interdependent and will operate on the basis of consultation and mutual respect.

7.2 Policy Framework in Democracy and Accountability

Chapter 6 of the Constitution outlines Leadership and integrity as an important component in public service delivery. Ethics and integrity that presuppose honesty and openness are integral components of any undertaking to ensure efficiency in the utilization of resources and effectiveness in service delivery. This requires a minimum threshold of transparency and accountability in the conduct of public affairs. For this to occur, a measure of moral standing among individuals and institutions must exist to check on their excesses and more so when these act in contradiction to their calling. The foregoing is expected to arrest such vices as corruption, enshrine appropriate work ethics and prevent other underhand deals that disadvantage the public with regard to service delivery. Corruption, which is deep-rooted in Kenya, has largely been blamed for scaling down domestic saving and investment. The devolved systems of governance came with a promise to begin on new footing clear and devoid of previous experiences from the local authorities.

There are various independent offices which are tasked with the mandate of ensuring this is attained: Ethics and Anti-Corruption Commission (EACC), Auditor General (AG), Office of the Controller of Budget (OCOB). This is besides the vibrant civil society organizations. Their independence needs to be reaffirmed to ensure they discharge their mandate effectively.

Article 79 established EACC which is supposed to ensure compliance with Chapter 6 of the Constitution (Leadership and Integrity). There were fears at the start of implementing the devolution process that corruption will follow devolved resources and secondly, a low understanding on Devolution. Since devolution is new, the public should be educated on how to provide oversight. Counties do not have the proper structures in place to carry out the oversight role.

The Office of the Auditor General draws its mandate from the Constitution of Kenya.

Chapter 12, Part 6, Article 229 establishes the Office of the Auditor General. Chapter 15, Article 248, Section 3 and Article 249, Section 2 (a) and (b) provides for the independence of the Office of the Auditor General.

Article 228 of the Constitution of Kenya, 2010 that established the office of the Controller of Budget (OCOB) envisages OCOB as the anchor for prudent public financial management in the Country. The OCOB seeks among other issues, to promote fiscal discipline and equitable allocation of available resources and improve transparency and accountability in the budget implementation process, particularly with the inception of the devolved system of government, which introduces an urgent need for strong expenditure control.



Hon. Raila A. Odinga issuing remarks during the Opening Ceremony

Removal of governors is a process provided for under the law. The Constitution provides for the impeachment of the Presidency and governors; Article 181(1) of the Constitution provides for the removal of a county governor on the grounds of gross violation of the law, where there are reasons to believe that he/she has committed crimes, abuse of office or gross misconduct and physical or mental incapacity to perform the functions of the office. Key questions to consider in this regard are:

- i) *What line are you drawing between when to impeach and when not to impeach?*
- ii) *What procurement procedures are you putting in place?*
- iii) *How can democracy survive if authorities are not taking action and if citizens are not blowing the whistle?*

The procedure of such removal, except for physical or mental incapacity is set out under section 33 of the County Governments Act and simply put:

- 1) The County Assembly commences the process by passing a motion to impeach the governor. The motion ought to be supported by at least two thirds of all the members;
- 2) The Speaker of County Assembly informs Speaker of Senate of such resolution within two days;
- 3) Within seven days of receiving the notice, Senate shall hear the charges against the governor or form a committee to investigate the charges;
- 4) When the Senate Committee hears and finds out that the accusations against the governor are unsubstantiated, there shall be no further proceedings and the governor shall remain in office. However if the senate committee finds out that the charges are substantiated, the whole senate vote on impeachment; and
- 5) If majority of all senators vote to impeach the governor, the governor shall cease to hold office.

The current situation in Kenya: key issues, concerns and challenges in Practice

The push for democracy and accountability in Kenya is an ongoing process. The media has enjoyed significant growth and plays a vital role in ensuring that leaders are answerable for their actions. Furthermore, the culture of silence and fear has passed, and citizens and civil society groups today are empowered and are willing to speak out against governmental impunity. The judiciary has played a key role in effecting the cases brought before the bench for disbursement. As a country, we have made progress but had a longer way to go than what we had achieved. However, nepotism and tribalism are critical vices to deal with, which also undermine accountability. In the end, “the reality is that the degree of accountability in a country is the outcome of the conflict between pressure from the populace and resistance from the power holders”. Therefore, the level of accountability in the country will continue to evolve and be an ongoing and highly contested issue.

However the call for accountability should not be made to look like personal vendetta against individuals. The impeachments that are now rampant at County level especially against Governors who went against popular opinion to implement correct decisions in the interest of the public are evidence of conflicts in perception and interests. There is need to have thresholds for actualizing impeachment, in order to ensure that Counties do not come to a halt in the absence of a Governor, in effect undermining the devolution process. This was particularly with regards to the various impeachment and threats of impeachment experienced in various county Governments, particularly in Makueni and Embu County where such cases had derailed the development agenda. The other counties which had faced various threats are: Bomet, Machakos, Nairobi, Taita Taveta, Baringo, Kericho, Nyeri, Kitui, Elgeyo Marakwet, Tana River and Vihiga.

Case Study: Devolution lessons learnt from the South African Devolution experience applicable to Kenya

The Speaker informed delegates that game-changers for realization of devolution objectives are hinged on planning, effective public participation, simplicity of plans and monitoring framework as well as effective execution. The following notes on these four game-changers were highlighted:

- i) Plan to plan: County Integrated Development Plans (CIDPs) were a noble initiative. It is important for counties to be clear on who does what and the institutional arrangements for implementing the plans.
- ii) Public Participation: Counties should keep records of the needs of the diverse stakeholders. Similarly, there should be a feedback mechanism for the County governments to report back to citizens (their constituencies) on which needs have been accommodated, which ones have been deferred and the justifications thereof.
- iii) Simplicity: The plans should be simple and monitoring should focus on specific key performance indicators (KPIs) that are agreed upon at planning stage.
- iv) Effective execution depends on the existence of a cordial relationship between the key facilitators of the CIDP implementation process. For example, it is critical that the Governor and Executive/County Secretary are on same page, without which implementation can be adversely affected.

“Service delivery is the heart of devolution”

Dr. Johann Mettler, South African Expert, PWC

There are three main phases of the devolution process, namely Pre-interim, Interim & Final Phase:

- The Pre-interim phase is characterized by establishment of structures and setting up of systems, including accountability structures and systems.
- In the Interim phase, the County is working towards compliance with set standards while at the same time laying down the foundation for sustainability. In this regard, it is important for example to establish County Accounts Committees that are accountable to the County itself to start with.
- The Final Phase is also the consolidating phase, where the County attains full compliance and is setting up a sustainability model. At the same time, it is important to effectively manage the transformation and ensure consistent coordinated planning leading to realization of devolution goals, bearing in mind that service delivery is the heart of devolution.

Presentation by Hon. Martha Karua: Experience as a former Cabinet Minister and whether democracy and accountability is a reality in the current context of governance

The following key measures could be used in enhancing accountability:

- Innovation in responding to the needs of the people.
- Appointments should be based on merit.
- Ensuring meaningful participation, integrate feedback mechanisms.
- Ensuring the public is empowered with the correct information and can query the regime.
- Both levels of government should strive to be accountable and transparent as they carry out their mandate.
- The impeachment of governors should not be a personal vendetta.

Plenum Deliberations

Accountability is being able to account for the resources bestowed on leaders. The Constitution is very clear on the accountability of the resources bestowed on the County governments. More resources have been allocated to county governments and they must be accounted for. For accountability purposes, the report from the auditor general should be availed to the common *mwanaanchi*. Accountability is a huge responsibility that is also a value in our Constitution under Article 10(2)(c). There should be an enabling environment for accountability to be enhanced, and this should include protection of whistle blowers. At the same time, the role of the civil society should stand out. The same rules enacted at the national government relating to accountability should equally be applied on the county governments. There are however an array of issues that undermine effective democracy and accountability processes at national and county level. These include inadequate resourcing for the independent offices which have an oversight role on these issues as well as political interference.

All the 47 counties inherited some systems from former local authorities. In order to enhance professionalism and to cultivate a culture of accountability in County governments, the independent offices should play their critical role in capacity building the County Governments. EACC for example, should sensitize County Staff on corruption and ethics. The Auditor General should also strengthen internal audit in the County Governments while overall, there is a great need to enhance accountability through automation of services.

Many gaps still do exist at the Senate level and in the County Assemblies on how to enhance accountability in service delivery. Further, there are gaps in constitutional provisions especially in Articles 96(1) and 96(3) on the role of Senate.

In appreciating Article 229(7), the Auditor General is supposed to table his/her report to the Senate and the National Assembly, but does not make it mandatory for the Auditor General to table the same report in County Assemblies.

