



TRANSPARENCY  
INTERNATIONAL  
KENYA

# DEVOLUTION HAND BOOK

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# 1. INTRODUCTION

The Constitution of Kenya has enhanced citizen participation and given the people a chance to determine how matters are run in the country. The devolved system of governance allows for the citizens to exercise their sovereign power. It has also allowed for transfer of powers to the 47 county governments.

For county governments to run smoothly, Parliament passed the following laws on devolution:

1. The County Government Act, 2012
2. Intergovernmental Relations Act, 2012
3. Transition to Devolved Government Act, 2012
4. Urban Areas and Cities Act, 2011
5. Public Finance Management Act, 2012
6. Transition County Allocation Revenue Act, 2013
7. National Government Co-ordination Act, 2013
8. Constituencies Development Funds Act, 2013
9. Transition County Appropriation Act, 2013

In order for the citizens to meaningfully participate and play their oversight role in the governance process, they must be

aware of these laws. By so doing, they will be able to hold their county governments to account.

It is with this in mind that Transparency International Kenya published this handbook, which is a simple analysis of devolution as per the Constitution of Kenya 2010 and the laws that have been enacted to operationalise devolution.

It is our intention to empower Kenyan citizens by providing this information to enable them to actively demand for transparency and accountability in the management of County governments.



## 2. JUSTIFICATION FOR DEVOLUTION LAWS

The Constitution of Kenya is the supreme law of the Land. This means that any other legislation that is passed and is not in line with the Constitution invalid right from the start. The Constitution breathes life into devolution and has given the Kenyan people the power to govern themselves and participate in all major

decisions that affect them.

Article 200 of the Constitution has granted Parliament the power to enact legislation that is necessary for devolution to take place. This handbook will examine how each of the enacted laws is meant to actualise devolution.

### **The County Government Act, 2012**

This Act came into operation upon the final announcement of the results of the March 4th 2013 general election.

Its purpose and objectives are among others to:

- a. Give effect to devolution under Chapter 11 of the Constitution; the objects and principles of devolution as set out in Art. 174 and 175 of the Constitution;

Art. 176 (2) of the Constitution in respect of further decentralisation

- b. Provide for the removal from office of the Speaker of the County Assembly in accordance with Art. 178 of the Constitution;
- c. Provide for the powers, privileges and immunities of County Assemblies, their Committees and Members under Art. 196 of the Constitution;



- d. Provide for public participation in the conduct of the activities of the County Assembly as required under Art. 196 of the Constitution;
- e. Seek to ensure that the community and cultural diversity of a County is reflected in its County Assembly and County Executive Committee as contemplated in Art. 197 of the Constitution;
- f. Prescribe mechanisms to protect minorities within counties pursuant to Art. 197 of the Constitution;
- g. Prescribe additional requirements in respect of the publication of county legislation as contemplated in Art. 199 of the Constitution;
- h. Provide, pursuant to Art. 200 of the Constitution, for the manner of nomination or appointment of persons to, and their removal from, office in county governments, including the qualifications of voters and candidates; the procedure of Assemblies and Executive Committees including the chairing and frequency of meetings, quorums and voting; and the suspension of Assemblies and Executive Committees; and,

- i. Prescribe, pursuant to Art. 235 of the Constitution, uniform norms and standards for establishing and abolishing offices in the County public service; appointing persons to hold or act in those offices, and confirming appointments; exercising disciplinary control over and removing persons holding or acting in those offices and provide for the promotion, evaluation and reporting on the compliance by county public officers with the values and principles in Art. 10 and 232 of the Constitution.
- j. Prescribe mechanisms to protect minorities within counties pursuant to minorities within counties pursuant to Art. 197 of the constitution; and prescribe additional requirements in respect of the publication of county legislation as contemplated in Art 199.

#### **Intergovernmental Relations Act, No. 2 of 2012**

The objectives of this Act are to among others:

- a. Provide a framework for consultation and co-operation between the National and County governments;
- b. Provide a framework for consultation and co-operation amongst county governments;



- c. Establish institutional structures and mechanisms for intergovernmental relations;
- d. Provide a framework for the inclusive consideration of any matter that affects relations between the two levels of government and amongst county governments;
- e. Give effect to Art. 187 and 200 of the Constitution, in respect of the transfer of 4 functions and powers by one level of government to another, including the transfer of legislative powers from the national government to the county governments; and,
- f. Provide mechanisms for the resolution of intergovernmental disputes where they arise.

### Transition to Devolved Government Act, No. 1 of 2012

The Transition to Devolved Government Act was passed to:

- a. Provide a legal and institutional framework for a coordinated transition to the devolved system of government while ensuring continued delivery of services to citizens;
- b. Provide, pursuant to section 15 of the Sixth Schedule to the Constitution, for the transfer of powers and

functions to the National and County governments;

- c. Provide mechanisms to ensure that the Commission for the Implementation of the Constitution performs its role in monitoring and overseeing the effective implementation of the devolved system of government;
- d. Provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the National and County governments assets and liabilities; human resources; government and local authorities; pensions and other staff benefits of employees of government and local authorities and any other connected matters.
- e. Provide for closure and transfer of public records; and,
- f. Provide for the mechanism for capacity building requirements of the National government and the County governments and make proposals for the gaps to be addressed.



