



IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

**FINALISATION OF OUTSTANDING ISSUES
IN THE TRANSFER OF FUNCTIONS
IN THE AGRICULTURE SECTOR**





**FINALISATION OF OUTSTANDING ISSUES
IN THE TRANSFER OF FUNCTIONS
IN THE AGRICULTURE SECTOR**



OCTOBER 2018

CONTENTS

Executive Summary	vi
CHAPTER ONE: INTRODUCTION	I
1.1 Constitutional Basis for Agriculture Sector Reforms	1
1.2 Objectives of the Research	2
1.3 Methodology of the Research	3
1.4 Challenges in Implementation of the Agricultural Function	5
1.5 Policy and Legal Framework	7
1.6 Organisation of National Government State Corporations	9
CHAPTER TWO: THE CROPS SUB-SECTOR	13
2.1 Unbundling of Functions	13
2.1.1 Crop Husbandry	13
2.1.2 Plant Disease Control	14
2.2 Legislative Review: Crops Sub-Sector	14
2.2.1 Agriculture and Food Authority Act, 2013	14
2.2.2 Crops Act, 2013	15
2.2.3 Kenya Plant Health Inspectorate Service Act, 2012	15
2.2.4 Bukura Agricultural College Act, 1999	25
2.2.5 Agricultural Development Corporation Act (Cap. 444)	25
2.2.6 Agricultural Finance Corporation Act (Cap. 323)	26
2.2.7 National Cereals and Produce Board Act (Cap. 338)	26
2.2.8 Seeds and Plant Varieties Act (Cap. 326)	27
2.2.9 Plant Protection Act (Cap. 324)	28
2.2.10 Tobacco Control Act, 2007	29
2.2.11 Irrigation Act (Cap 347)	29
2.3 Functional Review: Crops Sub-Sector State Corporations	32
CHAPTER THREE: THE LIVESTOCK SUB-SECTOR	40
3.1 Unbundling of Functions	40
3.1.1 Animal Husbandry	40
3.1.2 Animal Disease Control	41

3.2	Legislative Review: Livestock Sub-Sector	42
3.2.1	Animal Technicians Act, 2010	42
3.2.2	Animal Diseases Act (Cap. 364)	42
3.2.3	Branding of Livestock Act (Cap. 357)	42
3.2.4	Cattle Cleansing Act (Cap. 358)	44
3.2.5	Hide, Skin and Leather Trade Act (Cap. 359)	44
3.2.6	Kenya Meat Commission Act (Cap. 363)	44
3.2.7	Meat Control Act (Cap. 356)	46
3.2.8	Stock and Produce Theft Act (Cap. 355)	46
3.2.9	Dairy Industry Act (Cap. 336)	46
3.2.10	Uplands Bacon Factory Act (Cap. 362)	46
3.3	Functional Review: Livestock Sub-Sector State Corporations	48
CHAPTER FOUR: THE FISHERIES SUB-SECTOR		54
4.1	Unbundling of Functions	54
4.2	Legislative Review: The Fisheries Sub-Sector	55
4.2.1	Fisheries Management and Development Act, 2016	55
4.3	Functional Review: Fisheries Sub-Sector State Corporations	66
CHAPTER FIVE: CROSS-SECTORAL AREAS		70
5.1	Legislative Review: Cross-Cutting Statutes	70
5.1.1	Kenya Agricultural and Livestock Research Act, 2013	70
5.1.2	Climate Change Act, 2016	71
5.1.3	National Drought Management Authority Act, 2016	71
5.1.4	Biosafety Act (Cap. 357)	71
5.1.5	Fertilizers and Animal Foodstuffs Act (Cap. 365)	72
5.1.6	Pest Control Products Act (Cap. 346)	72
5.2	Functional Review: Cross-Cutting State Corporations	73
CHAPTER SIX: CONCURRENCE OF FUNCTIONS		75
6.1	Water Harvesting, Storage and Irrigation Infrastructure Development	77
6.2	Research and Capacity Building	78

6.3	Demand Driven Human Resource Development	80
6.4	Marketing of Agricultural Produce	81

**CHAPTER SEVEN: STRATEGY FOR FUNCTIONAL AND INSTITUTIONAL
RESTRUCTURING OF THE AGRICULTURE SECTOR** **82**

7.1	Recommendations	82
7.2	Implementation Matrix	84

List of Abbreviations and Acronyms

ACFC	Agrochemical and Food Company
ADC	Agricultural Development Corporation
AFA	Agriculture and Food Authority Act, 2013
AFC	Agricultural Finance Corporation
AHADI	Agile and Harmonized Assistance for Devolved Institutions
AIRC	Agricultural Information Resource Center
ATC	Animal Technicians Council
IGRTC	Intergovernmental Relations Technical Committee
CIC	Commission on the Implementation of the Constitution
COK	Constitution of Kenya, 2010
CoG	Council of Governors
ICDC	Industrial and Commercial Development Corporation
KALRO	Kenya Agricultural and Livestock Research Organization
KBS	Kenya Bureau of Standards
KCC	The New Kenya Cooperative Creameries
KENTTEC	Kenya Tsetse and Trypanosomiasis Eradication Council
KEPHIS	Kenya Plant Health Inspectorate Service Act, 2012
KEVEVAPI	Kenya Veterinary Vaccines Production Institute
KFS	Kenya Forest Service
KFS	Kenya Fisheries Service
KLDC	Kenya Leather Development Council
KMC	Kenya Meat Commission
MoALF	Ministry of Agriculture, Livestock and Fisheries
MoDP	Ministry of Devolution and Planning
NCPB	National Cereals and Produce Board
NDMA	National Drought Management Authority
NLC	National Land Commission
OAG	Office of the Attorney General
OP	Office of the President
TA	Transition Authority
USAID	United States Agency for International Development

Executive Summary

The Intergovernmental Relations Technical Committee (IGRTC) commissioned this study intends to determine the status of the transfer of functions in the agriculture sector. The scope of the study called for the identification of laws in the crops, livestock and fisheries sub-sectors that require review and alignment to the Constitution of Kenya, 2010 (COK, 2010). The legislative review aims to facilitate functional analysis and implementation of the functions by the relevant levels of government. A second aim of the study is to identify concurrent functions and clarify the levels of government to perform segments of functions.

This report details the findings deduced from the study and proposes an array of legal, institutional and intergovernmental operative reforms that if implemented will, to a great extent, deal with the identified challenges and lead to improved service delivery in the sector. While there are many challenges particular to each agricultural sub-sector, this study has limited itself to an analysis of governance challenges facing the sector, which has meant that eight years after the adoption of the COK, 2010 and five years after the establishment of county governments, the functions in the agriculture sector are still not being implemented as directed by the Fourth Schedule to the Constitution. The governance challenges can largely be traced to the following issues: (i) poor analysis of the unbundled functions; (ii) ambiguity and redundancy of legislation; (iii) existing institutional and legal infrastructure that violates the Constitution's allocation of functions between the two government levels, (iv) slow operationalization of intergovernmental relations structures which could have hastened the process of consultations between the national and county governments in resolving the issue of transfer of county government agricultural functions still being implemented by national government state corporations (v) perennial inadequacy of human and financial resources to enable effective implementation of devolved functions.

Chapter one of this report gives a broad overview of the constitutional basis for the proposed amendment of many pieces of agriculture sector legislation to pave the way for institutional re-alignment of state corporations in each sub-sector. The Chapter also gives an overview of the current policy, legal and institutional framework governing the sector.

Chapters two, three and four of this report respectively give a detailed review of the legislative and institutional arrangements in the crops subsector, livestock subsector and fisheries subsector. Legislation and institutions that are cross-cutting to all sub-sectors

are analysed in chapter five. In summary, this research has revealed that multiple national government state corporations are performing county government functions. While it may be easy to attribute this to the state's impunity of non-compliance with the law, this is not necessarily the whole story. The study has revealed that existing legislation gives these state corporations the mandate to perform county government functions. This can be attributed to two main issues:

- ♦ Majority of legislation enacted before August 2010 is yet to be amended or repealed to enable alignment with the post-2010 devolved governance structure. The import of this is that such statutes do not recognise the presence of county governments. Hence, as expected, state corporations established therein are implementing functions for which they were created at the time but are now county government functions.
- ♦ Some legislation that was enacted after August 2010, and which should respect the functional and institutional integrity of county governments do not necessarily do so. This may be partially attributed to the slow pace of analysis and unbundling of the Fourth Schedule functions at the time, completed only in late 2013 by the defunct Transition Authority. This, in turn, meant that legislators and other state organs responsible for the development of laws between August 2010 and December 2013 did not have the benefit of uniform guidance on the scope of each of these functions for either the national or county governments. This, therefore, calls for a review of some of the crucial agriculture sector laws enacted after 2010.

The study has also revealed that some legislation established a multiplicity of institutions, which though performing national government roles, are duplicative in their functional mandate. This, combined with the above-explained issues of national government institutions performing county government roles means that an institutional re-alignment of the sector's state-corporations is necessary. This is likely to result in either:

- ♦ A reduction in the scope of some state corporations.
- ♦ A merger of state corporations performing dual roles, or whose functions are best performed under one management body.
- ♦ Dissolution of redundant state corporations.

Chapter six of this report proposes areas of possible intergovernmental partnership between the two levels of government. This takes cognizance of the fact that functions in the agriculture sector cannot be implemented in a silo, but that its success depends on efforts made in soil and water conservation, agricultural research, local and international trade, opening up of markets through construction of national trunk roads, etc. Hence, while there are instances of clear functional demarcation between the role of the

national and county governments and call for legal and institutional reforms, there are also instances where the two levels of government must work together to ensure food security for the people of Kenya.

Chapter seven of this report outlines strategies for the re-alignment of the sector, that if implemented should lead to better coordination and service delivery in the sector. These include (i) implementation of proposed legal and regulatory reforms; (ii) restructuring of agriculture sector state corporations to allow county governments to perform their implementation functions; (iii) operationalisation of agricultural sector intergovernmental committees to guide consultations and mediations amongst governments; (iv) equitable sharing of national revenue to the two levels of government by the National Assembly; (v) pursuit of strategic approaches to the development of county policies and legislation, followed by their implementation; (vi) integrating meaningful public participation in the implementation of agricultural programmes.

Lastly, chapter seven also gives an implementation matrix with activities to be done within specified timelines by different actors at the national or county levels of government to (i) commence and see through the amendment of legislation and re-alignment of state corporations in the sector; (ii) pursue intergovernmental consultations in implementation of functions and sharing of resources when necessary or the mediation of related disputes.

INTRODUCTION

1.1 Constitutional Basis for Agriculture Sector Reforms

The agriculture sector has remained the backbone of Kenya's economy and general development. It is the largest contributor to the country's gross domestic product at 24 per cent, and the largest employer at about 74 per cent¹. Consequently, any positive or negative trends in the agriculture sector greatly impact on the health, food security, poverty incidence levels and general quality of life of a majority of the people of Kenya, whose livelihoods and sustenance depend either directly or indirectly on this sector.

The promulgation of the Constitution of Kenya in 2010 not only brought about a transformative shift in the country's governance structure but also in the strengthening of a Bill of Rights. The importance of food security is underscored by the recognition as a socio-economic right to the fact that each person should be free from hunger and have adequate food of acceptable quality². It places responsibility on the State to take the legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the socio-economic rights³.

On the governance front, the country transformed from a single central government system to a devolved one, comprising of one national and 47 county governments, all of which was institutionalized following the March 2013 general elections. The Constitution, through its Fourth Schedule, distributes functions to each level of government, with their implementation to be guided by the objects and principles of devolution⁴. In this distribution, the national government has conferred the function of policymaking and setting of standards in various sectors, inclusive of agriculture,⁵ as well as building capacities and providing technical assistance to county governments⁶. In practical terms, the national government, through its Ministry of Agriculture, Livestock and Fisheries, is mandated to facilitate and coordinate the national development planning process,

¹ Kenya Bureau of Statistics, *Strategic Plan for Agricultural and Rural Statistics 2015-2022*

² Article 43, COK, 2010

³ Article 21, COK, 2010

⁴ Articles 174 and 175, COK, 2010

⁵ Paragraph 33, Part 1 of the Fourth Schedule, COK, 2010

⁶ Paragraph 33, Part 1 of the Fourth Schedule, COK, 2010

oversee the implementation of Kenya's Vision 2030 Development blueprint and provide leadership in the implementation of its policies that lead to the attainment of food security. On the other hand, county governments are allocated the major responsibility of implementation of activities within the agricultural sector inclusive of crop and animal husbandry; livestock sale yards; county abattoirs; plant and animal disease control and fisheries.

Key to the success of devolution is the separation of powers between the national and county governments, and the need for county governments to have reliable sources of revenue to enable them to govern and deliver services effectively. The Constitution gave a pathway to the transfer of functions⁷ from the central government to the then newly formed national and county governments, with the expectation being that of a gradually phased transfer.

The defunct TA developed a framework for the analysis of functions, which was used to transfer functions in three phases via three gazette notices, i.e. Legal Gazette Notice No.16 of February 1, 2013; Legal Notices No. 137-183 of August 9, 2013; and Legal Notice No. 33 of March 17, 2014. Upon the end of TA term, the IGRTC took its residual functions⁸. It is within this context that IGRTC is reviewing the status of the transfer of functions within the agricultural sector, with a view of (i) finding out what has been done and what is yet to be done; (ii) ensuring that each level of government is doing its part in supporting the people of Kenya achieve food security.

In the pre-2010 constitutional dispensation, the agricultural sector was highly centralised

1.2 Objectives of the Research

with many departments and agencies in the sector managed under different ministries of the then central government. An April 2013 study⁹ of the sector indicated that agriculture was managed under at least 10 sub-sectors, i.e. crops; horticulture; livestock; fisheries; land; water; cooperatives and marketing; environment and natural resources sub-sector; regional development; and development of arid and semi-arid areas (ASAL). The fact that all the mentioned sub-sectors fell under different ministries made the transition to a consolidated and harmonious sub-sector for the county governments a complicated process.

7 Paragraph 15 of the Sixth Schedule, COK, 2010

8 Section 12(b), Intergovernmental Relations Act, 2012

9 Muriu AR & Biwott H, 'Agricultural Sector functional analysis: A policy regulatory and legislative perspective (2013) p. 1.

Despite the Fourth Schedule of the Constitution having detailed the separation of functions to be undertaken by each level of government and following the unbundling of functions by the defunct TA between 2013 to 2015, the reality is that implementation of the functions did not progress as smoothly as was expected. There have been many instances of duplication of responsibilities as well as the existence of functions that despite being transferred to county governments, are still not being performed by the national government for various reasons. Further, weak intergovernmental sectoral structures for the agricultural sectors has compromised the delivery of concurrent functions to be performed by both levels of government, meaning that consultations that could move the sector forward have been inadequate and ineffective.

IGRTC has therefore commissioned a study, whose objective is to:

- (a) Review existing literature on the status of the transfer of functions in the agriculture sector with a view of clarifying the relevant levels of government to perform given segments of concurrent functions.
- (b) Identify laws and policies in the crops, livestock and fisheries sub-sectors to flag out the sections that require review and alignment to the COK, 2010 to facilitate implementation by the relevant levels of government.
- (c) Identify concurrent functions and clarify the levels to perform which segment of the function.

1.3 Methodology of the Research

1.3.1 De-briefing session at an inception meeting

The consultant began with a detailed de-briefing from IGRTC, and specifically with members and staff responsible for the IGRTC sub-committee on Functional Analysis, Costing and Transfer. The purpose of this inception meeting was to clarify the consultant's and IGRTC collective understanding of the given tasks and responsibilities, as well as agree on specific action points for each party.

1.3.2 Review of relevant documents and literature

The literature review focused on carrying out a structured and systematic reading of the available literature related to the various aspects of the agricultural sector in Kenya. This stage was key in understanding the current status of the transfer of functions, as well as identifying gaps in various policies and legislation. The review also led to refining recommendations, identification of potential areas for discussion during stakeholder workshops and summarizing what was generally known in the agricultural sector, in terms of legislation and institutional frameworks in respect of agriculture-related functions.

The following documents were identified to form part of the literature review:

- ♦ The Constitution of Kenya, 2010;
- ♦ Agricultural Sector Development Strategy (2010-2020);
- ♦ Fisheries Policy, 2008;
- ♦ National Livestock Policy, 2008;
- ♦ Kenya Forest Policy, 2008;
- ♦ Agricultural Development Corporation Act (Cap. 444);
- ♦ Agricultural Finance Corporation Act (Cap. 323);
- ♦ Agriculture and Food Authority Act (No. 13 of 2013);
- ♦ Kenya Agricultural and Livestock Research Act (No. 17 of 2013);
- ♦ Crop Production and Livestock Act (Cap. 321);
- ♦ Crops Act (No. 16 of 2013);
- ♦ Fisheries Management and Development (No. 35 of 2016);
- ♦ Relevant reports of the Kenya Law Reform Commission;
- ♦ Relevant reports of the Council of Governors;
- ♦ The Transition Authority end term report, i.e. Report on the Status of Devolution: Achievements, Challenges and Lessons Learnt (June 2015);
- ♦ CIC's¹⁰ Report on the Assessment of the Implementation of the System of Devolved Government, 2014;
- ♦ CIC's Assessment of the Implementation of the Transferred Functions to The County Governments, 2015;
- ♦ CIC's End Term, 2015;
- ♦ Relevant reports of the Ministry of Devolution and Planning;
- ♦ Relevant reports of the COG; and
- ♦ Any other documents that add value to the review, as either availed by IGRTC or prove to be relevant in due process.

1.3.3 Interviews and Stakeholders' Workshop

While information collection was mainly through desk research, the consultant carried out his tasks through participatory approaches, involving interviews with relevant officers. Proposed key informants were representatives of the Ministry of Agriculture, Livestock and Fisheries; The COG; representatives of the relevant departments of county governments and staff of IGRTC.

¹⁰ The defunct Commission for the Implementation of the Constitution

Following the literature review and interviews, the consultant prepared a report and facilitated a stakeholder's workshop whose aim was to communicate the findings of the research including proposals for institutional and legislative review to facilitate a conclusion on the functional assignment between the national and county governments. IGRTC advised on the date of conduct of the planned stakeholders' workshop, identified the specific officials to participate in the workshop and facilitated rapporteurs for the same.

It was proposed that the workshop take no more than three days with a minimum two days required for discussions on the contents of the report and recommendations for adjustments on any of the matters raised in the report. A proposed workshop program was presented to IGRTC together with the draft report for adoption.

The transfer of agricultural functions from the former central government to the national and county governments took place in two batches, formally via three Gazette Notices

1.4 Challenges In Implementation of the Agricultural Function

issued by the defunct TA, i.e.

- ♦ Legal Gazette Notice No.16 of February 1, 2013
- ♦ Legal Notices No. 137-183 of August 9, 2013

The August 2013 Gazette Notice was especially important because it unbundled Fourth Schedule functions in the agriculture and other sectors and transferred them to county governments. Despite this extensive unbundling of functions, the sector is plagued with many implementation challenges. In the early years, the challenges were attributed to factors such the fact that former local authorities had not been performing the majority of tasks required in this function, unlike, say in water and sanitation, where the direct service providers were companies wholly owned by the former local authorities. However, five years after the establishment of the devolved system of government, some challenges in the implementation of the agricultural function are still being experienced.

The fact that the sector is still experiencing challenges calls for a review of the status of functional assignment in each of the unbundled functions to (i) determine and agree on possible areas on collaboration, through intergovernmental arrangements; and (ii) amend areas of law that allocated functions to the wrong level of government, thereby rendering parts of such laws unconstitutional.