Conflicts between leaders at different levels hinder effectiveness in enhancing accountability and fighting graft. Oversight structures exist, but there is need to define properly and provide steps to be taken. There are no proper steps at the county level that help County Assemblies to deal with their (graft-related) findings in their oversight mandate. The discussants underscored the need to ensure that Governors, who are County leaders, are key determining factors in the process of delivering on the devolution promise.

Summary Recommendations and Actions

There is increased public confidence in the devolution process. However, the public believes that Governors, Senators and Members of the County Assemblies should work harder to improve services.

- Governors need to spearhead accountability at the County level.
- Policy considerations: Address gaps in legislation
 - There are gaps in legislation, specifically Articles 96(1) and 96(3).
 - There is a gap in legislation Article 229(7) which does not expressly mandate the Auditor General to present audit reports to the County Assembly.
- Ensure that accountability structures and mechanisms are protected by the law.
- Enhance access to information by the public, since democracy and accountability are furthered through public access to information.
- As a best practice, Governors should invite EACC and Senate Committee on Ethics to strengthen the capacity of County Staff on ethics and accountability.



Kariithi Murimi, Devolution Expert

Conference resolutions on enhancing democracy and accountability

- 1 **THAT** existing Policy and Legislative Gaps have to be addressed including a proposed Constitutional amendment to Article 229(7).
(**Action:** Senate, National Assembly, Attorney General, Auditor General, Council of Governors)
- 2 **THAT** the National Assembly and Senate must work together to support devolution at the county level.
(**Action:** National Assembly, Senate)

SUB THEME

4

RESOURCES, POWER AND RESPONSIBILITY

Plenum 8

Gains, Opportunities and Challenges in Improving Devolution

8.1 Introduction

This section covers opportunities and challenges in implementing devolution under Sub-Theme 4 which focused on resources, power and responsibility. The session assessed the positive impact of devolution with respect to equal distribution of resources.

Gains of devolution so far

Devolution has enhanced the practice of planning and more targeted budgeting. County Integrated Development Plans (CIDPs) are in place and are already being used as the main basis for developing budgets. The Conference also noted that devolution had also increased the visibility of resources at the local level, with progressive improvement in delivery of services in all Counties. The amount of devolved funds disbursed to Counties has progressively increased as follows according to Economic Survey reports 2014 and 2015:

- 1) According to the Economic Survey 2014¹² and as part of Public Finance, in 2013/2014, a total of KSh. 210 billion was allocated through the County Allocation of Revenue Act 2013. Out of this, a total of KSh. 190 billion was allocated to County governments equitably during the same period.
- 2) Similarly, According to the Economic Survey 2015¹³, the enactment of the County Revenue Act 2014 provided for a total of KSh. 226.7 billion to be allocated as the equitable share of national revenue to the County governments in the 2014/2015 Financial Year. Likewise, As per the County Allocation of Revenue Act 2015, a total of KSh. 287 billion was expected to be transferred to the County Governments in 2015/16¹⁴. This incremental gain is illustrated graphically in fig 2.

¹² Kenya National Bureau of Statistics, 2014. Economic Survey 2014, pg 97.

¹³ Kenya National Bureau of Statistics, 2015. Economic Survey 2015, pg 113.

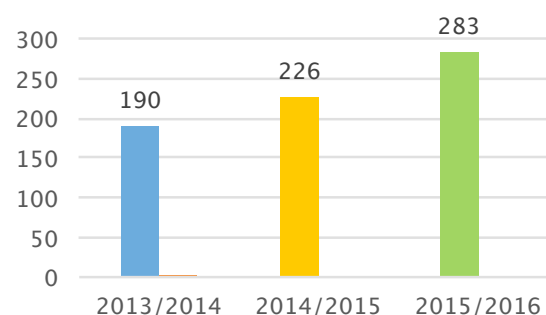
¹⁴ Kenya National Bureau of Statistics, 2016. Economic Survey 2016, pg 115.

Gains in expenditure and development

- 1) County governments have been allowed by the law to operate their own Revenue Fund Accounts.
- 2) Installation of the Integrated Financial Management System (IFMIS), which promotes efficient and transparent utilization of public finance in counties, has ensured expenditure is easily monitored and value for money traced and determined. IFMIS has improved the level of transparency and accountability in the operations of county governments. In spite of this achievement, there are emerging challenges from use of the system that need to be addressed as a matter of urgency, especially in relation to delay in procurement and release of funds.
- 3) The increased revenue allocation to County Governments has translated to increased investment in development by all the 47 Counties, and consequently, progressive improvement in service delivery for example:
 - i) Health: Many counties have acquired kidney dialysis machines, promising to end the nightmare of cancer patients who have been tormented for years by lack of the vital equipment
 - ii) Agriculture: Extension services are more accessible to farmers while farmers are accessing subsidized fertilizer and farm inputs to improve their productivity
 - iii) Public Participation: Thirty four (34) Counties have established their County Budget and Economic Forums
 - iv) Infrastructure-roads: The government has embarked on works countrywide to open up roads to increase accessibility of previously inaccessible rural roads
 - v) Urban Planning: The government has designed urban plans to improve infrastructure and sanitation in key towns across counties
 - vi) Education (ECD): All 47 counties are putting up more nursery schools where enrollment has also increased over the past two fiscal years

Fig. 2 Unconditional Equitable share of County Governments' revenue KSh. (bn)

(Source: Derived from KNBS 2014, 2016 & 2016) Public Finance data on allocation of revenue to Counties, Economic Survey Reports 2014-2016.)



Challenges in improving devolution

Managing expectations of citizens on gains from devolution has been a challenge while there is still resistance to change with regards to full implementation of devolution.

- 1) Policy and legislation-related challenges include the following:
 - a) Article 227 on procurement of public goods and services is yet to be respected. This requires that the systems adopted for procurement of contracts must be fair, equitable, transparent, competitive and cost-effective.
 - b) Areas that are not resourced as per the 4th Schedule are health services (item 23 and 28), Crop and animal husbandry, County Roads.

- 2) Publishing of County laws are delayed by the back-log at the Government Printer.
- 3) The National Government should not procure skilled staff for the Counties.
- 4) Implementation of the 15% allocation to Counties that was to be effected in 2014 is still pending.
- 5) Institutional challenges
 - o Presence of carry-over staff from former Local Authorities and seconded staff from National Government resulting in a bloated wage bill.
 - o Terms and Conditions of Service for County and National staff not harmonized
 - o Capacity development programmes under the national government and may not target the real and unique needs of the county governments.
 - o Provincial Administration is yet to be aligned with the devolved system of government within the timeframe of August 2015, as provided by the Constitution.
 - o When two arms of government are not in agreement, then harmonization of the budget and the running of the Counties becomes a challenge.
 - o Some Counties don't have proper internal audit units; these should be established in order to execute the budget.
 - o Senate has processed many Bills to support implementation of devolution but most of them have not been published.



Plenum Discussion on Gains, Opportunities and Challenges in Improving Devolution

- 6) Concern of failure to meet Constitutional deadline for enacting all laws. The Fifth Schedule of the Constitution set a timeline of 5 years for enacting all laws required to implement the Constitution. This timeline lapses in August 2015. The Council of Governors hopes that the National Government will expedite this process so that all structures respect the constitution.
- 7) Insecurity in counties due to terrorism is bound to shutter County economies.

Opportunities and recommendations

- 1) Capacity building for Counties, including qualified personnel, equipment and other support required to improve performance of County governments.
- 2) Policy recommendations: There should be proper implementation of:
 - i) Article 202 (Equitable sharing of national revenue).
 - ii) Article 203 (Equitable share and other financial laws) and
 - iii) Article 229 (Auditor General).
- 3) National government should focus on developing standards for construction and maintenance of roads (item 18) and not on implementation.
- 4) The National Assembly and Senate must work together to support devolution in all the Counties.
- 5) Constitutional offices like the Controller of Budgets, Auditor-General's Office should be independent and facilitative of the performance of both National and County governments.
- 6) Need to make the terms and conditions of service for County staff attractive enough for professionals. Council of Governors could work closely with Senate and CRA on this.



Delegates participating in plenary

- 7) Need to harmonize the benefits and allowances that accrue to MPs and MCAs.
- 8) Need to support Counties to strengthen internal audit systems, streamline procurement processes and monitor utilization of funds.
- 9) Senate to finalize the Bill for the establishment of the County Printing Press, to expedite publishing of County laws.
- 10) The National Assembly and the Senate must work for all the Counties.
- 11) All state corporations under tourism should respect county government in their boards and activities co-operative services.