### National Government Co-Ordination Act, No. 1 of 2013

- a. National Government Co-Ordination Act, No. 1 of 2013 was legislated to among others:
- b. Facilitate the exercise of Executive authority pursuant to Art. 131(1)(b) and 132 (3) (b) and (c) of the Constitution;
- c. Provide for the effective co-ordination and administration of the National government functions prescribed in the Constitution, this Act or any other written law; and,
- d. Provide for the establishment of an administrative and institutional framework at the National, County and decentralised units to ensure access to National government services in all parts of the Republic.

### Public Finance Management Act, 2012

Public Finance Management Act 2012 was passed to ensure that:

- a. Public finances are managed at both the National and the County levels of government in accordance with the principles set out in the Constitution; and,
- b. Public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

### Urban Areas and Cities Act, 2011

The Urban Areas and Cities Act, 2011 was legislated to establish a legislative framework for:

- a. Classification of areas as urban areas or cities;
- b. Governance and management of urban areas and cities;
- c. Participation by the residents in the governance of urban areas and cities; and,



- d. Other matters for the attainment of the objects provided for in paragraphs (a) to (c).

### **Constituencies Development Fund Act, 2013**

The purpose of the Constituencies Development Fund Act, 2013 is to ensure that:

- a. The provisions of the Act shall apply, as more specifically provided for in the Act; and,
- b. A specific portion of the National annual budget is devoted to Constituencies for infrastructural development, wealth creation and in the fight against poverty at the Constituency level.

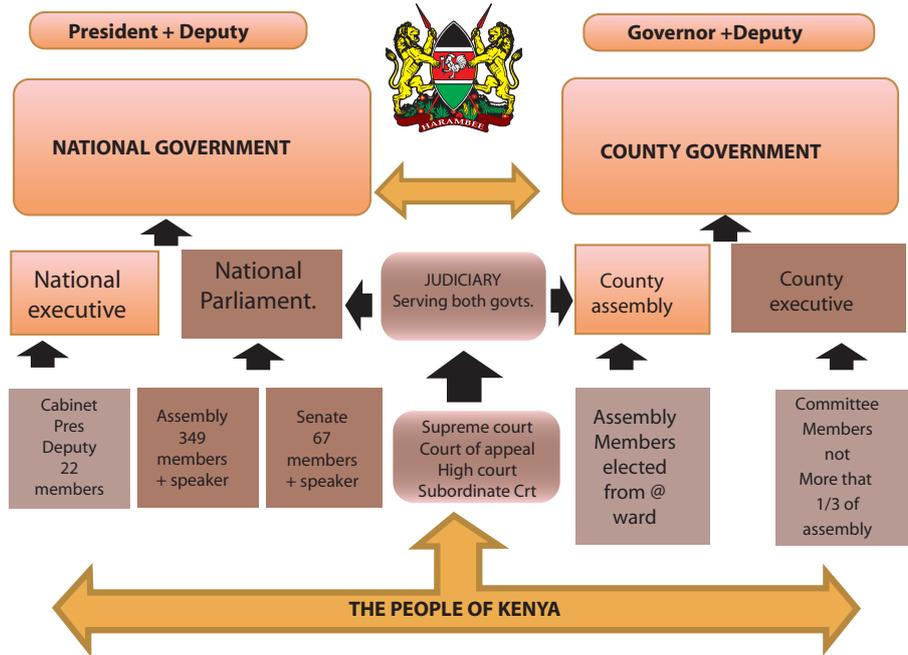
### **Transition County Appropriation Act, 2013**

Transition County Appropriation Act, 2013 authorises the issue of funds out of the relevant County Revenue Funds, and application of those funds towards the service of a particular financial period for specified county public services and purposes.

The County Appropriation Act of 2013 was for salaries and expenses of all Counties for the year ending 30<sup>th</sup> June 2013.



# 3. STRUCTURE AND SYSTEM OF GOVERNANCE





It is important to understand the structure and system of governance especially the inter-play between the National and County governments.

### Objectives of Devolution

The objectives of devolution in Kenya are stated under Article 174 of the Constitution. They are;

- a. To promote democratic and accountable exercise of power;
- b. To foster national unity by recognising diversity;
- c. To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- d. To recognise the right of communities to manage their own affairs and to further their development;
- e. To protect and promote the interests and rights of minorities and marginalised communities;
- f. To promote social and economic development and the provision of proximate, easily accessible

services throughout Kenya

- g. To ensure equitable sharing of national and local resources throughout Kenya;
- h. To facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and
- i. To enhance checks and balances and the separation of powers.