This report analyses the governance challenges facing the sector, which if not resolved, may negatively affect progress being made in other supportive sectors. The general challenges are as follows:

1. **Poor analysis of the unbundled functions:** In an ideal situation, an intergovernmental analysis on the actual scope of the unbundled functions should have taken place before gazettelement of the transfer of agricultural functions to counties. However, no such analysis took place, nor was a common understanding reached between the national and county governments after gazettelement, i.e. since 2013 to date. The result is that each level of government is left interpreting the relevant laws to suit their specific agenda.
2. **Inadequate human resources capacity:** County governments have been continuously plagued with a lack of human resources, in both skills and numbers. This is especially the case for extension officers to provide advisory services to farmers and pastoralists. This factor has been previously used by the national government to allege that county governments have inadequate capacity to implement functions in a sector as important as agriculture. On their part, county governments have previously accused the national government of refusing to release and consequently transfer staff to their county public service boards.

A second reason for the human resources problem is that the transfer of the agricultural function was not done in an asymmetrical and phased manner as was expected by the Constitution¹¹; instead, majority of the functions were transferred by the August 2013 Gazette Notice simultaneously. The result of this was that county governments were deemed not to have been ready for the implementation of certain functions. Sectors such as agriculture, which were under the direct control of the former central government, as opposed to the former local authorities, were especially affected.

3. **Ambiguity and unconstitutionality of legislation:** The foregoing challenges can be termed as “historical challenges” and should have been resolved five years into the full implementation of devolution. However, challenges in the agricultural sector continue to persist, and perhaps the source is the ambiguity and contradictions in various pieces of legislation and regulations. The main problem is that the major laws governing the sector do not abide by the spirit of the Constitution, more so on the issue of unbundled functional assignment to county governments. The result is that the national government is left performing several functions, which

¹¹ Paragraph 15, Sixth Schedule of the COK, 2010

are either whole county government functions, or those that should ideally be performed collaboratively within the intergovernmental precepts of Articles 6(2) and 189 of the Constitution. Specific problematic provisions of the legislation are discussed in greater detail in under the chapters of this report analysing specific sub-sectors, i.e. crops subsector, livestock subsector and fisheries sub-sector.

Despite much work having been done to streamline legislation governing the sector, in most cases, these are individually done instead of in a wholesome manner. Secondly, consultations are not always done in a meaningful manner, resulting in the enactment of legislation with provisions that do not necessarily respect the principles of devolution. The result of this is long legal stalemates between the national government and county government, stalling operations in the sector.

I.5 Policy and Legal Framework

Over the years, to improve the agricultural sector, Kenya has developed several policy documents the main ones being the Kenya Vision 2030 (2008-2030), which is the long term development blueprint for the country. Other agricultural policy documents developed over time included: Kenya's Strategy for Revitalizing Agriculture (launched in 2004); Agricultural Sector Development Strategy (2010-2020); National Horticulture Policy, 2012; Fisheries Policy, 2008; National Livestock Policy, 2008; Kenya Forest Policy, 2008; Cooperative Development Policy, 2008; Food and Nutrition Security Policy, 2011; etc.

The country has also enacted several legislations over the years to operationalize the above policies. Majority of these were enacted before the promulgation of the COK, 2010, while a few others were enacted after 2010. It is notable that the Acts of Parliament enacted before 2010 and are yet to be amended do not, as expected, make provision for devolution and county governments. On the other hand, legislation enacted after 2010 are expected to abide by the constitutional principles of distinct nature of the national and county governments; interdependence and intergovernmental relations; consultation and collaboration between the two levels. However, as will be observed in the in-depth analysis of these post-2010 Acts, these devolution principles are at times ambiguous and in some instances completely not provided for. This has created confusion in the sector, with accusations, mainly levied towards the national government by county governments of usurpation of powers, non-consultations etc., with some charges only being settled in courts of law.

This report gives an analysis of enacted agricultural legislation in four categories as follows:

<p>Legislation Governing the Crops Sub-Sector</p> <ol style="list-style-type: none"> 1. Crops Act, 2013 2. Kenya Plant Health Inspectorate Service Act, 2012 3. Bukura Agricultural College Act, 1999 4. Agricultural Development Corporation Act (Cap. 444) 5. Agricultural Finance Corporation (Cap. 323) 6. National Cereals and Produce Board (Cap. 338) 7. Seeds and Plant Varieties Act (Cap. 326) 8. Plant Protection Act (Cap. 324) 9. Tobacco Control Act, 2007 	<p>General Agriculture Sector Legislation</p> <ol style="list-style-type: none"> 1. Agriculture and Food Authority Act, 2013 2. Kenya Agricultural and Livestock Research Act, 2013 3. Climate Change Act, 2016 4. National Drought Management Authority, 2016 5. Biosafety Act (Cap. 357) 6. Fertilizers and Animal Foodstuffs Act (Cap. 365) 7. Pest Control Products Act (Cap. 346)
<p>Legislation Governing the Livestock Sub-Sector</p> <ol style="list-style-type: none"> 1. Animal Technicians Act, 2010 2. Animal Diseases Act (Cap 364) 3. Branding of Livestock Act (Cap. 357) 4. Cattle Cleansing Act (Cap. 358) 5. Hide, Skin and Leather Trade Act (Cap. 359) 6. Kenya Meat Commission Act (Cap. 363) 7. Meat Control Act (Cap. 356) 8. Stock and Produce Theft Act (Cap. 355) 9. Dairy Industry Act (Cap. 336) 10. Uplands Bacon Factory Act (Cap. 362) 	<p>Legislation Governing the Fisheries Sub-Sector</p> <ul style="list-style-type: none"> ▪ Fisheries Management and Development Act, 2016

While the above list of legislation governing the agricultural sector is not exhaustive, it covers a majority of Acts that directly affect the agricultural sector. It is acknowledged that there are many other Acts of Parliament affecting the sector. Some have a direct impact on the quality of agricultural produce as they govern water catchments, forestry, soil and environmental conservation; others affect all economic aspects in the country, e.g. legislation on price control and transport; yet others are cross-cutting to science, agriculture and the arts sector, e.g. matters on indigenous knowledge.

This research study has however confined itself to the review of legislation that falls directly under the functional mandates of the national ministry or county departments responsible for crops, livestock and fisheries management. Examples of legislation not reviewed in this study, which may have a bearing on the agricultural sector, are as listed below:

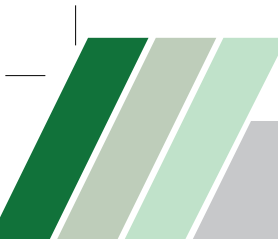
1. Wildlife Conservation and Management Act, 2013;
2. Forest Conservation and Management Act, 2016;

3. Community Land Act, 2016
4. Land Act, 2012
5. Land Registration Act, 2012
6. Physical Planning Act, 1996
7. Protection of Traditional Knowledge and Cultural Expressions Act, 2016;
8. Price Control (Essential Goods) Act, 2011;
9. Co-Operative Societies (Cap. 490)
10. Ewaso Ng'iro North River Basin Development Authority (Cap. 448)
11. Ewaso Ng'iro South River Basin Development (Cap. 448)
12. Kerio Valley Development Authority (Cap. 441)
13. Lake Basin Development Authority (Cap. 442)
14. Rating (Cap. 267)
15. Sacco Societies, 2008
16. Tana and Athi Rivers Development Authority (Cap. 443)

Chapters two, three and four of this report analyze the existing legislation in the crops, livestock and fisheries sub-sectors, while chapter five reviews laws cutting across all agriculture subsectors.

1.6 Organization of National Government State Corporations

It is generally agreed that the agriculture sector is the main employer of a majority of Kenyan citizens. In requiring county governments to directly implement the agricultural functions, the Constitution laid down a framework to ensure that services in this sector were brought closer to the people for greater efficiency. It was envisioned that this would result in a more reliable food basket for Kenyans, more employment opportunities and consequently improved living standards. This can only be achieved through proper management of the sector as was envisioned by the Constitution and respect to its Fourth Schedule distribution of functions. Hence, the policy, legal and institutional arrangements of the sector, as well as resource allocation between the two levels of government should reflect the fact that the agricultural function is to be almost wholly implemented by county governments, with the national government's role mainly limited to setting policies, regulations and standards and managing research and national and international level marketing initiatives. However, a significant number of functions that the Constitution allocated to county governments are being performed through national government state corporations.



This report reviews the functions of existing state corporations in each agricultural sub-sector, i.e. crops subsector, livestock subsector and fisheries subsector. The analysis and recommendations given in this report regarding re-alignment of state corporations take into consideration the recommendations of the 2013 Report of the Presidential Taskforce on Parastatals Reform. Some of the mandates of the Taskforce were to:

- “j. identify functions previously performed by State Corporations on behalf of the national government but assigned to the county governments at Schedule Four (4) of the COK, 2010.
- k. Recommend how State Corporations performing functions of the national government will interface with county governments;”

While the Taskforce’s recommendations are indeed useful, it should be noted that majority of its research was done before the full functioning of county governments, and therefore before the full potential of county governments could be practically appreciated. The Taskforce was appointed on 23rd July 2013, i.e. just four months after the establishment of county governments and it presented its final report in October 2013. It is observed that the recommendations of the Taskforce’s Report are weak on the roles of county governments. Page 13 of the Taskforce’s Report expresses these sentiments:

“No public views suggested how State Corporations performing national functions could interface with county governments as county corporations.”

In its Executive Summary, the Taskforce Report (page xxv) recommended the following, which is repeated throughout the report in matters relating to the alignment of the functions of state corporations to the devolved system of government:

“...discussions between the national government and county governments regarding the future of the State Agencies whose functions have been devolved. It is expected that those discussions will herald appropriate decisions on the way forward for those Agencies.”

The proposals for the re-alignment of the sector’s institutional structure given in this IGRTC Report, therefore:

- (a) Reviews the functions of the agriculture sector state agencies concerning the role of the national and county governments as described in the COK, 2010.

- (b) Gives due regard of the Taskforce Report, while enhancing those 2013 recommendations to take into account the constitutional mandate of county governments in the agricultural sector and consultations between county governments and the COG with the national government in the ensuing five years.

In summary, the recommendations on the re-alignment of state corporations touch on the functions of:

The state corporations under the Ministry of Agriculture, Livestock and Fisheries, concerning:

- ♦ Administration of the Crops Act, 2013;
- ♦ Licensing and marketing within the agriculture sub-sectors; Fishing licensing;
- ♦ Livestock policy management;

State corporations within the Ministry of Industry, Trade and Cooperatives on matters relating to:

- ♦ Leather Development;
- ♦ Cooperative production, marketing and value addition;
- ♦ Promotion of cooperative ventures.

This report presents an analysis of 34 relevant state corporations within each department of the above-mentioned ministries, as outlined in Executive Order No.1 of 2018 on the organization of the national government. The table below outlines these state corporations.

Ministry of Agriculture, Livestock and Fisheries

State Department for Crops Production

1. Agricultural and Food Authority
2. Agricultural Development Corporation
3. Agricultural Finance Corporation
4. Agricultural Information Resource Centre (AIRC) and AIRC Revolving Fund
5. Agro-Chemical and Food Company
6. Bukura Agricultural College
7. Commodities Fund
8. Chemelil Sugar Company
9. Miwani Sugar Company (*under receivership*)
10. Mumias Sugar Company
11. Muhoroni Sugar Company (*under receivership*)
12. Nzoia Sugar Company
13. South Nyanza Sugar Company
14. Kenya Plant Health Inspectorate Services
15. Kenya Seed Company
16. National Cereals and Produce Board
17. Nyayo Tea Zones Development Corporation
18. Pest Control Products Board

State Department for Livestock

19. Kenya Dairy Board
20. Kenya Meat Commission
21. Animal Technicians Council
22. Kenya Veterinary Vaccine Production Institute
23. Kenya Veterinary Board

State Department for Fisheries, Aquaculture and the Blue Economy

24. Kenya Fisheries Service
25. Fish Marketing Authority

State Department for Agricultural Research

26. Kenya Agricultural and Livestock Research Organization
27. National Biosafety Authority
28. Kenya Animal Genetics Resource Centre
29. Kenya Marine & Fisheries Research Institute
30. Kenya Tsetse & Trypanosomiasis Eradication Council (KENTTEC)

State Department for Irrigation

31. National Irrigation Board

Ministry of Industry, Trade and Cooperatives

State Department for Industrialisation

32. Kenya Leather Development Council

State Department for Cooperatives

33. Kenya Planters Cooperative Union
34. New Kenya Creameries Cooperative Limited

THE CROPS SUB-SECTOR

2.1 Unbundling of Functions

2.1.1 Crop Husbandry

The unbundled functions within the crops sub-sector are as outlined below.

Unbundled functions: crops husbandry

1. Provision of agricultural extension services/farmer advisory services.
2. Development and implementation of programmes in the agricultural sector to address food security in the county.
3. Construction of grain storage structures.
4. Enforcement of regulations and standards on quality control of inputs, produce and products from the agricultural sector.
5. Availing farm inputs such as certified seeds, fertilizer and other planting materials (cassava cutting, potato vines etc.) to farmers.
6. Development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture.
7. Promotion of market access for agricultural products.
8. Provision of infrastructure to promote agricultural production and marketing as well as agro-processing and value chains.
9. Enhancing accessibility to affordable credit and insurance packages for farmers.
10. Management of Agricultural Training Centers and Agricultural Mechanization Stations.
11. Land development services such as the construction of water pans for horticultural production for food security.
12. Formulation and review of country-specific policies.
13. Developing and enacting legislation and regulatory frameworks for country-specific policies.
14. Implementation of national and county-specific policies and legislation.

The main challenges facing implementation are:

- (a) Despite this clear functional assignment, the Agriculture and Food Authority Act, 2013 mandated the national government, through the Agriculture and Food Authority, to continue performing some county government functions. The result is an overlap of functions between the national government institutions and county governments.
- (b) There have also been reports of inadequate numbers of agricultural extension officers to offer support and advisory services to farmers across respective counties.
- (c) Existence of multiple laws on the same subject matter.
- (d) Existence of redundant institutions in law, e.g. the Agricultural Development Corporation, whose functions as stated in law are a replica of county government functions.

2.1.2 Plant Disease Control

County governments are mandated to implement specific activities of plant disease control as outlined by the TA unbundling of functions below.

Unbundled functions: plant disease control

Plant disease control including carrying out, coordinating and overseeing:

- Control of plant pests, diseases and noxious weeds that are specific to counties.

The main challenges experienced in this function is that contrary to the Fourth Schedule and below listed unbundling of functions, the Kenya Plant Health Inspectorate Service Act, 2012 mandates the national government, through KEPHIS, to continue performing some county government functions, i.e. those relating to plant disease control, i.e. through Kenya Plant Health Inspectorate Service.

2.2 Legislative Review: Crops Sub-Sector

2.2.1 Agriculture and Food Authority Act, 2013

The Agriculture and Food Authority Act, 2013 was enacted with the hope that it would provide for the consolidation of the laws on the regulation and promotion of agriculture generally, to provide for the establishment of the Agriculture and Food Authority, to make provision for the respective roles of the national and county governments in agriculture excluding livestock and related matters in furtherance of the relevant provisions of the Fourth Schedule to the Constitution and connected purposes.

There have been calls for the review of the AFA Act, 2013, mainly because it does not go far enough in the recognition of the roles of county governments in the agricultural sector. As it is, despite only being enacted in 2013, the Act has already been amended by four pieces of legislation, i.e. Act No. 37 of 2013, L.N. 4/2014, Act No. 7 of 2016 and Act No. 35 of 2016. This may be indicative of disjointedness in the manner that amendments are made, in a piecemeal manner, without wholesome review or adequate consultation of all relevant stakeholders. The Act should, therefore, be wholly reviewed, with participation from both the national and county governments, and other relevant stakeholders, to renegotiate functions of the Authority, and the respective roles of the national and county governments, in line with the principles set out in Articles 6(2) and 189, as well as the distribution of functions in the Fourth Schedule of the Constitution.

2.2.2 Crops Act, 2013

The Crops Act, 2013 was enacted to consolidate and repeal various statutes relating to crops; to provide for the growth and development of crops and connected purposes. Like the AFA Act, 2013, the Crops Act has already been substantially amended on three separate occasions by L.N. 57/2013, L.N. 110/2014, Act No. 7 of 2016.

The Crops Act, 2013 should therefore ideally be reviewed after the review of the AFA Act, 2013. Specifically, the Crops Act should be reviewed in light of the provisions of Section 29 of the AFFA Act, 2013 Act, which rightly captures the roles of the national and county governments in the agricultural sector, and does not bestow upon AFA, known in the Crops Act, 2013, as the Authority, functions that are the domain of county governments, contrary to the distribution of functions between the two levels of government as outlined in the Fourth Schedule to the Constitution.

The AFA Act, 2013 and the Crops Act, 2013 should, therefore, be reviewed for conformity with the Constitution and alignment with each other.

2.2.3 Kenya Plant Health Inspectorate Service Act, 2012

The Kenya Plant Health Inspectorate Service Act, 2012 establishes the Kenya Plant Health Inspectorate Service as a regulatory body for the protection of plants, seeds and plant varieties and agricultural products and provides that the Service shall be responsible for administering several other written laws.

The functions assigned to KEPHIS in the Act have not respected the functional and institutional mandates of county governments as discussed below.

Section No.	Provision in the Act	
Agriculture and Food Authority Act, 2013		
4. Functions of the Authority.	4. The Authority shall, in consultation with the county governments, perform the following functions— (a) administer the Crops Act, under the provisions of these Acts; 4 (b) Regulate, the production, processing, marketing, grading, storage, collection, transportation and warehousing of agricultural and aquatic products excluding livestock products as may be provided for under the Crops Act, and the Fisheries Act.	
4 (d)	(d) be responsible for determining the research priorities in agriculture and aquaculture and to advise generally on research thereof;	
5 (k) Board of the Authority	5.(1) The management of the Authority shall vest in a Board which shall consist of— (k) the chairperson of the Transition Authority or his representative.	
21 (1) Land development guidelines.	21 (1) The Cabinet Secretary shall, on the advice of the Authority, and in consultation with the National Land Commission, provide general guidelines, in this Act referred to as land development guidelines, applicable in respect of any category of agricultural land to the owners or the occupiers thereof.	
22 (2) Rules on preservation, utilization and development of agricultural land	22 (1) The Cabinet Secretary shall, on the advice of the Authority, and in consultation with the National Land Commission, make general rules for the preservation, utilization and development of agricultural land and aquatic resources, either in Kenya generally or in any particular part thereof 23.(1) The Cabinet Secretary, on the advice of. the Authority, and in consultation with the National Land Commission, for the conservation of the soil, or the prevention of the adverse effects of soil erosion on, any land, may prescribe national guidelines for any or all of the following matters	
23	(1) The Cabinet Secretary, on the advice of the Authority, and in consultation with the National Land Commission	
24	(1) The Cabinet Secretary may, on the advice of the Authority, by notice in the Gazette, declare a plant to be a noxious or invasive weed in any area (2) By the establishment of the county government	
40 Participation of farmers	40. (1) For purposes of ensuring effective participation of farmers in the governance of the agricultural sector in Kenya, there shall be close consultation with all registered farmers' organisations in the development of policies or regulations and before the making of any major decision that affects the agricultural sector.	

