



IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

END TERM REPORT
OF
**THE INTERGOVERNMENTAL
RELATIONS TECHNICAL COMMITTEE
MEMBERS**

2015 - 2020



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FOREWORD



The Constitution of Kenya, 2010 (COK, 2010) transformed Kenya from a highly centralized into a devolved system of governance. Article 6(2) provides that the two levels of government are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation. Article 189 requires the two levels to perform their functions and exercise their powers in a manner that respects the government and institutions of the other level. Intergovernmental Relations Act, 2012 (IGRA, 2012) establishes institutional structures necessary to manage the relations between the levels of government and amongst the county governments. The key structures under the Act are the National and County Government Coordinating Summit (Summit), Council of County Governments (COG) and the Intergovernmental Relations Technical Committee (IGRTC). The IGRTC is the secretariat of the Summit and the COG.

As the first Chairman of the IGRTC, I am honored to present our first end term report. This report provides summarized account of the work performed by the Committee in terms of institutional development, and delivery of mandate since inception in February 2015. As expected in a new institution, IGRTC faced many challenges. Many challenges emanated from the fact that devolution was a new system where each one of us was a student. IGRTC was the institution to manage intergovernmental relations in the new dispensation. As a carryover from the general elections of 2013, there was too much suspicion among politicians which resulted into too much push and pull in all structures of governance as the order of the day at all levels. In some instances, ignorance in the knowledge of constitutional provisions and by extension devolution reared its ugly face in disputes over mandate encroachment, power wars and relevance in the control of resources. These issues engaged the Committee spending much time trying to mediating over disputes. The other challenge the institution experienced was on its budgetary allocations. The IGRTC had serious budgetary constraint that

led it to largely depend on development partner support and deployed staff from the national government. It also operated under a law (IGRA, 2012) that had weaknesses which at times got exploited by the skeptics of devolution.

As members, we chose to focus on our mandate with unswerving neutrality. In pursuit to our commitment to provide evidence-based advice, we carried several studies including cost of litigation which demonstrated the need for use of alternative dispute resolution mechanisms for resolving intergovernmental disputes; and emerging issues in devolution and best practice which revealed the challenges facing devolution in Kenya and proposed mitigation measures. A number of residual functions left over by the Transition Authority were accomplished except for a few that are still pending as indicated in the report. Furthermore, we were able to facilitate and coordinate activities of the Summit but did less of the COG. Implementation of Summit resolutions was followed as one of the critical functions of the IGRTC. The report also includes the disputes IGRTC mediated through alternative dispute resolution mechanisms. The Committee also provided evidence-based advisories on policy and legislation on issues related to intergovernmental relations especially in areas where the existing legislation needed to be aligned with the COK, 2010. I am convinced that the readers of this report will find it informative and a reference material on matters of intergovernmental relations.

I therefore welcome the incoming members to utilize it as a first lane of information about the assignment awaiting them. Finally I most sincerely thank the Presidency for its invaluable support, my dedicated members for the support and sacrifice they made in starting off this important institution in the devolution space.



Prof. Karega Mutahi, CBS
CHAIRMAN



MESSAGE FROM THE CHIEF EXECUTIVE OFFICER



This first account of the work of the pioneer members is a testimony of the importance of intergovernmental relations in the implementation of the new system of governance. As pioneer team, the members set the ball rolling and went about establishing the institution in spite of the many financial and logistical challenges expected in establishing a new structure. The report provide rich material for reference on the status of our devolution, transfer of functions and achievements in resolving intergovernmental disputes. It documents all the resolutions made by the Summit and the status of their implementation.

When I joined the organization, the team accorded me a warm welcome and I have greatly benefitted from their rich leadership, decision making skills, and support. Together we were able to record a number of milestone achievements as indicated in this report. The pioneer team has put in place an institutional culture that will provide a foundation upon which the new members will build upon. As the second team of members assumes office, the report will be a valuable handbook as it summarizes the challenges, experiences and the immediate pending activities.

This report is a product of wide institutional internal consultations as it captures thematic area activities and members input. I appreciate the great efforts of all my staff and particularly Dr. Joseph Kosure, our resident consultant for providing the institutional records and memory. To the Chair and Members; on behalf of the Secretariat I say you have set a great example to everyone at work, your ideas were inspiring. You have run and finished this race diligently. We truly wish you all well in your future endeavors. To the new members we are really happy to have you in our team as our new Technical Committee Members. Welcome aboard.

A handwritten signature in blue ink, appearing to read 'Peter Leley', enclosed within a circular blue ink scribble.

Peter Leley
CHIEF EXECUTIVE OFFICER

ACKNOWLEDGEMENT

From the onset, IGRTC wishes to acknowledge the support given by its principals; the Summit and COG during the formative stages of the institution and throughout the period. All the activities achieved could not have been possible without such unwavering support. The cooperation received from national government ministries, department and institutions as well as the county governments was overwhelming. This was particularly observed during preparatory meetings ahead of the Summit, implementation of activities in residual functions and resolution of intergovernmental disputes and in implementation of Summit resolutions. These were clear indications that devolution worked better in well managed intergovernmental relations. This report is therefore a testimony to the good working relations to which IGRTC is grateful.

This first end term report of IGRTC is a result of contributions from both members and technical staff. It has particularly been made possible by the support of our development partners who provided technical assistance through a consultant who led the team in collecting, collating and analyzing the achievements, challenges and pending activities of the Committee during the period under review. The result of the support of the USAID/AHADI is therefore the culmination of this informative publication that will remain a reference document in the institution for years to come. I wish to acknowledge the support AHADI gave IGRTC through sponsoring almost all the studies undertaken and summarized in this publication. These studies enabled IGRTC to provide evidence-based advisories to its principals. We extend our gratitude to all stakeholder ministries, departments, agencies and county governments which worked closely with IGRTC in terms of technical support by taking part in our activities.

IGRTC acknowledges its members and staff who made it possible to achieve the milestones indicated in the report. The level of commitment among the IGRTC fraternity is highly appreciated. It is hoped that this spirit continues even as the institution receives the next team of members. Finally, we most sincerely thank the presidency, Council of County Governors, The Ministry of Devolution and ASAL, the Senate and National Assembly for all the support given to IGRTC to enable it to perform its mandate.



EXECUTIVE SUMMARY

This report is an account of the activities of the pioneer members of the Intergovernmental Relations Technical Committee (IGRTC). The report covers the period 2015 to 2020. It has been prepared in line with best practice that on completion of a particular assignment, it is imperative that the experience is detailed and shared as a repository for the next generation of assignees, the appointing authorities and the people of Kenya.

The report is presented in twelve chapters focusing mainly on the thematic areas as was designed to address specific functions and mandate of the IGRTC. However, the **first three chapters** have covered the introductory and legal architecture guiding the role and mandate of the IGRTC vis-à-vis the other intergovernmental relations structures envisaged in the Constitution of Kenya 2010 and the enabling legislation. Thus **chapter one** provides the historical background, purpose and organization of the report. **Chapter two** discusses the establishment of IGRTC with a synopsis of all the other intergovernmental relations structures namely; the National and County Government Coordinating Summit, the Council of County Governors, the Intergovernmental Budget and Economic Council, and Intergovernmental Sectorial forums among others.

The **third chapter** reviews the status of devolution in Kenya. This is particularly important as it gives a narrative on the environment in which IGRTC operates. The review covers the Kenyan context of devolution capturing intergovernmental relations issues at national and county levels. It further delves into the emerging issues affecting devolution in the country including state of policy and legislation, civic education and citizen participation, alternative dispute resolution and capacity building among others. The chapter offers specific recommendations on what the country needs to do to strengthen devolution.


The subsequent **chapters four to ten** provide the main achievements, pending activities, challenges, lessons learnt and recommendations from each thematic area. The thematic areas directed by sub-committees comprising members and management had specific objectives, responsibilities, key result areas and deliverables to guide the activities. In **chapter four**, the report summarizes

the main activities carried out in the Summit and Council of Governors Affairs thematic area. The thematic area facilitated, coordinated and followed up on the implementation of the resolutions of county secretaries meetings and Summit meetings as provided in law. It also carried out a study and published a report on emerging issues on devolution and best practices in intergovernmental relations. The thematic area organized a very successful first intergovernmental relations workshop held in Kisumu in 2018. The workshop reviewed the status of devolution and intergovernmental relations since implementation of devolved system of government. Presenters and other resource persons were drawn from experts and practitioners in the devolution space. In carrying out its activities, the thematic area identified some challenges as reported which affected completion of the work it planned to accomplish within the strategic plan period 2016 – 2020.

Chapter five provides details of the activities undertaken in the Consultation, Cooperation, Coordination, Human Resource and Capacity Development thematic area. The activities include publication of Status of sectorial and Intergovernmental forums in Kenya; facilitation and coordination of establishment of intergovernmental sectorial forums; intergovernmental sectorial committees and facilitation of activities of the capacity assessment and rationalization of the public service and closure and transfer of public records and information. A number of pending issues in the thematic area are the finalization of closure and transfer of public records and information; finalization of CARPS program; and establishment of various sectorial forums, working groups and committees. The report highlights a number of challenges the thematic area experienced in the course of its work especially in the establishment of sectorial forums, CARPS program and performance of functions as provided in the fourth schedule to the COK, 2010. The report offers recommendations to mitigate the challenges.

Chapter six covers the functional analysis, costing and transfer thematic area which facilitates the unbundling of both the concurrent and residual functions. It also deals with the costing of the functions for purposes of informing policy on budgeting and administration of such functions. During the period, the thematic area undertook and published a study on emerging issues on transfer of functions to national and county governments as appropriate. It also carried






out and published a study on the finalization of emerging issues in the agriculture sector to inform unbundling of functions of state corporations/institutions under the sector. The thematic area was able to facilitate and coordinate the transfer of library services as well as unbundling of museums services for eventual transfer to counties. The thematic area also finalized the unbundling of disaster management functions. It unbundled the cooperatives function, and commenced work on the unbundling of Joint Loans Board Scheme which was hitherto managed by State Department for Trade. The report highlights several pending activities and challenges faced during the work of the thematic area.

The activities of Monitoring and Evaluation, and Assets and Liabilities thematic area are covered in **Chapter seven** of the report. Activities achieved in the sub-thematic area on monitoring and evaluation includes development and publication of framework for monitoring and evaluation of performance of national and county governments and intergovernmental relations. Under sub-thematic area on assets and liabilities, achievements include the identification, verification, validation and transfer of the assets and liabilities of the defunct local authorities. The identification, verification, validation and transfer of the assets and liabilities of the devolved functions were also commenced. The activity is not yet concluded hence indicated as part of the pending activities. The report identifies challenges and provides recommendations for mitigation.

In **Chapter eight**, the report deals with Policy and Legislation thematic area. The highlights of achievements in the thematic area include analysis, development support and proposals to the amendments to policies and legislative instruments affecting devolution. It also developed internal legal instruments, mechanisms and frameworks to facilitate the advisory role of IGRTC. The pending issues in the thematic area include the review of the Intergovernmental Relations Act, 2012 incl. change of IGRTC name, anchoring COG secretariat into law, members' tenure; and review of the County Governments Act, 2012. The work in thematic area faced several challenges such as insufficient legislative drafting capacity in the county governments thus affecting the quality of the laws being drafted; differences in interpretation of the law leading to misunderstandings between the two levels of government which have culminated in protracted court processes leading to disruption of service delivery; lack of legal conformity to COK, 2010;



and legal gaps and overlaps thus creating conflict within the devolution laws and implementation.


The activities of Alternative Dispute Resolution and Public Participation thematic area are covered in **Chapter nine**. During the period under review the thematic area undertook studies and published reports on the status of public participation in national and county governments; and cost of litigation in inter/intra-government litigation in Kenya. The thematic area also facilitated, mediated and resolved a number of intergovernmental disputes. The report provides details of pending issues such as finalization of MOU between the Ministry of Defense and Nairobi City County Government; review of the law (IGRA, 2012) to provide for resolution of intra governmental disputes through ADR mechanisms; and conclusion of cases presented as “*on-going*” in **Annex 9.1**, “*Summary of the Status of Intergovernmental Relations Disputes*”. The other issues include production of awareness and promotion materials on public participation in various easy-read formats for larger segments of stakeholders; and establishment of a repository center for ADR matters among others.

The challenges identified however were that Kenya had no formal or standard rate of payments related to the cost of ADR mechanisms except for the scales¹ recommended by the Chartered Institute of Arbitrators, Kenya branch. The two levels of government had not comprehensively complied with provisions on public participation due to lack of clear policy frameworks and regulations for public finance management. The county governments were passing laws that had not undergone adequate public participation process thus leading to county residents challenging the laws in court. This had led to delayed implementation of the bills as they await conclusion of the court process.

Chapter ten covers report on an administrative thematic area responsible for financial management and human resource development in the IGRTC. The thematic area provides support to the institutional management functional units comprising human resource and administration, finance and accounting, audit, procurement, records and ICT. It thus provides leadership to ensure that the

¹ See Appendix 2





institution is managed in line with public management policies, procedures and regulations.

During the period the thematic area was occupied with the development of the structures as the IGRTC was a new outfit. It thus developed and published the first Strategic Plan 2016 – 2020; organizational policies and procedures operational manuals; as well as development of job description for staff and organizational structure. It commenced as a continuous process the recruitment of management staff. The staff establishment of the institution is 118 out of which a total of 54 are in post. The deployed staff in-post comprises 50% of the total.

The challenges faced by the thematic area include limited human resource to effectively deliver on the mandate of the institution. The institution continues to operate on a lean staff composed of deployed staff from other government ministries and few technical staff thus limiting the ability of the organization to fully discharge its mandate. There is perennial inadequate financial resourcing as budgetary allocation has not been progressive since 2016 because of the austerity measures.

The pending activities in the thematic area are summarized as operationalization of the corporate affairs directorate; training and induction to the technical staff and intern; development of second Strategic Plan 2021-2025; and reorganization of the thematic areas to be in harmony with the sub-committees at COG and organization of national government.

Chapters eleven and twelve discuss the general challenges and lessons learnt focusing on internal and external issues. The chapters further provide general recommendations, conclusions and members' profiles and parting shot respectively. The chapters provide the impetus into the starting point for the incoming team.

LIST OF ABBREVIATION

ADR	Alternative Dispute Resolution
CALCs	County Assets and Liabilities Committees
CARPS	Capacity Assessment and Rationalization of Public Service CCC, HR and Consultation, Cooperation, Coordination, Human Resource and Capacity Building Capacity Building
CEC	County Executive Committee
CGA	County Government Act, 2012
CIC	Commission for the Implementation of the Constitution
CIF	County Intergovernmental Forum
COG	Council of County Governors
COK, 2010	Constitution of Kenya, 2010
CRA	Commission on Revenue Allocation
DLA	Defunct Local Authorities
EACC	Ethics and Anti-corruption commission
EWWR	Environment Water and Natural resources
FACT	Function Analysis Costing and Transfer
GESDEK	Governance for Enabling Service Delivery in Kenya
HRM	Human Resource Management
IATC	Inter-Agency Technical Committee
IBEC	Intergovernmental Budget and Economic Council
IFMIS	Integrated Financial Management Information System
IGR	Intergovernmental Relations
IGRA	Intergovernmental Relations Act, 2012
IGRTC	Intergovernmental Relations Technical Committee
IGSC	Inter-Governmental Steering Committee



IPPD	Integrated Personnel and Payroll Database
JITC	Joint Intergovernmental Technical Committee
KENHA	Kenya National Highway Authority
KERRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
KRA	Kenya Revenue Authority
MHRMAC	Ministerial Human Resource Advisory Committee (MHRMAC)
MODA	Ministry of Devolution and the ASALs
MODP	Ministry of Devolution and Planning
NGO	Non-Governmental Organization
NYS	National Youth Service
PSC	Public Service Commission
TA	Transition Authority
TDGA	Transition to Devolved Government Act, 2012
The Summit	National and County Governments Coordinating Summit
UNDP	United Nations Development Program
UNES	University of Nairobi Enterprise Services
VERS	Voluntary Early Retirement Separation

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INTRODUCTION

1.0 Historical Background

The Constitution of Kenya (COK, 2010) created a devolved system of government premised on a two-tier structure of government. This system comprises the national government and forty-seven (47) county governments. The structure of devolved system of government involves the transfer of political, economic as well as administrative powers from the national to county governments. It also encompasses equitable sharing of national resources between the two levels of government.

Articles 6(2) and 189 of the COK, 2010 provide the basis for relationships between the two levels of government. It outlines the nature of the cooperation between the national and county governments, where it stipulates that either level shall perform its functions, and exercise its powers in a manner that respects the functional and institutional integrity of the government at the other level, and respects the constitutional status and institutions of government at the other level. It also provides for consultation and cooperation between the two levels of government and among county governments as the two levels are distinct but interdependent.

The Intergovernmental Relations Technical Committee (IGRTC) is established under Section 11 of the Intergovernmental Relations Act, 2012 (IGRA, 2012). The functions of the Technical Committee are provided for in Section 12 of the Act and include facilitating the activities and implementing the decisions of the National and County Government Coordinating Summit (The Summit) and the Council of County Governors (COG). As an intergovernmental structure established under an Act of Parliament, IGRTC is tasked with providing fora for consultations and cooperation between the national government and county governments; and amongst county governments, as well as providing a framework for the inclusive consideration of any matter that affects the relations between the two levels of government and amongst county governments.



I.1 Purpose of the Report


This report endeavors to give an account of IGRTC with regards to its role in advancing intergovernmental relations and devolution in the Republic of Kenya as the secretariat of the Summit and the COG. It seeks to outline the progressive operations of the organization from the time of its launching in early 2015 to the present time as a key stakeholder and partner in the realm of devolved governance. It highlights the existing intergovernmental relation structures including the IGRTC. The report also documents the achievements, pending activities, challenges and lessons learnt among other experiences of the first term members of the Committee. The outgoing members came into office on 23rd February 2015 and have established the institution from scratch to where it is today. This is therefore a formal report to the incoming Committee members and the key stakeholders in devolution.

In summary, the report serves as:

- 1) A repository for institutional memory for the incoming members
- 2) Documentation of achievements, challenges and pending activities which the new team should take over.
- 3) Information to the Summit and COG as well as other institutions of governance including the Parliament, county assemblies and the people of Kenya.

I.2 Organization of the Report

The report is organized in twelve chapters. Chapter one presents the introduction to the report. Chapter two discusses the formation of IGRTC and other intergovernmental relations structures. In Chapter three, the report analyses the status of devolution in Kenya. From Chapters Four to Ten, the report presents the achievements, challenges lessons learnt and recommendations of each thematic area of the IGRTC operational structure. The chapters also bring out pending activities to be considered for completion by the incoming members.



IGRTC coordinates the implementation of its activities through seven thematic areas coordinated by organized sub-committees. Each thematic area is covered in a chapter which details the activities achieved therein, pending activities, challenges, lessons learnt and recommendations. The thematic areas are presented in respective chapters as follows:

- Chapter Four - Summit and Council of Governors Affairs, Planning and Finance;
- Chapter Five - Monitoring and Evaluation and Assets and Liabilities;
- Chapter Six - Alternative Dispute Resolution and Public Participation;
- Chapter Seven - Policy and Legislation;
- Chapter Eight - CCC, HR and Capacity Building;
- Chapter Nine - Functional Analysis, Costing and Transfer; and
- Chapter Ten - Finance and Institutional Development

The report concludes with Chapters Eleven and Twelve on general challenges, emerging issues and lessons learnt; and general recommendations, conclusions and members' profiles and parting shots respectively. There are also several annexes to the report.

I.3 Methodology

The report is developed from primary and secondary data available in the institution. This is because it is largely a historical reflection of the activities the members have dealt with since their inauguration in February 2015 to June 2020. It also reflects on the challenges faced, lessons learnt and offers recommendations for follow up by the incoming team. The report details the pending activities for the incoming team to pick up from.

The report has been developed in a participatory approach which took into account every aspect of the activities undertaken by the outgoing team and the secretarial staff. Contributions for inclusion in the report were received from every thematic area.



2

ESTABLISHMENT OF INTERGOVERNMENTAL RELATIONS STRUCTURES

Introduction

The national and county governments came into operation after the General Elections held in March 2013. Under the COK, 2010, it was anticipated that the new paradigm would be the cornerstone for good governance and sustainable development of the country. The primary objective of devolution is to realign the two-tier governance system so as to ensure effective and efficient public service delivery through equity, equality and citizen participation. The concept of intergovernmental relations refers to the processes of interactions between different governments and between organs of state from different governments in the course of the discharge of their functions. These relations may either be cooperative, involving consultations for co-decision making or competitive in nature which encourages conflictual relations between the institutions.

Intergovernmental relations naturally evolved from the transition of governance from a highly centralized to the devolved system. Successful implementation of the devolved system of governance in Kenya therefore firmly rests on the nature of relations between the two levels of government. IGRTC was therefore established as a specialized institution with the required skills set and capacity to facilitate the intergovernmental relations.

2.1 Constitutional and legislative Provisions for intergovernmental relations

To underscore the importance of intergovernmental relations in the realization of the objectives of devolution, the COK, 2010 in Article 6(2) places the responsibility on the two levels of government to conduct their mutual relations on the basis of consultation and cooperation. The COK, 2010 Article 6(2) thus provides that the two levels of government “*are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation*”.

The distinct nature of the two levels of government is the operational autonomy which each level of government has in relation to the functions and powers as provided in the Fourth Schedule of the Constitution. It therefore means that each level of government has distinct legislative and executive mandates. Interdependence refers to the requirement that both levels of government implement the same national policies using national norms and standards. It is however, expected that implementation of the devolved system of government is not devoid of its challenges. Article 189(3) of the COK, 2010 addresses the contemplated disputes between the governments. It provides that “*in any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation*”. Article 189 (4) further provides that “*national legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms including negotiation, mediation and arbitration*”.

2.2 Intergovernmental Relations Structures


In considering the dynamics revolving around successful transition from a centralized to the devolved system of government, there was reasonable need for the establishment of intergovernmental relations structures through various statutes. These are the institutions involved in the day to day management of intergovernmental relations based on their individual mandates. Below are the key intergovernmental structures and their functional distribution.

2.2.1 The National and County Government Coordinating Summit

The National and County Government Coordinating Summit (Summit) is established pursuant to Section 7 of the IGRA, 2012. It is the apex body for intergovernmental relations and comprises ‘(a) *the President or in the absence of the President, the Deputy President who shall be the chairperson; and (b) the Governors of the forty-seven counties*’. The Chairperson of the Council of Governors, ‘*elected under section 19 shall be is the Vice Chairperson of the Summit*’.

As the apex organ, the Summit is established as a platform for promotion of consultation and cooperation between the national government and county





governments. Its functions include the consideration of matters relating to intergovernmental relations as well as reports from other intergovernmental forums and other bodies on matters of national interests. The Summit is also the highest organ in terms of alternative dispute resolution mechanism on matters of intergovernmental relations disputes.

In accordance with Section 9 of the IGRA, 2012, the Summit is expected to meet at least twice a year. It is mandated to submit annual reports to the National Assembly, the Senate and the County Assemblies within three months after the end of every financial year. However, no regulations have been developed to operationalize the IGRA, 2012.


2.2.2 The Council of County Governors

The COG is established under Section 19 of the IGRA, 2012 and consists of the Governors of the forty-seven counties. The Chairperson and Vice Chairperson of the Council are elected from amongst its members and serve for a term of one year and are eligible for re-election for one further term of one year.

As is the case for the Summit, the COG is established vide section 20 of the IGRA, 2012 to “*provide a forum for: (a) consultation amongst county governments; (b) sharing of information on the performance of the counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action; (c) considering matters of common interest to counties; (d) dispute resolution between counties within the framework provided under this Act; (e) facilitating capacity building for governors; (f) receiving reports and monitoring the implementation of inter-county agreements on inter-county projects; (g) consideration of matters referred to the Council by a member of the public*” among other functions including consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties. However, the procedure for the flow of preparation of COG reports is yet to be put in place.

2.2.3 The Intergovernmental Relations Technical Committee

The IGRTC is a body enacted pursuant to the provisions of the IGRA, 2012 and is intended to establish a framework for consultation and co-operation between the national and county governments and amongst county governments. Section



11(1) of the Act establishes the IGRTC. Section 11(3) of the Act provides that the IGRTC members shall be appointed on such terms and conditions as may be determined by the Summit. It is noteworthy that during the Summit held on 21st February, 2020 the tenure of office for the Chairperson and members of the Technical Committee was considered and approved to be one non-renewable term of six years. The Summit also received recommendation aimed at ensuring that IGRTC was impartial and autonomous. To achieve this, it was recommended that the institution be transformed into either an authority or commission. A committee was established with the Attorney General as the convener. The members were the IGRTC, Kenya Law Reform Commission, COG, MODA, IBEC, SRC, Executive Office of the President and the National Treasury.


Section 12 of the IGRA, 2012 provides for the functions and mandate of the Technical Committee which include:

- a) Be responsible for the day to day administration of the Summit and of the Council and in particular—
 - i. Facilitate the activities of the Summit and of the Council; and
 - ii. Implement the decisions of the Summit and the Council;
- b) take over the residual functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity;
- c) Convene a meeting of the forty-seven County secretaries within thirty days preceding every Summit meeting; and
- d) Perform any other function as may be conferred on it by the Summit, the Council, this Act or any other legislation.

Section 12 (a) (i) which provides that IGRTC is responsible for the facilitation of activities of the Summit as its Secretariat needs to be purposively understood to be linked to the functions of the Summit as provided in Section 8 of the Act.

Section 13(1) of the Act further empowers IGRTC to establish sectorial working groups or committees for the better carrying out its functions. In relation to this, during the five years, IGRTC convened sectorial working groups in sectors such as Betting, Cooperatives, meat inspection and Disaster Management amongst others. The working groups with the facilitation of IGRTC successfully achieved





their objectives in that all the disputes handled through the working groups were resolved amicably. Apart from this, IGRTC also handles emerging issues touching on intergovernmental relations that are referred to it by the Summit and the COG including intergovernmental disputes that are presented to the Summit.

Section 33 (2) on the other hand gives IGRTC the mandate to handle intergovernmental disputes reported to it by any of the parties through alternative dispute resolution mechanisms. In addition to this, IGRTC also handles emerging issues touching on intergovernmental relations that are referred to it by the Summit and the COG. These include intergovernmental disputes.

Given that the Summit and the COG are both platforms for promotion of cooperation and consultation, the mandate of IGRTC is largely centered on advancement and enhancement of intergovernmental relations and the implementation of decisions that are geared towards intergovernmental cooperation through coordinated approaches in the performance of their respective mandates. In the context of Section 12 (a) (i) providing that IGRTC is responsible for the facilitation of activities of the Summit as its Secretariat, this function must be purposively understood to be impliedly linked to the functions of the Summit as provided in Section 8 of the Act.

The Secretariat

The establishment of secretariat staff of IGRTC headed by a secretary/Chief Executive Officer is provided under IGRA, 2012 ss. 15 and 17 which give authority to the Technical Committee to recruit such officers and staff as are necessary for the proper functioning of the IGRTC. IGRA, 2012 s. 18 provides for authority to pay salaries, benefits and allowances subject to consultation with Salaries and Remuneration Commission (SRC).

IGRTC has an approved structure with a staff establishment of 118. Currently, out of the total establishment of 118, there are fifty four staff members in post out of which twenty Seven (27) members are employed by IGRTC while twenty seven are deployed from various ministries through the Public Service Commission. The top four senior management officers including the Chief Executive Officer and three directors are serving on six year contracts. The rest of the officers are on three year contracts. Although the deployed staff

was to help the institution with the necessary human resource capacity they were mainly in the administrative cadre supporting in services such as accounts, finance, secretarial and human resource. Hence, the organization continues to experience shortage of technical staff. On completion of their deployment term, the officers have been recalled to their parent ministries thus compromising implementation of activities and continuity of institutional memory. Details of all staff members both employed and deployed including gender distribution are presented in **Annexes 2.1 and 2.2 A & B.**

2.2.4 The Intergovernmental Budget and Economic Council

The Intergovernmental Budget and Economic Council (IBEC) is established pursuant to Section 187 of the Public Finance Management Act (PFMA), 2012. IBEC comprises of among others, the Deputy President who is the Chairperson, representatives from the COG and the Cabinet Secretary responsible for intergovernmental relations. The role of the IBEC is to provide a forum for *inter alia* consultation and cooperation between the national and county governments, particularly regarding matters of fiscal relations.

2.2.5 Intergovernmental Sectorial Forums

Section 13(2) of the IGRA 2012 empowers cabinet secretaries to convene consultative forums on sectorial issues of common interest to the national and county governments. Pursuant to these powers, at least 17 intergovernmental relations sectorial consultative forums have been established by various ministries.

The inter-governmental sectorial consultative forums are platforms for members to: monitor the implementation of national and county sector plans. The forums are used to receive and review progress reports from national and county governments including annual reports on matters pertaining to the sector. These forums also facilitate by supporting institutions in the implementation, follow up actions and recommendations from the Summit. The forums are also used in identifying gaps or conflicts in policies and legislation as well as providing a platform for counties to input into national policy and legislation. They are consensus-building avenues on how to address contentious or complex issues and; enhance communication between national and county governments.



2.2.6 County Intergovernmental Forum

This forum is established pursuant to CGA, 2012 s.54 as part of decentralization process to ensure quality service delivery to the public. The forum is chaired by the County government governor or his deputy in his/her absence. In the absence of both, the governor may designate a county executive committee member to chair the forum.

The forum comprises all departmental heads of the national government providing services in the county and county executive committee (CEC) members or nominees assigned in writing by the CEC members (s.54 (3) (a) and (b)). The forum is established to ensure harmonization of services rendered in the county; coordinate development activities in the county to avoid inherent duplication; coordinate intergovernmental functions and any other function that fall under the need for coordination. The forum is an important intergovernmental structure being the first lane in resolving any intergovernmental misunderstanding or dispute at the county level. Constitutional reference for the forum are COK, 2010 articles 6(2); 185 (2); 186 (1) together with the Fourth Schedule; 187 (2) and 189 (2).

2.2.7 Joint Intergovernmental Technical Committee

The Joint Intergovernmental Technical Committee (JITC) is established pursuant to Public Finance Management Act 2012 (PFMA, 2012), s. 100(1). The JITC is chaired by the Cabinet Secretary responsible for the National Treasury. The members include Cabinet Secretary responsible for matters relating to intergovernmental relations; and a representative of the county government or county government entity concerned. The other members are a representative of the Intergovernmental Budget and Economic Council; and a representative of the Commission on Revenue Allocation. The JITC may invite or enlist any other persons to assist it in performing its functions under this section.

JITC is expected to meet at least once every three months to review any action of intervention provided in PFMA, 2012 s.101 and based on the COK, 2010 Article 190(3)(b) including the progress on resolving the county government's financial problems and the recovery plan and its effectiveness. The Committee submits its progress reports to the Cabinet Secretary to the National Treasury, the County Executive Committee member for finance, the relevant County Assembly, the Intergovernmental Budget and Economic Council and the Senate every four months



with a final one on the interventions where necessary. The JITC has proved to be an effective intergovernmental relations instrument in the Kenyan devolution system.

2.2.8 Shared Institutions

These are institutions that offer services to both levels of government. They are mainly established by the COK, 2010 which, through their respective mandates, are tasked with ensuring harmonious relations between the two levels of government and amongst the county governments. Parliament established under Art. 93 of COK, 2010 comprising the National Assembly and the Senate have the legislative authority of the Republic that applies to both levels of government. In addition to statutory bodies, there are also non-statutory shared institutions that have evolved through practice and tradition caused by existential threat or need to protect common interest in the devolution environment. These institutions include County Assemblies Forum (CAF), Society of Clerks at the Table (SOCATT), County Secretaries Forum, County Attorneys Forum, and County Public Service Boards National Consultative Forum. As devolved governance progresses, these institutions may eventually mutate into statutory bodies.

Other specialized shared institutions are the ones referred to as Chapter 15 commissions and independent offices. These are institutions derived from Art. 248 of COK, 2010 which work across the levels of government to ensure fair service delivery, promotion of constitutionalism, and rights-based cohesive equitable society. They also promote deterrence against maladministration and injustices, checks on misconduct and integrity issues. These institutions provide advisory opinions, capacity development to both levels of government and promotion of alternative dispute resolution approaches to resolving intergovernmental and other public disputes.

The Chapter 15 commissions and independent offices include Kenya National Human Rights & Gender Equality (which was split to form Commission on Administrative Justice, National Gender and Equality Commission; and Kenya National Human Rights Commission), National Land Commission, Independent Electoral and Boundaries Commission, Parliamentary Service Commission and Judicial Service Commission. Others are Commission on Revenue Allocation, Public Service Commission, Salaries and Remuneration Commission, Teachers Service Commission, National Police Service Commission and the two independent offices namely; the Auditor-General and the Controller of Budget.



3

STATUS OF DEVOLUTION

3.0 Introduction

Implementation of the devolved system of government is a product of COK, 2010 which was promulgated on 27th August, 2010. Kenya transited from the centralized governance where the former central government was the frame of reference in the management of public affairs to a devolved system. The country adopted a “big bang approach” in implementing the new system of governance. Although conceptually, the preparation for devolution met the threshold, implementation faced a number of challenges from the beginning which the country continues to grapple with.

The Kenyan devolution structure is a two-tier system encompassing the national and county governments. However, most analysts especially, some sections of the media have conceptualized the system as a local entity. In this view, the system is often equated to the former local authorities which did not have any decision making and fiscal powers. Contrary to this conceptualization, devolution in Kenya is anchored in COK, 2010 Article 6 (2) which defines the governments at the national and county levels as “...distinct and inter-dependent”. This provision mandates the two levels “to conduct their mutual relations on the basis of consultation and cooperation”. This conceptualization is adopted in analyzing the implementation of the devolved system of government, and how the framers of the Constitution envisioned devolution to work. It further analyzes the actual implementation of devolution as a system enshrined in national and county governments and sectors under them.

This chapter thus reviews the Kenyan system of devolution that has shaped the governance affairs of the country at both levels namely national and county. It delves into emerging and cross cutting issues that will define future activities around devolution. The review is within the experience of the pioneer members of IGRTC.


3.1 Devolution in the Kenyan context

There are two main systems of devolution practiced worldwide with some countries with devolved system using hybrid approach. One type of devolution system is the dualist where the defined levels of government are fully institutionalized. In this case each level enacts and implements its laws. The national government here has more powers to raise revenue. Functions are assigned in reference to subject matter where the level performing the function has both legislative and executive powers over the function assigned. In this type of devolution, there are limited intergovernmental relations activities because the laws and policy making representation by counties at national level is less important. This system is being applied in countries such as Brazil, Canada, Spain, Australia and Argentina. The system is characterized by competition.

On the other hand, the integrated type of devolution upholds the principle of cooperation where though a constituent unit implements its laws as well as national laws, more legislation is enacted at national level. In integrated system, counties collect less revenue with functions assigned either by reference to subject matter or by reference to powers the level may have over the function. For example, the county government may have health function but the national government remains with policy formulation, enactment of laws, development of regulations, standards and norms, capacity building and technical assistance in relation to the same function. Integrated devolution system espouses the principle of intergovernmental relations through consultation, cooperation and coordination as well as good faith and respect for each other's mandate. This in the Kenyan context is the essence of Articles 6 (2) and 189 of the COK, 2010. The countries upholding this system include South Africa, Germany Austria, Switzerland and Kenya. However, with the description and attributes of the two types, Kenya is also considered a hybrid embracing various provisions of dualist and integrated systems of devolution.

In order to understand the Kenyan context of devolution, it is important to analyze the term devolution, its various typologies, concepts and features. Devolution is statutory transfer of power to sub-national level which in the Kenyan case is






the distribution of power between national and county governments. However such distribution can be both vertical and horizontal depending on the nature and circumstance. Devolution is an act of dispersal, distribution or surrender of power to another level of governance. It is characterized by distribution of functions and powers, concept of functional separation, cessation of power sovereignty, potential or existence of functional rivalries and intergovernmental relations. These characteristics have been observed in the Kenyan devolution space. In the Kenyan case, devolution has been characterized by competition for space, relevance and power rivalries by the two levels of government. The national government has attempted to hold on to the functions that were devolved by COK, 2010 claiming incapacity at the counties, while counties have treated national government with a lot of suspicion and mistrust. These are happening against the provisions of COK, 2010 article 189 (1) & (2) which encourages respect for the functional and institutional integrity of each level of government, consultation, cooperation and coordination.

The wisdom to enact a specific law, IGRA, 2012, to provide for intergovernmental relations in Kenya was guided by the COK, 2010, Articles 6 (2) which provides that “the governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.” Article 189, further provides for a consultative, cooperative and coordinative nature of relationship between the two levels of government. Each level of government must “perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level”.

The need to manage the cooperative nature of Kenyan integrated type of devolution called for the establishment of intergovernmental relations institutions discussed elsewhere in this report. Despite the existence of these institutions aimed at entrenching the spirit of cooperation as envisaged in the COK, 2010, the country has witnessed frosty, acrimonious and conflictual relations between and amongst the levels of government. Most of the challenges in the intergovernmental relations are caused by among others, perceived or real mandate encroachment, competition for power, control of resources and relevance in the devolution space.



IGRTC has therefore been in the forefront in the management of intergovernmental relations issues including alternative dispute resolution activities.

3.2 Issues at National Government level

While there are no components of the implementation of the devolved system of government considered of less importance, there are a number of aspects which have negatively affected the implementation. Some of these aspects are the functional analysis and transfer of functions; and management of human resources in both national and county governments. The delayed settlement of the latter has grossly affected the conceptualized model of managing human resource in the devolved governance system in Kenya.


Article 186 and Fourth Schedule to the COK, 2010 assigned functions to both national and county governments. However, more often than not, the national government continues to perform the functions that were assigned to the counties. The usual excuse for the action has been that the counties did not have capacity to perform the functions. This reason by the national government taking the functions of the counties is not justifiable. The COK, 2010, Fourth Schedule Part I s.32 and s.25 (2) (a) (i & ii) of the Sixth Schedule clearly indicate that the national government is responsible for capacity building and technical assistance to the counties. Any incapacity in the counties can therefore be construed to be a failure of national government in carrying out its constitutional responsibility.

Devolution has faced a number of challenges at the national level where organs of the national government continue to differ over mandates or roles:

a) Intra-governmental conflicts and disputes:

Intra-governmental conflicts and disputes are a threat to devolution. Particularly in the first phase of devolution, there were frequent disputes between and within the levels of government. There have been differences between the Judiciary and the Legislature. The Legislature at one point threatened and indeed reduced the budget of the Judiciary due to differences in opinion over roles. On the other hand both houses of Parliament have been accused of disobeying the Judiciary by disregarding court orders. The Executive and the Judiciary have also experienced frosty relations with the Judiciary especially where the Executive has had their





decisions overturned by the courts. There have also been conflictual relations between the National Assembly and the Senate over mandate and status. The Senate contends that the National Assembly passes county-related Bills without consultation with it, which the Senate considers unconstitutional. The conflict has been exacerbated by supremacy wars between the two houses with the National Assembly claiming to be the upper house. This insinuation has not been taken well by the Senate.


At county level, cases of poor working relationships have been witnessed between some governors and the members of the county assemblies, governors and their deputies, senators and governors, governors and county executive committee members among other conflictual relations. These incidences have affected service delivery in the counties where in some instances acrimonious attempts to impeach governors have been witnessed.

In summary, the main causes of disputes have been largely on resource utilization, power struggle and supremacy battles between:

- i. The three arms of national government -The Executive and the Judiciary; Judiciary and legislature; Legislature and Executive,
- ii. The governors and county commissioners,
- iii. National Assembly and the Senate,
- iv. Governors and the members of Parliament,
- v. The two arms of county governments –the Executive and County Assembly, and
- vi. Judiciary and legislature especially in handling of the impeachment processes. The Senate is of the view that judiciary oversteps its territory by treating impeachment as a legal rather than a governance issue.

b) National government overbearing relationship with county governments

The spirit of functional intergovernmental relations is founded in the COK, 2010 as stipulated in articles 6 and 189. The two governments though distinct, are interdependent with mutual respect for each other's mandate. The governments



are expected to consult, cooperate and coordinate their affairs for holistic development of the country.

Despite their effort to live within the letter and spirit of the COK, 2010, the two levels of government have not always agreed with each other. There have been disputes caused by perceived or real interference in the county government mandates by the national government including competition for power, resources and relevance. The issues have involved a number of devolved functions such as health, agriculture, roads, water, gaming, gambling and betting, among others. National government is accused of holding the bigger portion of resources allocated to these functions thus going against the principle of resources follow functions. This has created challenges in the counties to deliver on their functions. IGRTC has worked with both levels of government to address the challenges as reported elsewhere in this report.


c) Delayed release of the Exchequer to the counties and conflicts over revenue sharing

The hybrid type of Kenyan devolution with characteristics of both integrated and dualist systems mean that there are elements of cooperation and competition respectively. The competition aspect has however been playing out with the national government often attempting to compete with county governments in functions which are otherwise devolved.

The national government tends to control the budgetary resources for the counties which manifest itself into a feeling of ‘big brother’ relationship. For example, in health and agriculture, the national government still retains high percentage of resources meant for performing the functions at the counties. This has affected the performance of these functions at the county level despite the constitutional assignment. The principle of resources follow functions has never been fully adhered to by the national government.

Delays in Exchequer releases to the counties are a common feature of the relationship between the two levels of government. For example, in the Financial Year 2019/2020 there was disagreement on the division of revenue where the counties had stuck with the estimates by the Commission on Revenue Allocation





of KES. 335 billion, as opposed to KES. 314 billion allocated by the National Assembly. The stalemate grounded service delivery in some counties. These delays affected service delivery at the county level which have made the public to be disappointed with the devolved governance system culminating into frequent strikes particularly in the health workers.

3.3 Issues at County Governments level

The 'Big Bang' approach Kenya applied in introducing devolved system of governance had challenging effects on the institutions both at national and county levels. The counties being completely non-existent on 27th August 2010 were constitutionally existent on 28th August 2010! Parliament had to hurriedly enact laws to give effect to the constitutional provisions to enable all system-go by 2013 when the new governments were to take effect. Laws were passed without policies preceding their enactment hence current challenges being experienced in the implementation of devolved governance. It is unfortunate that since enactment, policies and regulations had not been developed for their effective operationalization.