### Principles of Devolved Government

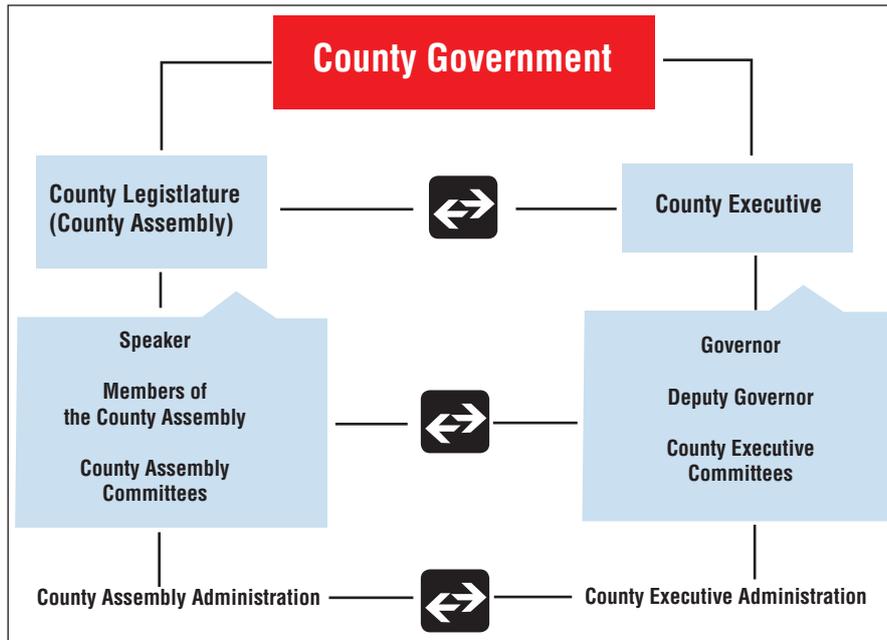
Article 175 of the Constitution provides that County governments shall;

- a. Be based on democratic principles and separation of powers;
- b. Have reliable sources of revenue to enable them to govern and deliver services effectively; and
- c. No more than two-thirds of the members of representative bodies in each County government shall be of the same gender.



## County Government Structure

Article 176 of the Constitution provides for County Governments which will comprise of the County Assembly and the County Executive. Each County government is allowed to decentralise its functions to the extent that is feasible.





## Functions of County Governments

According to section 5 of the County Government Act, County Governments shall be responsible for any function assigned to them under the Constitution or by an Act of Parliament. In addition, they shall be responsible for:

- a. County legislation in accordance with Article 185 of the Constitution;
- b. Exercising Executive functions in accordance with Article 183 of the Constitution;
- c. Functions provided for in Article 186 and assigned in the Fourth Schedule of the Constitution;
- d. Any other function that may be transferred to County governments from the National government under Article 187 of the Constitution;
- e. Any functions agreed upon with other County governments under Article 189 (2) of the Constitution; and,
- f. Establishment and staffing of its public service as contemplated under Article 235 of the Constitution. The assembly can appoint persons and exercise

disciplinary control over them apart from those subject to the Teachers Service Commission.

## The County Executive Committee

Article 177 goes further to vest the executive authority of the County in the County Executive Committee. The County Executive Committee is made up of the Governor, the Deputy Governor and members appointed by the county governor with the approval of the County Assembly. These members should not be Members of the County Assembly.

The County Government Act in section 32 requires that the Governor, in nominating members of the County Executive, to ensure that the composition of the County Executive reflects the community and cultural diversity of the County; and take into account principles of affirmative action provided in the Constitution.

## The role of the County Executive Committee

The following are the roles of the County Executive Committee as spelt out in Article 183 of the Constitution;



1. To implement county legislation
2. Implement national legislation within the county
3. Manage and coordinate functions of the county
4. Prepare proposed legislation for consideration by the county assembly
5. Provide the county assembly with full and regular reports on matters of the county.

### Governor

The functions and responsibilities of the Governor as provided under section 30 of the County Government Act are to;

- a. Execute the functions and exercise the authority provided for in the Constitution and legislation;
- b. Perform such State functions within the County as the President may from time to time assign on the basis of mutual consultations; Represent the county in national and international fora and events;
- c. Appoint, with the approval of the county assembly, the county executive committee in accordance with Art. 179(2)(b) of the Constitution;

- d. Constitute the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county;
- e. Submit the county plans and policies to the county assembly for approval;
- f. Consider, approve and assent to bills passed by the county assembly;
- g. Chair meetings of the county executive committee;
- h. By a decision notified in the county gazette, assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people;
- i. Submit to the county assembly an annual report on the implementation status of the county policies and plans;
- j. Deliver annual state of the county address containing such matters as may be specified in county legislation;



- k. Sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee;
  - l. Provide leadership in the county's governance and development;
  - m. Provide leadership to the county executive committee and administration based on the county policies and plans;
  - n. Promote democracy, good governance, unity and cohesion within the county;
  - o. Promote peace and order within the county
  - p. Promote the competitiveness of the county;
  - q. Be accountable for the management and use of the county resources; and,
  - r. Promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the county.
- a. Dismiss a County Executive Committee member at any time, if the Governor considers that it is appropriate or necessary to do so, despite section 40 of the Act
  - b. Dismiss a County Executive Committee member, if required to do so by a resolution of the County Assembly as provided under section 40;
  - c. Appoint an accounting officer for each department, entity or decentralized unit of the County Government; and,
  - d. Exercise such powers as may be necessary for the execution of the duties of the office of governor.

