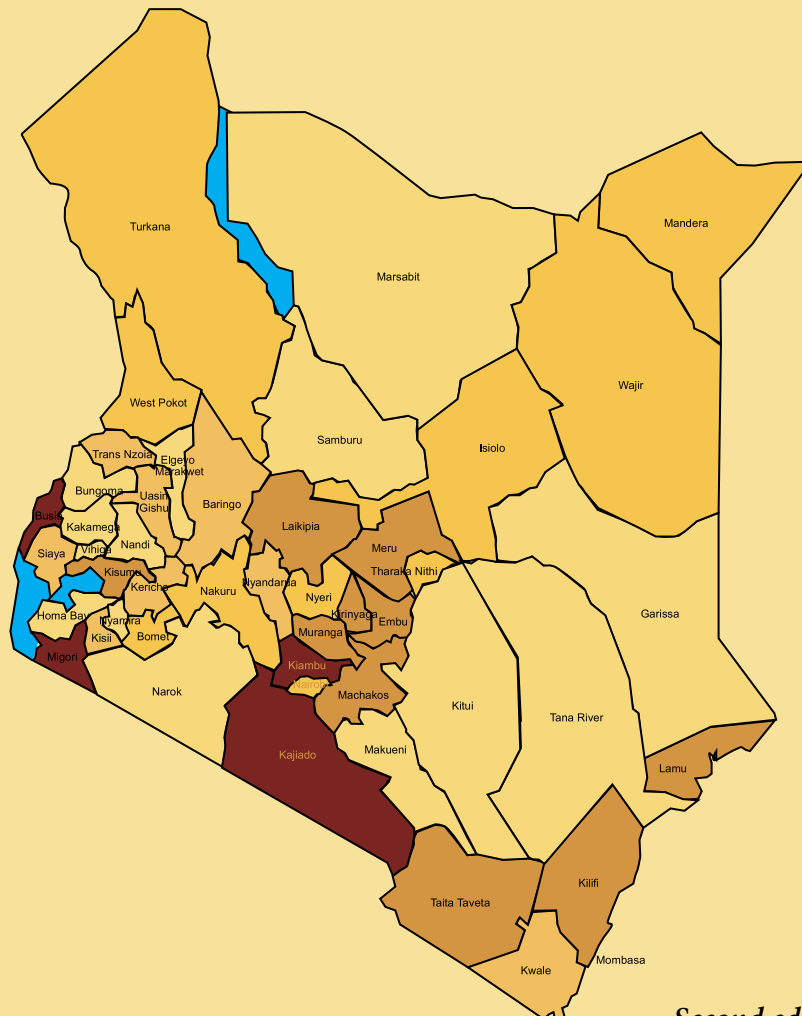




GUIDEBOOK FOR GOVERNORS

EXPLAINING THE ADMINISTRATIVE ARRANGEMENTS
FOR THE TRANSITION TO DEVOLVED GOVERNMENT



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ACRONYMS AND ABBREVIATIONS

CBEF	County Budget Economic Forum
CDF	Constituency Development Fund
CDFB	Constituency Development Fund Board
CDFC	Constituency Development Fund Committee
CG Act	County Governments Act
CGPFM Act	County Government Public Finance Management Act
CIC	Constitution Implementation Commission
CILOR	Contributions in Lieu of Rates
CPSB	County Public Service Board
CRA	Commission on Revenue Allocation
CTT	County Transition Team
FACTs	Function Analysis and Competency Teams
KeRRA	Kenya Rural Roads Authority
KURA	Kenya Urban Roads Authority
LATF	Local Authority Transfer Fund
LAIFOMS	Local Authority Integrated Financial Operational Management System
LASDAP	Local Authority Service Delivery Action Plan
PFM Act	Public Finance Management Act
PP&D Act	Public Procurement & Disposal Act 2005
PSC	Public Service Commission
SRC	Salaries and Remuneration Commission
TA	Transition Authority
TCT	Transition County Treasury
TCAoR Act	Transitional County Allocation of Revenue Act
TTDG Act	Transition to Devolved Government Act
TTT	Transition Treasury Team
UAC Act	Urban Areas and Cities Act

FOREWORD

Kenya's devolution agenda is one of the most ambitious in the world, that will result in the historic transfer of services and funding to 47 new county governments, each with elected officials at four levels of the government, namely, Governor, Senator, County Assembly Representative and Women's Representative. This arrangement follows the recent peaceful elections held on March 4th 2013.

The newly elected officials will manage functions and finances previously managed through ministries and district administrations by the central government. County governments will be led by Governors, in line with the stipulated constitutional provisions, and various enabling legislative acts and guidelines. The roles of the Governors include: coordinating the appointment of County Executive Committees and other accounting officers; providing leadership in the county's governance and development; promoting peace and order; encouraging and facilitating citizens' participation; and, being accountable for efficient and transparent management and use of the county's resources.

Some Governors have come into office with much knowledge of, and experience in public administration—perhaps having previously served in government positions—hence, a good understanding of government bureaucracy. Obviously, this is not the case for all Governors, and certainly not for numerous other new county government officials. In fact, the devolved structure of government introduces a complex framework of systems and procedures that will not be immediately comprehensible, even to the more experienced public officials. Governors are therefore likely to have a myriad of questions from the very onset. Without correct information and adequate communication, confusion is likely to arise, which could lead to intergovernmental tension and conflict. Furthermore, if Governors begin operating in ways that contravene established rules and procedures, reversing these inappropriate practices will be extremely challenging.

The TA has developed this Guidebook, through which it aims to avert these consequences by anticipating Governors' questions and providing responses to them. In publishing the Guidebook, the Authority's members, with support from key partners identified questions most likely to be of concern to incoming Governors. The questions were then discussed with relevant expert government officials and agencies, for the purpose of developing initial responses. Finally, the responses were validated by an extended group of stakeholders during a two-day workshop held between February 28th and March 1st 2013, in Nairobi.

In preparing this Guidebook, the TA was guided by the Constitution and the ensuing enabling legislations. The underlying motivation was to capture critical information about transition arrangements, and how county systems should work during the initial transition phase, thus paving a smooth way for subsequent transition phases. It is intended that this Guidebook will lay the foundation for an anticipated supplementary administrative tool, that will encompass detailed procedures and guidelines. The Guidebook will also be an essential resource for other county officials such as County Assembly Representatives and County Transition Teams. Additionally, besides helping Governors

to understand their roles and responsibilities, this Guidebook will enable the TA to identify any gaps in the transition framework that may require immediate resolution, and also to identify the agencies responsible for filling these gaps.

Over the transition period, information contained in this Guidebook will be revised, to reflect new questions emerging from the implementation of the constitution, with special emphasis on county governments. The TA wishes to make this a widely inclusive process, and appeals to you to send us any comments and suggestions, which will enable us to improve future editions of this Guidebook. Thank you for the continued support to the TA's commitment to facilitating Kenya's successful transition to a devolved system of government.



Kinuthia Wamwangi
Chairman, Transition Authority

SECTION 1: FUNCTION ASSIGNMENT AND TRANSFER

1.1 What are the powers and functions of a Governor, after he or she takes office?

The powers of a Governor are set out in Sections 30 and 31 of the County Governments Act. They include:

- appoint the County Executive, with the approval of the County Assembly, in accordance with Article 179(2) of the Constitution;
- constitute the County Executive Committee portfolio structure, to respond to the functions and competencies assigned to, and transferred to each county;
- submit county plans and policies to the County Assembly for approval;
- consider, approve and assent to bills passed by the County Assembly;
- chair meetings of the County Executive Committee;
- assign responsibilities to each member of the County Executive Committee, by notice published in the county gazette;
- submit to the County Assembly an annual report on the implementation status of county policies and plans;
- deliver an annual state of the county address;
- give notice of all important formal decisions made by the Governor or the County Executive Committee, by notice published in the county gazette;
- represent the county in national and international events;
- perform state functions in the county, as the President may assign on the basis of mutual consultation;
- provide leadership in the county's governance and development;
- provide leadership to the County Executive Committee and administration, based on the county's policies and plans.
- promote democracy, good governance, unity and cohesion within the county;
- promote peace and order within the county;
- promote the competitiveness of the county;
- be accountable for the management and use of county resources;
- promote and facilitate citizens' participation in the development of policies and plans, and the delivery of services in the county;
- the Governor may dismiss a member of the County Executive at any time, if he/she considers it to be appropriate or necessary to do so;
- the Governor shall dismiss a member of the County Executive if he/she is required to do so by a resolution of the County Assembly, under Section 40 of the County Governments Act; and
- appoint Accounting Officers for each department, entity or decentralized unit of the county government.

It is expected that Governors, with approval of the County Assembly, will want to determine the structure of the county administration once they take office. However, they must do so following the procedures of the County Government Act. The recruitment of staff to permanent positions in the county public service, must be done through the County Public Service Board (CPSB).

1.2 What are the first priorities for the County Transition Teams, to ensure continuity of service delivery?

The County Transition Teams (CTTs') role is to help to setup the county governments, and to ensure that services currently being delivered at the county level do not get disrupted. As a priority, when the CTTs report for duty, their Interim County Secretary—who is the head of the CTT—should work on the following:

- define the roles and responsibilities of the CTT with regards to the incoming county officers to ensure that they are understood. They should also determine the capacity on the ground, to carry out county operations;
- establish the County Treasury—including the procurement systems—to enable the county governments to receive and spend funds. The Interim County Secretary should work with the Interim County Chief Officer (Finance), to ensure that the county is prepared to receive and spend transferred funds, in order to run county operations until the end of the fiscal year; Amongst other things this involves:
 - (i) setting up the county's bank accounts;
 - (ii) transitioning from local authority systems of revenue collection, to county government revenue collection systems (Section 22 and 23 County Government Public Finance Management Transition Act 2013 (CGPFMT) preserves the power of county governments to collect these revenues); and
 - (iii) mapping out and institutionalizing county government procurement procedures;
- setup human resource management arrangements, including initiating the process of identifying suitable candidates for the CPSB; and
- setup the County Assembly systems, in close collaboration with the Interim Clerk of Assembly.

1.3 What happens to the interim team when the Governor arrives?

The CTTs and all public officers working in the counties are accountable to the TA for county operations and county service delivery, until the Governor is appointed. Once the Governor assumes office, the CTT will be responsible to the Governor.

Permanent appointments to the positions occupied by members of the CTT will be made by the CPSB, except in the case of the position of the County Secretary. The County Secretary is appointed by the Governor, with approval from the County Assembly, from a selection of persons who are suitably qualified and competitively sourced, under Section 44 of the County Government Act.

Once the Governor assumes office, the process of appointing the CPSB can begin. The CPSB can then recruit officers, and make permanent appointments to the county public service. These appointments can be of new staff or staff who are already working in the counties, in accordance with decisions made by the county government.

Section 138 of the County Governments Act sets out the interim arrangements for staff of county governments.

Box 1: Arrangements for public servants working in the counties

Section 138

- (1) Any public officer appointed by the Public Service Commission in exercise of its constitutional powers and functions before the coming to effect of this Act and is serving in a county on the date of the constitution of that county government shall be deemed to be in the service of the county government on secondment from national government with their terms of service as at that date and:
 - (a) the officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage;
 - (b) the officer shall not be removed from the service except in accordance with the terms and conditions applicable to the officer as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer at the time of commencement of the proceedings for the removal; and
 - (c) the officer's terms and conditions of service may be altered to the office's advantage.
- (2) Every public officer holding or acting in a public office to which the Commission had appointed the officer as at the date of the establishment of the county government shall discharge those duties in relation to the relevant functions of the county government or national government, as the case may be.
- (3) The body responsible for the transition to county governments shall in consultation with the PSC and relevant ministries facilitate the redeployment, transfers and secondment of staff to the national and county governments.
- (4) The provision under subsection (2) shall not preclude:
 - (a) the CPSB or other lawful authority from promoting or appointing the officer to another public office in the county; or
 - (b) re-deployment by the relevant lawful authority.
- (5) The period of secondment under subsection (1) shall cease upon the transfer of a public officer from the national government to a county government or upon the release of an officer by the county government to the national government.
- (6) Appointment of a public officer by the Public Service Commission includes the appointment of a public officer on powers delegated by the Commission.
- (7) The provisions of subsection (1) shall not apply to a public officer serving in a county and performing national government functions under the Constitution or any written law.

Note: Subsection 138(7) was added by an amendment included in the National Government Coordination, passed by Parliament in January 2013.

1.4 What is the procedure for appointing members of the County Executive?

The procedures by which a County Executive is appointed must conform to processes set out in the Constitution and in the County Governments Act (see Box 2). In summary, Governors can appoint members of the Executive Committee provided that:

- the number of members is not more than 10 (if the Assembly has thirty or more members), or one third of the number of members (if the Assembly has less than thirty members);
- the number does not exceed more than one third of any gender;

- the proposed members are Kenyan citizens, must hold a first degree from a recognized university in Kenya, and must have knowledge and a distinguished career of not less than 5 years in the field relevant to the portfolio;
- the proposed members comply with Chapter 6 of the Constitution;
- any member of the Committee should not hold another State or public office; and
- the composition of the Committee reflects the community and cultural diversity of the county, and takes into account principles of affirmative action, in relation to minorities and marginalized groups and communities.

Box 2: Legal requirements for appointing the County Executive

The Constitution of Kenya Article 179

- (2) The County Executive Committee consists of:
- (a) the county Governor and the deputy Governor; and
 - (b) members appointed by the county Governor, with the approval of the assembly, from among persons who are not members of the assembly.
- (3) The number of members appointed under clause (2)(b) shall not exceed:
- (a) one third of the number of members of the County Assembly, if the County Assembly has less than thirty members; or
 - (b) ten, if the Assembly has thirty or more members.

