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IGRTC
INTERGOVERNMENTAL
RELATIONS TECHNICAL
COMMITTEE

Consultation, Cooperation & Coordination in Devolution

REPORT OF THE SECOND INTERGOVERNMENTAL RELATIONS SYMPOSIUM



**SAWELA LODGE, NAIVASHA,
4TH – 6TH MARCH, 2024**

Theme: *The State of Intergovernmental Relations: Consolidating and Deepening Devolution in Kenya*



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Executive Summary

This report is a reflection of the outcome of the second intergovernmental relations symposium, themed “*The State of Intergovernmental Relations: Consolidating and Deepening Devolution in Kenya,*”.

The report comprises five main parts.

Part One provides the introduction to the report including the background to the symposium, its objectives and attendance.

The symposium was planned as one of the intergovernmental consultative platforms in furtherance of the constitutional provision that requires the two levels of government to cooperate and constantly consult in pursuit of common goals while discouraging adversarial approaches in their interactions. The specific objectives of the workshop were to: emphasize the significance of IGR in a devolved system of government; determine the adequacy of legislation relating to IGR; identify the salient and emerging issues in IGR in the Kenyan situation; determine compliance to the Fourth Schedule in performance of functions by both levels; and make recommendations on how the emerging issues can be addressed.

Part Two encompasses the preliminary proceedings or deliberations during the event including the opening session and the launch of the IGRTC Strategic Plan 2023-2027. It captures the opening remarks by the various invited guests. This part provides climate setting for the symposium. The session was addressed by senior invited guests including the Principal Secretary, State Department for Devolution, Ms. Teresia Mbaika who represented H.E. Rigathi Gachagua, the Deputy President; Hon. David Ochieng’, Ugenya Member of National Assembly who represented the Hon. Speaker of the National Assembly, Rt.Hon. (Dr.) Moses Wetangula, EGH., MP.; and a representative of Kenya Devolution Program, Act!, Ms. Judy Oduma.

Part Three covers the presentations by various experts and resource persons on the symposium topics.

The expert presentations and ensuing discussions were on topical issues namely:

- i. The Efficacy of the Current Constitutional and Statutory Intergovernmental Structures
- ii. The Success and Challenges of Intergovernmental Relations
- iii. Achieving Cost-Effective and Economy in National Resources Use in the Devolved System of Governance – Evaluating Resources Utilization Between the Two Levels of Government
- iv. The Nexus of Devolution and BETA Plan, and Implications for Intergovernmental Relations
- v. Brief on County Aggregation and Industrial Parks
- vi. A Whole Government Approach to the Transformation of Public Service Culture
- vii. The role of intergovernmental relations in achieving the vision of the judiciary on social transformation through access to justice
- viii. Intra-County Relationships and Impact on Intergovernmental Relations
- ix. Intergovernmental Relations in the Implementation of the National Medium-Term Plan
- x. Impact of Land Issues on Intergovernmental Relations
- xi. Political Economy of Devolution and Implications for Intergovernmental Relations

Among the challenges identified during the presentations and discussions included matters related to resource division, allocation and timely transfer of resources affected by revenue sharing formulae, and continuous existence of stalemates over division of revenue. For example, equalization fund has not been fully actualized. Fostering intergovernmental dialogue, and resolving intergovernmental disputes and conflicts are still a challenge. There seems to be inadequate capacity to ensure effective implementation of Intergovernmental Relations policies and programs. The legal framework for the dissemination of Summit reports faces challenges due to a “lacuna in law,” a lack of clear provisions. This gap hinders the efficient sharing of valuable information, including the targeted audience, dissemination frequency, and accessibility mechanisms.

The presentations and discussions also provided some salient recommendations as summarized:

- i) Breaking down the barriers between different government agencies and levels, fostering a collaborative environment where information and resources are shared seamlessly. This can be achieved by encouraging continuous forums for introspection and evaluation by establishing regular platforms or forums where stakeholders, particularly within the public service, can engage in candid and objective introspection. These forums should serve as spaces for collective reflection, enabling participants to appreciate successes, acknowledge failures, and strategize on addressing identified issues.
- ii) Need to embrace diversity within the workforce is not just a moral imperative; it is also a strategic advantage. A diverse and inclusive public service better reflects the needs and aspirations of our diverse citizenry.
- iii) Need to embrace technological advancements is crucial for streamlining processes, enhancing efficiency and delivering services in a manner that is both effective and responsive to the needs of the public. This should include investing in the skills and knowledge of the public servants. Continuous learning ensures that the workforce remains agile, adaptable, and capable of navigating the complexities of the modern governance landscape that places citizens at the centre of decision-making processes ensuring that policies and services are aligned with the actual needs and expectations of the people.
- iv) There is need to strengthen the commitment at all levels of government by emphasizing the need for accountability in cases of breaches of anti-corruption measures. Demonstrate a commitment to holding individuals personally responsible for any misconduct, and ensuring a robust approach to combating corruption.
- v) The need to have a joint plan to deliberate on how to deal with residual ambiguities or disputes over functions, improved IGR coordination and enhanced structures for meaningful public participation.

- vi) There is necessity or inevitability to undertake functional cost analysis on the transferred functions in order to clarify the exact costs of running county governments and also to inform revenue allocation. Furthermore, it would be necessary to undertake costing of functions every 10 years to address or arbitrate disagreements that arise regularly over the equitable annual division of revenue and county allocation of revenue. This will strengthen financial and fiscal relations between the national and county governments as provided for in COK, article 202.
- vii) Clear frameworks for conditional grants should be established, particularly focusing on sector-specific funding. This proactive measure aims to prevent disputes over resource control, offering transparent guidelines for the allocation and management of funds. Additionally, recognizing and emphasizing the pivotal role of the Senate in facilitating smooth intergovernmental relations, particularly in dispute resolution, is essential.
- viii) IGRTC and other IGR structures should be strengthened and anchored as Constitutional bodies to give them enforceability of decisions. This move aims to enhance the effectiveness and impact of IGRTC and other IGR structures in facilitating coordination, cooperation, and conflict resolution between different levels of government. IGRTC as a key IGR body should strongly voice out IGR, publish issues and disseminate reports about IGR for decision-making and public use.
- ix) Capacity building should be an embedded provision within county governments managed by County Public Service Boards to address staffing needs. This approach aims to ensure that the workforce remains adaptable, well-equipped, and responsive to the evolving challenges and demands of effective public service delivery within the county.
- x) IGR structures should enhance engagement with the public and NSAs for effective monitoring of their performance. This entails creating

mechanisms for regular communication, consultations, and feedback loops to ensure that the concerns, perspectives, and insights of the public and non-state actors (NSAs) are considered.

- xi) Counties should establish systems of documentation and data accessible to users to enhance data-driven decision-making. This proactive initiative accords with current governance norms, stressing transparency, accountability, and efficiency in county-level decision-making procedures. The resolve to build such systems reflects a broader approach to exploiting data as a strategic asset, to improve overall governance and optimize service delivery.
- xii) Review intergovernmental relations policies and legislative framework to address potential gaps, inconsistencies, or inadequacies in the current framework. This will ensure that the IGR policies align with the evolving needs of a decentralized governance system.
- xiii) There is urgent need to reinstate Section 54 of the County Governments Act, 2012 so that county intergovernmental committees are operationalized. This will ensure coordination for effective accountability mechanisms at the county and national levels for the successful implementation of devolution and intergovernmental relations.
- xiv) Establish a communication strategy that ensures visibility of IGRTC as the body that facilitates the implementation of devolution in Kenya.
- xv) Intergovernmental relations symposium should be held biennially to ensure that there is a continuous evaluation of progress in implementation of devolution.
- xvi) Ensure IGRTC is mandated adequately by the law to hold both levels of government accountable for the implementation of resolutions of the Summit and Sectoral Working Groups.

- xvii) In order to secure the independence of the County Public Service Boards endeavor to have the amendment of County Government Act to create a National County Public Service Board to take charge of all County Public Service Boards and fund them.
- xviii) Need for county governments to develop a legal framework for performance management that will anchor the performance management guidelines on a policy insulating it even with change in leadership regime.
- xix) Operationalize the National Performance Management Policy that will anchor the performance management function and provide for a unified and harmonized performance management guideline both at the county and national government levels. Implementing a robust system for monitoring and evaluating intergovernmental relations is paramount. This system should allow for timely interventions, ensuring that any emerging challenges are addressed promptly. Overall, these recommendations collectively contribute to creating a more collaborative and effective framework for intergovernmental relations, aligning with the objectives of devolution in Kenya.

Part Four captures reflections from breakaway sessions on topical issues. Some of the issues discussed at the sessions included discussions on how intergovernmental relations could be improved, improvement of the culture of public service at national and county levels, and how to work with politics for success of devolution.

Part Five of the report covers the remarks made during the closing session.

Abbreviations and Acronyms

Act!	Act Change Transform
ADP	Annual Development Plan
BETA	Bottom-up Economic Transformation Agenda
CAF	County Assembly Forum
CAIP	County Aggregation and Industrial Parks
CECM	County Executive Committee Member
CIMES	County Integrated Monitoring and Evaluation System
CGA	County Government Act, 2012
CIDP	County Integrated Development Plan
COG	Council of Governors
COK	Constitution of Kenya, 2010
CRA	Commission on Revenue Allocation
CUC	Court User Committee
DSP	Devolution Sector Plan
DWSG	Devolution Working Sector Group
ECDE	Early Childhood Development Education
EPR	Extended Producer Responsibility
FCDO	Foreign and Commonwealth Development Office
FLLOCA	Financing Locally-Led Climate Action
HR	Human Resource
HRM	Human Resource Management
IBEC	Intergovernmental Budget and Economic Council
IGR	intergovernmental relation
IGRA 2012	The Intergovernmental Relations Act 2012
IGRTC	Intergovernmental Relations Technical Committee
ILO	International Labour Organization
JASCOM	Joint Agriculture Sector Consultation and Cooperation Mechanism
KDP	Kenya Devolution Program
KDSP	Kenya Devolution Support Program
KIPMP	Kenya Integrated Performance Management Policy
KLRC	Kenya Law Reform Commission
KNLS	Kenya National Library Service

The Summit National and County Government Summit

MDA	Ministries, Departments and Agencies
MSME	Micro-Small and Medium Enterprise
MSMI	Micro-Small and Medium Industry
NG-CDF	National Government Constituency Development Fund
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organization
NPCC	National Productivity and Competitive Council
NPG	New Public Governance
NSA	Non-state actors
OAG	Office of the Auditor General
OCOB	Office of the Controller of Budget
OSR	Own Source Revenue
PFMA	Public Finance Management Act, 2012
PSRP	Public Sector Reform Program
RMLF	Road Maintenance Levy Fund
SACCO	Savings and Credit Cooperative Organisation
SDD	State Department for Devolution
SRC	Salaries and Remuneration Commission
STAJ	Social Transformation Through Access to Justice
TIVET	Technical and Vocational Education and Training
UHC	Universal Health Care
UNESCO	United Nations Educational, Scientific and Cultural Organization

PART ONE: INTRODUCTION



Preliminaries

This section of the report gives the background to the symposium. It also details the objectives and the symposium attendance.

1.1 Background

The Constitution created a political and institutional dispensation to underpin unprecedented national transformation. This is on the premise that freedom and democracy depend on a robust economy which can provide adequate resources to facilitate the fulfilment of various obligations of the state and actualize the rights of citizens. Economic development for shared prosperity is therefore, a fundamental foundation for the realization of our constitutional dispensation.

The Constitution introduced a devolved system of governance comprising two levels; the national and county governments. The two levels of government are distinct but interdependent. The two levels thus relate to each other vertically and horizontally. In this kind of arrangement, apart from the expected cooperative and consultative relations, conflicts are also bound to occur. However, it is how the conflicts are managed that would matter. In the Kenyan devolved system of governance, which constitutionally created two levels of government, intergovernmental relation (IGR) is a natural creation. This is basically the interaction between and among different levels of government. It is the subject of how the different levels of government appreciate their relative roles, responsibilities and influence affect each other. Intergovernmental relation as provided in law is therefore a natural and necessary mechanism for managing governmental projects, programs, conflicts and tension in order to ensure quality service delivery.