COK, 2010, Art. 96 provides for the role of the Senate in respect to the county representation at national level. Senate protects county interests, makes laws and approves Bills concerning counties at national level as well as exercising oversight over national revenue allocated to county governments. The Senate also determines allocation of national revenue among counties as provided in Art. 217. Lastly, the Senate participates in the oversight of State officers especially in considering and determining any resolution to remove the President or Deputy President from office in accordance with COK, 2010 Art. 145. In undertaking the county oversight role, there have been challenges in the relationship between the Senate and county governments. The county assemblies continue to be uncomfortable with oversight role of the Senate contending that oversight at the county level is their mandate. There is a thin line between overall oversight role by the county assemblies and the Senate over-sighting the use of resources allocated to counties by national government.

Furthermore the relationship between governors and senators has been suspicious with some governors feeling that senators might be interested in governance job. Erratic attempts to impeach governors which became a fashion in the first phase of devolution painted a bad picture in the relationship between the county governors and senators. Weak consultative processes between the Senate and county assemblies in matters affecting counties have also challenged the successful implementation of devolved system of governance in counties. This is caused by the process of direct election of the senators which delinks them from county governments. Hence the senators have no obligation to consult or report to their county governments as they operate at national level.

The performance of county governments as new administrative model has been affected by inadequate capacity in human, financial and other resources. Capacity building and technical assistance by the national government institutions to the counties as envisaged in the COK, 2010 have not been adequate.

The perceived or existence of financial mismanagement, unclear role of deputy governors, extortion of favors from governors and power of impeachment by members of county assemblies are some of the issues that emerged as affecting the performance of county governments. In the first phase of devolution for example, there were four failed attempts to impeach governors.

3.4 Emerging Issues in the Implementation of Devolution

Introduction

The issues emerging during the reporting period could be attributed to the teething problems of the new structures of governance. Admittedly, some of these issues require greater consultations, cooperation and coordination. Important gaps and issues were identified in the seven years of the implementation of the devolved system. The emerging issues included the following:

- a) Resource sharing;
- b) Policy and legislation;
- c) Consultation and cooperation;
- d) Civic education and citizen participation;



- e) Alternative dispute resolution;
- f) Capacity building; and
- g) Corruption, conflicts over mandates and financial resources.

These issues affected the principle of separation of powers, mandates and cooperative nature of devolution as was envisaged in the COK, 2010.


a) Resource sharing

The issue of resource sharing has been contentious as the national government which largely controls the National Treasury has been accused of lack of good will when dealing with matters of allocating resources to the counties. Stalemate over the matter is a frequent occurrence every financial year.

b) Policy and Legislation

As Kenya transitioned from a highly centralized system of governance to the present devolved governance, new structures began operations without corresponding revision of legislation to be in compliance with COK, 2010. Since the General Elections of 2013, the policies and legislation that were operational before devolution remained unchanged even in wholly devolved sectors like agriculture. For this reason, and considering that policies precede legislation, there was need for a comprehensive program for the review and updating of all sector policies and legislation, particularly development of new regulations to entrench the governance operations. As a result, the 8th Summit meeting held in February 2020 resolved that all policies and legislation must be harmonized with the COK, 2010 within the next three years. Otherwise, in the absence of operational regulations, it was difficult to effectively apply the laws and create common norms and standards. This was observed from the situation where county governments had not adhered to certain requirements of the law, for example, the 30% rule in hiring of public officers. Recruitment in the counties is highly ethnicized and localized creating a dangerous trend of in-breeding.

In order to manage devolution, Kenya enacted what have been referred to as 'devolution laws' namely; The County government Act, 2012 (CGA, 2012); The Public Finance Management Act, 2012 (PFMA, 2012); The Transition to Devolved Government Act (TDGA, 2012 now lapsed); The Urban Areas and Cities Act, 2011 (UA&CA, 2011); and Intergovernmental Relations Act, 2012



(IGRA, 2012). Of all these laws enacted to entrench devolution, only PFMA, 2012 has been operationalized through the development and approval of regulations. It means that some of the key laws like the CGA, 2012 and IGRA, 2012 are being implemented without regulations. In the absence of guiding policies and regulations, the implementation process of these laws has been faced with major challenges. A recent case of transfer of some functions of the County Government of Nairobi to the national government may be cited as the matter which was dealt with in the absence of regulations to guide the process. This caused the national government to work backwards by engaging the people of Nairobi in public participation exercise after the transfer of the functions.

c) Consultation and cooperation


The key intergovernmental relations institutions namely, the Summit, IBEC and COG have largely addressed emerging issues making devolution a reality. However, given the persistent disputes that had occurred between and within the two levels of government, it was obvious that the country was far from creating adequate trust for smooth and effective consultations and cooperation at institutional level. As a result, there had been disputes between the Senate and the National Assembly; Senate and Governors; Governors and their Deputies; and Governors and County Assemblies, among others.

Some of the disputes could have been avoided through systematic civic education targeting the key actors to clarify their limits and roles as well as the complementary nature of the various institutions established under the Constitution to support devolution.

d) Civic education and citizen participation

This is an issue of lack of inclusivity and non-compliance. CGA, 2012 s.2 defines public (citizen) participation as *“The resident of a particular county; rate payers of a particular city or municipality; any resident civic organization or non-governmental, private sector or labor organization with an interest in the governance of a particular county, city or municipality; non-resident persons who because of their temporary presence in a particular county, city or municipality make use of services or facilities provided by the county, city or municipality,”*





Ghai, P.Y. (2013) defines it as “A vision of democracy in which citizens are active in public affairs, promoting their notion of justice & good policies, & engaging in dialogues with the legislature & the executive & in these ways enhancing public deliberation & democracy. It is a means of bringing people’s preferences & aspiration onto the agenda of the state. And it is seen as relevant to accountability,” On the other hand, McCracken, J. (n.d.)² defines civic education, also known as citizen education or democracy education, from the perspective of its ability to equip and empower citizens as “the provision of information and learning experiences to equip and empower citizens to participate in democratic processes”. This can take very different forms, including classroom-based learning, informal training, experiential learning, and mass media campaigns.

On the basis of the above definitions, there seems to be challenges in meeting the threshold of public or citizen participation and civic education thus compromising the objects and principles of devolution. The challenges include:

- i) Some counties failing to observe the principle of diversity thus embracing “government of 100% for the 100%” against the requirement of at least 30% of personnel to be sourced from outside the dominant community in a county;
- ii) Some counties experiencing increased incidences of conflict because of lack of inclusion of all groups in the county. This negates the fight against marginalization;
- iii) Inadequacy in civic education and public participation at both national and county government levels. Without civic education, citizens cannot appreciate the essence and participate in decision-making on issues affecting their livelihoods; and
- iv) Failure to meet the threshold for a genuine public participation as many of these activities end up being public relations exercise full of manipulation by the leaders who would always want their way.

2 Civic Education. www.Youthpower.org/sites/default/files/youthpower/resources/civic%20Education.pdf

e) Alternative dispute resolution

The COK, 2010 Art 189 sub-article (3) and (4) and IGRA, 2012 section 31 require that all intergovernmental disputes should be subjected to alternative dispute resolution mechanism before going to court. The IGRA, 2012 provides for the resolution of such disputes through intergovernmental structures established in law. During the period under review, a growing number of disputes were reported to IGRTC while a few were taken to court. The cases taken to court were ultimately referred to IGRTC for resolution under ADR mechanism. While some of the disputes were duly resolved, others were still under consultations as at the time of preparing this report.

f) Capacity building

There was need for capacity development for staff at all levels of government in order to empower those charged with management of devolution processes with knowledge and skills necessary for their operations. To this end, the defunct Transition Authority (TA) and relevant ministries undertook the development of a capacity building curriculum. However, the implementation of the curricular programs required capacity assessment before engaging in actual delivery of the content. The capacity assessment took longer than was expected, but was finally completed and approved by the Summit for implementation. It was projected that the implementation process would begin in 2018. Unfortunately, due to various challenges, the implementation has not been realized.

g) Corruption, conflicts over mandates and Financial Resources

Since the introduction of devolution as a governance model in the country, there have been many cases of politicization and procrastination over issues, which created problems in the working relationship among the leaders of the various institutions. For example, corruption remained a challenge that was often politicized depending on the people affected. There also existed conflicts over mandates and financial resources occasionally driven by corruption undertones. Many counties have been accused of engaging in corrupt practices with rare conclusion of such cases. At times, national government had insisted on county governments to account for the resources given to them before the counties could advocate for increased allocation.



Causes of Intergovernmental disputes


Devolution in Kenya is adversely affected by various sources and reasons for intergovernmental disputes including:

- i. Unhealthy competition for resources between the national and the county Governments, and within the county government departments;
- ii. Lack of clarity on concurrent functions of national and county governments for example lands, housing and roads functions at the county level;
- iii. Duplication and overlapping roles of the two levels of government;
- iv. Delay in the release of county funds by the National Treasury to the county governments;
- v. Misunderstanding of the functions of capacity building by the national government for county governments. The procurement of medical equipment and drugs by the national government without adequate consultation with county governments is a case in point; and
- vi. Inadequate funding for the health function and misallocation conditional grant for level 5 hospitals by counties.

3.5 Cross-cutting issues

Cross-cutting issues affect both national and county governance structures. They affect the pillars of the COK, 2010 particularly Bill of Right, Devolution, Public Participation, Democracy and National Values. These pillars underpin the hallmark of the Constitution as they ensure freedom, justice, equality and good governance. The Kenyan devolution environment is however, still nascent with a number of cross-cutting issues challenging its success. These are largely about weak public participation in governance affairs, gender equality, and low level of engagement in devolution issues by special or marginalized groups such as women, youth and people living with disabilities who still cannot access the 30% government tenders as envisaged in law due to constraining bureaucracies. Weak public participation is a product of poor or lack of civic education meant to create awareness to the public of their rights and obligation.

The devolved governance system is about people-centered governance where all governance apparatus respect the provisions of the COK, 2010 especially




Articles 6 (2), 174, 175, 185; 186; 189; Part I s.32 of Fourth Schedule and s.17 of Sixth Schedule. However, it is emerging that some of the national government institutions do not adhere to these expectations which affect smooth implementation of devolution.

Secondly, weak structures for civic education have weighed down on the citizenry to appreciate participatory approach to public affairs. The citizens do not have adequate awareness on the importance of their involvement in the decision-making process in the management of public issues at both national and county governance levels. Many a time, citizens considered public participation events as an obligation of the leaders and expect to be compensated in monetary terms. This behavior has seriously compromised the principle of public participation which is a critical pillar in the COK, 2010. Public participation is a constitutional right in which citizens are expected to be active in public affairs, promoting their notion of justice and good policies, and engaging in dialogues with the legislature and the executive for their preferences and aspiration on how they want to be governed. It ensures accountability when properly applied. However, what is emerging is that even where a semblance of public participation is held, the exercise mainly remains at manipulation, therapy or utmost informing. These are situations where there is no genuine participation and it is like education only by the leaders “*putting the citizens to work to change themselves rather than giving them a say in procedures*” thus ending in patronization.

It is indeed a worrying emerging issue in devolution. Art.10 of the COK, 2010 recognizes public participation as one of the national values. CGA, 2012 s.98 spells out the principles of civic education as intended to promote empowerment and enlightenment of citizens and government; continual and systemic engagement of citizens and government; and values and principles of devolution in the constitution. Ss.99 to 101 of the CGA, 2012 elaborate further on the purpose, objectives and design of civic education as well as program implementation and framework. Given the emphasis, there is need therefore to upscale the efforts towards effective civic education which is currently inadequate in most of the counties and national government structures.





Third, as Ghai, P.Y. (2015)³ observes, “there has been considerable tension between counties and the national government. Differences have centered on the issues of money, the continuing, large presence of national government officials in the counties, and until recently the slow pace at which powers were devolved to the counties. So far, the incipient inter-governmental relations mechanisms have been more instrumental in mediating between the national and county governments than other institutions or political parties. But the role in dispute resolution has been minimal, as the governments or officials concerned have preferred to go to the Judiciary, despite the fact that the constitution and supporting legislation provide a major role for consultation and mediation in line with the principle of consultation and co-operation”. IGRTC concurs with this emerging challenge to devolution and indeed spearheaded the platform for dispute resolution through mediation on matters affecting intergovernmental relations.

Fourth, interpretation and application of intra-governmental relations issues are emerging in the management of devolution. The COK, 2010 and enabling legislation had not expressly contemplated that intra-governmental relations would have substantive relational challenges. The experience particularly in the first phase of devolved system of governance showed that there were more intra-governmental disputes than inter-governmental ones. At national level, the executive had disputes with the legislature; legislature with judiciary; executive with the judiciary; and organs of state at national level had issues with each other. At county level, governors had issues with their deputies; governors and county assemblies; county assemblies and county public service boards; and governors and their county executive committee members among other groups of disputes. The import of this is the need to review IGRA, 2012 within the context of COK, 189 (3) and (4) and COK, 2010 Art.259 on the interpretation of the constitution so that intra-governmental relations are construed as part of inter-governmental relations. In this way, IGRTC would be able to handle issues affecting intra-governmental relations.

3 *Comparative Theory and Kenya’s Devolution by Yash Ghai, a contribution to publication: Animating Devolution in Kenya: The Role of the Judiciary – Commentary and Analysis of Kenya’s Emerging Devolution Jurisprudence under the New Constitution (2015). IDLO and Judicial Training Institute and Katiba Institute.*


3.6 Recommendations

Addressing the challenges discussed in this chapter would require a multifaceted approach that focuses on the various weaknesses identified. In particular, there was need for a comprehensive review of all sector policies, laws and regulations to be in compliance with the COK, 2010 and taking into account the experience of the last seven years of devolved governance system in the country.

In summary the following actions are recommended:

- a) Review of all sector policies to align them with the Constitution and thus enhance the implementation of devolution;
- b) Review Devolution Policy in order to address the emerging issues in the implementation of devolution;
- c) As a matter of priority, review of all laws that are not aligned to the COK, 2010 in the respective agencies in order to enhance the discharge of their mandates. The aligned laws should then be the basis of creating national norms and standards, and development of regulations to operationalize all the laws;
- d) In order to minimize emergence of conflicts between the two levels of government, there was need to develop regulations to establish procedures and mechanisms for the implementation concurrent functions;
- e) Enforce the principle of diversity in employment in order to enhance inclusivity. For example, the 30% rule on recruitment should be implemented in all counties;
- f) Invest in civic education and public participation as means of empowering Kenyans to participate in decision making;
- g) Given the existing boundary and other disputes between the counties, there was need to expedite the finalization of alternative dispute resolution mechanisms for resolving these disputes. The mechanisms were approved by the 8th Summit in February 2020; and
- h) There should be deliberate effort to invest in the national capacity building programs to address governance weaknesses in both levels of government.





For example, in order to effectively facilitate intergovernmental relations at county level, there is need for capacity building on issues of intergovernmental relations, with special attention to the role of the county intergovernmental forum, which has been largely dormant.

As a secretariat of the Summit and COG, IGRTC should take lead in advocating for the above issues to be addressed at the relevant levels of government to enhance the spirit of consultation, cooperation and coordination. In this regard, IGRTC should follow up on the implementation of Summit resolutions with special attention to the review of sector policies and regulations within three years.

4

SUMMIT AND COUNCIL OF GOVERNORS AFFAIRS

4.0 Introduction

The main function of this thematic area is to organize summit meetings and associated activities. In this task, the team is responsible for obtaining proposed agenda items from national government ministries and agencies, COG and sectorial forums for presentation to the Committee (IGRTC) for consideration. Once the proposals are discussed by the main Committee (IGRTC), they are tabled before the Summit agenda preparatory committee under the chairmanship of Head of Public Service. Subsequent to the Summit meetings, the thematic sub-committee monitors the implementation of Summit resolutions. Another important function of the sub-committee is to undertake relevant research on emerging issues on intergovernmental relations and prepares advisories for consideration by the Committee (IGRTC).

4.1 Objectives of the thematic area

The objective of the thematic area is to facilitate the meetings of the Summit. This involves preparing and coordinating the meetings of the county secretaries of the forty-seven counties within thirty days preceding every Summit.

4.2 Responsibilities

The responsibilities of the thematic area are as follows:

- i) Preparation of agenda of the Summit;
- ii) Organization of Summit meetings;
- iii) Follow up on the implementation of the Summit resolutions;
- iv) Prepare reports on the status of implementation of Summit resolutions;
- v) Undertake relevant research on emerging issues on intergovernmental relations;
- vi) Hold County secretaries meeting within 30 days preceding every Summit meeting for discussions on issues for escalation to Summit; and



- vii) Monitoring and evaluation of performance of national and county governments and intergovernmental relations in Kenya.

4.3 Key Result Areas

The following are the key result areas of the thematic area:

- i) Organize meetings of the Summit;
- ii) Monitor implementation of the Summit resolutions; and
- iii) Identify and document the critical areas on IGR issues (e.g. through studies and workshops).

4.4 Deliverables


The following are the deliverables of the thematic area:

- i) Timely reports prepared for the Summit;
- ii) Topical study reports on emerging issues on devolution and best practices in intergovernmental relations published to provide evidence-based advice to the Summit, and IGR stakeholders;
- iii) Organize focused intergovernmental relations fora held for in-depth understanding of IGR by stakeholders for improvement of relations between and among levels of government; and
- iv) Submission of periodic advisories to guide the Summit and COG on technical intergovernmental relations issues.

4.5 Achievements by the Thematic Area

- i) Publication of a study on emerging issues on devolution and best practices in intergovernmental relations**

To be able to effectively discharge its functions, the IGRTC urgently needed to identify the strategic emerging issues and design strategies for addressing them. These issues were related to intergovernmental relations, and management of transition to devolved governance. The study identified emerging issues on devolution and best practices in intergovernmental relations. The emerging issues were of two categories namely; the matters relating to facilitation of co-operative government and intergovernmental relations and secondly, the



matters falling within the unfinished business, which involve management of transition to devolved governance system. Many of the unfinished matters could be attributed to the challenges in managing intergovernmental relations. This is because devolution was a new system and people mandated to drive the process were unfamiliar with it. Furthermore, the transition period given by the COK, 2010 was too short to complete the process.

Though an important intergovernmental relations structure, the IGRTC was launched at the beginning of 2015. This was two years after the first elections under the new Constitution were held. The Summit and the COG had also been established. This delay created a sense of urgency to IGRTC in trying to catch up with intergovernmental relations and devolution issues within its mandate as the secretariat of the two intergovernmental relations institutions. The issues that had emerged since the first national and county governments under the new constitution were installed in 2013 needed to be addressed. Furthermore, the term of office of the Transition Authority ended in March 2016 with a lot of unfinished transitional functions, necessitating the IGRTC to take over the residual functions as was envisaged in the IGRA, 2012.

Objectives and terms of reference of the study

The objectives of the study were pursued within the context of thorough understanding of the concept and nature of intergovernmental relations, their necessity within a devolved system of government, comparative approaches to management of intergovernmental relations, and the Kenyan constitutional and legal framework for intergovernmental relations. The study was therefore commissioned with the following specific objectives:

- a) To Identify emerging issues on devolution that require intervention through intergovernmental relations;
- b) To Identify comparative best practices in intergovernmental relations that Kenya can draw lessons from when developing her own system of intergovernmental relations; and
- c) To provide actionable recommendations that can guide the conduct of intergovernmental relations in Kenya.



Findings

- 1) Kenyan approach to intergovernmental relations is a highly formalized system of cooperative government with elaborate constitutional and legislative provisions which govern both processes and institutions. There is however room for enhancement of cordial relations through formal and informal processes such as intergovernmental agreements, joint institutions, projects and programs.
- 2) The established institutions still faces challenges in their operations. For example, although IGRTC is the institution mandated with the management of intergovernmental relations, the law establishing had weaknesses on its authority and powers. The powers of the IGRTC were left implicit from its functions providing room for misinterpretation.
- 3) The IGRTC is the secretariat of the Summit and the COG. However, the existence of a fully-fledged secretariat at COG makes it complicated for it to undertake its legal mandate as a secretariat of the COG. However, IGRTC has therefore performed the role.
- 4) The report under review opines that the inclusion of the Principal Secretary in the ministry responsible for matters of devolution in the membership of the IGRTC with exclusion of a representative of the COG compromises the neutrality and independence of the Committee.
- 5) As currently constituted, the status of IGRTC is not clear in terms of perpetuity and corporate nature. It is not capable of suing or being sued.
- 6) The residual functions taken over from the defunct Transition Authority were still outstanding except for the unaudited inventory of assets and liabilities of the defunct local authorities. Pending activities included clarification of devolved functions, unbundling, costing of functions, analysis and transfer of functions that were devolved. The other residual function not yet finalized was the rationalization and deployment of human resource between the two levels of government.


- 7) The study identified weakness in the funding structure for the IGRTC. The budget for the Committee is processed and channeled through the Ministry responsible for devolution. This compromises the neutrality of the organization.
- 8) The study found no country with what could be construed to be best practice in intergovernmental relations as each country has its own unique features and circumstances. Kenyan devolved system being an integrated one however has close semblance with the South African and German systems of devolution.
- 9) The interpretation of the oversight role of Senate as envisaged in Art.96 (3) of COK, 2010 has created misunderstanding between the Senate and members of county assemblies as well as the governors. The Senate has focused mainly on oversight function in disregard to the Constitutional oversight functions of the county assemblies.
- 10) The study identified the lack of clarity in the duties of deputy governors as one reason for frequent misunderstandings between the governors and their deputies. The deputy governors tend to be idle and function at the pleasure of governors (s.32, CGA, 2012).
- 11) The Senate has not paid enough attention to the protection of county interests
- 12) The study identified 31 emerging issues that need to be resolved through intergovernmental relations. The list is presented as Annex 4.1.

Challenges identified by the study

The challenges experienced in the thematic area were:

- a) The IGRA, 2012 does not expressly spell out the term of office of members, replacement or removal from office;
- b) Lack of regulations to operationalize the IGRA, 2010 has adversely affected the mandate of IGRTC;



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- c) Suspicious, acrimonious and frosty relations between various arms and levels of government pose challenges that affect successful implementation of devolution; and
 - d) Inadequacy in the separation of powers and functions as designed in Schedule Four of the COK, 2010 has resulted in non-functionality of certain sectors thus affecting service delivery. Some functions are defined as concurrent but which may not be carried out while others are not expressly assigned. An example is the case of betting control.

Recommendations of the study

The study provided the following recommendations:

- 1) Need to amend the IGRA 2012 to provide for the term and a staggered process of members' replacement or removal. Staggering the replacement will ensure preservation of institutional memory and continuity. The review may consider the composition of the members in order to remove the inclusion of Principal Secretary, Ministry responsible for Devolution or include the representative of the COG in the Committee. This will address the issue of autonomy and /or neutrality of the organization;
- 2) IGRTC funding should begin at the level of Division of Revenue Bill with the Commission on Revenue Allocation (CRA) making specific recommendations regarding the amount of money to be included in the share of the national government as a vote for financing intergovernmental relations. For example, IGRTC has experienced inadequate funding which has delayed implementation of most of its programs such as unbundling and transfer of functions activities;
- 3) The CGA, 2012 section 32 needs to be amended to expressly provide for duties of deputy governors rather than mere deputizing and acting in a limited manner in the absence of the governor;
- 4) The oversight powers of the Senate under Art. 96 of the COK, 2010 need to be clarified and expressly interpreted to avoid double over

sighting. Limits should be imposed on the exercise of such powers to avoid intrusion into functional domain of the county assemblies; and

- 6) There is need to create third list of functions and introduce an enabling act, “Powers and Functions Act” to categorically define and allocate functions explicitly. The third list should exclusively provide for the concurrent functions and how they should be performed by the two levels of government.

ii) Administration, Facilitation and Implementation of the Resolutions of the Summit

During the period under review, IGRTC performed its functions in accordance with the provisions of the law. It administered and facilitated the functions of the Summit. The IGRTC followed up with the agencies to ensure Summit resolutions were implemented. The details of the Summit meetings including minutes, resolutions and implementation status are presented as Annex 4.2.


iii) Intergovernmental relations workshop

IGRTC organized the first Intergovernmental Relations Workshop from 3rd to 5th December 2018 at the Grand Royal Swiss Hotel in Kisumu County. The theme of the workshop was “*Intergovernmental relations moving devolution forward for quality service delivery*”.

Background

The year 2018 marked Kenya’s sixth year of devolved system of governance. However, intergovernmental relation (IGR) as an important aspect of devolution was still facing challenges despite being recognized in law under the IGRA, 2012. The Act established three distinct IGR organs namely; the Summit, the COG and the IGRTC. Within its mandate and responsibilities, the Committee is expected to consult and create a cooperative environment for both the national and county governments. However, in the first phase of devolution, the role of IGR was quite limited. Some stakeholders did not understand the functions, roles and responsibilities of IGR organs. This was due to the fact that some players





in devolution had not appreciated the need for the two levels of government to work together in a cooperative and coordinated manner. It is noteworthy that the spirit of IGR is indeed, grounded in the objects of intergovernmental structures established under the IGR Act, 2012 s.5. The workshop was therefore organized to provide a forum for sharing experiences in order for the devolution stakeholders to appreciate intergovernmental relations.

Objectives of the workshop

The overall objective of the workshop was to give the stakeholders an opportunity to deliberate on issues of intergovernmental relations in the Kenyan devolved system of governance.

The specific objectives of the workshop were to:

- a) Introduce the theory and practice of IGR to the participants of the workshop;
- b) Emphasize the role of IGR in a devolved system of government;
- c) Determine the adequacy of legislation relating to IGR;
- d) Identify the salient and emerging issues in IGR in the Kenyan situation; and
- e) Make recommendations on how the emerging issues can be addressed.

The workshop focused on intergovernmental relations practice as a key driver to the success of devolution. It was convened to provide a forum for open discourse on issues of IGR particularly to take stock of the experiences during the first phase of implementation of the COK, 2010. It was expected to bring out the emphasis on the role of IGR in a devolved system of governance, determine the adequacy of IGR legislation, identify salient emerging issues and recommend how to address them for successful implementation of devolution. The deliberations therefore, provided participants with a deeper understanding of IGR while appreciating the systemic challenges and issues emerging in the process of implementing devolution.

Outcome of the workshop

The workshop presentations and discussions were facilitated by experts who had vast knowledge on intergovernmental relations. The key discussion areas were on intergovernmental relations, unbundling and transfer of functions, and alternative dispute mechanisms. Other areas included intra and intergovernmental relations in public service delivery and the role of county government in civic education and public participation. The experts and participants thereafter, had the opportunity to identify and discuss the challenges, giving their views and recommendations.

The workshop observed that the provisions of the COK, 2010 on the distinctiveness, interdependence, consultation, and cooperation had not been fully embraced by both levels of government. The inadequacy to appreciate the need for consultation and cooperation had resulted in conflicts, tensions, and threats which called for intergovernmental institutional interventions. It was also acknowledged that cooperative governance was critical for devolution to succeed and stressed the need to address issues of clarity of functional assignments. It addressed weaknesses in the application of principles of public participation and civic education; capacity building and oversight of county governments. The discussants expressed the need to resolve issues of inappropriate policy framework, laws, regulations, lack of uniform norms and standards, and lack of express legal provisions to address intra-governmental relations. In conclusion, the workshop also identified lack of IGRTC visibility and independence as a major concern. The workshop communique is presented as **Annex 4.3**.

4.6 Pending activities in the thematic area

The following are the pending issues under the thematic area:

- i) Follow up on 8th Summit resolutions (continuous activity) ;
- ii) Follow up on implementation of the resolutions and recommendations of the first IGR Workshop; and
- iii) Holding of second Intergovernmental Relations Workshop.




4.7 Challenges identified in the thematic area

The thematic area identified a number of challenges that affected its performance:

- i) Section 9 of IGRA, 2012 provides that “The Summit shall – a) meet at least twice a year; and b) conduct its meetings in the manner provided under the Schedule to this Act.” The challenge has been the irregularity in holding Summit meetings due to busy calendar of the principals. For instance, a year may lapse before a meeting is held. This has had the consequence of delaying important activities that may require the Summit direction and decision for implementation; and
- ii) IGRTC had challenges accessing information and follow up of the implementation of resolutions of the COG meetings as provided for in IGRA, 2012 section 12 (a) (i) and (ii). For example, during the study on cost of litigation which was a Summit directive, it was a challenge for the consultant getting information from the COG.

4.8 Lessons learnt

The introduction to devolved governance in Kenya offered a significant learning curve to the nation. Many people thought that devolution was going to resolve all their political and economic problems. Being in the initial stages of the system, Kenya faced challenges related to intergovernmental relations. The first five years of devolution however provided useful lessons and experiences. For example, both national and county government structures viewed each other with suspicion which at times generated into disputes related to relevance and competition for resources. Each party attempted to interpret the law to suit its interest. Devolved functions were not easily released to the level it ought to be performed. However, it suffices to say that Kenya had just begun the long journey of transforming the governance structure and that it would take many years to complete the process.



Experience from countries that began this process earlier indicate that devolution is a long-term program that often faced challenges, particularly over resources, mandates and development issues. For some of these countries, devolution has been a journey of more than 100 years, yet they are still quarreling over issues of common interest. Kenyans should be proud to note that within 5 years, the foundation had been created for devolved governance and the country is steadily moving forward.

IGRTC is a critical institution that stands in between the two levels of government on issues of intergovernmental relations. How it handles the issues will therefore define the success or failure of intergovernmental relations in devolution as a governance system in Kenya.

4.9 Recommendations

The thematic area has the following recommendations:

- 1) The Summit meetings should be definite and have yearly calendar that is predictable. This will ensure adherence to the provisions of the law (IGRA, 2012 s.9 (a) & (b)); and
- 2) The two levels of government need to uphold the principle of consultation and cooperation while respecting the constitutional mandate of each level. This is one of the pillars of the Kenyan devolution system. The Summit should be in the forefront through the established structures such as IGRTC in reducing or avoiding conflicts and tensions that characterized the first phase of devolution and which are still occurring sporadically.



5

CONSULTATION, COOPERATION COORDINATION, HUMAN RESOURCE, AND CAPACITY DEVELOPMENT

5.0 Introduction

This thematic area is responsible for ensuring that there is cooperation, consultation and coordination between the two levels of government on emerging issues. The ultimate objective is to promote unity and harmonious working relationship between them by bringing them together in sectorial committees to discuss issues of mutual importance and service delivery. In terms of the residual functions inherited from the TA, the thematic area is critical in conjunction with other partners in the implementation of the Capacity Assessment and Rationalization of the Public Service (CARPS). It also facilitates the completion of the closure and transfer of public records and information previously held by defunct Local Authorities, former provincial administration, county and national government ministries, departments and agencies.

5.1 Objectives of the Thematic Area

The objectives of the thematic area were:

1. To provide policy and strategic leadership to ensure achievement of the goals of the organization;
2. To provide guidance and support to the technical teams to ensure quality work outputs; and
3. To develop and manage strategic partnerships with key institutions and individuals to support and enhance the work of the organization.

5.2 Responsibilities

- 1) Ensure documentation and follow up of implementation of Summit and COG resolutions relating to consultation, cooperation and coordination, and human resource and capacity development in the public service;
- 2) Ensure the establishment of structures, mechanisms and guidelines for disseminating accurate and timely information to the Summit, and COG;

- 3) Review available minutes/reports relating to consultation, Cooperation, Coordination, Human Resources and Capacity Development (CCC, HR and CD) from sectorial forums and working groups and make recommendations to IGRTC;
- 4) Facilitate the development of agreed frameworks for CCC, HR and CD;
- 5) Facilitate the dissemination and implementation of developed frameworks;
- 6) Ensure development and implementation of a communications framework to enhance and promote access to public information; and
- 7) Develop and manage strategic partnerships with key institutions and individuals
- 8) Coordinate and spearhead all interventions related to CCC, HR and CD.

5.3 Deliverables of the thematic area

The following are the deliverables for the CCC, HR and CD thematic area:

- 1) Summit and COG resolutions with a bearing on CCC, HR and CD documented and implemented;
- 2) Timely status reports on the current state of CCC, HR and CD;
- 3) Frameworks for CCC, HR and CD developed, disseminated and implemented; and
- 4) Reports developed quarterly and annually using agreed format and submitted on time.


5.4 Achievements of the Thematic Area

The following were the achievements of the thematic area:

i) Publication of Status of Sectorial and Intergovernmental Forums in Kenya

This study was commissioned by IGRTC with the support of USAID/AHADI Kenya, with the objective of establishing the status of sectorial/intergovernmental forums. The main purpose of the study was to identify and document sectorial





and Inter/intra governmental forums; review the performance, achievement, challenges and existing gaps in establishment of forums; make recommendations on areas that require strengthening and develop a framework for the establishment of sectorial and intergovernmental forums.

Scope of the study on the Status of Sectorial and Intergovernmental Forums

The scope of this study was to document the sectorial and intergovernmental relations forums that have been established to facilitate consultation and coordination between the two levels of government and among county governments. The study analyses the performance of the forums, their achievements and challenges faced in managing the forums. The expected outcome of the study was a report identifying gaps with recommendations on areas that require strengthening to improve consultation, cooperation and coordination. The other outcome was the development of a framework that IGRTC can use in establishing sectorial forums/committees.

Objectives of the study

The primary objective of the assignment was to study and document the sectorial and intergovernmental relations forums that have been established since devolution started.

The specific objectives of the study were therefore to:

- 1) Identify and document in detail all sectorial and intergovernmental forums established since devolution was implemented:
 - a) Between the two levels of government
 - b) Between county governments.
- 2) Carry out an in-depth analysis on the performance and achievements of each of the sectorial and intergovernmental forums established.
- 3) Identify and document key challenges faced in the management and implementation of the decisions of the forums.
- 4) Identify gaps and areas/sectors where there is need for sectorial and inter-governmental forums/committees to be established.

- 5) Provide recommendations on how the forums could be strengthened.
- 6) Develop a framework that IGRTC could use in the establishment of sectorial and intergovernmental forums and committees.

Key Findings

The findings in this study are based on information obtained from the sectors and the reports of MODA inter-sectorial consultative forums convened between 2016 and 2018. The study captures the status of both statutory/formal and non-statutory/informal forums. Forums established pursuant to provisions of the law by the MODA, COG and IGRTC are statutory while the others are non-statutory. The non-statutory (informal) forums established to serve important intergovernmental relations purposes include the regional economic blocs, County Assemblies Forum, County Secretaries Forum, County Attorneys Forum and Society of Clerks at the Table.

Overall, the forums have been useful in facilitating consultations, cooperation and coordination between the two levels of government and among county governments. The forums have helped the two levels of government to consult on matters of development of policies and laws, coordination of the implementation of development projects and resolution of disputes arising from their activities.

However, the forums face many challenges in their performance since they are not yet adequately institutionalized. The challenges include failure to convene meetings on a regular basis, poor attendance by members, unavailability of cabinet secretaries to chair meetings, lack of funding for the operations of the forums, lack of effective secretariats and lack of enforcement mechanisms for their decisions.

ii) Establishment of intergovernmental sectorial forums

Section 13(1) of the IGR Act, 2012 provides that IGRTC may establish sectorial working groups or committees for the better carrying out of its functions. As such, IGRTC convened intergovernmental sectorial forums/meetings in the following:



- a) Delineation of cooperatives function;
- b) Resolving issues on implementation of betting, licensing, casinos and gaming functions;
- c) Resolving issues on sharing of revenue from meat inspection functions between national and county governments;
- d) Resolving issues on transfer of agricultural training center houses to the counties;
- e) Intergovernmental forum on human resource management in Kenya's public service; and
- f) Operationalization of the Framework For the Inter-governmental Gender Sector Forum

iii) Capacity Assessment and Rationalization of the Public Service

a) Development and Validation of the guidelines for Rationalization of the Public Service in the National and County Governments

IGRTC through the CCC, HR and CD thematic area has been involved in the CARPS program, through membership in the various institutional structures established under Gazette Notice No. 5556, namely the Intergovernmental Steering Committee, the Interagency Technical Committee and the Interagency Secretariat.

The organization has played a key role in the validation of the guidelines for rationalization of the Public Service in the National and County Governments.

The objectives of the guidelines were outlined as follows: -

- i) To provide mechanisms for rationalization through staff deployment, re-deployment and transfer between the two levels of government and within the devolved units;
- ii) To provide procedures for transfer of service for staff between the two levels of government and across county governments; and
- iii) To enhance collaboration, consultation and co-operation between the national government and county governments on matters related to staffing in the Public Service.

b) Roll out of the Public Service strategic policy documents on the enhancement of Public Service delivery

The CARPS program is coordinated by the State Department for Public Service. IGRTC is a member together with other stakeholders charged with rolling out strategic policy documents on capacity assessment and rationalization program for the Public Service at both the national and county government levels as guided by Gazette Notice No. 5556 of 2016. In 2017, the Interagency Secretariat of the CARPS, in conjunction with the Interagency Technical Committee, published strategic policy documents, to enhance service delivery in public service, and there were launched by the Cabinet Secretary for the Ministry of Public Service, Youth and Gender Affairs.

One of the significant activities planned under the CARPS program in the FY 2017/2018, was the roll out of the strategic policy documents for enhancing service delivery in the Public Service.

The Directorate of Public Service Management (DPSM), in partnership with IGRTC, The National Treasury, COG, Public Service Commission and Attorney General's office, rolled out the strategic documents throughout the 47 counties. The roll out was implemented in form of workshops from the month of September to December 2018. The workshops were implemented by the Intergovernmental Steering Committee and the Interagency Secretariat, as established under the CARPS program.

iv) Closure and Transfer of Public Records and Information

Following the introduction of the devolved system of governance and the subsequent dissolution of former local authorities and provincial administrative units, there was need to officially close and transfer the records and information previously held by these institutions to the relevant agencies and institutions to avert cases of loss of information and institutional memory. The closure and transfer of public records and information were part of the residual functions which IGRTC took over from the defunct TA. Before leaving office, the TA had issued Legal Notice No 44 of 11th March, 2016 on the Transition to Devolved



Government (Mechanisms for Closure and Transfer of Public Records and Information) Regulations 2016 to effect the closure and transfer of public records and information. As an institution that took over the residual functions of the defunct TA, IGRTC had the mandate to undertake the activity.

To execute this exercise comprehensively, the CCC, HR and CD thematic area developed a work plan and executed the initial activities which included development of training manuals, and establishment of the Inter-agency Technical Team (IATT) to oversee the exercise.

The CCC, HR and CD facilitated and coordinated the initial activities on the assignment including development of materials and training of the team representing state agencies including Public Service Commission, the Ministry of Interior and Coordination of the National Government, DPSM, Min of Sports, Culture and Arts, Kenya National Archives and Documentation Service (KNADS), National Economic and Social Council (NESC), the National Treasury as the Inter-Agency Technical Team.

With professional support from KNADS, IGRTC provided a platform for the county secretaries to share their experiences in record management and the status quo of records in their counties; as is, where is. This was part of the sensitization and training program prior to launching the exercise. Rolling out the activity has since been subject to availability of funds. It is expected that the exercise will be given priority in the next Financial Year 2020/2021.

v) Development and implementation of a communications strategy to enhance and promote access to public information

a) Communication goal and objectives

The overall goal of the IGRTC communication strategy is to improve corporate communication and image of IGRTC.

a) Communication Objectives

- i. To create awareness of IGRTC mandate and services
- ii. To improve the image and visibility of IGRTC

- iii. To build and strengthen strategic partnerships

b) Justification for IGRTC Communication Strategy

1) Public Communication as a constitutional requirement

According to COK (2010) communication of public information is a constitutional requirement. In Article 35, “every citizen has the right of access to (1) (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom. (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person. (3) The State shall publish and publicize any important information affecting the nation”.

This constitutional requirement therefore compels IGRTC as a government agency to provide information to the public in line with its mandate.

2) IGRTC mandate and communication

Articles 6(2) and 189 of the COK (2010) provide for a cooperative form of devolved government, requiring consultation and cooperation as opposed to a competitive approach to intergovernmental relations. The two levels of government are required to conduct their mutual relations on the basis of consultation and cooperation. This is the constitutional foundation for harmonious intergovernmental relations (IGR). IGRTC is established to promote and facilitate these relations.

3) Strategic Alignment of Communication at IGRTC

Strategic communication describes structured, facilitated conversations with staff and other key stakeholders to advance organizational mission.

The four core perspectives of the IGRTC Strategic Plan 2016-2020 are;

- a) Relations between the county and national government
- b) Resource Mobilization



- c) Internal systems, processes and values
- d) Institutional Capacity

The current IGRTC Strategic Plan 2016-2020 did not provide any emphasis on communication. It only comes as a challenge in the lessons learnt. In addition, the IGRTC operations manual does not capture communication as one of the areas that the Committee needs to roll out in its activity implementation.

An effective communication strategy is critical for IGRTC in fulfilling its mission of supporting a successful devolution through consultative, cooperative and coordinated intergovernmental relations. Considering that IGRTC has both internal and external stakeholders whose collaboration and cooperation are vital for the Committee to succeed, it must develop mutually beneficial relationships between itself and its stakeholders. It is therefore imperative for IGRTC to create conducive communication climate anchored in an effective communication strategy. This will enable the institution to build the much desired synergies, collaborations and customer centeredness.

Summary of the Strategy

The IGRTC Communication Strategy 2019-2023 was developed following the findings from an intensive communication audit with IGRTC internal and external stakeholders. The strategy examines the communication environment under which IGRTC operates and identifies the key communication strengths, weaknesses, opportunities and threats as well as the political, economic, social, technological, environmental, legal conditions relevant for implementing it.

The overall communication goal and communication objectives of the IGRTC communication strategy are outlined giving key strategic interventions for each communication objective along with the key communication activities necessary for successful implementation. The core target audiences are identified and recommended sample key messages that should be targeted to these stakeholders are developed based on the organizational objectives.

Also recommended are the channels of communication that should be utilized and examples of brand touch points that can be used to enhance the image

and visibility of IGRTC are elaborated. Feedback mechanism strategies are also recommended for both internal and external stakeholders effectively. To ensure that internal communication at IGRTC is effective and efficient, recommendations for improving communication between the management and the staff are outlined in this strategy.

The strategy recommends the setting up of a functional corporate communication department resourced with the necessary staff and equipment which will be in charge of strategic communication and public relations activities.