The Constitution of Kenya Article 197

- (1) Not more than two-thirds of the members of any County Assembly or County Executive Committee shall be of the same gender.
- (2) Parliament shall enact legislation to:
- (a) ensure that the community and cultural diversity of a county is reflected in its County Assembly and County Executive Committee; and
 - (b) prescribe mechanisms to protect minorities within counties.

County Government Act Section 35

- (1) The Governor shall, when nominating members of the Executive Committee:
- (a) ensure that to the fullest extent possible, the composition of the Executive Committee reflects the community and cultural diversity of the county; and
 - (b) take into account the principles of affirmative action as provided for in the Constitution.
- (2) The County Assembly shall not approve nominations for appointment to the Executive Committee that do not take into account:
- (a) not more than two thirds of either gender;
 - (b) representation of the minorities, marginalized groups and communities; and
 - (c) community and cultural diversity within the county.
- (3) A person may be appointed as a member of the County Executive Committee if that person:
- (a) is a Kenyan citizen;
 - (b) is a holder of at least a first degree from a recognised university in Kenya;
 - (c) satisfies the requirements of Chapter 6 of the Constitution; and
 - (d) has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.
- (4) A member of the County Executive Committee shall not hold any other State or public office.

1.5 What functions is the county government responsible for, as soon as it is formed?

Schedule 4 of the Constitution lists the functions that are assigned to county governments. Under the Sixth Schedule of the Constitution, these functions are to be transferred by the TA to the county governments, in a phased manner, over a period of not more than three years from the date of the first election of county assemblies.

The Transition to Devolved Government Act (TTDG Act) further details a procedure for the phased transfer of functions, starting with functions to be transferred immediately after the elections, and later how the rest of the functions can be transferred (see Box 3 for these legal provisions).

Box 3: Legal provisions for devolution of functions

The Constitution, Sixth Schedule, Part 4, Section 15

- (1) Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them under Article 185.

Transition to Devolved Government Act, Section 23

- (1) The Transition Authority shall, by notice in the Gazette at least thirty days before the first elections under the Constitution, identify functions which may be transferred to the county governments, immediately after the first elections under the Constitution.

The TTDG Act provides that the TA should gazette the first functions to be transferred to county governments at least 30 days prior to the first elections. The initial functions were gazetted by the TA in Gazette volume CXV no. 16 on 1st February 2013 and published in the newspaper on 17th January 2013. The details of the first functions are set out in Box 4. These functions essentially correspond to the functions that were carried out by the former local authorities before being abolished. A further set of functions will be gazetted as being available for transfer from 1st July 2013. These are all the remaining functions not already transferred in February. The list of functions available from 1st July 2013 is set out in Annex 1.

In addition to these gazetted functions, the county government will be responsible for the County Executive, administrative, legislative and financial functions, as soon as it is formed.

The procedure for transfer of functions, in addition to these stated functions are discussed further in Section 1.7.

1.6 Who is responsible for these functions before the county government is formed?

Before the county government is formed, the gazetted functions marked for initial transfer will continue to be performed by officers who were working for the local authorities, prior to repeal of the Local Government Act. After the local authorities are abolished, local authority staff are deemed to be seconded to the county government. They will work under the direction of the Interim County Secretary and his/her transition team.

Box 4: Initial functions for transfer as published by the Transition Authority on January 17th 2013

1. Agriculture:
 - (a) livestock sale yards; and
 - (b) county abattoirs/slaughterhouse services.
2. County Health Services:
 - (a) county health facilities and pharmacies (specific to Nairobi County, Kisumu County, Mombasa County, Nakuru County and Uasin Gishu County);*
 - (b) ambulance services (specific to Nairobi, Kisumu, Mombasa, Nakuru, Uasin Gishu Counties);
 - (c) cemeteries, funeral parlors/mortuary services and crematoria Services; and
 - (d) refuse removal, refuse dumps and solid waste disposal.
3. Control of outdoor advertising.
4. Cultural services, public entertainment and public amenities but limited to:
 - (a) betting services;
 - (b) liquor licensing;
 - (c) videoshows and hiring;
 - (d) sports and cultural activities and facilities; and
 - (e) county parks, beaches and recreation facilities.
5. County transport:
 - (a) access roads;
 - (b) street lighting; and
 - (c) traffic and parking.
6. Animal control and Welfare:
 - (a) licensing of dogs; and
 - (b) facilities for the accommodation, care and burial of animals.
7. Trade development and regulations:
 - (a) markets;
 - (b) trade licensing (excluding regulation of professionals); and
 - (c) local tourism.
8. County planning and development:
 - (a) land survey and mapping; and
 - (b) housing.
9. Pre-primary education, home-craft centre and childcare facilities.
10. Implementation of specific National Government policies on natural resources and environment conservation:
 - (a) protection of watersprings; and
 - (b) protection of wells and dams.
11. County public works and services specific to storm water management systems in built-up areas.
12. Fire fighting services and disaster management.
13. Control of drugs and pornography.

**This is limited to only health services being provided by the Municipalities of these Counties.*

1.7 How can the county government get more functions transferred to it?

The TTDG Act outlines a procedure by which the county governments can apply for functions. In its application, the county must demonstrate that it meets the criteria set out in the Act. The TA must respond to these applications within 60 days, and if they reject the application, the county can appeal to the Senate. However, the Constitution stipulates that a function must not be transferred until the county has demonstrated that it has sufficient capacity to undertake the said function (see Box 5).

Box 5: Procedure and criteria for phased transfer of functions

Transition to Devolved Government Act, Section 23

- (2) After the initial transfer of functions under subsection (1), every county government shall make a request in the prescribed manner to the Transition Authority, for the transfer of other functions in accordance with section 15 of the Sixth Schedule to the Constitution.
- (3) The Transition Authority shall, upon the request of a county government under subsection 2, shall determine whether a county government meets the set criteria under section 24, to allow the transfer of a function.
- (4) The Transition Authority shall:
 - (a) consider and dispose of any application under subsection (2); and
 - (b) make its determination within sixty days of receipt of such an application.
- (5) The decision of the Transition Authority under subsection (4) shall be based on the criteria for transfer of functions, provided under section 24.
- (6) Where the Transition Authority determines that a county government does not meet the set criteria for the transfer of function under section 24, it shall propose clear and practical measures to build the capacity of the county government during the transition period, to enable the county government to undertake its functions within the shortest time possible.

Transition to Devolved Government Act, Section 24

24. (1) Subject to section 23, the criteria for the transfer of functions shall include:
 - (a) whether there is in existence a legislation relating to the function applied for;
 - (b) whether a framework for service delivery has been put into place, to implement the function;
 - (c) whether, where applicable, the county government has identified or established administrative units related to the function;
 - (d) whether the county government has undertaken a capacity assessment in relation to the function;
 - (e) the arrangements for and the extent of further decentralization of the function, and provision of related services by the county government;
 - (f) whether there is the required infrastructure and systems to deliver the function;
 - (g) whether the county government has the necessary financial management systems in place;
 - (h) whether the county government has an approved plan in relation to the function; and
 - (i) any other variable as may be prescribed after consultations between the Transition Authority, county governments and the Commission for the Implementation of the Constitution, and the Commission on Revenue Allocation.
- (2) The Transition Authority shall perform the functions specified under subsection (1) in accordance with Article 187 of the Constitution.

The Constitution also allows for the delegation of national functions to be implemented by county governments or vice versa (see Box 6). However, the constitutional responsibility for the performance of the delegated functions remain with the original government that was assigned the function. That level of government (to whom the function is assigned in the Constitution) is also responsible for funding the function.

Box 6: Delegation of functions from one level of government to another

The Constitution, Article 187

- (1) A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if:
 - (a) the function or power would be more effectively performed or exercised by the receiving government; and
 - (b) the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised.
- (2) If a function or power is transferred from a government at one level to a government at the other level:
 - (a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and
 - (b) constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.

1.8 Can a county government appeal if it disagrees with a decision made by the TA about the transfer of a function?

Under Section 23(7) of the TTDG Act, a county government can appeal to the Senate against a decision made by the TA, when it does not meet the criteria for transfer of a function. Under Section 28(8), a decision of the Senate on the appeal, by majority vote in accordance with Article 123 of the Constitution, shall be binding on the TA.

1.9 How will the TA determine if the county is ready for additional functions?

The Transition to Devolved Government Act provides that the TA is responsible for carrying out an analysis of functions and competency assignment, and ensures that a plan for distribution of functions and competency is published, and the necessary Acts are amended. (TTDG Act, Fourth Schedule, Section 1(j)).

Every line ministry is required to submit an implementation plan that identifies which counties are ready, and what is required to develop a county's capacity, to handle the functions that are being devolved from the concerned ministry (TTDG Act, Section 16). The TA will rely on the ministries' technical advice to analyze whether a county has the capacity to deliver the identified function.

The criteria in the TTDG Act (Section 24 - see Box 5) describe the requirements which a county government must satisfy in making an application. These requirements include:

- a framework for service delivery;
- having the necessary laws in place;
- human resource capacity;

- county capacity assessments;
- available infrastructure; and
- an approved plan.

The criteria are objective, and will be evaluated with advice from line ministries.

If a county has the capacity to run a function, but does not wish to do so, it has three options:

- ask the national government to provide that service on the county government's behalf;
- ask another county to provide the service; or
- contract the service through a public-private partnership (PPP) or outsourcing, provided an appropriate legal framework is put in place. However, any failure to deliver the service remains the ultimate responsibility of the county government (see Box 6).

1.10 What functions should counties be budgeting for in 2013/14?

Counties should budget for all functions for which they have constitutional responsibility. These include delegated functions which have not been transferred to the county governments that remain with the national government.

The 2013/14 budgets passed by the County Assembly, will cover the funding of functions that have been transferred to county governments. At the time of producing this Guidebook in May 2013, these functions were confined to the following core functions:

- functions transferred to county governments in Phase 1, as described in Box 5;
- running the County Assembly;
- running the County Executive; and
- core functions related to county administration, including the public financial management, planning, human resource management, information technology and mechanisms for citizens' participation.

The TA and the National Treasury will provide further guidance to counties, with regards to the process of preparing the 2013/14 budgets, and the functions that should be included. A further set of functions are available for transfer in 2013/14. These are set out in Annex 1.

However, county governments should also ensure that staff working on devolved functions, who have NOT been transferred, still continue to prepare budgets in the normal way for the remaining devolved functions, which remain under the control of national ministries.

It is important that revenues and expenditure in county budgets are matched and consistent with the County Fiscal Strategy Paper. For 2012/13, the transfers to county governments are set out in the Transitional County Allocation of Revenue Act 2013 (TCAoR Act). The TCAoR Act includes a single transfer for each county. The detailed budget for these amounts is set out in County Estimates. The County Estimates include, budgeted funding for the County Assembly, Office of the Governor, the County Executive Committee, and operational goods and services funding for the county treasury. It does not include budget for any of the transferred functions.

County governments should budget for projects that their County Executives and community think are most important. It is mandatory for citizens to have input in this process. Local authorities have already identified some community needs through the LASDAP process of 2012/13. County governments should ensure that they budget sufficient funds to complete the projects that were started by local authorities under this process (see Public Finance section for more details).

Budgets must be linked to a county's development plan (mandated under Article 220). For 2013/14, the budget process in the counties will commence immediately, against the functions that have been gazetted as initial functions and costs associated with the establishment and running of county government administrations.

1.11 What happens to the functions not mentioned in the Fourth Schedule?

Not all functions are mentioned in the Fourth Schedule of the Constitution. However, the Constitution stipulates in Article 186(3) that a function or power not assigned by the Constitution or by national legislation to a county, is a function or power of the national government.

As previously noted, the national government can choose to delegate any of these national functions to a county government. However, the ultimate responsibility for the delivery of the function, and for funding it, remains with the national government (see Box 6).

1.12 What parastatal functions will become county functions?

In a number of sectors, the functions that have been devolved to county governments are being carried out by parastatal bodies. The issue of water service providers and water boards is covered in the next section (see answer to question 2.8). In addition to the water boards and water service providers, there are also the two road boards, Kenya Rural Roads Authority (KeRRA) and Kenya Urban Roads Authority (KURA). These two bodies are responsible for the maintenance of rural roads and urban roads, which have been devolved to the county governments.

In some cases, parastatal bodies are responsible for both devolved and national functions. Regional Development Authorities functions also overlap between national functions, and county functions given their broad scope.

These issues will be addressed by the TA as they make arrangements for the transfer of functions to county governments under the TTDC Act.

1.13 How will a Governor know exactly what a function involves?

The TA is managing a process for defining functions, and mapping out how they will be transferred to county governments, in conjunction with line ministries. Ministries that are responsible for devolved functions have established Function Analysis and Competency Teams (FACTs) which include experts in specific function fields, that can provide advisory support in this area. The definition of what comprises individual functions will be set out in the Transition Implementation Plans, which each ministry is preparing.

In addition, the Constitution mandates the national government to build the capacity of the county governments, and therefore has the task of providing details of what functions are involved.

SECTION 2: ADMINISTRATION OF URBAN AREAS

2.1 Who is responsible for delivering urban services under the new dispensation?

The Constitution assigns the responsibility for urban service delivery to county governments, under the Fourth Schedule. Some of the urban functions listed in the Fourth Schedule that were previously delivered by local authorities, and are assigned to county governments are:

- abattoirs;
- refuse removal, refuse dumps and solid waste disposal;
- control of air pollution, noise pollution, other public nuisances and outdoor advertising;
- regulation of public entertainments;
- county transport, including county roads, street lighting, traffic and parking;
- animal control and welfare, including licensing of dogs;
- trade development, including markets and trade licenses (not including regulation of professions);
- storm water management, and water and sanitation services; and
- fire fighting.