In Kenya, IGR is outlined in Articles 6 and 189 of the Constitution. Whereas Article 6 provides that *‘the governments at the national and county levels*

are distinct and inter-dependent and shall conduct their mutual relations on the basis of 'consultation and mutual cooperation', Article 189 on the other hand requires that 'government at either level shall perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of the government at the other level, and respects the constitutional status and institutions of government at the other level and in the case of the County Government, within the county level'. The requirement to cooperate and consult implies the pursuit of common goals and discourages an adversarial approach during interactions as this may impede achievement of set common goals and objectives.

The Intergovernmental Relations Act 2012 (IGRA 2012) establishes the framework for consultation and cooperation between the national and county governments and also provides mechanisms for the resolution of intergovernmental disputes.

The Intergovernmental Relations Technical Committee (IGRTC), as the secretariat of the National and County Government Coordinating Summit (the Summit), leverages various interventions and mechanisms to promote sustainable intergovernmental relations through continuous consultation and cooperation between both levels of government on various aspects. Guided by its strategic plan, IGRTC holds biennial IGR symposiums that aim to provide an account of intergovernmental relations and the progress made towards deepening devolution. These symposiums also aim to highlight achievements, emerging issues, challenges, and lessons learned, among other experiences in intergovernmental relations and the realm of devolution.

The second intergovernmental relations workshop, themed "*The State of Intergovernmental Relations: Consolidating and Deepening Devolution in Kenya*," was held from 4th to 6th March 2024. The symposium provided a platform for stakeholders to share knowledge, information, and best practices on intergovernmental relations. This report presents the outcome of the deliberations and recommendations therein.

1.2 Objectives


The overall objective of the symposium was to take stock of the state of play in IGR practice in the Kenyan devolved system of governance.

The specific objectives of the workshop were to:

- a) Emphasize the significance of IGR in a devolved system of government.
- b) Determine the adequacy of legislation relating to IGR.
- c) Identify the salient and emerging issues in IGR in the Kenyan situation.
- d) Determine compliance to the Fourth Schedule in performance of functions by both levels
- e) Make recommendations on how the emerging issues can be addressed.

1.3 Symposium Attendance

The symposium was attended by over 200 participants. The expert presenters and discussants in attendance included Mr. Felix Kosgei, Chief of Staff and Head of Public Service; Hon. David Kones, Deputy Governor Nakuru County, Ms. Teresia Mbaika, Principal Secretary, State Department for Devolution; Dr. Juma Mukhwana, Principal Secretary State Department for Industrialization; Hon. David Ochieng', Member National Assembly Speakers Panel, Hon. Hillary Kiprotich, Senator, Bomet County; Hon. Paul Ndemo, Ag. Chief Registrar, Judiciary. The other presenters and discussants were Ms. Winnie Lichuma, Advocate of the High Court of Kenya; Former Chairperson NGEK; Mr. Kinuthia Wamwangi, former chairman Transition Authority; Hon. Chege Mwaura, Secretary General County Assemblies Forum; Ms. Mary Mwiti, Chief Executive Officer, COG; Hon. Ndegwa Wahome, Former Speaker County Assembly of Nyandarua; Mr. Kithinji Kiragu, Chairperson, IGRTC; and Dr. Kipkirui Chepkwony, Chief Executive Officer IGRTC. The overall moderator for the symposium was Prof. Karuti Kanyinga, Research Professor Institute of Development Studies, University of Nairobi, assisted by Dr. Joseph Kosure, Intergovernmental Relations Consultant for Kenya Devolution Program/Act!.



Other participants were representatives from national and state agencies, county governments, IGR organs, development partners engaged in devolution such as the Act Change Transform (Act!); Foreign and Commonwealth Development Office (FCDO); Constitutional Commissions and Independent Offices; Civil Society organizations and Non-governmental Organisations (NGOs); and the Academia.

PART TWO: OPENING SESSION

The Symposium was officially opened with remarks from invited guests and the IGRTC leadership. This was followed by a launch the organizational Strategic Plan 2023 -2027. The program is presented as **Annex 5**.



Remarks

2.1.1 Mr. John Kimwela, Member, IGRTC

In his opening remarks, Mr. Kimwela, the Chairperson, IGRTC Summit and IGR Services Directorate expressed his gratitude to all distinguished guests and commended the organizers for their tireless efforts in convening the symposium, recognizing their commitment to fostering dialogue and collaboration on intergovernmental relations and devolution. He appreciated the stakeholders drawn from both levels of government, academia and NGOs. He specifically acknowledged the partnership between Act! and IGRTC, particularly their invaluable support to IGRTC in undertaking its functions including the IGR symposium.

He informed the stakeholders that devolution not only involved the transfer of functions but also empowerment of communities through decentralization of resources. He added that the theme for the second Intergovernmental Symposium aimed at bringing out the interconnectedness of the functions between the two levels of government, underscoring the need for collaboration between the two levels. He urged participants to ensure that the discussions elaborate on the following perspectives:

- i) **Devolution as a Transformative Journey:** Devolution is not merely about transferring powers but represents a transformative journey towards inclusive governance. He highlighted its significance in empowering local communities, enhancing service delivery, and fostering citizen ownership and responsibility, aligning with democratic ideals and strengthening government structures.

- ii) **Importance of Intergovernmental Collaboration:** The speech reiterated the necessity of effective collaboration and cooperation between different levels of government for smooth governance and policy implementation. He stressed the interconnectedness of governance structures and the need for interdependence to address contemporary challenges and opportunities effectively.
- iii) **Call for Citizen-Centric Governance:** Mr. Kimwela urged participants to prioritize citizen-centric governance, emphasizing the importance of creating transparent, accountable, and responsive systems. This call reflected a commitment to ensuring that governance structures align with the needs and aspirations of the people they serve.
- iv) **Encouragement for Active Engagement:** He encouraged active participation, dialogue, and partnership-building among participants, viewing the symposium as a catalyst for positive change. He urged attendees to leverage the platform to share insights, address challenges, and shape governance structures that uplift communities.

At the same time, he called upon participants to ventilate on all issues affecting the actualization of the objects of devolution. He then pointed out the three main recurrent challenges that should be addressed at the end of the symposium:

- i) Fiscal challenges between the two levels of government bringing constraints in strategy implementation
- ii) Lack of constant capacity building to equip the county governments with the necessary skills to enable them implement their functions.
- iii) Lack of continuous dialogue that inhibits implementation of emerging issues in the devolved sector.

He emphasized on the need for maintaining harmonious intergovernmental relations, for sustainable service delivery by both levels of governments. He noted the following aspects as some of the requirements in fulfilment of coordinated intergovernmental relations:

- i) Good intergovernmental relations require consultation, cooperation and coordination at both levels for successful implementation of policies.
- ii) The need for interdependence for effective policy making, resource allocation and sustainable development
- iii) Need to create systems that are not only transparent but genuinely responsive to the need of the citizens.
- iv) Need to remain steadfast in our commitment in citizen centric governance.
- v) Governance should be a collective endeavor to involve tiers of government and other development partners for the greater good of devolution.

In conclusion, he expressed his gratitude to all attendees and wished them successful and objective deliberations for positive and measurable outcomes.

2.1.2 Ms. Judy Oduma, Team Leader Kenya Devolution Program, Act!

Ms. Oduma reflected on the long-standing collaboration between IGTRC and Act! highlighting the significance of the collaboration in strengthening the vision and mission of Act!. She acknowledged the importance of collective efforts in delivering services and enhancing governance structures. She highlighted the role of Kenya Devolution Program (KDP) which is implemented in four-year phases, and provided the following key expected outputs for KDP:

- i) Strengthen intergovernmental relations
- ii) County governance, economic development and own source revenue
- iii) Participatory process: social accountability
- iv) Research and evidence learning to inform policy development.

The definition of IGR, which is the interactions between two levels of government, in itself brings out the need for effective consultation and coordination between and amongst the two levels of government. She

acknowledged IGRTC as the intermediary agency that promotes and facilitates harmonious cooperation and coordination between the two levels of government.

Ms. Oduma gave an overview of the KDP, by highlighting its objectives, the key focus areas and outputs as follows:

- i) **Overview of the Kenya Devolution Program:** The program aims to deepen devolution by strengthening inter-governmental relations, enhancing county governance, promoting economic and social development, while fostering research-based policy formulation.
- ii) **Key Focus Areas:** Role of inter-governmental relations for the future of Kenya in trade, investment, and economic development. She underscored the significance of social responsibility processes and research-based learning in informing policy decisions and administration.
- iii) **Promotion of Effective Consultations and Coordination:** The success of KDP lies in effective consultation, coordination, and cooperation between national and county governments. It is for this reason that Act! supports several institutions to facilitate harmonious development and coordination for ease of service delivery to Kenyans.
- iv) **Commitment to continued support:** Facilitation of ongoing conversations and resolutions aimed at strengthening inter-governmental relations is vital and through KDP, Act! is committed to supporting the IGRTC with a view to enhancing sustainable intergovernmental relations. KDP has been consistent in providing support towards strengthening devolution. To improve the cooperation between the two levels of government KDP has supported IGRTC in:
 - a) Providing technical assistance;
 - b) Supporting implementation of IGR functions including identification and valuation of inventories of public assets and

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- transfer of functions to the relevant level of government;
 - c) Supporting policy development; and
 - d) Supporting implementation of the decisions of the Summit.

In conclusion, Ms. Oduma emphasized the continued need to pursue support from relevant stakeholders for devolution success. She congratulated the organizers for hosting a successful summit and reiterated the importance of continued collaboration in advancing inter-governmental relations.

2.1.3 Mr. Charles Nzivo, CEO Kenya National Library Services

Dr. Nzivo noted that the success of devolution highly depended on commitment and willingness by the two levels of government to actualize the objects of devolution. He gave an illustration of the Kenya National Library service (KNLS), which had demonstrated this commitment through its collaborative actions with both the national and county governments in ensuring the transfer of the library function. Dr. Nzivo in his opening remarks observed the following:

- i) Successful Transfer of Devolution Functions:** He highlighted the achievement of KNLS in being the first to successfully transfer functions in line with the strategy for devolution. Dr. Nzivo underscored the importance of this accomplishment as it signifies a seamless transition of life and function from the national to county level.

- ii) Presentation on KNLS Approach:** Dr. Nzivo expressed shared with the participants the approach of KNLS to devolution. He emphasized on how devolution could be facilitated and encouraged within the respective departments and units of the government.

Dr. Nzivo concluded his speech by expressing gratitude to IGRTC for their efforts in actualizing devolution and for providing an opportunity for interaction and sharing of experiences with the participants.

2.1.4 Mr. Chege Mwaura, County Assembly Forum Secretary General

Mr. Mwaura delivered a speech focusing on the role of county assemblies in the context of intergovernmental relations and the transfer of functions from the national to county governments. He represented the County Assemblies Forum (CAF), which encompasses the legislative arms of the 47 county assemblies in Kenya. The highlights of his remarks were:

- i) **Commitment to Inter-Governmental Collaboration:** He reiterated the commitment of CAF in supporting the IGRTC in performing its mandate especially the transfer of functions. Emphasizing the importance of collaboration between the national and county governments, Mr. Mwaura highlighted the crucial role of county assemblies in legislation, oversight, and decision-making processes. He outlined the role of CAF in facilitating the implementation of the transfer of functions and ensuring effective oversight of county economies. He stressed the need for sharing reports and information between the national and county governments to enhance coordination and decision-making processes.
- ii) **Challenges and Proposed Solutions:** In addressing challenges experienced during the implementation of intergovernmental relations, Mr. Mwaura decried the absence of clear procedures for disseminating reports between government levels. He called for urgent attention to establish robust reporting channels and coordination mechanisms to enhance the effectiveness of intergovernmental relations.
- iii) **Advocacy for County Assembly Involvement:** Mr. Mwaura advocated for the inclusion of county assemblies, at least as observers, in the Summit. He emphasized the importance of their involvement in monitoring and implementing coordination plans, and providing valuable recommendations based on their observations.