Recommendation	Justification
Delete sub-section 4(a)	Administration of the Crops Act implies the implementation of functions relating to crop husbandry, which is a county government function. The policy-setting and regulatory function of AFA within the crops sector is already covered in sub-section 4(b)
Amend the clause to restrict the function to policy direction. The Authority could also monitor and advise both levels of government in these areas	This could conflict with the functions of county government – it is not clear whether this goes beyond monitoring and standard-setting and could interfere with the functional responsibilities of county governments
Amend the clause to read: Determine at the national government level and advise at the county government level	In line with national government role on policymaking
Replace with 'chairperson of the Intergovernmental Relations Technical Committee'	To reflect the fact that TA is now defunct and in its place is IGRTC
Include the phrase "subject to the national land policy". Also include the fact that consultations should be with county governments as well.	This is in line with the Constitutional provision in 67 (b) which is the constitutional; framework against which land use is regulated. Secondly, county governments, being the main implementers of functions in the agricultural sector should not be left out in such consultations.
Add "and with county governments .."	Given their role as implementers of the agriculture function and conservation matters, the county governments ought to be consulted
Add "or at the request of a county government." Delete this part	The law needs to provide for county governments as implementers requesting the Cabinet Secretary to declare a weed noxious This portion is obsolete
Amend to read "There shall be close consultation with agricultural sector stakeholders and in particular all registered farmers'	To remove the current restriction on public participation to only registered farmers

Section No.	Provisions	R
Crops Act, 2013		
<p>Section 6</p> <p>Role of national and county governments in the development of crops</p>	<p>(1) According to the Fourth Schedule of the Constitution—</p> <p>(a) the Authority, on behalf of the national government, shall be responsible for licensing and charging of levies and breeder royalties on all scheduled crops on condition that the total sum of the levies charged by the Authority shall not exceed ten per centum of the gate value of the produce;</p>	<p>R th co F C</p>
<p>7</p> <p>Declaration of scheduled crops.</p>	<p>(1) The crops specified in the First Schedule have scheduled crops for purposes of this Act.</p> <p>(2) The Cabinet Secretary may, by notice in the Gazette, declare any other crop to be a scheduled crop</p>	<p>T “s ba b cc</p>
<p>8</p> <p>Promotion of scheduled crops.</p>	<p>In addition to the functions stipulated under any other law, the Authority shall—</p> <p>(a) through to (q)</p>	<p>A S In st th c c g</p>
<p>9</p> <p>Commodities Fund</p>	<p>(1) There is a fund to be established known as the Commodities Fund.</p> <p>(2) The Fund shall consist of-</p> <p>(a) monies paid as license fees, commission, export or import agency fees and fees that may accrue to or vest in the Authority in the course of the exercise of its functions under the Act;</p>	<p>A th C an o</p>

Recommendation	Justification
<p>Re-write this Section to respect the roles of the national and county governments as per the Fourth Schedule of the Constitution.</p>	<p>This Section does not respect the division of function as between the national and county government as provided for in the fourth schedule. The national government has no role in the implementation of agricultural activities – its role is confined to policy formulation.</p> <p>The levies contemplated therein are part of the implementation. Specifically, Paragraph 7 in Part 2 of the Fourth Schedule gives the mandate of trade development and regulation to county governments. It also conflicts with Section 17 of this Act, which correctly references Article 209 and the Fourth Schedule of the Constitution. Section 17 of the Crops Act gives authority to county governments to impose fees for – (a) development of crops within the county (b) development and regulation of scheduled crop markets within the county; (c) issuance of trade licences to any person trading in scheduled crops within the county; and (d) issuance of licenses for cooperative societies dealing with scheduled crops within the county.</p>
<p>The definition of any crops as “scheduled crops” should be based on policy and there should be intergovernmental consultation on such definition.</p>	<p>As currently written, the determination of scheduled crops is solely by the Cabinet Secretary without a clear policy framework yet the effect of such declaration is that the regulation of those crops fall within the control of the Authority and not the counties.</p> <p>This can interfere with the division of functions under the Fourth Schedule and requires a clearer policy framing.</p> <p>Furthermore, considering the extensive regulatory role of the Authority over-scheduled crops, and considering that the national government has no role in implementing the agriculture functions, there may need to consider whether the Authority, if it is going to retain those functions, should be an intergovernmental organ.</p>
<p>Amend the first phrase of this Section to read:</p> <p>In addition to the functions stipulated under any other law, the Authority shall, <u>in consultation and collaboration with county governments</u>—</p>	<p>The role of the Agriculture, Fisheries and Food Authority in promoting the marketing of agricultural produce from the counties throughout the country is appreciated. However, the important functions listed in Section 8 should be done through an intergovernmental framework, such that county governments are part and parcel of the implementation of a majority of these functions. This is because the management of functions in the agriculture sector is first and foremost a function of county governments as per the Fourth Schedule to the Constitution.</p>
<p>Amend to reflect the fact that the management of the Commodities Fund should be by an Intergovernmental agency, as opposed to the Authority.</p>	<p>The Authority should not manage this Fund as the applications for which it is intended are within the functions of the county governments, as opposed to the national government. Consequently, any established Fund should be managed by an intergovernmental agency to serve the interests of all counties, as opposed to one level of government.</p> <p>As it currently stands, county governments are subject to the Authority as the national government is in control of resources meant for the</p>

Section No.	Provisions	R
Crops Act, 2013		
10 Application of the Fund.	<p>(1) The Fund shall be used to provide, sustainable affordable credit and advances to farmers for all or any of the following purposes—</p> <ul style="list-style-type: none"> (a) farm improvement; (b) farm inputs; (c) farming operations; (d) price stabilization; and (e) any other lawful purpose approved by the Authority. 	
11 Identification of agricultural land.	<p>(1) The Cabinet Secretary shall, with the advice of the Authority, develop rules for identifying agricultural land suitable for the production of each of the scheduled crops.</p> <p>(2) The process of identifying agricultural land under subsection (1) shall be based on valid representations following constitutional principles of participation of, the people, good governance, transparency and accountability.</p>	A th e w fo b
12. Incentives to growers	<p>(1) The Cabinet Secretary shall, on the advice of the Authority, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.</p> <p>(2) The Authority may, following rules and regulations made under this Act and subject to any other law, put in place programmes for ensuring the provision of the following incentives and facilities to growers and dealers of scheduled crops —</p> <ul style="list-style-type: none"> (a) credit assistance including provision of equipment for land preparation and other non-monetary assistance; (b) credit guarantee; (c) affordable farm-inputs including quality seeds, planting materials and market linkage; (d) technical support including research and extension services; (e) infrastructural support including physical infrastructure development, financial and market information; (f) fertilizer cost-reduction investment projects including private sector involvement in fertilizer importation and distribution, promoting local 	A r T th c e c m A T g r

Recommendation	Justification
	crops sub-sector.
<p>Amend subsection (1) so that the Cabinet Secretary makes the envisioned rules in consultation with county governments and following a participatory process by the people.</p>	<p>The rulemaking process under 11(1) is not participatory but the land identification is made participatory. Secondly, county governments are excluded from making these rules, yet they are the key to agricultural governance as per the Fourth Schedule to the Constitution.</p> <p>The rulemaking process is as crucial as its implementation. It is therefore important that there is participation at the stage of rulemaking, hence all key stakeholders should ideally be involved. This might also guarantee against fallouts at the stage of the land identification exercise as conceived under this section of the law.</p>
<p>Amend sub-section 1 so that it reads:</p> <p>The Cabinet Secretary shall, on the advice of the Authority and county governments, establish institutional linkages to coordinate the provision of credit, farm inputs and marketing.</p> <p>Amend subsection (2) as follows:</p> <p>The Authority and county governments may, following rules and regulations</p>	<p>As per the Fourth Schedule to the Constitution, county governments are wholly in charge of the implementation of government management functions within the agricultural sector. Consequently, the functions ascribed to the Authority are mainly, in fact, those of county governments.</p> <p>The proposed amendment to this section takes into account the fact that the national government may still provide incentives to farmers. In an ideal situation, such incentives should ideally be channelled through an intergovernmental agency. However, in the absence of such an agency, then county governments must directly be involved in putting in place programs to promote such incentives.</p>



Section No.	Provision in the Act	Re
Kenya Plant Health Inspectorate Service Act, 2012		
5	<p>The functions of the Service shall be to—</p> <ul style="list-style-type: none"> (a) regulate matters relating to plant protection, seeds and plant varieties; (b) administer and enforce sanitary and phytosanitary measures; (c) support the administration and enforcement of food safety measures; (d) establish service laboratories to monitor the quality and levels of toxic residues in agro-inputs, irrigation water, plants, soils and produce; (e) be the principal advisor to the government on issues relating to seeds and planting material; (f) implement plant variety protection in Kenya, administer plant breeders’ rights and maintain the Plant Breeders’, Rights Register; (g) undertake plant variety testing and description, seed certification and plant quarantine control; (h) undertake inspection and grading of plants and plant products at the ports of entry and exit; (i) in consultation with other relevant agencies, develop and implement standards for seed and plant materials; (j) implement and enforce national biosafety regulations on the introduction and use of genetically or living modified species of plants, insects and micro-organisms, plant products and other related species; (k) regulate import and export of plants and plant materials; (l) in consultation with other relevant agencies, regulate the commercial exploitation of naturally occurring plants and plant-related microorganisms; (m) register and license seed merchants, seed growers, agents and any other person who may be required to be registered under the provisions of this Act or any of the laws specified in the First Schedule; (n) enter into association with such other bodies or organizations or authorized persons as the Board may consider desirable or appropriate in furtherance of the purposes for which the Service is established, and (o) be the liaison office for international conventions relating to plant variety protection, plant protection, seed certification and dealing with endangered species or any other related conventions 	<p>(b) sen “su</p> <p>(c) sen “su</p> <p>(d) sen “in gov</p> <p>(e) wit gov</p> <p>(f) - sen “su</p> <p>(g) sen “su</p> <p>(i) - 1. A “in oth and</p> <p>2. s star</p> <p>(j) - sen “su</p> <p>(l) - “in oth</p> <p>(m) - sen “co bui lice</p>



Recommendation	Justification
(b) – Add the below phrase at the beginning of the sentence: “support county governments to”	<p>In unbundling the components of the agricultural functions, the Transition Authority listed the following as falling under the implementation function of county governments:</p> <ul style="list-style-type: none"> ▪ Enforcement of regulations and standards on quality control of inputs, produce and products from the agricultural sector; ▪ Implementation of national and county-specific policies and legislation. ▪ Control of plant pests, diseases and noxious weeds that are specific to counties. <p>It is nonetheless acknowledged that for uniformity of standards across the country, there is a need for a national level Health Inspectorate Service, which can best support county governments in the administration and enforcement of issues standards.</p> <p>Hence, the recommendation for amendment of the outlined subsections is specifically justified as follows:</p> <ul style="list-style-type: none"> ▪ (b), (c), (f), (g) – these are direct county government functions ▪ (d), – The establishment and management of the proposed laboratories must be done with county governments. ▪ (e) – there are two levels of government in Kenya; hence, an institution playing an advisory role should ideally advise both the national and county levels of governments. ▪ (i) – any meaningful consultations for devolved government functions, especially in the development of regulations or standards, must be held with either individual county government or the Council of Governors for shared areas of interest. Secondly, the implementation of standards is a county government function. ▪ (j) – implementation and enforcement of agricultural regulations are part of county government functions, hence KEPHIS can only play a supportive role. ▪ (l) - meaningful consultations should involve county government ▪ (m) – this is a direct county government role. KEPHIS can only coordinate with respective counties.
(c) – Add the below phrase at the beginning of the sentence: “support county governments to”	
(d) – Add the below phrase at the beginning of the sentence: “in collaboration with respective county governments”	
(e) – Delete the word “government” and replace with “the national government and county governments”	
(f) – Add the below phrase at the beginning of the sentence: “support county governments to”	
(g) - Add the below phrase at the beginning of the sentence: “support county governments to”	
(i) – Separate this into two functions: 1. Add the underlined words “in consultation with county governments and other relevant agencies develop standards for seed and plant material...” 2. support County Governments to implement standards for seed and plant materials.	
(j) - Add the below phrase at the beginning of the sentence: “support county governments to”	
(l) - Add the underlined words “in consultation with county governments and other relevant agencies	
(m) – add the below phrase at the beginning of the sentence: “ coordinate with county governments to build a national profile of registered and licenced seed merchants...”	

Section No.	Provision in the Act	Recommendation	Justification
Kenya Plant Health Inspectorate Service Act, 2012			
7 Regulation of modified living organisms	(1) The Service shall be the competent regulatory authority to implement the national biotechnology policy and regulations on introduction, transit and use of living modified plants, plant products and other regulated species of plants. (2) The Service may charge such fees for its services as it may deem appropriate.	Delete the words “to implement” and replace with the word “on all matters relating to” Add a new sub-section after sub-section 7(1): “The Service will support county governments in the implementation of policies and regulations relating to biotechnology described in sub-section (1) above.	Implementation of national agricultural policies is the functional assignment for county governments. It is however acknowledged that presently, capacities and numbers of human resources with knowledge of handling biotechnology may be low. For this reason, the Act must not reassign this function to the national government, but instead, legislate for the Service to build capacities of staff so that such important skills can be imparted to several staff across the counties. The amendment will enable the Service to play its regulatory function, as well as capacity building function as required by paragraph 32 of the Fourth Schedule to the Constitution.
First Schedule	Laws to be implemented by the Service: (a) The Plant Protection Act, (Cap. 324); (b) The Seeds and Plant Varieties Act, (Cap. 326); (c) The Agricultural Produce (Export) Act (Cap. 319); (d) The Suppression of Noxious Weeds Act, (Cap. 325)	Delete paragraphs (c) and (d) of the First Schedule	To ensure conformity between Acts of Parliament. <ul style="list-style-type: none"> ▪ Cap 319 was repealed by Section 42 of the Crops Act, 2013 ▪ Cap. 325 was repealed by Section 45 of the Agriculture and Food Authorities Act, 2013.

Objective of the Act	Recommendation	Justification
2.2.4 Bukura Agricultural College Act, 1999		
<p>To provide for the establishment and administration of Bukura Agricultural College, and connected purposes</p>	<p>Delete all instances of the word “Minister” and replace with “Cabinet Secretary”</p> <p>Delete all instances of the word “Permanent Secretary and replace with Principal Secretary”</p>	<p>The Act does not affect the functional or institutional integrity of county governments.</p> <p>Given that the Act was enacted in 1999 and last amended in 2003 (L.N.106/2003), some terminologies used should be updated to align with the current terms used in the Constitution of Kenya, 2010</p>
2.2.5 Agricultural Development Corporation Act (Cap. 444)		
<p>The Act established the Agricultural Development Corporation, whose functions include:</p> <p>(a) to promote the production of Kenya’s essential agricultural inputs as the Corporation may decide from time to time, such as seeds and pedigree and high-grade livestock including, hybrid seed maize, cereal seed, potato seed, pasture seed, vegetable seed, pedigree and high-grade cattle, sheep, goats, pigs, poultry and bees;</p> <p>(b) to undertake such activities as the Corporation may decide from time to time to develop agricultural production in specific areas or specific fields of production; and</p> <p>(c) to participate in activities in agricultural production which are related to the primary and secondary functions of the Corporation and which in the view of the Corporation are commercially viable.</p>	<p>This Act is redundant and should be repealed.</p>	<p>The Act was enacted in 1965, and last amended in 1988. It is therefore completely outdated in that it makes no mention of the role of county governments in the agriculture function.</p> <p>The August 2013 Transition Authority Gazette Notice unbundled the responsibility of county governments in crop production, animal husbandry, plant and animal disease control and fisheries.</p> <p>The functions of the Board of the Agricultural Development Corporation listed in 12(a) replicate those of county governments.</p> <ul style="list-style-type: none"> ▪ Function 12(b) and (c) is too wide and vague and open to interpretation. In any case, this can be taken to mean roles already being performed by the myriad of national government institution established by the various agricultural Acts of Parliament. These two functions do not merit the existence of a Corporation, and its continued existence may amount to wastage of public funds. <p>The Act should, therefore, be repealed as it no longer adds value to the management of the agricultural sector, but may instead create even more confusion.</p>

2.2.6 Agricultural Finance Corporation Act (Cap. 323)

The Act establishes an Agricultural Finance Corporation and prescribes its powers and duties.

The function of the Corporation is stated as being “to assist in the development of agriculture and agricultural industries by making loans to farmers, co-operative societies, incorporated group representatives, private companies, public bodies, local authorities and other persons engaging in agriculture or agricultural industries.”

Either:

Repeal the Act because the function of the Corporation is a county government function; or

If agreed in an intergovernmental forum that agricultural loans should be centrally managed at a national level, then review the composition of the AFC Board to equally incorporate representation from county governments. Thereafter, develop a framework to ensure that agricultural players in given blocs of counties are not marginalized in favour of others.

The Act was enacted in 1965, and last amended in 2017. The expectation is that a 2017 amendment would mean that the Act should now be up to date with regards to respecting the functional and institutional integrity of the two levels of governments. However, this is not the case.

The August 2013 Transition Authority Gazette Notice unbundled the responsibility of county governments in crop production to include

- Enhancing accessibility to affordable credit and insurance packages for farmers

However, this is not the case. Part of the functions of the Corporation is to enhance loans to “local authorities”. This shows that the 2017 amendment of the Act overlooked the existence of county governments. Monies allocated to AFC should ideally be but of county governments’ share of national revenue, to be then extended to farmers any individual counties based on set regulations.

2.2.7 National Cereals and Produce Board Act (Cap. 338)

The Act was enacted to regulate and control the marketing and processing of maize, wheat and scheduled agricultural produce; and to establish a National Cereals and Produce Board.

The whole Act should be reviewed to align it to the provisions of the current Constitution. In particular, the review should focus on

(a) Functions of the Board, which include:

- to regulate or to control the collection, movement, storage, sale, purchase, transportation, marketing, processing, distribution, importation, exportation, disposal and supply of maize, wheat and scheduled agricultural produce;
- to buy, store, sell, import, export or otherwise acquire and

The Act was enacted in 1985 and last amended in 2006. It is therefore outdated in that it is not aligned to the provisions of the Constitution of Kenya, 2010.

The Act does not recognize the existence of county governments, or the role they play in the agricultural function. Being the implementers of all government-related service delivery activities related to crop production in counties, county governments should also naturally have a say in the marketing and processing of said crops.

2.2.7 National Cereals and Produce Board Act (Cap. 338)

	<p>dispose of maize, wheat and scheduled agricultural produce in such manner, such quantities and on such terms as it may, from time to time, deem necessary to fulfil the requirements of producers and consumers in Kenya;</p> <ul style="list-style-type: none"> ▪ advising the ‘Minister’ <p>(b) Recognition of the role of county governments in majority aspects of crop production.</p> <p>(c) updating of terminologies used in the Act to be aligned to the Constitution.</p> <p>If a policy decision is made that to enhance food security a national institution is required to manage some aspects of NCOB current functions, then the same should be carried out by an intergovernmental agency.</p>	<p>The August 2013 Transition Authority Gazette Notice unbundled the Fourth Schedule role of county governments in crop production to include:</p> <ul style="list-style-type: none"> ▪ Construction of grain storage structures ▪ Promotion of market access for agricultural products
--	--	---

2.2.8 Seeds and Plant Varieties Act (Cap. 326)

<p>To confer power to regulate transactions in seeds, including provision for the testing and certification of seeds; for the establishment of an index of names of plant varieties; to empower the imposition of restriction on the introduction of new varieties; to control the importation of seeds; to authorize measures to prevent injurious cross-pollination; to provide for the grant of proprietary rights to persons breeding or discovering and developing new varieties; to establish a national centre for plant genetic resources; to establish a Tribunal to hear appeals and other proceedings</p>	<p>Review the Act (specifically Section 3A, 3B, 3C, 3D and 3E) to clarify the role of the “Service”, i.e. the Kenya Plant Health Inspectorate Service, concerning county governments.</p> <p>Ideally,</p> <ul style="list-style-type: none"> ▪ There should be mention of the role of county governments in the enforcement of regulations and standards. ▪ Amend sub-sections 3A, 3B, 3C, 3D and 3E to instead provide for a coordinative framework between KEPHIS and the county governments. ▪ All consultations should include county governments ▪ Amend to update some of the terms used to comply with the current Constitution. 	<p>The Act was enacted in 1972, and last amended in 2012 to give powers to designate KEPHIS as the national authority responsible for the administration of the Act. While this is in order, no mention was given to the role of county government in the implementation of the Act, which should have been the case given that the Act was amended in the post-2010 period.</p> <p>The August 2013 Transition Authority Gazette Notice unbundled the responsibility of county governments to include:</p> <ul style="list-style-type: none"> ▪ Enforcement of regulations and standards on quality control of inputs, produce and products from the agricultural sector.
--	---	--

2.2.8 Seeds and Plant Varieties Act (Cap. 326)

		<ul style="list-style-type: none">• Implementation of national and county-specific policies and legislation. <p>The direct day-to-day enforcement of regulations developed under this Act should, therefore, rest with county governments. Nonetheless, KEPHIS still has a role to play, hence the need for a coordinative framework between KEPHIS and the national government.</p>
--	--	--

2.2.9 Plant Protection Act (Cap. 324)

<p>The Act seeks to make better provision for the prevention of the introduction and spread of disease destructive to plants</p>	<p>Update the Act to provide for the role of county governments in plant disease control, as well as aligning the entire Act to the Constitution of Kenya, 2010.</p>	<p>Enacted in 1935 and last amended in 1971, this Act is quite outdated. The Act does not recognize the existence of county governments, or the role they play in the agricultural function. The August 2013 Transition Authority Gazette Notice unbundled the role of county governments in plant disease control to include:</p> <ul style="list-style-type: none">▪ Control of plant pests, diseases and noxious weeds that are specific to counties.
--	--	--

2.2.10 Tobacco Control Act, 2007

The Act seeks to control the production, manufacture, sale, labelling, advertising, promotion and sponsorship of tobacco products, to provide for the Tobacco Control Board, to regulate smoking in specified areas and for connected purposes

The Act should, therefore, be updated to provide for the specific role of county governments in implementing rules and guidelines issued by the national government on tobacco control.

