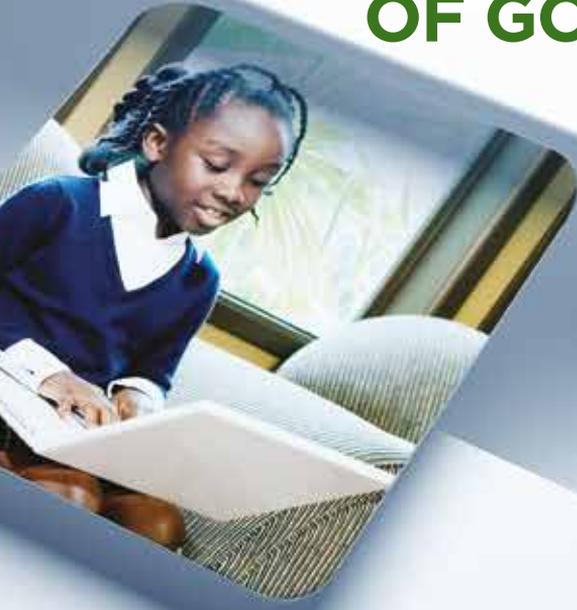


REPUBLIC OF KENYA



MINISTRY OF DEVOLUTION
AND PLANNING

POLICY ON DEVOLVED SYSTEM OF GOVERNMENT



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ABBREVIATIONS AND ACRONYMS

AG	Attorney General
BPS	Budget Policy Statement
CDF	Constituencies Development Fund
CG	County Government
CIC	Commission for the Implementation of the Constitution
CIDPs	County Integrated Development Plans
CPSB	County Public Service Board
CKRC	Constitution of Kenya Review Commission
CoB	Controller of Budget
CoE	Committee of Experts
COG	Council of County Governors
CoK	Constitution of Kenya, 2010
CPST	Centre for Parliamentary Studies and Training
CRA	Commission for Revenue Allocation
CSOs	Civil Society Organisations
EACC	Ethics and Anti-Corruption Commission
FBOs	Faith Based Organisations
GDP	Gross Domestic Product
IBEC	Intergovernmental Budget and Economic Council
ICT	Information, Communication and Technology
IEBC	Independent Electoral and Boundaries Commission
IFMIS	Integrated Financial Management Information Systems
IGRTC	Intergovernmental Relations Technical Committee
IRA	Inter-governmental Relations Act
JSC	Judicial Service Commission

KBC	Kenya Broadcasting Corporation
KNCHR	Kenya National Commission of Human Rights
KRA	Kenya Revenue Authority
KSG	Kenya School of Government
MDAs	Ministries, Departments and Agencies
MoDP	Ministry of Devolution and Planning
MTP II	Medium Term Plan II
NAO	National Audit Office
NCBF	National Capacity Building Framework
NGEC	National Gender and Equality Commission
NGOs	Non-Governmental Organisations
NIMES	National Integrated Monitoring and Evaluation System
NLC	National Land Commission
NPSC	National Police Service Commission
NT	National Treasury
PSC	Parliamentary Select Committee
PSC	Parliamentary Service Commission
PSC	Public Service Commission
PFM	Public Finance Management
PPPs	Public Private Partnerships
RRI	Rapid Results Initiative
SRC	Salaries and Remuneration Commission
SWOT	Strengths, Weaknesses, Opportunities and Threats
TA	Transition Authority

FOREWORD

Devolution is one of the most transformative changes to Kenya's governance system brought about by the Kenya Constitution, 2010. Article 174 of the Constitution provides that one of the key objectives of devolution is to promote social and economic development and provide proximate, easily accessible services throughout Kenya.

During the first three years of implementation of the devolved system of government, a number of successes have been achieved. Key among them is the enactment of devolution laws, operationalization of county government structures, the transfer of functions and allocation of resources to County Governments.

The implementation of the devolved system of government has, as would be expected of a nascent system experienced a number of challenges. There have been institutional, intergovernmental and resource related challenges. For example, human resources management, concerns over resource allocation and jurisdictional questions among various actors involved in the implementation of devolution. This Policy, therefore, seeks to address these emerging issues with a view to improving the implementation of the devolved system of government and to achieve optimal service delivery. It is intended to guide both levels of government to align their respective policies to the intended goals of deepening and sustaining devolution.

The Policy ushers in next phase of consolidating devolution, clarifying and strengthening roles and responsibilities of both the National and County Governments. Now that the transition phase is behind us, it is time to use the opportunity to revisit the Constitution and use experience gained since 2010 to make devolution work more effectively and efficiently for Kenyans.

Let us all support devolution.

God Bless Kenya.

Hon. Mwangi Kiunjuri, EGH, MGH
CABINET SECRETARY,
MINISTRY OF DEVOLUTION AND PLANNING

ACKNOWLEDGEMENT

The development and finalization of this policy benefited from the contribution of various organizations and individuals.

I acknowledge the excellent work done by the Taskforce on Devolved System of Government in Kenya, which laid the foundation for the publication of the Sessional Paper on Devolved System of Government, 2012. This policy has benefited enormously from the work that went into this Sessional Paper.

In the course of developing this policy, stakeholders were consulted and their views considered. The stakeholders include Government Ministries, Departments and Agencies, Constitutional Commissions and Independent Offices, Civil Society, Private Sector, Academia, Development Partners, the Council of County Governors, the County Assemblies Forum, the Senate, and the National Assembly. I sincerely thank them all for their invaluable contribution.

I extend my appreciation to the Taskforce on Devolution Policy and the Inter-Ministerial Technical Committee for their commitment and excellent work. I am also grateful to UNDP for coordinating development partners' support for the policy development process.

I especially thank the staff of the State Department of Devolution for their dedication and tireless efforts in ensuring successful completion of this policy.

I thank the Cabinet Secretary, Ministry of Devolution and Planning, Honourable Mwangi Kiunjuri for his guidance during the policy development process.

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EXECUTIVE SUMMARY

This policy has been developed by the Ministry of Devolution and Planning to guide the implementation of the devolved system of government in Kenya. The policy is anchored in the Constitution of Kenya 2010, Sessional Paper of Devolved Government, 2012 and national values and principles of governance.

The purpose of this policy is to improve the implementation of the devolved system of government in order to achieve optimal service delivery. It is intended to guide both levels of government to align their policies with the devolved system of government.

This policy considers the current situation in the implementation of the devolved system of government and categorises the challenges into three thematic areas namely institutional, resources (both financial and human) and inter and intra governmental relations and provides strategies to address these challenges.

This policy document is divided into four chapters:

Chapter 1 provides the background to the devolution policy and underscores Kenya's experience with decentralization since independence. It outlines the history of decentralisation in Kenya and the factors that led to the adoption of the devolved system of government.

Chapter 2 provides an analysis of the status of implementation of the devolved system of government. It discusses the policy issues and challenges under three thematic areas, namely institutional, resources and intergovernmental relations.

Chapter 3 provides policy objectives and strategies to address the challenges identified in chapter 2.

Chapter 4 provides the implementation framework and identifies the various actors and their roles in the implementation of the policy.