Conference Resolutions on challenges and opportunities for improving devolution

- 1 **THAT** the Conference recognizes increased public confidence in the devolution process and development initiatives and recommends that Governors, Senators and Members of the County Assemblies should cooperate, and consultatively work to scale up service delivery.
(**Action:** Council of Governor, Senate, County Assemblies)
- 2 **THAT** existing Policy and Legislative Gaps have to be addressed including a proposed Constitutional amendment to Article 229(7).
(**Action:** Senate, National Assembly, Attorney General, Auditor General, Council of Governors)
- 3 **THAT** the National Assembly and Senate must work together to support devolution at the county level.
(**Action:** National Assembly, Senate).
- 4 **THAT** National government should focus on developing standards for construction and maintenance of roads.
(**Action:** Ministry of Infrastructure and Transport, Council of Governors).
- 5 **THAT** constitutional offices like the Controller of Budget and the Auditor-General's Office should demonstrate independence as prescribed in their constitutional mandate and be facilitative of both Nation and County governments' performance.
(**Action:** Controller of Budget Office, Auditor General).
- 6 **THAT** terms and conditions of service for county staff should be made attractive enough to attract qualified professionals, at same levels as National Government. Council of Governors should work closely with Salary and Remunerations Commission in a bid to achieve this.
(**Action:** Salary and Remuneration Commission, Council of Governors)
- 7 **THAT** there is need to harmonize the benefits and allowances that accrue to MPs and MCAs.
(**Action:** Salaries and Remuneration Commission, County Assemblies Forum)
- 8 **THAT** there is need to support counties to strengthen internal audit systems, and adhere to procurement procedures, and monitor utilisation of funds.
(**Action:** Procurement Oversight Authority, Auditor General, Council of Governors, National Treasury)
- 9 **THAT** the Senate should finalize the Bill for the establishment of the county printing press, to expedite publishing of County laws.
(**Action:** Senate, Ministry of Interior and Coordination of National Government, Council of Governors)

SUB THEME

4

RESOURCES, POWER AND RESPONSIBILITY

Plenum 9

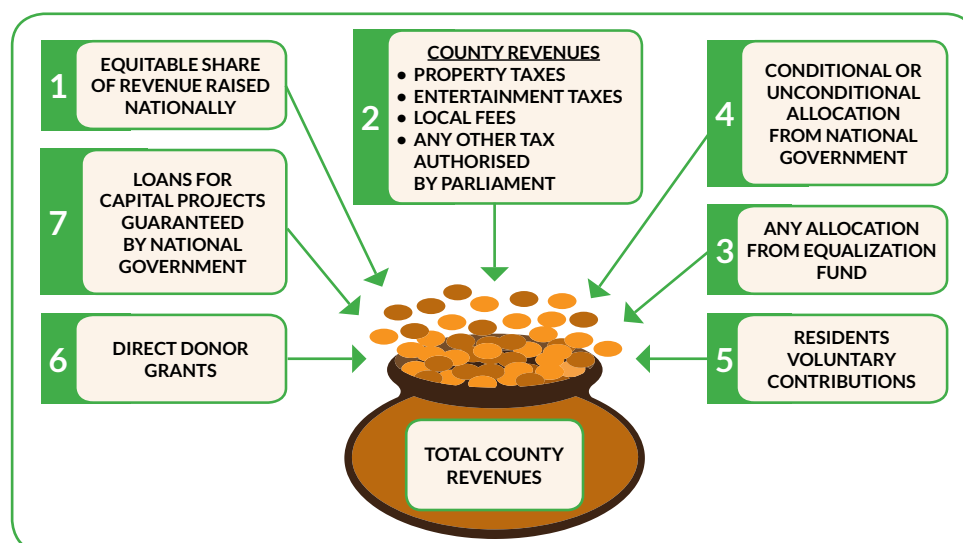
Revenue Collection

The Commission on Revenue Allocation (CRA) is mandated by the Constitution of Kenya 2010 (Article 216)(2) to advise and recommend on matters concerning the financing and financial management of County Governments. Similarly, Article 216(3)(b) gives CRA the mandate to define and enhance revenue sources of both National and County government. The constitution also through Article 216(3)(C) mandates the commission to encourage fiscal responsibility by county government while managing public finance.

Revenue sources for County Governments

County revenue streams fall under three broad categories namely:

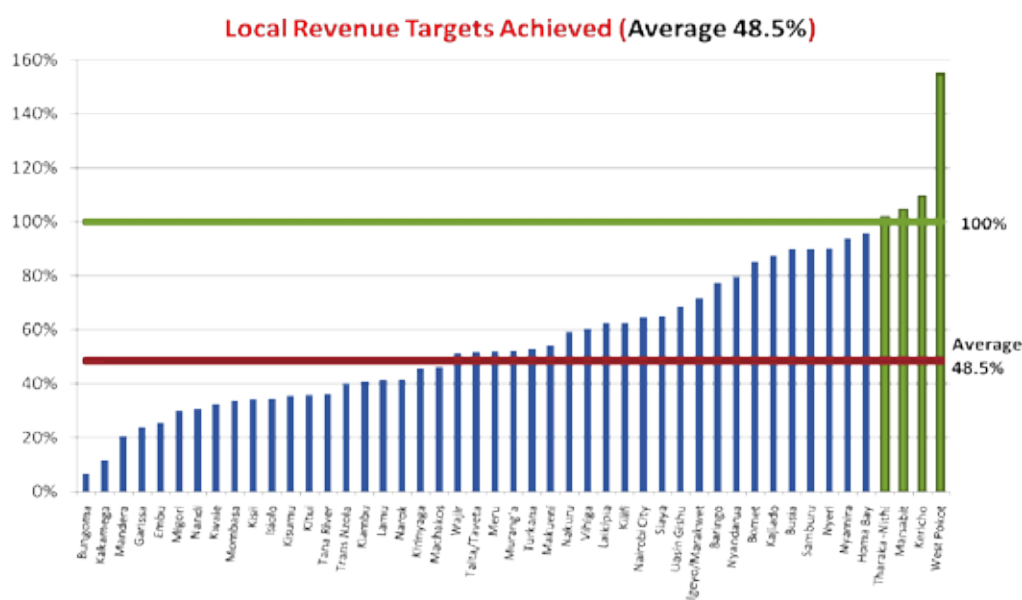
- 1) Internal Sources of revenue
 - i) Charges for services e.g., market fees, parking fees, slaughter fees and burial charges.
 - ii) Regulatory charges e.g., restaurant license, food handling permit and planning approval.
 - iii) Taxes e.g., property rates, entertainment tax, cess (where charged on sale or transit of goods). Taxes enable Counties to raise revenue for services and generate surplus to service debts. Property rates is the main important revenue source in urban areas while rural Counties rely on market fees and game parks fees.
 - iv) Others e.g., residents voluntary contributions.
- 2) Revenue from National Government
 - i) Equitable share of revenue raised nationally.
 - ii) Conditional or unconditional allocation from National Government.
 - iii) Any allocation from Equalization Fund
- 3) Direct Donor Grants
- 4) Loans for Capital Projects guaranteed by National Government



Sources of County revenue (CRA, 2015)

Status and challenges of revenue collection in Counties

The Office of Controller of Budget (COB) indicated that Counties generally collected more revenue than the former Local Authorities. However, the revenue collected was still below the targets set by the respective Counties. COB revealed that on average, the Counties collected only 48.5% of their revenue targets. This shows that there is great potential to increase revenue collection and use it to spur development in the Counties.



Source: Office of the Controller of Budget, 2015

A number of challenges were highlighted that contribute towards Counties low Revenue collection, they include:-

- a) Poor administrative capacity to assess the revenue base of the Counties.
- b) Poor administrative capacity to enforce the payment of taxes.
- c) Explicit and intentional tax evasion and resistance from taxpayers.
- d) Dishonesty of Revenue Collectors.
- e) External pressure on the local Finance Department to provide unrealistic revenue projections in their budgets.
- f) Political pressure on the local tax administration to relax on revenue collection, especially during election periods.
- g) Absence of incentive packages for hardworking and high performing revenue collectors.
- h) Weak Management Information System (MIS) on revenue collection.
- i) Insecurity undermines revenue collection in some areas within Counties.

Counties have resources that can be tapped in to collect revenues adequately. The County governments cannot introduce new taxes, but can come up with innovative ways to increase their revenue streams through service delivery.



Delegates engaging in plenary

Recommendations that can be adopted by County Governments to improve on their revenue collection

- 1) Reviewing processes and systems and ensuring the right systems are in place and that they work.
- 2) Legal and legislative framework which will ensure the revenue streams are expanded and that County taxes are charged as per the specifications in the national legislation. Article 207 of the Constitution should be operationalized by creating a County Revenue Fund as part of the legislative framework.
- 3) People – having the right people for the job.
- 4) Technology makes the process of revenue collection seamless and enhances accountability. A cashless system of revenue collection and integration of revenue tracking system is critical.
- 5) Structures-adopt functional structures that will effectively implement the revenue management system.
- 6) Information sharing – an accurate and reliable database of the taxpayers is fundamental.
- 7) Widen the tax bracket by working with KRA (also to support the County unearth and eliminate tax evasion).
- 8) Counties should be creative to attract investors and expand revenue base.
- 9) Ensure realistic revenue projections that take into account the need for the Counties to deliver devolved functions and debt status of the County Government.