Mr. Mwaura expressed optimism about the potential of the Symposium in providing a forum for transformative discussions and fruitful collaborations. He wished the participants a productive and enlightening session underscoring the importance of collaborative efforts in advancing Kenya's decentralized government system.

In conclusion and on behalf of CAF, he gave the following recommendations that:

- i) IGRTC actively involve county assemblies in the transfer and harmonization of county functions. This involvement is deemed essential to empower county assemblies with the necessary insights and information required for effective legislative and oversight roles over the implementation of the aforementioned functions by the county executive. By fostering collaboration in this process, county assemblies can contribute significantly to the success of devolved governance and the improvement of service delivery at the grassroots level.
- ii) IGRTC collaborates with county assemblies in establishing a comprehensive mechanism for monitoring and reporting on the progress of the transfer of functions. This should include regular updates on the status of functions, valuations of county assets and liabilities, and the overall implementation of devolved governance. Such a mechanism will enhance transparency, accountability, and facilitate informed decision-making by county assemblies in fulfilling their oversight responsibilities.
- iii) IGRTC, the Senate, and the National Assembly should initiate the amendment to the IGRA, 2012 and development of regulations to provide for a comprehensive framework outlining clear procedures for the dissemination, consideration, and feedback provision on the annual reports, as stipulated in Section 10 of the IGRA, 2012. By addressing this legislative gap, the efficiency of communication in the intergovernmental relations framework will be enhanced. It will ensure the timely sharing of reports with Parliament and county assemblies. This collaboration is pivotal for transparent and effective governance within the devolved system.
- iv) There should be established clear and structured consultation channels between IGRTC and county assemblies. This will ensure that their insights and observations are considered in subsequent deliberations. This will promote effective collaboration and enhance the overall efficiency of the intergovernmental relations framework.

- v) IGRTC actively shares the annual Summit reports with county assemblies for consideration and feedback. This collaborative approach will foster transparency and accountability within the intergovernmental relations framework. By providing county assemblies with timely access to these reports, IGRTC can ensure that the valuable insights and perspectives of local governance bodies are incorporated into the deliberations and decision-making processes of the Summit. This recommendation aims to strengthen the participatory nature of the intergovernmental relations system and enhance the effectiveness of devolution practices in Kenya.

- vi) IGRTC actively intervenes to address instances where the Senate encroaches on the oversight mandate of county assemblies. It is crucial to underscore that county assemblies have the rightful authority for the first-tier oversight over county government revenue, whether nationally allocated or locally generated, as recognized by the Supreme Court Judgment 24 of 2019. To uphold the principles of devolution and the rule of law, IGRTC should engage in dialogue with relevant stakeholders, including the Senate, to clarify and reinforce the constitutional mandate of county assemblies in oversight matters. This intervention seeks to preserve the distinct roles and responsibilities of county assemblies and the Senate within the devolved governance system.

- vii) IGRTC takes significant measures to ensure a fair and transparent asset allocation process. Currently, there is a notable trend where a large portion of these assets is allocated to the county executive. To address this imbalance and uphold the principles of equity and accountability, CAF urges IGRTC to seriously consider allocating a fair share of the defunct municipal council assets to county assemblies. This recommendation aims to empower county assemblies in fulfilling their oversight and legislative functions effectively, contributing to the overall success of the devolved governance system.

2.1.5 CPA Kithinji Kiragu, MBS, OGW, Chairman IGRTC

In his opening remarks, the Chairman, Mr. Kiragu acknowledged the presence of esteemed dignitaries, which included government officials, representatives, and stakeholders. He expressed gratitude for their participation in the Symposium. In his remarks, the highlights were on:

- i) **Focus on Intergovernmental Relations:** He emphasized the pivotal role of intergovernmental relations in ensuring the effectiveness of Kenya's devolution process. Mr. Kiragu noted the significance of addressing challenges and doubts surrounding devolution which required strengthening intergovernmental cooperation and adherence to constitutional provisions.
- ii) **Commitment to Devolution:** Mr. Kiragu reiterated the necessity of devolution as enshrined in the COK. He emphasized that devolution was not merely an option but a fundamental aspect of Kenya's governance framework, aimed at empowering local communities and fostering socio-economic transformation.
- iii) **Distinct yet Interdependent Governance System:** The Chairman elucidated the unique nature of Kenya's governance structure, comprising the national government and 47 county governments. He underscored the distinctiveness of each level of government while emphasizing their interdependence in achieving national development goals.
- iv) **Lessons from International Examples:** Drawing lessons from international experiences from countries such as Nigeria and the United States, he emphasized the importance of interdependence between different levels of government in fostering effective governance and national development.
- v) **Addressing Historical Suspicion:** Mr. Kiragu acknowledged historical suspicion between the national and county governments, stemming from doubts and naysayers from both sides. He stressed the need to move beyond this legacy of mistrust and

work collaboratively towards optimizing service delivery and socio-economic transformation.

- vi) **Leadership and Collaboration:** The Chairman commended the leadership of H.E President William Ruto in fostering collaboration and dialogue between the national and county governments. He expressed confidence in the President's commitment to making Kenya's devolved system of governance a success.
- vii) **Call to Action:** Mr. Kiragu concluded by inviting participants to engage in constructive dialogue during the symposium, focusing on how intergovernmental relations can support and consolidate devolution in Kenya. He emphasized the importance of collaborative efforts in realizing the full potential of devolution for the benefit of all Kenyan citizens.

2.1.6 H.E. David Kones, Deputy Governor Nakuru County

H.E. David Kones delivered a welcoming and inclusive speech aimed at fostering interaction and knowledge exchange among participants. On behalf of H.E Governor Susan Kihika, he welcomed all attendees to the County of Nakuru. He emphasized the importance of interaction and learning from one another. He encouraged participants to freely engage in discussions to facilitate the sharing of ideas and experiences. The Deputy Governor touched on a number of issues:

- i) **Recognition of Ecological Significance of Nakuru:** The Deputy Governor highlighted the cultural significance of Nakuru County, mentioning its abundance of natural resources, particularly its six major lakes. By showcasing the county's unique features, he aimed to create a sense of pride and appreciation among the visitors.
- ii) **Promotion of Gender Equality:** H.E. Kones proudly mentioned Nakuru County's reputation as the "**County of Girls**" due to the significant representation of women in leadership positions. By highlighting this aspect, he underscored the county's commitment to gender equality and inclusivity in governance. H.E. Kones expressed his gratitude to the participants for attending the symposium and

encouraged them to participate actively in the deliberations for experiential learning.

- iii) **Invoking a Sense of Exploration:** The Deputy Governor welcomed participants to Nakuru County. He promised them of great tourism products the county had. He thus invited the visitors to sample the products and other development sites in the county.

2.1.7 Ms. Teresia Mbaika, Principal Secretary, State Department for Devolution representing H.E. Rigathi Gachagua, the Deputy President

In her opening remarks, the PS noted that the Constitution promulgated in 2010 bequeathed Kenya a progressive supreme law which introduced the devolved governance system. One of the principles of devolution as provided in Article 175 (a) of the Constitution avers that county governments established under the Constitution shall be based on democratic principles and the separation of powers.

The Constitution recognizes that for effective service delivery, the two levels of Government must work in harmony such that any dispute arising has to be collaboratively addressed. Indeed, Article 189 (4) on cooperation between national and county governments provides that the national legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms including negotiation, mediation and arbitration.

The County Government Act, 2012 (CGA) section 121(1) mandates a ministry or government department responsible for matters relating to intergovernmental relations to provide support to county governments to enable them to perform their functions. Part of the mandate of the State Department for Devolution (SDD) is premised on this background. The Principal Secretary (PS) informed the participants that the SDD had been on the front line in deepening and strengthening intergovernmental relations. This had been done through coordination, consultation and collaboration with various ministries, departments, agencies (MDAs) and the counties. In the process of these engagements, it had been realized that the success of

Kenya's development would to some extent depend on how well coordinated intergovernmental responses were to the frequent governance shocks, which had had significant negative impacts on economic performance.

She referred to the 3-day-Symposium as a dialogue which was geared towards finding homegrown solutions to make devolution work for efficient service delivery. Additionally, she drew the attention of the participants to the several surveys and studies on the performance of the Kenya's system of governance. The PS gave a case in point of the World Bank report of 2022 "*Making devolution work for service delivery in Kenya*" which pointed out a number of proposals including:

- i) Deliberation on a joint plan to discuss residual ambiguities or disputes over functions;
- ii) Enhancement of adequacy, efficacy, equity and reliability of county revenue;
- iii) Improved IGR coordination;
- iv) Promotion of devolution beyond county government;
- v) Adoption of strategic result oriented and coordinated approach to HRM reforms in the county governments;
- vi) Enhancement of structures for meaningful public participation; and
- vii) Investment in data to build an evidence base for devolved sectors to strengthen results monitoring.

In response to these proposals, the PS noted that the SDD, with the support of the World Bank, had developed the Kenya Devolution Support Program II (KDSP II) as the vehicle to address the bottlenecks that hamper effective working of devolution. She highlighted the Key Result Area on IGR coordination as very relevant to the Symposium, noting that the SDD was committed to support national and county government initiatives towards the strengthening of intergovernmental coordination, institutional performance, and human resource management.

She highlighted the following aspects which the KDSP II aimed to address:

- i) Enhancing devolution sector engagements that brings together many institutions at the national and county levels of government with defined functional mandates;

- ii) Enhancing the effectiveness and sustainability of devolved sector operations by strengthening governance systems and structures at the county level through the strengthening of the coordination of devolved sectors through the Devolution Sector Working Group (DWSG), and intergovernmental sectoral forums;
- iii) Facilitating the achievement of Kenya’s nationally determined contributions by strengthening the institutional capacity and intergovernmental coordination to enable Kenya deliver on its mitigation and adaptation targets in line with the sectoral adaptation actions of Kenya’s National Adaptation Plan (2015– 2030); and
- iv) Strengthening the Devolution Sector Plan (DSP) as the overall umbrella strategic framework for devolution towards realization of the 2024– 2028 theme: “the acceleration of the performance of devolution” to be realized by:
 - a) improving capacity in service delivery, resource management, and accountability;
 - b) improving access to decentralized services;
 - c) ensuring effective participation by communities in governance and socioeconomic development; and
 - d) Strengthening intergovernmental cooperation and collaboration for resolution of emerging issues in devolution.

The PS noted that the dialogue to strengthen intergovernmental relations was as a result of the situational analysis on the performance of IGR in devolved governance. The analysis revealed that:

- i) Intergovernmental forums were not fully operationalized and this led to intergovernmental disputes from overlapping institutional mandates and duplication of functions between governments;
- ii) County departmental structures and requisite staffing were not fit for purpose, inefficient nor aligned to support performance and service delivery objectives exacerbated by weak payroll management controls; and
- iii) Human resource (HR) records were not up to date to inform decision-

making on human resource management (HRM) issues such as redeployment, succession management, and bridging of skill gaps.

In conclusion, the PS noted the following as the expectations of the IGR symposium:

- i) Deliberations geared towards addressing governance bottlenecks, improved coordination in HR management in the public service, and accountability in service delivery;
- ii) Propose recommendations towards improved coordination of functions and mandates between the two levels of government for efficient service delivery;
- iii) Propose mechanisms to improve payroll integrity of HR data for decision-making and budget control on staffing; and
- iv) Deliberate on the need for improvement of accountability to achieve results through integrated performance management.

Ms. Mbaika thanked the audience for attending the symposium and reiterated the commitment of the SDD to implement resolutions from the symposium that would require the intervention of the Department. She emphasized the need for all stakeholders in government to strengthen devolution through collective efforts. The full speech of the PS is presented as **Annex 1**.