CHAPTER 1: BACKGROUND

1.1 INTRODUCTION

Devolution under the Constitution of Kenya, 2010 comprises of two levels of government, namely the National and County Governments. The two levels of government are distinct and inter-dependent with constitutionally assigned and protected functions and powers as defined in the Fourth Schedule of the Constitution. The National Government comprises of the National Executive, Parliament and the Judiciary while the County Government comprises of the County Executive and County Assembly. The two levels are required to conduct their mutual relations on the basis of consultation and co-operation.

Under the devolved system of government, citizens participate in their governance by exercising their sovereignty either directly or indirectly through elected and appointed representatives. This is a major departure from the past where power and resources were centralized and citizens had minimal participation in governance.

One of the objectives of devolution as provided for in Article 174 of the constitution is to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya and to enhance government responsiveness to the needs of the citizens. The devolved system of government further aims at promoting equitable, efficient and prudent utilization of public resources.

The following institutions have been established to operationalize this new system of governance:

- i. The National Parliament and County Assemblies;
- ii. The National Executive and County Executive;
- iii. The Judiciary and Independent Tribunals;
- iv. Constitutional Commissions and Independent Offices.

The constitution allocates responsibilities and powers to each of these institutions. In the case of the arms of government, the constitution provides for separation of powers and a system of checks and balances.

Statutes have also established a number of intergovernmental institutions. These institutions include:

- i. The National and County Governments Coordinating Summit;
- ii. Intergovernmental Budget and Economic Council (IBEC);
- iii. The Intergovernmental Relations Technical Committee (IGRTC);
- iv. The Council of County Governors (COG);
- v. Transition Authority (TA).

Following the promulgation of the constitution on 27th August 2010, a Taskforce on Devolved Government was established on 8th November 2010. The taskforce developed the Sessional Paper on Devolved Government, 2010 which guided the formulation of laws that informed the setting up of structures to guide the transition to devolved system of government.

The devolved system of government has been implemented since March 2013. A number of successes have been registered in the course of its implementation. These include: enactment of relevant laws, operationalization of county government structures, transfer of functions and responsibilities, as well as allocation of resources. Alongside these successes, a number of challenges have emerged relating to institutions, resources and intergovernmental relations.

1.2 DECENTRALIZATION AND DEVOLUTION IN KENYA

At independence in 1963, Kenya adopted a devolved system of government comprising of a central government and eight regional governments. Each regional government was comprised of the executive and the legislature.

The powers of the regions were protected by the constitution, a senate, and exclusive functions and funding. The constitution guaranteed autonomy of regional governments and provided a Bill of Rights that protected property and the right of the individual to reside and work anywhere in the Republic. The design of the independence constitution was informed by the experience and the desire to deconstruct the colonial state that had systematically discriminated along racial and ethnic lines, impoverished large sections of the population and denied the people, particularly Africans, a chance to be responsible for their affairs.

Between 1963 and 1990 there were over 30 amendments to the constitution and in 1964 regional governments were removed. The majority of these amendments had the effect of strengthening the Executive at the expense of the other arms of government.

In an attempt to address regional disparities, Kenya experimented with various decentralization strategies in the form of de-concentration, delegation, and privatization. In 1965, the Local Government Act, Cap. 265 was amended as part of the decentralisation strategy to strengthen the local authorities by giving them responsibilities for local governance. However, this Act did not guarantee the autonomy of local authorities. The increased demand for local services put the delivery by and performance of Local Authorities under stress.

In 1966, the President appointed a commission to study the future of local authorities with a view to strengthening them. The government in Sessional Paper No. 12 of 1967 accepted the commission's recommendations. Parliament however disregarded the Sessional Paper and passed the Transfer of Functions Act of 1969 that abolished most grants to local authorities and transferred service delivery responsibility from local authorities to the central government.

The central government retained its power over Local Authorities through subsequent amendments to the Local Government Act, Cap. 265. The law gave powers to the minister to supervise, review and veto local authority decisions, nominate council members, suspend, and abolish local authorities.

Other measures adopted by the government in the 1960s and 1970s to decentralize resources included the establishment of the Special Rural Development Programme (SRDP) and the Rural Development Fund (RDF). This was followed in the 1980s by the establishment of Regional Development Authorities (RDAs), namely Tana and Athi River Development Authority (TARDA), Kerio Valley Development Authority (KVDA), Lake Basin Development Authority (LBDA), Ewaso Ng'iro North Development Authority (ENNDA), Ewaso Ng'iro South Development Authority (ENSDA) and Coast Development Authority (CDA).

In 1983, the Government introduced the District Focus for Rural Development (DFRD) Strategy to bring development planning closer to the people. However, government officials dominated the district development committees through which DFRD was to be implemented, and this limited effective participation by the citizens.

The decentralization agenda continued with the introduction in 1998 of the Local Authority Transfer Fund (LATF) through which five per cent of the annual income tax revenue was allocated to the local authorities. The objective was to improve and extend service delivery to citizens, improve financial management and reduce local authority debts. In 2001, the Local Authority Service Delivery Action Plan (LASDAP) was designed to empower local communities to develop capital investment plans to meet their local needs and priorities through a bottom-up consultative approach. In 2003, the Constituency Development Fund (CDF) was introduced as part of fiscal decentralisation. In 2008, the national economic blueprint, the Vision 2030, emphasized decentralisation of decision-making and equitable distribution of resources.

These decentralisation initiatives occurred within a limited democratic space occasioned by the 1982 Constitution amendment that introduced Section 2(A) making Kenya a *de jure* one party state. As the space for public participation in governance shrank, the struggle for constitutional change intensified. The struggle resulted in the repeal of Section 2(A) of the Constitution in 1991 that re-introduced multiparty democracy. The outcome of the multi-party elections of 1992 increased the demand for further legislative reforms resulting in the formation of the Inter-Parties Parliamentary Group (IPPG) on legal reforms. The IPPG negotiated and recommended legislative reforms, which responded to the demands for minimum reforms before 1997 elections. The Constitution of Kenya Review Act of 1997 provided a framework for constitutional change. Following negotiations between the government and civil society, amendments were made to the Act to incorporate a people driven constitution-making process. In 2001, the Constitution of Kenya Review Commission (CKRC) was formed to steer constitutional reforms. The CKRC collected and collated public views resulting in the

Draft Constitution (Ghai Draft) that was presented to the National Constitutional Conference at Bomas; however, the draft was rejected. This led to the Attorney General preparing the Proposed New Constitution of Kenya, 2005, which was subjected to a referendum, but was rejected by the people.

The failure to adopt the proposed constitution in the 2005 referendum did not dampen the spirit of Kenyans to have a new constitution. The disputed presidential election results of 2007 and the resultant post-election violence gave further impetus to the demand for a new constitution. The crisis was resolved through the National Accord and Reconciliation Agreement that was underpinned by the National Accord and Reconciliation Act, 2008. The Act established the coalition government and set up a framework and institutions through Agenda Four Resolutions to initiate a constitutional review process that would lead to a new constitution for Kenya.

Parliament enacted laws including the Constitution of Kenya Review Act, 2008 to serve as the legal framework for a new constitution. The Act identified four organs through which the review of the constitution was to be completed and these were: the Committee of Experts (CoE), the Parliamentary Select Committee (PSC), the National Assembly, and the Referendum. These organs were required to ensure that the outcome of the process reflected the wishes of the people of Kenya. These efforts culminated in the referendum held on August 4, 2010 following which the Proposed Constitution of Kenya, 2010 was adopted. The constitution was promulgated on 27th August 2010. This ushered in the devolved system of government.