The Constitution makes it clear that these functions are the constitutional responsibility of county governments.

Article 200 of the Constitution envisages that further legislation will provide for the governance of the capital city, other cities and urban areas. The Urban Areas and Cities Act (UAC Act) is the law enacted pursuant to Article 200. The UAC Act provides management arrangements for urban areas that are classified as cities, municipalities or towns. This Act provides that the management of urban areas is vested in county governments, and administered on their behalf by municipal or city boards and town committees, together with city or municipal managers and town administrators.

2.2 When do local authorities cease to exist?

Local authorities ceased to exist on the repeal of the Local Government Act. The Local Government Act is deemed to be repealed upon the final announcement of all the results of the first elections held under the Constitution (see Box 7).

Box 7: Repeal of the Local Government Act

County Governments Act Section 134

- (1) The Local Government Act is repealed upon the final announcement of all the results of the first elections held under the Constitution.
- (2) All issues that may arise as a consequence of the repeal under subsection (1) shall be dealt with and discharged by the body responsible for matters relating to transition.

2.3 What are the municipal functions that the county government will be responsible for?

County governments are responsible for all municipal functions that were previously carried out by the local authorities, except those that are no longer county functions. The most notable example of a municipal function that is not a devolved function is education (with the exception of pre-primary education, which is not a devolved function).

The effect of this is that the national Ministry of Education will assume the constitutional responsibility for schools previously operated by the former local authorities. However, the Ministry of Education could seek to delegate the responsibility for these schools to the respective county governments. Box 6 sets out the Constitutional provision that allows for functions to be delegated from one level of government to the other.

2.4 When—and how—do the new urban bodies under the Urban Areas and Cities Act come into existence?

Before any of the new urban bodies—such as city boards and municipal boards—come into existence, urban areas must first be given appropriate status. There are three steps involved in giving appropriate status to urban areas under the UAC Act.

The first step involves classifying all urban areas according to the criteria set out in the Act, and conferring the appropriate status on each urban area. Each urban area will be classified as a city, municipality or a town (see Box 8).

The TA has already begun the process of classifying urban areas as per these criteria.

The second step is the process of granting the appropriate status to each urban area. Different procedures apply to the grant of status as a town, municipality or city.

Conferment of city status (UAC Act Section 7 and 8). The President may confer the status of a city on a municipality, on the recommendation of the Senate.

- to begin the process of conferring city status, the board of a municipality must apply to the County Executive Committee;
- if the executive committee approves the application, the county Governor will constitute an *ad hoc* committee to consider the recommendation;
- the membership of the committee includes persons from the private sector and various professional bodies (see Box 9);
- the committee must determine if the urban area meets the relevant criteria (see Box 8). It then makes a recommendation to the Governor;
- the Governor transmits the recommendation to the County Assembly;
- if the County Assembly approves the recommendation for conferment of city status, the clerk of the assembly shall transmit the resolution to the Senate; and
- if the Senate approves the recommendation for conferment of city status, the clerk of the Senate shall forward the resolution to the President for conferment of the status on the municipality.

Box 8: Criteria for classifying urban areas

Section 5, Criteria for classifying an area as a city

- (1) Subject to subsection (3), an urban area may be classified as a city under this Act if the urban area satisfies the following criteria:
 - (a) has a population of at least five hundred thousand residents according to the final gazetted results of the last population census carried out by an institution authorized under any written law, preceding the grant;
 - (b) has an integrated urban area or city development plan in accordance with this Act;
 - (c) has demonstrable capacity to generate sufficient revenue to sustain its operation;
 - (d) has demonstrable good system and records of prudent management;
 - (e) has the capacity to effectively and efficiently deliver essential services to its residents, as provided in the First Schedule;
 - (f) has institutionalised active participation by its residents in the management of its affairs;
 - (g) has infrastructural facilities, including but not limited to roads, street lighting, markets and fire stations, and an adequate capacity for disaster management; and
 - (h) has a capacity for functional and effective waste disposal.
- (2) Nothing in this section may preclude an area from being conferred with the status of special purpose city under this Act, if it has significant cultural, economic or political importance.

Section 9, Conferment of municipal status

- (3) A town is eligible for the conferment of municipal status under this Act, if it satisfies the following criteria:
 - (a) has a population of at least two hundred and fifty thousand residents according to the final gazette results of the last population census carried out by an institution authorized under any written law, preceding the grant;
 - (b) has an integrated development plan in accordance with this Act;
 - (c) has demonstrable revenue collection or revenue collection potential;
 - (d) has demonstrable capacity to generate sufficient revenue to sustain its operations;
 - (e) has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule;
 - (f) has institutionalised active participation by its residents in the management of its affairs;
 - (g) has sufficient space for expansion;
 - (h) has infrastructural facilities, including but not limited to street lighting, markets and fire stations; and
 - (i) has a capacity for functional and effective waste disposal.

Section 10, Eligibility for grant of a town status

- (1) The county Governor may, in consultation with the committee constituted under section 8(2), confer the status of a town on an area that meets the criteria set out in subsection (2).
- (2) An area shall be eligible for the grant of the status of a town under this Act if it has:
 - (a) a population of at least ten thousand residents according to the final gazetted results of the latest population census carried out by an institution authorized under any written law, preceding the grant;
 - (b) demonstrable economic, functional and financial viability;
 - (c) the existence of an integrated development plan in accordance with this Act;
 - (d) the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule; and
 - (e) sufficient space for expansion.

Conferment of municipal status (UAC Act Section 9) A county Governor may confer the status of a municipality on a town, on the resolution of the County Assembly.

- The same procedure for conferment of city status applies, including referral to an ad hoc committee, with the necessary modifications.

Conferment of town status (UAC Act, Section 10) A county Governor may confer the status of town on an area, in consultation with the ad hoc committee established under Section 8(3).

- Conferment of town status does not require approval of the County Assembly.

The third step is the appointment of the boards of a city or municipality, and appointment of a committee of a town. This is covered in the answer to the question which follows.

Box 9: Members of the ad hoc committee to advise on urban area status

Urban Areas and Cities Act, Section 8(3)

- (3) The *ad hoc* committee shall comprise of relevant professionals in good standing, nominated by the following institutions:
- (a) Institution of Surveyors of Kenya;
 - (b) Kenya Institute of Planners;
 - (c) Architectural Association of Kenya;
 - (d) Law Society of Kenya;
 - (e) Association of urban areas and cities;
 - (f) Institute of Certified Public Accountants of Kenya; and
 - (g) Business community.

2.5 What is the procedure for appointing urban bodies?

The UAC Act provides different management arrangements for cities, municipalities and towns. Cities and municipalities are administered by a board and a city manager. Towns are administered by a committee and an administrator.

City and municipal boards are appointed in the same way. The difference is that a city board has a maximum of eleven members (six appointed and five nominated), while a municipal board has a maximum of nine members (four appointed and five nominated). (See Sections 13 and 14 of the UAC Act).

Appointed members are selected and appointed by the County Executive Committee, through a competitive process, with the approval of the County Assembly. The nominated members are appointed by the County Executive Committee with the approval of the County Assembly, and are nominated by the following groups:

- an umbrella body representing professional associations in the area;
- an association representing the private sector in the area;
- a cluster representing registered associations of the informal sector in the area;
- a cluster representing registered neighbourhood associations in the area; and
- an association of urban cities and areas.

The County Executive Committee must ensure that the board is inclusive along the lines of gender equity, youth, persons with disabilities and marginalized groups. The positions of appointed board members (i.e. those who are not nominated) should be advertised.

Town committees are appointed by the county Governor, with the approval of the County Assembly. (see Section 20(2), UAC Act).

Towns do not have executive powers and are not corporate bodies – i.e. they cannot enter into legal contracts, (UAC Act Section 31).

2.6 What is the procedure for appointing managers or administrators to urban bodies?

Municipal or City Managers are appointed under Section 29 of the UAC Act. The Act provides that they must be competitively recruited and appointed by an institution which is responsible for recruiting public servants in the counties (this body is the CPSB). Section 30 sets out the qualifications for the appointment of a Municipal or City Manager (see Box 10). Under Section 31, the same provisions apply to Town Administrators.

Box 10: Qualifications for appointment of a City or Municipal Manager

Urban Areas and Cities Act, Section 30

- (1) Subject to Article 232 of the Constitution, a person shall qualify to be appointed as City or Municipal Manager if the person:
 - (a) is a Kenyan citizen;
 - (b) holds a degree from a recognised university in Kenya or its equivalent; and
 - (c) has proven experience of not less than five years in administration or management, either in the public or private sector.
- (2) In appointing a Manager under subsection (1) the body responsible for county public service shall ensure:
 - (a) gender equity;
 - (b) the inclusion of minorities and marginalised communities; and
 - (c) the person satisfies the requirements of Chapter six of the Constitution.

2.7 Until the urban bodies are established, who should deliver these functions?

According to the UAC Act Section 12, the management of cities and municipalities is vested in the county government. Therefore, the county government will be in charge of delivering these functions. Over the transition period of the first election under the new Constitution, if a county government has not been installed, the CTTs will deliver services under the management of the Interim County Secretary.

County governments continue to exercise the revenue-raising powers of the former local authorities. The County Government Public Finance Management Act (CGPFM Act) Section 22 states that the revenue raising measures approved by the Minister for Local Government, under the Local Government Act shall continue for the 2012/13 financial year.

2.8 What will happen to the water service providers?

Water services in Kenya were reformed through the 2000 Water Act, which provides for water services assets like pipes and water treatment plants to be handed over to eight regionally located Water Services Boards. Retail water services are provided through a network of over 60 water service providers. The Water Services Boards charge a fee to the water service providers, to fund upkeep and maintenance of these assets.

Former local authorities were shareholders of the water service providers, in most cases they were the only shareholders. Under devolution, the ownership of these shares will pass to county governments, along with other assets of the local authorities. It is not yet clear how county governments will get involved in the operation of the Water Services Boards. Their ownership is more complicated because most of the boards service more than one county.

The Ministry of Water is liaising with the TA on the future arrangements and options for ownership and the management of water services, and will be putting legislation to the new Parliament, to clarify these arrangements. The sector arrangements have been subject to regulation by the Water Services Regulatory Board, therefore it will be necessary to clarify and consider the regulatory requirements of existing legislation.

2.9 Is the Governor accountable for any illegal acts under the control of local councils before assuming office?

No. Governors are not responsible for any previous illegal activity undertaken by local authorities.

However, public officers within the local authorities, who were previously responsible for any malpractices, will be held accountable, even after they leave office. Article 226(5) of the Constitution states that “If the holder of a public office, including a political office, directs or approves the use of public funds contrary to the law or instructions, the person is liable for any loss arising from that use, and shall make good the loss, whether the person remains the holder of the office or not.”

SECTION 3: PUBLIC FINANCE MANAGEMENT

A. COUNTY REVENUES 2012/13

3.1 Which are the different sources of revenue for county governments?

Counties' sources of revenues comprise of the following:

- equitable share of national revenues (at least 15 percent of the nationally collected revenues) (Article 202(1) of the Constitution);
- other conditional or unconditional grants, provided by the national government;
- grants and donations from other sources (other than national government);
- own revenues which comprises of:
 - property tax and entertainment tax
 - other taxes as authorized by Parliament
 - user-charges levied on services counties render (Article 209(4) of the Constitution); and
- borrowing, with guarantee of national government, after approval by County Assembly. However, this may not be applicable for financial year 2012/13 (see Article 212 of the Constitution).

3.2 How can a Governor find out how much revenue his/her county has in 2012/13?

County governments came into existence four months before the end of the 2012/13 fiscal year. In January 2013, Parliament made provision for the funding for counties for this period, through the Transition County Allocation of Revenue Act 2013. The Act provides details of nationally raised revenue allocated to county governments. The money is set aside mainly for the purpose of wages and administration costs, and any other expenses of the county assemblies and the County Executive.

The Act gives details of the amount that will be transferred to each county. It also indicates the total cost of county government functions, that will continue to be performed by the national government, during the 2012/13 fiscal year.

County governments should also obtain estimates from the outgoing local authority treasuries, (within the county), of the cash balances of local authority accounts, as well as the likely revenues to be raised from local rates and charges, between March and June 2013. Past collections of rates and charges provide a guide for how much the county could expect to receive in a year. Governors should also seek advice on how much will be received from the Local Authority Transfer Fund (LATF) for the remainder of 2012/13. (These details are also available in budgets of local authorities in the county for 2012/13).

3.3 When will the county's share of national revenue be released?

Article 219 of the Constitution provides that a county's share of revenue raised by the national government shall be transferred to the county without undue delay and without deduction.

The Public Finance Management Act 2012 (PFM Act) provides that transfers will be made on a quarterly basis (see Box 11).

Section 4(2) of the Transition County Allocation of Revenue Act provides that each county's allocation will be transferred to the respective County Revenue Fund, in accordance with a payment schedule that is prepared by the National Treasury, in consultation with the TA. This applies to the 2012/13 fiscal year.

In future, transfers to county governments will be based on consultations with the Intergovernmental Budget and Economic Council, cash flow projections, and will be set out in a schedule approved by the Senate (see Section 17 of the PFM Act 2012 in Box 11).