Recommendations:

c) Corporate Communication Department

The recommended corporate communication department will be in charge of strategic communications and PR activities in the organization. This department should be resourced with necessary staff and equipment to carry out communication functions effectively. The department should be led by the Senior Manager, Corporate Communications who will work with a team of communication staff to help steer the IGRTC strategic communications to the next level. The department will carry out the following strategic corporate communication functions:

- i. Corporate Affairs
- ii. Public Relations
- iii. Media Relations and liaison
- iv. Development and dissemination of IEC materials in liaison with the head office
- v. Event organization
- vi. Development of stories
- vii. Documentation of best practices and other activities i.e. video and photography
- viii. Regular update of website
- ix. Regular update of social media platforms such as Facebook, Twitter and You Tube.



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- x. Updating of the intranet in liaison with ICT
 - xi. Participation in stakeholder engagement events and exhibitions such as the Summit, ASK shows among others
 - xii. Branding and visibility activities
 - xiii. Crisis management
 - xiv. Internal communication and employee engagement
 - xv. Support other departments in stakeholder engagement

d) Capacity building of Corporate Communication Department

The mandate of IGRTC is to promote intergovernmental relations through consultation, coordination and cooperation in the devolved governance system. This function cannot be realized without an effective corporate communication department in place. The communication audit carried out revealed that currently there is no corporate communication department at IGRTC. The following strategies are therefore recommended to adequately equip the corporate communication department in the organization:

- I) Establishing various sub-sections within the corporate communication department to work closely as follows;
 - i. Corporate/Public Relations and Events. This sub-section will coordinate corporate and public relations related activities and events in the organization including but not limited to; corporate affairs, public relations, events management, crisis management, corporate branding and visibility;
 - ii. Advocacy and Publicity. This sub-section will support the coordination of publicity and advocacy activities mainly during major events such as the Summit meetings and other major stakeholder engagement events;
 - iii. Media Relations. Mainstream media. This sub-section will coordinate all mainstream media related activities including organization of press conferences, writing of media press releases, field visits, media coverage, feature stories, media interviews, Opinion Editorials, media buying and selling;
 - iv. Digital Media. This sub-section will coordinate all digital and social media aspects at IGRTC including managing and updating the website, social

- media sites, digital advertisements and creating conversations among others;
- v. Publication and Dissemination. This sub-section will coordinate development and publishing of all IGRTC publications to ensure consistency; and
 - vi. In addition, IGRTC should acquire the services of an in-house graphics designer who will be responsible for designing and laying out of all publications for print and online use.
- 2) Developing a departmental structure with clear roles and responsibilities of the above proposed sub-sections of the corporate communication department aligned to broader organizational structure.
- 3) Developing a media strategy including social media plan and policy guidelines.

5.5 Pending Activities

The following activities are pending and should be given priority in the next strategic plan:

- i) Finalization of closure of public records and information;
- ii) Finalization of CARPS program;
- iii) Finalization of establishment of sectorial fora in gender, trade, housing and energy sectors;
- iv) Implementation of the Corporate Communications Strategy; and
- v) Convening intergovernmental forum for the water sector.

5.6 Challenges

IGRTC as a secretariat of the Summit observes the following challenges:

a) Establishment and management of sector forums in Kenya

- i. The lack of legal support and statutory provisions to govern the sector forums has rendered these forums operationally weak.
- ii. The forums lack procedures of accountability in terms of reports on meetings and resources used.



- iii. The top level management is not providing committed leadership to the forums, hence the lack of follow up of implementation of action areas that come up from the resolutions made during the forum meetings.

b) County Public Service Boards

Various challenges were raised by the stakeholders present and clustered in various thematic areas for their appropriate resolution.

Human resource management and development

- (i) Weak systems and channels of accountability with respect to Human Resource Management.
- (ii) There is minimal effort in training and skills development for the county public service.

Institutional framework

Weak coordination and collaboration between institutions with mandate in devolution with respect to strengthening the county public service

Governance

- i. Implementation of norms and standards of public service and existing policy, legal and regulatory provisions is weak in the counties
- ii. Weak knowledge of policy, law and regulations with respect to public service management.
- iii. Lack of service charters of in some of the CPSB's.

County pensions

- a) Lack of a county pension scheme has led to Actuarial deficits resulting from unremitted dues

Policy gaps

- 1) Lack of a policy framework to guide the development and approval of county structures and staff establishments
- 2) Lack of appropriate policy, legislation and regulatory framework for the county public service

c) CARPS Program

The implementation of the CARPS program has been surrounded by several fears and concerns, which include the fear of loss of jobs and the fear of the wage bill reduction initiative. It was therefore, noted that as the various stakeholders finalized the guidelines, there should have been consideration of sensitizing the Public Service on the following:

- **Fear of the implementation of reduction of the wage bill**

The public service should be sensitized on the main objective of the CARPS program. The program did not aim at reducing remuneration, but rather identifying employees who may be redeployed, up skilled or re-skilled or where gaps may be filled to create best performance. The program was meant to create an efficient and effective public service at both levels of government for economic growth and development.

- **Fear of job losses**

The program was to help in cleansing the payroll and identify any ghost workers. Terms and conditions of service for employees would otherwise remain the same unless the existing skills call for re-designation which may lead to change in one's terms and conditions of service. In any case the Constitution provides that no public officer should be disadvantaged.

- **Functions, institutional and organizational review**

The assignment of functions to the national and county governments is provided in the Fourth Schedule of the COK, 2010. The national government was assigned 35 functions while county governments were assigned 14 functions. As the country was transiting from a centralized to devolved system, the process of transferring these functions to the relevant level of government was carried out by the statutory body established for the purpose, the Transition Authority. The devolved functions were therefore analyzed and transferred to the counties by the Transition Authority as provided in law. Despite the transfer of the devolved functions to the counties, there was a challenge especially during the first phase of devolution when some national government ministries or departments continued



to perform the county functions. This created friction in the relationship between the national and county governments.

d) Closure and Transfer of Public Records

Implementation of the remaining work plan on the closure and transfer of public records and information has been a challenge owing to lack of funds. Completion of this activity is long overdue as it affects the security of public records and information. The records and information may include documents relating to critical functions and historical account of governmental activities.

5.7 Lessons learnt

IGRA, 2012 section 13 (1) and (2) provides for the establishment of working groups, sectorial forums or committees. The experience of IGRTC was that the formation of sectorial forum, working group or committee was a slow process. Although sectors required the forums as a structure for dispute resolution or harmonization of activities, very few such forums had been set up since introduction of devolved system of governance. Where these organs are set, the resolution of issues tended to take long. However, the observation was that only sectorial forums in the agriculture and health were active and performing their activities satisfactorily. The following approaches could be considered out of the lessons learnt:

a) Establishment of intergovernmental and intra-governmental sectorial Committees

- i. Inter-governmental /sectorial committees/forums should be established after adequate consultations among the stakeholders in intergovernmental relations.
- ii. National government sectorial committees/forums should be established by the relevant cabinet secretary in consultation with stakeholders for technical support and the Cabinet Secretary for Devolution matters and with cabinet approval.
- iii. County committees should be established by the relevant CECs after consultation with the governor.

- iv. Where necessary, inter-county forums should be established by counties concerned.
- v. IGRTC should brief the Summit on the formation of its committees/ forums.

5.8 Recommendations from the thematic area

a) The sector forums in Kenya

- i. There is need to strengthen IGRTC to receive and to forward resolutions of the sectorial forums.
- ii. There is need for enhancing involvement of cabinet secretaries and governors in the intergovernmental forums for complete implementation of resolutions made during the sector forums.
- iii. Regulations should be developed to define procedures of managing the sectorial forums.

IGRTC looks forward to partner with other stakeholders so that the county public service operations are harmonized and synchronized with that of the national government.

b) Closure and Transfer of Public Records

Engage development partners to consider supporting the implementation of the exercise to its conclusion. The activities remaining include validation of the training manuals, training of trainers, and regional training of county records management committees on the closure and transfer of public records and information, appraisal of the records, and final closure and transfer of the records and information.



6

FUNCTIONAL ANALYSIS, COSTING AND TRANSFER

6.0 Introduction

This thematic area is responsible for facilitating the analysis, costing and completion of the transfer of functions. In carrying out these functions, the IGRTC is tasked with unbundling of functions including, state corporations for purposes of transferring them as appropriate. In addition, the IGRTC has the duty of costing the functions of the remaining fifteen sectors of the national government to provide a guide for annual budgeting by both levels of government. It has also the duty of transferring functions under mutual agreement.

6.1 Objectives of the thematic area

The following are the objectives of the thematic area:

- a) To advise on policy and provide strategic leadership to ensure achievement of the goals of IGRTC in regard to functional analysis, costing and transfer.
- b) To develop and manage strategic partnerships with key institutions and individuals to support and enhance devolution.

6.2 Responsibilities and powers

The following are the responsibilities and powers of the thematic area:

- a) Obtaining full details and analysis of residual functions from the defunct TA before the end of their term in March 2016;
- b) To develop the framework for the comprehensive and effective transfer of the residual functions;
- c) Facilitate the analysis and the transfer of residual functions;
- d) Develop a framework of the transfer of functions under mutual agreement;
- e) To develop a framework for determining the transfer of previously shared assets, liabilities and staff of the government and local authorities;

- f) Provide mechanisms for the transfer of assets and liabilities;
- g) Take over and keep safe custody of records pertaining to the transfer of functions that so far as of March 2016 will have successfully transferred; and
- h) Obtaining from TA the framework for comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule to the Constitution.

The powers are to:

- a) Gather relevant information, including the requisition of reports, records, documents or any other information from any source, including state departments and other public entities;
- b) Require production of any information necessary for the performance of the committee's function as and when necessary;
- c) Interview any person, groups or members of organizations or institutions;
- d) Make recommendations and facilitate the distribution of any remaining assets to the national and county governments; and
- e) Undertake any activity necessary to effectively carry out its functions

6.3 Key Result Areas

The key result areas in this thematic area include:

- a) Analysis of functions;
- b) Costing of functions; and
- c) Transfer of functions.

6.4 Deliverables

The deliverables for the thematic area are:

- a) Framework for effective transfer of functions developed;
- b) Framework for effective transfer of residual functions developed;
- c) Framework for transfer of functions under mutual agreement developed; and
- d) Semi-annual progress reports on transfer of functions prepared.



6.5 Methodology and Application

The Kenyan context of devolution categorizes functions as exclusive, concurrent and residual. The exclusive functions are performed at either level of government while concurrent functions are assigned to both levels. Apart from the assigned functions in the Fourth Schedule, the national government also performs the concurrent functions with the county governments. COK, 2010 Art.186 (2) provides, “A function or power that is conferred on more than one level of government is a function or power within the concurrent jurisdiction of each of those levels of government”. This is usually a potential source of conflict because neither the Constitution nor the enabling acts of Parliament have defined the procedure or regulations regarding performance of concurrent functions.

In the case of functions not expressly assigned by the COK, 2010 or national legislation to county government, such function is construed to be the responsibility of the national government. COK, 2010 Art. 186 (3) provides, “A function or power not assigned by this constitution or national legislation to a county is a function or power of the national government”. In order for clarity in performance of functions, there is need to unbundle them and assign to the relevant level of government accordingly. Therefore, residual functions are those that are not clearly assigned by the COK, 2010 to either level of government and by default are thus considered as functions of the national government.

Against the above background, IGRTC used the principles of assignment or delineation of functions to undertake unbundling and transfer of functions. These principles include:

(i) **Constitutionality**

This is in a case where a function has been clearly assigned in the 4th Schedule of the COK, 2010.

(ii) **Subsidiarity**

The principle is used where a public service is assigned to the lowest level of government capable of delivering it. Art 174 & 187.

(iii) Aligning capital and recurrent expenditures

The principle is used where one level of government is responsible for both asset creation and operational costs.

(iv) Economies of Scale

The principle is used where there are savings to be realized in having a larger unit to deliver the service.

(v) Spillovers

The principle is used where a service provides benefits or costs in more than one county.

(vi) Transferability of functions

The principle is used where there is no permanency in the assignment of functions. Article 187(1) of the COK, 2010 recognizes this principle and provides for transfer of functions.


(vii) Policy Formulation, Regulation, Standard vis-a-vis Implementation

The national level of government is assigned and performs the functions of formulating policy and setting national standards. On the other hand, the county governments perform the devolved functions in accordance with the national and own legislation. In this regard, county governments can also make their policies and enact legislation so long such actions are not in contradiction with the national government policies and laws.

(viii) Principle of Proportionality

Level of government is allowed to only take action to the extent that is necessary to achieve the stated objectives. Article 190(3) provides that Parliament shall enact legislation that will allow national government to intervene to ensure county governments perform their functions.





It is important to note that functional assignment and transfer are not a one-time event, but rather a continuous process. Before the end of TA and the current IGRTC term, several functions were transferred through the following legal instruments among others:

- a) Legal Notice No. 16 of 1st February, 2013 on transfer of livestock sale yards; county abattoirs; licensing and control of undertakings that sell food to the public; cemeteries, funeral parlors and crematoria; refuse removal, refuse dumps and solid waste disposal; racing, liquor licensing, cinemas, video shows and hiring; county parks, beaches and recreation facilities; local tourism; trade licenses; and animal control and welfare functions among others;
- b) Legal Notice No. 116 of 9th August 2013 on transfer of agriculture, crop, and animal husbandry functions; fisheries; forestry; county health facilities and pharmacies; promotion of health care; veterinary service; electricity and gas reticulation, energy regulation; public works; cooperative societies; ambulance services among other devolved functions;
- c) Gazette Notice No. 825 of 7th February, 2014 on guidelines for transition of staff to counties;
- d) Legal Notice No. 33 of 17th March, 2014 on transfer agricultural training center, and agricultural mechanization station; and
- e) Gazette Notice No. 2238 of 1st April, 2016 on clarification of functions as exercised by the national and county government in accordance with the fourth schedule of the Constitution regarding functions of natural resources, water, land including survey and mapping, urban development, regional development authorities, housing, physical planning, metropolis, and public works.

During the reporting period, IGRTC published the following notices:

- a) Gazette Notice No. 2701 of 24th March, 2017 on institutional structures for the verification and transfer of the assets and liabilities of the defunct local authorities;

- b) Gazette Notice No. 8753 of 8th September 2017 on delineation of betting, casinos and gambling functions;
- c) Gazette Notice No.5711 of 21st June, 2019 on Institutional structures for the identification, verification and transfer of assets and liabilities of the national government relating to devolved functions; and
- d) Legal Notice No. 142 of 9th August, 2019 on transfer of library functions

6.6 Achievements in the thematic area

i) Publication of a study on emerging issues on transfer of functions to national and county governments

The study was justified by the need to assess the current status of functional transfer due to challenges that had been identified in relation to each category of functions namely; exclusive, concurrent and residual. The study included reviewing the status of the implementation of the functions fully or partially transferred as well as the once performed concurrently. It was guided inter alia by the framework set out in Section 15 of the 6th Schedule to the COK, 2010, the TDGA, 2012, the IGRA, 2012 and the CGA, 2012.

Objectives of the study

The overall objective of this study was therefore, to review, identify and offer recommendations on the status of transferred functions and operationalization of transfer of residual functions. In particular the study was to:

- a) Identify the functions so far transferred;
- b) Identify and review those functions that have been transferred but are still being undertaken by the national government and to make recommendations on their complete and comprehensive transfer;
- c) Identify and review the status of functions that are not yet transferred and make recommendations on their transfer;
- d) Identify concurrent functions and analyze how they are being performed;
- e) Make recommendations on more effective performance of concurrent functions; and



- f) Make recommendations on the operationalization of transfer of residual functions.

Findings of the study

This study provided in depth analysis on the status of transfer of functions to national and county governments. It delineated clearly the functions that are exclusive, concurrent and residual. While exclusive functions are clear as per the Fourth Schedule, the other categories are not. Hence the study was able to delineate them for ease of implementation. Furthermore, the study found out that there were still a few exclusive functions that were yet to be operationalized across the counties.

The major difficulty with respect to exclusive functions was that the organs of national government were still performing some or certain aspects of them, despite the transfer to county governments. This challenge was most evident in the functions of housing, libraries, museums, roads, water sector, cooperatives and agriculture. It also emerged from the study that several intergovernmental discussions were ongoing on how to mitigate issues arising from these challenges although the issues were yet to be fully determined and agreed upon. The study analyzed the specific functions where challenges existed and proposed ways of dealing with the identified challenges.

On concurrent functions, the study identified statistics, sports and sport education, public works, disaster management, betting, casinos and other forms of gambling. The others were in areas of energy, local languages, tourism, environment and water resources. The study thus provides some recommendations to address the approach to implementing concurrent functions.

The study finally dealt with areas of residual functions. It identified the main residual functions including social development, children services, mining, adjudication, settlement and land registration as well as implementation of regional development programs and projects. The report provided the full criteria for determining a residual function in order assist in functional categorization.

ii) Publication of the Finalization of Emerging Issues in the Agriculture Sector to inform the unbundling of Functions of State Corporations/ Institutions under the sector


Among the residual activities that IGRTC took over from the defunct TA were the unbundling and functions of state corporations performing devolved functions. IGRTC facilitated several consultative meetings to discuss issues of unbundling the functions of institutions under the Ministry of Agriculture, Livestock and Fisheries in late 2018 and early 2019. The discussions led to the IGRTC commissioning this study to determine the status of transfer of functions in the agriculture sector.

Objectives of the study

In the pre-2010 constitutional dispensation, the agriculture sector was highly centralized with many departments and agencies in the sector managed under different ministries of the then central government. An April 2013 study of the sector indicated that agriculture was managed under at least 10 sub-sectors, i.e. crops; horticulture; livestock; fisheries; land; water; cooperatives and marketing; environment and natural resources sub-sector; regional development; and development of arid and semi-arid areas (ASAL). The fact that the mentioned sub-sectors fell under different ministries made the transition to a consolidated and harmonious sub-sector for the county governments a complicated process.

Despite the Fourth Schedule of the COK, 2010 having detailed the separation of functions to be undertaken by each level of government and following the unbundling of functions by the defunct TA from 2013 to 2015 and thereafter, the IGRTC, the reality is that implementation of the functions did not progress as smoothly as was expected. There were many instances of duplication of responsibilities. The instances of national government institutions performing functions that were devolved to the counties are still rampant. The other purpose of the study was to use its outcome to strengthen the sectorial forum in the agriculture sector, the Joint Agriculture Sector Consultation and Cooperation Mechanism (JASCOM).





The objectives of the study were therefore to review existing literature on the status of transfer of functions in the agriculture sector with a view of clarifying the relevant level of government to perform given segments of concurrent functions. Secondly, it was to identify laws and policies in the crops, livestock and fisheries sub-sectors in order to identify the sections that required review and alignment to the COK, 2010 to facilitate implementation by the relevant level of government. Finally, the study was to identify concurrent functions and clarify the level to perform each segment of the function.

Findings of the study

The study analyzed 34 relevant state corporations within each department in the agriculture, livestock and fisheries sub-sectors outlined in Executive Order No.1 of 2018 on the Organization of the National Government. The analysis focused on the nature and status of legislation that established them. In each area analyzed, the study provided recommendations on how to address the issues therein.

The study also analyzed the governance challenges facing the sector that negatively impacted on the progress that were being made in other supportive sectors. The report took cognizance of The Report of the Presidential Taskforce on Parastatal Reform , 2013 whose mandate in part, included “j,” identify functions previously performed by State Corporations on behalf of national government but assigned to the county governments at Schedule Four (4) of the Constitution of Kenya, 2010 and “k”. Recommend how State Corporations performing functions of the national government will interface with county governments;”


The study proposed re-alignment of the institutional structure of the sector which would require reviewing the functions of the agriculture sector state agencies in relation to the role of the national and county governments as prescribed in the COK, 2010 and with due regard to the Taskforce Report as follows:

- i. Legal and regulatory reforms: Work should commence on the process of amending the agricultural legislation as recommended in the report. The Ministry of Agriculture, Livestock and Fisheries should work together

with the COG, IGRTC, the Attorney General, the National Assembly, the Senate and the Kenya Law Reform Commission on the legal reforms. The study recommends areas for broad consideration to include: Providing for the role of county governments where this is yet to be done, i.e. in majority of all pre-2010 agricultural legislation; Consolidating the provisions of different pieces of legislation that guide on the same subject matter, e.g. those on plant pest and disease control; and Repealing redundant legislation


- ii. Institutional restructure: Successful legislative reforms meant to correctly assign functions as per the Fourth Schedule to the Constitution. Legal reforms to restructure agriculture sector institutions, being mainly state corporations of the national government would have to be undertaken. Given that majority of implementation functions in the agriculture sector were constitutionally placed with county governments, an institutional restructuring would practically mean a reduction of implementation scope for some state corporations, a merger of some or dissolution of those rendered redundant.
- iii. Operationalization of agriculture sector intergovernmental committees: Intergovernmental sector committees focused on the various sub-sectors of the agricultural function should be operationalized so as to streamline efforts between the national and county governments in delivery of services to farmers and pastoralists. However, the COG was of the opinion that the current intergovernmental structures between counties and national government should be expanded. COG also felt that the nature of responsibilities should be clearly defined to include planning committees to oversee the full implementation of devolution in the sector. These structures would deal with budget, functional, and institutional rationalization, and policy (re)alignment in the Sector.
- iv. Equitable sharing of national revenue: The division of revenue between the national and county governments by the National Assembly should reflect the greater responsibility of county governments in implementation of the agriculture sector functions.



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- v. Strategic approaches to development of county policies and legislation:
For better service delivery:
 - (i) County policies and legislation on agriculture should not be replica of the national level legislative documents but should speak to the varied needs of the specific counties.
 - (ii) Development of county level policies should take a multi-sectorial approach, more so those in which the livestock sub-sector heavily relies on scarce natural resources, i.e. pastures and water, and where there are competing priorities of natural resource management versus rangeland management. Such a multi-sectorial approach should ensure that policies developed speak to ground realities, do not contradict each other and offer practical solutions to perennial clashes over grazing lands and water resources between communities.
 - vi. Meaningful public participation in implementation of agricultural programs:
It was vital for county governments to have meaningful public participation when developing programs in any crop, livestock or fisheries sub-sectors. Decisions made on such programs should not be for political mileage but should ideally be for the benefit of majority of citizens in the county in the long term.

The study further identified some challenges in the sector as follows:


1. Poor analysis of the unbundled functions: In an ideal situation, an intergovernmental analysis on the actual scope of the unbundled functions should have taken place prior to gazettment of the transfer of agricultural functions to counties. However, no such analysis took place, nor was a common understanding reached between the national and county Governments after gazettment, i.e. since 2013 to date. The result is that each level of government is left interpreting the relevant laws to suit their specific agendas.
2. Inadequate human resources capacity: County governments have challenges with technical staffing. For example, extension officers required who used to provide advisory services to farmers and pastoralists were



no longer available in the counties. These challenges have been used by the national government to allege that county governments had no capacity to implement functions in a sector as important as agriculture. On their part, county governments accuse the national government of refusing to respect the principle of resources follow functions. The national government had also abdicated its responsible by failing to build the capacity of the county in order to close the capacity gaps. A second reason for the human resources problem is that the transfer of the agricultural function was not done in an asymmetrical and phased manner as was expected by the Constitution. Instead, majority of the functions were transferred by the August 2013 Gazette Notice simultaneously. The result of this was that county governments were not ready for the implementation of certain functions.

3. **Ambiguity and unconstitutionality of legislation:** The foregoing challenges can be termed as “historical challenges” and should have been resolved five years into the full implementation of devolution. However, challenges in the agricultural sector continue to persist. Some challenges result from the ambiguity and contradictions in various pieces of legislation and regulations. The main problem is that the major laws governing the sector do not abide by the spirit of the Constitution, more so on the issue of unbundled functional assignment to county governments. The result is that the national government is left performing a number of functions, which are either wholly county government functions or those that should ideally be performed in a collaborative manner within the intergovernmental precepts of Articles 6(2) and 189 of the Constitution.
4. **Existing institutional and legal infrastructure that is in violation of the constitutional allocation of functions between the two government levels:** Multiple national government state corporations are performing county government functions due to the existing legislation which give these state corporations the mandate to perform functions that have since been transferred to the county governments. This has been experienced in the water sector where a number of state corporations have been





established with thin functional boundaries. The reason for this is that majority of legislation enacted prior to August 2010 were yet to be amended or repealed to enable alignment with the post-2010 devolved governance structure. The import of this is that such statutes do not recognize the presence of county governments. Hence, as expected, state corporations established therein are implementing functions for which they were created at the time which were now county government functions.

Therefore, there is need for institutional re-alignment in the agricultural sector state-corporations which is likely to result in either:

- a) A reduction in scope of some state corporations;
 - b) Merger of state corporations performing dual roles, or whose functions are best performed under one management body; or
 - c) Dissolution of redundant state corporations.
5. Slow operationalization of intergovernmental relations structures: There is need to hasten the process of consultations between the national and county governments in resolving the issue of transfer of devolved agricultural functions still being implemented by national government state corporations. This aspect has however been addressed by the establishment of JASCOM.
 6. Some legislation that were enacted after August 2010, and which should respect the functional and institutional integrity of county governments do not necessarily do so. This may be partially attributed to the slow pace of analysis and unbundling of functions assigned in the Fourth Schedule at the time. The defunct TA completed the exercise late 2013 which in turn meant that legislators and other state organs responsible for development of policies and laws between August 2010 and December 2013 did not have the benefit of uniform guidance on the scope of each of these functions for either the national or county governments. In this regard, some of the crucial agriculture sector policies and laws are not aligned to the provisions of the COK, 2010 hence the need for review.

The following strategies were recommended for the re-alignment of the sector to enhance service delivery:

- a) Implement proposed legal and regulatory reforms;
- b) Restructure agriculture sector state corporations to allow county governments to perform their implementation functions;
 - i. operationalize agricultural sector intergovernmental committees to guide consultations and mediations amongst governments;
 - ii. apply equitable sharing of national revenue to the two levels of government by the National Assembly;
 - iii. pursue strategic approaches to the development of county policies and legislation, followed by their implementation; and
 - iv. integrate meaningful public participation in the implementation of agricultural programs

Observations and stakeholder recommendations during the study included:

- a) Need for alignment of laws to the COK, 2010 through policy review.
- b) Address human resource issues in the agriculture sector. Extension services particularly experienced high level of turnover. Issues of disparity in remuneration between former defunct local authorities' staff and county staff also needed to be addressed.
- c) Provide structures for engagement between counties and the national government on international commitments. This is a national government function. The issues include consumer protection, international treaties among others.
- d) The Ministry of Agriculture recommended a review of the unbundled functions that were undertaken by the defunct TA. This was because of emerging issues in implementing the functions. It maintained that some of the devolved functions that needed further clarity touched on the health of citizens.



- e) Kenya Veterinary Vaccine Production Institute (KEVEVEPI) provides and supports counties with vaccines. This institution is therefore critical in supporting the counties.
- f) The review of policy and laws in the Dairy sector should provide protection to farmers especially from imports of dairy products. Kenya Dairy Board develops regulation for enforcement by the county governments.
- g) The Meat Control Act, and Stock and Produce Theft Act should protect farmers from external exploitation. For example, it was observed that Tanzania had become the new food basket for Nairobi where local Kenyans were the main importers thus making border counties like Kajiado vulnerable when farming and marketing their produce. There should be regulations on licenses. The Ministry should work closely with the counties in development regulations on licenses to control the inter-border trade.
- h) In the fisheries sector, there should be clarity on the devolved and national functions. For example, aquaculture and fishing activities are devolved. The fishing research, international marketing, standards, quality control, protection especially in the case of wild catch and fisheries in the exclusive economic zones (EEC) were national government function.
- i) Research linkages between universities and counties should be addressed as counties provide the ground to carry out research.
- j) The land reclamation function though left out of the study, supported food security, hence should have been included in the study.
- k) The Kenya Fisheries Advisory Council is independent from the Kenya Fisheries Service. Some institutions have departments offering advisory services and not necessarily setting up a different institution for the same.
- l) There was need for consultation with county governments in Fertilizers and Animal Foodstuffs Act. CAP 365
- m) Kenya Fishing Industries Limited is a new institution in the fishing sector. There should be clear distinction in the roles of the new institution and the Fish Marketing Authority.

- n) The status of Nyayo Tea Zones Development Corporation should be given more thought and be accommodated in the process.
- o) National Cereals and Produce Board (NCPB) does not get revenue from the Exchequer. NCPB is self-revenue generating. It is a strategic institution with extensive stores and intervenes in food security. The Board is a regulatory body and not a marketing body.
- p) Need for intergovernmental partnership between the two levels of government. This takes cognizance of the fact that functions in the agriculture sector cannot be implemented in a silo, but that its success depends on efforts made in soil and water conservation, agricultural research, local and international trade, opening up of markets through construction of national trunk roads, etc. Hence, while there are instances of clear functional demarcation between the role of the national and county governments and call for legal and institutional reforms, there are also instances where the two levels of government must work together to ensure food security for the people of Kenya.


iii) Transfer of library function

IGRTC in consultation with sector stakeholders finalized modalities to transfer the function and attendant resources of the library function. The transfer was to take effect from the 1st July, 2020. IGRTC has also prepared a gazette notice in consultation with other stakeholders and forwarded it to the Office of the Attorney General for publication.

iv) Unbundling and Transfer of Museums Function

During the 6th Ordinary Summit meeting held in June 2018, a Sub-committee was formed to review the implementation of CARPS report presented before the Summit. In its first sitting, the Sub-Committee reviewed the status of the transfer of functions as provided for in the context of the Fourth Schedule and articles 185 (2), 186 (1), 187(2)) of the COK, 2010. One of the issues discussed was Museums Function, as contained in Part Two of the Fourth Schedule to the COK, 2010 - the Functions and Powers of the County Governments under function 4 (g).





This function was transferred by the defunct TA through Legal Notice No. 116 of 9th of August 2013. However, it has not been operationalized at the county due to legal implications. For example, the classification and mapping out of what constituted county and national museums had not been properly undertaken. The National Museums of Kenya was therefore performing the function pending finalization of legal and administrative processes.

IGRTC therefore, undertook this residual function by facilitating and coordinating all stakeholders in the sector to finalize the delineation of museums function as provided in the COK, 2010. Initially the timeline was that the transfer of county museums be undertaken with the resources attached be transferred to the counties by start of FY 2019/2020. This however, was not feasible as a number of issues needed to be addressed before such transfer. For example, the National Museums of Kenya were of the opinion that the existing laws be reviewed to facilitate smooth and orderly transfer of the function. The engagements are still ongoing. The consultations were due for conclusion and transfer gazetted within the financial year 2020/2021.

v) Unbundling of disaster management functions

Under the Fourth Schedule of the COK, 2010, disaster risk management functions fall within the purview of both the national and county governments. Thus by virtue of article 186 (2), the function is deemed to be within the concurrent jurisdiction of both levels of government. It appears on part 1 and 2 of the Fourth Schedule as “Disaster management” and “Firefighting services and disaster management” for the national government and county governments respectively.

The defunct TA transferred the function of firefighting services and disaster management through Legal Notice No. 16 of 1st February, 2013 to the county governments. However, the transfer was not preceded by unbundling. Due to inadequate unbundling and lack of clarity between the two levels of government on implementation of the disaster management function, there had been challenges on coordination, role clarity and resourcing that impeded service delivery between the national and county governments. In order to address

the challenges experienced in the implementation of the disaster management function, IGRTC engaged stakeholders in the sector to look at the concurrent nature of the function, analyze and delineate accordingly. IGRTC with sector stakeholders embarked on the unbundling of the functions. The activity was completed and awaiting gazettelement.

For the purposes of unbundling and assignment of concurrent disaster management functions, the following were taken into consideration:

- a) Hazards occurrence and effects are sector/function specific hence responsibility for the management shall be according to the functional assignment as per the Fourth Schedule to the COK, 2010;
- b) If a certain hazard occurrence is specific on a function assigned to a county government, then the responsibility for mitigating such a hazard lies with the respective county government; and
- c) Whereas hazards occurrence in relation to functions assigned to national government, the responsibility for mitigating and managing lies with national government.

The unbundling is also guided by the National Disaster Risk Management Policy, 2017 and specifically the levels of disasters as per the table below:

Level 1	Localized emergency events dealt within the regular operating mode of the protective, emergency and health services in Villages, Wards and Sub-County
Level 2	Emergency events that overwhelm the capacity of the resources in Sub-County, but which do not overwhelm the capacity of the county resources to respond and recover
Level 3	Emergency events that overwhelm a county and require mobilizing national resources to respond and recover
Level 4	Emergency events that overwhelm the existing national response capacity, thus prompting the President to seek Regional/International assistance to support the country in response and recovery

The above assigned functional levels are described as:

- a) Any hazard that is within the functions assigned to county governments under the Fourth Schedule and it is within level 1 or 2 is the responsibility of the county government;



- b) Any hazard that is within the functions assigned to county governments under the Fourth Schedule of COK, 2010 and it is within level 3, the national government shall provide the necessary leadership and intervention in consultation with the respective county government. However the functional responsibility remains with the level of government to which it is assigned as per the Fourth Schedule, COK 2010; and
- c) Any hazard that is within the exclusive functions assigned to the national government under the Fourth Schedule of the COK 2010, and falls under levels 1-4; will be the responsibility of the national government.

Disaster risk management

The stakeholders while deliberating on the unbundling of disaster risk management observed that there was a paradigm shift from reactive to proactive approach to disaster risk management. Proactive approach requires steps that include prevention, preparedness, response and recovery. These steps in disaster risk management can be described as follows:

I. Prevention

Prevention involves activities and measures to avoid existing and new disaster risks. Prevention (i.e. disaster prevention) expresses the concept and intention to completely avoid potential adverse impacts of hazards, vulnerability conditions and exposure through action normally taken in advance of a hazardous event. Examples include dams or embankments that eliminate flood risks, land-use regulations that do not permit any settlement in high risk zones, and seismic engineering designs that ensure the survival and function of a critical building in any likely earthquake.

Prevention measures can also be taken in or after a hazardous event or disaster to prevent secondary hazards or their consequences such as measures to prevent contamination of water supplies or measures to eliminate natural dams resulting to earthquake induced landslides and/or rock falls. Very often the complete avoidance of losses is not feasible and the task transforms to that of mitigation. Partly for this reason, the terms prevention and mitigation are sometimes used interchangeably in casual use.

2. Preparedness

The knowledge and capacities developed by governments, professional response and recovery organizations, communities and individuals to effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current disasters.

Preparedness action is carried out within the context of disaster risk management and aims to build the capacities* needed to efficiently manage all types of emergencies and achieve orderly transitions from response through to sustained recovery. Preparedness is based on a sound analysis of disaster risks and good linkages with early warning systems, and includes such activities as contingency planning, stockpiling of equipment and supplies, the development of arrangements for coordination, evacuation and public information, and associated training and field exercises. These must be supported by formal institutional, legal and budgetary capacities. The related term “readiness” describes the ability to quickly and appropriately respond when required.

3. Response


Response is actions taken during or immediately after a disaster in order to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the people affected.

The provision of emergency services and public assistance during or immediate after a disaster in order to save lives, reduce impacts, ensure public safety and meet the basic subsistence needs of the people affected

Disaster response is predominantly focused on immediate and short-term needs and is sometimes called disaster relief. Effective, efficient and timely response relies on risk-informed preparedness measures, including the development of the response capacities of individuals, communities, organizations, countries and the international community.

The institutional elements of response often include provision of emergency services and public assistance by public and private sectors and community sectors, as well as community and volunteer participation. The division between this response stage and the subsequent recovery stage is not clear-cut. Some





response actions, such as the supply of temporary housing and water supplies, may extend well into the recovery stage.

4. Recovery

Recovery is the development, coordination and execution of service and site restoration plans for impacted communities and reconstitution of government operations through individual, private sector, non-governmental, and public assistance programs that identify needs and define resources.

These are therefore decisions and actions aimed at restoring or improving livelihoods, health as well as economic, physical, social, cultural and environmental assets, systems and activities, of a disaster-affected community or society. This must be aligned with the principles of sustainable development to avoid or reduce future disaster risk.

Categorization of the unbundled functions awaiting gazettelement are presented in Annex 6.

▪ Resourcing for Disaster Management Functions

The PFMA, 2012, section 110 states that 2% of county allocation may be set aside by each county for emergencies in every financial year. With the delineation of roles between the two levels of government done, it is possible to now apportion and mobilize such resources to implement the disaster management functions. This is in line with the principle of resources follow function.

▪ Challenges in the Implementation of Disaster Management Functions

Throughout the consultations a number of challenges were flagged out by the stakeholders, which need to be addressed including:

- (i) Lack of a unifying national legislation in the management of disasters. The function of developing policies, laws, regulations, norms and standards on disaster management is the function of the national government. In absence of national policy, legal and regulative frameworks, the county governments face challenges in developing own county specific measures to deliver services;

- (ii) Inadequate vertical and horizontal coordination of stakeholders in all matters relating to disaster management e.g. distribution of relief food;
- (iii) Delay to develop a law to operationalize the National Disaster Risk Management Policy, 2017;
- (iv) The National Disaster Response Plan of 2009 is yet to be aligned to the devolved system of governance;
- (v) Lack of documented County Level Response Plans;
- (vi) Absence of Hazard Atlas in most of the counties. Only 8 counties have developed hazard atlas with the help of National Drought Management Authority (NDMA) and National Disaster Operation Centre (NDOC) ;
- (vii) Failure by some counties to establish and utilize county emergency funds;
- (viii) Weak disaster risk management coordination structures at both levels of government;
- (ix) Inadequate human resource capacity to manage disaster risks at the county level; and
- (x) The national and county governments invest heavily on response and recovery rather than prevention and preparedness/mitigation.

■ Recommendations

1. National government should fast track development of national disaster risk management legislation.
2. Strengthen Coordination of Disaster Risk Management:
 - i. County governments to establish well-resourced county disaster management units.
 - ii. Establishment of inter-county coordination framework to address disasters that affect more than one county.
 - iii. Establishment of an intergovernmental coordination framework with regards to policy development, resource mobilization and utilization and program implementation.
3. Partnership with private sector and non-state actors in implementation of disaster risk management.




4. Development of capacity building and technical assistance programs for disaster risk management by the national government.
5. Development of capacity building and technical assistance programs for disaster risk management by the county governments to the communities.
6. Development of public civic education programs to create awareness.
7. County governments to develop legislation on disaster risk management and establish a county emergency fund in accordance with PFMA, 2012 Section 110.

vi) Transfer of Joint Loans Board Scheme

The Joint Loans Board (JLB) scheme is a revolving fund established in 1954 for small scale traders. It was meant to bring the indigenous people into the mainstream business through trading activities. The state department for trade stopped the issuance of loans to the scheme in 2016. IGRTC together with sector stakeholders has embarked to transfer the scheme to counties and secure the collaterals that were deposited by the loan beneficiaries. By the year 2016, the Scheme had issued loans worth over KSh. 1.2 billion to over 51,000 traders. Disbursement of the loans was suspended in 2016 awaiting formal transfer of the function to the counties. A framework to identify, verify and transfer the function to county governments has been developed. Apart from templates for data capturing, institutional structures have also been developed in each of the 47 counties. Training for the established county teams has been done. Reports from each county teams were expected, upon which analysis of reports would be carried out followed by eventual transfer of the schemes to county governments.

vii) Unbundling of the Cooperatives functions

The COK, 2010 devolved the cooperative societies function to county governments except policy formulation; legislation, regulations, development of norms and standards, technical assistance and capacity building which are functions of the national government. The



implementation of the cooperative societies function at the counties has faced various challenges threatening the growth and development of the cooperative movement in Kenya. During the Sixth Summit, a resolution was made that the function of cooperatives among others be delineated and implemented at the county level as per the COK, 2010.

In order to implement the Summit directive on the cooperatives function, the State Department for Cooperatives embarked on developing a cooperative policy. As the secretariat to the Summit, IGRTC provided an expert consultant as technical assistance to the Department with the support of USAID / AHADI in the development of the policy. IGRTC in consultation with sector stakeholders further delineated the cooperatives functions to inform the policy.

The policy was developed anchored on the COK, 2010, Article 186 (I) and the Fourth Schedule, and the Legal Notice No. of 137 of 9th August 2013. The policy identified the national government functions to include formulation of policies, and legislation, capacity building and technical assistance to county governments, and setting of national norms and standards in the sector. On the other hand, the functions of county governments include implementation of county specific policies and laws and enforcement or implementation of national legislation, norms and standards. Details of delineated functions are presented in Annex 6.2.

- viii) Delineation and gazettelement of the functions of betting, casinos and other forms of gambling.

6.7 Pending activities in the thematic area

The following are the pending issues in the thematic area:

- a) Finalization of transfer of joint loans board function to counties;
- b) Gazettelement of delineation of functions of agriculture sector including state corporations;
- c) Gazettelement of delineation of disaster risk management functions;
- d) Delineation of the water sector and its state corporations functions;



- e) Gazettement of delineation of cooperative societies functions;
- f) Costing of functions; and
- g) Finalization of delineation and gazettement of transfer of museums function to the counties.

6.8 Challenges in the thematic area

The following challenges were identified in the thematic area:

- a) Lack of regulations on transfer of functions;
- b) Inadequate capacity in county governments to participate in unbundling and functional assignment processes;
- c) Slow pace in aligning existing policies, laws and regulations with the devolved system;
- d) Inadequate standards and norms for service delivery;
- e) Concurrency nature of functions hence duplication; and
- f) Perennial inadequacy of human and financial resources to enable effective implementation of devolved functions.

6.9 Lessons learnt

Whilst the unbundling of functions was a residual function taken over from the defunct TA by the IGRTC in accordance with the Intergovernmental Relations Act 2012, its implementation by IGRTC emerged to be one of the most effective approaches for resolving intergovernmental disputes. This manifested itself in the unbundling of export meat inspection, Betting, Gaming and Casinos, and primary cooperative society functions.

In the case of inspection of meat for export, the unbundling not only resolved a conflict but it unlocked revenues in millions of Shillings which had been withheld by the meat exporters pending resolution of the conflict. In the case of the Casinos, it removed barriers towards the employment of gaming inspectors aimed at increasing the capacity of both levels of Government. In the Cooperative sector, the unbundling of the functions of primary cooperatives societies enabled the finalization of the development of the sector policy.