The constitution defines Kenya's model of devolution as one that consists of two distinct and interdependent levels of government that are required to work in cooperation and consultation (Article 6(2)). The two have autonomy to the extent that the constitution allocates functions and powers to both of them. They are coordinated with each other.

This definition is enhanced in Article 189(a) which requires government at either level to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level. The constitution allocates functions to both the national and county governments. These functions fall into three categories: functions exclusive to level of government, those that are concurrent and those that are residual.

The constitution gives the responsibility and mandate for the achievement of the objects of devolution to the following state organs: parliament and the legislative assemblies in the county governments, the National Executive, the executive structures in the County Governments, the Judiciary and Independent Tribunals, Commissions and Independent Offices. These institutions have the collective responsibility to facilitate the achievement of the objects of devolution as outlined in Article 174.

The Constitution of Kenya 2010 in its entirety provides direction and mandate to various institutions for its implementation. The adoption of a devolved system of government has fundamentally changed the governance system in Kenya. The coordination of the activities and roles of these institutions will be mediated and negotiated, as necessary, through inter-governmental institutions provided for in the constitution.

1.3 RATIONALE OF THE POLICY

Following the promulgation of the Constitution on 27th August 2010, a Taskforce on Devolved Government was established on 8th November 2010. The purpose of the taskforce was to work on the implementation of the devolution process and advise the government on policy and legal frameworks for devolving power, resources and responsibilities to the people of Kenya for effective local development. Among other things, the taskforce was to make recommendations on an appropriate civic education programme on devolution.

The taskforce developed the Sessional Paper on Devolved Government, 2012 which guided the formulation of devolution laws and informed the setting up of structures for the transition to devolved system of government, following the 2013 General Elections. The devolution laws include; County Government Act of 2012, Transition to Devolved Government Act of

2012, Intergovernmental Relations Act of 2012, Urban Areas and Cities Act of 2011 and Public Finance Management Act of 2012. Other Acts passed to operationalize the devolved system of government include the Transition County Allocation Revenue Act of 2013 and County Public Finance Management Transition Act of 2013.

The devolved system of government has been implemented since March 2013, during which period, a number of achievements have been registered. However, a number of challenges that were not envisaged in the recommendations of the taskforce on devolved government have emerged. It is against this experience that a policy to respond to the emerging challenges in the implementation of devolution has become imperative.

This policy addresses the challenges and gaps identified in the course of implementing devolution and enhance the alignment of roles, coordination, and collaboration among citizens, governments and non-state actors that are mandated to implement the devolved system of government. The policy further spells out processes and procedures, including monitoring and evaluation mechanisms to improve management of devolution and service delivery at both levels of government.

1.4 GUIDING PRINCIPLES OF THE POLICY

This policy is guided by the national values and principles of governance contained in Article 10 of the Constitution:

- i. Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- ii. Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- iii. Good governance, integrity, transparency and accountability;
- iv. Sustainable development.

1.5 SCOPE AND PURPOSE OF THE POLICY

This is a policy on the implementation of the devolved system of government. The implementation of the devolved system of Government has experienced policy, institutional, legislative, administrative, budgetary, and programme challenges. This policy categorises the challenges into three thematic areas namely institutional resources (both financial and human) as well as inter and intra governmental relations with regard to structure in the implementation of devolution and provides strategies.

The purpose of this policy is to improve the implementation of the devolved system of government in order to achieve optimal service delivery. It is intended to guide both levels of government to align their policies to the devolved system of government.

1.6 POLICY DEVELOPMENT PROCESS

The development of this policy begun in 2014 with a review of the status of implementation of the Sessional Paper on Devolved System of Government in Kenya. The process was consultative and brought together state and non-state actors. Views from various stakeholders including Government Ministries, Departments and Agencies (MDA), Constitutional Commissions and Independent Offices, Civil Society Organizations, Private Sector, Development Partners and the Council of County Governors. This process was adopted in order to build consensus on the issues presented in the policy in line with the constitution. The draft policy was posted on the ministry website and valuable insights were gained from the general public which were then integrated into the final document. The draft policy was presented to the Senate Committee on Devolved Government and the National Assembly Departmental Committee on Justice and Legal Affairs for their input. The policy was validated at a stakeholders meeting held in 13th April 2016.

CHAPTER 2: SITUATIONAL ANALYSIS

2.1 INTRODUCTION

To prepare for the implementation of devolved system of government, parliament passed the Sessional Paper on Devolved Government, 2012 which became the basis of enactment of laws on devolution. These are: Urban Areas and Cities Act of 2011, The Transition to Devolved Government Act of 2012, County Governments Act of 2012, Intergovernmental Relations Act of 2012 and Public Finance Management Act of 2012. The Sessional Paper also informed the setting up of systems for the transition to devolved system of government.

Following the General Elections on the 4th day of March 2013, the devolved system of government became operational and its implementation since then has been characterised by successes and challenges. Key among the successes are:

- i. The enactment of the five devolution laws;
- ii. Establishment and operationalization of County Government structures;
- iii. Successful transfer of functions;
- iv. Sustained allocation of resources to County Governments;
- v. Development of the National Capacity Building Framework;
- vi. Establishment of and operationalization of intergovernmental relations institutions.

These successes notwithstanding, the implementation of devolution has experienced a number of challenges. This chapter discusses the challenges under three broad thematic areas: institutional, resources and intergovernmental relations.

2.2 INSTITUTIONAL CHALLENGES

This section identifies policy issues and gaps in regard to mandates, functions and roles, civic education and public participation, support to county governments and decentralised units.

The Constitution of Kenya, 2010 vests all sovereign power in the people of Kenya on whose behalf state organs exercise that power. These state organs include:

- i. Parliament and the Legislative Assemblies in the County Governments;
- ii. The National Executive and the Executive Structures in the County Governments;
- iii. The Judiciary and Independent Tribunals;
- iv. Commissions and Independent Offices.

Further, the constitution allocates responsibilities and powers to each of these institutions. In the case of arms of government, the constitution provides for separation of powers and a system of checks and balances. Statutes have also established a number of intergovernmental institutions, namely:-

- i. The National and County Governments Coordinating Summit;
- ii. Intergovernmental Budget and Economic Council (IBEC);
- iii. The Intergovernmental Relations Technical Committee (IGRTC);
- iv. The Council of County Governors (CoG);
- v. Transition Authority (TA).

These institutions provide a platform for a coordinated approach to the performance of functions by the two levels of government. In performing their respective functions as envisaged in the constitution and the relevant laws, a number of challenges have emerged.

2.2.1 FUNCTIONS, MANDATES AND ROLES

The Constitution of Kenya assigns functions, mandates and roles to both levels of government. However, there are laws enacted prior to the promulgation of the constitution that established a number of institutions whose functions are now devolved under the Fourth Schedule of the constitution. As a result, there is a conflict of laws and a conflict between the two levels of government and duplication of roles. For example, some Regional Development Agencies continue to perform functions that are listed as county functions.