Thereafter, update the entire Act to be aligned to the provisions of the Constitution of Kenya, 2010

This Act was enacted in 2007 and amended in 2009. It, therefore, has no provisions on the roles of county governments in tobacco control.

The Act does not fall under the agriculture function of county government, but instead, under their mandate of controlling drugs (Paragraph 13, Part 2 of the Fourth Schedule to the Constitution.) This is especially important given that in Section 11, the Act states that tobacco control education and dissemination should form part of health care, and undertaken by healthcare providers, who are expected to be employees of county governments (Paragraph 2, Part 2 of the Fourth Schedule to the Constitution.

2.2.11 Irrigation Act (Cap 347)

To provide for the development, control and improvement of irrigation schemes, and purposes incidental thereto.

Update the Act by:

- Providing for the role of county governments in the development of irrigation infrastructure
- Ensure conformity to the Constitution throughout the Act.

Note: Review the Irrigation Bill, 2017 for constitutional compliance. The Bill was published on 1st December 2017, and whose objective is to promote and regulate the development and management of irrigation in Kenya.

While not an agricultural act within the meaning of Paragraph 1, Part 2 of the Fourth Schedule to the Constitution, Irrigation invariably affects the productivity of the crops sub-sector and has therefore been reviewed within this study.

The Act was enacted in 1966 and last amended in 2013. Despite this 2013 amendment being after the promulgation of the Constitution, it did not acknowledge the existence of county governments, and their role as stated in the August 2013 Transition Authority Gazette Notice as being to:

Development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture.

Land development services such as the construction of water pans for horticultural production for food security.

State Corporation ¹²	Enabling Legislation	Co Fo
STATE DEPARTMENT FOR CROPS PRODUCTION		
1. Agricultural and Food Authority	Agriculture and Food Authority (No. 13 of 2013)	(a) S u g w (b) C r p tr
2. Agricultural Development Corporation	Agricultural Development Corporation Act (Cap. 444)	T D g (a ag ti li P h (b d P P (c w fu th
3. Agricultural Finance Corporation	Agricultural Finance Corporation (Cap. 323)	T o to re ar ag a) T as A c b) T th C
4. Agricultural Information Resource Centre (AIRC) and AIRC Revolving Fund	Not applicable	T L a fa in ag b

¹² List of state corporations is generated from Executive Order No. 1 of 2018, which outlined the organization of the government of the Republic of Kenya (National Government).

¹³ <http://airc.go.ke>

Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
<p>(a) Some functions bestowed on AFA either fall directly under the implementation mandate of county governments, i.e. to administer the Crops Act, 2013 which implies implementation of the functions therein.</p> <p>(b) Other AFA functions are too general and open to a range of interpretations, i.e. regulating the production, processing, marketing, grading, storage, collection, transportation and warehousing of agricultural products.</p>	<p>The Authority is necessary to make policies and regulations to guide the agriculture sector. However, some of its mandates go beyond those expected of the national government and should, therefore, be relieved from the Authority. Hence, the Authority's enabling legislation, i.e. the AFA Act 2013, should be amended so that these particular mandates do not conflict with the functions of county governments.</p>
<p>The functions of the Board of the Agricultural Development Corporation replicate those of county governments. These include:</p> <p>(a) to promote the production of Kenya's essential agricultural inputs as the Corporation may decide from time to time, such as seeds and pedigree and high-grade livestock including, hybrid seed maize, cereal seed, potato seed, pasture seed, vegetable seed, pedigree and high-grade cattle, sheep, goats, pigs, poultry and bees;</p> <p>(b) to undertake such activities as the Corporation may decide from time to time to develop agricultural production in specific areas or specific fields of production; and</p> <p>(c) to participate in activities in agricultural production which are related to the primary and secondary functions of the Corporation and which in the view of the Corporation are commercially viable.</p>	<p>Given that the main functions of ADC are those of county governments, dissolve ADC as it does not add value to the regulation or administration of the agriculture sector. This would be done through a repeal of ADC's enabling legislation, i.e. the ADC Act (Cap. 444)</p>
<p>The function of AFC is to "to assist in the development of agriculture and agricultural industries by making loans to farmers, co-operative societies, incorporated group representatives, private companies, public bodies, local authorities and other persons engaging in agriculture or agricultural industries."</p> <p>a) The above are partial functions of county governments, as unbundled by the defunct Transition Authority in August 2013, i.e. "Enhancing accessibility to affordable credit and insurance packages for farmers"</p> <p>b) The functions of AFC are replicative of the functions of those of the Board of Trustees managing the Commodities Fund, which is discussed below.</p>	<p>While it is useful to have a national level finance corporation dedicated to extending financial assistance to suppliers in the agricultural sector, this must be co-managed by county governments. Hence, the constitution of the AFC board should be revised to incorporate a fair number of county government representatives.</p> <p>Moreover, it is worth noting that the 2013 Report on the Presidential Taskforce on Parastatals Reform recommended that AFC should be merged with other public financing authorities to form the Kenya Development Bank (Taskforce report page 146)</p>
<p>The Centre is a Division in the Ministry of Agriculture Livestock & Fisheries (MOALF) and dedicated to serving a wide range of audience in the agriculture sector - farmers and stakeholders - with specialized agricultural information to enhance farmers ability to increase agricultural output hence food security to our country's basket.¹³</p>	<p>No further recommendation</p>

2.3 functional review: crops sub-sector state corporations

State Corporation ¹²	Enabling Legislation	Co Fo
STATE DEPARTMENT FOR CROPS PRODUCTION		
		T e in c
5. Agro-Chemical and Food Company	Companies Act (Cap 486) <i>Repealed by Companies Act, 2015 which recognises the continued existence of existing companies</i>	A b In (I D o (I A o in o c
6. Bukura Agricultural College	Bukura Agricultural College (Cap. 348)	T fa st a T fu g g in
7. Commodities Fund	Crops Act, 2013	T a fo in (e A T b e to fu s a M A g fu a) A d a th o g d b) M c

Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
<p>The mandate of AIRC mandate goes a long way in enhancing access to relevant information and does not infringe on the functional or institutional integrity of county governments</p>	
<p>ACFC was incorporated in 1978 as a Joint Venture between the Government of Kenya through the Industrial and Commercial Development Corporation (ICDC: 28.8 shareholdings) and the Agricultural Development Corporation (ADC: 28.2 shareholding) on one hand and the International Investment Corporation (Mehta Group) on the other.</p> <p>ACFC function is to carry on all or any other businesses of manufacturing related to Alcohol export and importation. As a business entity, ACFC does not infringe on either the functional or institutional mandate of county governments</p>	<p>While the mandate of ACFC does not directly affect the agricultural functions of county government, a review of the financial status of state corporations in the sector should be done should it affect its viability. In this regard, the 2013 Report on the Presidential Taskforce on Parastatals Reform recommended for two issues to be addressed in ACFC (page 171):</p> <ul style="list-style-type: none"> ▪ To address financial and management resource needs; and ▪ To address the company's excess debt. <p>A restructure of which state entities have a stake in ACFC shares may also be necessary given the previous recommendation to dissolve ADC.</p>
<p>The main mandate of the institution is to provide facilities for education in agriculture and other ancillary subjects through the integration of teaching, research and effective application of extension services.</p> <p>The college's mandate does not impinge on the functional or institutional integrity of county governments as this falls directly under the national government mandate of being responsible for institutions of higher learning.</p>	<p>No further recommendation</p>
<p>The Fund was established to provide, sustainable affordable credit and advances to farmers for the following purposes— (a) farm improvement; (b) farm inputs; (c) farming operations; (d) price stabilization; and (e) any other lawful purpose approved by the Agriculture and Food Authority.</p> <p>The sources of the Commodities Fund are stated as being: (a) monies paid as license fees, commission, export or import agency fees and fees that may accrue to or vest in AFA in the course of the exercise of its functions under the Act; (b) funds from any other lawful source approved by the Trustees; and (c) funds appropriated by Parliament for this purpose.</p> <p>Management of the Fund by the Agricultural and Food Authority negatively affects the function of county governments. The administration of the Commodities fund should not be under AFA for the following reasons:</p> <p>a) As stated under the review of the mandate of AFA, AFA does not have an all-encompassing role in the administration of the Crops Act, 2013. This is because the implementation of government policies is a mandate of county government. Hence, AFA only has a role in giving policy and regulatory guidance, as opposed to direct implementation of the Act.</p> <p>b) Monies paid as license fees are monies collected by county governments</p>	<p>As per the previous recommendation of the Agriculture Finance Corporation, there is merit in having a national level finance corporation dedicated to extending financial assistance to suppliers in the agricultural sector. This should ideally ensure equity in the distribution of credits and advances to farmers across the country.</p> <p>Nonetheless, the management of such an institution must be intergovernmental, and there should be a fair representation of county governments in its Board of Trustees.</p>

State Corporation ¹²	Enabling Legislation	Co Fo
STATE DEPARTMENT FOR CROPS PRODUCTION		
		c) F a a d) C “ P u th g e) T F F
8. Chemelil Sugar Company 9. Miwani Sugar Company (under receivership) 10. Mumias Sugar Company 11. Muhoroni Sugar Company (under receivership) 12. Nzoia Sugar Company	Companies Act (Cap 486) <i>Repealed by Companies Act, 2015 which recognises the continued existence of existing companies</i>	A th h r u v
13. South Nyanza Sugar Company	State Corporations Act (Cap. 446)	A b o b 2 R C
14. Kenya Plant Health Inspectorate Services	Kenya Plant Health Inspectorate Service Act, 2011.	E P fu o a in P m a n a th
15. Kenya Seed Company	Companies Act (Cap 486) <i>Repealed by Companies Act, 2015 which recognises the continued existence of existing companies</i>	T m th m P b s e A th g

¹⁴ *County Government of Migori & 4 others v Privatization Commission of Kenya & another [2017] eKLR*

Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
<p>c) Fees that may be accrued by AFA in the course of its administration of the Crops Act are in actuality fees accrued by county governments.</p> <p>d) Given that county governments are expected to “Enhance accessibility to affordable credit and insurance packages for farmers.” leaving the Commodities Fund under AFA’s management amounts to a usurpation of the functional and institutional integrity of county governments.</p> <p>e) The functions of the Board of Trustees of Commodities Fund are replicative of the functions of the Agricultural Finance Corporation, which is discussed above.</p>	
<p>As far as distribution of assets and functions go, each of the five public-owned sugar companies should ideally have been transferred to the management of the respective county governments under which they fall upon the Transition Authority’s unbundling of functions via Kenya Gazette Supplement No. 116 of 2013.</p> <p>Attempts to resolve the issues that have perennially bedevilled the public sector sugar companies have been ongoing since 2010, with the seemingly popular solution being to privatize the companies, as recommended by 2013 Report of the Presidential Taskforce on Parastatals Reform (page 124). The governors of affected counties challenged this popular view in Court.</p>	<p>(1) Based on guidance on the High Court’s ruling on Petition 187 of 2016¹⁴, pursue intergovernmental consultations, with appropriate timelines, with the aim of:</p> <p>(a) Getting a consensus between the national government and affected county governments on whether such privatization is necessary.</p> <p>(b) Drawing legally binding agreements, if deemed that privatization is the way forward, on how funds raised through the sale of the companies will be divided between the national government and the respective affected county governments.</p> <p>(c) Learning lessons from the sale of part of the government’s stake of the Mumias Sugar Company.</p> <p>(d) Consider recommendations given by the 2013 Report of Presidential Taskforce on Parastatals Reform.</p>
<p>Except for regulation of matters relating to plant protection, seeds and plant varieties, a majority of functions bestowed on KEPHIS fall under the mandate of county governments’ implementation of standards and guidelines issued by the national government. These include, but not limited to: administer sanitary and phytosanitary measures; administer of food safety measures; implement plant variety protection in Kenya; administer plant breeders’ rights; implement and enforce national biosafety regulations, etc. (Refer to a detailed analysis of the functions of KEPHIS that collide with those of county governments.)</p>	<p>KEPHIS is necessary to make policies and regulations to guide plant protection and ensure uniformity of their enforcement by county governments.</p> <p>However, as currently operated, some of its mandates go beyond those expected of the national government and should, therefore, be relieved from KEPHIS. Hence, the KEPHIS Act, 2011 should be amended so that the outlined mandates do not conflict with the functions of county governments.</p>
<p>The Kenya Seed Company is engaged in production, marketing and selling of certified seed to farmers within the Republic of Kenya. As per its website, it describes its mandate as being to: “carry out focused research, promote and facilitate the production of high yielding, better quality certified seed, to enhance food self-sufficiency and quality living standards for sustainable economic development”</p> <p>As such, the company’s mandate does not infringe on the functional or institutional integrity of county governments.</p>	<p>Although the company’s mandate does not affect county governments, intergovernmental relations should govern the promotion of seeds to farmers in all counties.</p> <p>In terms of corporate governance, care should be taken to ensure that the research function of the Kenya Seed Company is not replicative of those done by the Kenya Agricultural and Livestock Research Organisation</p>



State Corporation ¹²	Enabling Legislation	Co Fo
STATE DEPARTMENT FOR CROPS PRODUCTION		
16. National Cereals and Produce Board	National Cereals and Produce Board Act (Cap. 338)	N e o ti th g ▪ to s p d a ▪ to a p te fu K ▪ a c c P T fu C ▪ P
17. Nyayo Tea Zones Development Corporation	State Corporations Act (Cap. 446), <i>through the Nyayo Tea Zone Order</i>	T c a in e a V m C g d w r in m p tr In n r r e M



Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
<p>NCPB was established in 1985, decades before the emergence of the current constitutional order. The operations of NCPB have continued as it was in the new times' post-2010. As such, its functions directly negate the functional and institutional integrity of county governments. These include the following functions:</p> <ul style="list-style-type: none"> ▪ to regulate or to control the collection, movement, storage, sale, purchase, transportation, marketing, processing, distribution, importation, exportation, disposal and supply of maize, wheat and scheduled agricultural produce; ▪ to buy, store, sell, import, export or otherwise acquire and dispose of maize, wheat and scheduled agricultural produce in such manner, such quantities and on such terms as it may, from time to time, deem necessary to fulfil the requirements of producers and consumers in Kenya; ▪ advising the CS on scheduled agricultural produce concerning the needs of Kenya, and the extent to which control over the exportation and importation of the product is desirable or necessary; <p>The NCPB mandate impedes the following unbundled functions of county governments:</p> <ul style="list-style-type: none"> ▪ Construction of grain storage structures ▪ Promotion of market access for agricultural products 	<p>The 2013 Report of the Presidential Taskforce on Parastatals Reform recommended, “NCPB should be restructured to transfer the Strategic Grain Reserve mandate to the relevant Ministry and retain NCPB as a commercial entity under GIC.” (page 98)</p> <p>Taking into account the Taskforce recommendation, and given the role of county governments, in managing grain reserves and marketing of cereals, in an ideal situation, NCPB should, therefore, be restructured such that:</p> <ul style="list-style-type: none"> ▪ The Agriculture and Food Authority (AFA) becomes the strategic national level coordinator for accounting for all cereals and produce in the country. This will involve close coordination with each county government, which are to directly manage the collection, movement and storage of crops produce. ▪ AFA would be a national-level body with a bird’s overview of the country’s grains reserves and would consequently provide this information on quality and quantities to the Taskforce’s proposed Government Investment Corporation on adequate pricing of grains and their products. ▪ NCPB would then become a department under the proposed Government Investment Corporation to act on information received from AFA in setting prices of grains and their products. <p>The implementation of the above recommendations would result in the dissolution of NCPB in its current format and a repeal of the NCPB Act (Cap. 338)</p>
<p>The mandate of the Corporation is to promote forest conservation by providing buffer zones of tea and assorted tree species to check human encroachment into forestland. This is achieved through the establishment of tea and assorted tree buffer belts around those forests.</p> <p>While pertinent in 1986 when it was established, the mandate of the Nyayo Tea Zones Development Corporation currently infringes on those of county governments, which are responsible for the development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture. Each county government in a tea producing county should be in a position to manage the activities done by the Corporation to promote the plantation of tea buffer zones and assorted trees around forests within its county.</p> <p>In any case, the continued existence of the Corporation negates the constitutional principle of prudent use of resources given that its forest conservation mandate is replicative of that of the Kenya Forest Service, established by the Forest Conservation and Management Act, 2016.</p>	<p>The 2013 Report of the Presidential Taskforce on Parastatals Reform recommended that “For purposes of integration and effectiveness, it is recommended that the Kenya Water Towers Agency; the Kenya Forest Service, the Kenya Wildlife Service and the conservation function of Nyayo Tea Zones Development Corporation should be merged to form one entity that shall be responsible for wildlife, forests and water catchment management and conservation. The residual commercial function of the Nyayo Tea Zones Development Corporation should be transferred to GIC.”</p> <p>Based on the above and given the developments since 2013 to strengthen the mandate of the Kenya Forest Service, the Nyayo Tea Zones Development Corporation is a redundant institution, which should be dissolved through a repeal of the Nyayo Tea Zone Order. (Gazette Notice No. 265 of 1986)</p>

State Corporation ¹²	Enabling Legislation	Co Fo
STATE DEPARTMENT FOR CROPS PRODUCTION		
18. Pest Control Products Board	Pest Control Products Act (Cap. 346)	T in u o C fo n B (s e (a c n e T c d
STATE DEPARTMENT FOR IRRIGATION		
19. National Irrigation Board	Irrigation Act (Cap. 347)	V I in n s A g b P T u ▪ D v r ▪ L v s
STATE DEPARTMENT FOR COOPERATIVES (MINISTRY OF INDUSTRY, TRADE AND COOPERATION)		
20. Kenya Planters Cooperative Union	Regulated under the Societies Act (Cap. 108)	T s in c A th v in fa

¹⁵ <http://www.pcpb.or.ke/about.html>

Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
<p>The mandate of the Board is to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests and of the organic function of plants and animals.</p> <p>Given that the Act was written with an international focus, at initial outlook the functions of the Board do not negate those of county governments. However, the Board's objectives on its website¹⁵ are stated as being to (i) enhance compliance of pest control products to set standards and facilitate trade; (ii) ensure safe, quality and efficacious pest control products are availed to users; (iii) enhance responsible use of pest control products and food safety; (iv) improve management of pest control products lifecycle; (v) improve resource mobilization and Accountability; (vi) improve quality and efficiency of service delivery</p> <p>The above objectives may inadvertently intertwine with county government's function of plant and animal disease control specific to counties.</p>	<p>Although the company's mandate does not directly affect county governments,</p> <p>(i) It is necessary to update the Pest Control Products Act to delineate the functions of county governments and the national government in pest and disease control.</p> <p>(ii) In terms of corporate governance, to avoid a multiplicity of institutions, it may be best for the functions of the Pest Control Products Board to be collapsed into the Agriculture and Food Authority, e.g. as a unit within AFA, operating under one Board.</p>
<p>When the National Irrigation Board was established in 1966, the country was just three years into independence. The Board's structure and mandate have not evolved much with the changing governance structure, and despite some amendments to its enabling Act, it still has not taken into account the role of county governments in irrigation and the invariable linkage between the provision of water for irrigation and crop production.</p> <p>The August 2013 Transition Authority Gazette Notice unbundled the role of county governments as being:</p> <ul style="list-style-type: none"> ▪ Development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture. ▪ Land development services such as the construction of water pans for horticultural production for food security. 	<p>Review the structure and functions of the National Irrigation Board in light of the current constitutional framework. This is to be done through a repeal of Cap. 347 and instead of replacing it with one that provides for the new governance structure in Kenya.</p> <p>The repeal of this Act and consequent replacement with an updated version has been a work in progress since 2014, with the last version of the Bill having been published in December 2017. The process of enactment of the new Irrigation Bill should, therefore, be fast-tracked, with special interest given to the role of county governments in the development of irrigation infrastructure. Specifically:</p> <ul style="list-style-type: none"> ▪ County governments should be represented at the National Irrigation, e.g. through the Council of Governors. ▪ All regional irrigation schemes should have a representation of each relevant county government to be served by the scheme.
COOPERATIVES)	
<p>To offer innovative, sustainable and integrated coffee services and products profitably both locally and internationally to satisfaction of the coffee farmers and clients.</p> <p>As a business venture, its role does not directly negate those of county governments but must operate closely with county governments responsible for the implementation of agricultural strategies for coffee farmers.</p>	<p>No further recommendations</p>

3

THE LIVESTOCK SUB-SECTOR

3.1 Unbundling of Functions

3.1.1 Animal Husbandry

The unbundled functions within the animal husbandry sub-sector and allocated to county government are as outlined below.