Counties are advised to undertake a baseline survey to understand where their revenues come from. Formation of tax agencies will help collect taxes more efficiently and also leverage on each other's strengths. Exercising professionalism and setting up the right structures will be a game changer when it comes to revenue collection. The revenue administration systems need to be strong and aligned to the County Integrated Development Plans (CIDPs).

Recommended strategies for automating the County revenue management system

- a) Counties should pool resources and invest in a shared revenue management portal.
- b) Counties should invest in data centers either jointly or individually.
- c) Counties should allocate at least 5% of their budget to ICT for automation.
- d) Counties should implement pilot systems before contracting with suppliers.
- e) Follow recommended revenue automation guidelines issued by the Commission on Revenue Allocation (CRA) and National Treasury.

Conference Resolution on County Revenue Management

THAT there is need for a clear revenue framework that counties can use for revenue collection, because there exists disconnect between the law and revenue collection systems.

(Action: National Assembly, Office of the Auditor General).

Plenum 10

Progress on Decentralization of Services

Introduction

The objective of the session was to take stock of where the nation was in terms of decentralization of services beyond the Ward level.

Revisiting the disadvantage of the centralized governance system¹⁵

The centralized system of governance that was replaced by adoption of a new Constitution in 2010 hindered democratic participation of the people and communities in their own governance and development as well as in management of their own affairs. This encouraged inequitable development, distribution of resources, opportunities, and access to services, which resulted in underdevelopment and poor access to services.

Discussion¹⁶

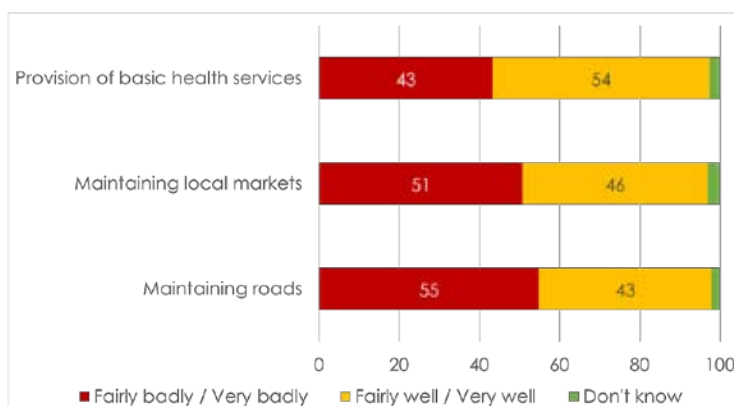
“It is clear that services are available at the lowest levels in the country and this means that the fruits of devolution are being experienced” Kinuthia Wamwangi – Chair – Transitional Authority.

Decentralization of services refers to the process of redistributing or dispersing functions, powers, people or things away from a central location or authority. The Constitution of Kenya 2010 resulted in the country embarking on fundamental devolution of power. The Constitution divides the country into 47 Counties, to which both political power and government functions are devolved. Devolution is anchored on service delivery and this is critical to all County governments. At the onset of devolution, some Counties were ahead of others in terms of infrastructure and various services. Since Counties started off at different platforms, Governors must set the way, have a vision for their County and work towards making that vision a reality.

Consistent with related discussions on best practices from Counties, all Counties have felt the benefits of decentralization through improved services across sectors. Public participation has increased, people from different groups have come out and their opinion has been helpful in enhancing service delivery.

The Afrobarometer Round 6 survey conducted between 2014 and 2015 indicated that the rating by citizens of how their County government handled County service delivery as fair/very good ranged between

County service delivery



Respondents were asked: How well or badly would you say your county government is handling the following matters, or haven't you heard enough about them to say? (%)

¹⁵ Dr. Mutakha Kangu 2015 Presentation

¹⁶ With input from PWC

43% and 54%. With only two years into devolution and even less time into actual decentralization given the gradual transfer of functions and release of resources to implement the functions, this is a good indication of work in progress. With sustained commitment at County level, citizens' satisfaction with County service delivery is likely to improve tremendously in subsequent surveys. Government is bound to be felt more as more people get involved in the government projects at the County level.

Three conditions for successful decentralization are;

- 1) Competencies
- 2) Autonomy
- 3) Capacity

Against these conditions for successful decentralization, the Transitional Authority succeeded in devolving most of the functions required to carry out service delivery to the Counties as well as in the demotion of Municipal Councils and County Councils to ensure that the new structures are in line with the devolved system. A number of challenges however still need to be addressed.



Transition Authority Chairman, Kinuthia Wamwangi

Challenges of Decentralization of Services in Kenya

- 1) From a human resource perspective, many Counties are struggling to get qualified personnel to work especially in remote areas.
- 2) Security concerns across the nation undermine effective decentralization of services.
- 3) The transition from central government to the County governments has led to duplication of some roles which creates confusion on who should be doing what.
- 4) 30% procurement rule which is entrenched in the Constitution is not yet being enforced in many Counties. This could be due to lack of the required expertise by people in this bracket to provide the required services, lack of funds etc.
- 5) Different definitions and interpretation of “village” when it comes to service delivery at the village level.

“Procurement cannot be a national exercise, the regions and conditions differ hence the need to have County Assemblies make their own procurement laws”

Cornell Rasanga – Governor Siaya County.

Some fundamental questions to confirm effectiveness of decentralization were:

- i) Regarding the progress of devolution, how can the Counties be ranked in terms of ease of doing business at the individual County level?
- ii) Is there an index that can be introduced to show the most attractive County when it comes to doing business?
- iii) With the delays that have been experienced in central government and County government, should the central government continue centralizing some functions?

With specific reference to procurement, the Conference noted that the main reason for centralizing procurement processes is resource management, but the delays experienced are mainly due to processes that have led to inefficiency. Counties should plan their procurement processes, ensure the right structures are in place and build capacity as they prepare for the decentralization of more services.

Counties also need to be prepared since service delivery-as the basis of devolution-will remain the priority even when pending functions are transferred to the Counties by National government.

Conclusion

- Service delivery under Kenya’s devolution is work in progress but remains on track – It is the centerpiece of the Constitution.
- Devolution is weakening the traditional basis of patronage in distribution of basic services. But there are new forms of patronage emerging. *These essentially threaten equitable delivery of services beyond the Ward level and across villages within Counties.*
- All regions have access to resources for basic services; access is no longer dependent on political considerations by the centre. *At County level however, we should avoid situations where improved service delivery is associated with the County headquarters and the environs, and instead ensure that services are felt at Ward level and beyond.*

Recommendations

- 1) Sensitization of citizens: Intensify on-going sensitization campaigns in the country on how the youth, women, people with disabilities and minority groups can participate in the process of service delivery. County governments should play their part in ensuring that citizens attend the forums.
- 2) County Government structure should be implemented to the village level in every County to ensure effective service delivery. (Action: Senate and County Governments).
- 3) Enhancing procurement processes:
 - i) Introduce and enforce more punitive measures for all who flout procurement laws.
 - ii) County leaders, citizens and interest groups should improve their knowledge on procurement laws and processes.
 - iii) Use of procurement as a tool to entrench devolution at the lowest levels of the County Government through unlocking procurement procedures for Kenyans and especially the women, youth and persons with disabilities (30 % rule on procurements must be adhered to: Youth, women, people with disabilities and minority groups should be given equal opportunities when it comes to the tendering process). (Action: Senate and County Governments).
 - iv) County Government should consider different kinds of procurement methods. (Action: Senate and County Governments).
- 4) There is need to create incentives for County staff and especially professionals to ensure that County Governments attract and retain personnel in key sectors like Health, Agriculture, and Education among others. (Action: Senate, Salaries and Remuneration Commission).
- 5) Devolution is still in a transition period and there needs to be a partnership between Senate and Governors to amend the Act to bring to life City Boards. For decentralization of services to work, everyone needs to pull their weight.

Address New Challenges

- Capacity gaps
- Corruption is on the rise even at the county level
- Inter---governmental tensions and challenges
- Conflicts over mandate
- Poor absorption capacity in some areas
- Increased conflicts over resources

Prof. Karuti Kanyinga,
University of Nairobi
Conference Facilitator

Plenum 11 & 12

Best practices from Counties in delivering devolved functions and as frontiers of investment

11.1 Introduction

The session's objective was to facilitate sharing of experiences and best practices from various counties on devolved functions i.e., Water, Health, Roads, Agriculture, Energy. In addition, the session also enabled delegates to appreciate Counties as frontiers of investments and the opportunities available for youth, women and persons with disabilities. The guiding question was, "How has devolution worked in the Counties?"