Section 7 of the Transition to Devolved Government Act 2012 (TDGA 2012) required the Transition Authority to facilitate the analysis and phased transfer of functions provided under the Fourth Schedule of the Constitution. Further, the Transition Authority was required to develop a framework for comprehensive and effective transfer of functions as provided for under Section 15 of the Sixth Schedule of the Constitution. While the framework was developed, the transfer of devolved functions did not comply with criteria provided within that framework. This means counties may have received functions for which they lacked capacity to implement.

With regard to concurrent functions, Section 7 of The Transition to Devolved Government Act 2012 required the Transition Authority to unbundle and cost these functions and provide a mechanism of joint implementation by the two levels of government. This process was not completed. Consequently, misunderstandings have emerged between the national and county governments in the performance of some concurrent functions. It is also important to put in place processes and measures to eradicate incidences where the two levels of government budget for and implement similar activities.

With the expiry of the transition period and the lapse of the TDGA 2012, the Transition Authority published its end term report outlining its achievements and pending activities. These achievements and pending activities need to be institutionalised to ensure continuity as the devolved system of government enters its implementation phase.

Article 187 provides for a function of power of a government at one level to be transferred to a government at another level by an agreement between the governments if the function or power is effectively performed by the receiving government and it is not prohibited by the legislation under which it is to be performed or exercised. Further, where a function is exclusive to either level, one level of government may complement the efforts of the other through an agreement. However, there is no legal framework to support these provisions.

The constitution provides for the separation of powers as well as systems that provide checks and balances in the exercise of these powers. There are varied interpretations of the principle of separation of powers viewed against the system of checks and balances, which has resulted in friction between institutions. For example:

- i. Parliament and the Judiciary;
- ii. National Assembly and the Senate;
- iii. The National Government and the County Governments;
- iv. County Assemblies and the County Executives;
- v. County Assemblies and the Senate.

Both the Constitution and the County Governments Act are silent on the transition, processes and procedures for the assumption of office for County Governors. Specifically, the laws are not clear on when the term of governors comes to an end; does the incumbent vacate immediately upon the announcement of the election results or remain in office until the swearing in of the governor elect?

2.2.2 PUBLIC PARTICIPATION, CIVIC EDUCATION AND ACCESS TO INFORMATION

The Constitution of Kenya, 2010 recognizes public participation as an integral component of good governance. Indeed, for effective public participation to take place there is need for civic education and information sharing.

Article 10 of the constitution identifies public participation as a national value and principle of governance. Article 174, which articulates the objects of devolution, provides for the participation of the public in the exercise of the powers of the state and in the making of decisions affecting them. Article 232(d) guarantees the involvement of the people in the process of policy making in the public service whereas Article 196(1)(b) requires county assemblies to facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

The Fourth Schedule to the constitution assigns county governments the role of ensuring and coordinating the participation of communities in governance at the local level. Section 3(f) of the County Governments Act, 2012 provides for public participation while Section 87 of the same Act requires county governments to facilitate public participation in conducting its affairs.

Although the law guarantees public participation, the level of citizen involvement at both levels has not been optimised. There continues to be a gap between the provisions of the law and actual practice. This is largely due to lack of understanding of the principles of public participation. Currently, there is no policy and legal framework to guide the conduct of public participation. Where counties have public participation legislation, these have been found to be weak and ineffective in promoting quality public participation.

Section 100 of the County Governments Act, 2012 requires county governments to design and implement appropriate civic education programmes, and establish civic education units. The national and county governments are also obliged to develop a national design and framework of civic education to determine the content of curriculum and facilitate the implementation of civic education programme. However, there is low awareness of civic responsibilities by the citizens, which has undermined effective civic participation in governance. There is an uncoordinated approach to the provision of civic education with state and non-state actors without a common civic education curriculum and accreditation particularly, of non-state actors.

The right to access information held by the state is provided for under Article 35 of the constitution. In particular Article 35(3) obligates the State to publish and publicise any important information affecting the nation. Further, the County Government Act, 2012 Section 93-96 provides for county government to establish a mechanism and facilitate public communication and access to information in the form of media with the widest public outreach in the county. However, access to information that facilitates effective public participation and civic education remains a challenge.

2.2.3 SUPPORT TO COUNTY GOVERNMENT

Article 190 of the constitution given effect by Section 121 -130 of the County Governments Act, 2012 provides for support to the County Government by National Government to enable them perform their functions. It was envisaged that the support would be coordinated and be demand driven. However, many national government agencies have taken to providing support to counties as they deem fit. This has led to a mostly supply driven and fragmented approach that leads to duplication of the efforts.

Where a county government is unable to perform its functions or does not operate a financial management system that is founded on law, the national government may intervene by appropriate and necessary measures. However, regulations to give effect to Section 121-130 of the County Governments Act 2012 and guide in the event that national government intervention is required are yet to be published. This means there are no clear mechanism for National Government assessment of County Governments' performance and no institutionalised mechanism for intervention where necessary.

2.2.4 DECENTRALISED UNITS

One of the objectives of devolution is to promote social and economic development and the provision of proximate and easily accessible services throughout Kenya. To achieve this, counties are required to decentralise further to the smallest feasible units. These units are sub-counties, wards and villages. However, in many counties the decentralisation process has not been fully operationalized due to inadequate resources, capacity infrastructure and system of delegation from county government to the decentralised units. Further, there lacks a mechanism to harmonise the operations of national and county government agents within the decentralised units.

Further, there are a number of challenges in implementing the provisions of the Urban Areas and Cities Act, 2011. Some of the challenges include provisions in the criteria for classification where the threshold is too high, structures for governance and management are not in place, and resourcing of urban areas and cities is inadequate.

2.3 RESOURCE CHALLENGES

This section identifies policy issues and gaps in regard to assets and liabilities, fiscal decentralisation, natural resources within counties, budgeting and development planning as well as human resources.

2.3.1 PUBLIC ASSETS AND LIABILITIES

Local Authorities ceased to exist on the repeal of Local Government Act Cap. 265, Section 7 (2) (e), (f) and (g) of the Transition to Devolved Government Act, 2012 required the Transition Authority to: prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities and make recommendations for the effective management of assets and liabilities of national and county governments; provide for policy and operational mechanisms for audit, verification and transfer of assets and liabilities to the national and county governments which may include, vetting the transfer of assets and liabilities during the transition period. This process was not completed and as a result several challenges have arisen:-

- i. Inability to determine with acceptable degree of certainty the opening balances for both assets and liabilities to be inherited by counties;
- ii. The absence of verifiable inventories and records on assets and liabilities has made it difficult to audit county books of accounts;
- iii. It is not clear which level of government takes over the liabilities of defunct local authorities.

With the lapse of the Transition to Devolved Government Act of 2012, the moratorium issued on the disposal of public assets expired. If the audit, verification and transfer of assets is not concluded in an expeditious manner, assets could be lost through theft, degradation and obsolescence.

2.3.2 FISCAL DECENTRALIZATION

Article 202 and 203 provide for the establishment of an agreed framework to guide intergovernmental fiscal transfers and allocation of resources between the two levels of government. There are still no guidelines to clarify a cohesive oversight framework for fiscal flows between the two levels of government in line with the Constitution and Public Finance Management Act of 2012. These guidelines should cover:

- i. Conditional and unconditional additional allocations to counties from the National Government;
- ii. The Equalization Fund;
- iii. Grants and donations from development partners to finance devolved functions;
- iv. Finances following functions transferred between levels of government as envisaged in Article 187 of the Constitution;
- v. Inter-county collaborative financing and management of joint projects.