### Deputy Governor

The functions of the Deputy Governor are provided under section 32 of the County Government Act and include to:

- a. Take and subscribe to the oath or affirmation as set out in the Schedule to this Act before assuming office;
- b. Deputise the Governor in the execution of the Governor's functions;
- c. Perform any other responsibility or portfolio as a member of the County Executive Committee as may be assigned by the Governor; and,

### The Powers of the Governor

These are provided under Section 31 of the County Government Act. The governor has power to:



The Deputy Governor may not exercise any powers of the Governor, to nominate, appoint or dismiss, that are assigned to the Governor under the Constitution or other written law when acting in office as contemplated in Article 179 or other written law.

### **The County Assembly**

Legislative authority of a County is vested in the County Assembly as spelt out in Article 185. The members of the County Assembly may make laws that are necessary for effective performance of the County government as set out in schedule four. The functions of the County Assembly are;

- a. To make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the County government; While respecting the principle of the separation of powers, to exercise oversight over the County Executive Committee and any other County executive organs; and,

- b. To receive and approve plans and policies for the management and exploitation of the County's resources; and the development and management of its infrastructure and institutions.

No civil or criminal proceedings may be made against a member of the County Assembly for anything said in any debate, petition, motion or other proceedings of the County Assembly.

### **Membership of the County Assembly**

Article 177 of the Constitution lists membership of the County Assembly as follows:

- a. Members elected by the registered voters of the wards;
- b. The number of special seat members necessary to ensure that no more than two-thirds of the membership of the Assembly is of the same gender;
- c. The six nominated members of marginalised groups, including persons with disabilities and the youth, prescribed by the County Government Act; and,
- d. The Speaker, who is an ex officio member.



## The County Assembly Service Board

This is provided for in section 12 of the County Governments Act. Each County Assembly shall have a County Assembly Service Board.

The County Assembly Service Board is made up of the Speaker of the County Assembly as the Chair; leader of the majority or a County Assembly Member appointed by him as the Vice Chair; leader of the minority party or a County Assembly Member appointed by him and one person resident in the County who is appointed by the County Assembly from among people who have knowledge and experience in public affairs but who isn't a member of the County Assembly. The assembly clerk shall be the secretary to the board.

The County Assembly Service Board is responsible for;

- c. Providing services and facilities to ensure effective and efficient functioning of the County Assembly
- d. Constituting offices in the County Assembly service, appointing and supervising office holders.

- e. Preparing annual estimates of expenditure of the County Assembly service and submitting them to the County Assembly for approval and exercising budgetary control over the service.
- f. Undertaking, singly or jointly with other organisations programmes to promote ideals of parliamentary democracy
- g. Performing other functions necessary for the well being of members and staff of the County Assembly or other functions prescribed by the national legislation.

## County Public Service Board

Each County shall have a County Public Service Board whose work shall be to;

- a) Establish and abolish offices in the County public service
- b) Appoint persons to hold or act in offices of the County public service including in the board of cities and urban areas in the county and to confirm appointments
- c) Exercise disciplinary control over staff



- d) Prepare regular reports for submission to the County Assembly on the execution of functions of the Board
- e) Promote in the County public service the values and principles referred to in Articles 10 and 232
- f) Evaluate and report to the County Assembly on the extent to which the values and principles of Articles 10 and 232 are complied with
- g) Facilitate development of coherent, integrated human resource planning and budgeting for personnel in the County
- h) Advise the County on human resource management and development
- i) Advise County governments on implementation and monitoring of national performance management system in the Counties
- j) Make recommendations to the Salaries and Remuneration Commission on behalf of the County government on the payments, pensions and gratuities for the County public service employees.

In performance of its functions, the County Public Service Board shall have power to;

- a) Inform and educate County public officers on values and principles of governance.
- b) Recommend to the County government effective measures to promote values and principles of governance.
- c) Assist County governments in formulation and implementation of programmes intended to inculcate in public officers the duty to uphold values and principles of governance.
- d) Advise County governments on their obligations under international treaties and conventions on good governance in the County public service
- e) Visit any County public office or body to assess and inspect the status of compliance with values and principles
- f) Investigate on its own initiative or upon a complaint the violation of any values and principles



- g) Recommend to the relevant lawful authority any necessary action in view of any violation of the values and principles by an individual or body
  - h) Cooperate with other institutions working in the field of good governance in the public service
  - i) Perform any other function that is considered necessary for the promotion of values and principles of governance.
- b) The Sub-counties equivalent to the constituencies within the County as established in Article 89 of the Constitution which sets out the procedure for delimitation of electoral units;
  - c) The wards within the County;
  - d) The number of village units in each County as determined by the County assembly of each County.
  - e) Any further units that the County may determine in accordance with the law.