Discussion

The panelists shared experiences and lessons learnt so far in the implementation of devolved functions.

Improving trends of service delivery across all Counties

Each County is unique and all are at different levels with regard to their achievements. However, there is progressive improvement in a number of devolved services that are in turn improving the quality of life and the enabling environment for investment.

They include but are not limited to:

- Improvement of access roads into the interior parts of the Counties.
- Access to medical care and services such as CT scans ambulance services.
- Solar lighting projects in various towns across Counties.
- All the 47 County Governments are in the process of putting up more Early Childhood Development (ECD) structures to cater for the devolved Education functions. Recruitment of ECDE teachers has happened in most Counties and bursary allocations are being disbursed more efficiently in all Counties.
- County citizens are progressively increasing their interest and participation in running of County affairs.

Breakthroughs in the healthcare sector

- Counties have acquired kidney dialysis machines and reduced the cost of dialysis from **KES 13000** to **KES 4500** for all required three sessions.
- There are currently **51 kidney dialysis** machines in county hospitals performing **944 sessions per day**.
- Kidney patients' referrals to Kenyatta National Hospital have been reduced over **11 times**.
- **SAMBURU**: Maternal deaths have declined by **79 %**.

Inter-County Gains: Spurring investment through partnerships

As Counties enjoy their political and administrative independence, they remain interdependent in terms of trade and exploitation of investment opportunities. Examples of inter-County gains that are expected to spur investment and promote employment through partnerships are:

- 1) Kericho County has attracted a steel mill from an investor in Kisumu worth KES 10 billion.
- 2) Homa Bay County has attracted Nyeri & German business partners who have invested in a factory that provides employment to about 500 people.
- 3) Kiambu has a solar ran maternal health facility in partnership with Philips which has increased the number of patients attended to at that health facility from 30 to 200 daily.
- 4) Counties are progressively establishing inter-County Economic Blocks. For example, thirteen (13) Counties in the Lake Victoria Basin launched The Lake Basin Economic Blue Print during the Second Annual Devolution Conference.

Breakthroughs in the agriculture sector

Agriculture is a devolved function. Some notable breakthroughs that impact immensely on agribusiness, food security and value chain strengthening are:

- 1) Extension services more accessible to farmers.
- 2) Farmers are accessing subsidized fertilizer and farm inputs to improve their productivity.
- 3) Improved technologies like tissue culture, soil testing, genetic improvement programs, provision of drought resistant seeds and improved fishing and aquaculture methods.
- 4) Farmers now have more linkages to international markets for products like livestock, avocado, tea and coffee.

Breakthroughs related to Social and Fiscal Accountability

Thirty four (34) Counties have established their County Budget and Economic Forums (CBEFs). The Forums have consequently enhanced the quality of County budgets.

Breakthroughs for investment in the Energy Sector

Counties have made the Licensing of SME power generation projects easy, to encourage industrial development in counties. Similarly, investment in increasing electricity connectivity and provision of incentives on adoption of green energy and use of renewable energy is already being realized in Busia, Kiambu, Homa Bay, Kericho, Baringo and Kajiado Counties.



Plenum Discussion on Sharing Different Counties Experiences and Best Practices

Opportunities for youth and persons living with disabilities

The finance sector presented broad opportunities for the youth and persons living with disabilities to fund start-ups and expand their businesses. For example, KCB Group CEO Mr. Joshua Oigara indicated that KCB had set up a KSh. 1B fund for capacity building to invest in counties. The bank is particularly focused on the youth and enterprise development and can partner with the different Counties on various development plans.

Tremendous progress has been made when it comes to the uptake of the Youth Enterprise Development Fund with some of the best performing counties being Kisumu, Nakuru, Meru, Busia, Nairobi, Embu, and Marsabit. All counties need to encourage their youthful population to take advantage of this fund.

Best practices and experience from some specific Counties

Nairobi City County

- Refurbishing of the slums in Nairobi County. Nairobi County has the highest population among all the counties but has never had an integrated master plan to ensure efficient and effective service delivery to its residents. This has now been developed and is being rolled out and the effects should be seen and felt in the next few months.
- Use of ICT in revenue collection and specifically parking and paying for licenses and levies has led to increased revenue collection, more accountability and reduced cases of corruption. Nairobi City County, has embraced technology in service delivery and to increase efficiency as evidenced by the security surveillance system and the parking fees collection system called *E-jiji pay*.
- Improved maternal healthcare in most Counties. Neo-natal mortality has been reduced with the improvement in maternal healthcare through the various initiatives at Pumwani Maternity Hospital and various others country-wide.

Nyamira County

Access to medical services in the Level 4 hospital in Nyamira County has improved due to installation of CT scan, ambulance services and other equipment.

In the agriculture sector, Nyamira County established a Cattle Germplasm Multiplication (Artificial Insemination) Program; and Subsidized Artificial Insemination project targeting 10,000 cows per year.

Homa Bay County

In Homa Bay County, solar lights have been installed in the town, traders can sell up to late as 10.00pm, and this has reduced crime thus ensuring that business can continue in a safe environment even after dark.

Kisumu County

Kisumu County has realized remarkable improvement in security and water supply services; has opened and murramed a total of 575km of roads since 2013; has installed state of the art 21 high metre flood lights in Kisumu County CBD; has built 30 ECDs since 2013 and; built 25 health centres and dispensaries since 2013.

Lamu County

Lamu County operates speed boat ambulances to help patients get to the main land to access better health care.

Meru County

Thirty (30) Km road built in three months using new technology at 1/3 of the cost.

Machakos County

Thirty three (33) Km road was completed in almost half the time and cost initially proposed.

Mandera County

Mandera County constructed the first tarmac road within the County since independence. In agriculture, the County has also set up a fully operational fruit processing factory within only two years of devolution.

In the health sector, for the first time since independence, Mandera County performed its first caesarian delivery at Takaba Sub-county Hospital.

Nyeri County

In Nyeri county, over **KES 2.5 billion** has been injected into the economy to support co-operatives.

Nandi County

Nandi County has rehabilitated 300 Cattle Dips.



Plenum Discussion on Sharing Different Counties Experiences and Best Practices

Muranga County

In Muranga County, each Ward in the milk producing regions has a milk cooler.

Kisii County

Kisii County organized avocado farmers into a cooperative and an investor has established an avocado processing factory, having already made some export of oil.

Nakuru County

In Nakuru County 147 ECD Centres were built in the last two years of devolution.

Recommendations

- 1) All Counties should device mechanisms to stimulate and support the youth, people living with disabilities (PLWD) and women to apply for devolve funds to finance their enterprises.
- 2) Counties should continuously learn and borrow from fellow Counties on how to adopt technologies that drastically save the cost of implementing capital intensive projects.

Plenum 13

Role of Development Partners in promoting development in Counties

Introduction

Plenum 13 covered the role of development partners in promoting development in Counties. Discussions focused on ways of streamlining and developing a coordinated approach by development partners with a bid to creating an enabling environment, tackling inequality and providing quality service to citizens so as to achieve overall national priority goals. The key guiding questions were:

- v) What is the role of development partners in the devolution process?
- i) Why are relations with development partners being left with the national government and not with the County governments where the developments will take place?

Deliberations

Role of partnerships

Partnerships serve to improve the scale of investment and impact of social, economic and public-benefit programmes. They also serve to address challenges that are beyond the capacity of a single community, county or nation to address thereby preventing losses or lessening their negative impact. Global scale issues like terrorism and various forms of extensive challenges or disasters including climate change and food security-related threats can be best addressed in collaboration between governments and development partners. Long term, strategic programmes that require huge capital investment are implemented mainly through partnerships.

Challenges of undermining role of development partners in Kenya

The following challenges were isolated as being critical concerns:

- i) Weak intergovernmental relations between the national government and County government;
- ii) Limited access to development funds since most agreements are already signed and ongoing;
- iii) Weak coordination between the central, county governments and development partners.
- iv) Counties cannot attract foreign investors if they are not able to attract local investors.

Recommendations

- 1) There is need to harmonize contribution of development partners in financing and supporting development in each County in order to avoid duplication, wastage of resources, enhance equity and accountability of stakeholders.
- 2) Identify key issues that the counties are struggling with as this will ensure that development funds are targeted to specific projects.
- 3) Set up structures for fund management and resources to ensure that there is accountability and resources are used for the intended purposes.
- 4) Improve citizen participation and document evidence.
- 5) Streamline and coordinate approaches to provide an enabling environment for development partners.
- 6) Best practices and learning from neighboring nations that have succeeded in this (partnerships) is key as it provides a reference point.
- 7) Donor support needs to be coordinated more effectively between the National and County levels of

“When it comes to planning, this should be done knowing that the plans reconcile with the national plans, which creates local ownership and accountability”

(Jack Ranguma, Governor Kisumu County)



Plenum Discussion on the Role of Development Partners in Promoting Development in Counties

government.