There is no policy and enabling legislation to direct County Governments on the taxes they can levy beyond those outlined in the Constitution as per Article 209 (c). County taxes and business licensing requirements and procedures are not harmonised to ensure consistency and certainty in undertaking commerce, taking into account the national, regional and international protocols mandating partner states to eliminate any new tariff and non-tariff barriers which negatively affects trade and commerce.

The Public Finance Management Regulation 2015 contains an elaborate framework for borrowing by both the national and county governments. Among salient provisions of the Regulations are that national public debt shall not exceed 50% of GDP in net present value (NPV) terms, and counties may only borrow up to 20% of their audited total annual revenue, also in NPV terms. In addition to this borrowing framework, mechanisms to enable county governments to access short term borrowing (overdraft facility) at the Central Bank of Kenya are not yet established. In addition, the capacity of county governments to manage this borrowing mandate is yet to be established. County governments have accumulated pending bills relating to unremitted statutory deductions, unpaid bills to suppliers and contractors, and check-off deductions of staff.

The Public Procurement and Asset Disposal Act of 2015 provides that procurement processes reserve 30% of all government tenders to youth, women and persons with disabilities, that

40% of government procurement are locally produced products and that 20% of procurements are reserved for residents of the county. Both levels of government are yet to fully comply with these provisions.

2.3.3 EQUITABLE SHARING OF ACCRUING BENEFITS FROM NATURAL RESOURCES

Article 69 provides that the state shall ensure sustainable exploitation utilisation, management and conservation of the environment and natural resources and ensure equitable sharing of accruing benefits. Currently there is no policy and legal framework that gives effect to this Article.

2.3.4 BUDGETING AND DEVELOPMENT PLANNING

The submission of the Budget Policy Statement and the Revenue Bills to Parliament is done by 15th of February each year before counties are required to table their Fiscal Strategy Papers in their respective Assemblies on February 28th. County governments are informed of their allocation after the presentation of the Budget Policy Statement (BPS) in February. Consequently, they have insufficient time to engage in and link to the National Government planning process which begins in July each year. There is need to improve alignment between the national and county budget cycles.

The current mechanism to guide, coordinate and support the engagement between the County Government and the private sector in operationalizing a Public Private Partnerships (PPP) framework is inadequate. Following enactment of the Public Private Partnership Act, 2013, the National Treasury has facilitated several engagements with county governments, aimed at bringing more clarity to the legislation and reaching consensus on the design of attendant regulations. The current legal framework does not prohibit county governments from initiating local public private partnership arrangements, as long as the contracts do not generate unmitigated contingent liabilities at either level of government. These provisions require greater clarity and a legal basis to guide adherence.

There is no legal and policy framework to give effect to Article 220 (2) and the Fourth Schedule of the Constitution, which assigns the function of national economic policy and planning and coordination of planning of the county governments to the national government. Currently county governments' plans are not aligned to national plans and therefore undermining the promotion of social and economic development and service delivery.

2.3.5 HUMAN RESOURCES

Article 233 of the Constitution establishes the Public Service Commission to administer the public service at national level. Section 57 of the County Governments Act 2012 establishes County Public Service Boards in each county. The functions of the Commission and Boards at the respective levels are to create and manage an efficient system of public service delivery. Further, the commission and the Boards are completely independent of each other except as provided in Article 234(i) where the Public Service Commission can hear and determine appeals in respect of county governments' public service. However, it is not clear how the Public Service Commission will hear and determine appeals against county governments.

The Transition to Devolved Government Act, 2012 Section 7(i), (j) and (k) required the TA to carry out an audit of the existing human resources of the Government and local authorities; assess the capacity needs of national and county governments and recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions. This process was not completed leading to several challenges:

- i. There are currently three categories of staff at county level i.e. the former local authority staff, personnel seconded from national government and those employed directly by the county governments resulting to disparate terms and conditions and unsustainable wage bills;
- ii. A pension scheme for county employees has not been finalised causing uncertainty among staff with regard to their retirement benefits;
- iii. In the absence of norms and standards, human resource management and development at county level has become a challenge;
- iv. Despite efforts to address the capacity needs of the counties, there still exist skills gaps in the public service. There is inadequate capacity at both levels of government to implement their respective mandates and functions.

The County Government Act, 2012 (138) provided that during the transition period, public servants appointed by Public Service Commission who were serving in a county on the date of its constitution were deemed to be in service for that county government on secondment from national government with their terms of service as at that date. This period of secondment was to cease upon the transfer of a public officer from the national government to the county government or upon the release of the officer by the county government to the national government. However, the delay in publishing regulations for the County Governments Act that would have guided the deployment of the seconded officers has subjected the officers to uncertainty and job insecurity. Some of the county governments have used the provisions of Section 138 of

the County Governments Act, 2012 to release officers back to national government to create vacancies in their counties of as a disciplinary measure leading officers to seek judicial interventions.

Article 235 of the Constitution provides that parliament will enact a law to set norms and standards for county public service. This legislation is yet to be enacted resulting in various challenges:

- v. The 47 county public service boards all operate independent of each other and of the national norms and standards set out by the Public Service Commission. There is therefore no uniformity in the public service at county level and therefore no mechanisms for inter county and intergovernmental transfer of personnel.
- vi. The provision in the County Government Act Section 65 (e) that stipulates that candidates who are not from the dominant ethnic community in the county fill 30% of the vacant posts at entry level is not adhered to by most county governments.

2.4 INTERGOVERNMENTAL RELATIONS CHALLENGES

The relationship between the two levels of government is provided in the Constitution of Kenya 2010. Article 6(2) states that the two levels of government are distinct and inter-dependent and are expected to conduct their mutual relations on the basis of consultation and cooperation. Article 189 makes it imperative that each level of government performs and exercises its powers in a manner that respects the functional and institutional integrity as well as the constitutional status of institutions of government at the other level.

The Intergovernmental Relations Act, 2012 establishes the legal and institutional framework for consultation, cooperation and dispute resolution between the national and county governments and amongst the county governments. The Act establishes the following intergovernmental relations bodies: National and County Government Coordinating Summit, the Intergovernmental Relations Technical Committee and the Council of County Governors. The Public Finance Management Act, 2012 creates the Intergovernmental Budget and Economic Council as a forum for consultation and cooperation between the two levels of government on fiscal matters.

The challenges relating to intergovernmental relations experienced in the course of implementing devolution are described hereafter.

2.4.1 INTERGOVERNMENTAL CONSULTATIVE FORUMS

The Inter-Governmental Relation Act, 2012 provides for establishment of intergovernmental

sector forums on sector issues of common interest to the national and county governments. There are however a number of challenges with regard to establishment of these forums. They include but are not limited to the following:

- i. Absence of administrative procedures for establishing and managing intergovernmental sector forums;
- ii. The decisions of the forums are not binding;
- iii. Absence of enforcement mechanism for forum decisions.

Section 12 of Intergovernmental Relations Act, 2012 provides for the functions of the Intergovernmental Relations Technical Committee. However, regulations to give effect to the Act have not been developed making it difficult for the committee to effectively discharge its mandate.