County governments will need to prepare development plans and ensure links between the plans and the budgets. Transition Treasury Teams (TTT) have been sent to the counties and instructed to open accounts for County Operations.

In order to spend money from the county revenue fund, there has to be an approved budget and appropriation law to authorize spending of the funds. Article 207 of the Constitution provides that money can only be withdrawn from a county revenue fund, as authorized by the law of the county, or an Act of Parliament. For the 2012/13 fiscal year, Parliament has passed a Transition County Appropriation Act that authorizes the spending of the amounts allocated under the Transition County Allocation of Revenue Act.

Box 11: Provisions on timing of transfers to county governments

Public Finance Management Act 2012, Second Schedule, Section 14

For the period in between the first general elections under the Constitution and the end of the first financial year, following the first general elections, cash disbursements to the county governments shall be conducted on quarterly basis, in accordance with the transfer of functions to county governments.

County Governments Public Finance Management Transition Act 2013, Section 4

- (2) Each county government's allocation under sub-section (1), shall be transferred to the respective County Revenue Fund, in accordance with a payment schedule prepared by the National Treasury in consultation with the Transition Authority.

Public Finance Management Act 2012, Section 17

- (6) The National Treasury shall, at the beginning of every quarter, and in any event not later than the 15th day from the commencement of the quarter, disburse monies to county governments.
- (7) The disbursement referred to in subsection (6) shall be done in accordance with a schedule prepared by the National Treasury, in consultation with the Intergovernmental Budget and Economic Council, with the approval of the Senate, and published in the Gazette, as approved, not later than 30th May each year.

Public Finance Management Act 2012, Section 127

- (1) Not later than 15th June of every financial year, each county government shall prepare an annual cash flow projection for the next financial year, and submit it to the Controller of Budget, with copies sent to the Intergovernmental Budget and Economic Council and the National Treasury.

3.4 Can transfers to a county be stopped after the allocation has been approved by Parliament?

Yes. The Constitution under Article 225 provision (4) provides for such stoppage. In addition Sections 95 and 96 of PFM Act authorizes Cabinet Secretary to stop, not more than 50 percent, of transfers to a county, if the county government commits:

- i) serious or material breach of financial obligations and commitments; or
- ii) persistent breaches.

Once a decision to stop is made, the secretary is required to notify:

- i) the respective County Executive Member;
- ii) Controller of Budget;
- iii) Commission of Revenue Allocation; and
- iv) Cabinet Secretary for Intergovernmental Affairs, and seek approval of Parliament within seven days.

3.5 Can a county government continue to collect property rates and taxes?

Yes. The County Government Public Finance Management Transition Act 2013, allows local authorities to collect taxes and rates, approved and in force during financial year 2012/13. This will continue until 30th September 2013. (The County Governments Public Finance Management Transition Act is repealed from 30th September 2013) (see Box 12).

Revenue collections will continue, using existing systems, under the control of the Transition County Receiver of Revenue, with supervision from the Transition County Principal Officer (Finance), until county governments are established.

When the County Treasury is established, the County Executive member for finance will appoint Receivers of Revenue. Each of the Receivers is required to collect or recover specified revenue and account for it.

County Governments need to ensure that they have in place a Rating Act or a similar law, to enable the collection of property rates, by 1st July 2013.

Box 12: Imposition of rates and taxes by county governments

County Governments Public Finance Management Transition Act 2013, Section 22 and 23

- (22) Until the new budgets of the decentralized units are approved by the relevant County Assemblies, as provided in the Public Finance Management Act 2012, the revenue raising measures approved by the Minister for Local Government under the Local Government Act, shall continue to be in force for the 2012/13 financial year.
- (23) For avoidance of doubt, until a new law relating to imposition of rates and charges is enacted, county governments, urban areas and cities may, with necessary modifications, continue to impose rates and charges under the law for the time being in force, in relation thereto.

B. COUNTY BUDGET FOR 2012/13

3.6 What can the county share of national revenue for 2012/13 be spent on?

The national share of county revenue for 2012/13 (provided for in the Transition County Allocation of Revenue Act) has been allocated by the national Parliament. In January 2013, Parliament passed a Transition County Appropriation Act, and also adopted detailed County Estimates that set out what the funds can be used for. The main purposes that funds have been applied to are:

- wages, administration and other expenses of county assemblies;
- wages, administration and other expenses of County Executive Committees; and
- goods and services and minor capital costs of public financial management in counties.

If a county government wishes to change the purposes on which the county share of national revenue will be spent, it should pass a supplementary county appropriation law through the County Assembly.

3.7 How can the Governor get a copy of the county budget for 2012/13?

County budgets for 2012/13 are set out in the County Estimates, which were adopted by Parliament the same time it passed the Transition County Appropriation Act, 2013. This Act serves to authorize the total amount that can be spent by county governments. The Act itself is available from www.kenyalaw.org.

It sets out a single amount for each county. The county estimates set out the detailed breakdown of that amount, into different purposes and kinds of expenditure as set out above.

For the first two, the details are already available on the Treasury website: www.treasury.go.ke. County government estimates are currently being printed by the Government Printer.

For the costs relating to local authorities falling within the county, the Governor can get full details from individual managers of the former local authorities that existed within the county. The TA has directed that these be consolidated into a single county budget.

3.8 Can the Governor change the county budget for 2012/13

The Governor cannot change any budgetary provisions. He/she can only request the County Assembly to make changes through a supplementary county appropriation law. Under the PFM Act, a county appropriation law must be submitted to the County Assembly by the County Executive member for finance (PFM Act, Section 129).

The County Assembly is empowered to make changes when approving a supplementary budget to reallocate the approved provisions, and also changes to the tax rates. For changes to taxes and tax rates, this should be reasonable and consistent with the Constitution, which prohibits counties from imposing taxes that interfere with national economic policy or trade, across the county boundaries, or national mobility of goods, services, capital or labour.

3.9 Can county governments spend funds that were raised by local authorities?

Currently, an appropriation law does not exist for authorizing the spending of funds that are transferred to county revenue funds, from bank accounts of the former local authorities, or the additional revenue counties will raise after March 2013. However, the TA is working with the Attorney General to determine an appropriate approach to this.

The budgets of the former local authorities will be used as the basis for allocating the funds that were transferred from local authority bank accounts into county revenue funds. The TA is currently harmonizing those local authority budgets into a single budget for each county.

The Controller of Budget is required to approve the withdrawal of money from county revenue funds. The main requirement of the Controller of Budget is to ensure that the money has been lawfully appropriated. The Constitution together with the County Government Public Finance Management Transition Act 2013 empowers the Controller to approve withdrawals. Section 16 of the national Transition County Appropriation Act provides the legislative authority for the Budget Controller to approve withdrawal of money from all county revenue funds (see Box 13).

Box 13: Authorisation for withdrawal from county revenue funds

Constitution of Kenya, Article 207

- (1) There shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament.
- (2) Money may be withdrawn from the Revenue Fund of a county government only:
 - (a) as a charge against the Revenue Fund that is provided for by an Act of Parliament or legislation of the county; or,
 - (b) as authorized by an appropriation by legislation of the county.
- (3) Money shall not be withdrawn from a Revenue Fund unless the Controller of Budget has approved the withdrawal.
- (4) An Act of the Parliament may:
 - (a) make further provision for the withdrawal of funds from a county Revenue Fund; and
 - (b) provide for the establishment of other funds by counties and the management of those funds.

County Governments Public Finance Management Transition Act 2013, Section 16

- (1) The Transition County Appropriation Act shall provide the legislative authority to the Controller of Budget for the withdrawal of funds, from the County Revenue Funds in accordance with Article 207(4)(a) of the Constitution until the county government passes the County Appropriation Bill.

3.10 What funding is available to pay for municipal functions in 2012/13?

The Transition County Allocation of Revenue Act specifies that the transfers county governments will receive in 2012/13 only covers wages and administration costs, and other expenses of the County Executives and County Assemblies. A detailed budget for these transfers is provided in the County Estimates approved by Parliament when it passed the Transition County Appropriation Act. Therefore, these transfers are not provided to cover the costs of municipal functions.

The former local authorities financed municipal functions from a combination of LATF transfers, and the revenues they collected from rates and other charges. These same revenue sources will continue to finance municipal functions in 2012/13.

Two tranches of LATF were already paid to local authorities before the Local Government Act was repealed. Local authority bank accounts were closed, and any unspent balances were transferred to county operational accounts. A further tranche of LATF paid to county governments in April 2013.

Local revenue collected by county governments after 5th March 2013 (on repeal of Local Government Act) will be deposited into the county revenue funds. These funds can also be used to fund municipal functions, including paying local authority staff. However, before these funds can be withdrawn from county revenue funds, an appropriation will be needed to authorize the spending, and the withdrawal needs to be approved by the Controller of Budget.

3.11 How will ongoing projects and programs be funded?

The UAC Act states that existing contracts entered into by local authorities remain valid (Section 58). County governments should therefore ensure that they honour all legally valid contracts entered into by local authorities that are still current.

C. COUNTY BUDGET FOR 2013/14

3.12 How will county shares of national revenue for 2013/14 be decided?

Parliament, with advice from the Commission on Revenue Allocation (CRA) and National Treasury, will decide:

- the total amount available for all counties, through the Division of Revenue Act;
- the share for each county (based on the formula approved by Parliament) through the County Allocation of Revenue Act; and
- under the PFM Act, the County Allocation of Revenue Act will also set out the conditional grants paid to each county from the national share of revenue (Section 191(3)(b), PFM Act).

This together with revenues raised locally and other sources of revenue, will form the budget for the fiscal year 2013/14. County Governments should ensure that they make a realistic estimate of locally raised revenues, to be included in the 2013/14 budget.

3.13 When will county governments know how much revenue is allocated to each county for 2013/14?

This will have to wait till the next Parliament is in place to approve the two bills namely, the Division of Revenue Bill and the County Allocation of Revenue Bill. The Constitutional deadline for these two bills to be submitted is the 30th of April (Constitution, Article 218(1)).

3.14 Who will prepare the first county integrated development plans?

The County Executive is responsible for preparing the first county integrated plan. However, to assist in this exercise staff of the Ministry of Planning are already in each county, and the TA has requested them to assist the county government to prepare these plans.

3.15 Who will prepare county budgets for 2013/14?

Preparation of the county budgets for 2013/14 is provided for in Sections 24-26 of the County Governments Public Finance Management Transition Act (see Box 14). Local authorities within each county were required to prepare estimates of revenue and expenditure for 2013/14, by end of February 2013 and submit it to the Transition County Treasury, with copies sent to the Controller of Budget and the CRA. These estimates cover functions formerly carried out by local authorities within the county.

Under Section 26 of the County Governments Public Finance Management Transition Act, the Transition County Principal Officer (Finance) is responsible for preparing the budget as per the Public Finance Management Act, and presenting them to the County Assembly. This budget should be all-inclusive. It should also cover other functions that county governments will be responsible for in 2013/14.

The TA and the National Treasury have a role to play in supporting county governments to prepare budgets (see Box 14).

Box 14: Preparation of the 2013/14 county budgets

County Governments Public Finance Management Transition Act 2013

- (24) For the purposes of preparing the county budget, the existing local authorities, at the commencement of this Act, shall facilitate county governments to prepare their estimates of revenue and expenditure for the 2013-2014 financial year and submit the estimates to the Cabinet Secretary, with copies sent to the Commission on Revenue Allocation and to the Controller of Budget, by the end of February, 2013.
- (25) Not later than 30th April 2013, the Governor or before they are sworn, the Transition County Principal Officer, shall submit the budget estimates of the County to the County Assembly.
- (26) The Transition County Treasury or the County Treasury shall ensure that the budgets of the respective counties are prepared in accordance with the Public Finance Management Act, 2012.

3.16 How should additional requested functions be budgeted for?

Section 1 of these Guidelines details the procedure county governments should follow when requesting for additional functions to be transferred to the county government.

The budgeted resources will be transferred to the county government when the functions are transferred. The TA and National Treasury will provide guidance on both functions and finance that need to be transferred for these in 2013/14. These functions should also be included in the county budget, if county governments are so directed.

D. MANAGING COUNTY PUBLIC FINANCES

3.17 Who will be the accounting officer for the County Revenue Fund?

Section 10 of County Governments Public Finance Management Transition Act provides that the Transition Principal Officer (Finance) shall be the accounting officer of Transition County Treasury.

3.18 If County Transition Team can spend the money before the county government is formed, to whom should this expenditure be reported?

The expenditure on county expenditures and other revenue matters are to be reported to the TA, the National Treasury, the Controller of Budget, the CRA, County Executive Member in charge of finance (once appointed), and Constitution Implementation Commission (CIC) (during the transition).

3.19 What is the process for spending money from county government revenues?

If the funds are in an approved budget for 2012/13, such funds can be spent under authority of the County Government Public Finance Transition Act, 2013, which extended the approved budgets to end of June 2013. Where there is no approved budgetary provision, expenditure can only be incurred upon approval of a supplementary budget, either by Parliament or County Assembly when operational.

Once the County Assembly is in place, it will need to approve any expenditure that is not already approved. In future, county expenditures must be in accordance with the county development plan, which should be consistent with the national strategy, and the medium term plan and priorities.

3.20 Can the Governor spend money that is not in the approved budget?

The Governor cannot spend money that is not in the approved Budget, because it is both illegal and unconstitutional. Under Article 226 (5) of the Constitution, any holder of a public office, including holder of a political office, who spends or directs spending of public money contrary to the law and regulations, is personally liable and must compensate the public for the loss. This liability applies whether the holder is in office or has left, which means that officers can be followed to pay for irregular spending of public funds, after they have left office.