2.1.8 Keynote Address by Rt. Hon. (Dr.) Moses Wetangula, EGH, MP Speaker of the National Assembly represented by Hon. David Ochieng' of the Speaker's Panel

Towards More Harmonious and Productive Intergovernmental Relations

The keynote address was delivered by Hon. David Ouma Ochieng', Member of National Assembly, Ugenya Constituency and a member of the Speaker's Panel on behalf of the Speaker of the National Assembly, Rt. Hon. (Dr.) Moses Wetangula.

In his opening remarks, Hon. Ochieng' emphasised on the need to put in place measures that would ensure that devolution succeeded. He pointed out that devolution had evidently aided decentralization of resources to areas that were deplorable pre-devolution. This had accelerated infrastructural development in areas where there was no hope for facilities.

Additionally, he implored upon the national government to uphold the spirit and objects of devolution so as to fast track the expected transfer of functions with the attendant resources. Hon. Ochieng' stated that the National Government Constituency Development Fund (NG-CDF) had played a huge role in transforming the lives of citizenry at the grassroot levels. He reiterated that the fund had facilitated developments such as critical amenities in schools and timely issuance of bursaries. He stated that if the NG-CDF were to be challenged, the people would take action to keep it in place since they acknowledged the milestones achieved through the fund.

Hon. Ochieng' delivered Hon. Moses Wetangula's speech which commended IGRTC for organizing the Symposium. He noted that it was a demonstration of its (IGRTC) commitment towards enhancing the intergovernmental relations between the two levels of government. He added that fourteen years after the promulgation of the Constitution, devolution was undoubtedly the key towards promoting the social and economic development of counties.

The Speaker noted the robust constitutional framework especially *Articles 6 and 189*, which acknowledge that the governments at national and county levels were distinct and interdependent, and expected to conduct their mutual relations on the basis of consultation and cooperation. The relations, he explained, would be carried out in a manner that respects the functional and institutional integrity of government at the other level; and assist, support and consult the other level of government.

The IGRA, 2012 enforces these constitutional provisions and provides for a framework for consultation and co-operation between the national and county governments. The Act also provides for resolution of intergovernmental disputes where they arise. On this basis the speaker shared his concern on the recurrent intergovernmental disputes that have continued to disrupt the harmony between the two levels thus posing a threat to productivity.

He noted that while disputes are inevitable, it was important to ensure that productive intergovernmental relations are achieved. He observed that the legislative processes had at times stalled owing to the disputes between the Senate and the National Assembly, leading to the need to harmonize the bicameral relations. To facilitate this, a Houses of Parliament (Bicameral Relations) Bill, 2023 was before the National Assembly, pending a Second Reading. He underpinned the overall objective of the Bill as streamlining the bicameral legislative processes.

The Speaker however, reiterated that the recent absence of contention during the consideration of the Division of Revenue Bill, the County Allocation of Revenue Bill and the County Government Additional Allocations Bill was as a result of the adoption of consultative approach in the legislative processes with regards to matters relating to financing of county governments. This was also evidenced by the fact that the two houses of Parliament had approved the mediated version of the County Governments Additional Allocations Bill, 2023. The Bill provided an additional allocation of approximately KES. 46billion to counties for the FY 2023/24.

On the perennial disagreements on equitable share of revenue allocated to counties, the Speaker called for the need for preliminary consultations to

avoid disputes during debates. There should be more intentional pre-debate consultations between the COG, Commission of Revenue Allocation (CRA) and the existing intergovernmental relations structures, in order to enhance devolution. To avoid the operational paralysis that the counties often have to undergo due to interruption of legal processes and finally resulting to delayed disbursement of funds, pre-negotiations between all relevant parties must be held. This, the Speaker noted, would help in negating unforeseen deadlocks experienced in legislative processes in the past.

The Speaker was concerned over the absence of consensus on revenue sharing for the Financial Year 2024/25 yet there had been ongoing pre-debate consultations between the Intergovernmental Budget and Economic Council (IBEC) chaired by His Excellency the Deputy President, the COG, the National Treasury and the CRA. He reiterated that the financial decisions made by key institutions should embody public interests, because devolution encompasses the aspirations of the people of Kenya.

Consequently, the Speaker took note and applauded the current efforts by H.E the Deputy President as Chair of IBEC towards resolving the aforementioned stalemate, which would result in a consensus on the quantum of the equitable share of revenue.

In view of the foregoing, a cost analysis of the transferred functions was inevitable to clarify the exact costs of running county governments and inform resource allocation. Conversely, he noted that counties needed to devise ways of increasing their Own Source Revenue (OSR) to bridge the revenue gap, having in mind that most disputes emanate from revenue allocation to county governments. Parliament was for enhancing the sources of revenue for counties, a strong reason as to why the County Governments Additional Allocations Bill, 2024 was approved by Parliament with an allocation of KES.3 billion.

On dispute resolution, he implored the two levels of government to avoid adversarial approach towards resolving disputes, and explore all available avenues before seeking litigation. He cited a court case on the

Road Maintenance Levy Fund (RMLF), which threatened to paralyse the consideration of the County Governments Additional Allocations Bill, 2023.

In conclusion, the Speaker called for goodwill from the two levels of government to ensure strengthening of Kenya's intergovernmental structures, and the implementation of negotiated positions between the relevant parties on any matter that is brought for resolution. He finally registered his delight in the deliberate move towards debating more on harmonious and productive intergovernmental relations, taking note of the spirit of the programme for the Symposium. He paid regard to the tremendous efforts towards moving devolution to a trajectory of greater success. The Speaker's full speech is presented as **Annex 2**.



2.2 Launch of Strategic Plan

The Symposium witnessed the official launch of the IGRTC Strategic Plan 2023-2027. The Plan provided for the mission, strategic goals, and operations of the institution. The Plan guided the organisation towards a positive institutional trajectory in the discharge of its mandate as a key stakeholder in devolution and intergovernmental relations. The strategic plan has been designed to align the organisation with the government's development agenda and to ensure that the organisation seamlessly discharges its facilitative mandate in service delivery to the public.

PART THREE: EXPERT PRESENTATIONS

This part of the report covers the expert presentations. The topics were presented followed by plenary discussions. A total of eleven papers were presented on diverse issues on intergovernmental relations.



The Efficacy of the Current Constitutional and Statutory Intergovernmental Structures, Prof. Winnie Mitullah, Research Professor of Development studies, institute of development studies, University of Nairobi and UNESCO

3.1.1 Introduction

The presentation focused on the effectiveness of current constitutional and statutory intergovernmental structures whose objective was to understand the position of IGR structures in the devolution space. The IGRA, 2012 operationalizes Articles 6 (2) and 189 of the Constitution which establishes institutional structures and mechanisms for IGR. The structures include national and county governments coordinating Summit which is the apex body for IGR, The council of Governors and the Intergovernmental Relations Technical Committee.

The significance of IGR in a decentralized system of governance is the foundation for multi-level delivery of services to citizens. Since inception of devolution, both legal and non-legal IGR structures have emerged to enhance collaboration and delivery of mandates by both levels of government. While relationships cannot be legally regularized, there was need to assess the efficacy of IGR structures to assist in identification of gaps and proposals for potential improvement.

3.1.2 Understanding IGR Concept, theories and best practices

The concept of intergovernmental relations goes beyond interactions between the two levels of government to include administrative, fiscal, legal, social, political, and economic aspects of governance. However, interstitial activities, relationships, and organizations that arise between the two levels are the most important aspects of IGR and cannot be fully coded into legal structures.

In the presentation, Prof. Mitullah observed that most theories account for the multi-level dimension of public governance. She discussed theories such as systems, collaborative governance, new public governance, and multi-level, all of which assist in understanding IGR. She further elaborated on system theory which accommodates sub-systems that impact the entire government. The theory takes into account power relations and principal actors within IGR structures and mechanisms, accommodating networks, cultural, political, social, and other contexts that may shape the relationships in a system and its sub-systems.

On collaborative governance theory, the presenter stated that within a devolved system of governance, New Public Governance (NPG) operates within a multi-level framework. This framework recognizes not only different levels of government but also different actors and institutions, accommodating complex vertical and horizontal engagements. Decision-making competencies are shared by sub-national, national, and supranational actors, preventing monopolization by the state.

The IGR concept was mostly used in federal states like the USA and Nigeria but was gaining currency in devolved systems of governance like Kenya albeit with challenges due to fixation with centralization. She observed that IGRTC should be strengthened as the overarching IGR body in the country to provide a holistic assessment of devolution, service delivery by both levels of government and other IGR structures.

IGR shortcomings could be addressed by implementing mechanisms for engagement and accountability to monitor governance processes and outputs. Lack of information created a knowledge gap, leading to uninformed debates on the viability of devolution and IGR structures. Additionally, the recommendation was that IGR structures should embrace NPG as it provided a solid foundation for collaborative IGR operations.

3.1.3 Assessment of the efficacy of IGR Structures

Prof. Mitullah highlighted several IGR structures established by the Constitution and statutes serving various purposes. They included; the

National and County Government Coordinating Summit, Council of Governors (COG), IGRTC, IBEC, County Intergovernmental Forums, Sector Forums, Joint Intergovernmental Technical Committee, CRA, Office of the Controller of Budget (OCOB), Office of the Auditor General (OAG), Kenya Law Reform Commission (KLRC), and Commission on Administration of Justice (Ombudsman).

The said IGR structures provide forums for both levels of government to deliberate on matters of the economy, finance, budgetary allocations, transfer of functions, powers and competencies by bringing stakeholders together for consultation and cooperation. The presenter observed that an effective assessment of IGR structures requires the synthesis of scarce data. While resource allocation and revenue sharing are well-secured in law, contention persists.

In conclusion, the recommendation was that IGR structures should enhance engagement with the public and non-state actors (NSAs) for effective monitoring of their performance.

3.1.4 Challenges

- i. Resource division, allocation and timely transfer of the resources remain a thorny issue being addressed by almost all IGR structures. This included revenue sharing formulae, devising an acceptable formula not easily to diverse interests' cross counties and regions, continuous existence of stalemates over division of revenue
- ii. Equalization fund has not been fully actualized.
- iii. Ability to foster intergovernmental dialogue
- iv. Ability to resolve intergovernmental disputes and conflicts
- v. Capacity to ensure effective implementation of IGR policies and programs.
- vi. Limited understanding of the various established IGR structures
- vii. Accountability of allocated funds by both levels of government
- viii. Lack of a clear framework on follow up and implementation of IGR structures and outputs.
- ix. The legal framework for the dissemination of the Summit reports faces

challenges due to a “lacuna in law,” a lack of clear provisions. This gap hinders the efficient sharing of valuable information, including the targeted audience, dissemination frequency, and accessibility mechanisms.

3.1.5 Recommendations

Evaluating the effectiveness of IGR institutions necessitates a detailed analysis of limited data. The effectiveness of these structures is determined by their ability to promote constructive dialogue, skilfully resolve conflicts, and assure policy execution. Beyond functioning as forums for collaborative decision-making, successful IGR structures help to maintain the overall stability of decentralized systems by resolving conflicts and turning policies into actionable steps.

To determine the true impact of IGR on encouraging efficient and collaborative governance across various levels of government, a complete evaluation must include these critical components and recommendations;

- i. IGRTC and other IGR structures should be strengthened and anchored as constitutional bodies to give them enforceability of decisions. This move aims to enhance the effectiveness and impact of IGRTC and other IGR structures in facilitating coordination, cooperation, and conflict resolution between and among different levels of government.
- ii. Capacity building should be an embedded provision within county governments managed by County Public Service Boards to address staffing needs. This approach aims to ensure that the workforce remains adaptable, well-equipped, and responsive to the evolving challenges and demands of effective public service delivery within the county.
- iii. IGR structures should enhance engagement with the public and NSAs for effective monitoring of their performance. This entails creating mechanisms for regular communication, consultations,

and feedback loops to ensure that the concerns, perspectives, and insights of the public and NSAs are considered.