The devolved system of government establishes a vertical system of power checks between state organs at two levels and horizontally between the organs at all levels. The structure was to ensure effective representation of citizens and safeguarding of their interest through the elections of the president, members of parliament, women representative, senators, governors and the members of county assembly. The expectation was that all these leaders will work in consultation, coordination and cooperation for effective service delivery and development. However, in practice this has not been the case with friction between leaders and minimal cooperation and consultation being witnessed. There is need to establish and support a platform and a framework to facilitate dialogue.

2.4.2 ALTERNATIVE DISPUTE RESOLUTION MECHANISM

The Intergovernmental Relations Act, 2012 provides for establishment of alternative dispute resolution mechanisms. However, there lacks policy and legal framework to guide the operationalization of this provision.

Section 23 of the Intergovernmental Relations Act provides for the establishment of joint committees with specific mandates where such a committee is necessary for the achievement of the objects and principles of devolution provided in Articles 174 and 175 of the Constitution, and for achievement of the objects and purposes of Intergovernmental Relations Act, 2012. There are however a number of challenges with regard to establishment of these committees:

- i. Absence of administrative procedures for establishing and managing joint committees;
- ii. The decisions of the committees are not binding;
- iii. Absence of enforcement mechanism for committee decisions.

The success of the devolved system of government is contingent on strong foundations and interventions at policy, legal, institutional and programmatic levels while keeping the objects

of devolution in sharp focus. These interventions can only be implemented in an environment of good intergovernmental relations between the two levels of government. Therefore, the issues identified to be addressed in this policy are a reaffirmation of government commitment to the success of the devolved system of government.

CHAPTER 3: POLICY OBJECTIVES AND STRATEGIES

This chapter presents the policy objectives and strategies needed to address issues identified in Chapter 2, covering institutional, resource and intergovernmental relations challenges.

Overall Objective

The purpose of this policy is to improve the implementation of the devolved system of government in order to achieve optimal service delivery. It is intended to guide both levels of government to align their policies to the devolved system of government.

Objective 1: To harmonise laws and policies that are inconsistent with the devolved system of government

Strategies:

- a. Establish interagency body to review existing laws, policies and regulations relating to the devolved system of government;
- b. Generate bills necessary for effective implementation of the devolved system of government;
- c. Develop and gazette regulations for all laws relating to the devolved system of government;
- d. Amend the County Government Act, 2012 to provide for transition, processes and procedures for the assumption of office of county governors.

Objective 2: To complete the process of functional analysis, unbundling, costing and transfer of functions between the national and county governments

Strategies:

- a. Establish interagency body to analyse functions of the National and the County Governments with the goal of eliminating duplication of functions as well as wastage arising there from;
- b. Initiate legislation to give effect to Article 187 of the Constitution of Kenya;
- c. Provide support to agencies responsible for functional analysis, unbundling and costing of functions;
- d. Develop a mechanism for determining the residual functions;
- e. Coordinate transfer of the outputs of the transition process to the appropriate institutions with relevant mandate.

Objective 3: To strengthen relations between institutions implementing the devolved system of government

Strategies:

- a. Develop and gazette regulations to give effect to the County Government Act, 2012;
- b. Develop regulations to provide the threshold for impeachment of governors and County Executive Committee members;
- c. Develop regulations to give effect to the Intergovernmental Relations Act, 2012.

Objective 4: To promote effective public participation and informed citizenry

Strategies:

- a. Establish a legal and policy framework for civic education and public participation;
- b. Establish, resource and support a national civic education and public participation framework;
- c. Facilitate the implementation of civic education and public participation programs;
- d. Develop and implement an accreditation system for civic education providers;
- e. Establish an institutional framework at national and county levels for purposes of facilitating and implementing civic education programmes;
- f. Design and implement a framework for monitoring and evaluating the effectiveness of civic education and public participation programmes;
- g. Establish and support mechanisms to provide access to information.

Objective 5: To establish mechanisms for supporting the County Governments by the National Government to enable them perform their functions

Strategies:

- a. Develop regulations to give effect to Section 121 – 130 of the County Governments Act, 2012;
- b. Review the National Capacity Building Framework with a view to strengthen it;
- c. Gazette the National Capacity Building Framework to make it official government document;
- d. Establish a mechanism through which counties can seek support from the national government to perform their functions;

- e. Establish a mechanism for the decentralisation of the functions and services of State Organs to counties.

Objective 6: To promote social and economic development and the provision of proximate and easily accessible services

Strategies:

- a. Provide requisite resources to support the operations of the decentralised units;
- b. Establish management structures for the governance of urban areas and cities;
- c. Review of the Urban Areas and Cities Act, 2011 to conform to best practices in the criteria for classification of urban areas and cities and to enhance its effectiveness;
- d. Develop and gazette regulations to operationalize the reviewed Urban Areas and Cities Act of 2011;
- e. Provide resources to support the operations of urban areas and cities.

Objective 7: To complete the audit, valuation and transfer of public assets and liabilities from the defunct Local Authorities to both levels of government

Strategies:

- a. Facilitate and support the audit of public assets and liabilities;
- b. Gazette and implement the mechanism for the transfer of assets and liabilities;
- c. Establish a system for the effective management of assets of national and county governments;
- d. Facilitate negotiation to determine the criteria by which to assign the liabilities of the defunct Local Authorities between the two levels of government.

Objective 8: To strengthen the management of fiscal decentralisation

Strategies:

- a. Develop and implement guidelines to clarify a cohesive oversight framework for fiscal flows between the two levels of government, in line with the Constitution and the PFM Act, 2012 with regard to:
 - i. Conditional and unconditional additional allocations to counties from the national government;

- ii. Equalization Fund;
 - iii. Grants and donations from development partners to finance devolved functions; and
 - iv. Finances following functions transferred between levels of government as envisaged in Article 187 of the Constitution.
- b. Develop policy and enabling legislation to guide County Governments' Own Source Revenue;
 - c. Develop a mechanism to enable assessment of county governments capacity for borrowing;
 - d. Establish a mechanism to enable short term borrowing by county government from Central Bank to meet short term obligations;
 - e. Develop regulations for the Public Procurement and Asset Disposal Act, 2015.

Objective 9: To establish a policy and legal framework to give effect to Article 69 (1) (a) of the Constitution on equitable sharing of accruing benefits

Strategy:

- a. Enact legislation and develop regulations for the equitable sharing of accruing benefit from natural resources.

Objective 10: To strengthen national economic planning and coordination of county government plans by the national government

Strategies:

- a. Establish through IBEC, a mechanism for the national and the county governments to improve alignment between the national and county budgeting, and identify areas requiring policy or legal improvements;
- b. Develop a national policy framework to give effect to Article 220 (2) of the Constitution;
- c. Enact legislation to guide national economic planning and coordination of county government planning;
- d. Establish procedures to facilitate the alignment of county planning with national planning.

Objective 11: To establish norms and standards for effective management and development of county public service

Strategies:

- a. Enact legislation to provide a framework for uniform norms and standards for public service at counties pursuant to Article 235 (1) of the Constitution of Kenya;
- b. Assess the human resource capacity needs of county governments and make appropriate recommendations;
- c. Harmonise the terms and conditions of public officers at county level;
- d. Enactment of the County Pension Scheme to facilitate transfer of staff to the counties and harmonise all retirement benefits of all county staff.