### Further units of decentralisation.

Further units of decentralisation are clearly spelt out in part VI of the County Governments Act.

The functions and services of each County government shall be decentralised to-

- a) The urban areas and cities within the County established in accordance with the Urban Areas and Cities Act;

If a Constituency or part of it falls within an urban area or city, that particular area shall be considered to be falling under the Urban Areas and Cities Act. The Act provides for areas to be classified as cities, towns and municipalities.



The following table indicates the standard that is necessary for the classification of each before a status is granted.

City	Municipality	Town
Population of at least 500,000 residents according to the final gazette results of the last population census carried out by an authorised institution under any written law	Population of at least 200,000	Population of at least 10,000
Has an integrated urban area or city development plan	Integrated development plan	Integrated development plan
Has demonstrable good system and records of prudent management	<ul style="list-style-type: none"><li>• Demonstrable revenue collection or collection potential.</li><li>• Demonstrable capacity to generate sufficient revenue to sustain operations</li></ul>	Demonstrable economic, functional and financial viability
Has capacity to effectively and efficiently deliver essential services to its residents as provided in the 1 <sup>st</sup> schedule	Capacity to deliver essential services as in the 1 <sup>st</sup> schedule	Capacity to deliver essential services as in the 1 <sup>st</sup> schedule



Has institutionalised active participation by residents in management of its affairs	Institutionalized active participation by residents	
Has infrastructural facilities e.g. roads, street lighting, markets, fire stations, an adequate capacity for disaster management, etc	Has infrastructural facilities e.g. street lighting, markets, fire stations, etc	
Capacity for functional and effective waste disposal	Capacity for functional and effective waste disposal	
	Has sufficient space for expansion	Sufficient space for expansion



The management of a city and municipality is to be done by the County government and administered on its behalf by a board, a City or Municipal manager and any other officer appointed by the County Public Service Board.

The work of the board/ City or Municipal manager is to:

- a. Oversee affairs of the city or municipality
- b. Develop and adopt policies, plans, strategies and programmes and may even set targets for delivery of services
- c. Formulate and implement an integrated development plan
- d. Control land use, subdivision, development and zoning for any purpose including industry, commerce, markets, shopping, employment centres, residential areas, parks, recreational areas, passenger transport, agriculture, freight and transit stations within the framework of the spatial and master plans for the city/town/municipal
- e. As may be delegated by the County government, promote and undertake infrastructural development,

- f. Maintain a comprehensive database and information system of the administration and make it available to the public upon payment of a nominal fee that may be determined by the board,
- g. Administer and regulate internal affairs,
- h. Implement applicable National and County legislation,
- i. Enter into contracts, partnerships or joint ventures that may be considered necessary for the discharge of functions,
- j. Monitor and where appropriate, regulate City and Municipal, services where the service providers are not on the board of the city or municipality,
- k. Prepare and submit its annual budget estimates to the County treasury for consideration and submission to the County Assembly for approval as part of the annual County Appropriation Bill,
- l. As may be delegated by the County government, collect rates, taxes, levies, duties, fees and surcharges on fees,
- m. Settle and implement tariff, rates and tax and debt collection policies delegated by the County government,



- n. Monitor the impact and effectiveness of any services, policies, programmes or plans
- o. Establish, implement and monitor performance management systems
- p. Promote a safe and healthy environment
- q. Facilitate and regulate public transport
- r. Any other delegated duties by the County government.

In the case of a town, the above mentioned functions of the board shall be carried out by a committee appointed by the County governor and approved by the County Assembly. There shall also be a town administrator for every town (section 31)

A City County is to be managed in the same way as a County government. This is a city which is also a County e.g. Nairobi.

### Village unit

When establishing a village unit, the county assembly shall consider the following;

- a. Population size

- b. Geographical features
- c. Community interest, historical, economic and cultural ties and
- d. Means of communication

It is the role of each County Assembly to enact legislation that provides for the division and establishment of villages.

### Sub-county administrator

The office of the sub-county administrator has been set out in section 50 of the County Government Act, 2012. Such a person shall be responsible for the coordination, management and supervision of general administrative functions which include:

- a. The development of policies and plans
- b. Service delivery
- c. Development activities to empower the community
- d. Provision and maintenance of infrastructure and facilities of public services
- e. The County public service
- f. Any powers delegated by the County Service Public Board



- g. Facilitation and coordination of citizen participation in the development of policies and plans and delivery of services.