The unbundling of functions is essential in many other aspects. Whilst the defunct TA had transferred several functions in 2013 including libraries and museums, the performance of these functions by county governments remained in limbo due to the fact that the process of analyzing and allocating the functions and units to the two levels of government in a consultative and mutually agreeable manner had not taken place. This has since been successfully done and county governments have taken possession and ownership of their assets in accordance with the COK, 2010. Unbundling in this case became the means through which implementation of the Constitution was achieved.

6.10 Recommendations

The recommendations provided by the thematic area are:

- a) The national government should develop regulations on transfer of functions;
- b) Policies, laws and regulations should be aligned to the devolved system of governance and in compliance with the COK, 2010;
- c) The national government should develop comprehensive standards and norms for service delivery;
- d) More resources should be availed to enable further unbundling and assignment of functions;
- e) As envisaged in the COK, 2010 Fourth Schedule, national government should provide technical assistance and capacity building to the county governments;
- f) Both national and county governments need to pay attention to the establishment and strengthening of intergovernmental sectorial forums; and
- g) Use of ADR mechanisms should be enhanced in order to reduce intergovernmental conflicts instead of resorting to judicial litigation.



7

MONITORING AND EVALUATION, ASSETS AND LIABILITIES

7.0 Introduction

The main function of this thematic area is to work with various stakeholders including national and county government agencies in monitoring and evaluating performance as envisaged in the IGRA, 2012 s.8 (f) and (h). In terms of residual functions inherited from the defunct TA, the thematic area is responsible for the audit and transfer of assets and liabilities within the two levels of government. The thematic area has two sub-themes namely; Part A on monitoring and evaluation, and Part B on assets and liabilities.

Part A: Monitoring and Evaluation

The mandate of the monitoring and evaluation (M&E) sub-thematic area is provided for in section 8(f), and (h) and section 14 (a) of the IGRA, 2012. Specifically the functions of the M&E sub-thematic are:

- a) Evaluating the performance of national or county governments and recommending appropriate action;
- b) Monitoring the implementation of national and county development plans and recommending appropriate action; and
- c) Submitting quarterly reports for consideration and presentation to the Summit and to the Council.

The IGRTC as the secretariat of the Summit and the COG facilitates the monitoring and evaluation of the implementation of development plans of national and county governments. IGRTC is expected to report on the implementation status of the plans to the Summit and COG.

7.1 Objectives of the M&E sub-Thematic Area

The objectives of the Monitoring and Evaluation of the sub-thematic area are to:

- a) Develop a monitoring and evaluation framework for the performance of national and county development plans;

- b) Prepare performance report on implementation of the national and county development plans and make appropriate recommendations;
- c) Submit performance reports of the Summit and COG;
- d) Prepare quarterly reports and submit to the Summit and COG;
- e) Advise IGRTC on policy and strategic leadership to ensure effective achievements of the institutional goals;
- f) Provide guidance and support to the technical teams to ensure quality work outputs; and
- g) Develop and manage strategic partnerships with key institutions and individuals to support and enhance the work of IGRTC.

7.2 Responsibilities of the M&E sub-Thematic Area

The responsibilities of thematic area through its sub-committee are to:

- a) Establish an M&E Unit to operationalize the objectives of the thematic area;
- b) Review the existing monitoring and evaluation performance reports and develop an M&E framework to monitor the performance of national and county governments;
- c) Assess the status of implementation of the M&E tools, Methodology and process;
- d) Develop an appropriate tool to evaluate the performance of the two levels of government;
- e) Validate and disseminate the evaluation tool;
- f) Monitor and evaluate the performance of national and county governments
- g) Prepare quarterly reports;
- h) Gather relevant information, including the requisition of reports, records, documents or any other information from any source including state departments and other public entities; and
- i) Require production of any information necessary for the performance of the function of IGRTC as and when necessary.



7.3 Achievements of the M&E sub-Thematic Area


The following are the achievements of the M&E sub-thematic area.

i) Development and publication of Framework for Monitoring and Evaluation of Performance of National and County Governments and Intergovernmental Relations in Kenya

The background to the study was informed by Section 8 of IGRA, 2012 that establishes the functions of the Summit:

- a) Consultation and co-operation between the national and county governments;
- b) Promotion of national values and principles of governance;
- c) Promotion of national cohesion and unity, and consideration and promotion of matters of national interest;
- d) Consideration of reports from other intergovernmental forums and other bodies on matters affecting national interest;
- e) Evaluating the performance of national or county governments and recommending appropriate action;
- f) Receiving progress reports and providing advice as appropriate;
- g) Monitoring the implementation of national and county development plans and recommending appropriate action;
- h) Considering issues relating to intergovernmental relations referred to the Summit by a member of the public and recommending measures to be undertaken by the respective county government;
- i) Coordinating and harmonizing the development of county and national government policies;
- j) Facilitating and coordinating the transfer of functions, powers or competencies from and to either level of government; and
- k) Performing any other function that may be conferred on it by this Act or any other legislation or that it may consider necessary or appropriate.

The IGRA, 2012 requires the IGRTC to submit quarterly reports to the Summit.



The IGRTC is also required to submit an annual reports to the National Assembly, the Senate and the county assemblies within three months of the end of every financial year. Each of these institutions is expected by law to consider the reports and make recommendations, if any, to the Summit. Within three months of every financial year, the COG is also required to submit a report to the Summit, the Senate and the National Assembly. As the Secretariat of the Summit and the COG, the IGRTC is mandated to compile these reports in good time for approval by the Summit and the COG prior to their submission to the relevant entities.

In the external environment in which the accomplishments of IGRTC are expected, the substantive progress in the initial transition to devolved governance and the future state of intergovernmental relations need to be monitored as a technical remit. The ultimate aim is to realize a successful devolved governance system with positive and harmonious intergovernmental relations. The IGRTC is expected to monitor the implementation of national and county government plans, collate data on its substantive governance parameters over time, conduct studies where necessary, and report on overall pace and content of devolution to the Summit.

The need for developing the M&E framework was driven by lack of a robust instrument that adequately addresses the principles, workings, relationships, outputs and impacts of the devolved system of government in Kenya. It is instructive to appreciate that the institutions created by legislation namely, the Summit, the COG, and IGRTC as well as the ones that facilitate effective functioning of the devolved system of government have complementary role in ensuring success of devolution. However, the interventions made to strengthen M&E in the implementation of public development programs and projects notwithstanding, the following challenges are experienced:

- a) Weak M&E culture;
- b) Weak M&E reporting structures and multiple and uncoordinated monitoring and evaluation systems within and among institutions;
- c) Weak institutional, managerial and technical capacities;



- d) Untimely, rarely analyzed or disseminated data and low utilization of data/information; and
- e) Weak legal framework.

Objectives of the Framework

The framework was developed to guide and inform monitoring and evaluation of performance of national and county governments and intergovernmental relations between and within levels of government, and to address some of the M&E challenges as they relate to intergovernmental relations.

The specific objectives of the M&E framework were to:

- a) Determine progress of IGR programs/ plans and policies;
- b) Avail data necessary for dispute resolution between governments and within governments;
- c) Enhance consultation, cooperation and coordination between the two levels of government and amongst county governments;
- d) Enhance accountability and transparency among and between governments;
- e) Enhance efficiency and avoid duplication of roles, functions and reduce wastages;
- f) Evaluate performance of the national government and county governments; and
- g) Facilitate appropriate feedback for improved performance.

Outcome of the study

Several tools were developed for use in assessing the performance of national and county governments. The tools include M&E impact indicators; outcome and output indicators; indicators on unbundling and transfer of functions; implementation of functions; indicators on effectiveness of coordination; and management of IGR.

- ii) Preparation of quarterly reports up to December, 2018.

These reports were prepared accordingly.

7.4 Pending Activities in the M&E sub-thematic area

The following are the pending activities that have not been achieved during the period under review (2015-2020):

- i. Finalization of quarterly reports from January 2019- June 2020
- ii. Undertaking baseline survey to monitor and evaluate the performance of national and county governments and intergovernmental relations
- iii. Staffing of the M&E unit with requisite human resource capacity

7.5 Challenges identified in M&E sub-thematic Area

The M&E sub- thematic area faced the following challenges among others in undertaking its planned activities during the period under review:

- i) Inadequate staffing of the M&E unit impeded implementation of all activities envisioned during the period under review. There is one (1) in post against Eight (8) as per the establishment;
- ii) Inadequate understanding of the scope of evaluating the development plans of national and county governments;
- iii) Inadequate funds to carry out baseline survey to determine the performance of national and county government; and
- iv) Lack of regulations.

7.6 Lessons learnt in the M&E sub-thematic Area

The unit is in-charge of preparing the statutory reports and evaluating the implementation and performance of national and county governments on behalf of the Summit. The sub-thematic area also covers critical mandate of the IGRTC in evaluating and monitoring the internal performance of the organization. Despite this critical role the unit has not been adequately resourced to enable it to perform its duties effectively.

7.7 Recommendations of the sub-thematic area

The following are some of the recommendations in the thematic area:

- a) There is need to strengthen the M&E unit with requisite capacity to enable the thematic area perform optimally;



- b) There is need to build proper understanding with all stakeholders on the scope of evaluating the development plans of national and county governments by IGRTC;
- c) There is need to mobilize adequate financial resources for undertaking baseline surveys to operationalize the M&E framework; and
- d) There is need to develop regulations and guidelines.

Part B: Assets and Liabilities sub-Thematic Area

This section of the report details status of functional audit and transfer of assets and liabilities to the relevant levels of government.

7.8 Objectives of the Assets and Liabilities sub-thematic Area

The objectives of the Assets and Liabilities sub-thematic area are to:

- a) Prepare and provide mechanism for identification, verification, validation and transfer as appropriate the inventory of all existing assets and liabilities of national government, defunct local authorities and other public entities.
- b) Make recommendations for proper management of the public assets and liquidation options resulting from the activities in (a) above.

7.9 Responsibilities of the sub-thematic area

The responsibilities of this sub-thematic area are drawn from the activities that were not finalized by the defunct TA and are follows:

- a) Verify and audit the inventory of assets and liabilities of national government ministries whose functions were devolved as well as those of the defunct local authorities;
- b) Verify, audit, and where necessary transfer the inventories of state corporations/agencies;
- c) Facilitate the transfer of assets and liabilities between the two levels of government through publication in the Kenya gazette; and
- d) Develop a data center and link it with existing government information systems.

7.10 Achievements of the sub-Thematic Area

i) Identification, verification, validation and transfer of the assets and liabilities of the Defunct Local Authorities

Among the residual functions that IGRTC took over from the defunct TA, was the finalization of the identification, verification, validation and transfer of all existing assets and liabilities of government, local authorities and other public entities. The assets and liabilities of all the 175 defunct local authorities (DLAs) were successfully identified, verified, validated and transferred.

Objectives of the exercise


The overall objective of the exercise was to facilitate the identification, verification, validation and transfer of the assets and liabilities of the DLAs to county governments. The specific objectives of the assignment were to:

- i. Identify, verify and validate the assets and liabilities of the DLAs;
- ii. Identify, record and secure all relevant documents relating to the assets and liabilities of the DLAs;
- iii. Identify and document disputed assets and liabilities of the DLAs;
- iv. Prepare comprehensive registers of the assets and liabilities of the DLAs as at the 27 March, 2013;
- v. Identify and transfer all assets and liabilities of the DLAs to respective county governments; and
- vi. Develop liquidation options for the settlement of the liabilities of the DLAs.

Implementation Framework

IGTRC in consultation with key stakeholders developed an institutional framework to guide the process of undertaking the identification, verification, validation and transfer of the assets and liabilities of the DLAs. The framework was published vide Gazette Notice No. 2701 dated 24 March 2017 established institutional structures to undertake the identification, verification, validation and transfer of the assets and liabilities of the DLAs:



- 
- i. IGRTC (as the coordinating agency);
 - ii. The Inter Agency Technical Committee (IATT); and
 - iii. CALCs in each of the 47 county governments.

IGRTC provided leadership and policy guidance to the process and coordinated the work of the IATT and the CALCs. The IATT offered technical assistance that included comprehensive training and quality assurance to the process whereas CALCs undertook the identification, verification and validation of all assets and liabilities of the DLAs as at 27 March, 2013. IGRTC and IATT also inducted all CALCs members on the guidelines, procedures and methodology of undertaking the exercise. They further undertook monitoring and evaluation of progress made by all the CALCs.

The Gazette Notice No. 2701 required all CALCs to submit their reports to IGRTC by 31 July, 2017. However, because of the interruptions resulting from the prolonged electioneering period and budgetary constraints, 14 counties were not able to finish the exercise in time. To ensure all the counties finalized and submitted their reports, the exercise was extended to 31 August 2018 vide Gazette Notice No. 4370 dated 11 May, 2018. As at 31 August 2018, all the CALCs had submitted their reports.

Findings from the exercise

This report was a milestone in the process of implementation of the devolved system of government in Kenya. The report gave consolidated information on the status of assets and liabilities from the forty seven (47) counties.

The assets owned by the DLAs were classified as Land, Buildings, Motor Vehicles, Computers and Computer Accessories, Furniture and Fittings, Plant and Equipment, Current Assets, Biological Assets, Investments and Projects; and Work in Progress. The findings of each of this category were as follows:

Land: The land owned by the DLAs, which was categorized as public land, included (but was not limited) to land meant for:

- a) Offices for municipal, town and county councils;

- b) Social amenities like stadiums, recreational parks, bus parks;
- c) Schools;
- d) Slaughter houses;
- e) Market centers;
- f) Health centers;
- g) Access roads; and
- h) Game reserves and parks.

The following were the findings on land:

- a) The total parcels of land of the 175 DLAs were 62,342 parcels.
- b) There were 53,453 parcels that had been registered; 58 percent of the total parcels had been surveyed while 44 percent of the total land parcels had been planned.
- c) There were 3,106 parcels with dispute. The disputes vary from irregular/illegal allocation, undefined boundaries/demarcations, grabbing and encroachment.

Buildings: The Physical Planning Act Cap 286 and the Land Act, 2012 describes building as any structure or erection, and any part of any structure or erection of any kind whatsoever, whether permanent, temporary or movable, and whether completed or uncompleted. The buildings owned by the DLAs include:

- a) County and Town halls and offices,
- b) Social amenities such as halls,
- c) Schools,
- d) Market stalls/sheds,
- e) Health centers,
- f) Public toilets,
- g) Slaughter houses,
- h) Bus parks,
- i) Cattle dips,
- j) Mortuaries, and
- k) Housing estates/residential units.



The following were the findings on buildings:

- a) The total number of buildings identified, verified and validated were 8,461,
- b) The buildings with identification (LR No/Parcel No./Allotment Letter No.) were 4,938 while the buildings without are 3,523, and
- c) There were 160 buildings reported to have disputes. The disputes include illegal and irregular allocation or illegal occupation of public land.

Motor Vehicles: The motor vehicles owned by the DLAs in general included; saloon cars, lorries, vans, motorbikes, pick-ups, tractors, boats, ferries, combined harvesters, ambulances and trucks.

The summary of findings on Motor Vehicles:

- i) The total motor vehicle owned by the DLAs were 2,617,
- ii) 1,755 motor vehicles were serviceable and 838 were grounded, and
- iii) A total of 24 vehicles could not be physically available for verification.

Computers and Computer Accessories: A computer is described as an electronic device that can be instructed to accept, manipulate and store information in the form of digital data. Computers are broadly classified as Desktops, Laptops and Personal Data Assistant devices (PDAs). Accessories on the other hand are described as any device added to a computer that performs an additional feature, but is not required. The computer accessories included scanners, photocopiers, mouse, keyboards, Uninterrupted Power Supply (UPS), projectors, external speakers.

The summary of findings on computers and accessories were:

- a) A total of 5276 computers 5,100 and computer accessories and other electronic devices owned by the DLAs were identified, and
- b) Most of the computers were reported to be obsolete.

Furniture and Fittings: Furniture refers to movable assets, other than equipment that have no permanent connection to the structure of buildings and utilities. They include tables, chairs, stools, sofas, lockers, beds, cupboards, cabinets, bookshelves, and benches. Fittings are items bolted on the walls, floors, freely standing or hanging. Specifically, they include partitions, wardrobes, bookcases,

blinds, curtains and curtain rails, lockers, safes and demountable partition systems.

The summary of findings on Furniture and Fittings were:

- a) There were 36,761 pieces of furniture and fittings verified,
- b) There were 22,304 pieces of furniture and fittings with a total value of KSh 211,017,099.54 attached, and
- c) Most of furniture and fittings were old, dilapidated, broken and poorly kept.

Equipment owned by the DLAs included items such as distribution networks, electronic appliances, household items, agricultural mechanization equipment, fishing, sports, first aid, laundry, firefighting, workshop and medical equipment among others.

The summary of findings on the equipment were:

- a) The total equipment of the DLAs were 9,715 pieces or items,
- b) 4,586 items of equipment had attached value of KSh. 211,017,099.54; and 5,129 pieces had no values attached, and
- c) Most of the equipment were old and dilapidated.

Biological Assets: Biological assets are living animals and plants that are grown and reared for profit and are classified as consumable and bearer biological assets. The biological assets owned by the DLAs in counties included a) Domestic animals – Dairy cows, heifers, calves, donkeys. b) Wild animals – Tortoise, lizards, snakes (in a park for tourist attraction). c) Farms – Tea bushes, coffee plantations d) Forests – with various types of trees for timber. The DLAs in 12 counties had biological assets valued at KSh. 292,615,253. However, local authorities in five (5) did not attach value to their biological assets.

Current Assets: Current assets refer to items that represent the value of all assets that can reasonably be converted into cash within one year. The current assets identified in the DLAs comprised:

- a) Property rates,
- b) House and plot rents,
- c) Staff debtors,



- d) Contribution in Lieu of Rates (CILOR),
- e) Cash and bank balances,
- f) Others (include outstanding way leaves charges and sundry debtors), and
- g) Inventories (Consumables).

The total value of current assets of all the DLAs was KSh 110,833,187,756.11 as at 27th March, 2013. These were categorized and valued as follows:

- i) Property Rates valued at KSh.84,539,045,022.22 which was 76.3% of total value of current assets,
- ii) Plot & House Rent valued at KSh.3,494,790,115.80 at 3.2%,
- iii) Cash & Bank Balances valued at KSh.2,298,841,835.63 at 2.1%,
- iv) Staff Debtors valued at KSh.792,324,435.00 at 0.7%,
- v) CILOR (Cash in lieu of rations) valued at KSh. 5,183,515,392.09 at 4.7%,
- vi) Others (Outstanding way-leave charges and sundry debtors) valued at KSh. 14,168,343,724.37 at 12.8%, and
- vii) Inventories valued at KSh.356,327,231.00 at 0.3%.

Investments: The DLAs mainly invested in water and sewerage companies, fixed deposits in banks and other financial institutions. Most of the county reports did not indicate the number and value of the shares owned by the DLAs in these investments.

Projects and Works in Progress: Projects undertaken by the DLAs included construction of schools, polytechnics, hospitals, dispensaries, water storage facilities, roads, bridges, markets, slaughterhouses among others. The verification exercise revealed that some of these projects were completed but not paid for, some were incomplete while in some, funds had been paid but the projects had not commenced as at as at March 27th 2013.

Findings on Liabilities

The liabilities of the defunct local authorities comprised of the obligations arising from their past transactions or events, the settlement of which was expected to lead to an outflow of future economic benefits. There were seventeen (17)

categories of liabilities with a total value of KSh. 53,756,398,754.25 as at 27th March, 2013.

Category of liabilities and amounts were as follows:

- i) Commercial Loans (Local) valued at KSh. 4,009,372,683.14 comprising 7.5% of total liability,
- ii) Bank Overdraft valued at KSh. 2,052,303,966.49 at 3.8% of total liability ,
- iii) Commercial Loans (Foreign) valued at KSh. 15,328,285,074.00 at 28.5%,
- iv) National Housing Corporation (NHC) Loans valued at KSh.250,564,719.93 at 0.5%,
- v) Local Government Loans Authority (LGLA) Guaranteed Loans valued at KSh. 3,776,405,365.46 at 7.0%,
- vi) Unremitted taxes (KRA) valued at KSh. 1,282,948,817.78 at 2.4%,
- vii) Unremitted National Hospital Insurance Fund (NHIF) Deductions valued at KSh. 52,288,406.00 at 0.1%,
- viii) Unremitted National Social Security Fund (NSSF) valued at KSh. 1,085,671,440.40 at 2.0%,
- ix) Unremitted LAPTRUST contribution valued at KSh. 5,080,320,267.95 at 9.5%,
- x) Unremitted LAPFUND contribution valued at KSh. 3,812,845,140.23 at 7.1%,
- xi) Unpaid staff Emoluments valued at KSh. 36,731,005,881.38 at 11.7%,
- xii) Unremitted HELB Loans valued at KSh. 2,447,256.60 at 0.001%,
- xiii) Unremitted staff Deductions – (SACCO, Union Dues, Staff Loans, Hire Purchase and HELB) valued at KSh. 247,166,210.38 at 0.5%,
- xiv) Unremitted Union dues valued at KSh. 74,975,505.70 at 0.1%,
- xv) Unpaid Trade and other creditors valued at KSh. 7,796,735,575.44 at 14.5%,
- xvi) Unpaid Audit Fees – KENAO valued at KSh. 152,648,575.00 at 0.3%, and
- xvii) Unpaid Legal Fees valued at KSh. 2,464,025,766.14 at 4.6%.



Liabilities Paid after 27 March, 2013

Although most of the debts are still outstanding some county governments have made efforts to discharge some of the debts that they had inherited. The debts repaid by the county governments amounted to KSh. 5,422,865,330.13 leaving a balance of KSh. 48,333,533,424.12.

Liquidation Options for Liabilities: IGRTC in consultation with stakeholders recommended liquidation options for the settlement of the all liabilities of DLAs in accordance with Sec 2 (2) of Gazette Notices 2701 and 4370. There were five broad liquidation options recommended for the settlement of the liabilities namely;

- a) Counties to budget and offset the liabilities from their respective equitable share of revenues,
- b) National government to consider allocating conditional grants for payment of the liabilities as a strategic intervention mechanism,
- c) National government and county governments to consider offsetting the liabilities jointly through an agreed percentage,
- d) Government institutions like the Office of the Auditor General (OAG) to consider writing off the liabilities as the previously owed entity was the Kenya National Audit Office which no longer exist in law and on the basis this a government to government liability, and
- e) Liabilities arising from investments in income generating projects (water, housing among others), should be paid from the same facilities. Under each category, the report notes cross-cutting issues that require to be addressed by relevant parties in settling or managing these liabilities for the benefit of the public.

ii) Identification, verification, validation and transfer of assets and liabilities relating to devolved functions

IGRTC developed a framework to undertake the audit, verification and validation of assets and liabilities relating to devolved functions. The framework was entrenched in law through Gazette Notice No. 5711 of 21st June, 2019 which

established the institutional structures for undertaking the exercise. Working with the national government, IGRTC prepared inventories of assets and liabilities that was used to verify and validate the assets and liabilities received by each county.

In order to undertake the exercise, Intergovernmental County Committee (IGCC) was established in each county. Due to the complexity of the exercise, the officers required to be trained. To this end IGRTC developed guidelines and carried out the training of the committees. As at the time of preparing this report, the exercise was still underway with expected completion of date of 31st December, 2020.

Objectives of the Exercise

The overall objective of the exercise was to facilitate the identification and verification of the assets and liabilities of the devolved functions transferred to the county governments.

The specific objectives of the assignment were to:

- a) Identify and verify the assets and liabilities of the devolved functions;
- b) Identify, record and secure all relevant documents relating to the assets and liabilities of the devolved functions;
- c) Identify and document the disputed assets and liabilities of the devolved functions;
- d) Prepare a comprehensive register for each of the 47 counties of the assets and liabilities relating to devolved functions; and
- e) Develop liquidation options for the settlement of the liabilities of the devolved functions.

7.11 Pending Activities in the sub-thematic area

The following are the pending activities in the thematic area:

- i) Undertaking phase three of identification and verification of assets and liabilities covering ministries and state corporations;
- ii) Follow up on implementation of recommendations of the reports;



- iii) Acquisition of asset and liabilities database management system; and
- iv) Finalization of Audit, Verification and Validation of Assets and Liabilities relating to Devolved Functions.

7.12 Challenges in the sub-thematic area

The following are the challenges experienced during identification, verification and validation exercise of the assets and liabilities of the DLAs, The challenges were mainly on administration, poor state of public records, inadequate financial resources and capacity especially caused by unwillingness of county leadership to involve officers from the DLAs.

- a) **Timing of the Exercise:** The first Gazette Notice No. 2701 establishing institutional structures for the identification, verification and validation of the assets and liabilities of the DLAs was issued on 24th March, 2017 directed that the final reports be submitted by 31st July, 2017. This was only four months within which various processes were all to be undertaken including the appointment of the IATT and CALC members, development of guidelines and templates for data capturing, training of CALC teams, data capturing and report writing. The situation was also compounded by the fact that 2017 was a general election year thus leaders' focus was on electoral campaigns rather than dealing with issues of assets and liabilities. This posed challenges that culminated into the exercise not meeting its timeline. The IGRTC sought for extension which was granted through Gazette Notice No. 4730 dated 11th May 2018 which pushed the deadline to 31st August 2018. The activity which was to last only three months lasted a year.
- b) **Financial Resources:** The most daunting challenge in executing the assignment was limitation in financial resources. The Gazette Notice No. 2701 of 27th March, 2017 and Gazette Notice No. 4730 of 11th May, 2018, stated in part that the IGRTC would meet the operational expenses of IATT. The county governments would meet the operational costs of their respective CALCs. The Notice was issued in the middle of financial year 2017/2018, consequently counties were hard pressed to re-allocate resources for it. This caused inordinate delays in completing the exercise.

- c) **State of Public Records:** When the country transitioned to the new system of governance, very little attention was paid to proper transfer of assets and liabilities. Thus no transfer records were developed. Furthermore, any records that might have been kept by the DLAs were not stored and preserved properly. The transition period began with the installation of new county governments. In the process of change and renovations of offices and other workstations, public records were thrown in disarray, with some of them being dumped in open garages and yards. By the time the CALCs were launched to carry out identification and verification of assets and liabilities there was no systematic retrieval or access to critical records. This posed a challenge to the CALCs hence the efficacy of the records used for this exercise could have been compromised.
- d) **Investments:** It was not possible to identify and verify the level of investments the DLAs had in various investment vehicles. Most DLAs invested in water and sewerage companies that operated in the jurisdictions of the respective local authorities. In many instances, it was not easy to identify the exact status of investments in those water service companies. In most cases the number of shares was not disclosed and in other instances where the share values were disclosed, the total number of shares was not stated. This made it difficult to corroborate the efficacy of the information on investments.

7.13 Lessons learnt in the sub-thematic area

In the process of undertaking identification, verification and transfer of assets and liabilities, IGRTC established that there was no legal framework that existed to manage public assets and liabilities in the DLAs. The other lesson learnt was that there was poor record keeping of assets and liabilities. In some instances, records were lacking. Therefore, there seemed to be a big risk of losing public resources especially due lack of proper records and information. The country is now in its second phase of devolved system of governance hence the risk of losing public records and the assets of the former centralized government operating in the local authorities and provincial administration is getting higher.



7.14 Recommendations of the sub-thematic area

i) Policy

The national government needs to develop a policy to provide for the management of assets during periods of transition, including redeployment or transitioning of senior government officers. In this regard, there should be requirements that before any such transitions, and before major renovations and reconstructions are carried out in public institutions, all records should be secured. Secondly, public servants should be held accountable for the safety and security of public records and assets under their care. Lastly, there should be a provision that in any major renovation or reconstruction of public facilities, experts in record management should be consulted to advice on security and safety of records.

ii) Closure and Transfer of Public Records and Information

County governments should carry out thorough searches of the records inherited from the DLAs and secure them appropriately. To this end, the IGRTC has developed a program to assist in the identification, closure and/or transfer for security of public records and information in all counties and the national government.

iii) Land Registration and Physical Planning


All identified parcels of public land that were not registered should be registered and titles issued. The unplanned public land should be planned accordingly. All public lands that were identified during the exercise as having been irregularly or illegally allocated to private individuals should be repossessed.

iv) Community Land Delineation

To avoid encroachment into community land, much of which is held by county governments in trust for the people, the boundaries of all community land should be delineated. Any community land not registered should be registered as a matter of urgency.

v) Land and Buildings Data Variances

A forensic audit should be undertaken to address any discrepancies noted during the exercise. All counties having acquired the assets on “as is where is” basis



should make urgent arrangements to document all public land and buildings in their jurisdictions. The process of resolving all land and buildings issues identified including resolution of all disputes where applicable should be instituted upon adoption of this report.

vi) Investments

It was not possible to identify and verify the level of investments that the DLAs had in various companies and in fixed deposits. Most DLAs invested in water services companies that operate in the jurisdictions of the former local authorities. However, in many instances, it was not easy to identify the exact status of investments in those water service companies. In some cases, the number of shares or the share values in these companies were not disclosed. This made it difficult to corroborate the efficacy of the information on investments. It is recommended that since water and sanitation services was a devolved function, the water and sanitation services companies should be formally handed over to the counties. In this respect, the IGRTC is fast tracking the unbundling of the water and sanitation services function. Secondly, the forensic audits on these investments should be carried out to establish the exact values and shares held in trust for the public through the DLAs.

vii) Liabilities

The adoption of the report was expected to trigger the settlement of liabilities as per liquidation options adopted. Where there were no records to ascertain exact amount of liabilities, forensic audits should be undertaken to get the exact position of liabilities. In the case of legal fees, claims should be subjected to taxation to arrive at justifiable amounts. In conclusion, the report provided critical information on the status of public assets and liabilities of the DLAs, an important milestone in the transition to the system of devolved government. It was hoped that both the national and county governments would implement the recommendations and ensure the full protection of critical national resources.



8

POLICY AND LEGISLATION

8.0 Introduction

This thematic area is largely a support function to IGRTC and the two levels of government. The achievements in the thematic area during the period have been through partnerships with the relevant stakeholders such as the MODA, the COG, Parliament, the Kenya Law Reform Commission, and Office of the Attorney General among others.

8.1 Objectives of the thematic area

The main objective of this thematic area is to review relevant policies, laws and regulations with the aim of identifying policy and legal gaps as well as provisions not aligned to the COK 2010. Particularly, it focuses on the spirit of devolution as enshrined in the COK, 2010.

8.2 Responsibilities

The responsibilities of the thematic area are as follows:

- i) Propose review of policies, laws and regulations to the national government;
- ii) Draft gazette notices for implementation of activities within IGRTC mandate;
- iii) Draft intergovernmental Memoranda of Understanding for signing subsequent to agreements mediated by IGRTC;
- iv) Review of legal instruments related to intergovernmental relations and devolution with recommendations to the relevant ministries, departments or agencies of national government for amendment consideration;
- v) Review and document existing disputes relevant to intergovernmental relations and make appropriate recommendations to IGRTC; and
- vi) Pursuing court cases including those related to the defunct TA in collaboration with the Office of the Attorney-General for settlement.

8.3 Key Result Areas

The thematic area has the following key result areas:

- i) Institutional support on policy and legislative interventions including advisories to IGRTC in ADR mediation activities and development of legal instruments for the institution to use in the ADR processes such as MOUs, and agreements;
- ii) Analysis of policies to ensure conformity with the devolved system of governance;
- iii) Provision of accurate and evidence based data on matters of devolution and intergovernmental relations to influence policy and legislation in the different sectors; and
- iv) Advocacy on policies and legislation that promote devolution and intergovernmental relations including drafting of policy and legal proposals for consideration by both levels of government.

8.4 Deliverables

The deliverables for the thematic area are:


- i) Policy reviews;
- ii) Legislation reviews and amendment proposals;
- iii) Policy and legal advisories to IGRTC; and
- vii) Sensitization of stakeholders on policy and legislation instruments supporting devolution and intergovernmental relations

8.5 Achievements in the thematic area

- i) Analyzed, proposed amendments and supported development of policies and legislative instruments affecting devolution**

In accordance with its mandate to ensure harmonious relations between the two levels of government, IGRTC through the Policy and Legislation thematic area analyzed policies and legislation that impact on the devolved system of governance.





In partnership with relevant institutions, IGRTC took active part in the review and development of the following policies, regulations and guidelines:

- a) The National Cooperatives Policy;
- b) The Public Participation Policy;
- c) Public Participation Guidelines;
- d) The Alternative Dispute Resolution in Intergovernmental Disputes Policy;
- e) ADR regulations 2018;
- f) The County Economic Blocs Policy;
- g) The Assets and Liabilities Management Policy
- h) Intergovernmental Consultative Sector Forum Regulations 2019;
- i) Coffee General Regulations; and
- j) Legal audit of legislation on devolved sectors.

In relation to legislation, IGRTC partnered with relevant institutions to:

- a) Review the Intergovernmental Relations Act, 2012;
- b) Review County Governments Act, 2012;
- c) Draft Alternative Dispute Resolution Regulations;
- d) Draft the Intergovernmental Consultative Sectorial Forum Regulations; and
- e) Draft guidelines on the establishment of intergovernmental relations units in ministries and county governments.

ii) Development of legal instruments, mechanisms and frameworks to facilitate the advisory functions of IGRTC

IGRTC worked closely with various stakeholders in the drafting of legal instruments such as legal notices, gazette notices and advisories to provide guidance on issues relating to devolution and intergovernmental relations. The legal notices published included the ones on the delineation of library function, delineation of the betting, gaming and casinos function, gazette notices on institutional structures for the identification and transfer of assets and liabilities

of the defunct local authorities as well as assets and liabilities relating to devolved functions.

8.6 Pending Activities

The pending activities in this thematic area are:

- i. Finalize the review of the Intergovernmental Relations Act, 2012 including change of IGRTC name, anchoring COG secretariat into law, members' tenure
- ii. Finalize the review of the County Governments Act, 2012

8.7 Challenges


The thematic area identified three major challenges namely:

- a) Low capacity in legislative drafting in the county governments thus delaying the presentation of Bills for debate by the county assemblies;
- b) Differences in interpretation of the law leading to misunderstandings between the two levels of government culminating in protracted court processes which largely disrupts service delivery; and
- c) Several laws in various sectors are not in conformity with the COK, 2010 thus affecting operationalization of functions at both levels of government. The gaps, overlaps and conflicts within these laws require amendment.

8.8 Lessons learnt

The implementation of activities of this thematic area had inherent challenges. It may be noted that matters of development of policies, laws, regulations and guidelines are functions or mandate of national government. IGRTC therefore has a thin line in contributing to the issues. Furthermore, due to levels of suspicion observed in the relationship between the national and county governments especially in the first phase of devolution, it was very challenging to have the county government appreciate the capacity building role of national government on these issues. There tended to be a feeling of supervision by national government where counties were advised on policy and legal issues. This was notwithstanding





the provisions of CGA, 2012 s.121 and IGRA, 2012 s.5 on support to counties and objects of intergovernmental relations respectively.

8.9 Recommendations

The alignment of policies and legislation provides a firm foundation for the devolved system of governance. It was noted that majority of the intergovernmental disputes reported to date largely arose from implementation of policies and legislation that did not conform to the devolved system of governance. As such, review of all policies and legislation need to be undertaken in a continuous manner to ensure that all stakeholders were well guided by the available legislative instruments, to guarantee respect for institutional integrity while undertaking their respective mandates.

9

ALTERNATIVE DISPUTE RESOLUTION AND PUBLIC PARTICIPATION

9.0 Introduction

The thematic area handles issues regarding public participation and resolution of disputes. This report details the activities achieved, challenges, pending activities and recommendations in the thematic area.

9.1 Objectives of the thematic area

The main objective of this thematic area is to promote the institutionalization of mechanisms to facilitate public participation in the implementation of the devolved system of governance.

The specific objectives are therefore to:

- a) Facilitate intergovernmental alternative dispute resolution on behalf of the Summit;
- b) Monitor the implementation of alternative dispute resolution agreements by the parties;
- c) Monitor and provide advisories on the status of public participation and their impact on decision making and service delivery; and
- d) Provide advisories on the public participation practices in both levels of government for purposes of strengthening citizen-driven decision making

9.2 Responsibilities

The responsibilities of the thematic area are as follows:

- a) Review constitutional and legal provisions on public participation and monitor their implementation at both levels of government;
- b) Identify gaps through evidence-based studies on public participation activities and sensitize stakeholders on the same;
- c) Contribute to the development of public participation and civic education frameworks at both levels of government;



- d) Prepare regular reports, advisories and briefs on public participation practices that impact on intergovernmental relations;
- e) Prepare regular reports on the status of intergovernmental disputes and efforts towards their resolution through ADR; and
- f) Assist both levels of government through mediation and facilitation of alternative dispute relations on cases that involve intergovernmental relations.

9.3 Key Result Areas

The key result areas for the thematic area are as indicated:

- a) Support to public participation activities on intergovernmental programs and projects;
- b) Application and facilitation of ADR in settling intergovernmental disputes to avoid litigious and costly judicial processes;
- c) Sensitization of the two levels of government on constitutional and legal provisions on public participation;
- d) Review of status of implementation of constitutional and legal provisions on public participation by the two levels of government; and
- e) Influence the development of a public participation policy using evidence-based studies and advisories.

9.4 Deliverables

The deliverables for the thematic area are outlined as follows:

- a) Periodic reports and briefs on level of public participation on intergovernmental programs and projects particularly, evidential reports on the increase in levels of awareness on matters of public participation by both levels of government;
- b) Reports on number of intergovernmental disputes resolved through ADR;
- c) Study reports on the status and implementation of public participation in national and county governments; and

- d) Number of advisories issued on emerging issues on matters of public participation by both levels of government.

Part A: Alternative Dispute Resolution Sub-thematic area

The IGRA, 2012 provides for consultations between the two levels of government; and mechanisms for resolution of intergovernmental disputes. Section 30 of the IGRA, 2012 defines intergovernmental disputes as disputes arising between the national and county government (s) or amongst county governments. Section 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 the formal declaration of a dispute, Section 33 (2) provides that where the negotiations “under subsection (1) fail, a party to the dispute may formally declare a dispute by referring the matter to the Summit, the Council or other intergovernmental structure established under this Act as may be appropriate.”


As a secretariat of the Summit and the COG, IGRTC facilitates and promotes harmonious intergovernmental relations. It is therefore one of the intergovernmental structures that is at the center of resolution of disputes for effective and efficient public service delivery in devolution. Apart from being a cheaper and expeditious way of resolving disputes, ADR has its advantages in guaranteeing uninterrupted service delivery during the process of dispute resolution. It is important to note that IGRTC only deals with disputes that have either been declared by the parties or referred to it by the courts.

9.5 Achievements in the Alternative Dispute Resolution sub-thematic area

- i) Facilitation of Resolutions in Intergovernmental Disputes

The COK, 2010 Art.189 (3) and (4) and the IGRA, 2012 s.31 provide for dispute resolution through ADR. Pursuant to these provisions, both COG and the IGRTC applied ADR mechanisms in resolving disputes.





During the period under review, IGRTC received a total of twenty one (21) cases for resolution through ADR mechanisms. Eight (8) of the cases were successfully resolved; one (1) case was referred to the courts for determination; and twelve (12) were still undergoing dispute resolution processes as at the time of preparing this report.

- a) Disputes reported to Intergovernmental Relations Technical Committee Article 6(2) of the COK, 2010 places the responsibility of both levels of government to conduct their mutual relations on the basis of consultation and cooperation on the two levels of government. Article 189(3) addresses the contemplated disputes between the governments by stating that “in any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation”. Article 189 (4) further provides that “national legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms including negotiation, mediation and arbitration”.

Section 31 of the IGRA, 2012 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”.

The summary of the status of intergovernmental relations disputes as reported to IGRTC is presented in Annex 9.1.

- ii. Capacity Building

Noting the importance of understanding its role as a facilitator in the resolution of intergovernmental disputes through ADR, IGRTC members and staff underwent training on mediation as a mechanism for ADR. The training proved beneficial to IGRTC in the execution of its mandate as envisioned in Article 189 (4) of the COK, 2010 and enabling legislation, ss.

- iii. Publication of a study on cost of litigation in inter/intra-government litigation in Kenya

The study was initiated as an implementation of a directive of the 5th Summit meeting held on 10th - 11th February 2016. The Summit raised the concern over the increasing tendency of the two levels of government settling their intergovernmental disputes through costly court processes. The Summit considered the trend as going against the spirit of the COK, 2010 article 189(3) and particularly with the fact that as far as possible intergovernmental disputes should be resolved through ADR processes.

Objective of the study

The primary objective of the assignment was to review the nature of inter and intra-governmental disputes, their causes, volume, indicative costs of litigation, mechanisms for dispute resolution and make proposals on the way forward.

Findings

The study was conducted through participatory methodology involving key informant interviews, a stakeholder consultative forum, focus group discussions and a validation workshop. The study found that litigation was mainly between national government and county government(s); county government(s) and national government agencies; county government and county government; county organ and another organ within the same county; National Assembly and the Senate; and between state agencies. The disputes were mainly resulting from the interpretation and implementation of powers and functions as provided in the Fourth Schedule to the COK, 2010, transfer of functions, policies and legislation not aligned to the COK, 2010, county boundaries, revenue and employment relations among others.

The study further revealed that the recurrent inter- and intra-governmental disputes being filed in courts for judicial resolution had had a great impact on the budgetary allocation, in terms of legal fees, to both levels of government. The study found out that the costs of litigation were high and a major constraint to development particularly in the county governments. The costs included both



direct financial expenditure and opportunity costs due to delayed, frustrated or abandoned projects as a result of court cases. In one county, the budget of the county could not be approved due to litigation while in another staff could not be recruited for six months due a court order. Advocate fees were found to be high with High Court cases being charged at between 20- 30 million per case. There were many instances of advocates charging as much as KShs. 75 million and even some cases, being charged as high as KSh.200million. It was found that the major challenge for the counties was the reliance on external Counsel as they did not have established legal departments unlike in the national government where cases are handled through the Office of the Attorney General/State Law Office.