The PFM Act section 135 (7) and County Governments Public Finance Management Transition Act provides limited scope to reallocate funding between existing expenditure items, or under special circumstances to spend more, provided this does not exceed a maximum of 10 percent of the total budget (see Box 15).

3.21 What are the PFM obligations of public officers?

Under section 162 (2) of the PFM Act, 2012, every public officer is required to comply with the Constitution and all necessary laws, when exercising powers conferred by the PFM Act. In addition, every officer is required to ensure that resources are used responsibly and:

- lawfully and authorized;
- in an effective, efficient, economical and transparent manner; and
- ensure adequate arrangements are made for proper use, custody, safeguarding and maintenance of public property, and make every effort to prevent any damage to financial interest of the County Government.

3.22 Are there any restrictions on how different funds can be spent?

All funds must be spent in accordance with the budget. However, if the funds are specified or earmarked, e.g. LATF, Equalization Fund, etc, these must be spent in accordance with the applicable laws and regulations. There must be a valid appropriation law in place for the purpose for which the funds will be spent.

If the county government wishes to change the budget, the County Assembly must pass a supplementary budget. County budgets must be consistent with the county plan.

Under the County Public Finance Management Transition Act, an accounting officer has limited powers to reallocate funds from one budgeted item to another, provided the total of all reallocations does not exceed 10 percent of the total approved (see Box 15).

Box 15: Power to reallocate funds to a different purpose

County Governments Public Finance Transition Act, Section 11

- (2) An accounting officer may reallocate funds appropriated by Parliament, but only in accordance with the Public Finance Management Act, 2012 and only if:
 - (a) provisions made in the budget item are available and are unlikely to be used; and
 - (b) the total of all reallocations made does not exceed 10 percent of the total expenditure approved by Parliament.

3.23 What procedures or requirements need to be met before the Controller of Budget can release funds?

The Controller of Budget requires the following to approve a release of funds from a county revenue fund:

- a requisition for release of funds with proof that the money is in the approved budget;
- proof that it is allocated for the purpose for which the money is to finance; and
- an annual cash flow plan and forecast, as required by Section 120(2) of the PFM Act 2012.

In addition, the amount requisitioned must not exceed the budget allocation.

E. ACCOUNTING AND REPORTING

3.24 What system will county governments use to record spending immediately after they are formed?

The National Treasury is rolling out a computerized system for recording county spending called the Integrated Financial Management Information System (IFMIS). However, county staff need training on its use. The benefits of IFMIS are considerable. It enables transactions to be processed electronically at every step, with individual users logging on using an electronic signature, to ensure that there is a complete trail of who has authorized the various transactions. As the IFMIS is rolled out, additional modules can be added to the system to expand its functionality.

As a temporary measure, the TA has specified the use of existing computerized local government financial management systems (called, Local Authority Integrated Financial Operational Management Systems – LAIFOMS) for managing human resources and payroll. The new payroll arrangements for County Assembly members, Executive Committee members and Governors, will initially be managed through LAIFOMS.

LAIFOMS will also continue to be used in the interim to collect county revenues. This is the same system which local authorities were previously using to manage their revenue collection functions.

F. REVENUE MOBILISATION

3.25 Should the Governor be concerned with the level of county revenues raised?

Yes. The Governor should pay special attention to the level of revenue raising in a county. This is necessary in order to comply with PFM principles in Article 201 and criteria in Article 203, both of which require the promotion of:

- (a) equitable society with fair sharing of tax burden;
- (b) need to optimize capacity to raise revenues.

These provisions suggest that counties need to maximize raising their own revenues, in order to comply with the principle of equity, with respect to fair sharing of tax burden. Failure to raise optimum revenue may expose the county to constitutional challenges on grounds that it is not carrying its fair tax burden.

SECTION 4: PROCUREMENT

4.1 What are the procurement procedures for county governments?

Articles 201 and 227 of the Constitution and section 9(f) of the County Governments Public Finance Management Transition Act, 2013 require compliance with principles of public finance, and that all procurement should be fair, equitable, transparent, competitive, cost effective, in accordance with Public Procurement and Disposal Act, 2005 (PP&D Act). Other conditions include:

- protection and advancement of persons, categories and groups of persons previously disadvantaged; and
- sanctions against non performing contractors, and tax defaulters.

The Public Procurement Oversight Authority has prepared a Gazette notice, currently under review, classifying entities within counties into A, B, and C categories, each with specified expenditure limits. Procurements values that exceed these limits will need to be advertised competitively and meet other thresholds. It is important for county administrations to be provided with copies of these guidelines.

4.2 Can the Governor buy assets?

The Governor can buy an asset, or anything else through the dully appointed accounting officers, provided it is budgeted for and approved by the County Assembly. In addition, the procurement process used should represent value for money, and be in accordance with the set procedures and thresholds.

4.3 Who is responsible for procurement and disposal of assets in counties?

A county procuring entity must be established in each county. It must act independently as a devolved unit and be responsible for all procurement and asset disposal decisions (see Box 16).

Box 16: A county procuring entity

The Public Procurement and Disposal (County Governments) Regulations 2013, Section 6

- (1) A county procuring entity shall independently, as a devolved unit, be responsible for all its procurement and asset disposal decisions and shall ensure that they are made in a systematic, corporate and structured manner.

4.4 What is a county procuring entity?

A county procuring entity is a department or agency of county government; an autonomous authority or body declared to be a county entity. (These will include city ad municipal boards, corporations and other bodies legally established by county governments). It must be established in each county and will consist of the following standing committees from within its members of staff:

- (a) tender committees specified in the Schedule of the Public Procurement and Disposal (County Governments) Regulations 2013;

- (b) disposal committee; and
- (c) such other bodies prescribed under the Act.

For greater transparency and good governance, a county procuring entity must establish the following *ad hoc* committees:

- (d) tender opening committee;
- (e) tender evaluation committee;
- (f) negotiation committee; and
- (g) inspection and acceptance committee.

4.5 What if a county does not have the capacity to comply with establishing all of the ad hoc committees?

The accounting officer of the county must seek advice from the Public Procurement Oversight Authority (established under Section 8 of the PP&D Act).

4.6 What are the committees specified by The Public Procurement and Disposal (County Government) Regulations 2013 responsible for?

Each committee has specified functions and responsibilities, namely:

Tender Committee

The primary functions of the tender committee shall be to:

- (a) review, verify and ascertain that all procurement and disposal has been undertaken in accordance with mandated legislative requirements;
- (b) approve the selection of the successful tender or proposal;
- (c) ensure that funds are available for the procurement under consideration;
- (d) ensure that the procuring entity does not pay in excess of prevailing market prices;
- (e) review the selection of procurement method and where a procurement method, other than open tender, has been proposed, to ensure that the adoption of the other procurement method is in accordance with legislative requirements; and
- (f) approve the amendment of contracts previously awarded by the tender committee.

In considering submissions made by the evaluation committee, the tender committee may:

- (a) approve a submission;
- (b) reject a submission with reasons; or
- (c) approve a submission, subject to minor clarifications made by the procurement unit or evaluation committee.

Disposal Committee

A procuring entity must establish a disposal committee for the purpose of recommending the best method of disposing of unserviceable, obsolete or surplus stores or equipment. (Section 128 of PP&D Act).

The committee must meet to report on the items, subject to a technical report, and recommend the best method of disposal. The committee must recommend to the accounting officer a method of disposing of the goods, which may include any of the following:

- (a) transfer to another public entity or part of a public entity, with or without financial adjustment;
- (b) sale by public tender;
- (c) sale by public auction; or destruction, dumping or burying; or
- (d) trade-in.

Evaluation Committee

For each procurement within the threshold of the tender committee, the procuring entity must establish an evaluation committee for the purposes of carrying out the technical and financial evaluation of the tenders or proposals.

An evaluation committee must prepare a report on the analysis of the tenders received, the final ratings assigned to each tender and submit the report to the tender committee.

Inspection and Acceptance Committee

A procuring entity must establish an inspection and acceptance committee.

The inspection and acceptance committee must immediately after delivery of the goods, works or services:

- (a) inspect and where necessary, test the goods received;
- (b) inspect and review the goods, works or services in order to ensure compliance with the terms and specifications of the contract; and
- (c) accept or reject, on behalf of the procuring entity, the delivered goods, works or services.

The inspection and acceptance committee must:

- (a) ensure that the correct quantity of goods, works or services has been received;
- (b) ensure that the goods, works or services meet the technical standards defined in the contract;
- (c) ensure that the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- (d) ensure that all required manuals or documentation have been received; and
- (e) issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

4.7 Can one person decide to buy an asset, order and pay for it and collect it from a supplier?

No. The decision to buy an asset, order, pay for it, and receive it must be undertaken by three different officers. The same applies to purchasing goods or services (see Box 17).

Box 17: Segregation of responsibilities

The Public Procurement and Disposal (County Governments) Regulations 2013, Section 6

- (2) All procurement shall be handled by different officers in respect of procurement initiation, processing and receipt of goods, works or services.

4.8 Are there different ways to purchase goods, works or services?

Yes. There are different ways of purchasing goods, works and services. The method to be used is determined by the maximum/minimum level of expenditure as to whether the purchase is made

through an open or closed tender or by direct procurement. The methods to be used are mandated in the Threshold Matrix of the First Schedule of the Public Procurement and Disposal Regulations 2006.

The Threshold Matrix also provides for the segregation of duties for different officers and committees in the procurement cycle under Section 26(3) (c) of the PP&D Act. It separates the functions of:

- procurement initiation;
- awarding the contract;
- signing the contract; and
- receiving goods, services or works.

4.9 How do we know what we want to buy?

A procuring entity must prepare a procurement plan under section 26(3) (a) of the PP&D Act for each financial year as part of the annual budget preparation process. Annual procurement planning must be integrated with applicable budget processes and based on indicative or approved budgets, as appropriate. Where appropriate, multi-year procurement plans may be prepared and must be integrated into the medium term budgetary expenditure framework.

An annual procurement plan must be submitted by the head of each area within the county to the accounting officer at least thirty days before the close of each financial year. The consolidated annual procurement plan must be approved by the head of the procuring entity and the County Assembly.

The annual procurement plan for each procuring entity must include:

- (a) a detailed breakdown of the goods, works, or services required;
- (b) a schedule of the planned delivery, implementation or completion dates for all goods, works, or services required;
- (c) an indication and justification for whether it shall be procured within a single-year period or under a multi-year arrangement;
- (d) an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-user items;
- (e) an indication of which items shall be packaged into lots;
- (f) an estimate of the value of each package of goods, works or services required, and an indication of the budget available and sources of funding; and
- (g) an indication of the appropriate procurement method for each procurement requirement.

The Public Procurement Oversight Authority shall issue instructions to the procuring entities on the format for preparing procurement plans

4.10 Should preference be given to local county business when purchasing goods and services?

Yes. When purchasing goods and services for county government use, preference must be given to small (11-50 staff with annual turnover of Ksh 5 million) and micro (1-10 staff annual with an annual turnover of Ksh 500,000) enterprises, and other disadvantaged groups that are located and operate within the counties. (The Public Procurement and Disposal (County Governments) Regulations 2013).

SECTION 5: ASSETS AND LIABILITIES

5.1 Do the assets of the former local authorities transfer automatically to the county governments?

All the assets of the former local authorities will automatically transfer to the county governments. The Transition to Devolved Government Act contains comprehensive provisions on dealing with assets (see Box 18).

Box 18: Legal provisions on assets and liabilities: Transition to Devolved Government Act

Functions of the Transition Authority

7. (1) The Transition Authority shall facilitate and co-ordinate the transition to the devolved system of government, as provided under section 15 of the Sixth Schedule to the Constitution.
- (2) Despite the generality of sub-section (1), the Transition Authority shall:
- (e) prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
 - (f) make recommendations for the effective management of assets of the national and county governments;
 - (g) provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period;
 - (h) pursuant to section 15 (2) (b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments;
 - (i) guide the transfer of functions to county governments; and
 - (j) determine the transfer of previously shared assets, liabilities and staff of the government and local authorities.

Offences

- 33.(2) A person who transfers assets without obtaining the requisite approval under section 36 or contrary to the mechanism provided by the Transition Authority under section 7 (2) (g) commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings or imprisonment for a term not exceeding seven years, or to both.

Moratorium on Minster of assets

35. (1) A State organ, public office, public entity or local authority shall not transfer assets and liabilities during the transition period.
- (2) Despite subsection (1), a State organ, public office, public entity or local authority shall:
- (a) during Phase One, transfer assets or liabilities with the approval of the Transition Authority, in consultation with the National Treasury, and the Commission on Revenue.
 - (b) during Phase Two, transfer assets or liabilities with the approval of the Transition Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet Secretary responsible for matters relating to intergovernmental relations; and
 - (c) transfer immovable property, with the approval of the Transition Authority, in consultation with the National Treasury, the Commission on Revenue Allocation and the Cabinet.
- (3) The Transition Authority may, on its own motion or on a petition by any person, review or reverse any irregular transfer of assets or liabilities in contravention of sub-section (1).
- (4) Any transfer of assets or liabilities made in contravention of subsection (1) shall be invalid.

5.2 What happens to schools that were previously run by local authorities?

Education (other than pre-primary education) is not a devolved function, and schools were not listed in the functions transferred to county governments on day one (see Box 4 in Section 1). However, local authority schools are among the local authority assets, and will need to be transferred somewhere.

The TA has been given the mandate to decide on assets to be transferred following the transfer of a function. If these assets are to be transferred to the national government, supporting staff would follow the function to the national government, and the Ministry will take over paying them.