### **Ward administrator**

The wards shall be run by a ward administrator who has the proper professional qualifications and technical knowledge in administration. The ward administrator answers to the sub-county administrator.

The ward administrator shall manage and supervise the general administrative functions of the ward including;

- a. The development of policies and plans
- b. Service delivery
- c. Development activities to empower the community
- d. Provision and maintenance of infrastructure and facilities of public services
- e. The County public service
- f. Coordination and facilitation of citizen participation in the development of policies and plans and delivery of services.

### **Village administrator**

The office of the village administrator has also been set up for the coordination, management and supervision of general administrative functions in the village which include;

- a) Ensuring and coordinating participation of the village unit in governance
- b) Assisting the village to develop the administrative capacity for the effective exercise of the functions and powers and participation in government at the local level

### **Village councils**

Each village shall have a council which shall consist of the village administrator as the chairperson and not less than three and not more than five village elders who have been competitively admitted.

This shall be done with the approval of the county assembly and shall take into consideration the gender rule. The council is responsible for;



- a. Ensuring and coordinating participation of the village in governance
- b. Assisting the village develop administrative capacity for effective exercise of functions and participation in governance at the local level.
- c. Monitoring implementation of policies
- d. Advising the ward and sub-county administrators on village matters.

A person can be a village elder if they;

- a. Are a Kenyan citizen,
- b. Have been a resident or has property in the particular

village for not less than five years before the appointment date,

- c. Have met the constitutional requirements on leadership and integrity and
- d. Haven't been disqualified by any other law of the land.

A village elder is eligible to an allowance as determined by the County Assembly.



## 4. DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS

Schedule four aside, a function of power of government at one level may be transferred to another if the other level of government will perform it more effectively and it isn't prohibited by legislation. Upon transfer of a function, arrangements shall be put in place to ensure there are necessary resources for performance. This is spelt out in Article 187.

The table below gives a glance at some of the functions as distributed between the National and County governments in schedule four of the constitution. It should be noted that some are exclusive to either the national or county government. Other functions are concurrent with the two governments holding the same functions at different levels while others have remained with the National government.



National Government	County Government
<p>1. Foreign affairs, foreign policy and international trade.</p>	<p>1. Agriculture including;</p> <ul style="list-style-type: none"> <li>• Crop and animal husbandry</li> <li>• Livestock sale yards</li> <li>• County abattoirs</li> <li>• Plant and animal disease control</li> <li>• Fisheries</li> </ul>
<p>2. Use of international waters and water resources.</p>	<p>2. <b>County health services</b> including county health facilities and pharmacies, ambulance services, promotion of primary healthcare, licensing and control of undertakings that sell food to the public, veterinary services(except regulation of profession), cemeteries, refuse removal and solid waste disposal.</p>
<p>3. Immigration and citizenship</p>	<p>3. Control of air <b>pollution</b>, noise pollution other public nuisances and outdoor advertising.</p>
<p>4. Relationship between religion and state.</p>	<p>4. <b>Cultural activities</b>, public entertainment and public amenities like racing, betting casinos and other forms of gambling, liquor licensing, cinemas, video shows and hiring, libraries, museums, sports and cultural activities, county parks, beaches and recreation facilities.</p>
<p>5. Language policy and promotion of official and local languages.</p>	<p>5. <b>County transport</b> including county roads, street lighting, traffic and parking, public road transport, ferries and harbours excluding regulation of international and national shipping matters</p>
<p>6. National defence services and their use.</p>	<p>6. <b>Animal control and welfare</b> including licensing of dogs and facilities for accommodation, care and burial of animals.</p>



7. <b>Police services.</b>	7. <b>Trade regulation and development</b> including markets, trade licenses, local tourism and cooperative societies
8. <b>Courts</b>	8. <b>County planning and development</b> including statistics, land survey and mapping, boundaries and fencing, housing, electricity and gas reticulation and energy regulation
9. <b>National economic policy and planning.</b>	9. Pre-primary <b>education</b> , village polytechnics, homecraft centres and childcare facilities.
10. <b>Monetary policy, currency, banking, incorporation and regulation of banking, insurance and financial corporations.</b>	10. Implementation of specific national government policies on natural resources and environmental conservation including soil and water conservation and forestry.
11. <b>National statistics and data on population, economy and society</b>	11. <b>County public works and services</b> including storm water management systems in built-up areas and water and sanitation services
12. <b>Intellectual property rights</b>	12. <b>Fire fighting services and disaster management</b>
13. <b>Labour standards</b>	13. Control of drugs and pornography



<p><b>14. Consumer protection including standards for social security and professional pension plans.</b></p>	<p>14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.</p>
<p><b>15. Education policy, standards, curricula, examinations and granting of university charters</b></p>	
<p><b>16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.</b></p>	
<p><b>17. Promotion of sports and sports education.</b></p>	
<p><b>18. Transport and communication including roads, construction and operation of national trunk roads, standards for the construction and maintenance of other roads by counties, railways, pipelines, marine navigation, civil aviation, space travel, postal services, telecommunications and radio and TV broadcasting.</b></p>	