The study adequately demonstrated the nature, and volume of cost of litigation of inter/intra governmental disputes. The graphical presentations illustrate the state of inter or intra governmental litigations:

Figure 1: cases involving county governments

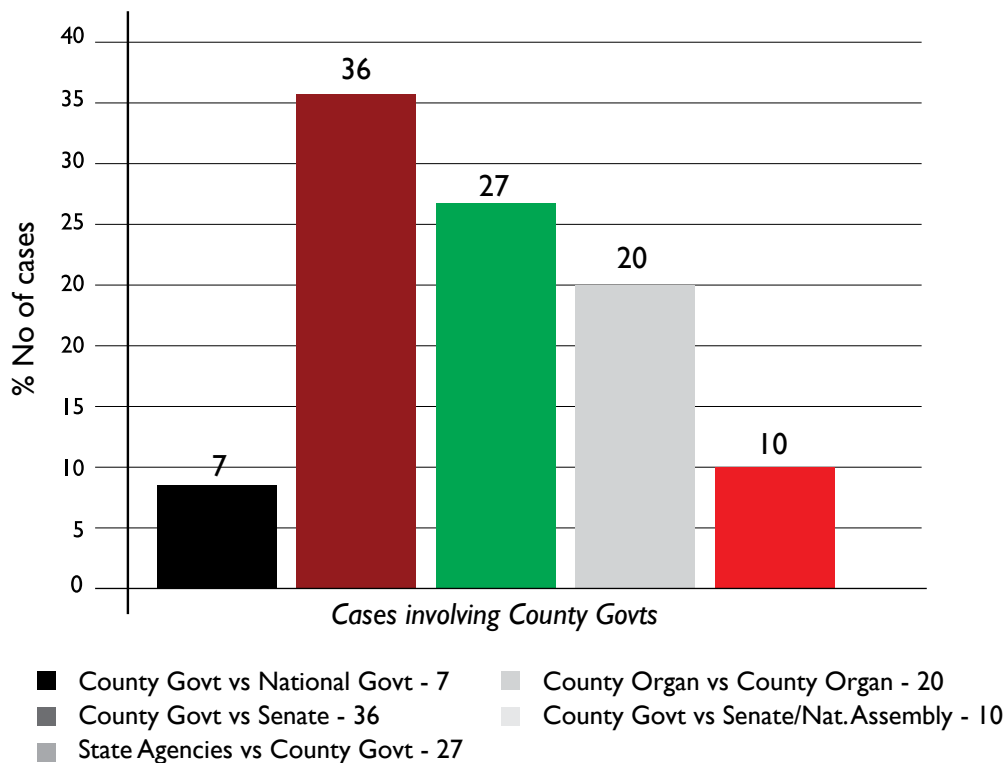


Figure 2: Cases involving national government

30-35 of the IGRA, 2012.

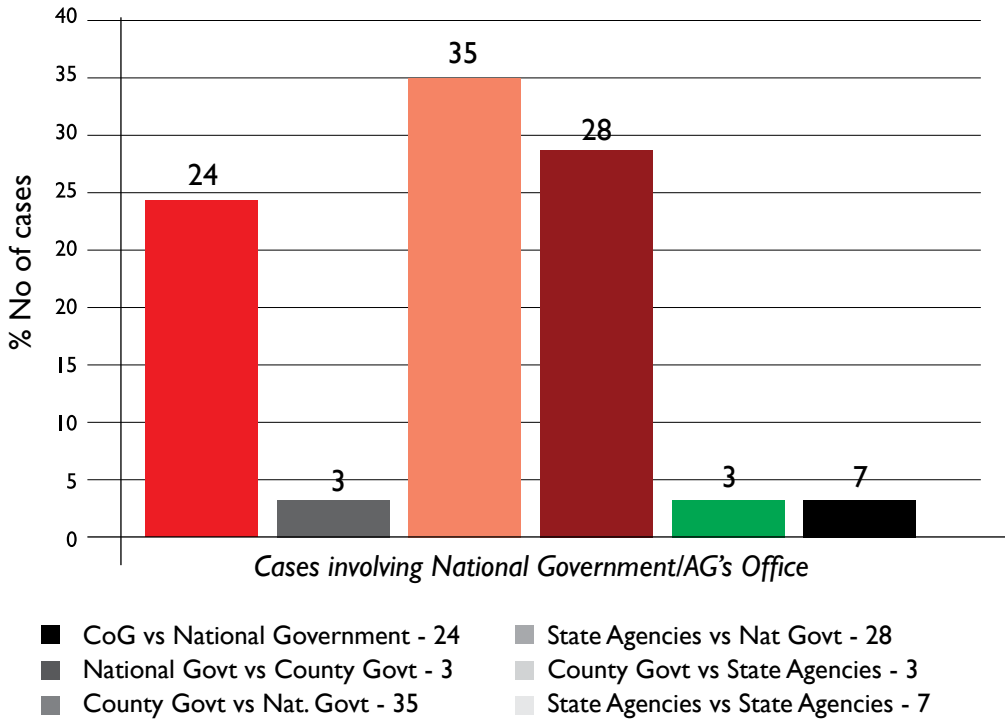
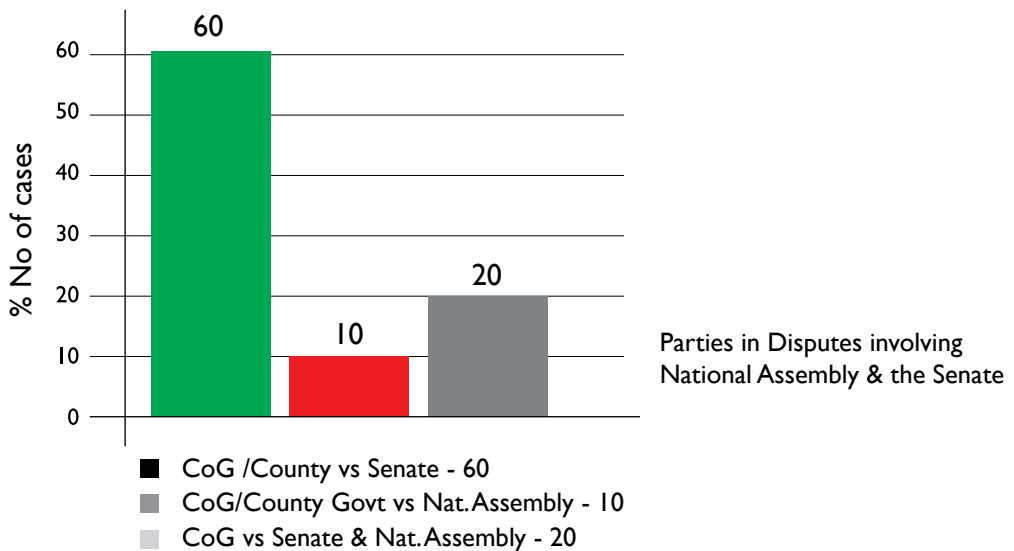


Figure 3: Cases involving National Assembly/ County Governments and the Senate



- i) The study included budgetary allocation and expenditure in legal fees for each county that responded. However, the figures were not disaggregated to enable the isolation of fees paid on inter- and intra- governmental disputes. Disaggregated data were also not available in various court registries, the judiciary and the State Law office.
- ii) The study presented sufficient data to justify the concerns over the high cost of litigation between various governmental institutions.

Some examples indicating the magnitude of expenditure on inter- and intra-governmental disputes include:

Table 2: Examples of inter-/intra-governmental dispute costs

No.	Case	Legal Fees paid (KSh.)
1	In a case (Judicial Review Application No. 109 of 2014) involving the National Government and the County Government of Nairobi over land rates, subject matter valued at KSh. 29 billion, the lawyer representing the County Government demanded for KSh. 2 billion as instruction fees. However, the Court awarded Nairobi County KSh. 724 million.	75 million
2.	No. 178 of 2016 involving the National Assembly and Council of Governors over the NGCDF Act,	Average legal fees amounted to KSh. 20-30 million
3.	In a dispute (E&L case No. 63 of 2015) involving the National Land Commission over grabbing of public land in Eldoret, the judgment was given as KSh. 8 billion.	KSh. 200 million
4.	In a dispute (Nyeri ELRC No. 6 of 2015) involving the County Secretary of County Government of TharakaNithi and the County Government	KSh. 6,960,000
5.	In a case (Nairobi ELRC No. 1571 of 2015) involving the County Government of Machakos and the Kenya Medical Practitioners, Pharmacists and Dentist Union.	KSh. 13,650,000

At the introduction of devolved system of government, counties inherited huge debts in legal fees from private lawyers. Nairobi for example, inherited 3000 cases of which 90% were handled by private lawyers accruing a debt of KSh.5 Billion in legal fees.

iii) Apart from the financial costs, there were serious non-financial costs that might be more costly to the country and the community in particular. Indirect costs included:


- a) Delayed implementation of projects;
- b) Stalling of projects;
- c) Strained relations between parties with negative impact on service delivery; and
- d) Low investor confidence.

Part B: Public Participation sub-thematic area

Public participation is one of the pillars of Kenyan devolution system apart from being one of the features of the national values and principles of governance under the COK, 2010. The Constitution clearly states that all sovereign power belongs to the people and can be exercised by them directly or through their democratically elected representatives. The COK, 2010 further states that the power exercised by state agencies is delegated and can only be exercised in accordance with its provisions.

Sharing and devolution of power, democracy and participation are some of the values and principles in Art. 10 of the COK, 2010. Furthermore, in articles 20 (4) and 24(1) it is clear that state authorities whether courts, tribunal or other authorities must interpret the Constitution in accordance with 'the values of an open and democratic society based on human dignity, equality, equity and freedom'. Art. 232 (d) expressly provides that the people shall be involved in policy making. Direct participation in the policymaking, law making and implementation of development programs is therefore, an essential part of meeting constitutional threshold. This is practiced by embracing various systems, processes and mechanisms to enhance citizen participation in governance particularly in the decision-making processes. Among these mechanisms is devolution/decentralization of government functions; policies and laws that impose mandatory consultation of the public; more inclusive electoral representation and greater access to public information.





This thematic area is therefore charged with facilitating reviews and operationalization of public participation policies and framework in order to strengthen intergovernmental relations and service delivery to Kenyans.

9.6 Achievements in the Public Participation sub-thematic area

- i) Publication of the study on the status of public participation in national and county governments

The COK, 2010 and the enabling laws emphasize the necessity of public participation in a number of critical governance areas especially in line with Objects of Devolution and Principles of Devolution enshrined in Articles 174 and 175 respectively. Public participation is thus critical in public finance management especially in the preparation of budgets, development of finance bill and expenditure, decisions on projects and programs to be implemented among other public affairs. The other areas that require public participation are in both long and short term plans; policies development and legislation; implementation of the Bill of Rights; and public service delivery.

Objectives of the study

The overall objective of the study was to assess the status of public participation in Kenya under the devolved system of governance. The study reviewed constitutional and legal provisions on public participation; assessed the nature, types/forms and levels of public participation. It identified opportunities, challenges, and lessons on best practices and experiences from selected countries.

Findings of the study

- i. The study found out that there were no clear norms or standards for effective public participation in the country. Both levels of government were constantly reviewing whether they had met the threshold for public participation. The study recommended that a national overarching policy providing for the norms and standards for effective public participation needed be developed through a participatory process that should involve

all key stakeholders, including the national and county governments. The policy should among other provisions provide for a holistic definition of public participation, the values and principles of public participation, key elements of effective public participation, infrastructure for public participation and the resourcing of public participation. Arising from this recommendation, the policy has since been developed by the national government but not yet approved.

9.7 Pending activities in the thematic area

As at the time of preparing this report, there several activities that were not yet completed according to the work plan. The report identifies the following activities as pending:

- i. Finalization of MOU between the Ministry of Defense and Nairobi City County Government;
- ii. Review of the law (IGRA, 2012) to provide for resolution of intra governmental disputes through ADR mechanisms;
- iii. Conclusion of cases presented as “on-going” in Annex 9.1 Summary of the Status of Intergovernmental Relations Disputes;
- iv. Launching of the study conducted by IGRTC on public participation in national and county governments;
- v. Production of promotion materials on public participation in various easy-read formats for larger segments of stakeholders;
- vi. Workshop to sensitize stakeholders on the use of ADR in inter- and intra-governmental disputes; and
- vii. Establishment of a repository center for ADR matters.

9.8 Challenges in the thematic area

The challenges facing ADR mechanisms and public participation in the country were summed up as follows:



Alternative Dispute Resolution mechanisms

- ii. Kenya has no formal or standard rate of payments related to the cost of ADR mechanisms except for the scales recommended by the Chartered Institute of Arbitrators, Kenya branch. It is therefore challenging to come up with total costs associated with solving inter- and/or intra-governmental disputes.
- iii. Inadequacy in the ADR institutional structures and enforcement including challenges in the administrative capacity especially in terms of trained professionals to handle disputes. Advocates are generally trained and oriented to consider litigation as a first option and rarely consider ADR as the first option. There are also unclear legal provisions for the remuneration of Advocates for ADR work as well as lack of centralized and coordinated appointing authority for arbitrators. Many institutions are involved in the appointment of arbitrators such as Law Society of Kenya, Institute of Engineers of Kenya, and Architectural Association of Kenya among others depending on the contractual provisions. At intergovernmental level, the structures for dispute resolution through ADR mechanisms are the Summit, COG, IBEC and IGRTC but which still require promotion for acceptance by governmental institutions.
- iv. Inadequate public awareness creation, and weak legislative environment. Members of the bench see arbitrators/mediators as competitors. Most members of the bench initially perceived ADR as a threat to the court system and are still not comfortable with it. On the other hand, lawyers see it as a threat to their incomes.

Public participation

- v. IGRTC has an operational challenge in public participation sub-thematic area. It is not clear whether or not the coordination and facilitation of public participation activities are technical function of the national and county governments.

9.9 Lessons learnt in the thematic area

Alternative Dispute Resolution mechanisms

In areas of ADR, the experience of the last seven years indicates that with consultation and cooperation, emerging disputes could be addressed and solutions found without resorting to acrimonious judicial relationships. However, this required clear guidelines on what would happen once a party declared a dispute with another. Experience from the disputes reported to the Summit through IGRTC showed that in some instances all the parties needed was an independent convener to facilitate discussions in search for resolutions to the problems. Although IGRTC experienced success in this role as indicated in this report, there was still need for the development of dispute resolution mechanisms guidelines to support the parties in handling disagreements between and among them.

Public participation

Political interference and conflict of interest were major hindrances to objective public participation as envisaged in the COK, 2010. These were observed mainly in development projects where the political class still created some unconstitutional programs like National County Development Fund which are basically selfish instruments for appealing to certain segments of voters. Since politicians have firm hold on such programs a true public participation on their project decision and implementation cannot be achieved.

The other lesson learnt was that there were low literacy levels across the country which had a negative impact on public participation processes. This was more rampant in the rural counties. Unfortunately leaders and governmental administrators take advantage of such illiteracy and have their way in critical decisions that affected the residents of such counties.



9.10 Recommendations of the thematic area

Alternative Dispute Resolution mechanisms

- i. The national government should develop a policy and legislative framework for the application of ADR. This would involve review of existing policies, legislation and institutional arrangements. It would require amending legislation or making a law to meet the demands of a devolved system of government including considering constitutional amendments to make ADR a mandatory precondition to court action.
- ii. Intergovernmental relations institutions including IGRTC, COG, IBEC, Summit, Senate and National Assembly should be strengthened for effective conflict management and ADR.
- iii. Public awareness through civic education should be undertaken in the counties to educate the county government officers (especially the newly elected/appointed county leaders/officers) and the public on the benefits of ADR. This will enhance the acceptance of ADR as mechanism for resolving disputes.
- iv. Capacity building: training of staff, establishment of structures and institutions that support ADR; the development and implementation of programs, plans and actions for the training of government officers on ADR; building capacity for conflict management and ADR.
- v. Judicial officials and advocates should be trained on ADR as an alternative mechanism to litigation of disputes. ADR should therefore be part of their training and Continuing Professional Development (CPD).
- vi. County governments should establish fully fledged legal departments capable of handling most of the litigations internally to reduce on external advocates' costs. The enactment of the Office of the County Attorney Bill 2014 should be fast tracked.
- vii. Remuneration scales for the different ADR mechanisms should be reviewed and streamlined to encourage lawyers to take up ADR mechanisms. There is also need to consider changing the approach to

- remuneration of advocates for cases involving public sector institution including having a special remuneration order for public sector litigation.
- viii. Traditional disputes resolution mechanism should be recognized through legislation subject to Article 159 of the Constitution. The recognition would allow for implementation of the awards or orders of elders.
 - ix. Given the reluctance by public institutions to provide data on the costs of litigation, the Summit should consider directing the audit of legal costs in all public institutions
 - x. Given that intra governmental disputes have a negative effect on intergovernmental disputes, and given the fact that the law does not place an obligation to parties in intra governmental disputes to resolve their disputes through mechanisms of ADR, there is need for stakeholders to interrogate the efficacy of the existing mechanisms for the resolution of inter and intra governmental disputes.

Public participation

- i. There was need to create cost effective means to conduct public participation through opportunistic meetings like churches, mosques, Barazas and other public gatherings to ensure target audience is reached for proper and responsible decision making
- ii. Both levels of government needed to ensure use of effective communication and coordination strategies in implementing the constitutional and legal provisions on public participation.
- iii. There was need for consultations among the intergovernmental stakeholders to discuss and agree on the role of IGRTC in public participation activities.



10

FINANCE AND INSTITUTIONAL DEVELOPMENT

10.0 Introduction

This is an administrative thematic area responsible for financial management and human resource development in the institution. It provides support to the institutional administrative departments comprised of human resource and administration, finance and accounting, audit, procurement, records and ICT functions. It thus provides leadership to ensure that the institution is managed in line with public management policies, regulations and procedures.

Part of the mandate of the thematic area is to review the thematic areas. For example, as at the time of this report, the thematic area committee was considering to restructure the thematic areas to align with the organizational structure of the national government and committees of the COG. The proposed structure of the IGRTC Harmonized Thematic Areas and Administrative Sub-Committees is presented in Annex 10.3. The proposal was pending final approval of the IGRTC ordinary meeting for implementation.

10.1 Objectives of the thematic area

The following are the main objectives of the thematic area:

- a) Provide policy direction on behalf of the Committee on institutional development;
- b) Support to the institution administrative departments comprising human resource and administration, finance and accounting, audit, procurement, records and ICT in carrying out their operations in line with the policies and manuals of the institution and adherence to sound financial management regulations; and
- c) Institutional capacity building.

I0.2 Responsibilities of the thematic area

The thematic area is responsible for:

- a) Providing leadership and support to staff, consultants and partners working in the development and management of the IGRTC internal systems;
- b) Ensuring that the budget is aligned to the IGRTC strategic plan and annual work plan; Monitoring and reporting on financial performance in relation to priorities and approved budgets; and
- c) Facilitating the:
 - i) Development and implementation of organizational plans- strategic plans, annual work plans, procurement plans and activity plans,
 - ii) Recruitment of relevant technical and advisory staff,
 - iii) Establishment of functional and relevant organizational management and operational structures,
 - iv) Development of relevant organizational policies, regulations and operational manuals for effective accountability and coordination of activities of the organization,
 - v) Relevant capacity development for committee members and technical staff for effective performance,
 - vi) Development of IGRTC annual budget, and
 - vii) Development of financial policies, procedures, regulations and operations manuals for effective management of financial resources.

I0.3 Key Result Areas

The thematic area operates within the following key result areas:

- a) Staff recruitment and appraisals;
- b) Institutional development and strengthening; and
- c) Budgeting and fund raising.



10.4 Deliverables

The deliverables for the thematic area are:

- i. The development of organizational system and structures developed and operational manuals;
- ii. Organization strategic plans developed and implementation process ongoing; ;
- iii. Performance reviews, tools and processes developed and operational;
- iv. Internal capacity development framework developed and operational;
- v. Organizational policy for gender equity and diversity developed and operational;
- vi. Senior management and technical staff recruited;
- vii. Timely development and submission of annual budgets;
- viii. Financial monitoring tools developed and operational;
- ix. Effective management of budget process and financial resources; and
- x. Production of financial reports.

10.5 Achievements of the thematic area

i) **Development and implementation of the Strategic Plan 2016 – 2020**

The Strategic Plan 2016–2020 was the first plan to be developed by the IGRTC to provide strategic direction for the institution in realizing its objective. It defined the institutional mandate, vision, mission, and core values. It also spelt out the strategic objectives, structure and resource requirements (human, financial and technical) guided by the mandate and operating environment. The plan provided for activities to be achieved in each thematic area in the organization. The current members' term ends concurrently with the Strategic Plan. The first activity of the new team of members would ideally be the development of the second strategic plan spelling out its vision and mission for the organization.

ii) **Publication of Organizational Policies and Procedures Operational Manuals**

For the facilitation of its administrative responsibility, the IGRTC developed the operational manuals to ensure the required controls and guidance are in place for effective utilization of resources in line with the government policies on public resource management. The guidelines are administrative tools informed by the COK, 2010, legislation, policies and periodic government circulars. They are subject to periodic reviews for appropriate realignment to changes that occur from time to time.

The specific manuals incorporated in this document are:

- 1) Human Resource Policies and Procedures;
- 2) Finance Policies and Procedures;
- 3) Internal Audit, Service Charter, Code Of Ethics and Standards;
- 4) Procurement And Asset Disposal Policies and Work Instructions;
- 5) Transport Policies And Procedures;
- 6) Records Management and Information Communication Technology Policies and Procedures;
- 7) Occupational Health, Safety, and Security Policies and Procedures; and
- 8) Policy on physical security.

The contents of each manual listed above are summarized as follows:

a) Human Resource Policies and Procedures

The overall objective of the manual is to provide for policies, procedures and other administrative processes to ensure consistency in the management of the organization. Specifically, it is intended to:

- (a) Ensure attraction and retention of qualified human resource;
- (b) Provide guidelines for objective appraisal system;
- (c) Strengthen the process of identifying staff for training opportunities;
- (d) Ensure that training and capacity building activities advance the goals and priorities of IGRTC; (e) Promote gender equity and diversity; and



- (f) Provide guidelines for staff welfare and development; (g) Provide guidelines for staff code of conduct.

b) Finance Policies and Procedures

The finance policies and procedure manuals are meant to ensure uniformity, consistency, transparency, accountability and compliance with statutory, legal and regulatory requirements and in particular PFMA, 2012 and regulations therein.

c) Internal audit service charter

The internal audit manual objective is to help bring a systematic and disciplined approach that improves governance, risk management and internal control processes in the organization.

d) Procurement, Asset Disposal Policies and Work Instructions

The Institutional Procurement Manual provides detailed guidance on general issues in procurement in line with the Public Procurement and Asset Disposal Act, 2015 and accompanying regulations. It is a guide to the systems and procedures that should govern the procurement of all the goods, works and services for the IGRTC.

e) Transport Policy and Procedures

The manual on transport policy provides guidance on the procedures, practices and regulations on the matters of transport at IGRTC. The manual applies to transport operation within and outside the organization

f) Records Management and Information Communication Technology Policies and Procedures

The manual provides a clear insight into efficient and effective, use, storage, maintenance and access to information.

g) Occupational Health, Safety, and Security Policies

This comprehensive Occupational Safety & Health (OS&H) Policy provides clear guidelines on how occupational safety and health are established and managed within the institution.

h) Policy on physical security

This Policy provides a framework for the institution to manage resources, protection of personnel, premises, hardware, software, networks, and data from physical action and events that could cause serious loss or damage to the institution in the most prudent manner.

iii) Job evaluation and review of the institution job description and specifications

The main objective of job evaluation is to determine equitable wage differentials between different jobs in the organization. The exercise was carried out in order to develop a systematic and rational wage structure in IGRTC.

iv) Job description and specification


The review process provided for well-defined job descriptions and specifications meant to attract, motivate and facilitate retention of suitably qualified and competent staff in the IGRTC secretariat. It was also meant to establish standards for recruitment, training and advancement within the career structure on the basis of qualifications, knowledge of the job, experience, and merit and ability as reflected in work performance and results.

v) Recruitment of Staff

IGRTC is a perpetual institution that requires to administratively structure itself with systemic operations for transparency, integrity and accountability in the management of public resources allocated to it. The institution is expected to apply human, physical and financial resources prudently and responsibly as envisaged in the Constitution and the various instruments of governance including legislation and administrative circulars on regulations and procedures. In order to observe the foregoing, IGRTC has to recruit and maintain highly qualified staff who can uphold its institutional vision, mission, core values and mandates.

During the period covered in this report, IGRTC recruited the first batch of its top management officials to provide leadership role in enabling it to achieve





its mandate and strategic organizational goals and objectives. The top officials recruited included the Secretary/Chief Executive Officer as head of the secretariat; Director, Inter-Governmental Relations (Summit and Council of Governors Affairs); Director, Inter-Governmental Relations (Transfer of Functions); and Director, Inter-Governmental Relations (Governance Affairs). Some middle level management staff were also recruited namely; assistant directors for various directorates and a communications officer. Some categories of support staff including accounts assistant, records officer, administrative assistant, ICT assistant, drivers, and cleaners have been recruited. Some of the positions are temporarily occupied by deployed staff from the national government especially the National Treasury, Public Service and MODA. The positions are in finance and accounts, records, procurement and resource management. Detailed status of staff establishment is as presented in **Annex 10.1**.

Meanwhile, there are several positions that are yet to be filled up as per the institutional organogram and strategic plan. IGRTC intends to recruit and has sought help from the National Treasury for the budget to fill in the vacant positions. The positions include:

- a) Director, Corporate Affairs
- b) Deputy Director, Human Resource Management,
- c) Deputy Director Finance,
- d) Chief Accountant,
- e) Principal Intergovernmental Relations Officers (8 No.),
- f) Supply Chain Management Officer,
- g) Principal Internal Auditor,
- h) Principal Records Management Officer,
- i) Principal Information Communication Technology Officer, and
- j) Chief Office Administrator.
- vi) Development of Organizational Structure.

IGRTC developed organizational structure as an instrument to facilitate the achievement of its objectives. The structure was developed by a joint team

composed of officers from the Directorate of Public Service Management (DPSM) and IGRTC. The approved structure is operational.

10.6 Pending Activities

The pending activities in the thematic area are as follows:

- i. Development of second Strategic Plan 2021-2025;
- ii. Operationalization of the corporate affairs directorate to enhance supervision for quality service delivery;
- iii. Training and induction to the technical staff and interns on the mandate and expectation of the organization as well as gaining knowledge in management of public institutions;
- iv. Corporate training for senior members of the management for quality service; and
- v. Reorganization of the thematic areas to be in harmony with the organization of national government and sub-committees at COG or in an appropriate format to effectively deliver the mandate of IGRTC.

10.7 Challenges in the thematic area

The sub-committee of this thematic area observed a number of challenges. The major ones were as follows:

- i. Limited human resource to effectively deliver the mandate of the institution. The institution continues to operate on a lean staff composed of deployed staff from other government ministries and few technical staff thus limiting the ability of the organization to fully discharge its mandate;
- ii. Inadequate financial resources. An activity such as costing shall require large amounts of financial resources. This may require support from different sources including the exchequer and development partners;
- iii. Inadequate funding of the institution which affected its ability to effectively carry out proposed activities;
- iv. Closure and transfer of public records. The implementation of the work plan on the closure and transfer of public records was a challenge owing to lack of funds. The exercise required a significant budget to execute; and



- v. The budgetary allocation has not been progressive since 2016 because of the austerity measures.

10.8 Lessons learnt

Compliance with Public Finance Management Act, 2012 in the management of financial resources and installation of IFMIS and I-banking systems has enhanced efficiency in the financial transactions.

10.9 Recommendations

The following recommendations are provided for improvement of activities in the thematic area:

- i. IGRTC should fast track the closure and transfer of public records and information of the defunct local authorities, so as to safeguard public assets and preserve vital records of Kenya for prosperity and future use;
- ii. Recruitment of staff to strengthen the secretariat as resolved by the Summit;
- iii. Increase in budgetary allocation to ensure effective operations of the institution. and
- iv. The need to operationalize the directorate of corporate affairs through recruitment of the competent staff; and
- v. Establishment of a functional communication unit to implement the Communication Strategy.
- vi) Development of Organizational Structure.



GENERAL CHALLENGES AND LESSONS LEARNT

11.0 Introduction

As a new institution, IGRTC faced both operational and technical challenges that are common to new institutions. These challenges were both internal and external. Internal challenges were mainly related to the status of internal operational facilities including financial and human resources. On the other hand the generic external challenges were those involving external factors including issues of relevance in the face of opposition from devolution skeptics.


The challenges provided lessons that should be observed to propel the institution to the next level. This chapter therefore delves into these challenges and lessons learnt to inform the future of the organization.

11.1 Internal challenges

The internal challenges have negative impact on the role of IGRTC in the effective management of intergovernmental relations. During the period, IGRTC experienced operational challenges due to lack of explicit neutrality and authority to play facilitative roles in devolution processes. The IGRA, 2012 does not expressly state the tenure of the Chairperson and members of the Technical Committee posing a challenge to the smooth operations of IGRTC. The Technical Committee provides overall leadership to the activities of the Secretariat. Therefore, each time there is term disruption, the activities of the secretariat requiring policy direction are affected. For example, the members' contracts were extended four times within the period from February 2018 to June 2020. The uncertainty in renewing the contracts had negative impact on the activities of the organization.

It also had lean staff to support the institutional mandate apart from experiencing financial difficulties as its budget allocation was always inadequate. This led the





organization to depend mainly on development partner support. In order to mitigate these challenges, the following are recommended:

- 1) Review the IGRA, 2012 especially:
 - a) Need to have members' term of office, replacement or removal expressly stated in the Act;
 - b) Need to have members' term in office staggered to preserve institutional memory and seamless continuity;
 - c) The name of the institution should be changed to befit a secretariat of a summit. The name "Committee" lacks the authority expected of such an important institution; and
 - d) The powers of IGRTC should be expressly indicated in the Act.


This recommendation was considered and the review of the Act approved during the 8th Summit held in February 2020. It is hoped that once the Summit resolutions on the issues are implemented.

- 2) The delayed release of funds during the first year of the IGRTC members in office i.e. March 2015 to June 2016, posed serious challenges in the institutional operations. The institution had no operational budget, no staff, no offices and equipment. It received its first operational (but limited) budget in the FY. 2016/2017. The budget could not finance the critical activities IGRTC was expected to undertake including the residual functions it inherited from the defunct TA.

In order to undertake all the functions as envisaged in the IGR Act, adequate and direct budgetary provisions need to be allocated to IGRTC. Currently, IGRTC depends on the Ministry of Devolution and ASAL for its budget which compromises effectiveness of the organization in delivering its mandate.

11.2 External challenges


Since its inauguration in 2015, the organization has not been able to fully utilize its legally established potential due to a number of challenges. The general opinion of the public over the IGRTC, thus reveal underlying issues creating the



challenges to the performance of the institution. The origin of the weaknesses in the provisions of the IGRA, 2012 was anchored on the ideological non-belief or misunderstanding of devolution by some of the key governmental apparatus and those who are ignorant of the nature of Kenyan devolved governance system. This has consequently created structural and non-structural weaknesses as stated below:

- a) The anti-devolution/ignorant group created a weak law that was not able to give muscle to whichever team that would be vested with the management of the institution created by the Act. Institutionally, a low perceptive name, “Committee” tended to have been deliberately chosen for the institution (Intergovernmental Relations Technical Committee). To some observers, the name created the impression of an institution that was temporary and a unit within the national government structure.
- b) IGRA, 2012 includes the Principal Secretary for Devolution affairs as a member of the IGRTC but exclude a representation from COG. This has led the county governments to doubt the neutrality of IGRTC as an institution to authoritatively manage the matters of intergovernmental relations. There was ground for suspicion that the institution would be biased against county governments. The considered opinion out there had it that either the national government representation (through Ministry of Devolution and ASAL) is removed from the Committee or a representation of county governments is included through an amendment of IGRA, 2012.
- c) Consequent to the ideological mischief, the systemic structural challenges ensued. The IGRA, 2012 creating the IGRTC having been enacted in 2012, the launch was delayed until March 2015 when IGRTC was inaugurated with terms of contract for members which also seemed to confirm that IGRTC was a State Corporation but without power to sue or to be sued. This was two years after the inauguration of devolved governance.
- d) The other challenge is the interference of the senior officials from MODA in the work of IGRTC. An example is when in a meeting with the Senate, a Principal Secretary declared that IGRTC was part of the Ministry and subsequently sent a letter that IGRTC had no legal power to hold assets.





This was followed by confiscating motor vehicles that were initially to be inherited from the defunct TA. On another occasion, a principal secretary told IGRTC that it was disrespecting the Ministry. This was because IGRTC had attended a meeting convened by Committee on the Implementation of the Constitution of the National Assembly out of Nairobi apparently ‘without the Minister’s approval.’ The last incident was where a principal secretary said that if IGRTC did not attend departmental meetings of the Ministry, then she would disband the IGRTC.

- e) It appears that the skeptics would want to have a weak IGRTC so that the devolution agenda remain weak. A strong IGRTC was seen as overshadowing the COG secretariat yet the COK, 2010 demands effective intergovernmental relations institutions. Some senior officials in MODA appear not happy with IGRTC as a neutral organ between national and county governments. For example, in one budgetary sector meeting in Mombasa, an official from MODA informed the meeting that IGRTC did not need money because it had completed work on audit, validation and transfer of assets and liabilities of the former DLAs failing to appreciate that there were many other activities for the organization to deal.
- f) The opinion is that the budget of the IGRTC for purposes of independence should be delinked from the Ministry of Devolution and ASALs to avoid vulnerability. Discussion on how to facilitate the flow of resources to IGR institutions without being affected by challenges need to be held. For example, the model of funding applied to the defunct Commission for the Implementation of the Constitution (CIC) could be explored for adoption. The CIC did not have its budget directly anchored on a ministry or state agency. This enabled the Commission to be a fully neutral body which undertook its mandate objectively.
- g) Lack of regulations to operationalize legislation enacted under the COK 2010 is a great hindrance to seamless intergovernmental relations, as stakeholders adopt different interpretations on legislation enacted after devolution, leading to disagreements.


11.3 Lessons learnt

The opportunity to establish a new institution can be both challenging and fulfilling. During the setting up of the IGRTC, the pioneer members had to pass through daunting experiences. There was nobody in Kenya who could pride himself or herself with the knowledge of managing devolution with its attendant features including the natural evolution of intergovernmental relations. Power, resources and relevance were the defining tag in the relationship between the varied stakeholders in the devolution space. In the mix up was the newly launched (2015) institution (the IGRTC) way after commencement of the first phase of devolved governance system despite its enabling Act of Parliament, the IGA, 2012, having been passed in 2012. This made the institution to be received as an intruder instrument coming late into the space.

In an environment of suspicion, IGRTC had to navigate its way to define its relevance. The experience was more challenging as the IGA, 2012 seemed weak to enforce the mandate of IGRTC. The tenure of members was not clear and left to discretion; and the name, “Committee”, was giving a notion of temporariness with consequent weak authority as a secretariat of the Summit and the COG. The mandate provided in the IGA, 2012 was compressed into three substantive functions, with (d) reading, “perform any other function as may be conferred on it by the Summit, the Council, this Act or any other legislation”. These functions were more implicit than explicit. IGRTC needed to undertake empirical reviews to categorically help it fully interpret its mandate and functions. This was because it was important to review the mandate as a secretariat within the prism of the functions of the Summit, IGA, 2012 s.8 and the COG, IGA, 2012 s.20. The outcome of the various studies as presented elsewhere in this report provided impetus in to the knowledge of what the mandate and functions of IGRTC were.

The establishment of a secretariat at the COG complicated matters for IGRTC albeit for a period before IGRTC fully interpreted its mandate and functions. This period was characterized by unnecessary misunderstandings. Yet in real sense the secretariat at the COG was supposed to handle day to day internal inter-county matters and facilitating the activities of the COG while IGRTC is





expressly expected to handle COG intergovernmental relations namely the relations between county and national governments. Ideally, when COG internal secretariat handles inter-county relations matters, the national government ministry responsible for devolution should handle national intra-governmental relations. However, the experience was such that the national government ministry responsible for devolution continued to usurp the powers of IGRTC with attempt to create an impression that IGRTC was a department within the Ministry. This state of affairs tended to dilute the IGRTC mandate. Consequently, IGRTC was forced to seek the help of the Attorney General's Office. The Attorney General clarified the matter in a reply to the request.

For fear of overstepping the mandate due to blurry or seemingly limited interpretation of intergovernmental relations, IGRTC experienced suppressed sphere of operations. In a devolved system with two levels of government, it is natural that relations would be at three categories namely; inter-governmental (national and county), inter-county (county to county), and intra-governmental (within national, and within county). Intergovernmental relations should have been interpreted within its definition to include all the categories. However, the understanding and practice have emerged that IGRTC is an intergovernmental institutions within the narrow concept in inter-governmental relations (national and county relations). Going forward, the interpretation needs to be reviewed for purposes of this IGRA, 2012 so that IGRTC can respond to all intergovernmental relations as a secretariat of the Summit and the COG.

- a) Review constitutional and legal provisions on public participation and monitor their implementation at both levels of government;
- b) Identify gaps through evidence-based studies on public participation activities and sensitize stakeholders on the same;
- c) Contribute to the development of public participation and civic education frameworks at both levels of government;

12

GENERAL RECOMMENDATIONS, CONCLUSIONS, AND MEMBERS' PROFILES AND PARTING SHOT

12.0 Introduction

This chapter presents the general recommendations, conclusions and the views of the founding members on their experiences as pioneers of the institution.


12.1 Recommendations

The report has presented detailed information on the activities that have been undertaken by the pioneer members despite the hard teething problems that faced them during their term. A number of recommendations are offered herein for the incoming members to prioritize as they settle down:

- i. The role and mandate of IGRTC should be performed in accordance with the spirit of IGRA, 2012 as:
 - a) **Facilitator.** This defines the organization as the administrator and coordinator of mandates of both Summit and the COG. It implements the resolutions of the Summit and the COG. The IGRTC is therefore, a facilitator for dialogue and consultations between the intergovernmental structures.
 - b) **Implementer.** IGRTC is responsible for the day to day activities of the Summit and implements its resolutions. It should therefore enjoy operational autonomy and capacity to perform its mandates without any interference.
 - c) **Mediator.** This calls for the organization to be proactive and present on issues construed to be affecting intergovernmental relations in the country. It needs to provide objective advisories in cases where it is believed that actions of one level of government may infringe on the constitutional mandates of the other level. It should be able to preempt conflicting issues and facilitate the smooth running of relations between the two levels of government. This is a dispute preventive and resolution role.



- d) Mediator in IGR Disputes.** This role is envisaged and provided for in the COK, 2010, Art.6 (2), Art.189 (3), (4); and IGR Act, 2012 s.31. Thus before considering judicial processes, parties to the dispute should endeavor to seek redress through intergovernmental relations institutions. With strategic value positioning, IGRTC should be the first station of call on matters related to intergovernmental relations. As a secretariat of the Summit (the apex intergovernmental relations dispute resolution institution), it would be the one to re-direct disputes that require up-scaling. This is a dispute curative role.
- e) Promoter of intergovernmental relations.** IGRTC needs to be adequately resourced and supported to finalize the residual functions that were left over by the defunct TA. Completion of the pending issues would promote intergovernmental relations in the country. This will also enhance the image and build stakeholder confidence in the organization.
- f) Coordinator of capacity building activities** to enhance productivity and quality public service especially in the counties. This involves working with other institutions to identify capacity gaps and recommending remedial actions.
- ii. During the period, IGRTC undertook several empirical studies to ensure evidence-based advisories. Follow up and implementation of recommendations and proposed activities from these studies should be undertaken without delay.
 - iii. Develop the second Strategic Plan 2021 – 2025.
 - iv. The review of all polices and legislation of national government to align with the COK, 2010 should be fast tracked. Details of these legislation are presented in Annex 12.1
 - v. Advocate for the development of regulations to operationalize the laws enacted under the COK, 2010.
 - vi. Develop a civic education program for senior government staff, on devolution, paying close attention to the implementation of concurrent functions.
 - vii. Entrench the term of the Chairperson and members of the Technical Committee in law as directed by resolution of the 8th Summit in accordance with Section 11(3) of the IGR Act, 2012.



As shown in this report, IGRTC is a unique institution that serves the two levels of government. This is why the members are appointed by the Summit which is the apex body in intergovernmental relations. In order to ensure neutrality and stability, IGRTC should be housed in the Office of the President i.e. in the Office of the Chairman of the Summit.

12.2 Conclusion

As indicated in this report, the IGRA, 2012 establishes several inter-governmental structures which promote inter-governmental cooperation and consultation under the devolved governance structure. As discussed elsewhere in this report, the structures include the Summit, COG, IBEC, JITC, Sectorial forums, CIF and IGRTC. There are also specialized IGR agencies established by Art.248 popularly known as Chapter 15 commissions and independent offices. The national and county governments use these structures to consult on policies, legislation and other important issues that affect Kenyans at every level of governance. One of the fundamental pillars of the COK, 2010 is to create accountability in the use of state power and resources. It also gives the people the right to make decisions on issues that affect them among others. Thus the public expect from their leadership transparent and accountable governance that ensures quality public service delivery.

To enforce the constitutional provisions, the IGRA, 2012 s.4 provides for the principles of inter-governmental relations as recognizing the sovereignty of the Kenyan people; inclusive and participatory governance. The law also puts emphasis on promotion of national values, constitutional governance principles, and equality in public service delivery. The other principles include respecting the constitutional status of each level of government and its institutions; objective and impartial decision-making; as well as minimizing inter-governmental disputes. The law recognizes the need to promote accountability to the people; and institutionalizing the protection of marginalized groups. These are some of the reasons why there are specialized intergovernmental institutions commonly known as Chapter 15 commissions and independent offices to ensure these key pillars of the COK, 2010 are adhered to by the leadership and the citizens.