- iv. Counties should establish systems of documentation and data accessible to users to enhance data-driven decision-making. This proactive initiative accords with current governance norms, stressing transparency, accountability, and efficiency in county-level decision-making procedures. The resolve to build such systems reflects a broader approach to exploiting data as a strategic asset, to improve overall governance and optimize service delivery.
- v. IGRTC as a key IGR body should strongly voice out IGR, publish issues and disseminate reports about IGR for decision-making and public use.
- vi. Finalize unbundling and costing of devolved functions to help in addressing existing challenges and tensions between the two levels of government.
- vii. Review IGR policies and legislative framework to address potential gaps, inconsistencies, or inadequacies in the current framework. This will ensure that the policies align with the evolving needs of a decentralized governance system.
- viii. There is a need for clarity on who is supposed to establish sector forums'
- ix. Reinstate Section 54 of the CGA so that county intergovernmental committees are operationalized.
- x. Ensure effective accountability mechanisms at the county and national levels for the successful implementation of devolution and IGR.

3.1.6 Way Forward

In conclusion, IGR structures, both political and financial, play a critical role in facilitating cooperation, consultation, coordination, and decision-making between the two levels of government. There is therefore need to ensure that all are legislated and supported to avoid tensions between them and enhance prudent financial management.

IGRTC should be strengthened as the overall IGR body to provide surveillance on both levels of government and the IGR structures. This will provide platforms for both levels of government, NSAs and the public to deliberate and strengthen devolution. There is also need to strengthen and anchor IGR structures, address legislative gaps and make them vehicles for dialogue, resolving disputes and enhancing capacity on implementation of IGR policies and programs.

3.2

Panel Discussion: Successes and Challenges in Intergovernmental Relations

Panellists:

1. Mr. Kinuthia Wamwangi, Former Chairman, Transition Authority
2. Mr. Con Osendo, Governance Advisor, FCDO
3. Ms. Winnie Lichuma, Advocate of the High Court of Kenya and former Chairperson National Gender and Equality Commission

Moderator: Professor Karuti Kanyinga, Research Professor, Institute of Education Development Studies, University of Nairobi.

The discussion focused on areas that could be strengthened through harmonious intergovernmental relations for a successful devolved governance system in the country. The panellists discussed the successes and challenges affecting devolution in reference to activities of IGRTC and based on the presentation of Prof. Mitullah. The summary of the discussion brought out the successes and challenges in the last ten years from the inception of devolved governance system in Kenya.

3.2.1 Strengthening Intergovernmental Relations

Accountability in governance is a pivotal aspect of ensuring transparency and integrity in the decision-making process. To this end, a robust governing body is indispensable in overseeing the effective implementation of agreed decisions. Equally important is the need to clarify the role of the IGRTC in promoting a culture of responsibility and accountability in governance. This is anchored on the fact that it is the secretariat of the Summit with the mandate of facilitating its activities including evaluating the performance and monitoring the implementation of national and county government plans and recommending appropriate action.

The IGRTC serves as an impartial arbiter by providing a platform for the two levels of government resolve issues of divergence or potential dispute. The mandate of IGRTC thus involve facilitating dialogue and cooperation

between the two levels of government to mitigate conflicts and enhance collaboration. Through its mechanisms, IGRTC is expected to promote intergovernmental relations and foster a conducive environment for service delivery to the citizens.

A clarification should be made on the enforcement of Section 13 of IGRA, 2012, to prevent misinterpretation of functional mandates provided therein. Therefore, it was suggested that a thorough review of the relevant provisions is conducted, and any necessary amendments are made to eliminate ambiguities or confusion that may arise. There was therefore an urgent need to develop regulations to guide the enforcement of the section.

To strengthen its role as a secretariat of the Summit, IGRTC should be granted legislative authority and neutrality for the proper performance of its mandate. The organization must assume the responsibility of monitoring the implementation of resolutions of the Summit, IGRA, 2012 (s.12). This would guarantee that the resolutions are timely and effectively executed.

The panel proposed that IGRTC should also be the secretariat of the sectoral forums for better coordination and implementation of resolutions that emerge from them. To maximize efficiency, the role of IGRTC as a secretariat to the Summit should therefore be strengthened to enable it perform its mandate effectively. Furthermore, IGRTC should increase its visibility in its pivotal role in intergovernmental relations.

In conclusion, the panel observed that the legal recognition of the CAF was vital to enhance the coordination and strength of the county assemblies for more accountability and transparency in county governments. This legal recognition would further support their (CAF) cohesiveness and facilitate a more efficacious governance structure. A legally formalized CAF will also be able to formally engage with its diverse stakeholders for successful devolution in the country.

3.2.2 Successes

The panel observed that IGRTC had made progress in the performance of its mandate with a number of successes:

- i. Facilitated ten (10) Summit meetings
- ii. Convened statutory County Secretaries meetings prior to holding the Summit.
- iii. Worked with MDAs in implementing Summit resolutions.
- iv. Transferred the library, and museum functions to counties as per provisions of the Fourth Schedule to the Constitution.
- v. Identified, verified and validated assets and liabilities of the 175 defunct local authorities for eventual transfer to the county governments.
- vi. Identified, verified, validated and transferred assets of the devolved functions to the county governments.
- vii. Initiated and coordinated the processes of establishing a number intergovernmental Sector Forums including ICT, Energy, Trade, Public Service, Water, and Tourism.
- viii. Built the human capacity of IGRTC staff through recruitment and career development.
- ix. Resolved 22 disputes using mediation as a dispute resolution mechanism.
- x. Coordinated the handing over of the four (4) formerly transferred functions to Nairobi Metropolitan Service back to Nairobi City County Government.
- xi. Facilitated the finalization of the unbundling and transfer of devolved functions though awaiting gazettelement as at the time of the Symposium.
- xii. Published a number of referral documents for knowledge management and repository on devolution and intergovernmental relations

3.2.3 Challenges

The panel discussed and identified a number of challenges affecting IGRTC performance:

- i. Inadequate legal framework or institutional mechanisms to address certain aspects of intergovernmental relations.
- ii. Non clarity on the division of powers and responsibilities between the national and county governments despite the Fourth Schedule.
- iii. Limited enforcement mechanisms to ensure compliance with intergovernmental agreements and decisions.
- iv. Slow or incomplete implementation of the decisions of the intergovernmental sector forums by the responsible agencies.

- v. Lack of legislative provision to embed the tenure of IGRTC members in law.
- vi. IGRTC lacks independence for effective performance of its mandate.
- vii. IGRTC has not fully actualized its mandate and role as the secretariat for the COG as envisaged in law (IGRA, 2012 s.12).
- viii. IGRTC has not fully realized or it may have abandoned its role of establishing Sectoral Working Groups in accordance with Section 13(1) of the IGRA, 2012. This role seems to have been relegated to the SDD.
- ix. Under section 8(f) of the IGRA, 2012, the Summit in its 10 years has not evaluated the performance of national or county governments. This is a mandate where IGRTC is critical as the secretariat to the Summit.

3.2.4 Recommendations

The panel made recommendations towards ensuring that intergovernmental relations are strengthened:

- i) There was need to consider legislative amendment to IGRA, 2012:
 - a) Change the name of IGRTC to reflect its mandate as a secretariat of the Summit. Furthermore, the current name is mouthful and does not reflect the organization as a perpetual institution.
 - b) Secure greater neutrality and independence for effective performance of institutional mandate especially in ensuring implementation of both Summit resolutions and intergovernmental working group/sector forum decisions.
 - c) Address the anomaly arising from Section 12(a)(i) and (ii) where the COG established its separate secretariat to perform some of the functions described therein.
 - d) Establish the office of IGRTC coordinator in every county to serve the purpose of Section 17 of IGRA 2012. This should however be proposed as an amendment to the Act after a thorough feasibility is carried out to assess the efficacy and workload of such offices.

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- ii) Ensure regular and timely preparations of quarterly reports to the Summit and COG as envisaged in Section 14(a) of IGRA 2012.
 - iii) As the Secretariat, strongly advise that the Summit adheres to its calendar and convenes at least twice a year as provided for in section 9(a) of the IGRA 2012.
 - iv) IGRTC should champion the evaluation of performance of national and county governments on a defined and regular basis as envisaged in IGRA 2012 Section 8(f). This exercise has not been done since the advent of devolution.
 - v) Implement the institutional communication strategy to ensure visibility of IGRTC as the body that facilitates the implementation of devolution in Kenya through harmonious intergovernmental relations.
 - vi) Undertake costing of functions every ten (10) years to address or arbitrate disagreements that arise regularly over the equitable annual division of revenue and county allocation of revenue. This was for purposes of strengthening financial and fiscal relations between the national and county governments as provided for in Article 202 of the Kenya Constitution.
 - vii) IGR symposium should be held biennially to ensure that there was a continuous evaluation of progress in implementation of devolution.
 - viii) In order to secure the independence of the County Public Service Boards endeavor to have the amendment of CGA to create a National County Public Service Board to take charge of all County Public Service Boards including funding.

3.3

Achieving Cost-Effective and Economy in National Resources Use in the Devolved System of Governance – Evaluating Resource Utilization Between the Two Levels of Government, Mr. Samuel K. Kiptorus, Director Intergovernmental Fiscal Relation, The National Treasury

3.3.1 Introduction

The National Treasury, established pursuant to article 225 of the COK, is a critical player in supporting and consolidating devolution through provision of resources to both levels of government. Key among the resource allocation categories included; equitable share, equalization fund, loans and grants and own source revenue. The Financing Locally-Led Climate Action (FLLOCA) program was another criterion meant for climate change financing to 45 eligible counties except for Mombasa and Nairobi counties.

3.3.2 Equitable Share

Article 202 of the COK provided for the criteria used in determining the equitable share. The criteria included national interest, public debts and the needs of the national government. The other criteria are fiscal capacity and efficiency of county governments, and the need to ensure that the county governments are able to perform the functions allocated to them. Every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall not be less than 15% of all revenue. Additionally, the allocation shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

3.3.3 Equalization Fund

As provided for in Article 204 of the COK, the equalization fund is set at 0.5% of actual revenue collected by the national government. The fund is utilized in providing basic services such as water, roads, electricity and health to marginalized parts of the country with the aim of bringing services in such areas to a standard generally enjoyed by the rest of the nation.

The fund had a lifespan of 20 years from the onset of the COK and Parliament may enact legislation extending the implementation period. The fund was

being implemented in 14 counties under the first policy and 34 counties in the second policy.

3.3.4 County Own Source Revenue

The county governments should have their own reliable source of revenue to enable them govern and deliver services as envisaged under Article 175 (b) of the COK. They may impose taxes and charges on property rates, entertainment taxes and any other taxes that it is authorized to impose by an act of parliament. County governments inherited revenue streams administered by the defunct local authorities together with the local authority structures that exhibited a lot of administrative weaknesses in the collection and management of own source revenue. However, there have been progress in resolving this problem through adoption of technology and implementation of guidelines on the payments of fees and charges.

The National Treasury was developing an own source revenue policy intended to standardize institutional, policy and legal framework to be applicable in all counties. The COK and the Public Finance Management Act (PFMA), 2012 mandates the National Treasury to develop and oversee the implementation of a comprehensive county financing system that ensures financial controls for efficient and effective utilization of public resources. The Treasury further spearheads the process of budget formulation through the preparation of the Budget Review and Outlook Paper, the Budget Policy Statement and the Medium-term Review Strategy Paper. It also strengthens financial and fiscal relations between the national and county governments including providing assistance to county governments by helping them develop their capacities for efficient, effective and transparent financial management.

Article 202(1) of the COK provides that revenue raised nationally shall be shared equitably among the national and county governments. County governments may be given an additional allocation from the national government share of revenue either conditionally or unconditionally.