Objective 12: To promote and strengthen harmonious intergovernmental relations

Strategies:

- a. Develop regulations to operationalize the Intergovernmental Relations Act, 2012;
- b. Develop policy to promote the use of alternative dispute resolution mechanisms in the first instance;
- c. Enact legislation to provide for Alternative Dispute Resolution mechanisms pursuant to Article 189(4) of the Constitution;
- d. Review the legislation and regulations to strengthen intergovernmental relations, in particular:
 - i. Strengthen the Intergovernmental Relations Technical Committee;
 - ii. Gazette the intergovernmental sector consultative forums;
 - iii. Establish intergovernmental relations focal points at both levels of government to facilitate a cooperative government.
- e. Establish and support a platform and a framework to facilitate dialogue for all elected leaders at both levels of government.

Objective 13: To monitor and evaluate the implementation of this policy

Strategies:

- a. Establish a monitoring and evaluation secretariat to oversee the implementation of the policy;
- b. Develop and execute a monitoring and evaluation tool for the policy.

CHAPTER 4: IMPLEMENTATION FRAMEWORK

This policy will be implemented through a coordinated involvement of various actors including the Presidency, Ministry responsible for Devolution and Intergovernmental Affairs, National Government ministries, Parliament, Judiciary, Independent Commissions and Offices, Intergovernmental Relations Technical Committee, and the County Governments. At some level, particularly with regard to civic education, government will partner with a wide range of non-state actors. The implementation process will require coordination, consultations, cooperation and collaboration by the implementers. The ministry responsible for Devolution and Intergovernmental Affairs will play the leading role in coordination.

IMPLEMENTERS

The implementation of this policy will require a number of institutions to take a lead role:

The Presidency

The Presidency will implement its national executive functions in the implementation of this policy particularly through the National and County Government Coordinating Summit (The Summit).

Ministry and State Department Responsible for Devolution Affairs and Intergovernmental Relations

This ministry will be the lead agency in the coordination and implementation of this policy. It will formulate guidelines, standards and norms on issues relating to devolution, establish the framework and mechanism for support to National and County governments, and facilitate the strengthening of the legal and regulatory frameworks for the implementation of devolution.

The National Treasury

The National Treasury will provide leadership in directing, regulating and facilitating the implementation of this policy with regard to fiscal matters.

Ministries, Departments and Agencies (MDAs)

Government Ministries, Departments and Agencies (MDAs) in collaboration with the Ministry responsible for Devolution Affairs and Intergovernmental Relations will develop sector specific policies, guidelines, standards and norms and support to county governments in relation to the implementation of this policy.

County Governments

County governments will implement, facilitate and coordinate county related activities arising from this policy.

Parliament

Parliament will exercise its oversight and legislative role in the implementation of this policy.

The Judiciary

Judiciary will exercise its constitutional mandate in clarifying roles, settling disputes, giving advisory opinions and interpreting any questions arising from this policy.

Constitutional Commissions and Independent Offices

They will provide guidance and leadership in the implementation of this policy.

Intergovernmental Relations Technical Committee (IGRTC)

The IGRTC will implement the decisions of the Summit and the Council in relation to this policy.

Non-State Actors

Non-state actors will play roles in the provision of advocacy, civic education, and community mobilisation in relation to the implementation of this policy.

MONITORING AND EVALUATION

A monitoring and evaluation framework will be developed to evaluate the progress made in the implementation of this policy. The ministry responsible for devolution and intergovernmental affairs in collaboration with agencies implementing this policy will prepare annual monitoring and evaluation reports and share with all stakeholders on the implementation progress.

FUNDING

Funding and other resources including technical assistance for the activities to be undertaken under this policy will be sought from the National Treasury and Development Partners.

POLICY REVIEW

This policy will be reviewed after a period of three years or any other period as shall be determined by the ministry responsible.

ANNEX 1: IMPLEMENTATION MATRIX

Objectives	Strategies	Indicators	Actors	Time Frame		
				Year 1	Year 2	Year 3
Objective 1: To harmonise laws and policies that are inconsistent with the devolved system of government	a) Establish an inter-agency body to review existing laws, policies and regulations relating to the devolved system of government.	Laws reviewed policies reviewed	KLRC, AG, MODP, Parliament			
	b) Generate Bills necessary to implement effectively the devolved system of government	No. of legislations enacted	KLRC, AG, MODP, Parliament			
	c) Develop and gazette regulation for all laws relating to the devolved system of government	Gazetted regulations	Government Ministries			
	d) Amend the County Government Act 2012 to provide for transition, processes and procedure for the assumption of office of county governors.	Amended County Government Act 2012	KLRC, AG, MODP, Parliament			
Objective 2: To complete the process of functional analysis, unbundling, costing and transfer of functions between the national and county governments	a) Establish interagency body to analyse functions of the national and the county governments, with the goal of eliminating duplication of functions as well as wastage arising there from	Function analysis reports	IGRTC, MODP, CG, MDAs			
	b) Initiate legislation to give effect to Article 187 of the Constitution of Kenya	Legislation	MODP, KLRC, IGRTC, AG			
	c) Provide support to agencies responsible for functional analysis, unbundling and costing of functions	Gazette Notices Cost of functions	IGRTC, MODP, CG, MDAs			
	d) Establish a framework for the management of concurrent functions	Management Framework	IGRTC, CG MODP, MDAs			
	e) Develop a mechanism for determining the residual functions	Framework	IGRTC, MODP, CG, MDAs			
	f) Coordinate transfer of the outputs of the transition process to the appropriate institutions with relevant mandate	Framework	IGRTC, MODP, CG, MDAs			
Objective 3: To strengthen relations between institutions implementing the devolved system of government	a) Develop and Gazette regulations to give effect to the County Government Act, 2012.	County Government Regulations	MODP			
	b) Develop regulations to provide the threshold for impeachment of governors and county executive committee members.	Regulations	MODP, CG, IGRTC			
	c) Develop regulations to give effect to the Intergovernmental Relations Act, 2012	Intergovernmental relations regulations	MODP, CG, IGRTC			

Objectives	Strategies	Indicators	Actors	Time Frame		
				Year 1	Year 2	Year 3
Objective 4: To promote effective public participation and informed citizenry	a) Establish a legal and policy framework for civic education and public participation	Policy, Legislation	MODP, CG, IGRTC, Parliament, COB, MDAs			
	b) Establish, resource and support a national civic education and public participation framework	Civic education units % of budget allocated to civic education and public participation	MODP, CG, MDAs, COB			
	c) Facilitate the implementation of civic education and public participation programs	No. of programmes implemented	MODP, CG, MDAs, COB			
	d) Develop and implement an accreditation system for civic education providers	An accreditation system No. of civic education providers accredited	MODP, IGRTC, CG, MDAs Non state actors			
	e) Establish an institutional framework at national and county levels for purposes of facilitating and implementing civic education programmes	Civic education framework	MODP, CG, MDAs, Non State Actors			
	f) Design and implement a framework for monitoring and evaluating the effectiveness of civic education and public participation programmes.	Civic education M&E framework Monitoring reports	MODP, CG, MDAs			
	g) Establish and support mechanisms to provide access to information	Legislations, information platforms	MODP, CG, MDAs			
Objective 5: To establish mechanisms for support to County Governments by the National Government to enable them perform their functions	a) Develop regulations to give effect to Section 121 – 130 of the County Governments Act 2012	Regulations	MODP			
	b) Review the National Capacity Building Framework with a view to strengthen it	National Capacity Building Framework Reviewed	MODP, IGRTC, CG, PSC, SRC, KSG			
	c) Gazette the National Capacity Building Framework to make it an official government document	Gazette notice	MODP			
	d) Establish a mechanism through which counties can seek support from the national government to perform their functions	Support framework	MDAs			
	e) Establish a mechanism for the decentralisation of the functions and services of state organs to counties	No. of national functions decentralised	MDAs, CG			