12.3 Members' Profiles and Parting shot

PROF. KAREGA MUTAHI, PhD., CBS, CHAIRMAN



Prof. Karega Mutahi is a distinguished public servant and scholar with unparalleled wealth of experience in the public service spanning over 46 years with a stint in the consulting world. He trained as a primary school teacher at St. Mark's Teachers Training College, Embu. After his training he taught in primary schools in Murang'a and Nyandarua before joining the University of Nairobi for his first degree. He currently holds a PhD in Linguistics from University of Nairobi; Master's Degree in Linguistics from University of California, Los Angeles (UCLA); and Bachelor's Degree in Linguistics, Political Science and Kiswahili from University of Nairobi. After graduating with his first and second degrees he worked as teacher trainer in Kilimambogo Teachers Training College, Kiambu and Kagumo Teachers Training College, Nyeri before joining the University Nairobi as an academic member of staff. He taught at the University for fifteen years before joining the civil service as a permanent secretary. As academic member of staff at the University of Nairobi, Prof. Mutahi played a central role in the development of academic programs in Kiswahili and linguistics. He also contributed in the development of Post-graduate Studies in Faculty of Arts. For many years he served as a member and chairman of Faculty Postgraduate Studies Committee.

Professor served as a member of the Senate Post-graduate Committee of the University for a period of six (6) years. Prof. Mutahi was instrumental in the initiation of the first project that resulted in the development of the Kenyan sign language, a task which he undertook with the then chairman of the Kenya National Association of the Deaf (a Mr. Otieno) and the Association's Interpreter, Mr. Philemon Akach. From the humble beginnings and regular meetings at All Saints Cathedral Nairobi, the Kenya National Sign Language was born. Prof. Mutahi also played a key role in the development of Chuna, the savings and credit society of the University of Nairobi. He served as its first chairman of the Supervisory Committee for six years. Prior to his appointment as Permanent




Secretary in May 1989, Professor was serving as the Chairman of the Department of Linguistics and African Languages. Between 1989 and 2013 he served in the position of Permanent Secretary in seven different ministries namely, ministries of Arid, Semi-Arid and Wetlands; Technical Training and Applied Technology; Research, Training and Applied Technology; Planning and National Development; Agriculture, Livestock Development and Marketing; Education, Science and Technology; and Ministry of Local Government. He shortly left Public Service in January 1999 and worked as a consultant for several institutions including the World Bank, Ministry of Planning and National Development, Ministry of Agriculture, The Dutch Embassy, Gatsby Trust, and UNDP among others. While serving in the various ministries, Prof. Mutahi left indelible marks including development of Jua Kali sector focusing on small enterprises supported by Jua Kali associations and Jua Kali shows countrywide. He helped in the establishment, development and application of bio-safety rules in Kenya; and the establishment and development of the then Kenya Industrial Property Institute (KIPI). Other achievements were the establishment of Kenya Institute of Public Policy Research and Analysis (KIPPR); establishment of Kenya Plant Health and Inspectorate Service (KEPHIS); and implementation of Free Primary and Free Day Secondary Education policy.

Prof. Mutahi was also instrumental in the policy development with regard to the University education. The policy ushered in the competitive process in the recruitment of vice – chancellors of public universities; and integration of special education and technical training in the mainstream national education system. As the Chairman of the Steering Committee on Devolution, Prof. Mutahi was instrumental in the development of the policy and key bills on devolution. He was part of the team that steered the successful launch of devolved system of governance between 2012 and 2013. He is currently the Chairman of Intergovernmental Relations Technical Committee.

My parting shot is that after five years of experience at IGRTC, I leave the office with a huge amount of knowledge. I am now better qualified to comment on the Kenyan devolution than when we completed a draft devolution policy and bills that ushered in the implementation of COK, 2010. I am now more aware





that devolution is still a mystery to many Kenyans. It is a fact that many of the senior public officers at the level of directors and principal secretaries are yet to read and internalize the constitutional provisions to be able to guide their sectors and country a whole on the ideals of the Kenyan devolved governance. My personal observation is that there are many senior Kenyans at both levels of government that simply want to enjoy the privileges of big office and its benefits without paying attention to “*wanjiku’s*” interest. In this regard, one wonders when we shall be able to sit down and dialogue over the issues of devolution in public service delivery. Without serious soul searching, we may never realize the objects and principles of devolution as provided in Chapter 11 of the COK, 2010. In the process of dialogue, it will be important to ask the question, “*Why did it take two years to establish IGRTC after the launch of devolution?*” Two, in a period of five years, the IGRTC, as a secretariat with the responsibility of facilitating intergovernmental relations, did not get the opportunity to brief the Chairman of the Summit despite making the necessary effort. These and many other questions raise doubt that make one wonder as to whether or not the concept of two levels of government is clearly understood by those who are charged with the management and implementation of devolution in Kenya.

Ms. ALLYCE KUREIYA ESINTELE, VICE CHAIRPERSON




Ms. Allyce Kureiya Esintele is a professional with many years of experience in the field of Education and Social Development. She has mainly worked among pastoralist communities in Kenya, Tanzania and the wider East African Region. Her main areas of focus are Education Development (Quality Enhancement, Access, Retention, Completion and Transition, with particular focus to Access for Pastoralist Communities and the Pastoralist Girl-Child), Governance (Gender Equity, Women Empowerment and Leadership), Improvement of Pastoralist Livelihoods, Conflict Management and Peace Promotion.

Allyce is a graduate of Kenyatta University with a Bachelor's Degree in Education, and Post-Graduate Studies in Governance and Democracy – Marquette University, Wisconsin, USA, and Management and Leadership - Inwent Institute, Bonn Germany. She is currently a member and vice chairperson of Intergovernmental Relations Technical Committee. She chairs its Finance and Institutional Development Committee. She started her career in development work in 1992 with GTZ, a German Bilateral Technical Assistance Program, based in the then Marsabit District, Northern Kenya. She was mainly responsible for performance improvement in the sectors of education and health, and was also charged with ensuring gender mainstreaming through all the activities of the program. She later on became the Deputy Team Leader of the entire program.

Allyce joined the Netherlands Development Organization (SNV) in 2000, first as a Program Manager for a women's empowerment program, and later as the Portfolio Coordinator responsible for a team of professionals in field offices based in Turkana and Nairobi. She later worked in an international position as a Senior Education and Governance Advisor for SNV Tanzania, based in Arusha. She has also worked as a Consultant for development organizations and the public sector. In Addition, Allyce was a delegate to the Constitutional Conference on





the Review of the Constitution of Kenya at Bomas of Kenya. As an employee of an SNV, she played a key role in mobilizing the civil society in lobbying and advocating for the provisions on human rights, gender equity and affirmative action for women and marginalized groups in the constitution. Allyce has published various articles in Social Development Journals, including a Booklet - Pacifying the Valley – Peace Building and Conflict Transformation in the Kerio Valley.

My parting shot is that Intergovernmental Relations is a key pillar for the management of the devolved system of governance. This fact is articulated through Article 6 (2) of the Constitution, which states that ‘The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.’ Further, Article 189 (1) (a) of the constitution states that ‘Governments at either level shall perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of the government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level’. It is therefore of utmost importance that the management of intergovernmental relations between the national and county governments is entrenched as a practice, and strengthened through policy, legal and institutional frameworks.

DR. NYERIS RAYMOND, PhD.



Dr. Raymond Nyeris is a Member of Intergovernmental Relations Technical Committee and Chair of Public Participation and Alternative Dispute Resolution Thematic Area. He is a management and policy expert with a PhD in Management and Policy Studies from Masinde Muliro University of Science and Technology, a Master's and Bachelor's degrees from Kenyatta and Moi Universities respectively.

He also holds a Bachelor of Laws (LLB) Degree from the University of Nairobi. Dr Nyeris has a wealth of experience in Public Service Management, Resource Mobilization, Civic Education and Public Participation. He has carried out several consultancies, research and lectured in Mount Kenya University among other universities on part-time basis while supervising postgraduate students. He has also presented academic papers and attended several courses on leadership and governance. Moreover, he has also served as a Chief Officer in charge of Public Administration and County Coordination in West Pokot County Government, Logistics Coordinator in relief Services which was coordinated by Anglican Church of Kenya among other engagements. Dr. Nyeris is passionate in championing girl-child education, civic education and public participation in the devolved system of governance. He is an ardent supporter of social justice and ethical leadership.

My parting shot is that Kenya's devolution system is a God-send phenomenon that has transformed lives. Every county has a story of success demonstrating that devolution is working. The fundamental transformation in the socio-economic, political and governance structures can be seen.

However, there are real challenges impacting negatively on the efficiency and effectiveness of devolution governance. These challenges which include intergovernmental disputes affect service delivery. For a robust service delivery, intergovernmental relations that puts premium on cooperative governance through consultation must be strengthened. This will in turn bring about expeditious resolution of intergovernmental disputes as envisioned in the law. In conclusion, it was a great honor serving the country as a pioneer member with the support of the competent secretariat. To the new members, I wish you God's blessings as you take on the mantle of leadership to advance intergovernmental relations agenda. Be brave and build synergy.




PROF. SHANYISA ANOTA KHASIANI, PhD.



Prof. Shanyisa Anota Khasiani holds a Bachelor of Arts degree in Sociology and a Master of Arts degree in Sociology from the University of Nairobi. She holds a Doctorate of Philosophy degree in Social Demography from Florida State University in the USA. In addition, Prof. Khasiani has technical skills in computer applications, and certificates in Civil Society Resource Mobilization; and Enterprise Management. She is currently a Member of Intergovernmental Relations Technical Committee where she chairs Policy and Legislation Thematic Area.

Prof. Khasiani has extensive professional and work experience that includes management and programming. She has served as the Director of Population Studies and Research Institute of the University of Nairobi; Executive Director of the Family Support Institute-NGO; and Senior Program Officer on Child Protection at UNICEF-Kenya Country Office. She also served as Senior Community Development Advisor on Agriculture for Livelihood and Food Security Program in Western Communities, and Advisor to the Western Kenya Community Driven Program on Poverty Eradication of the World Bank. Her teaching experience spans from the rank of Lecturer, Senior Lecturer and Associate Professor at the University of Nairobi. She rose to Full Professorship at Mount Kenya University. She has been a member of several boards including Chairlady of African Women in Research and Development; Board Member of the Refugee Training Institute; Member of Family Planning Association of Kenya; and Board member of Shanderema Secondary School.


Prof. Khasiani has undertaken extensive research in Environmental Management, HIV and AIDS and Reproductive Rights, Gender Equality, Democracy and Human Rights, Population Dynamics, Rural Development and Agriculture as well as Youth and Child rights. She has also undertaken extensive training and facilitation in areas of research methodology, gender mainstreaming and women empowerment, civic education and HIV and AIDS. Prof. Khasiani has participated in formulation and drafting legislation including in the Committee reviewing laws discriminatory



to women, Member of the Committee that drafted Sessional Paper on HIV/AIDS in Kenya. She is a member of the Committee that formulated the Poverty Reduction Strategy Policy and the Economic Recovery Strategy for Wealth and Employment Creation Policy. She undertook a Needs Assessment and Policy Development of the Millennium Development Goals and participated in drafting the Sessional Paper No I of 2005 on Gender Equality and Development in Kenya. Prof. Khasiani has published several articles in referred journals; book reviews, contribution of chapters in other publications; published books, publications of Community Resources and Materials; and Gender Based Articles in daily newspapers. Prof. Khasiani's future direction after completion of her tenure as a member of the Intergovernmental Relations Technical Committee is to resume teaching at Mount Kenya University and undertake consultancies.

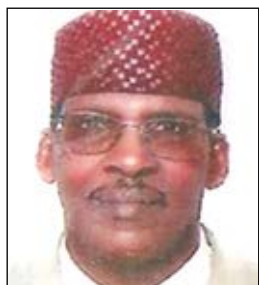
My parting shot is that under the Constitution 2010, we have experienced inherent tensions, conflicts and threats between the two levels of government. The tensions seem to frequently emanate from differences in opinions of the two levels of government in terms of national direction and priorities, how to secure the well-being of the people, and locally defined preferences. The incoming team needs to have a deep appreciation and recognition that intergovernmental relations are at the center of managing these tensions, conflicts and threats in order to ensure coherent government that delivers services to the nation through the two levels of government. The team should particularly note the critical factors influencing intergovernmental relations. These include the manner in which the constitution has distributed functions and powers making it impossible for any one level of government to operate in total isolation. Added to this is the lack of clarity in assignment of functions and powers. The Constitution has no clear provision or institutionalization for county governments to participate in policy and law making processes at the national level despite being the implementers. Furthermore, cooperation requires the two levels of government to support and respect each other's functional domain yet this is left to be exercised in good faith. The unequal distribution of financial and other resources in favor of the national government also has often forced county governments to resort to threats. The team should facilitate and leverage the functions of key institutions such as the Executive, legislature and the Judiciary created to manage intergovernmental





relations to implement relevant policies and laws. Joint institutions established by agreements can play critical roles in intergovernmental relations. Furthermore, other specialized institutions established by the Constitution such as commissions and independent offices provide opportunities for managing intergovernmental relations. Despite the multiplicity of these institutions, there is evidence that they have not been effectively used because legal architecture establishing them especially the IGRA, 2012 seems to be weak. The incoming team needs to prioritize their review for effective application.

DR. BILLOW KHALID, PhD., CPS (K)



Dr. Billow Khalid has wide public service experience spanning 42 years. He has served in the military for 32 years and retired at the rank of Major in 2006. While in the military he served as a diplomat (Military Attache') in Kenya High Commission in Pakistan for four years. Dr. Khalid has taught in a number of military academies. He also taught in a number of universities as part time lecturer. He was born in Wajir County. He is currently a serving member of Intergovernmental Relations Technical Committee in charge of Monitoring and Evaluation; and Assets and Liabilities Thematic Area.

Dr. Khalid holds a PhD. degree in Business Administration (Entrepreneurship) from the School of Business, University of Nairobi and Master of Business Administration (MBA) degree from the same university. He is a member of Kenya Institute of Management and Certified Public Secretary of Kenya – Chartered Secretaries. He has core competences in strategic management, change management, human resource management, entrepreneurial development, public sector governance and business values and ethics. Dr. Khalid has interest in cooperative and consultative devolved governance systems in the context of Africa. He has great vision for Kenya.

My parting shot is that my five years at the IGRTC has been good. However, we should be aware that devolution passes through four stages. First is the competitive stage where either the national or the county government does not want to share functions and resources. Second stage is cooperative and consultative, and the third one is the enhanced new cooperative and consultative phase. The fourth and last is the creative stage in terms of intergovernmental relations. In Kenya we were in the first stage during the first five years of devolution. Currently, we are in the second stage which focuses on cooperation and consultation. The new IGRTC team with other stakeholders will have to deal with the challenges of consolidating our devolution and moving it to the third stage.



MRS. ELIZABETH NJAMBI MUCHANE, MBS



Mrs. Elizabeth Njambi Muchane is a Member of the Intergovernmental Relations Technical Committee (IGRTC), where she has served since the inception of the institution in March 2015. She is the Chair of Cooperation, Consultation, Coordination (CCC), Human Resource and Capacity Building Thematic Area where she provides general oversight and leadership in the thematic area. Mrs. Muchane holds a Bachelor of Arts degree in Political Science and International Relations from the York University, Canada and a Master of Science degree in Entrepreneurship from Jomo Kenyatta University of Agriculture and Technology (JKUAT). She has also undergone extensive training in Public Administration, Management, Leadership, Corporate Governance, Project Management and Technology Assisted Learning and is credited with the development and rolling out of several online programs at eLDi. Mrs. Muchane has had an illustrious career in both the public and private sectors spanning over twenty years and was instrumental in the establishment and development of the Kenya Institute of Management, Centre for Enterprise Development (CED) and more recently the Kenya Development Learning Center (KDLC), which was later renamed the eLearning and Development Institute (eLDi) of the Kenya School of Government (KSG). Mrs. Muchane has successfully coordinated a number of donor funded projects including the Capacity Development Program of the Association of African Distance Learning Centres covering 17 African countries sponsored by the World Bank. In acknowledgement to the distinguished service rendered to KDLC and the Nation, His Excellency the President awarded Mrs. Muchane the “Moran of the Order of the Burning Spear” (M.B.S) in 2012.

My parting shot is to firstly thank God for the opportunity given to serve the people of Kenya in this important institution. Secondly, working at the IGRTC has been both rewarding and challenging. There was no dull moment. The most fulfilling experience however, was to witness the power of devolution especially how the formerly marginalized regions are actively participating in the development of our country. Lastly, I wish the incoming members well as they continue with what we have started.


DR. FRANCIS KALAMA FONDO, PhD.



Dr Francis Kalama Fondo holds a Doctorate degree in Business Administration, an executive Master of Business Administration degree (strategic management) and a Bachelor's degree (Upper 2nd class Honors) in Commerce. He is a Certified Public Accountant and a member of the Institute of Certified Public Accountants of Kenya, Institute of Certified Public Secretaries of Kenya and the Kenya Institute of Management. He is currently a member of Intergovernmental Relations Technical Committee and chairs its Functional Analysis, Costing and Transfer Thematic Area. Dr. Fondo has a long career background in auditing, financial management and corporate governance, built from 1980. He has served with multinational organizations including Delloite & Touche, Wellcome Kenya Limited and Delta Plc of London. He also has experience in the Financial and Banking sector having worked with the Kenya Commercial Bank Group. In the Public service, Dr. Fondo has served for 8 years, five of which as the Deputy Director, Finance Administration of Kenya Wildlife Service and three with the Coconut Development Authority as the Managing Director and Secretary to the Board. He has been part of the transformation of both organizations. Between 2010 and 2015, he lectured in a number of Universities at Masters and PhD level in Global Business Strategy, Strategy and Strategic Human Resource Management, Strategic Management, Management of Innovations, Management across Cultures and Strategy Implementation.

Dr Fondo's competences are in strategy formulation, implementation and control; ISO 9001:2008 policy formulation and implementation and design and implementation of the Balanced Scorecard. Others are business risk management, business process reengineering; strategic innovation and management of strategic change. His personal attributes and skills include leadership, team building and negotiation; good interpersonal and communication skills; and strong analytical skills. He has attended skill development courses such as Enterprise Resource Program, Sun and Access Accounting systems, Microsoft Office, Power Point and





Microsoft Excel. His areas of interest are environmental protection, community development and coaching and mentoring employees and young members of the society.

My parting shot is that a lot remains to be done in the implementation of the functions that were assigned by the Fourth Schedule of the COK, 2010. Many functions and resources assigned to counties such as agriculture, health and regional development authorities still remain with the national government. Seven county governments still remain with primary schools which used to be owned by defunct local authorities. The unbundling of state corporations remains work-in-progress. Commitment by both levels of government to unbundle, cost and assign these functions is critical towards the full implementation of the COK, 2010 and in eliminating lingering intergovernmental conflicts.

PROF. JUDITH MIGUDA-ATTYANG, PhD.


(Resigned from the IGRTC w.e.f. July 2019 on appointment as CEC Health, Kisumu county)



Prof. Judith Miguda-Attyang is an accomplished university don whose academic career spans twenty-six years. She holds Ph.D. in linguistics, and M.Phil. Degree both from Delhi University, India. She has a Bachelor of Education degree from University of Nairobi and Master's Degree in Applied Linguistics at Birmingham University in the UK. Prof. Miguda-Attyang also holds Post-Graduate Diploma in Human Rights and International Humanitarian Law (the Indian Academy of International Law and Diplomacy, New Delhi). Prof. Miguda-Attyang is currently a member of Intergovernmental Relations Technical Committee and chairs its Summit and Council of Governors Affairs, Planning, Budgeting and Finance Thematic Area. In 1990, she joined the Department of Communication Skills, Moi University as an assistant lecturer. In 1992 she moved to Maseno University as a lecturer. In 2005, Prof. Miguda-Attyang rose to the rank of senior lecturer, and was appointed chairperson of the Department of Communication and Media Technology. As chairperson, she oversaw exponential growth and increased capacity in the Department. Through collaborations and networks, she established the institution radio station, Equator FM.

Under her chairmanship, the student enrollment increased significantly and the Department was rated highly by both students and other stake holders. In 2010, she joined Bondo University College (BUC), which later became the Jaramogi Oginga University of Science and Technology (JOOUST) as an associate Professor of linguistics. On joining BUC Prof. Miguda-Attyang was appointed the founding director of the Board of Postgraduate Studies (BPS). As director of BPS Prof. Miguda-Attyang established and presided over a very vibrant institute which within three years had established all the required infrastructure, policies, rules and regulations resulting in a large number of students graduating in both





Masters and Ph.D. grades. In addition to her intellectual pursuits, Prof. Miguda-Attyang has deep interest in social development and governance issues. Over the years she has trained and sensitized communities in civic education and public participation, gender and development; and human rights and advocacy issues. In the years running to Kenya's new proposed system of governance, Prof. Miguda-Attyang took a keen interest in the new system of governance and was instrumental in developing and teaching curriculum on devolved system of government at JOOUST at a certificate level. It is Prof. Miguda-Attyang's deepest desire that Kenya will succeed beyond anybody's dream through total devolved system of governance.

My parting shot is that IGRTC is a powerful tool of intergovernmental relations that has not been used to its potential. MODA must not view it as being under it and the COG secretariat must not see it as a competition. The Summit must fully embrace it as its secretariat and leave to it all coordination of Summit activities, from organizing the meetings to coordinating the implementation. The practice of having sub-committees appointed at Summit meetings to implement its resolutions completely weakens the IGRTC, leaving resolutions not effectively implemented. There is need for the chairman of the IGRTC secretariat and the chair of the Summit to have easy access to each other for proper and seamless coordination of the activities.


MRS. ANGELINE HONGO, MBS (Alternate to PS, Devolution)



Mrs. Angeline Hongo is a career civil servant with over 30 years working experience. Her distinguished and exemplary service to the Nation, and particular in devolution, has won her a Presidential Award of Moran of Burning Spear (MBS) in 2012. She holds a Master's Degree in Business Administration, Finance Option, and Bachelor's Degree in Commerce, Accounting Option both from the University of Nairobi. Mrs. Hongo has also attended several courses and workshops in Public Administration and Local/Sub-National Governance Finance among others. She is currently the Director, Intergovernmental Relations and is an alternate to the Principal Secretary State Department of Devolution in the Intergovernmental Relations Technical Committee. Before joining the then Ministry of Cooperative as Principal Cooperative as an auditor, Mrs. Hongo worked as an auditor in the then Controller and Auditor General's Office. She has also worked in the then Ministry of Local Government as Program Coordinator, Kenya Local Government Reform Program, charged with reforming the Local Government Sector. She also served as Secretary to Local Authorities Trust Fund (LATF) Advisory Board.

In the run-up to the introduction of devolved system of governance, Mrs. Hongo was appointed Joint Secretary to the Task Force on Devolution in Kenya which was charged with the mandate to propose implementation mechanisms for the devolved system of government. She was appointed as a member of Inter-Ministerial Committee charged with implementing the Task Force report which came up with the Devolution laws. Mrs. Hongo was a member and Vice Chairperson of the Transition Authority, the body that spearheaded and midwifed introduction of Devolution in Kenya. Mrs. Hongo has served in a number of statutory boards including board member of Kenya Accountants and Secretaries National Examinations Board (KASNEB) and TANA and TANATHI Water Services Board.





My parting shot is that IGRTC is an important body as its mandate is to ensure that intergovernmental relations are achieved. Effective intergovernmental relation is key as it acts as a vital engine to drive a successful devolution. Intergovernmental relations have come a long way and the two levels of government have made gains and successes through consultation, cooperation and coordination. This must be upheld and sustained for the country to experience the objects of devolution. Going forward, we may need to review the composition, roles, structures and responsibilities of the existing intergovernmental bodies to establish whether they are addressing the emerging issues after so many years of implementing devolution in Kenya.


ANNEXES

Annex 4.1:

Emerging Issues identified on Devolution and best practices Intergovernmental Relations. Some of the issues have been addressed as presented elsewhere in this report

- 1) Clarification of functions and powers.
- 2) Creation of three lists of functions and powers.
- 3) Sharing out of concurrent functions and powers.
- 4) A framework for national government assignment of additional functions to county governments.
- 5) A framework for intergovernmental transfer of functions and powers.
- 6) Unbundling and transfer of functions and powers.
- 7) Restructuring of the old order institutions.
- 8) Unbundling, costing and transfer of functions in the health sector.
- 9) Transfer and management of human resources in the health sector.
- 10) Unbundling and transfer of functions in the roads sector.
- 11) Unbundling and transfer of functions in the housing sector.
- 12) Unbundling and transfer of functions in the water sector.
- 13) Unbundling and transfer of functions in the agriculture sector.
- 14) The institutional framework for fiscal intergovernmental relations.
- 15) Intergovernmental relations on the powers to raise revenue.
- 16) Intergovernmental relations on the vertical and horizontal division and allocation of revenue raised nationally.
- 17) A framework for conditional grants.
- 18) A framework for the expenditure of the Equalization Fund.



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- 19) A framework for mobilization and sharing of donor grants.
 - 20) A framework for borrowing by both national and county governments.
 - 21) The IFMS and e-procurement framework and its implementation.
 - 22) Audit, verification, and transfer of assets.
 - 23) Audit, verification, validation, and liquidation of liabilities.
 - 24) Rationalization of staff and harmonization of terms and conditions of service.
 - 25) The role of the Senate and its relationship with other institutions including county governments.
 - 26) Intra-governmental relations
 - 27) Accountability by Governors.
 - 28) Dispute resolution
 - 29) Gender balance in intergovernmental relations structures and institutions.
 - 30) Preparation for managing another transition.

Annex 4.2 Summary of Summit meetings held during the period

IST SUMMIT Held at State House, Nairobi on 19Th June 2013.

Minute	Resolution	Status	Actors	Remarks
<p>Min.No.2/19/06/13 Transfer of Functions A concern was expressed regarding the apparent lack of awareness on the part of the officials of the national government working at the County Level on the fact that devolved functions have been transferred. It was suggested that communication be issued from the national government to its officials clarifying these issues and asking the officials to act in accordance with the reality.</p>	<p>It was resolved by the Summit that the formal processes of transferring all devolved functions to county governments be fast tracked and expeditiously concluded in accordance with the Law.</p>		<p>National government TA/IGRTC COG KLRC IBEC</p>	
<p>Min.No.3/19/06/13 Pending Legislation on Devolution The Taskforce had outlined the need to elaborate the regulations that support enacted legislation on devolution</p>	<p>The meeting agreed to fast track the development of regulations as appropriate. Regulations to elaborate on the statutes supporting the implementation of Devolution would be done by relevant bodies</p>		<p>The National Government. COG KLRA MoDP</p>	

Minute	Resolution	Status	Actors	Remarks
Min.No.4/19/06/13 Perceived Control of the Transition Process	Governors proposed that the membership of the Transition Authority should be revised so as to have neutral members who are not drawn from the National Government. The deliberations did not however lead to an outcome resolution.			
Min.No.5/19/06/13 Contextual Conflict of Laws relating to Devolution. Governors were concerned that the National Government Coordination Act mandated the national government to appoint coordination officers to the lowest level of the ward in counties, whereas the County Government Act also mandated counties to appoint administrators to the same level.	The Summit deliberated on the matter and clarified that the law will not infringe on the mandates of county governments. Further, the national government would ensure appropriate collaboration with counties as a joint enforcement of laws and regulations through security agencies. His excellency the president further made commitment to support counties in establishing County Policing Committees, and further		The National government COG IGRTC	The Governors were of the opinion that this situation would create parallel structures and lead to conflict. His Excellency the President emphasized that the proposal to share administrative structures would lead to further conflict.

Minute	Resolution	Status	Actors	Remarks
<p>Governors particularly sought to have the national government desist from appointing officers at the county level below the level of County Commissioners recommending that the administration at the lower level below the County Commissioners should be appointed by the county governments.</p> <p>The Governors further requested that the national coordination administrative officers should report to the counties on their activities.</p>	<p>secure County Participation in development and implementation of Disaster Management Policies.</p>		<p>The National Treasury Council of Governors IGRTC</p>	



Minute	Resolution	Status	Actors	Remarks
<p>Min. 7/19/06/13 Staffing and Structure. <i>The Health function staffing and structure.</i> The following issues were outlined for clarification: 1) Whether drugs for use in counties would be sourced from KEMSA and whether the resources for drugs purchased was allocated to counties directly or to KEMSA</p> <p>2) Clarification as to why the national Government sought to employ nurses despite Health being a devolved function and further why the employment was structured from a constituency perspective through the participation of Members of parliament rather than through the counties.</p> <p>3) Clarification as to whether the Ministry of Health was planning to establish level 5 Hospitals in</p>	<p>His Excellency the President agreed to have the National government undertake the payroll functions for the next six months and handover the same to the counties thereafter at the specific request of any County through the established legal frame.</p> <p>The Summit made the following decisions; 1) Counties to address County specific Health Challenges directly with the CS Health. 2) National Government to retain vaccination drug procurement and implementation across the country. 3) National Government to unbundle all devolved function budgets and costing and share the same with respective counties.</p>	<p>1) Cabinet Secretary National Treasury clarified that all resources for purchase of drugs were transferred as part of the funding for Counties and as such, counties would be required to purchase their requirements from KEMSA. 2) It was agreed that the National government was best placed to carry out the bonding of doctors to ensure uniformity in bonding terms and equitable distribution of specialist. County governments may however sponsor and bond officers on County specific priority needs. The Health Bill before</p>		

Minute	Resolution	Status	Actors	Remarks
<p>all 47 Counties, or upgrade and sustain at least one Hospital at level 5 status in each of the 47 Counties.</p> <p>4) Clarification as to why the Ministry of Health was still retaining a larger portion of the entire health budget whereas the health function is substantially devolved.</p> <p>5) Governors were of the opinion that funding for Health would not be sufficient to pay for Health workers and undertake development projects. They requested the National government to continue paying the Health workers from the National Government Health budget.</p> <p>6) Clarification of the decision of the national government implementation of Health priorities through Counties.</p>	<p>National treasury to forward the unbundled budgets to counties by 28th June 2013.</p> <p>4) Counties to retain and manage all the staff transferred with functions. Counties to undertake their respective rationalization framework for both National and County Governments.</p> <p>5) Technical support to be provided by the National treasury to support county governments with the preparations of their budgets, Counties would prioritize salaries and other personal emoluments as first on their budgets.</p> <p>6) National Government will continue to administer payroll functions with regard to Health workers if requested by the County</p>	<p>Parliament addresses the issue of sharing specialist.</p> <p>3) In the FY 2015/16, the National Treasury allocated Ksh. 3.6 billion as conditional grants for level 5 hospitals. In 2016/17 conditional grants amended to 4 billion.</p> <p>4) Ministry of Health reported that funding to meet all staff cots had been allocated to County governments. In cases where liabilities have risen, counties were advised to submit the details of figures to the inter-agency team, which would approach the National treasury for their inclusion in the MTEF.</p>		

Minute	Resolution	Status	Actors	Remarks
	<p>governments in accordance with the Law.</p> <p>7) His Excellency the National government would be implementing health priorities through Counties in form of conditional grants.</p> <p>Counties will therefore be expected to implement and report on specific programmes such as free maternity care on behalf of the National government, over and above their individual health programmes</p>	<p>5) To address issues raised by COG, the Ministry of Health developed the Health Bill which underwent an expert review by COG, KLRC and CIC. The reviewed Bill was presented to Parliament and awaits its decision.</p> <p>6) It was reported by the Ministry of Health, that as at 18th August 2015, all 47 counties had signed and collected their staff files.</p> <p>7) The National government is now in the process of reviewing the free maternity policy .In this regard, the National government intends to partner</p>		

Minute	Resolution	Status	Actors	Remarks
<p>Min.No.8/19/06/13 Operationalization of Inter-Governmental Relations Structure.</p> <p>1) The Governors requested the National Government to operationalize the Inter-governmental relations Structure including the Budget and the Economic council and The Intergovernmental technical Committee.</p>	<p>1) The meeting agreed to establish two separate Inter-Governmental Technical Committees, one to cater for the summit and the other for the Council. This would require an amendment to the Inter-Governmental Act.</p> <p>2) His Excellency the President recommended the creation of an interim technical committee to begin the process of</p>	<p>with NHIF and introduce the Linda mama Health Card that would be issued to all expectant mothers, making them eligible to access facilities and service in any public and selected institutions.</p>		



Minute	Resolution	Status	Actors	Remarks
	<p>recruitment of members of the two technical committee agreed upon. The meeting agreed to appoint two persons from the Council of Governors and two persons from the National Government and jointly agree upon Chairperson to begin the process of recruitment and establishment of the Inter-governmental Committees.</p> <p>3) Interim Technical committee to review textual conflicts of laws outlined by the Council for possible amendment.</p>			

Minute	Resolution	Status	Actors	Remarks
Min. No. 9/19/06/13 Implementation of the President's Policy Agenda in Counties.	His Excellency the present would put on pause any national government projects undertaken without due consultation with respective Governors involving county functions.	The national government its intention to implement priority projects through conditional grants or earmarked funds reiterating that no project on devolved functions would be implemented without due consultation with the respective county government.	The national government COG	
Min. No. 10/19/06/13 Representation of the Presidency In The National Functions at County Level	The item was resolved through a circular from the ministry of Interior and Coordination of the National Government used in preparation of 1 st June 2013			
Min. No. 11/19/06/13 Operationalization of the County Gazette	The Council of Governors to liaise with the Government Printer.	The county governments to consult with the Government Printer.	National government County governments	



Minute	Resolution	Status	Actors	Remarks
<p>Min.No.12/19/06/13</p> <p>Funding and Implementation of Educational Infrastructure</p> <p>Governors requested the National government to Transfer the function of infrastructure support for primary schools. Governors indicated that they were receiving varied requests to maintain School infrastructure.</p>	<p>His Excellency the President however requested Governors to defer the request pending further Consultations with relevant stakeholders</p>		<p>Ministry of Education</p> <p>The national government</p> <p>COG</p>	.
<p>Min.No.13/19/13</p> <p>County Government Infrastructure (Roads Maintenance)</p> <p>“Class C” roads</p> <p>1) Governors requested to take over the management of “class C” roads within their counties due to the perceived delays over national Government maintenance of these roads.</p> <p>2) The Meeting was informed that plans were underway to</p>	<p>The meeting resolved that counties should focus on management of the roads currently designated, which are class D, E and unclassified roads.</p> <p>1) With regard to the transfer of KURA and KERRA functions and resources to Counties, the Summit resolved that an administrative mechanism be established to guide this transfer. It also agreed that</p>	<p>The Roads Bill 2014 was developed and submitted to Parliament. The Bill addresses all the concerns raised by county governments, including classification of roads.</p> <p>The Ministry of Transport and Infrastructure signed individual agreements with all the 47 County governments. The</p>	<p>Ministry of Transport and Infrastructure</p> <p>KURA</p> <p>KERRA</p> <p>KENHA</p> <p>TA/IGRTC</p>	

Minute	Resolution	Status	Actors	Remarks
<p>merge the various road authorities, namely Kenya Rural Roads Authority (KERRA), The Kenya Urban Roads Authority (KURA) and Kenya National Highways Authority (KENHA) into one National Authority. Counties are free to from their own.</p>	<p>because the personal emoluments of the transferred of the staff of KERRA and KURA are paid out on roads levy fund, the officers would be transferred to counties, but administratively continues being paid through the Fund until anew administrative framework is established.</p> <p>2) The Summit resolved that the plans and programmes of the National Government on roads should be communicated to County Governments to facilitate effective coordination between the two levels of Government</p> <p>3) Circular to be issued by the Ministry of Road and deployment of transferred function staff of KURRA and KERRA.</p>	<p>transfer was based on an inventory done by the Ministry following the unbundling of roads sector function by the Transition Authority. The Ministry of Transport and Infrastructure confirmed that the classification had been done.</p>		



Minute	Resolution	Status	Actors	Remarks
<p>Min.No.13/19/06/13 County Government Infrastructure (Road Maintenance)</p> <p>i. Transfer of road Maintenance equipment</p> <p>1) Governors requested the National Government to transfer certain designated roads maintenance equipment to be shared amongst County clusters for their effective implementation of County roads Maintenance functions.</p>	<p>The national government agreed to transfer the ownership of certain road equipment to county governments in line with the recommendation of the task force on challenges facing devolution.</p>	<p>The Ministry of Transport and Infrastructure informed IGRTC that the Ministry had developed an inventory of assets to be transferred to counties. All 47 County governments had signed individual agreements with the Ministry and witnessed by TA through the county Transition Coordinators. All equipment's had since been transferred. The national and county governments were, in principle in agreement over the classification of county vs National roads as specified in the Fourth Schedule of the constitution. There was also consensus that the national government</p>	<p>The Ministry of Transport and Infrastructure The County governments IGRTC</p>	

Minute	Resolution	Status	Actors	Remarks
		would manage the construction and operation of roads classes A and B while county governments would manage roads class D, E and unclassified roads.		
Min.No.13/19/06/13 County Government Infrastructure (Road Maintenance) ii. Agriculture Mechanization Equipment Governors requested the National government to transfer agricultural mechanization equipment to be shared amongst County cluster for their effective implementation of the County agriculture functions.	It was resolved that the ownership of the equipment under the Agriculture Mechanization Service be transferred to County Governments through agreed administrative scheme.	The Agricultural Policy had been developed and had undergone comprehensive consultation with key stakeholders including farmers and County governments.	The Ministry of Agriculture The National government County government IGRTC	



Minute	Resolution	Status	Actors	Remarks
<p>Min. No. 14/19/06/13 Management of Water Resources. Governors requested to be included in the decision-making framework of water Resource Management Authorities and Water Service Regulation Boards. This would require amendment of relevant laws.</p>	<p>His Excellency the President agreed to work with respective bodies to review the proposal to have counties participate in the Directors of the Water Resource Management Authorities and Water Service regulations Boards.</p>	<p>In order to accommodate the constitutional changes brought about by CoK, 2010, the Ministry had developed the water Bill, 2014 which was passed by Parliament into Water Act, 2016. The Act aligns the sector with the Constitution, whereby Water resource management is recognized as a national function and water service provision and sanitation as a county function.</p>	<p>The Ministry of Environment, water and Natural Resources Resource Management Authorities County governments</p>	
<p>Min. No. 15/19/06/13 Development of Partner Engagement. Governors requested clarification as to whether donor funded projects has been factored into county government budgets.</p>	<p>His Excellency the President informed Governors that the National Government was relooking at the overall foreign policy assistance and the engagement with development partners.</p>	<p>The Summit established an ad hoc committee. The committee developed guidelines for management of Intergovernmental Fiscal Transfers to provide clarity on the framework for managing and</p>		

Minute	Resolution	Status	Actors	Remarks
	<p>That, a framework for Coordination of development partner engagement with Countries to be developed in line with the Country's Foreign policy and External Resource policy.</p>	<p>facilitating smooth implementation of these transfers as contemplated in the Constitution and PFMA. The guidelines address the flow of conditional and unconditional funds between the two levels of government, including funds from development partners.</p>		



Minute	Resolution	Status	Actors	Remarks
<p>Min.No.03/20/05/2014 Report on the IBEC Discussion /observation. The CS National Treasury reported that the National Assembly had approved the Division of Revenue Bill. Treasury had presented budget recommendation for the Counties in the amount of Ksh.228 billion on an economic growth rate of 6% but parliament reduced the amount to ksh.26 billion. The two options for calculation of the County allocation were: i.Based on revenue growth and ii.Based on economic growth.</p>	<p>1) That, going forward the National Treasury will be updating the COG after presenting budget to the National Assembly. 2) That, the matter on the proper base to be used i.e. economic growth, to be referred to IBEC for future deliberation and decision making.</p>	<p>A sub-national borrowing framework was developed on 29th October 2014. IBEC has made various proposals to the Senate to amend PFM to ensure financial prudence.</p>	<p>The National Treasury COG IBEC</p>	
<p>MIN.NO.04/20/05/2014 Update on Intergovernmental Institutions and Arrangements.</p>	<p>That, the Ministry of Devolution and Planning shall find existing office space within the Government buildings offices in Nairobi for the Council of Governors.</p>	<p>The Ministry of Devolution and Planning has spearheaded the development of regulations to operationalize devolution laws, including</p>	<p>Ministry of Devolution and Planning KLRC IGRTC</p>	

Minute	Resolution	Status	Actors	Remarks
<p>Discussions/Observations</p> <p>1) The committee to recruit the Intergovernmental Committee is in place and they have advertised and short-listed candidates. The Interviews for shortlisted candidates are expected to begin on Monday 26th May, 2014.</p> <p>2) A proposed amendment to the Intergovernmental Relations Act to provide for a separate committee to support COG is pending under miscellaneous Amendment Bill.</p> <p>3) The budget for supporting the IGRTC comes from the Ministry of Devolution. The budget is currently awaiting approval by National Assembly.</p>		<p>Intergovernmental Relations Act 2012.</p> <p>Regulations for Alternative dispute resolutions (ADR) have been developed.</p> <p>The summit secretariat, IGRTC has used ADR to resolve several matters that have been referred to it such as dispute between West Pokot County Government and County Commissioner over ownership of office block, dispute over land ownership between county government of Tharaka Nithi and the Prison Department and dispute over Meat Inspection between Nairobi city County and Ministry of Agriculture, Livestock and Fisheries.</p>		



Minute	Resolution	Status	Actors	Remarks
<p>Min.No.05/20/05/2014 National Security. Discussion/observation Two issues on security were raised by the governors: i.The need for enforcement of county regulation by the police and ii.De-radicalization of the youth. The CS Interior and coordination of National government reported that legislation regarding the County Policing Authority is ready and will be gazetted. The CS further reported that County Commissioners represent the national government in matters concerning security and coordination. On poaching, the governors called for operationalization of the Wildlife Act to give effect to compensation in the event of human wildlife conflict.</p>	<p>1) That, the County Policing Authorities regulations to be gazetted; 2) That, the National Government via the Ministry of Interior and Coordination of National government to provide a framework for coordination of security at the County level 3) The Ministry of Interior and Coordination of National government convenes a meeting with the COG security committee to discuss a way forward on tackling radicalization and interior. 4) That, the CS interior, CS Tourism and COG Chair of Tourism Committee with H.E the President to discuss Tourism matters.</p>	<p>Guidelines for County Policing Authority have been signed by the Cabinet Secretary for Interior and National Coordination. For Cross-County threats there are regional structures and initiatives in place to deal with the same. Enhanced collaboration between the national and county governments has been enhanced to address radicalization of the youth. The national government has engaged security forces and international agencies such as Interpol to assist in fighting poaching. At the same time the National and county government meet regularly to address tourism related issues.</p>	<p>Kenya Forest Service Ministry of Tourism Ministry of Interior and Coordination of National Government Council of Governors</p>	

Minute	Resolution	Status	Actors	Remarks
<p>The CS Environment Water and Natural Resources (EWNRR) assured members that the implementation of the Wildlife Act is ongoing.</p> <ul style="list-style-type: none"> The CS EWNRR reaffirmed the successes in areas where community involvement was present and reported of reinforcement of some 580 recruits from NYS as rangers and another 2500 requested including 500 from affected communities. 		<p>There has been improvement in community engagement in security e.g. disarmament as a strategy in enhancing success of security operations.</p> <p>It was resolved that all logging in national forests to be stopped.</p> <p>County governments, Forestry Department, Kenya Forest service and local communities have jointly developed a participatory Forest Management Plan for every forest station.</p> <p>These partners formed a team to be responsible for allocation of permits for forests resources.</p>		



Minute	Resolution	Status	Actors	Remarks
<p>Min.06/20/05/2014 Legislative Interventions and Challenges including Water Sector Reforms. Discussion/Observations. The governors, via their chairperson, faulted the process of developing legislation that overlooks their participation and involvement. Their sentiments were however objected by the CIC who claimed that the commission facilitates public participation on all bills and engages the counties via CEC for their participation. The governors felt there was need for clearing house before bills affecting Devolution were presented to the National Assembly</p> <ul style="list-style-type: none"> On the water Bill, the governors felt the need to have the water Bill, 2014 county representation in the Water Resources Regulatory Authority 	<ul style="list-style-type: none"> THAT, CIC convenes an Inter-governmental forum to discuss legislation that is relevant to devolution. THAT, the Council of Governors organise sector engagement meetings on legislation affecting counties. THAT, the CIC establishes a formal way of consulting on bills. THAT, CIC convenes a meeting with the Council of Governors and the CS ENW to make a memorandum on the Water Bill and present it jointly before the relevant parliamentary committee. 	<p>The Ministry of Environment, Water and national Resources developed the Water Bill, 2014 which was passed by the Parliament into the Water Act, 2016. The Act aligns with the Constitution, whereby Water resource management is recognized as a national function and water service provision and sanitation as a county function.</p>	<p>The Ministry of Environment, Water and Natural Resources</p> <p>Water Resources Management Authority</p> <p>Water Services Regulation Board.</p>	

Minute	Resolution	Status	Actors	Remarks
<p>Management Board and water service Regulatory Board.</p> <ul style="list-style-type: none"> Governors expressed concern that there were numerous other pieces of legislation content involved. 				
<p>Min.08/20/05/2014 Funding for County Governments. Discussion/Observation</p> <p>Level 5 Hospitals Concern was raised over the stopping of conditional grants in future financial years and the risk of closure due to lack of funds to maintain and sustain the existing level 5 hospitals. Concern was raised over the current insufficient allocation of the existing level 5 hospitals resulting in a decline in service delivery. Human resource capacity and infrastructure development were extremely</p>	<p>The national and county government each contribute 1.7billion from their budgets towards funding of level 5 hospitals.</p>	<p>In reference to the minutes of the 3rd Summit, the Chairman requested for time to consult with the cabinet secretary for the National Treasury and the governors of Wajir, Nyeri, Mombasa and Kisumu to agree on a way forward.</p> <p>The Summit resolved that the Equalization Fund will be dealt with the guidelines on the administration of the Equalization Fund established under Article 204 of the Constitution, which were published vide Gazette No.26 of 13th</p>	<p>Council of Governors Ministry of Health The National Treasury</p>	

Minute	Resolution	Status	Actors	Remarks
<p>constrained by the current allocation. It was suggested that: The Equalization fund be used to fund the level 5 hospitals but objection was made to such re-direction citing the constitution's direction of its use which is limited to marginalized communities (Article 204 of the Constitution)</p> <p>ii. Wage bill</p> <p>It was reported that from the agreement of payment of the County wage bill for a period of 6 months by the national government.</p> <p>Multiple Governors had raised the issue of the disproportionate amount of their allocation. This scenario has created stagnation in development at their counties due to insufficient funds in their counties.</p> <p>iii. Retention of funds & refund to national Government.</p>		<p>March 2015. The guidelines provide, among others, for the establishment of the Equalization Fund Advisory Board and guidelines on the administration and management of funds.</p>		

Minute	Resolution	Status	Actors	Remarks
Governors raised concern over the delay in release of funds to the counties. However, the president assured Governors that the national Government is not withholding funds allocated to counties.				
Min.No.09/20/05/2014 Depletion of Forest Cover in Kenya	THAT the CS Environment, Water and Natural Resources (EWNR) convenes a meeting with the Governors of the counties affected by depletion of the forest cover and present away forward.	All county governments have prepared County Forest Transition Implementation Plans to guide management of forests. The Ministry of Environment, Water and Natural Resources reported that all logging in natural resources had been stopped.	CS Environment, Water and Natural Resources (EWNR); COG	
Min.No.10/20/05/2014 National Capacity Building Discussion/Observation There was need for (1) joint rationalization and (2)	THAT the MoDP and the Council of Governors (or their representative) discusses matters of rationalization and	National and county governments have jointly developed a National Capacity Building framework (NCBF) and curriculum.		