- 8) Governments through the formulation of an intergovernmental agency can coordinate and institutionalize partnerships with development partners.
- 9) During the opening ceremony, development partners gave an example of coordinated investment to support security programmes including the fight against terrorism collaboratively with the National Government. The impact of such an initiative should be felt in each of the 47 Counties.
- 10) Define measures to coordinate donor support between the National and County Governments through the formulation of an intergovernmental agency that can coordinate and institutionalize partnerships with development partners. (Action: Senate, COG, Intergovernmental Relations Technical Committee-IGRTC)

Plenum 14 Demystifying role of elected leaders in development and leadership

Introduction

The objective was to reflect on the roles and responsibilities of elected leaders in devolution and how they are fulfilling their mandated roles as set forth in the Constitution. The session speaker Dr. Mutakha Kangu guided the reflection as further discussed here below.

Discussions

Objects of devolution

Devolution as the most transformative aspect of the Constitution was adopted not as an end in itself but a means to an end. Its main objects were to: promote and advance democracy and accountability; enhance checks and balances and the separation of powers; promote and advance development and service delivery; promote and advance equity and inclusiveness; and finally, limit and constrain national government and centralization generally.

What facilitates devolution? Devolution must be propelled

It is worth noting that devolution cannot propel itself—it must be aided, assisted and supported by various institutions. The Constitution creates various institutions with specific roles and mandates to play in propelling devolution. Key among these institutions are the Elected Leaders in Parliament and the County Assemblies which play three important functions namely representation, legislation and oversight. The three functions are assigned by the Constitution to different institutions at the two levels of government.

“Devolution cannot propel itself—it must be aided, assisted and supported by various institutions.”
(Dr. Mutakha Kangu)

The Constitution envisages and employs various approaches to the division and separations of powers as follows:

- i) Vertical division and separation between national and county governments/Parliament and county assemblies.
- ii) Horizontal division and separation of powers between legislative and executive branches of the two levels of government.
- iii) Bicameral division and separation of powers between the National Assembly and the Senate.

While the National Assembly's role is to represent 'the people of the constituencies and special interests,' the Senate primarily according to Article 96(1), 'represents the counties, and serves to protect the interests of the counties and their governments'.

Legislative mandate

The legislative mandate is vested in Parliament and not just one house of Parliament. The Senate's legislative mandate is divided into two:

- i) Participation in consideration, debate and approval of Constitution Amendment Bills; and
- ii) Participation in the consideration, debate and approval of Bills concerning Counties.

Article 110 identifies three categories of Bills concerning county governments:

- i) a Bill containing provisions affecting the functions and powers of the county governments;
- ii) a Bill relating to the election of members of a county assembly or a county executive;
- iii) a Bill affecting the finances of county governments.

Oversight mandate

Oversight refers to the crucial role of legislatures in monitoring and reviewing the actions of the executive organs of government. The term refers to a large number of activities carried out by legislatures in relation to the executive. In a constitutional context, the legislature's oversight function flows from the concept of separation of powers and responsible government. It is a corollary of law-making power and entails the monitoring of the implementation of such legislation by the executive.

Although Article 96(3) and (4) refer to oversight by the Senate only in respect of 'national revenue allocated to county governments', and 'considering and determining any resolution to remove the President or Deputy President from office', various constitutional provisions imply oversight powers on the part of the Senate in various other circumstances.

Two basic forms of the Senate's oversight can be identified, namely: strong form oversight and weak form oversight. Strong form oversight has two variants, namely:

- i) where the Senate can make binding removal decisions and
- ii) where the Senate can review the decisions of the national government in a binding manner.

On the other hand, three types of weak form oversight can be identified:

- i) oversight over national government,
- ii) intergovernmental relations oversight, and
- iii) oversight over national revenue allocated to county governments.

Recommendations

- 1) Since devolution cannot propel itself, National Assembly and Senate must effectively discharge their legislative role by debating and approving pending and future Bills that serve to propel devolution in earnest, including the pending Gender Bill, on the implementation of the two-thirds gender principle.

“Devolution maze iko poa, hata kama corruption iko
angalau unaona maendeleo”

(A citizen in Devolution Conference 2015 Video)

Resolutions for Second Annual Devolution Conference



Group photo of H.E President Uhuru Kenyatta with Excellency Deputy Governors

COMMUNIQUE AT THE END OF THE SECOND ANNUAL DEVOLUTION CONFERENCE HELD ON 21ST TO 23RD APRIL 2015 AT TOM MBOYA LABOUR COLLEGE, KISUMU COUNTY

It is two years on and indeed we now know devolution is permanent. We as a nation are now testing, modifying and improving the systems we laid last year. The participants at this conference have affirmed the need for continuous improvement as we implement the new system of governance.

The conference considered and recommended thus:

- 1 **THAT** the conference strongly affirmed devolution remains the constant factor that must be implemented in The Constitution of Kenya 2010;

Action:

Ministry of Devolution and Council of Governors

- 2 **THAT** the National Government and County Governments remain committed to delivering the “devolution promise” to the people of Kenya; and that when faced with challenges along the way, concerted effort by both levels of government must be aimed at ensuring that devolution works.

Action:

Ministry of Devolution and Council of Governors

- 3 **THAT** challenges of insecurity; transfer of funds; lack of comprehensive frameworks for public participation; limited capacity for legislation at County level be addressed immediately.

Action:

Ministry of Interior and Coordination of National Government

Senate

Ministry Devolution

Council of Governors

National treasury

- 4 **THAT** all functions need to be devolved/transferred as per the Constitutional Time frames while respecting the principle that resources follow functions. This concern remains unaddressed since the First Devolution Conference.

Action:

Transition Authority

- 5 **THAT** there is need to strengthen the link between the County and National Governments.

Action:

Council of Governors

Ministry of Interior and Coordination of National Government

- 6 **THAT** the process of asset audit, costing and transfer should be accelerated and completed urgently to enable Counties use the assets to provide services to citizens.

Action:

Transition Authority

- 7 **THAT** disbursement of funds should be prompt in order to implement CIDPs within schedule and to ensure that service delivery to citizens is not delayed.

Action:

National Treasury

- 8 **THAT** job groups and remuneration of CECs needs clarity.

Action:

Salaries and Remuneration Commission

- 9 **THAT** Counties should ensure that all CIDPs are both compliant and credible, that they are the basis for spending budgets, and are inclined to national planning framework Vision 2030.

Action:

Council of Governors

National treasury

Ministry of Devolution

- 10 **THAT** Political parties need to convene urgent summit to deliberate strategies for fulfilling the two thirds gender principle.

Action:

Senate

Registrar of Political Parties

Ministry of Devolution

National Commission on Gender and Equality

- 11 **THAT** development policies at the National & County levels must be streamlined to enhance women participation in leadership and development.

Action:

Ministry of Devolution

Council of Governors

- 12 **THAT** the Conference recommends that the National Assembly, Senate and County Assemblies consider adopting the proportional representation in implementation of the two-thirds principle.

Action:

National Assembly

Senate,

National Commission on Gender and Equality,

Attorney General, Ministry of Devolution.

13 THAT there is need to undertake boundary dispute resolution as a matter of national importance.

Action:

IEBC

Senate

14 THAT it is important to entrench the culture of rule of law (which is a national value in Article 6 of The Constitution) by ensuring that all court orders are respected and also expeditious handling of cases

Action: Judiciary,

National Police Service

15 THAT the introduction of County Attorney Bill should be fast-tracked

Action:

Senate

16 THAT capacity building and civic education should be enhanced.

Action:

Council of Governors

Ministry of Devolution

17 THAT the role of public participation in governance and budget making shall be enhanced and the funding gap on public participation addressed

Action:

Ministry Devolution

National Treasury

CRA

Council of Governors

18 THAT the Bill on Public Participation shall be fast-tracked.

Action:

Senate

19 THAT the Conference recommends adoption of transformational leadership culture for the realization of sustainable food security and reduction of poverty.

Action:

Council of Governors

Ministry of Agriculture

20 THAT the Conference recognizes increased public confidence in the devolution process and development initiatives and recommends that Governors, Senators and Members of the County Assemblies should cooperate, and consultatively work to scale up service delivery.

Action:

Council of Governor

Senate

County Assemblies

- 21 THAT** existing Policy and Legislative Gaps have to be addressed including a proposed Constitutional amendment to Article 229(7).