The Kenya Plant Health Inspectorate Service (KEPHIS) Act, 2012 establishes the Kenya Plant Health Inspectorate Service as a regulatory body for the protection of plants, seeds and plant varieties and agricultural products and provides that the Service shall be responsible for administering several other written laws.

The functions assigned to KEPHIS in the Act have not respected the functional and institutional mandates of county governments as discussed below.

Unbundled functions: animal husbandry

- Livestock sale yards
- County Abattoirs/Slaughterhouse services
- Animal husbandry including livestock extension services to deliver husbandry technologies to livestock farmers and pastoralists through farmer field days, farm demonstrations, farmer field schools, Agricultural shows, Individual farm visits, farmer training courses (residential and non-residential), barazas, farmer tours, posters, brochures, leaflets etc.

While the distribution of functions in the livestock sub-sector should be fairly clear, the fact that a majority of legislation governing animal husbandry were enacted before the promulgation of the Constitution in 2010 and are yet to be updated to the present-day governance structure means that national government state corporations are still left implementing county government functions. Other implementation challenges problems are reported to be due to:

- (a) Inadequacy of resources to employ extension officers to give support services to livestock farmers and pastoralists.
- (b) Poor choice of location of abattoirs by some county governments, in areas with little water and pasture, leading to under usage of the structures once built.
- (c) Development of policies by different county government departments, which may lead to a contradiction. In counties practising pastoralism as the major form of agriculture, competing interests between conservation of natural resources, i.e. rangelands, and the use of the same rangelands as livestock migratory patterns, creates policy implementation challenges if not developed together and in a

participatory manner. Poor management of rangelands and natural resources in such counties in many instances contributed to community conflicts.

- (d) Poor enforcement and management of the Community Land Act, 2016 leading to community conflicts, with some ending with fatalities, more so in the arid and semi-arid areas where large fractions of land are communally owned.

3.1.2 Animal Disease Control

County governments are mandated to implement specific activities about plant disease control as outlined by the unbundling of functions undertaken by the defunct TA below. A key challenge noted in this sub-sector has been broken down relations between the Kenya Veterinary Vaccines Production Institute (KEVEVAPI) and some county governments, who have previously reported that in some instances, crucial animal vaccines are withheld by KEVEVAPI until under a month to expiry. Upon release of the vaccines, county government officers are usually unable to vaccinate the animals, leading to wastage funds, and the spread of animal diseases, e.g. recent reports of outbreak of Rift Valley fever was partially attributed to this.

Unbundled functions: plant and animal disease control


- Animal disease control including carrying out, coordinating and overseeing:
- Communal dipping and spraying operations and vaccination campaigns.

3.2 Legislative Review: Livestock Sub-Sector

Objective of the Act	Rec
3.2.1 Animal Technicians Act, 2010	
<p>The Act provides for the training, registration and licensing of animal technicians, to provide for the regulation of the standards and practice of the profession of animal technicians, excluding matters concerning animal health and food safety, and for connected purposes.</p>	No
3.2.2 Animal Diseases Act (Cap 364)	
<p>The Act provides for matters relating to the diseases of animals.</p>	<p>Rev cou par inte 5. P 7. P 10. 11. ani 14. 15. 16. 23.</p>
3.2.3 Branding of Livestock Act (Cap. 357)	
<p>The Act makes provision for the registration of brands of stock</p>	<p>Rev gov ani ▪ De aut gov ▪ Ma exe live ▪ Up Co</p>

Recommendation	Justification
<p>None. The Act is acceptable as is.</p>	<p>The Act regulates a profession falling within veterinary services, and so falls within the functional mandate of the national government [Paragraph 2(e) and 7(b), Part 2, Fourth Schedule of the Constitution]</p>
<p>Review the entire Act to provide for the role of county governments in disease control. Areas of particular interest include:</p> <ul style="list-style-type: none"> 5. Power to declare areas infected. 7. Provisions affecting infected areas. 10. Slaughter of infected animals. 11. Disposal of the carcass of the slaughtered animal. 14. Power to search for infected animals, etc. 15. Power to prescribe fees, etc. 16. Power to prohibit the use of vaccine or drug. 23. Disposal of the forfeited animal. 	<p>Originally enacted in 1999, the Act was last amended in 2012</p> <p>Paragraph 1(c) and (d) of the Fourth Schedule to the Constitution assigns the implementation of functions relating to county abattoirs and animal disease control to county governments. The Animal Diseases Act (Cap. 364) does not, however, make a single mention of counties, or county governments for that matter.</p> <p>Despite having been amended in 2012, the Act is yet to be aligned to the requirements of the functional assignment between the two levels of government. This is now possible given that the unbundling of the functions in the Fourth Schedule to the Constitution has been done, coupled with the experience of the practicality of implementation of the said functions.</p>
<p>Review to provide for the role of county governments in the registration of branded animals, e.g.</p> <ul style="list-style-type: none"> ▪ Delete all instances of the words “local authorities” and replace with “county governments” ▪ Make provisions for the role of the county executive committee member in charge of livestock, etc. ▪ Update the entire Act to conform with the Constitution. 	<p>Originally enacted in 1907, the Act was amended on numerous occasions till 2006. The last amendment was made in 2016 to provide a schedule of registration of branded livestock in each county by national government staff.</p> <p>Despite the 2016 amendment, the Act still refers to colloquial terms such as ‘local authorities. The Act should be reviewed to conform with the Constitution of Kenya, 2010 in its entirety, and in particular, to the devolution provisions in Article 189 and the Fourth Schedule.</p>



Objective of the Act	Rec
3.2.4 Cattle Cleansing Act (Cap. 358)	
The Act provides for the cleansing of cattle	Rev gov
3.2.5 Hide, Skin and Leather Trade Act (Cap. 359)	
The Act provides for the coordination and control of the trade and development of the hide, skin and leather industry.	Rev gov hid 
3.2.6 Kenya Meat Commission Act (Cap. 363)	
The Act was enacted to establish a commission to purchase cattle and small stock and to acquire, establish and operate abattoirs, meatworks, cold storage concerns and refrigerating works to slaughter cattle and small stock, processing by-products, preparing hides and chilling, freezing, canning and storing beef, mutton, poultry and other meat foods for export or consumption within Kenya, and to confer certain exclusive rights upon the Commission.	Rev gov lon con Fou



Recommendation	Justification
<p>Review to provide for the role of county government in cattle cleansing.</p>	<p>Originally enacted in 1937, the Act was last amended in 1979, meaning that is completely outdated, making use of terms that no longer exist, e.g. provinces.</p> <p>The Act should, therefore, be reviewed to conform with the Constitution of Kenya, 2010 in its entirety, and in particular, to the devolution provisions in Article 189 and the Fourth Schedule. Concerning the unbundling of functions, the Transition Authority’s Gazette notice specifically gives county governments the role of carrying out, coordinating and overseeing communal dipping and spraying operations and vaccination campaigns</p>
<p>Review the Act to provide for the role of county governments in trade and development of the hide, skin and leather industry,</p>	<p>The Act was enacted in 1987 and last amended in 2006. It is therefore outdated as it does not meet the current constitutional threshold for trade in a devolved system of government.</p> <p>The Act limits itself to the import and export of the hides, skin and leather; it does not detail the role of either level of government in their development. The Act should, therefore, be reviewed to align it to the Constitution.</p>
<p>Review the Act to provide for the role of county government in majority of listed functions in the long title and the content of the Act, i.e. to conform to the functional assignment in the Fourth Schedule to the Constitution.</p>	<p>The Act was enacted in 1955, went through a series of amendments, with the last amendment has been in 2006. The Act is therefore completely outdated.</p> <p>Paragraph 1(b) and 1(c) of the Fourth Schedule to the Constitution provides that county governments oversee livestock sale yards and county abattoirs. This infers that county governments should facilitate all activities related to sales, abattoirs and consequential storage of meat emanating from livestock. County governments are expected to implement standards set by the national government on matters related to health in abattoirs.</p> <p>The Act should, therefore, be wholesomely reviewed to align it to the Constitution and the principles of devolution.</p>

Objective of the Act

Rec

3.2.7 Meat Control Act (Cap. 356)

The Act exists to enable control to be exercised over meat and meat products intended for human consumption, and over slaughterhouses and places where such meat is processed; and to provide for import and export control over such meat and meat products.

The Act gives the power of licensing, controlling and regulating slaughterhouses; defining areas to be served by specified slaughterhouses; inspecting slaughterhouses, etc.

Rev
pro
live
the

3.2.8 Stock and Produce Theft Act (Cap. 355)

An Act provides for the recovery of fines imposed for the theft of stock or products and to make persons liable to account for the possession of stock or produce in certain cases

The
ned
sec
cou
the
rev
Co

3.2.9 Dairy Industry Act (Cap. 336)

The Act was enacted to provide for the improvement and control of the dairy industry and its products

Up
gov
ind
Co
▪ The
rep
▪ Rev
tho
gov

3.2.10 Uplands Bacon Factory Act (Cap. 362)

The Act provides for the constitution of the Uplands Bacon Factory (Kenya) Limited

No

Recommendation	Justification
<p>Review the regulations in line with previously proposed recommendations for legislation on livestock and to conform it to the provisions of the 2010 Kenyan Constitution.</p>	<p>The Act gives power to the ‘Minister’ to make regulations</p> <p>Except for the specification of standards, all other functions that were ascribed to the ‘Minister’ as of 1972 when the Act was enacted (last amended in 2007) are now functions of county governments.</p> <p>While it is within the mandate of the Cabinet Secretary responsible for livestock matters to be done in consultation with county governments and other relevant stakeholders.</p> <p>The Act and its subsidiary legislation should, therefore, be wholesomely reviewed to align it to the constitutional functional assignment to the two levels of government and the principles of devolution</p>
<p>The Act should be reviewed to (i) check on its necessity given that there now exist extensive security laws which provide for the role of county governments in security matters; (ii) if deemed necessary, then have a wholesome review of the Act to conform it to the Constitution and the existing security laws.</p>	<p>Having been enacted in 1933 and last updated in 1966, this Act is completely outdated.</p> <p>The object of the Act relates to security matters and is, therefore, the mandate of the national government in Section 7, Part I of the Fourth Schedule to the Constitution. However, given the sensitive nature of stock theft in a number of counties, county governments need to give certain input into prevention of stock and produce theft.</p>
<p>Update the Act to provide for the role of county governments in development of the dairy industry, as well as aligning the entire Act to the Constitution of Kenya, 2010. Specifically:</p> <ul style="list-style-type: none"> ▪ The Council of Governors should be represented in the Dairy Processing Board ▪ Review the functions of the Board by deleting those that fall under the docket of county governments 	<p>The Act was enacted in 1958, and last amended in 2006. It is therefore completely outdated in that it makes no mention of the role of county governments in development of milk processing industries within their mandate of facilitating activities falling within animal husbandry. This includes milk processing and marketing.</p> <p>A few counties are already practically processing milk, e.g. Makueni; hence, the Act should be updated to align not just with the Constitution, but also with the ground realities.</p>
<p>None. The Act is acceptable as is.</p>	<p>The Act was enacted in 1945 and last updated in 2017.</p> <p>The Factory is guided by the Companies Act (Cap.486) and therefore has no direct bearing on the agricultural function of county governments.</p>

3.3 Functional Review: Livestock Sub-Sector State Corporations

State Corporation ¹	Enabling Legislation	Co Fo
STATE DEPARTMENT FOR LIVESTOCK		
Kenya Dairy Board	Dairy Industry Act (Cap 336)	Est org ma hav req imp rea pro dai deg pro the oth the pro Exc ma tha
Kenya Meat Commission	Kenya Meat Commission Act (Cap. 363)	Exc pro the gov cat ope and sto chi po con exc Par Co ove infe act sto gov by hea

¹ List of state corporations is generated from Executive Order No. 1 of 2018, which outlined the organization of the government of the Republic of Kenya (National Government).

Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
<p>Established in 1958, the Board's functions include: (i) to organise, regulate and develop the efficient production, marketing, distribution and supply of dairy produce, having regard to the various types of dairy produce required by different classes of consumers; (ii) to improve the quality of dairy products; (iii) to secure reasonable and stable prices to producers of dairy products; (iv) to promote market research concerning dairy produce; (v) to permit the greatest possible degree of private enterprise in the production, processing and sale of dairy produce, consistent with the efficiency of the producer and the interests of other producers and consumers; generally to ensure the adoption of measures and practices designed to promote greater efficiency in the dairy industry.</p> <p>Except for the regulatory functions, the Board's mandate is outdated as it was established at a time that county governments did not exist.</p>	<p>The 2013 Report of the Presidential Taskforce on Parastatals recommended:</p> <ul style="list-style-type: none"> (a) For the establishment of National Livestock Development Corporation whose objective will be promotion, development and marketing of livestock and livestock products.” (b) Regulatory functions to move to a proposed regulator for the sector <p>The Taskforce recommendation is agreeable, with a change of name to National Livestock and Dairy Products Development Corporation.</p> <p>This would result in the dissolution of the Kenya Dairy Board (as well as Kenya Meat Commission, Kenya Leather Development Council) and merging its functions under a single Corporation with a Single Board. The establishment of such a national level Corporation should take into account the role of county governments in animal husbandry, and must therefore be done in consultation with all county governments.</p> <p>Lastly, the said new Corporation should not replicate any functions of the Agriculture and Food Authority.</p>
<p>Except for importation and exportation of livestock products, all other functions currently bestowed upon the Kenya Meat Commission are functions for county governments. These can be summarized as to purchase cattle and small stock, and to acquire, establish and operate abattoirs, meatworks, cold storage concerns and refrigerating works to slaughter cattle and small stock, processing by-products, preparing hides and chilling, freezing, canning and storing beef, mutton, poultry and other meat foods for export or consumption within Kenya, and to confer certain exclusive rights upon the Commission.</p> <p>Paragraph 1(b) and 1(c) of the Fourth Schedule to the Constitution provides that county governments oversee livestock sale yards and county abattoirs. This infers that county governments should facilitate all activities related to sales, abattoirs and consequential storage of meat emanating from livestock. County governments are expected to implement standards set by the national government on matters related to health in abattoirs.</p>	<p>Majority of KMC role falls under the functional mandate of county governments. Nonetheless, it is appreciated that there is need for a national level institution to engage in cross-country marketing of livestock products, and ensure that there is an adequate supply of these products across the country.</p> <p>Borrowing from the 2013 Presidential Taskforce recommendations on the Kenya Dairy Board outline above, it is recommended that the proposed National Livestock and Dairy Products Development Corporation should incorporate the role of the Kenya Meat Commission while taking into account the role of county governments in animal husbandry and the role of AFA. This is then result in the dissolution of the Kenya Meat Commission.</p> <p>It is worth noting that the 2013 Report of the Presidential Taskforce on Parastatals recommended:</p> <ul style="list-style-type: none"> ▪ Restructuring and privatization of KMC to address its future viability; and ▪ To address the required financial and management resources of the company

State Corporation	Enabling Legislation	C F
Animal Technicians Council	Animal Technicians Act, 2010	T te re re pr
Kenya Veterinary Vaccine Production Institute	State Corporations Act (Cap. 446), <i>through Gazette Notice No. 223 of 4th June 1990</i>	T m ve co
Kenya Veterinary Board	Veterinary Surgeons and Veterinary Para-professionals Act, 2011	T o in T m ve co
STATE DEPARTMENT FOR AGRICULTURAL RESEARCH		
Kenya Animal Genetics Resource Centre	Kenya Gazette Notice No. 557 of 19th June 1946	T an tis pr th T m re th
Kenya Tsetse & Trypanosomiasis Eradication Council (KENTTEC)	State Corporations Act (Cap. 446), <i>through the Kenya Tsetse and Trypanosomiasis Eradication Council Order, 2012</i>	K tr ac gu go fo go

Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
	The IGRTC recommendation is therefore attuned to the 2013 Taskforce recommendations.
<p>The Council oversees the regulation of animal technicians in the country, which entails: training, registration and licensing of animal technicians; regulation of the standards and practice of the profession of animal technicians.</p> <p>The Board's functions fall under the functional mandate of the national government (Regulation of veterinary profession) and do not collide with those of county governments.</p>	No further recommendation.
<p>To produce safe, efficacious and affordable veterinary vaccines through undertaking research, providing information, marketing and distribution for improvement of the livestock industry.</p> <p>The Board's functions fall under the functional mandate of the national government (Regulation of veterinary profession) and do not collide with those of county governments</p>	No further recommendation
<p>The Board exercises general supervision and control over the training, business, practice and employment of veterinary surgeons and veterinary paraprofessionals in Kenya.</p> <p>The Board's functions fall under the functional mandate of the national government (Regulation of veterinary profession) and do not collide with those of county governments</p>	No further recommendation
<p>The mandate of the Centre is to produce, preserve, and conserve, animal genetic material (semen embryo, tissues and live animals) and rear breeding bulls for provision of high-quality disease-free semen to meet the national demand and for export.</p> <p>The Centre's functions fall under the functional mandate of the national government (setting of regulations and standards) and do not collide with those of county governments.</p>	<p>Even though it implements a national government function, similar to KALRO discussed above, the Kenya Animal Genetics Resource Centre should execute its functions within the spirit of intergovernmental relations with county governments to ensure a maximum positive end result of its activates. This is even more pertinent given that the TA unbundled the function of county governments to include: "carry out, coordinate and oversee veterinary services including clinical services, artificial insemination, and reproductive health management"</p>
<p>KENTTEC's mandate is to coordinate all tsetse and trypanosomiasis eradication in Kenya, including to: advise the government on policy issues; recommend guidelines for eradication; determine and advice the government on national goals, priorities and strategies for eradication; coordinate activities of relevant government agencies and stakeholders; promote</p>	<p>Ensure that KENTTEC mandate is executed in very close collaboration with individual county governments its mandate to eradicate specified animal diseases is to be achieved.</p>



State Corporation	Enabling Legislation	C F
		er ap ar fa m A pe ne H C co co co ea
STATE DEPARTMENT FOR INDUSTRIALISATION (MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES)		
Kenya Leather Development Council	Leather Development Council Order, No. 14 of 2011	T “ m hi pu na gu st ac su di in pe co A an to la co ■ im ■ lic
New Kenya Creameries Cooperative Limited	State Corporations Act (Cap. 446),	T w m A of ne pr ca