The Education Ministry could make an agreement with the respective municipalities, to run the function on their behalf pursuant to Article 187 of the Constitution (Transfer of functions and powers between levels of government(see Box 6 in Section 1).

5.3 Will Governors be given a list of assets they are taking responsibility for? Does it include fixed and movable assets?

The TA will be the custodian of assets for the next three years, and will be responsible for classifying them into either national or county assets. Previously there was no existing asset register. However, the TA is creating provisional asset registers that include fixed and movable assets. The provisional asset registers will be made available to the respective county Governors.

A forensic audit verifying the physical assets to the provisional asset registers will be conducted, and the National Land Commission will identify and record all land assets.

If any Governor identifies an asset that is not recorded on the provisional asset register for his/her county, he/she should notify the TA for advice on how the asset should be recorded.

If any Governor has an asset recorded on the provisional asset register, but cannot locate the physical asset he/she must refer the issue of the missing asset to the TA or another investigative body, for follow up.

Regulations to guide identification and transfer of assets from the national government to county governments, which include penalties for the unauthorized dealing with government assets, were gazette by the TA on 14th February 2013.

The structures for registering and compiling assets have been put into place, with at least 15 people included in the technical committee reporting to the TA. Among them are chairpersons of CRA, CIC, Ethics and Anti-Corruption Commission and the National Land Commission.

The TA has identified Ksh 5 billion required to fund a two year process, ending in 2015. It has started the profiling of the assets, by establishing an Integrated National and County Register.

International Public Sector Accounting Standards recognizes heritage assets that have a special sentimental value e.g. a monument. Assets of this nature will also be recorded as assets in the registers.

5.4 Is there a formal handover process for assets?

There is a formal handover process, which will be implemented as soon as respective Governors are prepared to receive the assets after the provisional asset registers are completed by 20th March 2013.

5.5 What is the procedure for transferring shares in the Water Service Providers, currently held by the local authorities, to the county governments?

The water sector is complicated as the water service providers are private entities which were established under the corporations law. In the case of the Water Service Boards which serve more than one county, a decision needs to be taken as to how ownership of the assets should be handled.

The Water Service Providers will remain a separate legal entity, and have to be dealt with in accordance with the regulatory framework for the sector. However, ownership of the shares will pass to the county government, along with other local authority assets.

5.6 Is there a list of outstanding liabilities of local authorities?

There is a list of outstanding liabilities for local authorities, and public entities that are being transferred to the counties (which are currently run by ministries). The most significant liability is outstanding contribution to staff pension funds.

Governors will be provided with provisional registers of liabilities as well as assets, subject to a process of verification and where necessary forensic audits.

5.7 Who is responsible to pay outstanding liabilities?

This issue has not yet been resolved. There is also a question of offsetting the amount which the national government owes the local authorities in unpaid local rates (CILOR).

5.8 Is the county government obliged to honour contracts (for ongoing projects and programs) entered into by local authorities?

Section 58 of the Urban Areas and Cities Act 2011 provides that any contract, arrangement, agreement etc. entered into by any local authority, shall continue to be valid. County governments should continue to maintain on-going projects and programs.

SECTION 6: PUBLIC SERVICE

6.1 Which public servants in the county report to the county government immediately after it is formed?

The CTT members and all former local authorities' staff will report to the county government on day one. Other staff will begin to report as the functions they are performing are transferred to the county government.

6.2 When do the remaining officers performing devolved functions report to the county government?

All the officers serving in the county, who perform functions of the county government, will be seconded as and when the functions they are performing are transferred to the county government. Seconded officers are answerable to their immediate supervisors (in the county).

The only officers who will report to national government are those whose functions have been retained at the national level, in accordance with the Fourth Schedule of the Constitution.

6.3 Who pays the salaries of seconded officers?

Salaries will continue to be paid by the parent ministry, until the seconded staff are absorbed/transferred to the service of the county government (see Box 19).

Box 19: Payment of seconded staff

County Governments Act, Section 73

- (1) The national government shall put in place, measures to protect its public officers on secondment to the counties from loss or disadvantage, with respect to pension benefits, gratuity or other terminal benefits.
- (2) Unless there is an agreement to the contrary, it shall be the responsibility of the national government to pay the salaries, remuneration; allowances and other benefits due to the staff seconded to a county government, during the transition period.

6.4 What is the process for deciding which staff in the counties are seconded and which are not?

Decisions on secondment will depend on whether the functions performed by the staff have been transferred to the county government.

CTT have already been appointed by the TA to comprise of the administrative arm of the county government. When the CPSBs are established, they will determine a structure for the new county public service, and begin to recruit into their own public services, including absorbing existing national officers.

A committee (chaired by the County Commissioner) will assist with the transition of staff who are deemed to be seconded. This committee is the conduit for the relationship between the national government and the Governor in each county.

6.5 What if the Governor wants more staff—can he/she request for more to be seconded?

The National government (coordinated through the TA) is responsible for building capacity of the counties. A request for more staff should be made to the TA and the PSC.

6.6 What happens to local authority staff in the county? Are they seconded to the county, or transferred?

Local authorities were abolished when the Local Government Act was repealed, on the announcement of final results for the county elections. The functions of local authorities are functions of the county governments. Staff of local authorities, who are public servants appointed by or under delegation from the PSC, automatically become county government staff.

The PSC is currently putting into place arrangements to formalize their transfer to county government service.

6.7 Can former local authority staff be redeployed to other duties?

Yes. Staff of former local authorities are now county staff and can be deployed by county governments.

The new county governments will carry out an assessment of their needs against seconded staff and determine what they need. The TA in collaboration with the PSC will rationalize the deployment of staff across counties, to address shortages/excesses (see Box 20).

If there are excess people at the end of this process, the strategies, including retraining for new skills required for county governments will be applied by relevant institutions. For example, one area of new skills required is Hansard recorders for the 47 counties.

Box 20: Provisions on seconded staff

County Governments Act, Section 138

- (1) Any public officer appointed by the PSC in the exercise of its constitutional powers and functions before the coming into effect of this Act, and is serving in a county on the date of the constitution of that county government, shall be deemed to be in the service of the county government on secondment from national government with their terms of service as at that date and:
 - (a) the officer's terms of service including remuneration, allowances and pension or other benefits shall not be altered to the officer's disadvantage;
 - (b) the officer shall not be removed from the service, except in accordance with the terms and conditions applicable to him/her as at the date immediately before the establishment of the county government or in accordance with the law applicable to the officer, at the time of commencement of the proceedings for the removal; and
 - (c) the officer's terms and conditions of service may be altered to the office's advantage.

- (2) Every public officer holding or acting in a public office to which the Commission had appointed the officer, as at the date of the establishment of the county government, shall discharge those duties in relation to the relevant functions of the county government or national government, as the case may be.
- (3) The body responsible for the transition to county governments shall in consultation with the PSC and relevant ministries facilitate the redeployment, transfers and secondment of staff to the national and county governments.
- (4) The provision under subsection (2) shall not preclude:
 - (a) the CPSB or other lawful authority from promoting or appointing the officer to another public office in the county; or
 - (b) re-deployment by the relevant lawful authority.
- (5) The period of secondment under subsection (1) shall cease upon the transfer of a public officer from the national government to a county government, or upon the release of an officer by the county government to the national government.
- (6) Appointment of a public officer by the Commission includes appointment of a public officer on powers delegated by the Commission.

6.8 Can CPSBs also recruit from the open market?

Yes. But county governments should initially consider the skills of existing staff seconded/deployed to the county government. County governments should also ensure that they adhere to the principles enshrined in the Constitution, and employ sound and merit-based recruitment procedures.

The national Parliament will be setting uniform recruitment norms and standards applicable to all county governments (see Box 21). The PSC is working on guidelines on the rationalization and redeployment of staff during the three year transition period.

Public officers will remain on secondment until the CPSB decides to either, offer them positions in the county public service, or return them to the national government (see Box 21).

Box 21: Constitutional authority of the national Parliament to set uniform norms and standards

Constitution of Kenya, Article 235

- (1) A county government is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament, for:
 - (a) establishing and abolishing offices in its public service;
 - (b) appointing persons to hold or act in those offices, and confirming appointments; and
 - (c) exercising disciplinary control over and removing person holding or acting in those offices.
- (2) Clause (1) shall not apply to any office or position subject to the Teachers Service Commission.

6.9 How will the 30 percent outsider target be achieved?

Section 65 of the County Government Act provides that in selecting candidates for appointment, the CPSB shall consider, among other things, the need to ensure that at least 30 percent of the vacant posts at entry level, are filled by candidates who are not from the dominant ethnic community in the county.

This target is not meant to be achieved by sacking people who are otherwise entitled to remain in their jobs. It will not be achieved immediately, but over the three year transition period.

Also, this target is not possible to be achieved by simply increasing the overall size of the county public service. This is because Section 107 of The PFM Act also provides limits for spending on public service wages and benefits. Similarly, this target will be implemented over the medium term (3-5 years).

6.10 What happens to Health Ministry staff deployed to local authority health facilities after the facilities become the responsibility of county governments?

In January 2013, the TA gazetted the transfer of health functions to county governments. So far, health facilities are operated by municipal authorities in counties such as Nairobi, Kisumu, Mombasa, Nakuru and Uasin Gishu (see Box 4, in Section 1).

Health staff working in these facilities, who have been transferred from local authorities to county governments, are now deemed to be seconded to county governments. Former local authorities' staff will remain within their pension schemes, while seconded public servants will transfer their service once absorbed by the county public service.

6.11 What are the procedures for appointing CPSBs?

The PSC will provide guidelines and necessary support in the establishment of CPSBs, in accordance with Sections 57 and 58 of the County Government Act, 2012.

In February 2013, the TA gazetted a legal notice under the Transition to Devolved Government Act. It sets out a procedure for the appointment of CPSBs (see Box 22).

Box 22: Procedures for appointment of CPSBs

Legal Notice under the Transition to Devolved Government Act

- (1) The Governor shall upon swearing in and no later than seven days after assumption of office, direct the Interim County Secretary by notice in two newspapers of national circulation, to declare vacancies in the CPSB, and invite applications from qualified persons to fill the positions of chairperson and members of the CPSB.
- (2) The Governor shall appoint a selection panel to consider the applications and shortlist and publish the names and qualifications of shortlisted applicants in two daily newspapers of national circulation, within seven days from the last day of receipt of the applications.
- (3) The Panel shall interview the shortlisted candidates within seven days from the date of publication of the shortlisted applicants, and select three persons who are qualified to be chairperson and twelve persons qualified to be appointed as secretary and members of the board.
- (4) The Governor shall, within seven days of receipt of the names forwarded under 11A(3) above, nominate a chairperson and members of the CPSB and forward the names of the nominees to the County Assembly for approval.
- (5) When the County Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the Governor for appointment.

Published on February 17th, 2013.

6.12 Where can a county get assistance in recruiting its CPSB?

Counties can seek assistance from the PSC. This process should be initiated by the Interim County Secretary.

6.13 Can the Governor hire advisers to his/her office? How should their remuneration be determined?

A Governor can hire advisers if the county needs them to deliver its mandate. Advisers will be appointed by the CPSB subject to procedures and regulations governing the hiring of non-public service staff (see Box 23).

The PSC and TA are developing a model county government structure as a guideline to the counties. This is a guideline only, and CPSBs may establish offices depending on the needs of the county, in accordance with Section 60 of the County Government Act, 2012.

If advisers are hired before the assembly is in place, there should be a process of retrospective ratification by the County Assembly. The approval by the County Assembly should include the remuneration and grading of the advisers hired. The Salaries and Remuneration Commission (SRC) will advise on salaries and remuneration levels, Governors need to observe the limits imposed on spending on personnel emoluments.

Box 23: Regulation of appointment of persons on contract

County Government Act, Section 74

The CPSB shall regulate the engagement of persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices.

6.14 Can the Governor terminate staff of former local authorities?

No. While on secondment, staff of former local authorities are employees of the PSC and can only be terminated by the PSC. Any termination by the PSC would be in accordance with the laid down laws and regulations for the national public service.

Once the staff are permanently recruited to the county, they will be managed by the CPSB in accordance with county public service regulations.

6.15 If the Governor believes he/she has too many staff, or cannot afford to pay them all, what should he/she do?

Staff who are no longer needed can be retrenched in accordance with PSC terms and conditions. Once the staff are absorbed into the county public service, their retrenchment will be in accordance with terms and conditions of the county public service.

6.16 What is the difference between a deployed and a seconded officer? Do they relate differently to their parent ministry?

Secondment is where a person is temporarily placed to another organisation for a period of time. The host organization takes responsibility for paying salary and allowances, and contributes towards the officer's pension. However, the officer maintains their pension benefits from the original seconding agency.

Deployment is where a person is placed to another organization/location on their current terms and conditions.

6.17 Who manages HR functions in relation to officers deployed or seconded to county governments?

Once an officer is seconded, he/she is deemed to be an officer of the county government, and human resource management functions pass to the organization to which the officer is seconded.

Until CPSBs are established and secondments are formalized, the PSC will continue to manage public officers until the CPSBs are established. When they are established, the CPSBs will be fully responsible for HR management. From this point on, the PSC will only be responsible for hearing and determining appeals. There will be collaboration and cooperation between CPSBs and PSC in management of staff in the counties.

6.18 Has a discipline process been determined for public servants or other staff employed in the county?

The discipline procedure under PSC regulations will apply during the transition period. Counties will develop uniform discipline procedures in line with the Constitution, relevant legislation and public service norms and standards.