3.3.5 Annual Revenue Bills to the County Governments

Section 191 of PFMA, 2012 requires the Cabinet Secretary (the National Treasury) to annually submit Budget Policy Statement to parliament accompanied by;

- i. **Division of Revenue Bill:** The Division of Revenue Bill is prepared in line with Article 218 of the COK. It provides for vertical sharing of revenue raised nationally between the national and county governments in accordance with Article 202 of the COK.
- ii. **County Allocation of Revenue Bill:** The bill provides for;
 - a. the allocation of an equitable share of revenue raised nationally among the county governments, pursuant to Article 218(1)(b) of the COK and on the basis of the revenue sharing formula approved by Parliament under Article 217 of the COK;
 - b. facilitation of the transfer of allocations made to counties from the Consolidated Fund to the respective County Revenue Funds.
 - c. Allocation to each county government shall be transferred to the respective County Revenue Fund in accordance with a payment schedule approved by the Senate and published in the gazette by the Cabinet Secretary in accordance with section 17 of the PFMA, 2012.
 - d. The budget ceilings for recurrent expenditure for county governments for the financial year.
- iii. **County Government Additional Allocation Bill:**
 - a. Pursuant to Article 202 (2) of the COK, county government may be given additional allocation from national government's share of revenue either conditionally or unconditionally. County Government Additional Allocation Act 2022 defines additional allocations as additional resources allocated to county governments from the national government's share of revenue or in form of loans and grants from development partners.

- b. The National Treasury shall facilitate any agreement between a county government and a development partner.
- c. In addition, The National Treasury shall table the agreements before the Senate and the National Assembly before inclusion in the Budget Policy Statement.

3.3.6 Challenges in Implementation of the PFMA, 2012 in Counties

The National Treasury had undertaken strategic reform programs to strengthen county public finance management institutional capacities to implement, manage and support governance. This was intended to enhance accelerated development and service delivery as envisaged in the COK. Despite these reform efforts by the Ministry, there were still challenges in the management of county public finances which included;

- i. Disconnect between planning and budgeting due to a lack of integrated planning and budgeting, forecasting, collection and administration of county own resource revenue which many a time was below target and specific potential levels in most counties,
- ii. Failure to align the county budgets and what is provided in the County Fiscal Strategy Paper while others had a weak linkage between the budget and development plans,
- iii. Ineffective risk management structures in the counties as most counties have not developed risk management strategies and policies contrary to the requirements of the PFMA 2012,
- iv. The huge wage bill under the human resource functions in the county governments leading to non-adherence to the fiscal responsibility principles of the 35% threshold on personnel emoluments,
- v. Budget implementation constraints brought about by accumulation of pending bills due to non-adherence to budget line provisions,
- vi. Lengthy legislative processes such as in the case of the County Government Additional Allocation Bill,

- vii. Funding of urban areas and cities, and
- viii. Monitoring and evaluation are generally ineffective as some counties are yet to establish audit committees as required by law.

3.3.7 Recommendations

The paper makes the following recommendations:

- i. The National Treasury should have own sector programs so as to have a holistic view on the development of the country;
- ii. Devolution should work in a manner that brings up the marginalized counties to the desirable development level;
- iii. There is need to evaluate the effectiveness of equalization fund;
- iv. Both levels of government should enhance mechanisms of mobilizing adequate resources to address intergovernmental disputes related to division of revenue;
- v. County governments should apply the provisions of sections 138 to 145 of the PFMA, 2012 on acquisition and management of funds from development partners;
- vi. Conditional grants should be allocated to county governments through equitable share criterion in order to enhance sustainability and predictability;
- vii. Both levels of government should consider the adoption of a unified revenue collection system to increase own source revenue; and
- viii. The oversight role of the OAG should be enhanced to ensure both levels of government remain accountable in the use of public resources.

3.3.8 Way Forward

There was need to start evaluating the impact of all the allocations that have been made to both levels of government since the promulgation of the Constitution and see if they are meeting development agenda of the country.

3.4

The Nexus of Devolution and BETA Plan, and Implications for Intergovernmental Relations, Dr. Irene C. Asienga, Advisor, Budget and Fiscal Policy, Executive Office of the President.

3.4.1 Introduction

The Constitution establishes a two-tier government comprising the national and county governments. While these two levels of government are distinct, they are interdependent and should conduct their mutual relations on the basis of consultation and cooperation. The Fourth Schedule of the Constitution assigns functions to each level of government. Article 187 provides that functions and powers assigned to one level may be transferred to a government at either level by agreement between the governments if:

- i. The function or power of government would be effectively performed or exercised by the receiving government, and
- ii. The transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised.

The IGRA, 2012 establishes a framework for consultation and cooperation between the national and county governments, as well as amongst county governments as guided by the following principles:

- i. Recognition of the sovereignty of the people as provided for under Article 1 of the COK;
- ii. Inclusive and participatory governance;
- iii. Respect for the functional and institutional integrity of the two levels of government;
- iv. Promotion of national values and principles of governance provided under Article 10 of the COK; and
- v. The requirement for consultation and cooperation as provided under Article 6(2) of the COK.

3.4.2 Bottom-Up Economic Transformation Agenda and its relation to Devolution

The Bottom-Up Economic Transformation Agenda (BETA) Plan comprises five pillars: agriculture; Micro, Small and Medium Enterprises (MSMEs);

affordable housing; digital creative economy; and health. Key enablers to the BETA include cooperatives, digital transformation, and climate action with the objective to reduce the cost of living and expand the revenue base.

In agriculture, the objectives encompass a wide array of goals including addressing the cost of living, bolstering foreign exchange reserves, generating employment opportunities, eradicating hunger and poverty, and fostering industrialization. To achieve these objectives, various interventions are proposed including:

- i. Ensuring adequate and affordable working capital;
- ii. Implementing risk management strategies;
- iii. Transforming 2 million resource-poor farmers from deficit to surplus;
- iv. Enhancing the productivity of key value chains including maize, dairy, and beef;
- v. Reducing import dependence particularly on edible oil and rice;
- vi. Revitalizing underperforming and collapsed export crops such as coffee, pyrethrum, cashew nuts, and bixa while expanding into new ones such as avocado and nuts; and
- vii. Promoting value addition in tea, fruits, and vegetables.

In MSMEs development, the objectives are multifaceted, aiming to create jobs, foster inclusive growth, enhance competitiveness, and expand the revenue base. To achieve these objectives, various interventions are proposed including:

- i. The creation of an enabling environment by addressing the cost of doing business;
- ii. Tackling regressive taxation;
- iii. Facilitating access to finance through initiatives such as the Hustler Fund; and
- iv. Investing in infrastructure and capacity building such as industrial parks, working spaces, and Savings and Credit Cooperative Organizations (SACCOs).

Furthermore, there are sector commitments outlined within the context of the BETA Plan, focusing on manufacturing, trade, and MSMEs. These

commitments involve strategic actions to support different industries. For instance, in the pharmaceutical sector, efforts are directed towards addressing tax issues and enhancing competitiveness, leveraging on the Universal Health Coverage (UHC) framework, and tapping into regional opportunities for pharmaceutical manufacturing. Similarly, initiatives are proposed in sectors like leather, cotton, textiles, and building products with the aim of boosting local production, improve product quality, and exploit export potential.

Under the Plan, specific measures are proposed to bolster MSMEs, including the establishment of MSME Business Development Centres in every ward and industrial parks in every Technical and Vocational Education and Training (TVET) institution. Financial support is emphasized with a commitment to allocate substantial funds annually to provide MSMEs with affordable finance options through SACCOs, venture capital, equity funds, and long-term debt instruments. Additionally, efforts to end the criminalization of work, streamlining business licensing processes, and reducing regulatory burdens are highlighted. These are all aimed at facilitating the growth and sustainability of MSMEs while improving the livelihoods of citizens, particularly the informal traders.

Affordable housing initiatives aim to achieve several objectives, including the eradication of slum dwellings and addressing the urban housing supply deficit at a rate of around 200,000 units per annum. It also advocates for creation of job opportunities through TVET programs, and stimulating manufacturing activities, particularly in the building products sector. To realize these objectives, various interventions have been proposed. The interventions include efforts to increase the supply of affordable housing, which currently stands at only 1% of the required 50,000 units per annum. Additionally, strategies to improve financing options, such as implementing off-take plans and offering affordable mortgages, are emphasized. Streamlining the value chain and promoting production innovations are also crucial components of the intervention strategy.

Within the framework of BETA in the housing and environment sector, specific sector commitments have been outlined. These commitments encompass promoting youth-owned and operated briquette-making enterprises that utilize agricultural waste which are available in commercially viable quantities. Additionally, initiatives such as organizing waste collectors into cooperatives, providing infrastructure for waste separation sites, and promoting a circular economy approach are proposed to complement extended producer responsibility (EPR) with community-based and owned value chains. Furthermore, there was an emphasis on decriminalizing the charcoal trade, recognizing that bribery accounts for a significant portion of the final price, estimated at 20-30%. These commitments collectively aim to address housing challenges while promoting sustainable environmental practices and economic opportunities within the housing sector.

UHC agenda aims to improve healthcare accessibility and delivery through various interventions. These comprise strengthening the Community Health Promoters system, unbundling primary healthcare services through Primary Health Care Funds, transforming the National Health Insurance Fund into a Social Health Insurance Fund. Additionally, it involves establishing a stakeholder-managed national procurement scheme, and establishing an Integrated Digital Health Management platform. Key objectives consist of achieving universal health insurance coverage, reorienting health systems towards primary healthcare, optimizing the utilization of private, faith-based, and public facilities, and leveraging on digital technologies for cost-effectiveness and efficiency.

The government had committed to strengthening the healthcare system through BETA commitments in the UHC sector by:

- i. Allocating a Sh100 billion seed money to co-fund strategic programs for HIV, tuberculosis, blood transfusion, malaria, family planning, and reproductive health;
- ii. Prioritizing the employment of 20,000 healthcare workers;
- iii. Providing National Health Insurance Fund coverage for all Kenyans;
- iv. Setting aside funds for the Kenya Association of Retired Officers medical schemes;

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- v. Harmonizing employment terms;
 - vi. Integrating preventive and promotive services;
 - vii. Establishing a commission for health human resource management;
 - viii. enhancing supply chain management systems; and
 - ix. Integrating Information Communication and Technology systems for telemedicine and health management information systems.

These commitments aim to ensure equitable access to quality healthcare services for all citizens.

3.4.3 Strengthening Devolution under BETA

Commitment to strengthening devolution focused on several key aspects comprising:

- i. **Complete transfer of functions to devolved units:** There was a clear directive to finalize the transfer of all functions earmarked as devolved to the county governments as per the Fourth Schedule to the Constitution. This move aimed at empowering local administrations with the authority and capacity to manage a broad range of services and functions effectively.
- ii. **Resources to follow function:** A fundamental principle highlighted in the commitment was the “resources to follow function” approach. This principle ensures that financial resources are allocated to counties in accordance with the functions they are mandated to perform. By aligning funding with responsibilities, this principle enhances accountability and efficiency in resource utilization.
- iii. **Reduce county dependency on the Exchequer:** There was an emphasis on reducing county governments’ over-reliance on transfers from the national government. This suggests a strategic shift towards promoting self-sufficiency and financial autonomy at the county level. By encouraging counties to explore alternative revenue streams and bolstering their revenue-generating capacity, the aim was to create a more sustainable fiscal framework for devolved governance.

- iv. **Timely disbursement of the Equitable Share:** The commitment included ensuring timely disbursement of the equitable share to counties. Timely and predictable allocation of funds is crucial for effective planning and service delivery at the county level. By honoring this commitment, the national government seeks to provide counties with the necessary financial stability to carry out their mandated functions efficiently.

- v. **Transfer of mineral functions to devolved units:** Another key aspect of the commitment is the transfer of mineral-related functions to devolved units. This transfer of responsibilities aims to empower counties to manage and regulate mineral resources within their jurisdictions. By decentralizing authority over mineral resources, the government aims to promote local participation, economic development, and community empowerment in areas endowed with such resources.