Comments on Mandate vis-à-vis the COK, 2010 Fourth Schedule Distribution of Functions	Recommendation
<p>eradication activities in Kenya; establish and maintain appropriate knowledge management systems on tsetse and trypanosomiasis eradication; coordinate, guide and facilitate related research; negotiate, source and mobilise resources and ensure their effective use; etc.</p> <p>As a coordinating institution in animal and diseases pest control, the functions of KENTTEC do not necessarily negate those of county governments. However, as</p> <p>County governments have a key role in animal disease control, specifically, in coordinating and overseeing communal dipping and spraying operations within a county, it is vital for KENTTEC to work closely with each county government.</p>	
<p>The functions of the Board are stated as: “(a) to provide advisory services to the Minister on matters relating to the processing of and trade in hides, skins, leather and leather goods for planning purposes; (b) to promote, direct, coordinate and harmonize all activities in the leather subsector; (c) to guide the implementation of the Board's policies and strategies; (d) to undertake research and development activities; (e) to oversee licensing in the leather subsector; (f) to collect, store, analyse and disseminate data on leather subsector; (g) to enhance inertial and external marketing strategies; and (h) to perform such other function as the Minister may consider necessary”</p> <p>Although placed under the Ministry of Industry, Trade and Cooperatives, it is clear that the outlined roles are to do with a livestock product. These are roles that largely fall under the animal husbandry mandate of county governments, specifically on</p> <ul style="list-style-type: none"> ■ implementation of strategies; ■ licensing of leather in the subsector 	<p>Similar to above, discussed recommendations for the Kenya Dairy Board and the Kenya Meat Commission, it is proposed for the role of the Kenya Leather Development Council to be collapsed into a single institute, i.e.</p> <p>National Livestock and Dairy Products Development Corporation. Such a Corporation would then have relevant departments to set policies and strategies in the various livestock sub-sectors, i.e. dairy sub-sector; meat sub-sector; and leather sub-sector. This would then result in the dissolution of the Kenya Leather Development Council.</p> <p>Any national government plants existing to centrally process leather should be transferred to the management of the management of the new merged corporation.</p>
<p>The mandate of New KCC is to procure raw milk which it processes, packages and markets as milk and milk products.</p> <p>As a business venture, its role does not negate those of county governments, but at the same time does not necessarily prevent county governments from processing dairy products should they have the capacity to do so.</p>	<p>No further recommendations</p>

4

THE FISHERIES SUB-SECTOR

4.1 Unbundling of Functions

Unbundled functions: fisheries

1. Fisheries extension services.
2. Upscaling seaweed, fin-fish and crustacean culture.
3. County fish seed bulking units.
4. Maintenance of county fish auction centres (Nyeri, Meru, Migori, Kisumu, Homabay, Siaya, Busia, Kakamega and Lamu).
5. On-Farm Trials.
6. Fish health certification.
7. Development and maintenance of fish landing stations and jetties, fish auction centres and fish landing fees.
8. Demarcation of all fish breeding areas and fencing of fish landing stations.
9. Fish trade licensing and fish movement permits.
10. Collection of fish production statistics.
11. Enforcement of fisheries regulations and compliance with management measures.
12. Implementation of fisheries policy, fisheries management measures and regulation, limiting access to fishing.
13. Fisheries monitoring, control and surveillance.
14. Zonation for aquaculture-county specific disease control.

The challenges observed include:

- (a) Contrary to the Fourth Schedule and below listed unbundling of functions, the Fisheries Management and Development Act, 2016 mandates national government, through the Kenya Fisheries Service, to continue performing some county government functions, more so functions (9) to (13) of the unbundled function list.
- (b) For counties bordering international waters, there is no clear intergovernmental framework to guide fisheries operations in international waters, i.e. where do the mandate of the county government stop and that of the national government begin?
- (c) In the above-unbundled list, the TA only listed fish auction centres for eleven (11) counties. The question therefore is what is expected to happen to the maintenance of such centres should other counties develop them.

4.2 Legislative Review: The Fisheries Sub-Sector

4.2.1 Fisheries Management and Development Act, 2016

The Fisheries Management and Development Act, 2016 is expected to provide for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of communities' dependent on fishing and to establish the Kenya Fisheries Services; and for connected purposes.

A review of the Act reveals that to a great extent, it has attempted to incorporate the role of county governments in the management of the fisheries sub-sector. It also recognizes that the place of regional policies, treaties and conventions, due to the existence of a number of international water spaces within Kenya's borders. Lastly, the Act makes good provisions with regards to public participation.

Despite this major progress expected to streamline operations in the sector, there are still several sections which have not abided to the spirit of the Constitution, more so on the unbundled functions of county governments as per the defunct TA Gazette Notice Supplement No. 116 of 9th of August 2013. The result is that the national government is left performing many functions which are either wholly county government functions, or those that should ideally be performed in a collaborative manner within the intergovernmental precepts of Articles 6(2) and 189 of the Constitution. Secondly, there seems to be an overbearing role of the Director-General over county governments, as is discussed in the below matrix.

Section No.	Provisions	R
Fisheries Management and Development Act, 2016		
5 (1) Objective	The objective of this Act is to protect, manage, use and develop the aquatic resources in a manner which is consistent with ecologically sustainable development, to uplift the living standards of the fishing communities and to introduce fishing to traditionally non-fishing communities and to enhance food security.	A C g t e
6(2) Establishment of the Kenya Fisheries Council	The function of the Council shall be to review and advise the national government on— (a) policies concerning the co-ordination of fisheries management concerning the aquatic environment and human dimensions; (b) the allocation and access to fisheries resources; (c) intergovernmental agreements and arrangements related to fisheries; (d) research, education, capacity development in fisheries and the management of fisheries resources; (e) management plans and resources for the development of the fisheries sector; and (f) any other matters connected with this or any other related Act.	(K F ▪ D ▪ In th s ▪ M c F (In (c
9. Functions of Service	The functions of the Service shall be to – (listed from ‘a’ to ‘w’) <i>Highlighted functions:</i> (n) raise revenue through levies, fees, investments and other means under this Act and the Constitution, including solicitation by public appeal or otherwise, and accept and receive subscriptions, donations, devices and bequests, whether of movable or immovable property and whether absolute or unconditional for the general or special purposes of the Service or subject to any trust;	▪ D ▪ A c b 9 (fi n (fi a g
10(1) Establishment, functions, powers and duties of the Board of Directors (of the Kenya Forest Service)	(a) provide general control over and be accountable to the cabinet secretary for the exercise of the functions and powers of the Service; (b) advise the cabinet secretary on all matters pertaining to the conservation, management standards, development, and sustainable use of fisheries resources;	(a p c g

Recommendation	Justification
<p>Add the words “...<u>in consultation and collaboration with respective county governments</u>, introduce fishing to traditionally non-fishing communities to enhance food security”,</p>	<p>While the role of the national government in environmental protection, in line with Paragraph 22, Part 1 of the Fourth Schedule to the Constitution is appreciated, it remains a fact that implementation of activities related to fisheries remains the preserve of the county governments (Paragraph 1, Part 2 of the Fourth Schedule.) The fisheries role of the county governments was analysed and unbundled in the Transition Authority’s Kenya Gazette Supplement No. 116 of 9th of August 2013.</p> <p>Hence, the objective of the Act should take into account the role of county governments in the management and implementation of the fisheries function.</p>
<p>(1) Review the role, hence the necessity of the Kenya Fisheries Council, concerning the Kenya Fisheries Service.</p> <ul style="list-style-type: none"> ▪ Delete the entire Section (6) ▪ Incorporate (6)(c) and 6(d) into the function of the Board of the Fisheries Service under sub-section 10 ▪ Make provision for intergovernmental sectoral committees on fisheries under “<i>Co-ordination of Fisheries Management with the Counties</i>” (Sections 33-37), with reference made to the Intergovernmental Relations Act, 2012. <p>(2) Review sub-sections that encroach on county government functions</p> <ul style="list-style-type: none"> ▪ Delete sub-section 9(1)(n) ▪ Add the words “in consultation and collaboration with county governments” at the beginning of each of the following sub-sections 9(1) (o, p, q, r, t, u and v), i.e. <ul style="list-style-type: none"> (o) undertake the development of appropriate fisheries infrastructure, that relates to its mandate under this Act and the Constitution; (p) facilitate investment in commercial fisheries, in collaboration with relevant agencies, persons or bodies, including government departments; (q) promote development and introduction of appropriate technologies in aquaculture production, processing and preservation in collaboration with relevant agencies, county governments and stakeholders; 	<p>(1) <u>Reviewing the necessity of the Council</u></p> <p>(a) The two main institutions established by the Act, i.e. Fisheries Council and the Board of the Fisheries Service <u>are essentially playing similar roles, hence a case of multiplicity of institutions.</u></p> <p>Subsections 6(2) (a, b, d, and e) overlap with subsections 10 (1) (b, c, i), with the main difference being that the Council advises “the national government” while the Service gives advise to “the Cabinet Secretary”</p> <p>As the Cabinet Secretary is the topmost national government’s representative in the fisheries sector, the role of the Council and the Board of Directors of the Kenya Fisheries Service then boils down to the same function.</p> <p>(b) The two duplicate institutions established in the Act <u>are a burdensome expense to the taxpayer</u>, contrary to the provisions of Article 201 of the Constitution.</p> <p>(c) There should be an <u>intergovernmental sectorial committee to discuss areas of common interest to the two levels of government on matters relating to fisheries</u> so that a national government institution does not play the role of an intergovernmental body. A national government institution exists to promote the national government’s agenda, and remains answerable to the national government, even if there is a representative of the Council of Governors within its membership. Secondly, the representation in the Council is not balanced and essentially biased towards the national government. (d) Important intergovernmental matters on fisheries that cannot be resolved at the IGR sectoral committee and require further deliberation at a national profile can then be escalated to the <u>National and County Governments Coordinating Summit</u>, which has a balanced representation of the national and county governments. (Refer to Sections 7 – 10 of the Intergovernmental Relations Act, 2012).</p>



Section No.	Provisions	P
Fisheries Management and Development Act, 2016		
	<p>(c) provide recommendations to the cabinet secretary for overall policy in matters within the scope of this Act;</p> <p>(d) collaborate with the Fish Marketing Authority established under section 204 and other agencies to ensure that trade in fish is carried out following the provision of this Act;</p> <p>(e) approve the annual budget and financial plan of the Service and otherwise provide oversight for all financial matters;</p> <p>(f) endorse the annual report of the Service required under section 25 and transmit it through the cabinet secretary to Parliament;</p> <p>(g) establish an open, competitive, transparent and objective selection process, and required qualifications for, the Director-General, and as appropriate for other persons employed by the Service;</p> <p>(h) establish open, competitive employment policies, a transparent and objective selection process and general terms and conditions for employees of the Service;</p> <p>(i) provide policy guidance over the exercise of the functions and powers of the Service; and</p> <p>(j) perform any other function which the cabinet secretary may by notice in the Gazette prescribe.</p>	<p>(v d fr (c P (c a (c t</p>
<p>36. Relations between national and county governments</p>	<p>(1) Where there is any conflict between a county fisheries management plan and the management related provisions of this Act, the Director General shall consult with the county government and give appropriate direction.</p>	<p>A . t</p>



Recommendation	Justification
<p>(r) identify and promote construction of any works deemed necessary for the sustainable development and economic utilization of fisheries resources;</p> <p>(t) arrange and enter into joint ventures or any other forms of investment arrangement for purposes of performing any of its functions</p> <p>(u) co-ordinate fish quality assurance and operations of the marine and coastal fisheries, aquaculture and inland and riverine fisheries</p> <p>(v) coordinate and or undertake monitoring, control and surveillance of all activities within the scope of this Act;</p>	<p>(e) There are 5 cabinet secretaries in the Council, being responsible for: (i) fisheries (ii) interior and co-ordination of national government; (iii) transport and infrastructure (iv) national treasury (v) foreign affairs and international trade.</p> <p>While the role of the ministries represented by the above cabinet secretaries is acknowledged, the role of the latter four is cross-cutting across many sectors, and not only the purview of the fisheries Sector. As it stands, the Act essentially implies that there should be a Council for almost all sectors. <u>The national government has internal administrative coordination mechanisms</u>, which should not be set out in legislation for every other matter, which the apex mechanism being the Cabinet.</p> <p>(2) <u>Encroachment of County Government Functions</u></p> <p>Article 6(2) of the Constitution provides as follows: Paragraph 1, Part 2 of the Fourth Schedule to the Constitution, and the unbundling of functions in the Kenya Gazette Supplement No. 116 9th of August 2013 is quite clear on the role of the county government in the implementation of fisheries.</p> <p>In the judicial review of Misc. Application Nos. 291 & 314 of 2016, the High Court acknowledged that the agriculture function is fully devolved, with the <i>“the national government’s role in agriculture is strictly limited to agricultural policy while implementation of the agricultural policies and other agricultural functions are a preserve of the county governments.”</i></p> <p>At the same time, the High Court made recognition of the provisions of Article 6(2) and 189(1) of the Constitution in areas where the national and county governments have some roles in matters relating to agriculture. This is indeed the case for the listed sub-sections 9(1) (o, p, q, r, t, u and v), some of which are listed in the aforementioned Transition Authority’s Gazette Notice.</p> <p>l. Raising of levies and fees emanating from the fisheries sector, e.g. fish trade licensing and fish movement permits is a domain of the county government; hence the need to delete sub-section 9(1)(n)</p>
<p>At the end of the statement, add the words: “and in respect of the spirit of Article 191 of the Constitution”</p>	<p>Article 191 of the Constitution provides for what should happen should there be a conflict of laws between the national and county governments and details of instances when either the national or county government law should apply.</p> <p>The spirit of the Constitution should be applied in Section 36 so as not to give the Director-General overbearing control over county governments. As is currently presented, the Director-General is given the power to give directions to the</p>



Section No.	Provisions	R
<i>Fisheries Management and Development Act, 2016</i>		
<p>65.</p> <p>County's responsibility to monitor non-commercial aquaculture activities</p>	<p>Title of sub-section</p> <p>“County’s responsibility to monitor non-commercial aquaculture activities”</p>	<p>D</p> <p>ti</p> <p>“</p> <p>a</p>
<p>Part X — Licensing and Registration</p> <p><i>Licences, authorizations and registration</i></p>	<p>84. Licences and authorizations required.</p> <p>86. Grant, renewal and issuance of licences and authorizations.</p> <p>87. Standards for approval, renewal and issuance of licences and authorizations</p> <p>89. Application for the grant or renewal of licences or authorizations.</p> <p>90. Terms and conditions of licences and authorizations.</p> <p>93. Fees, charges or levies.</p> <p>94. Suspension or cancellation of licence or authorization.</p>	<p>(</p> <p>⊕</p> <p>re</p> <p>in</p> <p>(</p> <p>li</p> <p>re</p> <p>a</p> <p>re</p> <p>e</p> <p>(</p> <p>(</p> <p>D</p> <p>a</p> <p>in</p> <p>D</p> <p>P</p> <p>F</p> <p>A</p>



Recommendation	Justification
	<p>county governments, and essentially perfect over counties' management plans. This may result in undermining county governments from making their own fisheries plans tailored to their respective distinct needs.</p>
<p>Delete the words “non-commercial” from the title of the sub-section, so that it reads.</p> <p>“County's responsibility to monitor aquaculture activities”</p>	<p>While the substance of the sub-section is valid, its title is misleading as it creates the impression that county governments should only monitor aquaculture activities which are of a non-commercial nature. This is obviously not the case as implementation of activities within the fisheries sector is mainly the function of county governments. Further, the Transition Authority's unbundled the fisheries function for county governments to include:</p> <ul style="list-style-type: none"> (x) enforcement of fisheries regulations and compliance with management measures; (xi) implementation of fisheries policy, fisheries management measures and regulation and limiting access to fishing; (xii) fisheries monitoring, control and surveillance; and (xiii) zonation for aquaculture-county specific disease control.
<p>(1) Review and amend the entire listed sub-articles in Part X of the Act, to reflect with the role of county governments in the implementation of the fisheries function.</p> <p>(2) References to the Director-General in the listed sub-articles concerning issuance, regulation and cancellation of licenses, authorisations and registrations should be replaced with the term or “the county executive committee member”</p> <p>(3) Delete sub-section 84(2)</p> <p>(4) Instead, add a new sub-section for the Director-General to issue licences, authorisations and registrations on the use of international waters and water resources.</p> <p>Details of this should then be referenced to Part XII of the Act, i.e. <i>Requirements For Foreign Fishing Vessels or Vessels Fishing Under Charter Arrangements</i></p>	<p>Licensing, authorizations and registration fall under the implementation function of county governments. As written, Part X of the Act assigns this role to the Kenya Fisheries Service, i.e. to the national governments, when this is a role for county governments.</p> <p>Specifically, the Transition Authority's Gazette unbundled the fisheries function assigned to the county governments to include:</p> <ul style="list-style-type: none"> ▪ fish trade licensing and fish movement permits; ▪ enforcement of fisheries regulations and compliance with management measures; ▪ implementation of fisheries policy, fisheries management measures and regulation and limiting access to fishing; (This includes authorisation and registration as per regulations or guidelines issued by the national government) ▪ Sub-section 84(2) is particularly offensive to the distribution and unbundling of the Fourth Schedule functions as it essentially limits the role of county governments to issuing licenses only to recreational fishing and fish processing establishments. <p>The proposed new-subsection will ensure that the Act abides by the distribution of the function of the use of international waters and water resources to the national government (Paragraph 2, Part I of the Fourth Schedule to the Constitution)</p>



Section No.	Provisions	R
<i>Fisheries Management and Development Act, 2016</i>		
Fish processing and marketing	<p>115. Returns.</p> <p>116. Establishment and operation of aquaculture.</p> <p>117. Registration of Aquaculture Establishment, a notice of transfer.</p> <p>118. Aquaculture permits.</p> <p>119. Application for an aquaculture licence.</p> <p>120. Standards for approval of aquaculture licence.</p> <p>121. Inspection of the proposed site.</p> <p>122. Conditions for aquaculture licences.</p>	<p>I</p> <p>c</p> <p>'p</p> <p>I</p> <p>a</p> <p>n</p> <p>I</p> <p>r</p> <p>n</p> <p>I</p> <p>"</p> <p>e</p> <p>I</p> <p>"</p> <p>e</p> <p>I</p> <p>"</p> <p>e</p> <p>I</p> <p>a</p> <p>n</p> <p>I</p> <p>c</p> <p>r</p> <p>n</p> <p>I</p> <p>r</p> <p>n</p> <p>I</p> <p>C</p> <p>c</p>
Part XIII — Monitoring, Control and Surveillance	<p>136 – 142: Powers of authorized officers</p> <p>147 – 152: Appointment and functions of, and duties to, observers and inspectors</p> <p>153 – 156: Protection of and duties owed to authorized persons</p> <p>157: Requirements for vessel monitoring systems</p> <p>158 – 161: Requirements for use of ports</p>	<p>R</p> <p>r</p> <p>n</p> <p>a</p> <p>F</p> <p>(</p> <p>"</p> <p>p</p> <p>p</p> <p>s</p> <p>u</p> <p>a</p> <p>a</p>



Recommendation	Justification
<p>115 – Add the words “or county executive committee member” after the words “Director-General</p> <p>116(1) – Delete the word “Director-General” and replace with “county executive committee member”</p> <p>116(3) – Add the words “in consultation with respective county executive committee members” after the words “Director-General</p> <p>117 - Delete all instances of the word “Director-General” and replace with “county executive committee member”</p> <p>118 - Delete all instances of the word “Director-General” and replace with “county executive committee member”</p> <p>119 - Delete all instances of the word “Director-General” and replace with “county executive committee member”</p> <p>120(1) - Delete the word “Director-General” and replace with “county executive committee member”</p> <p>120(3) – Delete the word “Director-General in consultation with the relevant County” and replace with “county executive committee member”</p> <p>121 - Delete the word “Director-General” and replace with “county executive committee member”</p> <p>122(2) and 122(3)- Delete the word “Director-General” and replace with “county executive committee member”</p>	<p>As explained in the foregoing Part on <i>Licences, authorizations and registration</i>, these are functions assigned to county governments, and should therefore not be performed by the Director General of the Kenya Fisheries Service.</p> <p>The only exception to this is in the case where such activities, if any, should occur in international waters for which an exception clause can be added. It is however highly unlikely that fish processing and marketing should happen in international waters; hence, such an exception is not necessary, and so fish processing and marketing remain in the domain of county government functions.</p> <p>Nonetheless, nothing precludes the national government from getting involved in fish processing and marketing through intergovernmental frameworks, which can be added to the section of the Act dealing with “<i>Co-ordination of Fisheries Management with the Counties</i>” (Sections 33-37).</p>
<p>Review and amend Part XIII of the Act to recognise the role of county governments in monitoring control and surveillance of activities in the fisheries sector.</p> <p>For example, either:</p> <p>(1) Add a new sub-section that stating that “Nothing written in Part XIII of this Act shall preclude a county government from performing its monitoring, control and surveillance role with regards to its function under the Fourth Schedule to the Constitution, and as prescribed by county legislation, rules and regulations”</p>	<p>The proposed new sub-section takes into account the role of county governments in fisheries as unbundled by the TA Gazette Notice, i.e. “Fisheries monitoring, control and surveillance</p>

Section No.	Provisions	
<i>Fisheries Management and Development Act, 2016</i>		
Part XVIII — Establishment of Fish Marketing Authority	<p>198. Establishment of Fish Marketing Authority.</p> <p>199. Objects and purpose.</p> <p>200. Functions of the Fish Marketing Authority.</p> <p>201. Board of directors.</p> <p>202. Tenure of office and vacation of office.</p> <p>203. Conduct of meeting of the Board.</p> <p>204. Disclosure of interests.</p> <p>205. Delegation of functions.</p> <p>206. Appointment of chief executive and other staff.</p> <p>207. Funds of the Fish Marketing Authority</p>	
208 Regulations	The cabinet secretary may make regulations for the better carrying into effect of the provisions of this Act.	