Minute	Resolution	Status	Actors	Remarks
<p>prioritization of training needs and resources.</p> <p>The CS Devolution reported that there was ongoing discussion on rationalisation.</p>	<p>capacity building and present way forward.</p>	<p>Implementation of some of the modules in NCBF is underway.</p>		
<p>Min.No.11/20/05/2014 The Public Benefit Organization Act ,2013 Discussion/Observation</p> <p>The CS Devolution stated that the passing of the PBO Act does not affect the civil societies and Non-Governmental Organizations at the County level.</p>	<p>THAT the MoDP convenes a meeting with the council of Governors (or their representatives) and other stakeholders of the PBO Act, for further deliberations and define way forward.</p>		<p>Ministry of Devolution and Planning</p>	
<p>Min. No.12/20/05/2014 Enhanced Working Relationship</p>	<p>H.E the President and Council of Governors agreed on the need for a symbiotic working relationship based on consultation and cooperation between the national and county governments</p>	<p>The national and county governments have jointly developed a National Capacity Building Framework (NCBF) and curriculum implementation of some of the modules in NCBF is underway.</p>	<p>The national government County governments</p>	

Minute	Resolution	Status	Actors	Remarks
<p>Min.No.13/20/05/2014 Date and Venue for Future Summit Meetings. Discussion/Observation Sec.9 (a) of the Intergovernmental Relation Act, 2012, requires for the summit to be held at least twice a year. In addition to the two summit meetings the chairman may convene a special meeting.</p>	<p>THAT future National and County Government Coordinating Summit be held every second week of May and November.</p>			



3rd Summit Held at State House, Nairobi On 8Th December 2014

Minute No.	Resolutions	Status	Actors	Remarks
<p>Min.No.03/S3/2014 Report of the IBEC Discussion/ Observations</p> <p>The Chair of the Finance Committee of COG noted the need for further engagement on the following issues;</p> <ol style="list-style-type: none"> 1) The creation of an independent Loans and Grants Council within 6 months with representation from the National and County Levels of Government. 2) Harmonization of County taxes and levies. 3) County Budget ceilings in line with prudence and fiscal responsibility. 5) IBEC and Senate should seek closer partnerships. IBEC and CRA should convene meetings to deliberate on double taxation. 	<ol style="list-style-type: none"> 1) A sub-national borrowing framework was adopted during the last IBEC held on 29th October 2014. 2) IBEC is engaged with the commission on Revenue Allocation on the process of developing the second-generation formula that might see some changes on how resources are shared between the two levels of Government. 3) IBEC through the commission on Revenue Allocation, the National Treasury and the Council of Governors will be holding a consultative meeting to discuss ways of streamlining the taxation efforts by all counties to ensure that business operating in and across counties are not affected. 4) IBEC had made various proposals to the Senate to amend the PFM to ensure financial prudence. The proposed amendments are also aimed at strengthening the role of the County Executive Member in all counties to exercise their mandate as stipulated in section 130 of the Finance Management Act. IBEC will hold an extraordinary session to 	<p>During the 5th Summit the National Treasury confirmed that the borrowing framework is part of the PFM regulations approved by parliament. As such, the borrowing framework for County governments would ensure equity and limit unnecessary bureaucracies.</p> <p>The National Treasury informed IGRTC that the disbursement of funds to counties is dependent on tax revenues collected by KRA and the disbursement schedule approved by IBEC.</p> <p>It was reported that the process of rectifying the budgets to conform to the PFM Act contributed to delays in approvals by COB. The COB indicated willingness to build the capacity for county governments to ensure that they prepare</p>	<p>The Cabinet Secretary, National Treasury. IBEC</p>	

Minute No.	Resolutions	Status	Actors	Remarks
	<p>discuss and approve the amendments before forwarding the proposal to the Senate.</p> <p>5) Regulations on the Equalization Fund have been completed and submitted to Parliament. An Equalization Fund Board has been established. The fund has Kshs 3.4 Billion allocated to it and a secretary (accounting Office) has been appointed. The fund will serve as conditional grant to counties with marginalized communities.</p>	<p>budgets that conform to the requirements of the PFM Act.</p>		
<p>Min.No.04/S3/2014 The Status of Makueni County. Discussions/ Observations. 1) The Summit formally received the petition to dissolve Makueni County. According to the law, the Summit is required to make a decision on whether to progress the petition by forming a commission to review the matter or decline the petition.</p>	<p>Once signatures were verified, the Summit recommended that a commission of inquiry to be set up.</p>	<p>The Sate of tension between the Makueni County Governor and the County Assembly was so high to the extent that a petition to dissolve the County government was submitted to the President in accordance with the County Government Act. A commission of inquiry was appointed to investigate the matter and submit a report. The Commission conducted the inquiry and submitted the report H.E. the President</p>	<p>The National Government Council of Governors The County Government of Makueni The Makueni County Assembly IGRTC</p>	

Minute No.	Resolutions	Status	Actors	Remarks
<p>2) The Chairman informed the meeting that he had asked the IBEC to verify signatures as per the legal requirement and revert back with a report.</p> <p>3) The Chairman recommended mediation between the conflicting parties as an avenue worth exploring.</p> <p>4) The Governor of Makueni county made the following remarks; The situation in Makueni county had become untenable. Numerous attempts at reconciliation had been attempted without positive results. Mediation as an option had thus failed. In the circumstances the Governor requested the summit to favourably consider the petition for dissolution of Makueni County</p>		<p>in exercise of his powers under The County Government Act however declined to dissolve the County government.</p>		

Minute No.	Resolutions	Status	Actors	Remarks
Min.No.05/S3/2014 Roads Sector: Status on Classification of Roads and Sharing of Roads Equipment.	<p>1) The Cabinet Secretary, Transport and Infrastructure and COG will work together on the allocation of 80% of the road's equipment by 15th December 2014.</p> <p>2) A sub-committee on roads will be formed and chaired by the President with membership from the Council of Governors, Senate Transport/Roads Committee, Ministry of Transport and Members of Parliament to try and resolve the issue of classification roads.</p> <p>3) A Special Summit meeting should be convened to deliberate the findings of the Sub-committee on roads. The special meeting should take place in mid to late January before the next court date of 4th February 2015.</p>	<p>The Ministry of Transport and Infrastructure informed IGRTC that county roads class D, E and unclassified roads had been transferred to counties. This has been addressed in the Roads Bill 2014.</p> <p>The Ministry confirmed that it had developed an inventory of assets to be transferred. All 47 county governments had signed individual agreements with the Ministry and witnessed by TA through the County Transition Coordinators. All equipment had since been transferred.</p>	<p>The Cabinet Secretary, Transport and Infrastructure COG IGRTC</p>	
Min.No.6/S3/2014 Funding for Level 5 Hospitals. Discussions/ Observations	<p>The chairman requested time to consult with the cabinet secretary for the National Treasury and the Governors of Wajir, Nyeri, Mombasa and Kisumu to agree on a way forward.</p>	<p>In the FY 2015/16, the National Treasury allocated Ksh. 3.6 billion as conditional grants for level 5 hospital. In 2016/17 conditional grants amended to 4 billion.</p>		

Minute No.	Resolutions	Status	Actors	Remarks
Min.No.7/S3/2014 Progress of Verification of Assets and Liabilities of The Defunct Local Authorities	It was resolved that this matter be postponed for future discussion.	Verification of assets and Liabilities has been completed and reports submitted to counties.	IGRTC	
MIN.NO.08/S3/2014 IGR Structures and Secretariat Appointment of the Members of the IGRTC	The summit received the report of the Recruitment Committee and resolved as follows: 1) The successful candidates of the positions of Members of the IGTRC to be gazetted immediately pursuant to the Act. 2) The three names of the candidates for the position of the Chairperson should be forwarded to EACC for clearance in compliance with Chapter six of the Constitution. The highest ranked candidate as per the Recruitment panel report would be the person to be formally appointed to the position of the Chair if he is cleared by the EACC. If, not then the next person in ranking would be gazetted and the same would apply in sequence.			

Minute No.	Resolutions	Status	Actors	Remarks
Min.No.08/S3/2014 Budget of the Council of Governors Secretariat	The Chairman directed the Cabinet Secretary Treasury to release any outstanding allocated funds to the COG Secretariat.	The National Treasury informed IGRTC that the disbursement of funds to counties is dependent on tax revenues collected by KRA and the disbursement schedule approved by IBEC.	The Cabinet Secretary Treasury, National treasury, COG IBEC	
Min.No.09/S3.2014 National Security	The Ps Interior , noted that there was need to map put the Country based on threat levels following which teams would be established to address the treat .She further noted that there was tension in some regions of the Country and this was becoming an impediment to trade and commerce. It was resolved that as soon as the new CS, Interior was in Office a meeting with the County Governors will be Scheduled to deliberate on Security matters.	County Security Coordination. 1) Guidelines for County Policy Authority have been signed by the Cabinet secretary for interior and National Coordination. The Gazettement process was in progress. 2) For Cross-County threats there were regional structures and initiatives in place to deal with the same.	The Cabinet secretary for Interior and National coordination COG	There have been continuous border disputes between counties and there is need for mechanisms to reduce tension.



4th Summit Held at State House, Nairobi On 18th December, 2015

Minute No.	Resolutions	Status	Actors	Remarks
Min.No.4/12/2015 E-Procurement	<p>CS, Treasury noted that the idea behind e-procurement is to improve transparency and accountability.</p> <p>It was therefore proposed that the County Governments revert to Manual procurement which is subsequently loaded onto procurement.</p> <p>A technical Committee comprised of the National Treasury, Council of Governors and IGRTC to be established to review the challenges being faced in implanting E-procurement and report back at the next meeting.</p>	<p>A lot of training had been undertaken in Counties on the same targeting both users and suppliers.</p> <p>However there have been challenges in the implementation of development of programs and, ultimately, compromised absorption of the development budget.</p> <p>A technical team was appointed to review the challenges being faced in implementing e-procurement.</p>	<p>The National Treasury</p> <p>Council of Governors</p> <p>IGRTC</p> <p>Ministry of Information Communication and Technology.</p>	<p>There had been challenges in the implementation of e-procurement which undermined implementation of development programs and ultimately absorption of development budget.</p>
Min.No.5/12/2015 Funds Flow and Oversight of Conditional Grants	<p>CS Treasury reported the need for clarity regarding how conditional grants are managed and line ministry function therein so as to provide a framework/mechanism that would ensure clarity, transparency and accountability. He indicated that there had been ad hoc consultations.</p>	<p>The committee developed Guidelines for Management of Intergovernmental Fiscal transfers to provide clarity on the framework for managing and facilitating smooth implementation of these transfers</p>	<p>The National Treasury</p> <p>Council of Governors</p>	<p>H.E The President added that there had been conflict regarding roles and oversight that donors have their regulations .He directed that the framework-the Kenya position on condition grants be developed and thereafter</p>

Minute No.	Resolutions	Status	Actors	Remarks
	<p>After deliberations it was resolved that;</p> <p>1) a technical committee comprised of the National Treasury; Council of Governors be established to;</p> <p>a) Study the challenges the County Governments are facing in relation to grants both from the National Government and Development Partners.</p> <p>b) Study the mechanisms respective Development Partners use to disburse grants.</p> <p>c) Develop a mechanism that is transparent and acceptable that will be used to engage Development Partners.</p> <p>2) The line Ministry involved in the function that is been funded to be involved.</p> <p>3) The National Treasury to continue engaging the Development partners to access funds as the Technical Committee finalizes its report.</p>	<p>contemplated in the Constitution and PFMA. The guidelines address the flow of conditional and unconditional funds between the two levels of government including funds from development partners.</p>		<p>development partners be engaged in their inputs.</p>



Minute No.	Resolutions	Status	Actors	Remarks
Min.No.6/12/2015 Free Maternity Funding	<p>It was resolved that;</p> <ol style="list-style-type: none"> 1) All funds to be disbursed through the County revenue Fund as required by law. 2) The Ministry to release Quarter 1 and 2 funds to the County Governments. 3) Quarter 3 funds will be released upon County accounting for Quarter 1 and Quarter 2 funds. 4) Quarter 1 and Quarter 2 funds will be based on estimates. Accounting of funds will be based on actual figures. 5) The National Treasury to calculate and release arrears of funds due to County Government for the financial year 2014/2015. 	<p>The National government established a budget line to compensate county governments for implementing the policy on free maternity service. The Formula is that, the National Treasury reimburses county governments based on the number of deliveries. The matter brought forward by the COG on delayed reimbursement was finally settled as at 30th June, 2016 all claims for reimbursement of costs incurred for 2014/15 and 2015/16 had been paid.</p>	<p>The National Treasury. Council of Governors. The Ministry of Health</p>	<p>H.E The President clarified that the problem had been the late release of funds and reporting</p>

Minute No.	Resolutions	Status	Actors	Remarks
Min.N0.7/12/2015 Agriculture Development Levy Funds	<p>The meeting resolved that;</p> <p>1) A technical committee to be established to study the matter and submit a report to the next Summit.</p> <p>2) The Committee to comprise of National Treasury, Council of Governors and IGRTC.</p>	<p>The Agricultural Policy had been developed and had undergone comprehensive consultation with key stakeholders including farmers and county governments.</p> <p>Extension services had been developed.</p>	<p>The National Treasury</p> <p>Council of Governors</p> <p>IGRTC</p> <p>Agriculture Food Authority (AFA)</p> <p>Kenya Roads Board (KRB)</p>	



5th Summit Held at State Lodge Sagana From 10th to 11th February 2016

Minute	Resolution	Status	Actors	Remarks
<p>MIN.NO.5/2/2016 Report of the IBEC</p>	<p>The Cabinet Secretary, National Treasury highlighted that the Equalisation fund is now operational and will be launched soon.</p>	<p>The National Treasury reported that regulations for the management of the Equalization Fund had been developed and approved by Parliament.</p>	<p>The Cabinet Secretary National Treasury IBEC</p>	<p>Done</p>
<p>Min.5/2/2016 Report of the IBEC Plenary Discussion The Members observed that the 35% ceiling on salaries and wages will constrain County Governments as to a large extent was inherited from Defunct Local Authority. therefore, regulations should consider pegging the 35% ceiling on salaries and wages on total budget and not recurrent expenditure</p>	<p>35% refers to gross expenditure. Its implementation is progressive and should be attained over a medium term (3) years. It also is tied to implementation of CARPS.</p>	<p>The Regulations had been approved by the Parliament.</p>	<p>The Cabinet Secretary for National Treasury</p>	

Minute	Resolution	Status	Actors	Remarks
<p>Min.No.6/02/2016 Report of The IGRTC</p>	<p>1) The need to establish Intergovernmental Relations Units in all Counties and Ministries. Regulations should ensure they are fully funded due to the critical role they play.</p> <p>2) Regulations developed to implement devolution Laws should ensure creation of National norms.</p> <p>3) The MODP should spearhead the development of regulations of Intergovernmental Relations.</p> <p>4) That regulations for ADR need to be developed urgently.</p> <p>5) That funding for Public Participation and Civic Education exercise was not agreed during IBEC meeting held on 9th February, 2019</p>	<p>The implementation of ADR is in progress and the Summit secretariat, IGRTC has used ADR to resolve several matters been referred to it which include;</p> <p><i>Dispute between West Pokot County Government and county Commissioner over ownership of Office block.</i></p> <p><i>Dispute over land ownership between County Government of Tharaka Nithi and the Prison Department.</i></p> <p><i>Dispute over Meat inspection between Nairobi City County and MoALF.</i></p> <p><i>Privation of Public owned sugar companies.</i></p> <p><i>Makueni County Government issue.</i></p>	<p>Ministry of Devolution and Planning</p> <p>IGRTC</p>	<p>The intergovernmental units are not functional and there is need to give them a new life to function effectively them</p>

Minute	Resolution	Status	Actors	Remarks
<p>Min. No. 7/02/2016 Finance</p>	<p>1) Guidelines for Management of Intergovernmental Fiscal Transfers. The National Treasury was of the view that funds should flow directly from the National Treasury to counties but with clearance from the relevant line Ministries since they (Ministries) are accountable and ultimately have a report to Parliament. The county government position was that funds should flow directly from National treasury to counties. County governments would then account for the same the same manner they account for other monies.</p>		<p>Cabinet Secretary for National Treasury Council of Governors.</p>	

Minute	Resolution	Status	Actors	Remarks
Min.No.7/02/2016 Fines on Contravention of Laws Related to Devolved Functions	1) It was noted that all fines, including those imposed on contravention of laws related to devolved functions, are collected by the judiciary. The law requires that such fines be deposited in the consolidated fund. The county government requested that fines imposed for contravening county laws to be transferred to county government as grants.		Cabinet Secretary for National Treasury Attorney General Council of Governors	
Min. N0.8/02/2016 Health Sector	1) Ministry of Health and county Government should cooperate in the delivery of health services. In this regard, an inventory should be prepared on all stalled projects and their status.	During the 6 th Summit the Cabinet Secretary for Health informed the meeting that 36% of the population was covered under Universal (UHC) Health Care. That all the 47 counties would pilot UHC under the Big Four Agenda individually and register 10,000 members. The National government through MoH will support Nyeri Isiolo, Kisumu and Machakos	The Ministry of Health County government	

Minute	Resolution	Status	Actors	Remarks
<p>Min. 9/02/2016 Capacity Assessment and Rationalization of Public Service (CARPS).</p>	<p>The Summit deliberated the following to be undertaken;</p> <ol style="list-style-type: none"> 1) Implementation of voluntary separation (staff exit/early retirement) be deferred to 2018 after further consultation amongst key stakeholders and as guided by the National Treasury on budgetary provision. 2) Sensitization of the public officers and public participation on the CARPS programme. 3) Development of norms, standards, legislations, policies, guidelines and regulations as well as a National master plan for high priority and scarce skills. 4) Adoption of a unified payroll number generating system, skill and competency framework recommended generic model organization structure for the Public service and automation /outsourcing of common services in the National and County Government to 	<p>During 6th Summit members resolved that:</p> <p>A sub-committee be constituted to discuss the CARPS program and make recommendation</p> <p>The sub-committee is composed of COG, CS Public Service Gender and Youth, CS Labour and Social Protection, SRC, MoDA, IBEC, and IGRTC</p>	<p>Cabinet Secretary for Public Service, Youth and Gender</p> <p>Council of Governors</p> <p>CS Labour and Social Protection</p> <p>SRC</p> <p>MoDA</p> <p>IBEC</p> <p>IGRTC</p>	

Minute	Resolution	Status	Actors	Remarks
	<p>drive efficiency and optimize cost of operations.</p> <p>5) Completion/ conclusion of transfer and operationalization of the devolved function and human resource including adoption of common Pension Scheme for County Government Staff.</p> <p>6) Development and re-deployment of existing staff within and across the two levels of Government, to address the skewed staffing and realize equitable distribution with both National and County Governments progressively working towards achieving 70/30 optimal staffing ratio of technical staff to support staff.</p> <p>7) Development of sessional Paper for implementations of the recommendations of the programme.</p>			



Minute	Resolution	Status	Actors	Remarks
Min. No.10/02/2016 Progress on Verification of Assets and Liabilities of The Defunct Local Authorities.	The Chairman of Transition Authority indicated that the process was to be undertaken in three phases. 1)Inventory 2)Audit and verification 3)Registration and Transfer	1)The Inventory has already been done	IGRTC	
Min. No.11/02/2016 Agriculture	The Ministry indicated its willingness to transfer Infrastructure Funds to county Governments. However, the Ministry and The County Governments need to sign a memorandum of Understanding to facilitate the transfer.	IGRTC convened meetings with key stakeholders and agreed on: Agriculture levy Funds collected in the eighteen tea and coffee producing counties to by AFFA have been distributed. KRB which also collects levies in the counties has committed to disburse Ksh.100 million. All funds to be distributed by 31 st July, 2016.	Ministry of Agriculture livestock and Fisheries Council of Governors IGRTC KRB	

Minute	Resolution	Status	Actors	Remarks
Min. 12/02/2016 Austerity Measures	<p>The Summit deliberated on the subject and resolved that top leadership at both National and County Government should lead in implementing the austerity measures as follows.</p> <ol style="list-style-type: none"> 1) There is need to restore governance institutions at both levels to reduce wastage and increase efficiency. 2) The National Youth Service to be re-casted to develop a broad strategy across institutions to empower the youth. This strategy should be oriented towards skills development and employment. 3) That task forces to be established to collect information on public expenditure against resources mobilized by the National Treasury and county government. 		<p>Cabinet Secretary, Treasury</p> <p>Council of Governors</p>	



6th Summit Held at State House, Nairobi on 22nd June 2018

Minute	Resolution	Status	Actors	Remarks
<p>Min. No.5/06/2018: Reports from Secretariat</p>	<p>1) The sub-Committee was established to consider the institutional reports presented by the IGRTC and give recommendations to the next Summit meeting</p>	<p>The sub-Committee concluded its assignment and recommended that the Summit adopts the following reports as presented by IGRTC on the 22nd of June 2018 as follows:</p> <ul style="list-style-type: none"> i. IGRTC institutional report ii. The National and County Government Coordinating Summit report to National Assembly, Senate and the 47 County Assemblies. iii. Cost of litigation in inter/intra government litigation in Kenya iv. The status of public participation in national and county government. v. Emerging issues in transfer of functions to National and County Governments. 	<p>Cabinet Secretary, Ministry of Public Service Youth & Gender Affairs.</p>	

Minute	Resolution	Status	Actors	Remarks
<p>Min. No.6/06/2018: Capacity Assessment and Rationalization of Public Service (CARPS)</p>	<p>2)The sub-committee established to deal with the CARPS Report comprised of: Prof. Margaret Kobia, (Co-Chair) Gov. Josphat Nanok, (Co-chair) Gov. James Ongwae Hon. Eugene Wamalwa Hon. Amb. Ukur Yatani Gov. Wycliffe W. Wangamati Gov. Stanley K. Kiptis Prof. Karega Mutahi Ms. Ann Gitau Dr. Patrick Omutia</p>	<p>The sub- committee deliberated on its assignment and makes the following recommendations: a) Voluntary Early Retirement Separation (VERS); The committee observed that the cost of implementing this option is estimated to be KES.185 billion. The Early Voluntary Exit Retirement Program proposes exit of staff of the following categories: i) Limited Skills and Education ii) Rationalization of Functions and Efficiency iii) Over 50 years not Ring-Fenced iv) Special Circumstances</p>		<p>i. The Summit to note the fiscal challenges currently faced by the National Treasury and the need to ensure affordability and sustainability. ii. The Summit to note the current practice of managing the human resource in the Public Service through common Norms and Standards and strengthening of the Service through succession management to address shortage of technical and scarce skills in critical areas.</p>

Minute	Resolution	Status	Actors	Remarks
				iii) The Summit is requested to approve VRS based on the revised costs, staggered over a period of 5 years, with effect from FY 2020/21
		<p>b) Norms and Standards for management of the human resource for the public service.</p> <p>The Committee noted that the Human Resource Management Norms and Standards for the Public Service were launched in December 2017</p>		<p>The Summit is requested to direct both levels of government to ensure the operationalization of norms and standards in the management of Human Resources in the Public Service</p>
		<p>c) Adoption of a unified human resource and payroll number generating system for the Public Service linked to National Registration Bureau, KRA,</p>	<p>KRA GESDEK GOK</p>	<p>The Summit is requested to adopt the Unified Human Resource Information and</p>

Minute	Resolution	Status	Actors	Remarks
		<p>and IFMIS Systems among others; The issue is being addressed through the Governance for Enabling Service Delivery in Kenya (GESDEK) which is a GOK program supported by the World Bank.</p>		Payroll Management System
		<p>d) National Master Plan for high priority and scarce skills; Development of a National Master Plan for High Priority and Scarce Skills.</p>		<p>i. The Summit is requested to approve the roadmap for the development of a National Master Plan</p> <p>ii. The Summit is requested to direct all institutions at the two levels of government to support the development of cross sectorial National Master Plan</p>



Minute	Resolution	Status	Actors	Remarks
		<p>Transfer of Libraries: The library function was transferred vide Legal Notice no. 142 of 9th August 2019. This was published in Kenya Gazette.</p>		<p>i. The Summit is requested to approve transfer of staff and payroll to the counties to be affected in FY2020/2021</p> <p>ii. The Summit is requested to approve the transfer of funds to be undertaken through Division of Revenue Bill in FY2020/2021</p>
		<p>Transfer of museums: Consultations between the State Department for Culture and Heritage, National Museums of Kenya, COG and IGRTC are currently ongoing on unbundling and transfer of the museums function</p>	<p>The State Department of Culture and Heritage, National Museums of Kenya COG</p>	<p>The Summit is requested to note the progress</p>

Minute	Resolution	Status	Actors	Remarks
		<p>Cooperatives: The National Cooperative Policy was developed and has been approved by the Cabinet</p> <p>Statistics: The County Statistics Bill, 2018 is pending before the Senate</p>	IGRTC	<p>The Summit is requested to note the progress</p> <p>i. The Summit to direct the Cabinet Secretary, National Treasury and Planning to develop an enabling policy and liaise with Parliament to fast-track the enactment of the County Statistics Bill 2018</p> <p>ii. The Summit to request Parliament to fast-track the enactment of County Statistics Bill 2018</p>



Minute	Resolution	Status	Actors	Remarks
		Land Survey, Mapping and Housing: The above functions were delineated vide Gazette Notice number 2238 dated 1 st April, 2016.		The Summit is requested to direct the Cabinet Secretaries responsible to ensure that current review of specific legislation and enabling policies relating to lands and housing sectors take into account the delineated functions.
		County Roads: The Kenya Roads Bill, 2017 is still before the National Assembly		The Summit is requested to note
Min. No.7/06/2018: Pension for Employees of County Governments	1) The CARPS sub-committee was charged with discussing pension for employees of county government	The county government Retirement Scheme Act of 2019 was enacted. However, following several petitions in court, the High Court issued orders to stay the implementation of the Act	SRC The National Treasury COG MoDA Cabinet Secretary.	Summit to note

Minute	Resolution	Status	Actors	Remarks
Min. No.8/06/2018: Pension for Governors	2) A technical committee to discuss pension for governors was established. The technical committee was chaired by the Hon. Attorney General	pending the determination of the petitions. The technical committee is in the final stages of its report. This subject requires further consultations.	Ministry of Public Service.	Summit to note
Min.No.10/06/2018: Report of the Intergovernmental Budget and Economic Council (IBEC)	3) Following the presentation by the Cabinet Secretary of National Treasury on issues deliberated by IBEC, the Summit noted the following issues affecting counties to be addressed: a) Borrowing framework b) Own-Source Revenue c) Guidelines on conditional grants	The framework for short-term borrowing by county governments has been developed. a. A policy framework for own source revenue has been developed to guide revenue Collection in counties. b. The National Treasury has issued a circular to guide on flow of conditional grants to county governments.		The Summit is requested to note



Minute	Resolution	Status	Actors	Remarks
Min.No.11/06/2018: Big Four Agenda.	<p>4) A sub-Committee was established to develop a harmonized implementation framework for the Big Four Agenda.</p> <p>The sub- Committee was chaired by the Cabinet Secretary for Devolution & ASAL, Hon. E. Wamalwa. The other members were: Gov. J. Nanok Hon. A. Duale Hon. K. Murkomen Gov. S. Sang Prof. Karega Mutahi</p>	<p>The Ministry of Devolution and ASALs has developed an Intergovernmental Framework for Implementation of National Government Programs and Projects in Counties, which has taken into account the implementation framework for the Big Four Agenda. This is awaiting Cabinet approval.</p>	MODA	The Summit is requested to note

Minute	Resolution	Status	Actors	Remarks
<p>Min. No.12/6/2018: Tenure of Office of IGRTC Members and Anchoring COG Secretariat In Law</p>	<p>5) A sub-Committee was established to consider the tenure of the IGRTC members and anchoring of the COG secretariat in law Members of the Committee Gov. Hon. J. Nanok, Co- Chair Hon. E. Wamalwa, Co-Chair Hon. A. Duale Hon. K. Murkomen Gov. Hon S. Sang Prof. Karega Mutahi</p>	<p>The sub-Committee recommended a one-year extension in office for the current members, during which a Review on intergovernmental relations structures would be carried out by IGRTC to guide on the necessary changes to be undertaken. Phase One of the review, covering sector forums has been done. Further discussions are in IGRTC's institutional report. The sub- Committee recommended anchoring of the COG secretariat in law. A draft Intergovernmental Relations Bill, 2019 has been developed by MoDA to address these matters.</p>		<p>Summit is requested to note.</p>



7th Summit Held on 4th March, 2019 at State Lodge, Sagana

Minute	Resolution	Status	Actors	Remarks
<p>Min 8/03/2019: Engagement of Agitating Cadres and Rationalization of Labor Laws</p>	<p>1)The Summit resolved that the National Government, through the Ministry of Labor and Social Protection, reviews the law in order to identify existing gaps with regard to provision of health care services across both levels of Government.</p> <p>a. The Summit further resolved that the Ministry engages nurses on matters of industrial action with a view to finding avenues of consultation and cooperation in delivery of services.</p>	<p>1) The Ministry of Labor and Social Protection is currently at various stages of reviewing 6 labor related laws to align it with the Constitution and to provide for health as an essential service.</p> <p>2) Reconstitution of the Conciliation Committee has been done. The Committee will assist parties to negotiate, finalize and sign a Collective Bargaining Agreement.</p>		<p>The Summit is requested to note</p>

Minute	Resolution	Status	Actors	Remarks
<p>Min. No.9/03/2019: Disciplinary Action and Prevention of Health Service Delivery Disruptions</p>	<p>i. The Summit resolved that disciplinary proceedings be instituted in accordance with the existing regulations by both levels of government where nurses failed to report on duty by Friday, 15th February, 2019 as directed, through stoppage of salaries as well as recovery of monies not worked for.</p> <p>ii. The Ministry of Health and COG were tasked with establishing mechanisms to ensure that dismissed officers are not able to secure employment in other government facilities.</p>	<p>i. The Ministry of Health implemented the Summit resolution.</p> <p>ii. The Ministry of Health has put in place a system to ensure that issuance of personal numbers for suitable candidates for appointments is done through a centralized IPPD system administered by the PSC. This would allow the Ministry of Health to establish whether the candidate had a previous personal number, after which a report is made available to establish candidate's past record.</p>	<p>The Ministry of Health</p>	<p>The Summit is requested to note.</p>



Minute	Resolution	Status	Actors	Remarks
Min. No. 10/03/2019: Recruitment and Sustenance of Uninterrupted Service Delivery	<p>1) The Summit resolved that any vacancies for recruitment of nurses arising from natural attrition or dismissal in both levels of government be filled on contract terms. The Public Service Commission was tasked to develop;</p> <p>a. Standardized Contract Framework for Short-Term Employment.</p> <p>b. Standardized framework for outsourcing nursing services</p>	<p>The Public Service Commission has developed a Framework for Short Term Contracts for employment and this has been rolled out for implementation by the two levels of government.</p> <p>An inter-agency team has been constituted to prepare a draft standardized framework for outsourcing nursing services</p>		<p>The Summit is requested to note progress.</p>
Min. No. 11/03/2019: National Dialogue to Discuss Growing Wage Bill	<p>i. The Summit resolved that the Salaries and Remuneration Commission organizes a national dialogue on the growing wage bill.</p>	<p>The SRC organized a National Conference on Wage Bill Sustainability which was held on 26th November 2019.</p>	<p>SRC</p>	<p>The Conference Report to be presented by SRC Chair.</p>

8th Summit Meetings Held at State House Nairobi, Kenya on 21st February 2020

Minute	Resolution	Status	Actors	Remarks
Min. No.5/02/2020: Matters Arising and Submission of Sub-Committee Reports	During the 6 th Summit, the Summit established a sub-Committee to consider the request to have the COG secretariat anchored in law.	The Summit approved and adopted the recommendation to have the COG secretariat anchored in law	Convener: MODA Other Actors: COG IGRTC KLRC AG	
Min. No.5/02/2020: Matters Arising and Submission of Sub-Committee Reports	During the 6 th Summit, the Summit established a sub-committee to discuss the CARPS report and make recommendations to the Summit.	The Summit approved and adopted the following recommendations: 1)Summit to support the finalization of CARPS report 2)Support to county governments on capacity building to continue through implementation of the capacity building framework Adoption of Voluntary Early Retirement Separation (VERS) program	Convener: Ministry of Public Service Other actors: COG IGRTC The National Treasury RBA SRC	



Minute	Resolution	Status	Actors	Remarks
Min. No.5/02/2020: Matters Arising and Submission of Sub- Committee Reports	During the 6 th Summit, the Summit established a sub-committee on the implementation of the Big Four Agenda	The Summit approved and adopted the intergovernmental framework on the implementation of the Big Four Agenda.	Convener: MODA Other actors: COG IGRTC NDICCC PDU	
Min. No.7/02/2020: Report from the Intergovernmental Budget and Economic Council (IBEC)	During the 8 th Summit, IBEC recommended revision of the share for the county road fuel maintenance levy from 15 to 20%.	The Summit directed that the stakeholders continue with consultations on the matter	The National Assembly and Senate	
Min. No.8/02/2020 Report from Salaries and Remuneration Commission on the National Wage Bill Conference	During the 7 th Summit, the Summit directed that the SRC holds a National Wage Bill Conference	The Summit approved the request by SRC to constitute an intergovernmental multi-agency team to implement the resolutions.	Convener: SRC Other actors: COG IGRTC PSC MPSYGA TSC IBEC MOH The National Treasury CRAMLSP Head of Public Service	

Minute	Resolution	Status	Actors	Remarks
<p>Min. No.9/02/2020-Intergovernmental Relations Technical Committee</p>	<p>During 8th Summit, the Cabinet Secretary made the following recommendations to the Summit:</p> <p>The tenure of office for the IGRTC Chairperson and members shall be one non-renewable term of six years in office.</p> <p>To ensure impartiality and autonomy of IGRTC, IGRTC should be made into either an Authority or a Commission.</p> <p>Strengthening of IGRTC</p>		<p>Convener: Attorney General</p> <p>Other actors:</p> <p>IGRTC KLRC COG MODA IBEC SRC EOP The National Treasury</p>	



Annex 4.3 Intergovernmental Relations Workshop Communiqué

COMMUNIQUE OF THE FIRST INTERGOVERNMENTAL RELATIONS WORKSHOP HELD FROM 3RD TO 5TH DECEMBER, 2018 AT THE GRAND ROYAL SWISS HOTEL IN KISUMU COUNTY

■ Preamble

The first Intergovernmental Relations Workshop was held from 3rd to 5th December, 2018 at the Grand Royal Swiss Hotel in Kisumu County. The theme of the workshop was “*Intergovernmental relations moving devolution forward for quality service delivery*”.

The workshop focused on intergovernmental relations practice as a key driver to the success of devolution. The workshop was convened to provide a forum for open discourse on issues of intergovernmental relations (IGR) during the first phase of implementation of Constitution of Kenya, 2010 (COK, 2010) on devolved governance. It was expected to bring out the emphasis on the role of IGR in a devolved system of government, determine adequacy of IGR legislation, identify salient emerging issues and recommend how to address them for successful implementation of devolution. The deliberations therefore provided participants with deeper understanding of IGR while appreciating the systemic challenges and issues emerging in the process of implementing devolution.

The workshop observed that the provision of the COK, 2010 on the distinctiveness, interdependence, consultation and cooperation had not been fully embraced by both levels of government. Failure to appreciate the need for consultation and cooperation has resulted in conflicts, tensions and threats which call for intergovernmental institutional interventions. It was also acknowledged that cooperative governance was critical for devolution to succeed and stressed on the need to address issues of clarity of functional assignments; weakness in application of principles of public participation and civic education; inadequate capacity building; double oversight of county governments; inappropriate policy framework, laws, regulations, lack of uniform norms and standards; and lack of express legal provisions to address intra-governmental relations. Lack of IGRTC visibility, and independence were also identified as a major concern.

Following intensive presentations and deliberations, the workshop made the following resolutions:

1. Clarity of Functional Assignments

THAT there was need for the national government to develop policies that are aligned to the COK, 2010 particularly to facilitate implementation of the functions under the Fourth Schedule of the Constitution and to develop norms and standards frameworks for delivery of service by both levels of government.

THAT there was urgent need to develop uniform norms and standards for the delivery of services by the two levels of government.

THAT the National Treasury should ensure timely exchequer releases to both levels of government as required under the COK, 2010 and the Public Finance Management Act, (PFMA) 2012.

THAT there was need for a comprehensive review of functions-related legislation to ensure that it resonated with the letter and spirit of the constitution.

THAT unbundling of functions ministries, departments and agencies (MDAs) that were not finalized by the defunct Transition Authority (TA) be carried out and concluded without delay.

THAT legislation on the implementation of concurrent functions be put in place for clarity of roles.

THAT uniform norms and standards be set to guide implementation of functions by both levels of government.

2. Weakness in application of principles of Civic Education and Public Participation as envisaged in the spirit of the Constitution.

THAT given the critical role of civic education and public participation especially in implementation of COK, 2010, programs should be developed for delivery of effective civic education to Kenyans to eliminate the misconceptions that exist amongst political class and ensure adequate public participation in making decisions affecting the populace.

THAT civic education and public participation be entrenched in Kenya's system of governance in accordance with the COK, 2010.

THAT capacities of the citizens be built to enable them monitor the performance of services by both levels of government and to hold leaders accountable.