3.4.4 Mechanisms for intergovernmental relations.

To improve coordination between and amongst the county governments and the national government, IGR structures have been established:

- i. The Summit
- ii. Council of County Governors
- iii. Intergovernmental Relations Technical Committee
- iv. Intergovernmental Budget and Economic Council
- v. Joint intergovernmental Technical Committee
- vi. Sector Forums

These structures are complemented by the activities of

- i. Parliamentary sector committees
- ii. Senate sector committees
- iii. Caucus for sector CEC members
- iv. County Assemblies Forum
- v. County Assembly sector committees
- vi. Universities and other research institutions

- vii. Civil Society Organizations
- viii. Community-Based Organizations
- ix. Faith-Based Organizations

Intergovernmental sector forums are critical in enhancing intergovernmental relations in specific sectors. Good examples are the already established forums, specifically, Joint Agriculture Sector Consultation and Cooperation Mechanism (JASCCM) and the Kenya Health Sector Coordination Framework.

However, the forums still face a number of challenges such as inadequate funding, misaligned functions, duplication of efforts, and policy mismatches. In order to address these challenges, several policy levers are proposed. The levers range from aligning the framework with intergovernmental mechanisms, strengthening its implementation at the county level, enhancing donor coordination, clarifying functional assignments to fostering inter-county coordination mechanisms. These interventions are intended to improve healthcare delivery and outcomes nationwide.

3.4.5 Emerging Issues from Plenary Discussions

- i. There is a significant challenge posed by the existence of divergent priorities and goals between different levels of government, which hinders cohesive planning and implementation of development initiatives.
- ii. There is a clear need for capacity-building initiatives, particularly in county governments, to strengthen their ability to generate income, effectively implement devolved functions, and align with national development goals.
- iii. The lack of a comprehensive framework to coordinate planning processes between the national and county governments at the county level has resulted in duplicated efforts and gaps in implementation.
- iv. The insufficient mechanisms for sharing information between the

national and county governments serve as a barrier to effective collaboration and coordination, thus impeding the efficiency of development programs.

- v. Financial constraints are adversely impacting the performance of departments in implementing Medium-Term Plans, underscoring the imperative for enhanced resource mobilization and allocation strategies.
- vi. Effective public participation and collaboration are indispensable components for successful development planning, implementation, and reporting with emphasis on the importance of inclusive governance processes.

3.4.6 Recommendations

The paper makes several recommendations for consideration.

- i. Develop and implement robust coordination mechanisms between the national and county governments to ensure effective alignment, communication, and collaboration in implementing policies and achieving development objectives, particularly in sectors such as agriculture, health, and housing.
- ii. Invest in capacity building and institutional strengthening initiatives aimed at promoting inclusive and participatory governance.
- iii. Expedite the transfer of functions constitutionally assigned as devolved functions to counties within the stipulated timeframe to empower county governments for effective delivery of services.
- iv. Review and align existing policy frameworks, such as the Kenya Health Sector Coordination Framework, with the Intergovernmental Coordination Mechanism to eliminate duplication of functions.
- v. Prioritize resource mobilization efforts to support county governments in generating their own income to reduce overreliance on transfers from the national government.

- vi. Ensure timely and predictable transfer of shareable revenue to counties in accordance with the law to enable them to meet their development objectives effectively.
- vii. Formulate a comprehensive framework aimed at fostering close collaboration between state-owned entities tasked with executing projects under the BETA Plan and county governments, particularly in the devolved functions.
- viii. Align county development plans with national development goals, such as Kenya Vision 2030 and the Sustainable Development Goals to ensure coherence and synergy in development efforts.
- ix. Develop supportive policy and legislative frameworks to facilitate intergovernmental relations and coordinate planning processes between the national and county governments effectively.

3.4.7 Conclusion

The nexus of devolution and BETA requires careful alignment, coordination, and communication among different levels of government to achieve effective intergovernmental relations and successful national development. Implications for intergovernmental relations arise as various levels of government interact to implement policies for the achievement of development objectives. Effective coordination and collaboration are therefore crucial to ensure a harmonious relationship between the different tiers of government.

3.5

Brief on County Aggregation and Industrial Parks, Dr. Juma Mukhwana, CBS., Principal Secretary, State Department for Industry

3.5.1 Introduction

The overall theme of the fourth medium term plan is “Accelerating Socio-Economic Transformation to a More Competitive Inclusive and Resilient Economy: A Bottom-Up Approach”. The Plan aims at economic turnaround and uplifting the lives and livelihoods of those at the bottom of the pyramid. Agro-industries have been prioritized as key player in promoting manufacturing pathway to enhance economic development.

The manufacturing sector plays key role in economic development, and employment contribution. In countries with rapid industrialization, the sector has been identified as the major growth and development accelerator capable of reducing poverty. The Kenyan manufacturing sector largely being agricultural-based with food and beverage processing contributes over 40% and 48% of manufacturing employment and GDP respectively.

However, the sector GDP contribution had stagnated in the last couple of years at 7% before registering a growth of 7.8% recently. Equally, the agriculture sector contribution to GDP is over 30%, employing more than 40% of total population and accounting for 65% of the export earnings. However, export of processed agricultural and livestock commodities had stagnated at around 16%. The two sectors have potential to promote new products through value addition backward and forward linkages to other sectors of the economy like trade and investments.

3.5.2 Meaning, Nature and Necessity of County Aggregation and Industrial Parks

County Aggregation and Industrial Parks (CAIPs) is a food or non-food processing hub comprising both the County Aggregation Centers and Industrial Parks in one location. An aggregation center is a centralized collection center where multiple small-scale farmers can bring their produce

for basic value addition like grading, sorting, cleaning, packaging, and distribution for sale in the domestic or export market.

An industrial park is a geographic cluster of independent firms grouped together to gain economies of scale and positive externalities by sharing infrastructure and taking advantage of opportunities for bulk purchasing and selling, capacity building through training, extension services, recycling and use of agro-industrial waste/residues.

Productivity in agriculture sector remains relatively low in all regions due to;

- i. Poor incentives and underdeveloped supporting infrastructure and institutions,
- ii. Limited incentives to farmers, and
- iii. Limited linkage between manufacturing and agriculture sectors.

Some of the incentive measures taken to encourage productivity include;

- i. Provision of dedicated three phase Power sub-stations,
- ii. Provision of clean water,
- iii. Provision of common manufacturing facilities to support value chains,
- iv. Provision of road network and internet services,
- v. Availability of serviced land,
- vi. Provision of effluent treatment,
- vii. Provision of security, and
- viii. Accessibility to market through common marketing platforms.

In FY 2023/2024, CAIP had a budgetary allocation of KES. 4.5 billion and the project had been launched in the first phase in eleven (11) counties namely; Busia, Embu, Garissa, Homabay, Meru, Migori, Mombasa, Nyamira, Siaya, Bungoma, and Trans-Nzoia. The second phase covered six (6) counties comprising Vihiga, Kajiado, Narok, Kakamega, Kisii, and Laikipia.

3.5.3 Goals of the County Aggregation and Industrial Parks

The CAIPs program aims at;

- i. Increasing employment creation and economic development. Each CAIP was estimated to create direct and indirect employment of about 9,600 jobs on completion,

- ii. Increasing value-added products and growth in manufacturing,
- iii. Enhancing productivity in agricultural sectors,
- iv. Increasing export of agro-processed products,
- v. Increasing farmers' earnings on MSMEs/MSMIs,
- vi. Increasing foreign exchange,
- vii. Enhancing adoption of modern technology for value addition,
- viii. Enhancing forward and backward linkages with better markets, and
- ix. Improving working relationship between the agriculture-manufacturing-government-development partners and private sector.

3.5.4 Challenges

The session highlighted and discussed several challenges facing the implementation of the CAIPs program:

- i. Limited access to suitable land for setting up agro-industries;
- ii. Many fragmented small-scale farmers over vast area of land leading to collection inefficiencies;
- iii. Inconsistency in quality and quantities affecting ability to compete regionally and globally;
- iv. Limited means of communication leaving the farmers with little knowledge of buyers' expectation and insufficient incentives to produce high quality products as a consequence, agro-processors are unable to procure the appropriate quality and quantity of raw materials locally;
- v. Limited specialized agri-business infrastructure, including cold storage units, quarantine facilities, quality control laboratories, quality certification centers, controlled and modified atmosphere storage;
- vi. Insufficient supply of agricultural produce due to high annual post-harvest losses;
- vii. Pre-dominantly, farmers have limited capital input leading to low productivity;
- viii. Unconducive business environment especially, inhibitive regulatory and policy environment;
- ix. Delay in transfer of funds to the counties by the National Treasury as a result of delayed approval of County Government Additional Allocation Bill;
- x. Delay in the signing of the intergovernmental Transfer agreement

- between the National Treasury and county governments; and
- xi. Lack of budget for coordination of CAIPS especially for building the capacity of counties, support industrial investment forums, vet the viability of the value chains and support capacity building of MSMEs for value addition.

3.5.5 Recommendations

The presentation had a number of recommendations:

- i. Each county should identify suitable public land as per the agreed criteria and set aside at least 10 acres with a maximum of 100 acres for industrial purpose;
- ii. CAIPs should be equipped with machinery and equipment that can be used by MSMEs/MSMEs for leasing and common user purposes;
- iii. CAIPS should promote private sector investment in value addition; and
- iv. CAIPs should have an online marketing platform

3.5.6 Way Forward

In conclusion, CAIPS should be a vehicle for sustainable growth of manufacturing and agricultural productivity through agro-industries.

The Ministry of Investment, Trade and Industry, State Department for Industry in partnership with county governments, COG and other key development partners are implementing the project in all the 47 counties. Project implementation is in three phases in an interval of three years: - Phase one targeting 18 counties, Phase two targeting the next 18 counties and, finally, Phase three targeting 11 remaining counties.

The State Department for Industry in collaboration with the counties and United Nation Industrial Development Organization intends to conduct value chain analysis for phase one counties to establish the value chains viability.




Implementation of The National Integrated Public Performance Management Policy for Enhanced Productivity, Mr. John Kennedy Monyoncho, MBS, MCiARB., Commissioner, Salaries and Remuneration Commission

3.6.1 Introduction

The Salaries and Remuneration Commission (SRC), is responsible for setting and regularly reviewing the compensation and benefits of state officers. Additionally, the SRC advises national and county governments on compensation matters for other public officers as mandated by Article 230 of the Constitution. The principles guiding pay determination, as outlined in Article 230(5) of the COK and Section 12 of the Salaries and Remuneration Act (2011), were broad and take into account several factors. These factors included ensuring fiscal sustainability, recognizing productivity and performance, attracting and retaining skilled personnel, promoting transparency and fairness, and ensuring equal remuneration for work.

The presentation explored the difference between productivity and performance management. Productivity referring to the efficient use of resources to achieve desired outcomes and performance management on goal alignment to realize organizational objectives. The various performance management frameworks implemented in the public service were examined, including the Public Sector Reform Program (PSRP), Result-Based Management, and the Kenya Integrated Performance Management Policy (KIPMP). Public service productivity was defined as a strategic agenda aimed at driving revenue and economic growth. It was to improve the wage bill-to-revenue ratio for sustainable employment opportunities. The goal was to enhance service delivery and competitiveness. The presentation highlighted Kenya's position on public service productivity, using statistics from the International Labour Organization (ILO) to indicate its global and continental rankings.

3.6.2 Challenges

The presentation identified major challenges affecting productivity and performance in the public service as:

- i. Weak coordination mechanism of the multiple actors on public service productivity and performance. The coordination mechanism among multiple actors responsible for enhancing productivity and performance was not strong enough. This had led to poor collaboration, and communication thus affecting proper alignment among various departments and agencies involved in delivering public services. As a result, the full potential of the public service could not be realized due to inefficiencies and duplication of efforts.
- ii. Sub-optimal implementation of performance management frameworks. Inadequate data collection, analysis, and reporting have negative impact on decision-makers. It means that decisions are made without empirical data which could help improve public service delivery.
- iii. Incomprehensive productivity agenda in the public service. There was no clear plan or strategy in place to improve the productivity of the public service. This led to ad-hoc initiatives and less focus on key productivity drivers such as innovation, quality, and efficiency.
- iv. Ministries, departments and agencies had inadequate institutional capacity to measure productivity, signifying that there was limited skills, tools, and resources to measure and analyze productivity data effectively. This hindered the ability to identify critical productivity gaps and opportunities for improvement.
- v. Weak productivity culture in the public service due to lack of motivation, disengagement, and poor accountability among public servants. This was because of a number of factors such as lack of incentives, poor recognition, and limited training opportunities, as well as resistance to change and a culture of complacency.