Recommendation	Justification
<p>or</p> <p>(b) Add the words “or county executive committee member” after every instance the word “Director-General” except as used about monitoring, control and surveillance in international water spaces.</p>	
<p>Delete provisions establishing the Fish Marketing Authority and move the outlined functions to be part of the functions of the Kenya Fisheries Service, i.e.</p> <p>Delete Sections 198, 201, 202, 203, 204, 205, 206 and 207 of the Act, i.e. i.e. all provisions relating to the establishment of the Authority and its Board.</p> <ul style="list-style-type: none"> ■ Merge the provisions of Section 200, i.e. on the objects and purpose of the Authority, with those of the Board of the Kenya Fisheries Service. It is therefore recommended to merge the functions of the Fish Marketing Authority into those of the Kenya Fisheries Services. This requires: 	<p>In terms of good corporate governance and prudent use of resources, it is not clear why its functions cannot be done by the Kenya Fisheries Service. The presence of the two institutions is an example of a multiplicity of institutions, both with full Boards, staff and a Parliamentary allocation for recurrent expenditure. The multiplicity of institutions is highly burdensome to the Kenyan tax-payer.</p> <p>A closer review of the Act reveals that the Director-General of the Kenya Fisheries Service is already assigned various aspects of the marketing function.</p>
<p>Amend by adding the underlined words:</p> <p>The cabinet secretary may, <u>in consultation with the Council of Governors and other relevant stakeholders</u>, make regulations for the better carrying into effect of the provisions of this Act.</p>	<p>As these regulations would touch on a devolved function, then it is mandatory that county governments are meaningfully consulted at each stage of their development process.</p> <p>This is especially important as ruled by the High Court in the judicial review of Misc. Application Nos. 291 & 314 of 2016, where the High Court, concerning regulations made under the Crops Act 2013, determined that:</p> <p><i>“112. In other words, in formulating legislation and policies relating to agriculture, the national government is enjoined to consult the county governments in the spirit of upholding the principle of devolution. This position is strengthened by the fact that whereas section 40(1) of Crops Act empowers the 1st Respondent to make regulations in the agricultural sector, it also requires that such regulations can only be made in consultation with county governments. However, the Council, the one body representing all counties, was not consulted in the making on the impugned regulations. In this case, there is no evidence at all that the county governments were consulted before the impugned regulations were promulgated.”</i></p> <p>The High Court went further and advised on what constitutes meaningful consultations, e.g. that it should be conducted at the formative stages of a legislative process.</p>

4.3 Functional Review: Fisheries Sub-Sector State Corporations

State Corporation	Enabling Legislation	C D
STATE DEPARTMENT FOR FISHERIES, AQUACULTURE AND THE BLUE ECONOMY		
Kenya Fisheries Service	Fisheries Management and Development Act, 2016	M en fis se th cr pr lev Ra fis m go G th ▪ ▪ ⊕
Fish Marketing Authority	Fisheries Management and Development Act, 2016	TH an ob co (b en int th un tra ru ad sta fis int W ma na ma th th

Comment vis-à-vis the Fourth Schedule Distribution of Function	Recommendation
<p>Majority of functions of the Kenya Fisheries Service entail policy development, implementation of fisheries services in international waters, and fisheries sector imports & exports. However, it is notable that the Kenya Fisheries Service is performing some crucial county government functions, with the main problematic one being to: “raise revenue through levies, fees, investments and other means”</p> <p>Raising of levies and fees emanating from the fisheries sector, e.g. fish trade licensing and fish movement permits is a domain of the county governments. Specifically, the Transition Authority’s Gazette unbundled the fisheries function assigned to the county governments to include:</p> <ul style="list-style-type: none"> ▪ fish trade licensing and fish movement permits; ▪ enforcement of fisheries regulations and compliance with management measures. ▪ implementation of fisheries policy, fisheries management measures and regulation and limiting access to fishing; (This includes authorisations and registrations as per regulations or guidelines issued by the national governments) 	<p>Review the functions of the Kenya Fisheries Service through an amendment of the Fisheries Management and Development Act, 2016 and more so, Part X of the Act on licensing and registration</p> <p>Such a review should clearly state the delineation of roles of the national and county governments, and most importantly, recognise that raising of levies and fees that are not in legally recognized international water spaces, or relating to imports and exports, is a function of county governments. (Refer to detailed legislative analysis of the enabling Act)</p>
<p>The Fish Market Authority is expected to market fish and fisheries products from Kenya. Its specific objectives include to (a) develop, implement and coordinate a national fish marketing strategy; (b) ensure that fish and fishery products from Kenya enjoy market access at local, national, regional and international level; (c) deterring and eliminating to the extent possible trade in illegal, unreported and unregulated fishing (d) enforce national fisheries trade laws and international fisheries-related trade rules; (e) identify fish market needs and trends and advise fisheries stakeholders accordingly; (f) organize stakeholders to ensure smooth marketing of fish and fishery products; (g) collaborate with national and international trade-related bodies;</p> <p>While county governments have a role in fisheries marketing, it is appreciated that there is need for a national level institution to engage in cross-county marketing of fisheries products, and ensure that there is an adequate supply of these products across the country.</p>	<p>While the mandate of the Fish Marketing Authority does not negate the function of county governments, in terms of good corporate governance and prudent use of resources, it is not clear why its functions cannot be done by the Kenya Fisheries Service. The presence of the two institutions is an example of a multiplicity of institutions, both with full Boards, staff and a Parliamentary allocation for recurrent expenditure. The multiplicity of institutions is highly burdensome to the Kenyan tax-payer.</p> <p>It is therefore recommended to merge the functions of the Fish Marketing Authority into those of the Kenya Fisheries Services. This requires:</p> <ul style="list-style-type: none"> ▪ A deletion of Sections 198, 201, 202, 203, 204, 205, 206 and 207 of the Act, i.e. all provisions relating to the establishment of the Authority and its Board.



State Corporation	Enabling Legislation	C D
		Th re Fo do int
STATE DEPARTMENT FOR AGRICULTURAL RESEARCH		
Kenya Marine & Fisheries Research Institute	Science, Technology and Innovation Act, 2013 <i>(Previously established under the Science and Technology Act, Cap 250 via Legal Notice No. 7 of 1979)</i>	C o a s d i s o t s t r i n e r e a q p c a r e c o t r a r e p r o c e d u r e T h m a r e o f



Comment vis-à-vis the Fourth Schedule Distribution of Function	Recommendation
<p>The Board of the Fish Marketing Authority includes representation of the Council of Governors.</p> <p>For the above reasons, the mandate of this Authority does not negate the functional or institutional integrity of county governments.</p>	<ul style="list-style-type: none"> ▪ Merging the provisions of Section 200, i.e. on the objects and purpose of the Authority, with those of the Board of the Kenya Fisheries Service. A closer review of the enabling legislation reveals that the Director-General of the Service is already assigned various aspects of the marketing function.
<p>Conduct multidisciplinary and collaborative research on fish ecology, population dynamics, stock assessment and general aquatic ecology; collect and disseminate scientific information on fisheries and other aquatic resources and related natural products; study and identify suitable species for culture including development, adoption and transfer of rearing technology and procedure; study chemical and physical processes that affect the productivity of aquatic ecosystems; monitor water quality and pollution in fresh and marine water environments; carry out socio-economic research on aspects relevant to fisheries, environment and other aquatic resources; establish a marine and freshwater collection for research and training purposes; offer training facilities to aquatic scientists; conduct research on fish quality control, post-harvest preservation and value addition technologies; and conduct research on the blue economy.</p> <p>The Institute's functions fall under the functional mandate of the national government (management of research institutions) and do not collide with those of county governments.</p>	<p>Even though it implements a national government function, similar to KALRO and the National Biosafety Authority discussed above, the Kenya Marine & Fisheries Research Institute should execute its functions within the spirit of intergovernmental relations with county governments to ensure a maximum positive end result of its activities.</p>

5

CROSS-SECTORAL AREAS

5.1 Legislative Review: Cross-Cutting Statutes

5.1.1 Kenya Agricultural and Livestock Research Act, 2013

The Kenya Agricultural and Livestock Research was enacted to: provide for the establishment and functions of the Kenya Agricultural and Livestock Research Organization (KALRO); to provide for organs of the Organization; to provide for the coordination of agricultural research activities in Kenya, and connected purposes

Section No.	Provision	Recommendation	Comment
<i>The Kenya Agricultural and Livestock Research Act 2013</i>			
5 Objects and functions of the Organisation	Section 5(1) outlines the objects of KALRO Section 5(2) provides for KALRO's specific functions	Add a sub-section after Section 5(2) as follows: "The Organisation shall consult and collaborate with county governments in the discharge of the functions outlined in section 5(2)	The Act does not affect the functional or institutional integrity of county governments. However, in the spirit of Articles 6(2) and 189 of the Constitution, county governments must be involved in giving input to KALRO so that agricultural research remains relevant.

Act Objective	Recommendation	Comment
5.1.2 Climate Change Act, 2016		
Provides for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate development, and for connected purposes	None. The Act is acceptable as is.	The Act respects the functional and institutional integrity of county governments. Mainstreaming of climate change into both national and county level governance has been incorporated into the Act.
5.1.3 National Drought Management Authority Act, 2016		
The National Drought Management Authority Act, 2016 establishes NDMA; provides for the membership, powers and functions of the Authority and connected purposes	None. The Act is acceptable as is.	The Act respects the functional and institutional integrity of county governments Drought management is important in promoting water and food security in the country. For this reason, the two levels of government need to collaborate in this matter, with disaster management being a function allocated to both national and county governments. The Act has decentralized its operations to the counties. Its Board includes representation from the Council of Governors and provides that NDMA is expected to facilitate both national and county level drought management processes.
5.1.4 Biosafety Act (Cap. 357)		
The Act makes provision to regulate activities in genetically modified organisms, to establish the National Biosafety Authority, and for connected purposes. The objective of the Act is to ensure the safety of human and animal health when dealing with modified organisms. The First Schedule of the Act lists eight regulatory institutions, with three being of interest to the agricultural sector, i.e.: (i) Department of Public Health; (ii) Department of Veterinary Services; (iii) Kenya Bureau of Standards; (iv) Kenya Plant Health Inspectorate Services ; (v) Kenya Industrial Property Institute (vi) Kenya Wildlife Service; (vi) Pest Control Products Board ;	Review to provide for the role of county governments.	The Act was enacted in 2009, and yet to be amended, The Act should be reviewed to conform with the Constitution of Kenya, 2010 in its entirety, and in particular, to the devolution provisions in Article 189 and the Fourth Schedule. The Act makes no provision for the role of county governments, nor any special provisions on areas of collaboration or intergovernmental relations between the National Biosafety Authority and individual counties.

Act Objective	Recommendation	Comment
(vii) National Environment Management Authority, KEPHIS and PCPB are directly involved in the regulation of agricultural-related products.		
5.1.5 Fertilizers and Animal Foodstuffs Act (Cap. 365)		
The Act seeks to regulate the importation, manufacture and sale of agricultural fertilizers and animal foodstuffs and substances of animal origin intended for the manufacture of such fertilizers and foodstuffs.	None. The Act is acceptable as is.	<p>The Act enacted in 1962 and was last amended 2015, It is therefore up to date it with the current constitutional order and is compliant with the principles of devolution.</p> <p>The substance of the Act limits itself to the regulation of matters outlined in its long title, which is a national government, i.e. development of policies, standards, regulations and guidelines. The Council of Governors is represented in the Fertilizer and Animal Foodstuffs Board of Kenya, therefore ensuring intergovernmental consultations despite being a national government function. The Board also plays an advisory role to both the national and county governments.</p>
5.1.6 Pest Control Products Act (Cap. 346)		
The Act seeks to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests and of the organic function of plants and animals	Update the Act to be aligned to the terminologies used in the Constitution	<p>The Act does not affect the functional or institutional integrity of county governments as it only regulates the manufacture, trade and distribution of pest control products. The Act has not stretched its boundaries beyond as stated in the long title.</p> <p>Having been enacted in 1982 and last amended in 2009, the Act should nonetheless be updated for alignment with the terminologies of the current Constitution.</p>

5.2 Functional Review: Cross-Cutting State Corporations

State Corporation	Enabling Legislation	Comment vis-à-vis the Fourth Schedule Distribution of Function	Recommendation
STATE DEPARTMENT FOR AGRICULTURAL RESEARCH			
Kenya Agricultural and Livestock Research Organization	Kenya Agricultural and Livestock Research Act, 2013.	<p>The functions of KALRO can be summarized as (a) to promote, streamline, co-ordinate and regulate research in crops, livestock, genetic resources and biotechnology in Kenya. (b) to promote, streamline, co-ordinate and regulate research in crops and animal diseases; and (c) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the field of agriculture.</p> <p>KALRO's functions fall under the functional mandate of the national government (management of research institutions) and do not collide with those of county governments</p>	<p>While the functions of KALRO are within the mandate of the national government, the spirit of Articles 6(2) and 189 of the Constitution, it is necessary for county governments— as the sole implementers of national agricultural policies, regulations and standards – to be involved in setting of research aims and working closely with research and biosafety regulation authorities. This will ensure that all research done is relevant to the needs of end-users, i.e. the citizens, and that biosafety standards are also closely monitored.</p>
National Biosafety Authority	Biosafety Act, 2009	<p>The Biosafety Authority exists to regulate activities in genetically modified organisms to ensure the safety of human and animal health when dealing with modified organisms. The Biosafety Authority is expected to regulate the operations of institutions across many sectors, i.e. (i) Department of Public Health; (ii) Department of Veterinary Services; (iii) Kenya Bureau of Standards; (iv) Kenya Plant Health Inspectorate Services; (v) Kenya Industrial Property Institute</p>	<p>Even though it implements a national government function, similar to KALRO discussed above, the National Biosafety Authority should execute its functions within the spirit of intergovernmental relations with county governments to ensure a maximum positive end result of its activities.</p>

State Corporation	Enabling Legislation	Comment vis-à-vis the Fourth Schedule Distribution of Function	Recommendation
		<p>(vi) Kenya Wildlife Service; (vi) Pest Control Products Board;</p> <p>(vii) National Environment Management Authority.</p> <p>Pertinent to the agricultural sector is the Department of Veterinary Services, KEPHIS, and NEMA.</p> <p>KALRO's functions fall under the functional mandate of the national (setting of regulations and standards) and do not collide with those of county governments</p>	

CONCURRENCE OF FUNCTIONS

Article 186(1) of the COK, 2010 sets the foundation of the distribution of functions between the national and county governments as outlined in the Fourth Schedule. In the agriculture sector, the national government is assigned the function of setting of the agricultural policy, while county governments are expected to manage agriculture, including crop and animal husbandry; livestock sale yards; county abattoirs; plant and animal disease control; and fisheries.

Article 186(2) of the Constitution introduces the concept of “concurrent” functions, also commonly known as “shared” functions. It states that:

“A function or power that is conferred on more than one level of government is a function or power within the concurrent jurisdiction of each of those levels of government.”

In the judicial review Miscellaneous Application 291 and 314 of 2016¹⁷, the High Court determined that although the national government is given the role of policy formulation and implementation, activities within the agricultural sector is fully devolved to the county governments, there is nonetheless need for intergovernmental relations as each level of government has roles in the sector.

“110. It is not in doubt that agriculture is a fully devolved function under the Fourth Schedule of the Constitution and that under section 29 of part I of the Fourth Schedule to the Constitution, the national government’s role in agriculture is strictly limited to agricultural policy while implementation of the agricultural policies and other agricultural functions are a preserve of the county governments. Article 6(2) of the Constitution provides as follows:

The governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations based on consultation and cooperation.

111. Therefore since both the national and county governments have some roles in matters relating to agriculture they ought to adhere to the provisions of Article 189(1)(a) which provides that:

17 *Republic v Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries & 4 others Ex Parte Council of County Governors & another [2017] eKLR*

Government at either level shall—

- (a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level.

112. In other words in formulating legislation and policies relating to agriculture, the national government is enjoined to consult the county governments in the spirit of upholding the principle of devolution.”

Although the High Court addressed itself to the need of the national government to consult with county governments, the same requirement can be inferred on the need of county governments to consult with the national government in the discharge of its mandate.

Having reviewed the various pieces of legislation in chapters two, three, four and five of this report, and taking into account the provisions of Article 186(2) of the Constitution and the above-mentioned judicial review, it can be concluded that, the elements of roles within the agriculture sector falls within the concurrent jurisdiction of both the national and county governments. This remains the case even as it is acknowledged that the majority of functions in the sector are to be implemented by county governments. In order to fully appreciate the nature of concurrence of functions for the two levels of government in this sector, it is necessary to adopt a broader outlook into the interpretation of the term ‘concurrent function’, looking into all the supportive factors that would make the sector successful. This is in contrast with the more traditional approach of simply stating and limiting the interpretations to the literal listed functional statements as outlined in the Fourth Schedule.

A conservative interpretation of the term would simply compartmentalize the functions of the two levels of government by limiting the national government to setting of agricultural policy and standards, without interrogating what other roles the national government could play to support county governments in implementation of the functions in the sector. A more liberal approach instead interrogates the following questions:

“What type of policies and standards would the national government set in agriculture? What is necessary to make the implementation of these policies successful? Which other functions or sectors are important to facilitate the implementation of unbundled county government functions? Which level of government is in charge of implementing functions in the said supportive sectors?”

The above questions lead one to resolve that success in the agricultural sector is not only limited to the actual management and facilitation of activities directly related to crops,

livestock and fisheries but would need the successful management of several facets of roles in other sectors as well. These would include water, soil and environmental management, transport sector management, agricultural education and research management, climate change governance in agriculture etc. This approach appreciates that given government activities, be it at national or county level, cannot be fully separated and operated in a solitary manner, but must instead be implemented within the confines of consultations, collaboration and cooperation. This is indeed one of the principles of devolution, as defined in Articles 6(2) and 189 of the COK, 2010.