Objectives	Strategies	Indicators	Actors	Time Frame		
				Year 1	Year 2	Year 3
Objective 6: To promote social and economic development and the provision of proximate, easily accessible services	a) Provide requisite resources to support the operations of the decentralised units	No. of sub-counties, wards and villages established	NT, COB, MODP, CG			
	b) Establish management structures for the governance of urban areas and cities	No. of urban areas and cities established	CG, MODP, MLHUD			
	c) Review of the Urban Areas and Cities Act, 2011 to conform to best practices in the criteria for classification of urban areas and cities and to enhance its effectiveness.	Urban Areas and Cities Act, 2011 Reviewed	CG, KRLC, AG MODP, MLHUD, Parliament			
	d) Develop and gazette regulations to operationalize the reviewed Urban Areas and Cities Act, 2011	Urban Areas and Cities Act regulations	MLHUD			
	e) Provide resources to support the operations of urban areas and cities	% of budget allocated to urban areas and cities	NT, COB, MODP, CG, Parliament			
Objective 7: To complete the audit, valuation and transfer of assets and liabilities from the defunct Local Authorities to both levels of government	a) Facilitate and support the audit of public assets and liabilities.	Assets registers Audit reports	IGTRC, CG, COB, Auditor General, CRA, NT, MODP			
	b) Gazette and implement the mechanism for the transfer of assets and liabilities	Legal notices	IGTRC, CG, COB, Auditor General, CRA, NT, MODP			
	c) Establish a system for the effective management of assets of national and county governments.	Asset management system	IGTRC, CG, COB, Auditor General, CRA, NT, MODP			
	d) Facilitate negotiations to determine the criteria by which to assign the liabilities of the defunct local authorities between the two levels of government	% of liabilities assigned and settled	IGTRC, CRA, CG, COB, Auditor General, NT, MODP			

Objectives	Strategies	Indicators	Actors	Time Frame		
				Year 1	Year 2	Year 3
Objective 8: To strengthen the management of fiscal decentralisation	a) Develop and implement guidelines to clarify a cohesive oversight framework for fiscal flows between the two levels of Government, in line with the constitution and the PFM Act, 2012 with regard to: <ul style="list-style-type: none"> i. Conditional and unconditional additional allocations to counties from the national government; ii. Equalization fund; iii. Grants and donations from development partners to finance devolved functions; and iv. Finances following functions transferred between levels of government as envisaged in Article 187 of the Constitution. 	Guidelines	NT, MODP, IGTRC, CG, COB, Auditor General, CRA			
	b) Develop policy and enabling legislation to guide county governments' own source revenue;	Policy, legislation	CRA, NT, MODP , CG, IGTRC, COB			
	c) Develop a mechanism to enable assessment of county governments capacity for borrowing;	Borrowing framework	CRA, NT, MODP , CG, IGTRC, COB, Parliament			
	d) Establish a mechanism to enable short term borrowing by county governments from Central Bank to meet short term obligations	Guidelines on short term borrowings	CRA, NT, MODP , CG, IGTRC, COB			
	e) Develop regulations for the Public Procurement and Asset Disposal Act, 2015	Regulations	NT			
Objective 9: To establish a policy and legal framework to give effect to Article 69 (1) (a) of the Constitution on equitable sharing of accruing benefits	a) Enact legislation and develop regulations for the equitable sharing of accruing benefits from natural resources	Legislation/ regulations	MODP, KLRC, Parliament, AG			

Objectives	Strategies	Indicators	Actors	Time Frame		
				Year 1	Year 2	Year 3
Objective 10: To strengthen national economic planning and coordination of county government's plans by the national government	a) Establish through IBEC a mechanism for the national and the county governments to improve alignment between the national and county budgeting process, and identify areas requiring policy or legal improvements.	National and county governments budgeting and planning processes aligned	NT, MODP, CG			
	b) Develop a national policy framework to give effect to Article 220 (2) of the Constitution	Planning policy	MODP, CG			
	c) Enact legislation to guide national economic planning and coordination of county government planning	Legislation	MODP, CG, Parliament			
	d) Establish procedures to facilitate the alignment of county planning with national planning	Guidelines	MODP, CG, NT			
Objective 11: To establish norms and standards for effective management and development of county public service	a) Enact legislation to provide a framework for uniform norms and standards for public service at counties pursuant to Article 235(1) of the Constitution of Kenya	Legislation	PSC, SRC, MODP, KLRC, Parliament, IGRTC			
	b) Assess the human resource capacity needs of county governments and make appropriate recommendations	Capacity needs assessment reports No. of trainings	PSC, SRC, MODP, IGRTC			
	c) Harmonise the terms and conditions of public officers at county level	Harmonised terms and conditions of public officers	PSC, SRC, CPSB, MODP, IGRTC			
	d) Enact legislation of the county pension scheme to facilitate transfer of staff to the counties and harmonise all retirement benefits of all county staff.	Legislation on county pension scheme	CRA, NT, MODP, CG, IGRTC, COB, Parliament, KLRC			

Objectives	Strategies	Indicators	Actors	Time Frame		
				Year 1	Year 2	Year 3
Objective 12: To promote and strengthen harmonious intergovernmental relations	a) Develop regulations to operationalize the Intergovernmental Relations Act, 2012	Intergovernmental relations regulations	MODP, CG, IGRTC			
	b) Develop policy to promote the use of alternative dispute resolution mechanisms in the first instance	Policy	AG, Parliament, MODP, CG, IGRTC			
	c) Enact legislation to provide for Alternative Dispute Resolution mechanisms pursuant to Article 189(4) of the Constitution	Legislation	Parliament, IGRTC, AG, KLRC, MODP			
	d) Review the legislations and regulations to strengthen intergovernmental relations, in particular, <ul style="list-style-type: none"> i. Strengthen the Intergovernmental Relations Technical Committee ii. Gazette the intergovernmental sector consultative forums iii. Establish intergovernmental relations focal points at both levels of governments to facilitate cooperative government 	Legislation reviewed Intergovernmental Sector Forums Gazetted No. of intergovernmental focal points established	Parliament, IGRTC, AG, KLRC, MODP			
	e) Establish and support a platform and a framework to facilitate dialogue for all elected leaders at both levels of government	County dialogue platforms	All elected leaders			
Objective 13: To monitor and evaluate the implementation of this policy	a) Establish a monitoring and evaluation secretariat to oversee the implementation of the policy	M&E secretariat	MODP			
	b) Develop and execute a monitoring and evaluation tool for the policy	M&E tool	MODP			

NOTES



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