<b>19. National public works</b>	
<b>20. Housing policy</b>	
<b>21. General principals of land planning and coordination of planning by the counties.</b>	
<b>22. Protection of environment and resources to establish a durable and sustainable system of development especially-</b> <ul style="list-style-type: none"><li>• Fishing, hunting and gathering</li><li>• Protection of animals and wildlife</li><li>• Water protection,securing sufficient residual water and safety of dams</li><li>• Energy policy</li></ul>	
<b>23. National referral health services</b>	
<b>24. Disaster management</b>	
<b>25. Ancient and historical monuments of national importance</b>	
<b>26. National elections</b>	
<b>27. Health policy</b>	
<b>28. Agricultural policy</b>	
<b>29. Veterinary policy</b>	



<b>30. Energy policy including electricity and gas reticulation and energy regulation</b>	
<b>31. Capacity building and technical assistance to the counties</b>	
<b>32. Public investment</b>	
<b>33. National betting, casinos and other forms of gambling</b>	
<b>34. Tourism policy and development</b>	



# 5. STRUCTURES OF DECENTRALISATION

## The County intergovernmental forum

The County intergovernmental forum is established in each County. It is to be chaired by the Governor. If he isn't available, then it shall be chaired by the Deputy Governor. In the absence of both, it shall be a member of the County Executive Committee designated by the Governor.

The forum is made up of;

- a. The heads of all departments of the National government giving services in the County
- b. The County Executive Committee members or their nominees who have been appointed by them in writing.

The intergovernmental forum is responsible for;

- a. Harmonization of services given in the county
- b. Coordination of development activities in the county
- c. Coordination of intergovernmental functions.

## Establishment of intergovernmental relations structures

Available intergovernmental forums established in the Intergovernmental relations Act include the National and County Government Coordination Summit, the Council of County Government Forum and the intergovernmental relations technical committee.

## The National and County Government Coordination Summit

This is established under section 7 of the Intergovernmental Relations Act and is the central body for intergovernmental relations. The summit shall comprise of the President or in the



absence of the President, the Deputy President, who shall be the chairperson; and the Governors of the 47 Counties.

The functions of the Summit, which shall meet at least twice a year, shall be to among other things, provide a forum for:

- a. Consultation and cooperation between the National and County governments;
- b. Promotion of national values and principles of governance;
- c. Promotion of national cohesion and unity;
- d. Consideration and promotion of matters of national interest;
- e. Consideration of reports from other intergovernmental forums and other bodies on matters affecting national interest;
- f. Evaluating the performance of National or County governments and recommending appropriate action;
- g. Receiving progress reports and providing advice as appropriate;
- h. Monitoring the implementation of National and County development plans and recommending appropriate action;
- i. 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;
- j. Coordinating and harmonizing the development of County and National governments policies;
- k. Facilitating and coordinating the transfer of functions, power or competencies from and to either level of government; and,
- l. Performing any other function that may be conferred on it by any legislation or that it may consider necessary or appropriate.

### **Council of County Governors**

This Council is established under section 19 of the Intergovernmental Relations Act, 2012.



The council shall consist of the Governors from the 47 Counties, with its chair and deputy elected from among its members.

The functions of the Council which shall meet at least twice a year shall be to among other things, 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 County governments;
- 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 members of the public;

- h. Consideration of reports from other intergovernmental forums on matters affecting National and County interests or relating to the performance of Counties; and,
- i. Performing any other function as may be conferred on it by any legislation or that it may consider necessary or appropriate.

### **Intergovernmental Relations Technical Committee.**

This Technical Committee is established under section 11 of the Intergovernmental Relations Act. It shall comprise: a chairperson competitively recruited and appointed by the Summit; not more than eight members who shall be competitively recruited and appointed by the Summit; and, the Principal Secretary of the State department for the time being responsible for matters relating to devolution.



The functions of the Technical Committee shall include:

- a. Taking responsibility for the day to day administration of the Summit and of the Council and in particular facilitate the activities of the Summit and of the Council; and implement decisions of the summit and the council.
- b. Taking over the residual functions of the Transition Authority established under the law relating to transition to devolved government after dissolution of the Transition Authority
- c. Convening of meetings of the 47 County Secretaries within 30 preceding every National and County Government Coordination Summit meeting; and,

- d. Performing any other function as may be conferred on it by the National and County Government Coordination Summit, the Council of County Governors, Intergovernmental Relations Act or any other legislation.

The technical committee may establish sectoral working groups or committees for better carrying out of its functions.

#### **Joint committees.**

The National or a County government may establish a joint committee with a specific mandate where it is deemed to be necessary for the achievement of devolution.



## 6. RELATIONSHIPS BETWEEN GOVERNMENTS (ARTICLE 189)

Cooperation between the National and County governments is important as this will determine how each will perform its functions and powers. The National and County governments should respect, assist, support, consult each other and exchange information. To this end, they may set up joint committees and authorities.