This section of the report therefore proposes areas for possible collaboration between the national and county governments, which would lead to the success of the agricultural sector. Identified areas for collaboration are:

- ♦ Water harvesting & storage;
- ♦ Irrigation infrastructure development;
- ♦ Research and capacity building;
- ♦ Marketing of agricultural produce;
- ♦ Human resource development;

6.1 Water Harvesting and Storage and Irrigation Infrastructure Development

The success of the agriculture sector is directly related to the availability of water for crops, aquaculture, livestock watering and agroforestry. While the country still heavily relies on rainfall patterns, progress has been made towards water harvesting and irrigation strategies. Key to sustainable agricultural practices is putting in place infrastructure to enable mass water harvesting and storage, and consequential use on irrigation and livestock watering.

The implementation of various functions within the water sector is shared between the national and county governments. The Fourth Schedule to the Constitution allocates to the national government the function¹⁸ of:

“Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—*water protection, securing sufficient residual water, hydraulic engineering and the safety of dams.*”

18 Paragraph 22(c), Part I of the Fourth Schedule to the Constitution

On the other hand, county governments are allocated the function¹⁹ of :

“implementation of specific national government policies on natural resources and environmental conservation, including – (a) soil and water conservation; and (b) forestry. (c) county public works and services, including – storm water management systems in built-up areas and water and sanitation services.”

The August 2013 TA Gazette Notice unbundled the crops husbandry function to include:

- ❖ Development and implementation of programmes in the agricultural sector to address food security in the county.
- ❖ Development of programmes to intervene on soil and water management and conservation of the natural resource base for agriculture

With both levels of government given mandates in water protection, there is need for collaboration between the two levels of government in (i) development of innovative strategies for water harvesting and storage; (ii) development of appropriate water storage and irrigation infrastructure that responds to specific county climate context, as well as farming and pastoral systems; (iii) promotion of effective and efficient agricultural water use, including implementation of strategies for wastewater management.

6.2 Research and Capacity Building

Improved productivity and quality of crops can only be gained through continuous research that amalgamates international best practices with local knowledge and practices, thereby making research responsive to local needs. Research is a component of the education function, which is shared between the two levels of government. Specifically, the national government is allocated the responsibility²⁰ :

“Education policy, standards, curricula, examinations and the granting of university charters.

“Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions”

On their part, county government are allocated²¹ :

“Pre-primary education, village polytechnics, home craft centres and childcare facilities.”

The TA August 2013 Gazette Notice unbundled the crops husbandry function to include:

¹⁹ Paragraphs 10 and 11, Part 2 of the Fourth Schedule to the Constitution

²⁰ Paragraphs 15 and 16, Part 1 of the Fourth Schedule to the Constitution

²¹ Paragraph 9, Part 1 of the Fourth Schedule to the Constitution

“Management of Agricultural Training Centers and Agricultural Mechanization Stations.”

As it is, the majority of scientific research takes place in tertiary and research institutions, whose management falls squarely on the national government. The following are the Institutes established by various pieces of legislation, i.e. the Agriculture and Food Authority Act, 2013 the Fisheries Development and Management Act, 2016 the Science and Technology Act, 2013, among others. Majority of the listed Institutes are under the management of either the Kenya Agricultural and Livestock Research Organization or the Kenya Fisheries Service²².

1. Food Crop Research Institute.
2. Livestock Research Institute.
3. Fisheries and Marine Research Institute.
4. Industrial Crop Research Institute.
5. Horticulture Research Institute.
6. Forest and Environment Research Institute.
7. Water Resource Management Research Institute.
8. Arid and Range Lands Research Institute.
9. Genetic Resources Research Centre.
10. Biotechnology Research Institute.
11. Beef Research Institute.
12. Apiculture Research Institute.
13. Dairy Research Institute.
14. Non-Ruminant Research Institute.
15. Sheep and Goat Research Institute.
16. Veterinary Science Research Institute.
17. Marine and Fisheries Research Institute.

In addition to the management of the above Institutes, Section 56 of the Kenya Agricultural and Livestock Research Act, 2013 mandates KALRO to undertake the research functions of the following former Institutes:

1. Kenya Agricultural Research Institute.
2. Kenya Trypanosomiasis Research Institute.
3. Kenya Forestry Research Institute.

22 <http://www.kalro.org>

4. Agricultural Science Advisory Research Committee.
5. Coffee Research Foundation.
6. Tea Research Foundation of Kenya.
7. Kenya Sugar Research Foundation.

From the foregoing list of institutes, it is clear that all elements of agricultural research are to be managed by the national government. It is nonetheless imperative for all research conducted to be responsive to local needs, hence the need to consult and collaborate with county governments on the research areas required. Further, the emerging lessons and practices learnt through the research should be cascaded to county government agricultural staff through capacity-building initiatives²³, so that they too can further extend relevant agricultural practices to farmers and pastoralists.

6.3 Demand driven Human Resource Development

Adequate human resource, both in terms of number and requisite skills, is required for effective implementation of the agricultural function. However, a recurring theme in the devolution of agriculture in the past few years has been the lack of adequate human resources, mainly in terms of skills, to meet the specialized needs to the counties. This may be attributed to several factors, including limited human resource budgets for county governments, leading to low employment of relevant professionals and the limited capacity of learning institutions to train on emerging issues.

The development of skilled human resources ideally starts at institutions of training for which the national government has the mandate of managing the education in tertiary institutions and those of higher learning. Further, County Service Boards are expected to identify the appropriate skills and numbers of personnel required and recruit them for particular roles. Lastly, it is vital for the sharing of revenue between the national and county governments to be equitable within the precepts of Article 201 of the Constitution as any deviations from this, affects the delivery of vital functions, including in agriculture, across the country.

It is, therefore, necessary for county governments to meaningfully engage with the national government in the following areas:

- (a) Joint conduct of training needs assessments across counties for existing staff to enable capacity-building trainings.
- (b) Joint periodic review and updating of agriculture training curricula in educational institutions to ensure that learning is constantly responding to ground realities,

²³ Paragraph 32, Part I of the Fourth Schedule to the Constitution

and hopefully lead to the supply of adequate human resources, with skills that meet counties' agricultural needs.

- (c) Establishment of working partnerships and collaboration with national level institutions that have expertise in specific technical areas, to build capacities of county government staff.
- (d) Intergovernmental consultations on the fair division of revenue between the two levels of government to meet human resource and associated costs as they discharge their agricultural mandates within communities.

6.4 Marketing of Agricultural Produce

After providing services to citizens to facilitate agricultural production in respective counties, county governments are naturally expected to then assist farmers to market their produce. The TA August 2013 Gazette Notice unbundled counties' trade function to include management of cooperative societies. In crop husbandry, the Gazette Notice unbundled the role of county governments to include:

- (a) Promotion of market access for agricultural products.
- (b) Provision of infrastructure to promote agricultural production and marketing as well as agro-processing and value chains.
- (c) Enhancing accessibility to affordable credit and insurance packages for farmers.

Despite the above, county governments cannot only trade between their own citizens. There is need for inter-county trade, which a majority of counties are already doing and some have organised themselves into economic blocs. There is also need for linkages between counties that are far flung from each other, through roads or other means of transport, and good cross-country marketing of produce.

Agricultural produce from crops and livestock need to be purchased in large quantities while still fresh and stored for future use. Such purchase power may only be possible by the national government. Further, there is need for international marketing and trader, which is a function of the national government²⁴. County government should therefore figure out what marketing and trade options are best for their citizens and facilitate agreements on behalf of the people. Lastly, certain development projects, e.g. construction of access roads, should be linked to the economic benefits it will bring to a people who rely on agriculture for livelihoods, i.e. the need to efficiently transport the goods to market centres.

24 Paragraph 1, Part I of the Fourth Schedule to the Constitution

7

STRATEGY FOR FUNCTIONAL AND INSTITUTIONAL RESTRUCTURING OF THE AGRICULTURE SECTOR

7.1 Recommendations

1. Legal and regulatory reforms: Work should commence on the process of amending the agricultural legislation as recommended in this report. The Ministry of Agriculture, Livestock and Fisheries should work together with the COG, IGRTC and the office of the Attorney General in this regard. It will be useful to also work with the relevant committees of the National Assembly and the Senate in this matter. Areas for broad consideration include:

- ♦ Providing for the role of county governments where this is yet to be done, i.e. in majority of all pre-2010 agricultural legislation.
- ♦ Updating legislation, as analysed in chapters two, three, four and five of this report, to respect the functional and institutional integrity of each level of government.
- ♦ Consolidating the provisions of different pieces of legislation that guide on the same subject matter, e.g. those on plant pest and disease control.
- ♦ Repealing redundant legislation.

2. Institutional restructure: Successful legislative reforms will mean that each level of government is correctly assigned its functions as per the Fourth Schedule to the Constitution. Legal reforms will, therefore, be followed restructure of agriculture sector institutions, being mainly state corporations of the national government. Given that majority of implementation functions in the agriculture sector are constitutionally placed with county governments, an institutional restructure will practically mean a reduction of implementation scope for some state corporations, a merger of some or dissolution of those rendered redundant.

3. Operationalisation of agriculture sector intergovernmental committees: intergovernmental sectoral committees focused on the various sub-sectors of the agricultural function should be operationalised so to streamline efforts between the national and county governments in the delivery of services to farmers and pastoralists. The Council of Governor's recommendation on this matter was that:

“The current intergovernmental structures between counties and national government should be expanded and the nature of responsibilities clearly defined to include planning committees that will oversee the full implementation of devolution in Agriculture. These structures will deal with budget, functional, and institutional rationalisation, and policy (re)alignment in the Sector²⁵”

4. Equitable sharing of national revenue: The division of revenue between the national and county governments by the National Assembly should reflect the greater responsibility of county governments in implementation of the agriculture sector functions.

5. Strategic approaches to the development of county policies and legislation: for better service delivery:

- (i) County policies and legislation on agriculture should not be replicas of the national level legislative documents but should speak to the varied needs of the specific counties.
- (ii) Development of county-level policies should take a multi-sectoral approach, more so those in which the livestock sub-sector heavily relies on scarce natural resources, i.e. pastures and water, and where there are competing priorities of natural resource management versus rangeland management. Such a multi-sectoral approach should ensure that policies developed to speak to ground realities, do not contradict each other and offer practical solutions to perennial clashes over grazing lands and water resources between communities.

6. Meaningful public participation in the implementation of agricultural programmes: County governments need to have meaningful public participation when developing programmes in either crops, livestock or fisheries sub-sectors. Decisions made on such programmes should not be for political mileage but should ideally be for the benefit of majority of citizens in the county in the long term.

25 *Sectoral Policy and Legislative Analysis 2015, COG*

7.2 Implementation Matrix

Area of Intervention	Activities	
Analysis of the status of implementation of the agriculture sector functions	Review of mandates of national government agriculture sector parastatals vis-à-vis functional assignment under the Fourth Schedule to the Constitution	
	Consultations with stakeholders at the national government, county governments and relevant CSO stakeholders	
Harmonisation of agricultural sector laws	Review of agricultural laws in the crops, livestock and fisheries sub-sectors to (i) identify sections of laws which impede the implementation of the agricultural function as intended by the Constitution (ii) identify laws which may conflict with each other	
Identification of other non-legislative challenges that may be impeding the efficient implementation of the agricultural function	Literature review	
	Consultations with relevant stakeholders	
Facilitate intergovernmental consultations on the implementation of agricultural functions as per the Fourth Schedule to the Constitution and the Transition Authority's 2013 Gazette Notices on the transfer of functions	Consultations with the cabinet secretary and respective principal secretaries– Ministry of Agriculture, Livestock and Fisheries (MOALF)	
	Consultations with the Council of Governors (COG) and county executive committee members responsible for agriculture in the 47 counties	
	Convene a roundtable meeting between COG and MOALF, facilitated by IGRTC	
	Issue advisory to the office of the President (OP) and Office of the Attorney General (OAG) on the agreements made	
Development of draft Agricultural Sector Amendment Bill	Submit a report of IGRTC legislative review to the Kenya Law Reform Commission, Council of Governors and OAG	
	Appoint a working intergovernmental sectoral committee to harmonise recommendations on legislative amendments from various institutions	
	Convene a series of working committee meetings to agree on specific Sections of each agricultural law to be proposed to Parliament for amendment, or laws to be wholly repealed	

	Expected Outputs	Actors	Time Limit
	Report on the status of implementation of the agriculture sector function	▪ IGRTC	31 st October 2018
	Report of reviewed laws, with necessary recommendations on areas proposed for amendment or repeal	▪ IGRTC	31 st October 2018
	Report on challenges impeding the implementation of the agricultural function	▪ IGRTC	31 st October 2018
	Signed Memorandum of Understanding on the need for the national government to hand-over the implementation of identified functions being carried out by state corporations to county governments.	▪ MOALF ▪ IGRTC ▪ COG	30 th November 2018
			30 th November 2018
			15 th December 2018
	IGRTC advisory to OP and OAG	▪ IGRTC	20 th December 2018
	Advisory to the various offices on the proposed amendments to various statutes.	▪ IGRTC	15 th November 2018
	Responses from relevant institutions appointing staff to be members of the working drafting committee	▪ KLRC ▪ AG ▪ MOALF ▪ COG ▪ 2 CSOs ▪ IGRTC	20 th December 2018
	Minutes of the working committee sessions	▪ KLRC ▪ OAG ▪ MOALF ▪ COG	31 st January 2019

Area of Intervention	Activities
	<p data-bbox="782 452 1551 527">Develop a draft Agriculture Sector Amendment Bill, containing proposed amendments to all affected legislation</p> <p data-bbox="782 587 1373 621">Convene roundtable meeting to validate the Bill</p>
<p data-bbox="300 886 673 919">Consultations with Parliament</p>	<p data-bbox="782 886 1503 960">Submit advisory of proposed amendments to the National Assembly and the Senate</p> <p data-bbox="782 996 1572 1134">Host a working retreat with the National Assembly's Departmental Committee on Agriculture and Livestock, and the Senate's Standing Committee on Agriculture, Livestock and Fisheries</p>
<p data-bbox="300 1278 666 1312">Enactment of Amendment Bill</p>	<p data-bbox="782 1278 1048 1312">Publication of the Bill</p> <p data-bbox="782 1348 1133 1382">Passage of Bill by Parliament</p> <p data-bbox="782 1538 1017 1572">Presidential Assent</p> <p data-bbox="782 1719 1517 1793">Issue Gazette Notice on functions previously performed by parastatals to be implemented by county governments</p>
<p data-bbox="300 1936 748 2109">Facilitate re-alignment of agriculture sector functions and institutions to enable the full transfer of functions and resources to county governments</p>	<p data-bbox="808 1936 1546 2073">Convene an intergovernmental agriculture sector planning committee to oversee the full transfer of the agricultural function to respective levels of governments. Specifically, the planning committee will oversee:</p> <ul data-bbox="808 2097 1520 2164" style="list-style-type: none"> <li data-bbox="808 2097 1520 2164">▪ Identification and costing of state corporation's assets and liabilities to be transferred to county governments.

	Expected Outputs	Actors	Time Limit
		<ul style="list-style-type: none"> ▪ 2 CSOs ▪ IGRTC 	
	Draft consolidated Amendment Bill	<ul style="list-style-type: none"> ▪ KLRC ▪ AG 	15 th February 2019
		<ul style="list-style-type: none"> ▪ KLRC ▪ OAG ▪ MOALF ▪ COG ▪ IGRTC 	28 th February 2019
	Advisory explaining the need for reforms in the agriculture sector	<ul style="list-style-type: none"> ▪ IGRTC 	
	Minutes of meeting	<ul style="list-style-type: none"> ▪ National Assembly ▪ Senate ▪ COG ▪ IGRTC 	31 st January 2019
	Agriculture Sector Amendment Bill, 2019	<ul style="list-style-type: none"> ▪ OAG 	15 th March 2019
	Agriculture Sector Amendment Law, 2019	<ul style="list-style-type: none"> ▪ Parliament 	Timeframe to be guided by Parliamentary Calendar
		<ul style="list-style-type: none"> ▪ President 	Timeframe to be guided by Office of the President's Scheduling
	Publication of Gazette Notice	<ul style="list-style-type: none"> ▪ IGRTC 	One month following presidential assent to the Amendment Bill.
	A road map for the transfer of functions and resources from the national government to county governments	<ul style="list-style-type: none"> ▪ IGRTC 	30 th June 2019

Area of Intervention	Activities	
	<ul style="list-style-type: none"> ▪ Mapping of state corporation’s human resources to be transferred to county governments. ▪ Developing of a road-map for the transfer of assets and human resources from state corporations to county governments. <p>Facilitate Implementation of the planning committee’s report, to ensure:</p> <ul style="list-style-type: none"> ▪ Reduction of the scope of some state corporation ▪ The merger of some state corporations ▪ Dissolution of obsolete state corporations. ▪ Transfer of assets, liabilities and human resources from state corporations to county governments 	
Oversight on intergovernmental practices in the implementation of the agricultural function	Operationalise an agriculture sector intergovernmental sectoral committee	
	Convene monthly IGR committee meetings to continually discuss emerging intergovernmental issues in the agricultural sector	
Facilitate intergovernmental and cross-country agreements on shared functions, i.e. on implementation and sharing of raised resources.	Conduct a needs assessment for all county governments on possible areas for an intergovernmental approach between (i) an individual county government and the national government; and (ii) two or more county governments	
	Facilitate discussions between individual county governments and the national governments on possible sharing of: (i) specific implementation functions, or: (ii) revenue raised from specific agricultural sector products or licenses	
	Convene discussions between county governments on implementation of cross-country functions and sharing of revenue emanating from such functions or products	
Privatisation of public sector owned sugar companies (Nzoia, South Nyanza, Chemelil, Muhoroni and Miwani)	Convene intergovernmental consultations between the national government, through MOALF, and the affected county governments, on the sharing of funds that will be raised from such future sale of the companies. The affected county governments include Migori, Bungoma, Kisumu. This will be in line with recommendations of the High Court in Petition No. 187 of 2016 ²⁶ .	

	Expected Outputs	Actors	Time Limit
	Monthly implementation reports	<ul style="list-style-type: none"> ▪ IGRTC ▪ MOALF ▪ County governments 	Within six months of presidential assent to the Amendment Bill.
	Appointment letter of Agriculture sector IGR committee members	<ul style="list-style-type: none"> ▪ IGRTC ▪ COG ▪ MOALF 	30 th January 2019
	Monthly intergovernmental agriculture sector committee update reports	<ul style="list-style-type: none"> ▪ IGRTC 	Continuous basis
	Agriculture sector intergovernmental Mediation Needs Assessment Report	<ul style="list-style-type: none"> ▪ IGRTC 	28 th February 2019
	Memorandums of Understanding between a county government and the national government	<ul style="list-style-type: none"> ▪ IGRTC ▪ County Governments ▪ MOALF 	Continuous basis
	Cross-county joint framework on implementation and revenue sharing.	<ul style="list-style-type: none"> ▪ IGRTC ▪ County governments 	Continuous basis
	Signed Minutes and other evidence of all consultative efforts made to resolve the issue of privatisation of public sector sugar companies	<ul style="list-style-type: none"> ▪ COG ▪ Affected county governments 	Continuous, but to be completed by 30 th April 2019.
	Signed Memorandum of Understanding on the agreements made.	<ul style="list-style-type: none"> ▪ IGRTC ▪ MOALF 	





INTERGOVERNMENTAL GOVERNMENT RELATIONS TECHNICAL COMMITTEE

Parklands Plaza, 3rd Floor, Chiromo Lane, Westlands, Nairobi, Kenya

P.O. Box 44880-00100 NRB

Phone: +2547 (0) 202101489

www.igrtc.go.ke

Email: info@igrtc.go.ke



USAID
FROM THE AMERICAN PEOPLE

AHADI
AGILE AND HARMONIZED ASSISTANCE

The production of this document was supported by the United States Agency for International Development (USAID)