THAT inclusivity of persons living with disabilities, youth and women should be ensured.

3. Capacity Building

THAT IGR institutions need additional resources and capacity building facilities. Further, the workshop called upon both levels of governments to identify their needs in order to approach capacity building holistically.

THAT the capacity of County Public Service Boards be built to ensure quality in the recruitment of county staff to enhance service delivery in accordance with Articles 10 and 232 on values and principles of Governance and Public Service respectively.

4. Double oversight of the county administrations (Article 96 and 185)

THAT double oversight of county executives by both Senate and county assemblies needs to be resolved through legislation.

THAT in the meantime a Joint Oversight Committee of Senate and county assemblies should be set up.

5. Legislation to cater for intra-governmental relations.

THAT there is urgent need for legislation to address intra-governmental disputes.

THAT legislation to regulate inter-county programs should be put in place.

6. Lack of IGRTC visibility, independence and weak legislation

THAT acknowledging the limited public awareness of the mandates of IGR organs especially IGRTC, the workshop underscored the need for public education on this subject.

THAT there is need to revise Intergovernmental Relations Act (IGRA) 2012, to give the IGRTC operational autonomy necessary for an organ that handles both levels of government.

7. Alternative Dispute Resolution

THAT use of alternative dispute resolution mechanisms or institutions should be the first level of solving intergovernmental disputes.

THAT counties need to embrace Alternative Dispute Resolution (ADR) Mechanisms to avoid expensive judicial processes.

Dated this day of 5th December 2018

Annex 6.1: Categorization of the unbundled functions in disaster management awaiting gazettement

S/N	Unbundled	National Government	County Government
I.	<p>Prevention</p> <ul style="list-style-type: none"> a. Policy development and implementation b. Capacity building and technical assistance to the counties on disaster prevention c. Consolidation of disaster risks analysis generated from counties d. Establishing national early warning systems (sector based) and climate change related information e. Circulate the early warning information for decisions making f. Institute pre-emptive measures – sector specific based on alert levels in the national level g. Development of norms and standards as well as guidelines on risk prevention h. Ensuring provision civic education on disaster risk prevention and management to counties and stakeholders i. Ensuring public participation and awareness creation in disaster risk prevention j. Coordination of risk management activities between the national and county governments 	<ul style="list-style-type: none"> a. Implementation of the national and county policies b. Development of county specific policies aligned to the national policy and the constitution c. Capacity building and technical assistance to the communities on disaster prevention d. Conducting county disaster risk analysis e. Ensuring provision of civic education and awareness creation to the stakeholders and communities f. Collection of data relating to early warnings and share with national government g. Institute pre-emptive measures – sector specific based on alert levels in the county level h. County governments enforce and implement the guidelines, norms and standards on prevention of risks within the counties. i. Establish and strengthen institutional structures for disaster risk management in counties. 	

S/N	Unbundled	National Government	County Government
2.	Preparedness and Mitigation	<ul style="list-style-type: none"> a. Development of national policies, norms and standards in disaster management b. Resource mobilization for risk reduction c. Development of national resilience building programmes d. Capacity building counties on disaster preparedness e. Awareness creation f. Develop guidelines for conducting drills and simulation exercises g. Develop sector specific standards operating procedures on preparedness and response h. Monitoring and evaluation i. Consolidation of data on disasters generated from counties. j. Carrying out national research k. Develop guidelines on rapid assessments l. Develop guidelines for declaration of national and county disaster emergency 	<ul style="list-style-type: none"> j. Ensuring public participation and awareness creation in disaster risk prevention k. Coordination of risk management activities in counties for county disasters.
		<ul style="list-style-type: none"> a. Development of national policies, norms and standards in disaster management b. Resource mobilization for risk reduction c. Development of national resilience building programmes d. Capacity building counties on disaster preparedness e. Awareness creation f. Develop guidelines for conducting drills and simulation exercises g. Develop sector specific standards operating procedures on preparedness and response h. Monitoring and evaluation i. Consolidation of data on disasters generated from counties. j. Carrying out national research k. Develop guidelines on rapid assessments l. Develop guidelines for declaration of national and county disaster emergency 	<ul style="list-style-type: none"> a. Domestication of national policy in counties b. Capacity building and technical assistance to the communities on disaster preparedness c. Mobilise resources for resilience building and climate change adaptation strategies d. Development and implementation of county resilience and climate change adaptation programmes e. Development of county risk reduction plans f. Implementation of policies, plans g. Development of county contingency plans h. Prepositioning of supplies i. Awareness creation j. Monitoring and evaluation k. Conducting drills and simulation exercises in the counties

S/N	Unbundled	National Government	County Government
3.	Response	<ul style="list-style-type: none"> m. Development of national response plan n. Development of information sharing mechanism and communication strategy between the national and county governments during disaster o. Develop guidelines for post disaster needs assessment p. Strengthen linkages and coordination with local, regional and international institutions dealing with humanitarian response and preparedness. 	<ul style="list-style-type: none"> l. Data collection and analysis on disaster in the counties m. Mapping of actors and interventions n. Operationalize the sector specific standards operating procedures o. Undertake county level research p. Document and upscale good practices on disaster risk reduction q. Develop response plans for county emergencies r. Prepare recovery programs s. Strengthen linkages and coordination with institutions dealing with humanitarian response and preparedness within the county.
		<ul style="list-style-type: none"> a. National government to declare national emergency b. Capacity building and technical assistance to the counties on disaster response c. Activate response plans for national emergencies d. Consolidate county response plans e. Implementation of the information sharing mechanism between the national and county governments f. Strategic coordination of disaster response 	<ul style="list-style-type: none"> a. of rapid assessments to Conducting understand vulnerability levels. b. Capacity building and technical assistance to the communities on disaster response c. County governments to declare county disaster emergencies d. Activate response plans for county emergencies e. Implementation of the information sharing mechanism between the national and county governments



S/N	Unbundled	National Government	County Government
4.	Recovery	<ul style="list-style-type: none"> g. Consolidate response initiatives reports from counties h. Consolidate county disaster needs assessments i. Coordination of management of food and non-food relief j. Oversee the implementation of sector standard operating procedures during response k. Communicate on disaster response interventions to counties and stakeholders 	<ul style="list-style-type: none"> f. Coordinate disaster response through multi-sectorial approach and cross-county g. Reporting on response initiatives during emergencies in the counties h. Updating disaster needs assessment i. Management of food and non-food relief at county level. j. Communicate on disaster response interventions to stakeholders and communities
		<ul style="list-style-type: none"> a. Implementation of national recovery on building back better programs b. Capacity building and technical assistance to the counties on disaster recovery c. Consolidate post disaster needs assessment from counties d. Consolidate monitoring, evaluation learning and lessons learnt report e. Mounting public participation in recovery programs 	<ul style="list-style-type: none"> a. Implementation of county recovery and building back better programs b. Capacity building and technical assistance to the communities on disaster recovery c. Conduct post disaster needs assessment d. Conduct monitoring, evaluation and learning and lessons learnt report e. Mounting public participation in recovery programs

Annex 6.2- Delineated functions in the Cooperatives sector

S/No.	Activity	National Government	Respective County Governments
1	Policy, legal framework, norms and standards	<ul style="list-style-type: none"> Formulation of the National policy and legal framework for the development and growth of the co-operative sector in consultation with county governments. Development of National Co-operative norms and standards in consultation with county governments. Review of the policy, norms and standards in consultation with county governments. Development of national regulation for the operations of cooperatives sector in consultation with county governments. Licensing cooperatives that are Deposit taking (SACCOs) for the purpose of operating FOSA. 	<ul style="list-style-type: none"> Implementation of National Co-operative Development Policy Formulation of county specific legislation and regulation in line with the national policy but specific to individual county needs. Enforcement of Co-operative norms and standards. Licensing operations of all co-operatives societies.
2.	Registration of Co-operatives	<ul style="list-style-type: none"> Registration of all co-operatives. Development and maintenance of National Co- 	<ul style="list-style-type: none"> Processing of application documents for registration. Provisional registration (where necessary) of primary co-operatives and unions.



S/No.	Activity	National Government	Respective County Governments
3	Professional Co-operative services	<ul style="list-style-type: none"> • operative register and database. • Liquidation of co-operatives upon recommendations from the county governments. • Filing of annual returns. 	<ul style="list-style-type: none"> • Cancellation of provisionally registration. • Development and maintenance of County Co-operative registers and database. • Recommendation for liquidations. • Enforcement on filing of returns. • Promotion of all co-operatives. • Pre-Co-operative training.
4	Investigations (Inquiries and inspections)	<ul style="list-style-type: none"> • Setting Co-operative accounting and auditing standards. • Registration of Co-operative Auditors and Audited Accounts. • Regulation of Cooperative professional Services. • Apex, NACOs (Federations), deposit taking SACCOs, and Diaspora Co-ops. • Inspection and Inquiries into affairs of cooperatives referred to the national Government and primary cooperatives by the county governments. 	<ul style="list-style-type: none"> • Provision of audit and other professional services. • Enforcing audit requirements and standards. • Receive and maintain audited accounts from primary cooperatives.
4	Investigations (Inquiries and inspections)	<ul style="list-style-type: none"> • Apex, NACOs (Federations), deposit taking SACCOs, and Diaspora Co-ops. • Inspection and Inquiries into affairs of cooperatives referred to the national Government and primary cooperatives by the county governments. 	<ul style="list-style-type: none"> • Inspection and Inquiries into affairs of primary cooperatives and Unions NACOS.

S/No.	Activity	National Government	Respective County Governments
5.	Periodical returns Non-Remittances/Annual	<ul style="list-style-type: none"> ● Investigation of all co-operatives on criminal offenses (DCI, EACC) ● Issuance of Agency notices for; <ul style="list-style-type: none"> ➢ The Apex body ➢ The Deposit Taking SACCOs ➢ The NACOs ➢ Diaspora Co-operatives ● Enforcement of Agency notices for; <ul style="list-style-type: none"> ➢ The Apex body ➢ The Deposit Taking SACCOs ➢ The NACOs ➢ Diaspora Co-operatives 	<ul style="list-style-type: none"> ● Issuance of Agency notices for; <ul style="list-style-type: none"> ➢ Primary and Secondary Cooperatives ➢ Unions ● Enforcement of Agency notices for; <ul style="list-style-type: none"> ➢ Primary and Secondary Cooperatives ➢ Unions ● Issuance of Demand notices for compliance ● Enforcement of monthly Non-remittances returns. ● Monitoring of non-remittances.
6.	Advisory Services	<p>Offer advisory services to;</p> <ul style="list-style-type: none"> ● The Apex body ● The Deposit Taking SACCOs ● The NACOs ● Diaspora Co-operatives ● Filing of elections returns 	<p>Offer advisory services to;</p> <ul style="list-style-type: none"> ● All Primary and Secondary Co-operatives and Unions ● Supervisory services (Extension) ● Overseeing elections ● Risk assessment and management



S/No.	Activity	National Government	Respective County Governments
7.	Capacity Building	<ul style="list-style-type: none"> • Carrying out capacity building to the county Governments • Capacity building for Co-operatives • Formulation and regulation of cooperative education and training standards; • Training of Apex, NACOs, The Deposit Taking SACCOs and Diaspora Co-operatives 	<ul style="list-style-type: none"> • Training of all Primary and Secondary Co-operatives and Unions • Capacity building for Co-operatives • Anchoring Cooperative learning centers within existing County learning institutions • Providing co-operative advisory services • Support and strengthen growth, revival and restructuring programs;
8.	Co-operative Education Research and development	<ul style="list-style-type: none"> • Identification of priority areas for research • Carrying out research • Supporting co-operative research, development and data collection • Building research capacity for countries 	<ul style="list-style-type: none"> • Support co-operative research, development and data collection in countries • Support and facilitate field research
9.	Co-operative Ethics and Governance	<ul style="list-style-type: none"> • Promotion of good governance and ethics in all Co-operatives • Development of prudential standards for co-operatives 	<ul style="list-style-type: none"> • Promotion of good governance in the management of the co-operative societies; • Enforcement of prudential norms and standards • Enforcement of code of conduct

S/No.	Activity	National Government	Respective County Governments
10.	Co-operative ventures, innovations and partnerships	<ul style="list-style-type: none"> • Development of Code of conduct for co-operatives • Promoting public private partnerships, joint ventures and facilitate regional and international co-operative relations • Developing and maintaining intergovernmental relations in the cooperative sector; 	<ul style="list-style-type: none"> • Promoting public private partnerships, joint ventures and facilitate regional and international co-operative relations • Promote co-operative ventures and innovations for co-operative societies • Facilitate collaboration and linkages between co-operatives and stakeholders for the benefit of the movement
11.	Dispute resolution in cooperative sector	<ul style="list-style-type: none"> • Develop ADR regulations for the sector • Undertake Alternative Dispute Resolutions (ADR) for disputes from; <ul style="list-style-type: none"> ➢ The Apex body ➢ The Deposit Taking SACCOs ➢ The NACOs ➢ Diaspora Co-operatives • Handle disputes referred to them by county governments where ADR has failed. 	<ul style="list-style-type: none"> • Undertake Alternative Dispute Resolutions (ADR) for disputes from Primary and Secondary Co-operatives and Unions. • Building the capacity for cooperatives to handle internal disputes.



Annex 9.1 Summary of the Status of Intergovernmental Relations Disputes

Date of Declaration	Declared By	Dispute Against	Nature of Dispute	Dispute Narrative	Action Taken	Status
15 th July 2016	Tharaka Nithi County	Ministry of Interior and Coordination of the National Government (Prisons Department)	Land Dispute	Disputed ownership of land between Prisons Department and County Government	Three consultative meetings were held between the parties. Consultations and negotiations are on going	On going
18 th November 2016	Ministry of Interior and Coordination of National Government	Bomet County	Land Dispute	Disputed ownership of land between Bomet County and National Government	IGRTC had a consultative meeting with the Governor of Bomet and a site visit to the land in dispute	Ongoing
3 rd March 2017	Nairobi City County	Ministry of Defense	Land Dispute	Disputed construction of a road through the Embakasi Garrison Barracks.	IGRTC has undertaken two site visits and 6 Consultative meetings between the parties. An MOU is awaiting signing.	On going
18 th May 2017	Kajiado County	Ministry of Agriculture, Livestock and Fisheries	Land Dispute	County Government of Kajiado issued a notice of demolition to occupants of the Ministry of	IGRTC has written to the county government requesting for a	Ongoing

Date of Declaration	Declared By	Dispute Against	Nature of Dispute	Dispute Narrative	Action Taken	Status
3rd October 2017	Post Master General of Kiambu Post Office	Kiambu County	Land Dispute	Agriculture, Livestock & Fisheries Invasion of the undeveloped portion of Kiambu Post Office land.	consultative meeting. IGRTC has held a consultative meeting with County Government.	On going
29 th January 2018	Ministry of Transport Housing and Urban Development	Kiambu County	Land Dispute	Illegal development of a new market and the extension of a bus park.	IGRTC facilitated the review of draft Memorandum of Understanding between the County Government of Kiambu and State Department Planning. The MOU is awaiting signing.	Ongoing
11 th June, 2018	County Government of Kisumu	the Ministry of Interior and Co-ordination of National Government	Office Space	The County government of Kisumu was issued a notice to vacate from National Government buildings and had taken longer than agreed to vacate the building.	IGRTC had a consultative meeting with the County government of Kisumu	Ongoing



Date of Declaration	Declared By	Dispute Against	Nature of Dispute	Dispute Narrative	Action Taken	Status
23 rd January, 2019	County Government of Taita-Taveta	National Government	Revenue collection from the Tsavo National Park	The County Government of Taita-Taveta reported that 62% of the county's land was within the Tsavo National Park and was not collecting reasonable revenue from the proceeds of tourism and as such considered filing a petition to determine aspects of equity in revenue share to boost its local revenue collection.	A consultative meeting was held with the County Government of Taita Taveta.	Ongoing
6 th February, 2019	Uasin Gishu County	National Government	Asset Dispute	Societies Regulatory Authority (SASRA) revoked the provisional license of Moi University Sacco by cancelling its registration and subsequently liquidating it.	Four consultative meetings have been held between the parties, with each party providing a brief to IGRTC on the matter.	Ongoing
30 th August, 2019	State Department of East African Community (EAC)	County Government of Kajiado	Transit Charge	The EAC reported that the County of Kajiado had charged road toll levy to the Republic of Burundi when transiting through the county.	Two consultative meetings were held with the Counties of Kajiado, Migori and Busia and State department of EAC	Ongoing

Date of Declaration	Declared By	Dispute Against	Nature of Dispute	Dispute Narrative	Action Taken	Status
18 th October, 2019	Turkana County Government	National Government	Housing dispute	County Government of Turkana declared a dispute on housing where it stated that the National Government, department of housing was interfering with the development of housing in devolved functions.	IGRTC has written to the county requesting for a brief.	Ongoing
9 th December, 2019	Lake Victoria North Water, Works Development Agency	County Government of Bungoma	Land Dispute	The County Government of Bungoma constructed a dairy processing plant forcefully without permission, on National Government land, reserved for public use under the Ministry of Water, Sanitation and allocated to the Lake Victoria North Water Works. The land in question housed the water offices and other assets which have since been demolished by the contractor.	A letter has been written requesting for a comprehensive brief on the matter.	Ongoing



Date of Declaration	Declared By	Dispute Against	Nature of Dispute	Dispute Narrative	Action Taken	Status
9 th January, 2020	Kakamega County	National Intelligence Service (NIS)	Land Dispute	<p>The Land in dispute is said to belong to the County Government of Kakamega as per the allotment letter provided by the National Land Commission. The same land was then transferred to NIS without any consultation with the County government of Kakamega. Efforts by the county government to install a 5000m water tank on the land have been frustrated, after NIS stopped the construction of the water tank.</p>	A letter has been written requesting for a comprehensive brief on the matter.	Ongoing

Disputes Referred to Court

Date of Declaration	Declared by	Dispute Against	Nature of Dispute	Dispute Narrative	Action Taken	Status
12 th October 2016	Embu County and the County Government of Kirinyaga	Ministry of lands and physical planning	Land Dispute	Disputed ownership of Mwea Settlement Scheme land between the National & County Governments	Embu County Government, Kirinyaga County Governments requested the halting of the process of printing of and /or issuance of title deeds on the Mwea Settlement Scheme.	Referred to Court



Concluded Disputes

No.	Dispute	Status
1.	Dispute between the Office of the Governor and the Office of the County Commissioner, West Pokot County on the occupation of office space by the Government of West Pokot meant for the County Commissioner.	Memorandum of Understand Signed between the County Commissioner and West Pokot County
2.	Dispute between the Ministry of Interior and National Coordination, over the Siaya ATC houses.	Memorandum of Understand Signed between the Ministry of Interior and the County Government of Siaya
3.	Dispute between Agriculture, Food and Fisheries Authority (AFA) and County Government, over the withholding of coffee cess by AFFA.	Memorandum of Understand Signed between the AFA and coffee growing County Governments
4.	Dispute between Nairobi City County and Ministry of Agriculture, Livestock and Fisheries on revenue sharing on export slaughter houses.	Memorandum of Understand Signed between the Nairobi City County and the Ministry of Agriculture, Livestock and Fisheries
5.	Dispute between Baringo County and the Ministry of Agriculture, Livestock and Fisheries on the Marigat Slaughter House.	Memorandum of Understand Signed between the county of Baringo and the Ministry of Agriculture, Livestock and Fisheries
6.	Dispute between the County Government of Garissa and the Ministry of Devolution and Arid & Semi-Arid Lands, on construction of masonry perimeter fence, double steel gate and a pedestrian gate at the Garissa Referral Hospital.	Memorandum of Understand Signed between the parties.

No.	Dispute	Status
	regarding the hand-over of Nasukuta Export Slaughter house.	
8.	<p>Transfer of Irrigation Projects in nine (9) counties;</p> <ol style="list-style-type: none"> 1) Mbogoni Irrigation Scheme - Tharaka Nithi County 2) Kathiga Gacheru Irrigation Scheme – Embu County 3) Kabaa Irrigation Scheme – Machakos County 4) Kauti Irrigation Scheme - Machakos County 5) Namelok Irrigation Scheme – Kajiado County 6) Ngurumani Irrigation Scheme – Kajiado County 7) Mosiro Irrigation Scheme – Narok County 8) Lari Wendani Irrigation Scheme – Nakuru County 9) Kabonon Kapkamak Irrigation Scheme – Elgeyo Marakwet County 	Memorandum of Understand Signed between the Ministry of Agriculture and respective Counties.



Annex 9.2: The Chartered Institute of Arbitrators Kenya Chapter Guidelines for the Remuneration of ADR services

Arbitration, Adjudication & Dispute Adjudication Board Member Fees in KSh. services

	0 – 5 years-experience	5 – 10 years-experience	10 years plus experience
Chartered Arbitrator	-	15,000 – 20,000	20,000 – 25,000
Fellows	10,000 - 12,500	12,500 – 15,000	15,000 – 20,000
Members	7,500 – 10,000	10,000 – 12,500	12,500 – 15,000
Associates	4,000 – 5,000	5,000 – 7,500	7,500 – 10,000

Mediation/Conciliation Fees in KSh.

	0 – 5 years-experience	5 – 10 years-experience	10 years plus experience
Chartered Arbitrator	-	10,000 - 12,500	15,000 or above
Fellows	7,500 – 8,500	8,500 – 10,000	10,000 or above
Members	6,000 – 7,500	7,500 – 8,500	8,500 – 10,000
Associates	4,000 – 5,000	5,000 – 6,000	6,000 – 7,500

Annex 2.1 - Status of Staff Establishment

a) Current Staff Compliment

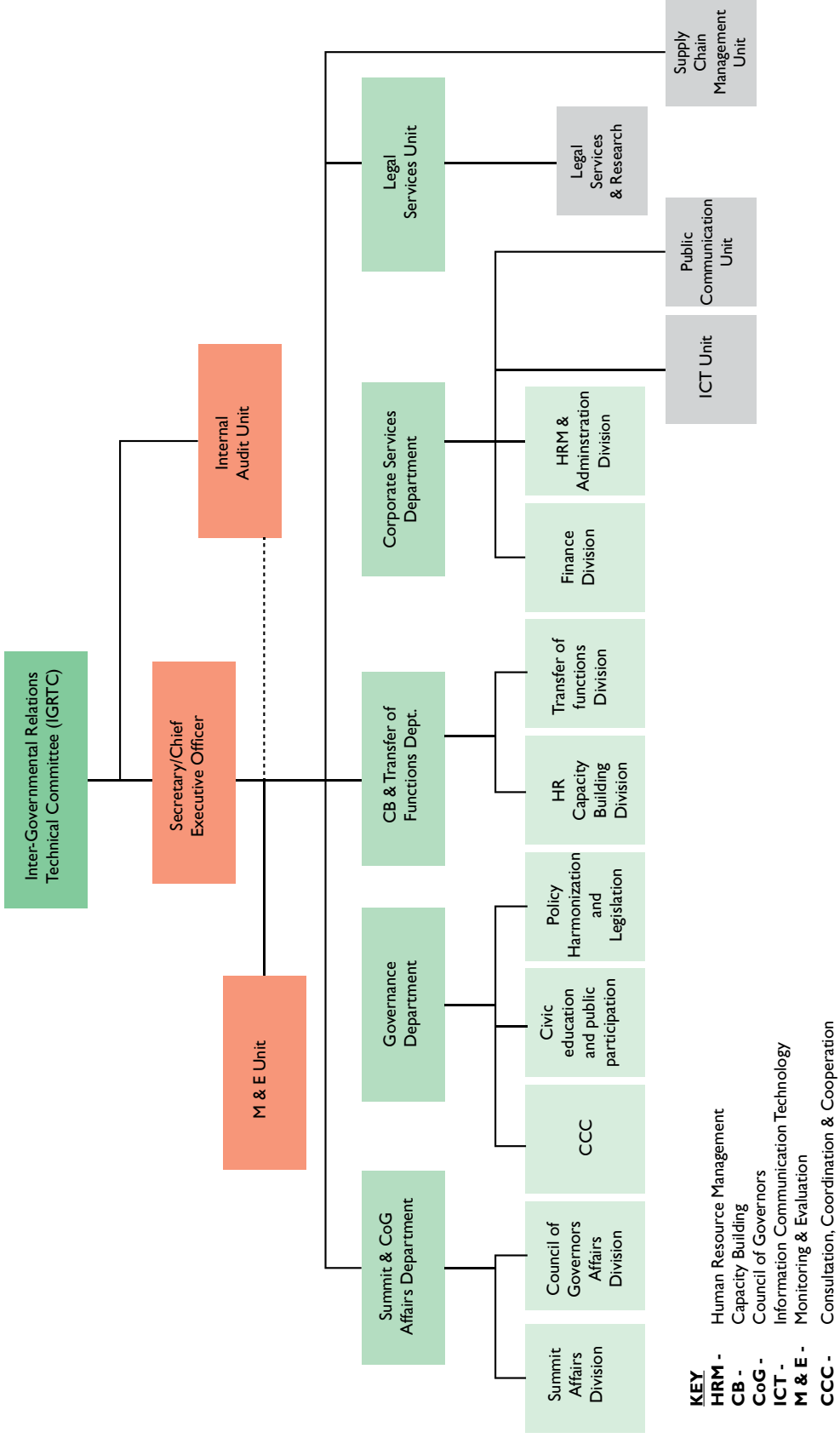
Grade	Designation	Male	Female	Total	Remarks
Staff on contract paid by IGRTC					
IGRTC 1	CEO	1	-	1	6 years Contract
IGRTC 2	Directors	1	2	3	6 years Contract
IGRTC 4	Senior Assistant Director	1	-	1	3 Year Contract
IGRTC 5	Assistant Director	-	6	6	3 year contract
IGRTC 6	Principal Technical officers	5	3	8	3 year term contract
IGRTC 9	Senior Clerical Officer	-	1	1	3 year term contract
IGRTC 10	Drivers	4	-	4	3 year term contract
IGRTC 11	Support Staff	2	1	3	3 year term contract
TOTAL EMPLOYED		14	13	27	

Grade	Designation	Male	Female	Total	Remarks
Deployed Staff NOT paid by IGRTC					
M	Principal Technical officers	2	2	4	Deployed staff
L	Senior Officers	2	3	5	
K	Officer I	-	2	2	
J	Officer II	2	-	2	
D,E,F	Drivers	1	3	4	
Insp., Sergeant, Constable etc.	Security officers	9	1	10	
TOTAL		16	11	27	

b) Optimal (Establishment) Staff Complement

Grade	Designation	Job Group	Optimal Staff	In-post
IGRTC 1	Secretary/ Chief Executive Officer	T	1	1
IGRTC 2	Director	S	5	3
IGRTC 3	Deputy Director	R	11	0
IGRTC 4	Senior Assistant Director	Q	0	1
IGRTC 5	Assistant Director	P	16	6
IGRTC 6	Principal Officer	N	29	12
IGRTC 7	Chief Officer	M	14	0
IGRTC 8	Senior Officer	L	27	4
IGRTC 9	Officer I	K	5	2
IGRTC 10	Officer II/Senior Clerical Officer/Drivers	J	5	9
IGRTC 11	Officer III	H	1	0
IGRTC 12	Clerical Officer Driver/Office Assistant	G	2	0
		F	2	7
	Security Officers	-	-	10
TOTAL			118	54

Annex 10.1: Organizational Structure:



Annex 10.3 a, b, c: IGRTC Proposed Harmonization and Realignment of Thematic Areas

S/ No.	Council of Governors Committees	IGRTC Current Thematic Areas	S/ No.	Proposed IGRTC Harmonized Thematic Areas And Coverage	Proposed Champion
1	Health and Biotechnology		1	HEALTH AND SOCIAL AFFAIRS: Health, Biotechnology, Education, Social Services, Sports, Culture, Gender, Youth; and related State agencies	
2	Education, Gender, Culture, Youth, Sports and Social Services				
3	Agriculture		2	AGRICULTURE AND PRODUCTIVE RESOURCES: Agriculture, Trade, Industry, Investments, Fisheries, Livestock, Water, Forestry, Tourism, Wildlife, Environment, Mining, Cooperatives, Enterprise Development; and related State agencies	
4	Trade, Industry and Investments				
5	Tourism and Wildlife				
6	Cooperatives and Enterprise Development				



S/ No.	Council of Governors Committees	IGRTC Current Thematic Areas	S/ No.	Proposed IGRTC Harmonized Thematic Areas And Coverage	Proposed Champion
7	Human Resource, Labor and Social Welfare	I.CCC, HR, and Capacity Building	3	HUMAN CAPITAL RELATIONS: Human Resource/Labor, Consultation, Cooperation, Coordination, Capacity Building, Public Service; and related State agencies	
8	Intergovernmental Relations	2.Summit and Council of Governors Affairs	4	SUMMIT AND COUNCIL OF GOVERNORS AFFAIRS: Summit and Council of Governors Affairs, Interior and National Coordination; Foreign Affairs and related State agencies	
9	Security and Foreign Affairs				
		3.Functional Analysis, Costing and Transfer of Functions	5	FUNCTIONAL ANALYSIS, COSTING, TRANSFER OF FUNCTIONS Analysis of functions, costing and transfer to relevant level of government	

S/ No.	Council of Governors Committees	IGRTC Current Thematic Areas	S/ No.	Proposed IGRTC Harmonized Thematic Areas And Coverage	Proposed Champion
10	Finance, Planning and Economic Affairs	4. Finance and Institutional Development	6	FINANCE AND RESOURCE MOBILIZATION: Finance, Resource Mobilization, Planning, Economic Affairs, Urban Development; and related State agencies	
11	Resource Mobilization				
12	Urban Development, Planning and Lands				
13	Infrastructure and Energy	5. Monitoring and Evaluation, Assets and Liabilities	7	INFRASTRUCTURE: Infrastructure, Roads, Transport, Water, Mining, Information, Technology, and Communication, Lands, Arid and Semi-arid lands, Energy; and related State agencies,	
14	Information, Technology, and Communication				
15	Water, Forestry and Mining				
16	Arid and Semi-arid Lands				



S/ No.	Council of Governors Committees	IGRTC Current Thematic Areas	S/ No.	Proposed IGRTC Harmonized Thematic Areas And Coverage	Proposed Champion
17	Legal Affairs and Human Rights	6. Alternative Dispute Resolution and Public Participation	8	POLICY AND LEGISLATION AFFAIRS: Legal Affairs, Parliamentary Affairs, Judicial affairs, Human Rights, Civic Education, Public Participation, Policy, Rules and Business and related State agencies	
		7. Policy and Legislation			
18	Rules and Business				

NB: Activities of monitoring and evaluation as well as assets and liabilities are functional activities that cut across thematic areas. They will therefore be performed on scheduled or needs basis.

c) Management of County specific issues at IGRTC

The experience in the last five years revealed that many a time there are specific county issues that require the attention of IGRTC to address urgently. It is proposed that each member be responsible for a cluster of counties apart from the responsibility on thematic areas. This will provide an effective reference point in expediting resolution of county specific issues. The clusters are as follows:

Cluster	County Cluster Responsibility	Member
1.	Mombasa, Kwale, Kilifi, Tana River, Lamu, Taita/Taveta,	
2.	Garissa, Wajir, Mandera, Marsabit, Isiolo, Meru, Tharaka Nithi	
3.	Embu, Kitui, Machakos, Makueni, Nyandarua, Nyeri, Kirinyaga	
4.	Murang'a, Kiambu, Turkana, West Pokot, Samburu, Trans Nzoia	
5.	Uasin Gishu, Elgeyo/Marakwet, Nandi, Baringo, Laikipia, Nakuru, Narok	
6.	Kajiado, Kericho, Bomet, Kakamega, Vihiga, Bungoma, Busia	
7.	Siaya, Kisumu, Homa Bay, Migori, Kisii, Nyamira, Nairobi	

d) IGRTC Administrative/Institutional Committees

The administration of the secretariat requires policy direction for effective accountability and transparency. In order to achieve this, it is proposed that management committees be reviewed or established as follows:

S/No.	Current Committees	S/No.	Proposed Committees	Committee Functions
I	Finance and Institutional Development	I.	Finance, Administration and Resource Mobilization	<ul style="list-style-type: none"> a) Provide guidance on all financial matters of the Committee (IGRTC) including work plans, annual budgets and financial reports. b) Ensure that all foreseen services are included in the budget estimates. c) Ensure accuracy and completeness of the estimates. d) Ensure the budget circle and deadlines for submitting the estimates are adhered to. e) Present and seek the approval of the Committee before the budget is submitted to Treasury for onward Parliamentary approvals. f) Undertake resource mobilization from development partners to close resource gaps in the Committee. g) Ensure any grant or donation received by the Committee is included in the Budget estimates. h) Consider and give guidance for acquisition proposals and administration of the assets (e.g. furniture, equipment, motor vehicles, e.t.c) of the Committee. i) Administer security, safety, leases, rentals, and transport policies in the Committee. h) Any other assignment that may be required or requested from time to time. <p>NB: Chaired by a member/Preferably Vice Chairperson</p>

S/No.	Current Committees	S/No.	Proposed Committees	Committee Functions
2	Audit and Risk Management	2.	Audit and Risk Management	<ul style="list-style-type: none"> a) Provide independent opinion to the accounting officer and the institution on the systems efficacy, adequacy or otherwise and advise accordingly. b) Ensure internal financial controls are in place. c) Ensure effective risk management. d) Provide quality assurance and value for money in the utilization of public resources. e) Any other assignment that may be required or requested from time to time. <p>NB: Chaired by a member</p>
3	Management and Development	3.	Human Resource and Training	<ul style="list-style-type: none"> a) Provide policy guidelines for human resource management in line with the Civil Service Code of Regulations (COR). b) Ensure right level and efficient deployment of staff in the Committee. c) Undertake human resource establishment analysis and propose areas of deployment or reorganization. d) Undertake regular reviews, appraisals and propose rewards or reprimand based on state of performance. e) Human resource training and career development. f) Human resource discipline. h) Develop and manage the staff retention, succession plan and exit strategies.



S/No.	Current Committees	S/No.	Proposed Committees	Committee Functions
				i) Medical plans. j) Any other assignment that may be required or requested from time to time. NB: Chaired by a member
		4.	Budget Implementation	a) Ensure that appropriated funds are spent for the intended purpose and in conformity with the laid down rules and regulations. b) Ensure that goods or services ordered are paid for within the commercially accepted time and that payments are made immediately after delivery to avoid build-up of arrears (pending bills). c) Overall Coordination and monitoring of budget execution. d) Any other assignment that may be required or requested from time to time. NB: Chaired by the Accounting Officer

- NB:** 1) Specific statutory and non-statutory ad-hoc committees will be established from time to time
- 2) The technical thematic areas have been aligned to cover all Council of Governors committees and National Government Ministerial functions.
- 3) Other administrative sub-committees that are ad hoc or otherwise will be established from time to time.


Annex 12.1: Some of the policies, legislation and strategies that have not been aligned with the COK, 2010

- a) Agricultural Sector Development Strategy
- b) National Agricultural Sector Extension Policy Sessional Paper no 1 of 2011
- c) National Horticulture Policy, 2012
- d) National Policy on Irrigation and Drainage Development
- e) The National Housing Policy
- f) Health Information Systems Policy

Various legislations have not been aligned with the Constitution of Kenya, 2010:

- a) Co-operative Societies Act
- b) Sacco Societies Act
- c) Betting, Lotteries and Gaming Act
- d) The Agricultural Development Corporation Act
- e) Biosafety Act
- f) Agricultural Development Corporation
- g) Agricultural Finance Corporation
- h) Agricultural Produce (Export)
- i) Agriculture and Food Authority
- j) The Physical Planning Act
- k) Survey Act
- l) Kenya National Library Service Board Act
- m) National Museums and Heritage Act
- n) The National Cereals and Produce Board Act, cap 338
- o) The Seeds and Plant Varieties Act
- p) Seeds and Plant Varieties Act



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- q) Hide, Skin and Leather Trade Act
 - r) Kenya Meat Commission Act
 - s) National Cereals and Produce Board Act
 - t) Pest Control Products Act
 - u) Plant Protection Act

Legislation aligned with the COK, 2010 but require the development of regulations and operational guidelines:

- a) The National Government Coordination Act, 2013
- b) Intergovernmental Relations Act, 2012
- c) County Governments Act, 2012

Annex 2.2 A – B: IGRTC Management

A: Senior Management Team



Peter Leley
Secretary/Chief Executive Officer



Agnes Muthoni Ndwiga
*Director, Summit
& COG Affairs*



Mahat Osman Shalleh
Director, FACT



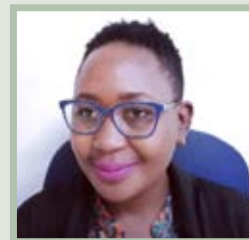
Caroline Lentupuru
Director, Governance



Monicah M. Wambua
Asst. Director, FACT



Augustine Sekeyan
Senior Assistant Director, Legal



Sophie Amutavy
Asst. Director Summit & COG





Evelyn Gitau
Asst. Director Governance



Beatrice Waithera
ADR & PP



Fatuma Amin
*Asst. Director,
Monitoring & Evaluation*



Peter Ochieng' Bando
Ag. Chief Finance Officer



John Kamau Kimathi
Head, Accounts



David Keter
Head, Procurement



Jane Oyugi
Head, Human Resource



Prisca Rawua
Head, Administration



Esther Mukoko
Head, Records



Margaret C. Korir
Head, ICT

B: List of All Members of Staff
i) Staff Members Employed by IGRTC

S/ No.	Name	IGRTC Grade	Designation
1	Peter Leley	IGRTC Grade 1	CEO
2	Caroline N. Lentupuru	IGRTC Grade 2	Director, Governance Affairs
3	Mahat Shalle	IGRTC Grade 2	Director, Transfer of Functions
4	Agnes M. Ndwiga	IGRTC Grade 2	Director, Summit and CoG Affairs
5	Augustine Sekeyian	IGRTC Grade 4	Senior Assistant Director Legal
6	Monica Wambua	IGRTC Grade 5	Assistant Director Transfer of Functions
7	Evelyne Gatiu	IGRTC Grade 5	Assistant Director CCC
8	Prisca Rawua	IGRTC Grade 5	Assistant Director Administration
9	Fatuma Mohamed	IGRTC Grade 5	Assistant Director M&E
10	Bilha E. N. Kimondo	IGRTC Grade 5	Assistant Director Legal
11	Sophie Amutavy	IGRTC Grade 5	Assistant Director Summit
12	Elvis Aganyo	IGRTC Grade 6	Principal Officer ICT
13	Shadrack Ruto	IGRTC Grade 6	Principal Officer Finance
14	Lydia Cheruto Plaino	IGRTC Grade 6	Principal Officer Communication
15	Meshack K Tuwey	IGRTC Grade 6	Principal Officer Administration
16	Stella Chepkosgei	IGRTC Grade 6	Principal Officer Transfer of Functions
17	Lynet Kemunto Ogero	IGRTC Grade 6	Principal Officer Council of Governors
18	Benjamin Sasimwa	IGRTC Grade 6	Principal Officer Assets and Liabilities
19	Dickson Bukamu Wekesa	IGRTC Grade 9	Senior Clerical Officer
20	Elema Diramu Boru	IGRTC Grade 9	Senior Clerical Officer
21	Leonard Olale	IGRTC Grade 10	Driver
22	Bob Ongor	IGRTC Grade 10	Driver
23	John Kuria	IGRTC Grade 10	Driver
24	Eliud Kiplimo	IGRTC Grade 10	Driver
25	Joseph Ondego	IGRTC Grade 11	Support Staff
26	Douglas Machani	IGRTC Grade 11	Support Staff
27	Beatrice Atieno Awuor	IGRTC Grade 11	Support Staff

ii) The Staff Members Deployed by the Public Service Commission

S/No.	Name	Designation	Responsibilities
1.	Peter O. Bando	Principal Devolution Officer	Acting Finance Officer, Transport Officer and Assets and Liability Officer
2.	Esther E. Mukoko	Principal Records Officer	Records Management Officer
3.	Milka A. Ongoro	Principal Office Administrator	Office Administrator in the Chairman's Office
4.	David Keter	Principal Supply Chain Officer	Head of Procurement
5.	Jane A. Oyugi	Principal Human Resource Management Officer	Officer in the Human Resource Department
6.	Winfred W. Waweru	Senior Assistant Office Administrator	Office Administrator in the CEO'S Office
7.	John Kamau Kamathi	Senior Accountant	Head of Accounts
8.	Nancy Wanjiru Ngari	Senior Accountant	Examination in Accounts
9.	Margaret Chepkemoi Korir	ICT Officer I	ICT Office
10.	Beatrice Waithera	Gender & Social Development Officer I	Technical Officer ADR
11.	Julius K. Chepkwony	Accountant II	Assisting in Supply Chain Management
12.	Ali Yahya	Accountant II	Managing the Cash Book
13.	Eliud Nabali	Senior Clerical Officer	Assisting in Supply Chain Management
14.	Margaret W. Kanyara	Driver	Driver
15.	Daniel Muia	Driver	Driver
16.	Lawi Tanui	Driver	Driver
17.	Joel Arika	Driver	Driver

SECURITY OFFICERS			
1	Musa Bishar Said	Inspector, Head Security	Security
2	Moses Musyoka	Sergeant	Security
3	Jacinta Kanario	Sergeant	Security
4	Osman Mohamed	Corporal	Security
5	Moses Mugambi	Corporal	Security
6	Evans Kavulavu	Corporal	Security
7	Nelson Kasungu	Corporal	Security
8	Jeremiah Omollo	Admin Police Constable	Security
9	Edwin Biwott	Admin Police Constable	Security
10	Gilbert Onsongo	Admin Police Constable	Security

Annex 12.3: Members of the Report Preparatory Committee

S/No.	Name	Description	Position in Committee
1.	Dr. Joseph N. Kosure, PhD.	Resident Consultant	Chairman
2.	Fatuma Amin	Assistant Director, Monitoring and Evaluation	Secretary
3.	Sophie Amutavy	Assistant Director, Summit and COG Affairs & Legal Officer	Member
4.	Esther Mukoko	Principal Records Officer	Member
5.	Meshack Tuwey	Principal Administrative Officer	Member
6.	Winfred Wanjiku	Senior Assistant Office Administrator	Member







IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

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