Any disputes between the two should be resolved within the legal procedures under the national legislation.

The Intergovernmental Relations Act, 2012 sets out the principles of Intergovernmental Relations, which shall apply to the National and County governments; intergovernmental relations structures established by law; and the dispute resolution mechanisms provided under the Intergovernmental Relations Act.



The principles of intergovernmental relations include;

- a. Recognition of the sovereignty of the people as provided for under Article 1 of the Constitution;
- b. Inclusive and participatory governance;
- c. Respect for the functional and institutional integrity of the two levels of government;
- d. Promotion of national values and principles of governance provided under Art. 10 of the Constitution;
- e. Respect for the constitutional status of the levels of government and the institutions of government established at either level of government;
- f. Promotion of equality and equity in service delivery;
- g. Objectivity and impartiality in decision making
- h. The requirement for consultation and cooperation as provided under Art. 6 (2) of the Constitution;
- i. The need to minimise intergovernmental disputes while cooperating in exercising their functions;
- j. Promotion of accountability to the people in decision making and actions taken; and,
- k. Institutionalised protection of marginalised groups.



## 7. SUSPENSION OF COUNTY GOVERNMENTS (ARTICLE 192)

A county government may be suspended by the President in an emergency that arises out of internal conflict or war or any other exceptional circumstances. The senate may also suspend

County governments operations. Such suspension should not exceed 90 days after which elections should be held.



## 8. PUBLIC PARTICIPATION

This is one of the best ways that the constitution has allowed the citizenry to engage the government. Once one is empowered and knows their rights, they are able to hold the government accountable and demand for better service delivery.

According to section 87 of the County Government Act 2012, citizen participation in County governments shall be based upon the following principles:

- a. Timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
- b. Reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
- c. Protection and promotion of the interest and rights of minorities, marginalised groups and communities and their access to relevant information;
- d. Legal standing to interested or affected persons, organisations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalised communities, including women, the youth, and disadvantaged communities;
- e. Reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;
- f. Promotion of public-private partnerships, such as joint committees, technical teams, and citizen



- commissions, to encourage direct dialogue and concerted action on sustainable development
- g. Recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.

There are several other areas of interest of note where citizens have been given an avenue to participate in the governance of their country. Section 15 of the County Government Act, 2012 grants any person power to petition the county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

### Recall of Members of the County Assembly

Section 27 of the County Government Act, 2012 empowers the electorate in a County ward to recall their Member of the County Assembly before the end of the term of the member, where:

- a. The Member is found, after due process of the law, to have violated the provisions of Chapter Six of the

Constitution;

- b. The Member is found, after due process of the law, to have mismanaged public resources; and,
- c. The Member is convicted of an offence under the Elections Act, 2012.

### The right to petition

In addition, section 88 of the County Government Act, 2012, gives the people the right to petition the County government on any matter under the responsibility of the County government. Section 89 makes it a duty to County government authorities, agencies and agents to respond expeditiously to petitions and challenges from citizens.

Moreover, section 90 of the County Government Act, 2012 allows the conduct of referendum on local issues such as County laws and petitions; or planning and investment decisions affecting the County for which a petition has been raised and duly signed by at least 25% of the registered voters where the referendum is to take place.



Public participation in the County planning process is mandatory as indicated in section 113 of the County Government Act, 2012. It even goes on further to list the various avenues that the county should make available for the people to participate.

These include:

- a. Information communication technology based platforms;
- b. Town hall meetings;
- c. Budget preparation and validation fora;
- d. Notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest; Development project sites;
- e. Avenues for the participation of peoples' representatives including but not limited to members of the National Assembly and Senate; and,
- f. Establishment of citizen fora at County and decentralised units.

The Urban Areas and Cities Act, 2011 also has provisions that allow for citizen participation.

Residents of a city or urban area have the right to:

- a. Contribute to the decision-making processes of the city or urban area by submitting written or oral presentations or complaints to a board or town committee through the city or municipal manager or town administrator;
- b. Prompt responses to their written or oral communications;
- c. Be informed of decisions of a board, affecting their rights, property and reasonable expectations;
- d. Regular disclosure of the state of affairs of the city or urban area, including its finances;
- e. Demand that the proceedings of a board or committee and its committees or sub committees be: conducted impartially and without prejudice and untainted by personal self-interest;
- f. The use and enjoyment of public facilities; and,
- g. Have access to services which the city or municipality provides.



The Public Financial Management Act requires under section 10, the Parliamentary Budget Office to observe the principle of public participation in budgetary matters. Section 35 and section 125 require the Cabinet Secretary in-charge of finance and County Executive Committee member for finance to ensure public participation in the budget process. Section 175 requires the accounting officer of an urban area or city to ensure the public is given an opportunity to participate in the preparation process of the strategic plan and the annual budget estimates.



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