Action:

Senate
National Assembly
Attorney General
Auditor General
Council of Governors

- 22 THAT** the National Assembly and Senate must work together to support devolution at the county level.

Action:

National Assembly
Senate

- 23 THAT** National government should focus on developing standards for construction and maintenance of roads.

Action:

Ministry of Infrastructure and Transport
Council of Governors

- 24 THAT** constitutional offices like the Controller of Budget and the Auditor-General's Office should demonstrate independence as prescribed in their constitutional mandate and be facilitative of both Nation and County governments' performance.

Action:

Controller of Budget Office
Auditor General

- 25 THAT** terms and conditions of service for county staff should be made attractive enough to attract qualified professionals, at same levels as National Government. Council of Governors should work closely with Salary and Remunerations Commission in a bid to achieve this.

Action

Salary and Remuneration Commission
Council of Governors

- 26 THAT** there is need to harmonize the benefits and allowances that accrue to MPs and MCAs.

Action:

Salaries and Remuneration Commission
County Assemblies Forum

- 27 **THAT** there is need to support counties to strengthen internal audit systems, and adhere to procurement procedures, and monitor utilisation of funds.

Action:

Procurement Oversight Authority

Auditor General

Council of Governors

National Treasury

- 28 **THAT** the Senate should finalize the Bill for the establishment of the county printing press, to expedite publishing of county laws.

Action:

Senate

Ministry of Interior and Coordination of National Government

Council of Governors

- 29 **THAT** the Conference acknowledges the positive growth in agriculture due to budgetary allocation, but recommends that the agricultural function should be fully devolved.

Action:

Transition Authority

Council of Governors

- 30 **THAT** Counties should diversify agricultural products and consider horticulture as well as other products for growth.

Action:

Council of Governors

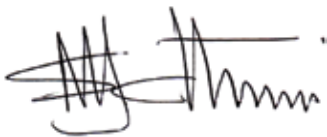
- 31 **THAT** there is need for a clear revenue framework that counties can use for revenue collection, because there exists a disconnect between the law and revenue collection systems.

Action:

National Assembly

Office of the Auditor General

THAT finally, in spite of the challenges, the Conference concluded that overall, Kenya's devolution process is on course.



His Excellency Salim Mvurya

Co-Chairman of the Second Annual Devolution
Conference 2015



Ms Anne Waiguru , OGW

Co-Chair of the Second Annual Devolution
Conference 2015 & Cabinet Secretary
Ministry of Devolution

ANNEX

1

Progress in implementation of the 1st Annual Devolution Conference Resolutions

- i) In 2014, delegates resolved that the Devolution Conference be held annually to review progress. The Second Annual Devolution Conference was the first in implementing that particular resolution.
- ii) Regarding transfer of functions and intergovernmental relations, most functions had been transferred while consultation and collaboration between the County governments and National government levels were on-going and there is improved intergovernmental relations.
- iii) Knowledge sharing was improving while Counties had enhanced the capacity of their legal departments through Kenya Law Reforms Programme.
- iv) On the need to create an enabling environment for investment in the counties, a number of Counties had held successful investment fora and this was on-going across the country.
- v) Wage determination was concluded and adopted while development of a security framework for County governments was on-going
- vi) On the concerns related to urban and cities, Urban Reference Groups were being supported by Swedish International Development Agency (SIDA) while UN Habitat was already supporting a capacity building programme housed at the CoG- symbiocity project.

Priorities for 2015: Outstanding actions and addressing emerging challenges

- i) To facilitate effective dispute resolution, the Summit would convene more regularly and work closely with the Intergovernmental Technical Committee (IGTC).
- ii) Governors had held discussions with the Cabinet Secretary for Finance Mr. Henry Rotich on the need to unlock the delay in release of funds by adhering to 15th of every month deadline in order to avoid delay in implementing projects at County level. This was yet to be fully resolved.
- iii) There was need to conclude the process of developing the security framework for County governments.
- iv) Finally, the Governor underscored two critical issues for consideration by the National and County governments alike: first, that corruption remained a fundamental obstacle to development and cannot be won by the Ethics and Anti-Corruption Commission (EACC) alone and secondly, that the rising level of insecurity (citing examples of Garissa, Mandera, West Gate) served to stagnate and even erode the gains of devolution.

Based on the forgoing, the Conference made the following resolutions to ensure full implementation of the resolutions for the First Devolution Conference held in 2014:

- 1 **THAT** all functions need to be devolved/transferred as per the Constitutional Time frames while respecting the principle that resources follow functions. This concern remains unaddressed since the First Devolution Conference.

(**Action:** Transition Authority)

- 2 THAT there is need to strengthen the link between the County and National Governments.
(**Action:** Council of Governors & Ministry of Interior and Coordination of National Government)
- 3 THAT the process of asset audit, costing and transfer should be accelerated and completed urgently to enable Counties use the assets to provide services to citizens.
(**Action:** Transition Authority)
- 4 THAT disbursement of funds should be prompt in order to implement CIDPs within schedule and to ensure that service delivery to citizens is not delayed.
(**Action:** National Treasury)
- 5 THAT job groups and remuneration of CECs needs clarity.
(**Action:** Salaries and Remuneration Commission)



The Lake Region Economic Blue Prints after the launch

ANNEX

2

List of Resource Persons

Plenum 2: Implementation of the two-thirds gender principle	
Session Chair:	H. E Hon. Benjamin Cheboi, Governor for Baringo County
Session Moderator:	Hon. Anne Waiguru, OGW, Cabinet Secretary, Ministry of Devolution and Planning
Session Speaker:	Winfred Lichuma, chairperson of The National Gender and Equality Commission (NGEC)
Panellists:	<ol style="list-style-type: none"> 1) H.E Prof. Kivutha Kibwana, Member, Council of Governors Committee on Legal Affairs and Human Rights 2) Hon. Prof. Anyang Nyong'o, Senator for Kisumu County and Member of the Senate Committee on finance, commerce and Budget (representing Prof. Chris Obure), 3) Christine Gatimba (representing Professor Githu Muigai), 4) Ms. Katindi Sivi-Njonjo (UN Women) and Ms. Rahab Mwikali Muiu (Chairperson Maendeleo Ya Wanawake)

Plenum 3: Enhancing the Rule of Law and Alternative Dispute Resolution Mechanisms in Devolved Governance	
Session Chair:	H.E Governor William Kabogo, Governor for Kiambu County
Session Moderator:	Prof. Karuti Kanyinga, Conference Facilitator (standing in for Ms. Milly Lwanga, Advocate of the High court of Kenya and member of the UN Bureau for Crisis Prevention)
Session Speaker:	Dr. Otiende Amollo, EBS, Chairperson of the Commission on Administration of Justice (Office of the Ombudsman)
Panellists:	<ol style="list-style-type: none"> 1) H.E Cornell Rasanga, Governor Siaya County (standing in for Governor for Kisumu County) 2) H.E Issa Timamy Governor Lamu County 3) Hon. Ann Githinji, Speaker Kirinyaga County Assembly 4) Sen. Amos Wako, EGH, Senator for Busia County, Chairperson, Senate Committee on Legal Affairs and Human Rights

Plenum 4: Role of National Government and County Governments in Security in Kenya and emerging issues therein	
<i>Session Chair:</i>	Governor Amb. Ukur Yatani
Session Moderator:	Mr. Simiyu Warunga
Session Speaker:	Prof. Noah Midamba Dr. Turner, British High Commissioner to Kenya, on behalf of Development Partners (Role of Development Partners on devolution; an international perspective of national security)
Panellists:	<ol style="list-style-type: none"> 1) H.E Governor Amb. Hussein Dado, Chairperson Council of Governors Committee on Security 2) Sen. Haji Mohamed Yusuf, Chairperson Senate Committee on National Security and Foreign Affairs 3) Sen. Beatrice Elachi, representing Sen. Prof. Kithure Kindiki, Majority Leader 4) H.E Governor Kinuthia Mbugua, CBS, OGW, Member of Governors Committee on Security

Plenum 5: Appreciating the role of public participation in governance	
<i>Session Chair:</i>	Governor Eng. John Mtuta Mruttu
Session Speaker:	Dr. Johan Leibbrandt (PWC)
Session Moderator:	Ms. Catherine Omenda, Ag. Deputy National Director, World Vision International
Panelists:	<ol style="list-style-type: none"> 5) H.E Governor Dr. Julius Malombe, Chairperson, Chairperson Committee on Urban Development 6) Sen. Prof. Anyang' Nyong'o, Member of Senate committee on finance, Commerce and Budget 7) Sen. Naisula Lesuda (Nominated) 8) Ms Safia Abdi, Member of Transition authority 9) Prof. Peter Wanyande, Commissioner, Commission for the Implementation of the Constitution 10) Prof. Winnie Mitullah, Director, Institute of Development Studies, University of Nairobi 11) Ms. Wanjiru Gikonyo, National Coordinator, The Institute For Social Accountability 12) Ms. Caroline Agwanda-Nominated MCA, Chairperson of Kisumu Women MCAs Caucus & PWDs Representative 13) Mr. Eric Latif-“I Run this City”