6.19 Is there a proposed organisation structure for county administrations?

The TA will provide a model county government structure, and the county governments will adapt it to their particular context and needs.

The CTT positions are interim support systems, which enable county governments to build their own systems. The CTT are there to ensure that the prerequisite positions are in place before the county government comes in to office. CTTs will act as the technical support team in cases where other county staff are employed into their positions.

6.20 Which staff will be paid in the county and which ones will be paid at national level?

Local authority staff will be paid by county governments. Newly elected County Assembly members, Executive Committee Members, and the Governor will be paid by county governments.

Seconded staff will continue to be paid from the source that was paying their salary before the secondment (i.e. staff of the CTTs).

National transfers under the Transitional County Appropriation Act only covers the salaries of the elected staff. All seconded staff will be paid by the national government up to the end of June. In 2013/14 the budget is expected to cover all these salaries.

6.21 What funds will be used to pay local authority staff on 30th March 2013?

Funds generated by local authorities will be used to pay local authority staff.

6.22 How will the salary and entitlements of County Assembly members, Governor and County Executive members be determined?

The County Transition Appropriation Act authorizes the payment of salaries. The SRC will fix the entitlements of all state officers, including those at county level. Box 24 sets out the definition of State officers from the Constitution.

Box 24: What are state officers?

Constitution of Kenya, Article 260

“State office” means any of the following offices:

- (h) member of a County Assembly, Governor or deputy Governor of a county, or other members of the Executive Committee of a county government.

“State officer” means a person holding a state office.

6.23 When are payroll systems being installed in counties?

Interim payroll managers have been recruited and as the County Assemblies come on board, they will start to process their details through a payroll system at the county level. Currently, payroll systems of the former local authorities will be used to process the payroll for the County Assembly members.

The Ministry of State for Public Service and National Treasury are assisting to make sure that payroll systems are operational.

6.24 Who decides the salary levels of new positions in the county public service?

The SRC can advise on civil service salaries in counties (see Box 25).

Box 25: Power of the SRC to fix salaries and other benefits

Constitution of Kenya, Article 223(4)

Article 234(4) of the Constitution states that the powers and functions of the SRC shall be to:

- (a) set and regularly review the remuneration and benefits of all State officers; and
- (b) advise the national and county governments on the remuneration and benefits of all other public officers.

6.25 Who are the members of the County Transition Teams?

There are three categories of staff in the CTTs:

(1) County Assembly Transition Team:

Clerk, Deputy Clerk (not yet recruited), Clerk-assistants, Hansard Editor, Hansard Reporters, Hansard Recorders, Sergeant at Arms, Deputy Sergeant at Arms, and administrative staff (e.g. finance, budget and HR for the assembly).

(2) Executive Team:

Interim County Secretary, Deputy Secretary, HR Manager, Payroll Manager, ICT and Records Manager.

(3) Treasury team:

Chief Finance Officer, Expenditure Budget and Manager, Accounting, Supply Chain and Internal Audit.

6.26 What are their roles and responsibilities?

The CTT is the core team responsible for setting up the county government. Its role is to put in place systems for the county government.

All of the CTT with the exception of the County Coordinator, hold core positions in the county public service, but they occupy them on a transitional basis. They will remain in these positions until the CPSB is formed, and commences making permanent appointments to these positions. Members of the CTT will be free to apply for these permanent positions, or they could choose to return to the position from which they were originally seconded.

6.27 What is the role of the County Coordinator?

Unlike the rest of the CTT, the County Coordinator continues to report to the TA even after the county government is formed. The County Coordinator is an employee of the TA.

The County Coordinators' role is to be the focal point for the transition process, to coordinate aspects of civic education, and to undertake institutional capacity assessments on behalf of the TA. The County Coordinator communicates transition issues to the rest of the teams, and coordinates transition at county level.

Although the County Coordinator reports to the TA, he/she works in close collaboration with other teams in the county. This position provides the link between the TA and the county level staff, and ensures that cross-county issues are addressed.

6.28 Do the CTT positions have established grades?

Members of the CTTs will retain the grades that they had when they were in their substantive positions in the public service, and this will last until the rationalization of positions is completed (harmonizing of grades).

The Public Service Act (yet to be drafted and passed) will set the norms and standards that will apply to both levels of government.

The TA will govern this process during transition.

SECTION 7: PUBLIC PARTICIPATION

7.1 What are the most important things Governors can do first, to get citizens involved in the affairs of the county government?

There are several ways in which the county government can get citizens involved in the affairs of the county. For now, when county governments are still being formulated, the most important thing to do is to set-up the structures for citizens to participate. Six ways in which the county Governor can do this are as follows:

- (a) **Use existing forums at the sub-national level rather than reinventing the wheel.** For example using local barazas, professional groups meetings and forums and citizens' monitoring groups amongst others, as a basis for engagement as a county. The county Governor and citizens should agree on a standard format for engagement with these groups on going forward.
- (b) **Put in place structures for disseminating the information.** For citizens to effectively participate they need information. Section 96(2) of the County Government Act (CG Act) directs that an office is set up for citizens to access information, while Section 91 of the same Act outlines some additional structures that can help to facilitate this (see Box 26). Care must be taken to ensure that these structures encourage participation from citizens at all levels in the sub-county (wards, village, etc.).

Some key information to be immediately disseminated includes:

- the rights and responsibilities of the citizens; and
 - the relevant tools available for them to get involved and how to engage with the county government.
- (c) **Regulations in the PFM Act** - and institutions created therein for citizens' engagement e.g. the County Budget Economic Forum (CBEF).
 - (d) **Pay special attention to marginalized groups.** Identify key marginalized groups in the county, and ensure that they have the necessary tools and structures to participate effectively.
 - (e) **Establish a county civic education programme.** Section 100 of the County Government Act directs counties to implement an appropriate civic education programme, with support from non-state actors (see Box 26).
 - (f) **Formalise mechanisms and platforms** for citizens' engagement and participation under Section 91 of the County Government Act (see Box 26).

Box 26: Citizens' participation - structures and tools

County Governments Act, Section 88

- (1) Citizens have a right to petition the county government on any matter under the responsibility of the county government.
- (2) Citizens' petitions shall be made in writing to the county government.
- (3) County legislation shall give further effect to section 88 (1).

County Governments Act, Section 91

The county government shall facilitate the establishment of structures for citizens' participation including:

- (a) information communication technology based platforms;
- (b) town hall meetings;
- (c) budget preparation and validation;
- (d) notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest;
- (e) development project sites;
- (f) avenues for the participation of peoples' representatives, including but not limited to members of the National Assembly and Senate; or
- (g) establishment of citizen for a at county and decentralized units.

The County Governments Act, Section 96

- (1) Every Kenyan citizen shall upon request have access to information held by any county government or any unit or department thereof, or any other State organ in accordance with Article 35 of the Constitution.
- (2) Every county government and its agencies shall designate an office for purposes of ensuring access to information as required by subsection (1).
- (3) Subject to national legislation governing access to information, a county government shall enact legislation to ensure access to information.
- (4) A county legislation enacted pursuant to subsection (3), may impose reasonable fees or charges for accessing information held by the county government, its departments or agencies.

The County Governments Act, Section 100

- (1) Subject to subsection (2), each county shall implement an appropriate civic education programme and establish a civic education unit in this regard.
- (2) For purposes of subsection (1), there shall be established a national design and framework of civic education, to determine the contents of the curriculum for civic, education taking into account the provisions of Article 33 of the Constitution.
- (3) The national and county governments shall facilitate the implementation of civic education programme under subsection (2).
- (4) The design and implementation of county civic education programmes under this section shall involve the participation of registered non-state actors, as may be prescribed.

7.2 What key activities which involve citizens will take place in the first few months, after the county government is established?

Given the country's history, it may not be immediately obvious as to what activities the county government should be involving its citizens. However, if the aim of the new Constitution is to empower citizens to have a greater say in the delivery of public services provided to them, these are some key activities that they must take part in:

- (a) **Nominating the County Executive.** Although nominations to the County Executive will largely be political, it is important to get citizens' buy-in for nominees.
- (b) **Nominating the CPSB.** The TA has specified a process of publishing the candidates for appointment to the CPSB. The County Government should explain how it chose these candidates, and why they are considered to be qualified for these important positions.
- (c) **Identifying key citizens' groups and forums to meet with in order to understand actual realities on the ground.** The CPSB should assist in identifying the groups/people who the Governor should work with.
- (d) **Engaging citizens in the review and finalization of the county profiles.** This includes ensuring citizens understand key statistics of their counties, which areas need to be prioritized for county development, and generally how the county fares in comparison with other counties.
- (e) **Convening a team to develop an interim strategic plan.** Basically, this interim team will help the county Governor to understand 'what to do next' or the priorities of the county. The interim team should be formed for the broader purposes of the county, but should also address planning in respect to citizens' participation.
- (f) **Contribution to legislation on public participation.** Given the guidelines in the County Governments Act; involve the citizens in thinking around how best to ensure their sustained participation in running the county.
- (g) **Beginning the process of establishing the County Budget and Economic Forum.** There is the possibility that this may be established later, around April, due to other roles which first have to be put into place.
- (h) **Develop a process for ensuring public participation in the 2013/14 budget process.** The 2013/14 budget process will be much shorter than is provided for in the Public Finance Management Act. The County Government should explain at the start of the process how citizens will be able to make an input.
- (i) **Reviewing of 2012/13 Budget outturn.** Citizens must understand how their county government funds have been spent in the 2012/13, so that they can provide input on whether these were the right services, if their delivery was satisfactory, or if (and how) it can be improved. It will also be up to the county Governor to determine a good way to translate the technical process and jargon for the layman. Based on the feedback provided by citizens, the county Governor can adequately prepare the 2013/14 budget.
- (j) **Use the guideline on Assumption of Office prepared by the TA, to identify any further requirements.**

7.3 What are some key principles for achieving meaningful participation?

Citizens' participation is a first step, but meaningful participation—where the citizens are actively engaged and understand the issues—is another matter altogether.

Section 87 of the County Governments Act contains key principles that can help to ensure a meaningful participation including: timely access to information; inclusiveness especially of marginalized groups; reasonable access to the process of formulating and implementing policies, laws and regulations; reasonable balance between the roles and obligations of county government and non-state actors; and, promotion of PPPs partnerships (see Box 27).

Some additional principles include:

- **Inclusiveness:** Facilitating unity amongst community members, especially those who did not vote for the Governor and new government; holding meetings in centrally-placed, easily accessed or convenient locations, and on days when public can attend (weekends) with platforms for public to give views even when they cannot attend. Ensure access to information for marginalized groups, in the relevant formats e.g. for the blind, deaf, illiterate persons, etc.
- **Incentives:** Putting into place incentives to ensure that county officers implement participatory processes. Incentives might include requiring officers to report on level of participation at budget/planning forums; pegging release of funds to evidence of citizens' participation in planning and monitoring and evaluation of development projects; including citizens' participation as a measurement in performance contracts, amongst others.
- **Timeliness:** Sufficient notice of meetings and early dissemination of budget information prior to meetings, to enable quality participation. Timely start of meetings and reasonable durations is also important.
- **Accessibility:** to the office of the Governor by citizens.
- **Communication:** Adopting widely accessed communication channels as per section of CG Act Section 95 (see Box 27).
- **Responsiveness:** Addressing public complaints and queries in a timely manner. Service charters should be developed and displayed in easily visible places. County Governments could consider establishing a county ombudsman office.
- **Education:** Continuous civic education on how citizens can stay engaged. Citizens' civic education will improve meaningful participation over time.

Box 27: Key principles to encourage citizens' participation

County Governments Act, Section 87

Citizens' participation in county governments shall be based on 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, marginalized groups and communities, and their access to relevant information;
- (d) legal standing to interested or affected persons, organizations, and where pertinent communities, to appeal to or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, 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 citizens' commissions, to encourage direct dialogue and concerted action on sustainable development; and
- (g) recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.

County Governments Act, Section 95

- (1) A County government shall establish mechanisms to facilitate public communication and access to information in form of media, with the widest public outreach in the county which may include:
 - (a) television stations;
 - (b) information communication technology centres;
 - (c) websites;
 - (d) community radio stations;
 - (e) public meetings; and
 - (f) traditional media.
- (2) The county government shall encourage and facilitate other means of mass communication including traditional media.

7.4 What are the most important processes, decisions and documents that should be made transparent during the first six months of the government?

From the start, the following processes, decisions and documents should be made transparent:

- recruitment processes;
- list of assets (and liabilities) in the county that belong to the county government and those that belong to the national government;
- ongoing projects and commitments from previous administrations within the county;
- operation manuals on how to deliver functions including processes, procedures, e.t.c;
- nomination process for county officials, including County Executive Committee members, CPSB, County Secretary and County Chief Officers;
- MTP II and county profiles;

- county government budgets for 2012/13 and 2013/14;
- existing laws that govern county government; and
- process for public participation.

7.5 What are the most effective ways for Governors to ensure that marginalized groups and minorities are engaged in public life, in a meaningful way?

Marginalized groups and minorities often need specialized attention to make their involvement in county government affairs more meaningful. Here are a few ideas on where to start:

- define marginalization/minorities within the context of the particular county (marginalization is not only economic, but should be defined holistically);
- map out who and where the marginalized groups and minorities are, and identify reasons why they are considered to be marginalized and minorities. Ensure that a distinction is made between marginalized and minority groups by providing attention to each of their specific needs, to ensure they are included and addressed.
- hold specialized forums to ask marginalized communities for their development priorities, and seek their views on the use of the Equalisation Fund (if the county is one that is classified as marginalised);
- collect and review documents that have been developed for and by marginalized groups and minorities, in order to understand what their expectations are;
- establish channels for engaging with the marginalized groups and minorities, and develop systems to ensure their continuous engagement; and
- develop strategies to address marginalization within the county.