Plenum 6: Managing food Security for Change	
Session Chair:	H. E Governor Samwel Mbae Ragwa
Session Speaker:	David Nyange-Agriculture Policy Expert Prof. Vincent Onigbogu-Transformational Leadership Expert, Nigeria
Session Moderator:	Ms. Mary Njenga
Panellists:	<ol style="list-style-type: none"> 1) H.E Governor Hon. Nderitu Gachagua, Chairperson, council of Governors Committee on Agriculture and Land 2) Sen. Beatrice Elachi, Member of Senate Committee on Finance, Commerce and Budget 3) Hon. Adan Mohamed Nooru, MP, Chairperson National Assembly Committee on Agriculture, Livestock and Cooperatives 4) Ms. Sicily Kariuki, MBS, Principal Secretary, Ministry of Agriculture, Livestock and Fisheries 5) Dr. Washington Ochola, Agricultural Policy & Sustainable Development Specialist

Plenum 7: Democracy and Accountability	
Session Chair:	H.E Governor Patrick Simiyu Khaemba, CBS, Governor Trans Nzoia County
Session Speaker:	<p>Johann Mettler (South Africa)-Devolution lessons learnt in Devolution in South Africa applicable to Kenya</p> <p>Martha Karua: (Experience as a former Cabinet Minister and whether democracy and accountability is a reality in the current context of governance)</p>
Session Moderator:	Mr. Houghton Irungu, Associate Director, Society for International Development
Panellists:	<ol style="list-style-type: none"> 1) H.E Governor Samuel Ole Tunai Kuntai - Narok County 2) Mr. Edward Ouko, Auditor General 3) Mr. Vincent Okongo, Ethics and Anti-Corruption Commission (representing Mr. Mumo Matemu, Chairperson EACC) 4) Ms. Regina Opondo, Executive Director Constitutional Reform Education Consortium (CRECO) 5) Sen. Boni Khalwale, Chairperson, Senate Committee on Senate Public Accounts and Investments

Plenum 8: Gains, Opportunities and Challenges in Improving Devolution	
<i>Session Chair:</i>	H.E Isaac Ruto, Chairman, Council of Governors
<i>Session Speaker:</i>	Mr. Murimi Kareithi
<i>Session Moderator:</i>	Mr. Sammy Onyango, Deloitte & Touche
<i>Panellists:</i>	<ol style="list-style-type: none"> 1) Governor Cpt. Ali Roba, Chairperson Council of Governors Committee on Arid and Semi-Arid Lands 2) Governor Eng. John Mtuta Mruttu, Chairperson Council of Governors Committee on Energy 3) Governor Hon. James E. O Ongwae, CBS, EBS, OGW 4) Chairperson Council of Governors Committee on Human Resources, Labour and Social Welfare 5) Sen. Dr. Agnes Zani, Chairperson Senate Committee on Legislation on Royalties Accruing from Natural Resources in Counties 6) Sen. Omar Hassan, Senator Mombasa County 7) Sen. Beatrice Elachi, Member of Senate Committee on Finance, Commerce and Budget 8) Ms. Sarah Serem, EBS. Chairperson, Salaries and Remuneration Commission 9) Ms. Agnes Odhiambo, Controller of Budget 10) Ms. Carolynn Ogot, Member of County Assembly, Kisumu County

Plenum 9: Revenue Collection	
<i>Session Chair:</i>	H.E Governor Ahmed Abdullahi, Governor Wajir County
<i>Session Speaker:</i>	Ms. Cathleen Whimp, World Bank
<i>Session Moderator:</i>	Hussein Mohammed, News Anchor, Royal Media Services
<i>Panellists:</i>	<ol style="list-style-type: none"> 1) H.E governor Wycliffe Ambetsa Oparanya, EGH 2) Member, Council of Governors Committee on Finance, Commerce and Economic Affairs 3) Sen. Hon. Billow Kerrow, Chairperson Senate Committee on Finance, Commerce and Budget 4) Mr. Henry Rotich, Cabinet Secretary, National Treasury 5) Mr. John Njiraini, MBS. Commissioner General, Kenya Revenue Authority 6) Mr. Micah Cheserem, MBS. Chairperson, Commission for Revenue Allocation

Plenum 10: Progress on Decentralization of Services

<i>Session Chair:</i>	H.E Governor Issa Timamy, Governor for Lamu County
<i>Session Speaker:</i>	Mr. Carles Llorens, Secretary General, Oru Fogar (Regions United)
<i>Session Moderator:</i>	Prof. Njuguna Ngethe, Associate Professor, Institute for Development Studies, University of Nairobi
<i>Panellists:</i>	<ol style="list-style-type: none"> 1) H.E Governor Joseph Nanok, Governor Turkana County. 2) Member, Council of Governors committee on Energy, Roads and Infrastructure 3) Senator Kipchumba Murkomen. Chairperson, Senate Committee on Devolved Government 4) Ms. Katherine Muoki, Director-Directorate of Gender, Ministry of Devolution and Planning 5) Mr. Kinuthia WaMwangi, EBS. Chairperson Transition Authority 6) Hon. George Okode, Speaker Siaya County 7) Ms. Banu Khan, Programme Analyst-Women Economic Empowerment-UN Women 8) Mr. Maurice Juma, Director General, Public Procurement Oversight Authority 9) Eng. Peter Mwichigi, Regional Coordination Kenya Power

Plenum 11 & 12:

Sharing of experiences and best practices from various Counties on devolved functions of Services

Doing Business in the Counties as the new frontiers of investment; and Opportunities available for the youth, women and persons with disabilities

<i>Session Chair:</i>	
<i>Session Speaker:</i>	<p>Governor Jack Ranguma (Sharing experience from Ethiopia)</p> <p>Mr. Ismail Fahmy M. Shiaye, Chief Executive Officer, Water Services Trust fund</p>
<i>Session Moderator:</i>	Mr. Linus Gitahi, CEO, Nation Media Group
<i>Panellists</i>	Joshua Oigara, CEO, Kenya Commercial Bank

Plenum 13: Role of Development Partners in promoting development in Counties	
<i>Session Chair:</i>	Governor Hon. Peter Munya, Governor Meru County
<i>Session Speaker:</i>	Enid Muthoni, Country Director, International Development Law Organization (IDLO)
<i>Session Moderator:</i>	Prof. Karega Mutahi, chairperson, Intergovernmental Relations Technical Committee
<i>Panellists:</i>	<ol style="list-style-type: none"> 1) Governor Jack Ranguma, chairperson, council of Governors Committee on Health and Biotechnology 2) Governor Daniel Waithaka Mwangi, Member of Governors Committee on Agriculture and Land 3) Sen. Hon Mohammed Kuti, EGH, Chairperson Senate committee on Health 4) Hon. Dr. Rachel Nyamai, M.P., Chairperson, National Assembly Committee on Health 5) Mr. James Wainaina Macharia, Cabinet Secretary, Ministry of Health 6) Mr. Siddarth Chatterjee, UNFPA Representative and Deputy Chair of the DPHK 7) Mr. Robert Allport, FAO Representative in Kenya

Plenum 14: Demystifying the Role of elected Leaders in Development and Leadership	
<i>Session Chair:</i>	Governor Hon. Sospeter Ojaamong', EGH
<i>Session Speaker:</i>	Dr. Mutakha Kangu
<i>Session Moderator:</i>	Mr. Hussein Mohammed, News Anchor, Royal Media Services
<i>Panellists:</i>	



H.E. the President Hon Uhuru Kenya and Hon Raila Odinga enjoying a dance



PS for Devolution, Ms. Mwanamaka Mabruki and CoG Chairman, H.E Isaac Ruto and Vice Chairman H.E Salim Mvurya displaying the communique



H.E Hon. Uhuru Kenyatta receiving a lion made of Soapstone from the County Governor of Kisii, H.E James Ongwae



US Ambassador to Kenya H.E Robert Godec issuing his remarks during the opening ceremony



Gov. for Mandera H.E Capt. Ali Roba, CS for National Treasury Mr. Henry Rotich and Gov. for Kiambu H.E William Kabogo during the opening ceremony



Sen. Prof Anyang' Nyong'o, a panelist during one of the sessions



H.E The President launching the Lake Region Economic Blue Print



Exhibition booths



Launch of the Sectoral Policy and Legislative Analysis by CoG



Senator Boni Khalwale



Panelists during a session



Dr. Johan Leibbrandt (PWC)

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