SECTION 8: INTERGOVERNMENTAL COORDINATION

8.1 What is the relationship between the two levels of government?

The two levels of government, county and national, will work side by side in coordination with each other. Article 6 (2) of the Constitution defines the national and county levels as distinct and inter-dependent, and provides that they will conduct their mutual relations on a consultative and cooperative basis. This is put into effect through the mechanisms in the Intergovernmental Relations Act 2012 (see Box 28).

Box 28: Objectives of intergovernmental relations structures

Intergovernmental Relations Act 2012, Section 5

The objects of intergovernmental structures established under this Act include:

- (a) facilitating the realization of the objects and principles of devolution provided for under Articles 174 and 175 of the Constitution;
- (b) facilitating cooperation and consultation between the national and the county governments, and amongst county governments, as provided under Articles 6 and 189 of the Constitution;
- (c) providing a forum for co-ordinating governments' policies, legislation and functions;
- (d) providing a forum for sharing and disclosing of necessary data and information;
- (e) providing the mechanisms for the transfer of power, functions and competencies to either level of government; and
- (f) promoting accountability between the two levels of government or amongst the county governments.

Section 7 of the Intergovernmental Relations Act 2012 provides for the establishment of a National and County Government Coordinating Summit that will be the apex body for intergovernmental relations. The Summit members shall comprise of the President or Deputy President in his absence, who will be the chairperson, and the Governors of the forty-seven counties.

The Summit will among other things provide a forum for consultation and cooperation between the national and county governments, promote national values and principles of governance, consider and promote matters of national interest, monitor the implementation of national and country developments, and recommend appropriate action (see Box 29). Summit meetings must be held at least twice a year.

Box 29: Functions of the National County Coordinating Summit

Intergovernmental Relations Act 2012, Section 8

The Summit shall, 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) co-ordinating and harmonizing the development of county and national governments policies; and
- (k) facilitating and co-ordinating the transfer of functions, power or competencies from and to either level of the government; and 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.

8.2 What is the mechanism for coordination between the county government and national agencies in the county?

The National Government Coordination Act establishes a framework for coordination at the national and county levels. A specific mechanism is provided, that relates to disputes over concurrent functions. It requires a mediation team to be constituted consisting of two eminent persons appointed by the Governor, and two eminent persons appointed by the Cabinet Secretary responsible for national government coordination. If the committee cannot resolve the dispute, the matter is referred to the High Court.¹

Some individual Acts also contain consultative forums like the police forum, which the county Governor chairs. This is separate from the County Security Committee. Other shared institutions between national and county government include the courts, Auditor General, Controller of Budgets, and the PSC.

Another forum for intergovernmental coordination is provided in Section 187 of the Public Finance Management Act 2012 through the establishment of the Intergovernmental Budget and Economic Council. The purpose of the Council is to provide a forum for consultation and cooperation between the national government and the county governments, on budget and economic matters and will meet at least twice a year (see Box 30).

National ministries will no longer control the delivery of devolved services. The national government will set the policy and standards, and county governments will be responsible for delivery of services at county level.

¹National Government Coordination Act 2013 Part IV - Collaboration and Resolution between the National and County Governments on issues of Apparent Concurrent Mandate.

The TA is the mechanism for coordinating with agencies at national level. It exercises this role through the interim county coordinator, who is the TA's representative at the county level. An important function of the county coordinator will be in relation to applications for additional functions. The TA will carry out an assessment to determine the county's capacity and capability to deliver these additional services. The TA is also responsible for the coordination of the level of support necessary to build capacity of county governments from donors and national ministries.

Box 30: Intergovernmental Budget and Economic Council—membership and functions

Public Finance Management Act 2012, Section 187

- (1) There is established a council to be known as the Intergovernmental Budget and Economic Council comprising of:
 - (a) the Deputy President who shall be the Chairperson;
 - (b) the Cabinet Secretary;
 - (c) a representative of the Parliamentary Service Commission;
 - (d) a representative of the Judicial Service Commission;
 - (e) the Chairperson of the Commission on Revenue Allocation or a person designated by the Chairperson;
 - (f) the Chairperson of the Council of County Governors;
 - (g) every County Executive Committee member for finance; and
 - (h) the Cabinet Secretary responsible for intergovernmental relations.
- (2) The purpose of the Council is to provide a forum for consultation and cooperation between the national government and county governments on:
 - (a) the contents of the Budget Policy Statement, the Budget Review and Outlook Paper and the Medium Term Debt Management Strategy;
 - (b) matters relating to budgeting, the economy and financial management and integrated development at the national and county level;
 - (c) matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees;
 - (d) agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections;
 - (e) any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;
 - (f) any proposed regulations to this Act;
 - (g) recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190; and
 - (h) any other matter which the Deputy President in consultation with other Council members may decide.

8.3 When is the National Council Coordinating Summit and the Council of County Governors likely to first meet?

The TA needs to give an advisory on when these bodies will meet. A number of issues concerning arrangements for the Summit and the Council need to be agreed, including where these bodies will meet.

8.4 Who is responsible for arranging for the Governors Council to meet?

The TA is responsible to facilitate the first meeting of intergovernmental bodies before the technical committee is established. Section 11 of the Intergovernmental Relations Act 2012 provides for the establishment of the Intergovernmental Relations Technical Committee.

The Intergovernmental Relations Act also mandates the Committee membership composition and the responsibilities and functions of the Committee. The Committee reports quarterly and is accountable to the Summit and the Council.

It is likely that the intergovernmental arrangements will evolve over time.

8.5 How should Governors interact with Members of Parliament for constituencies in the county, Senator and the TA?

Members of Parliament represent units that are under the management of the county government. They have distinct areas of responsibility, but the interests of people in a constituency overlap with issues that are the responsibility of county governments. They should also connect with ward members within their constituency, and be involved in the development of county budgets.

Senators can address the County Assembly and also represent the county nationally. There is currently no legal provision on how a senator will interact with the county government. However it should be noted that a senator is a key person on decisions to be made, and the division and allocation of revenue. This is one area where the framework for the relationship needs to be developed further.

8.6 How should disputes between a county government and national government be resolved?

The Intergovernmental Relations Act 2012 includes the provisions for dispute resolution (Part IV). Sections 33 and 34 provides for disputes to be mediated by the Council of County Governors and the National County Coordinating Summit.

Resolution of disputes is also provided for in the National Government Coordination Act (see point 8.2).

8.7 How should disputes between counties be resolved?

The Council of County Governors has been established under the Intergovernmental Relations Act to resolve disputes between counties.

Section 43 of the County Governments Act 2012 provides for the Attorney General to represent county governments, but he/she cannot do so in an intergovernmental dispute or in disputes between counties, as the AG is not a shared institution, but is a cabinet minister. Hence, it will be particularly important to resolve such disputes by mediation.

¹ *National Government Coordination Act 2013 Part IV - Collaboration and Resolution between the National and County Governments on issues of Apparent Concurrent Mandate.*

8.8 What supervisory powers are there over a county government?

Section 192 of the Constitution provides for the President to suspend a county government which is expanded on in Part XIII of the County Governments Act 2012. The circumstances for suspension are in an emergency arising out of internal conflict or war or other exceptional circumstances. Section 123 of the Constitution defines the exceptional circumstances as being where 10 percent of registered voters support a petition. Senate can lift the suspension at any time or can petition to remove the Governor.

ANNEX 1: TRANSFER OF FUNCTIONS TO COUNTY GOVERNMENTS

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Section 15 of the Sixth Schedule to the constitution provides that ‘Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them.

Pursuant to the provisions of Section 23(1) of the Transition to Devolved Government Act, 2012, the TA is required to identify functions listed in the Fourth Schedule of the Constitution that may be transferred to county governments immediately after the first elections under the Constitution. This was done through **Legal Notice No 16 of 2013**.

Section 23 (2) of the Transition to Devolved Government Act, 2012 provides that after the initial transfer of functions every county government shall make a request in the prescribed manner to the Authority for transfer of other functions in accordance with section 15 of the Sixth Schedule to the Constitution.

Section 24 of the Transition to Devolved Government Act, 2012 provides the following criteria that should be met for the transfer of functions:

- (a) whether there is in existence legislation relating to the function applied for;
- (b) whether a framework for service delivery has been put into place to implement the function;
- (c) whether, where applicable, the county government has identified or established administrative units related to the function;
- (d) whether the county government has undertaken a capacity assessment in relation to the function;
- (e) the arrangements for and the extent of further decentralization of the function and provision of related services by the county government;
- (f) whether there is the required infrastructure and systems to deliver the function;
- (g) whether the county government has the necessary financial management systems in place;
- (h) whether the county government has an approved plan in relation to the function;
- (i) and any other variable as may be prescribed after consultations between the Authority, county governments and the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation.

Counties are therefore invited to initiate processes that will ensure there is capacity to undertake the functions as provided under the Fourth Schedule to the Constitution, keeping in mind the criteria established under Section 24 of the Transition to Devolved Government Act.

	Functions as listed in the Fourth Schedule of the Constitution of Kenya 2010	Functions gazetted by Legal Notice No. 16 of 2013 pursuant to Section 23 of the TGDA	Functions ready for transfer by 1st of July 2013
1.	Agriculture, including— (a) crop and animal husbandry; (b) livestock sale yards; (c) county abattoirs; (d) plant and animal disease control; and (e) fisheries.	Agriculture: (a) livestock sale yards; (b) county abattoirs/slaughter house services.	Agriculture: (a) crop and animal husbandry (b) plant and animal disease control; and fisheries.
2.	County health services, including, in particular— (a) county health facilities and pharmacies; (b) ambulance services; (c) promotion of primary health care; (d) licensing and control of undertakings that sell food to the public; (e) veterinary services (excluding regulation of the profession); (f) cemeteries, funeral parlours and crematoria; and (g) refuse removal, refuse dumps and solid waste disposal.	County health services, including, in particular— (a) county health facilities and pharmacies; (b) ambulance services; (c) promotion of primary health care; (d) licensing and control of undertakings that sell food to the public; (e) veterinary services (excluding regulation of the profession); (f) cemeteries, funeral parlours and crematoria; and (g) refuse removal, refuse dumps and solid waste disposal.	County Health Services (a) all county health facilities (including provincial general hospitals) and pharmacies in counties not listed in Legal Notice No. 16 of 2013 (b) ambulance services in counties not listed in Legal Notice No. 16 of 2013 (c) promotion of primary health care; (d) licensing and control of undertakings that sell food to the public; (e) veterinary services (excluding regulation of the profession).
3.	Control of air pollution, noise pollution, other public nuisances and outdoor advertising.	Control of outdoor advertising.	Control of air pollution, noise pollution, other public nuisances.
4.	Cultural activities, public entertainment and public amenities, including— (a) betting, casinos and other forms of gambling; (b) racing; (c) liquor licensing; (d) cinemas; (e) video shows and hiring; (f) libraries; (g) museums; (h) sports and cultural activities and facilities; and (i) county parks, beaches and recreation facilities.	Cultural services, public entertainment and public amenities but limited to— (a) betting services; (b) liquor licensing; (c) video shows and hiring; (d) sports and cultural activities and facilities; (e) county parks, beaches and recreation facilities.	Cultural services, public entertainment and public amenities— (a) racing (b) cinemas (c) libraries; (d) museums
5.	County transport, including— (a) county roads; (b) street lighting; (c) traffic and parking (d) public road transport; and (e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.	County Transport— (a) access roads; (b) street lighting; (c) traffic and parking.	County Transport— (a) county roads (b) public road transport (c) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
6.	Animal control and welfare, including— (a) licensing of dogs; and (b) facilities for the accommodation, care and burial of animals.	Animal control and Welfare— (a) licensing of dogs; (b) facilities for the accommodation, care and burial of animals.	Already transferred.

7.	Trade development and regulation, including— (a) markets; (b) trade licences (excluding regulation of professions); (c) fair trading practices; (d) local tourism; and (e) cooperative societies.	Trade development and regulation— (a) markets; (b) trade licensing (excluding regulation of professionals); (c) local tourism.	Trade development and regulation— (a) fair trading practices (b) cooperative societies.
8.	County planning and development, including— (a) statistics; (b) land survey and mapping; (c) boundaries and fencing; (d) housing; and (e) electricity and gas reticulation and energy regulation.	County planning and development— (a) land survey and mapping; and (b) housing.	County planning— (a) statistics; (b) boundaries and fencing; (c) electricity and gas reticulation and energy regulation.
9.	Pre-primary education, village polytechnics, homecraft centres and childcare facilities.	Pre-primary education, home-craft centre and childcare facilities.	Village polytechnics.
10.	Implementation of specific national government policies on natural resources and environmental conservation, including— (a) soil and water conservation; and (b) forestry.	Implementation of specific national government policies on natural resources and environment conservation— (a) protection of water springs; (b) protection of wells and dams.	Soil and water conservation; and forestry.
11.	County public works and services, including— (a) storm water management systems in built-up areas; and (b) water and sanitation services.	County public works and services specific to storm water management systems in built-up areas.	Water and sanitation services.
12.	Fire fighting services and disaster management.	Fire fighting services and disaster management.	Already transferred.
13.	Control of drugs and pornography.	Control of drugs and pornography.	Already transferred.
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.		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.

Note: Functions that are not listed here are still being restructured.

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