The presenter however, outlined the progress achieved so far including; the launch of frameworks for recognizing productivity and performance, the development of productivity measurement tools, and capacity-building initiatives for officers. He discussed the rationale behind the KIPMP emphasizing its role in streamlining and standardizing performance management across government levels.

Finally, the presenter proposed key action steps as need to:

- i) review the KIPMP,
- ii) organize a wage bill conference,
- iii) continue with capacity-building efforts, and
- iv) offer advice on rewarding and recognizing productivity.

The aim of the above suggested interventions was to ensure that the public service remains competitive, efficient and productive in order to meet the needs of the Kenyan people.

3.6.3 Issues and Key Focal Points

The ILO statistics on labor productivity for the year 2021, ranks Kenya in position 151st globally and 22nd in Africa. The rankings are indicative of Kenya's performance in comparison to 185 countries worldwide and 46 ranked countries in Africa, respectively. The data highlighted the need for comprehensive strategies to enhance productivity levels and promote economic growth in the country.

In 2019, a summit resolution was passed to *“Develop a comprehensive national performance management policy aimed at streamlining and standardizing public sector performance management across the National and County government levels”*. The first national wage bill conference was held in 2019 and consequently, the KIPMP was developed. The rationale underpinning the KIPMP was examined in this exposition. The central focus was on its pivotal role in harmonizing and standardizing performance management across various levels of government, and providing comprehensive guidelines for implementation to support service delivery.

In April of 2023, a comprehensive framework for measuring and recognizing

productivity and performance was developed and launched by The National Productivity and Competitive Council (NPCC). Technical support had been provided to a total of 348 officers by the SRC and NPCC to help develop productivity metrics and improve their performance. The SRC remains involved in advising on productivity and performance-based bonuses following an evaluation of performance contracts for MDAs.

3.6.4 Way Forward

The presenter provided proposals on the way forward:

- i) One of the tasks at hand was to review KIPMP to ensure that it included a comprehensive pipeline from performance to productivity. The review would help identify any gaps in the current plan and provide recommendations for improvement. Providing advice on rewarding and recognizing productivity was another important aspect of the review. This would involve developing a framework for identifying and rewarding employees who consistently demonstrate high levels of productivity. It would help motivate employees and create a culture of productivity within the organization.
- ii) Actualize 3rd National Wage Bill Conference planned for April 2024. The purpose of the conference was to discuss the wage bill and its impact on productivity. The conference was to provide insights into the best practices for managing wage bill and how to ensure that they were aligned with productivity goals.
- iii) Progress with the building capacity of institutions on productivity measurement as had been an ongoing process. This was intended to provide training and support to institutions to help them accurately measure productivity. It would enable them to make informed decisions and take actions that would improve productivity.



A Whole Government Approach to the Transformation of Public Service Culture, Mr. Felix Koskei, EGH., Chief of Staff and Head of Public Service

3.7.1 Introduction

The objective of the presentation was to promote transformation initiatives in county public service culture, promoting integrity, transparency, and responsiveness among government workers, aligning with constitutional provisions and the “Whole-of-Government Approach.

The Head of Public Service (HOPS) highlighted the fact that it was difficult to advance in any endeavour without regular candid and objective introspection. In every endeavour, one must be able to appreciate wins, acknowledge losses, identify challenges and adopt strategies to address them to achieve intended objectives. He expressed appreciation to IGRTC for organizing the symposium, which came at a most opportune time when the public service was operating in an increasingly dynamic, interconnected world and facing complex multifaceted challenges. HOPS posited that public service culture transformation was at the core of any nation’s efforts to guarantee the achievement of its development goals like Vision 2030, the BETA Plan, and the aspirations of the Constitution.

3.7.2 Constitutional Values and Principles of Public Service

One of the key outstanding provisions of the Constitution was the adoption of the devolved system of governance intended to bring services closer to the citizens in an efficient and effective manner. This essentially meant that the two levels of government, exist to serve one common client, “The People” - whose main need was to receive services conveniently and effectively from one unit which they fondly referred to as ‘Serikali’.

The “People” had no appreciation of the way the two levels of government had organized themselves into ministries, departments, and agencies or even how they had split their mandates into devolved and national

functions. To them, government was one unified institution, accountable for the management of their resources and affairs. Article 10 of the COK provides that state organs, state officers and public officers are agents of transforming public service culture by respecting and promoting the national values and principles of governance. In addition, Article 232 of the COK sets out values and principles of the public service which required these agents to embrace high standards of professional ethics, efficient and effective use of public resources and be accountable to the citizens among others.

Further, the clarity of the COK in Article 6(2), highlighting that “the governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations based on consultation and cooperation.” This imperative for harmonious relations between the two levels of government was further emphasized by the speaker, referencing Article 189 of the COK. The specific stipulations include the expectation that the government at either level should, among other things, assist, support, consult and as appropriate, implement the legislation of the other level of government. Additionally, it should liaise with the government at the other level to exchange information, coordinate policies and administration, and enhance capacity.

3.7.3 Transforming the public service culture

Mr. Koskei reiterated the significance of the Kenya Vision 2030 with the goal that Kenya was to transform into a newly industrializing ‘middle-income country providing a high quality of life to all its citizens by the year 2030’. He further emphasized the crucial role of transforming the public service in ensuring accountability and efficient and high-quality services at all government levels as enabler towards achieving the Vision. To achieve this, he pointed out that the BETA Plan underscored the imperative of cultivating a public service with highly skilled, agile and responsive employees, aligning with principles consistent with merit-system practices.

The profound alignment between the spirit and letter of the Constitution and the expectations for public servants within the devolved system of governance was paramount. Public servants were envisioned to serve as

paragons of excellence, contributing significantly to the transformation of the national culture. Article 10 of the Constitution emphasized its binding nature on all state organs, state officers, and public officers. This constitutional provision outlined a comprehensive set of national values and principles of governance including patriotism, national unity, power devolution, the rule of law, democracy, and people's participation.

Article 232 specifically outlines the need to transform the public service so that it is "citizen-focused, results-oriented, transparent and accountable to the people". It elaborates the values and principles emphasizing high standards of professional ethics; efficient, effective, and economic use of resources; representation of Kenya's diverse communities, and other elements. The Constitution demanded a paradigm shift and a different approach to managing the public service. It empowers citizens to demand public services in the context of the provisions in the Bill of Rights and in particular the guarantee of economic and social rights enshrined in Article 43.

However, the anticipated benefits of efficiency, specialization, human resource expertise, and citizen focus within the government's devolved system had not been fully realized. Instead, a multitude of factors, including personal interests, greed, self-interest, lack of vision, incompetence, underutilization, and misuse of resources, had led to duplications, overlaps, turf wars, a silo mentality, unhealthy competition, and in a nutshell, a culture of poor service delivery. In addressing the conflict between the two levels of government attributed to differences in mandates and resource sharing, HOPS stated that the ongoing conflicts left citizens without access to desired services, resulting in the wastage and misuse of enormous resources. In general, this situation delayed and derailed development thus perpetuating a negative image of the government. Under the circumstance, citizens would in turn demonstrate mistrust and disillusionment with government decisions and actions.

3.7.4 A whole of Government Approach

The HOPS stated that the disjointed approach to service delivery was the situation that the President confronted upon assuming office. The President

thus committed to transform the public service into a highly performing, agile, efficient, effective, and citizen-centric institution anchored on the rule of law. This recognition stemmed from the understanding that siloed decision-making and isolated efforts hindered the country's ability to provide integrated and seamless services to its citizens. Breaking down these silos would allow for better coordination, collaboration, and information sharing resulting in more effective and responsive governance.

One of the strategies identified to achieve this was the 'Whole-of-Government Approach,' which meant embedding a deliberate, unified approach in the management of public resources and service delivery from a bottom-up perspective that ensured no one was left behind. The concept of a 'Whole-of-Government Approach' emphasized the need for collaboration, coherence, and coordination across all levels of government. This approach was not just a theoretical framework but a practical strategy that called for breaking down silos and working together as a unified force. It acknowledged that the challenges faced were interconnected and could not be effectively addressed in isolation. It called for a shared vision and purpose that went beyond individual ministries and departments within the devolved units.

The overall goal of transforming the public service culture should be to achieve the Vision 2030 goal and BETA Plans. The objectives of these two blueprints were to steer the country to rapid socio-economic transformation, guarantee prosperity for all, promote equity and inclusiveness, and adherence to the rule of law. A transformed public service had therefore be be accountable, promote provision of efficient and quality services and implement interventions aimed at achieving these objectives.

By aligning objectives and working towards common goals, he noted the potential to harness the collective strength of diverse expertise and resources, ultimately saving citizens from the disarray of disjointed services. Leaders at both government levels were urged to recognize the urgency of adapting and sustaining the 'Whole of Government Approach' within the

context of ambitious transformational goals outlined in the Vision 2030 and the BETA Plan.

Recognizing the citizens' heightened expectations and discerning critique, he emphasized collective accountability and discouraged inefficiencies veiled under the pretext of "not my mandate." Mr. Felix highlighted a consistent rallying call by the President, referencing a recent Executive Retreat where joint performance reviews and planning were conducted with Cabinet Secretaries and Principal Secretaries, illustrating the President's commitment to this approach. In addition, the adoption of the value-chain approach in the implementation of priority programs under BETA was yet another practical evidence of a "Whole of Government Approach".

He underscored the imperative of initiating transformational change through a mindset shift and the need to instil a culture that prioritized integrity, transparency, and responsiveness to the needs of our citizens as essential for building public trust and confidence. Transforming the public service culture therefore, required a collective commitment from all stakeholders. Related to this, and similarly an important catalyst to achieving the concept of the 'Whole of Government Approach', was the need to embrace good governance initiatives, and specifically interventions that mitigate the vice of corruption.

To achieve this, the Executive Office of the President had engaged with various public bodies and professional cadres regarding the vice of corruption in the public service. The President committed to sustain the war on corruption in line with the rule of law without discrimination. Public servants were warned that they would be held solely responsible for their vices.

In conclusion, the HOPS stated that for the country to experience the full benefits of public service transformation, both levels of government had no choice but to work together in the spirit of the Summit and in line with the constitutional provisions of consultation, cooperation, and coordination articulated in Article 189.

3.7.5 Challenges

The HOPS identified some of the factors that impeded the actualization of a transformed public service among county governments including;

- i. Personal interest and political interference with county public service boards;
- ii. Incompetence of public servants;
- iii. Underutilization, theft and misuse of public resources;
- iv. Duplications in roles;
- v. Silo mentality;
- vi. Corruption, favoritism and nepotism;
- vii. Stalled projects and pending bills;
- viii. Lack of citizen-centricity public service management;
- ix. Uncoordinated understanding of mandates amongst county governments; and
- x. Delayed disbursement of funds to county governments.

3.7.6 Recommendations

The ‘Whole-of-Government Approach’ was a key strategy identified for addressing the challenges. The approach called for collaboration, coherence, and coordination across all government levels to ensure a unified and effective public service. The HOPS recommended the following as a means of addressing the challenges:

- i. **Collaboration and Coordination:** Break down the barriers between different government agencies and levels, fostering a collaborative environment where information and resources are shared seamlessly.
- ii. **Continuous engagement forums:** Encourage continuous forums for introspection and evaluation by establishing regular platforms or forums where stakeholders, particularly within the public service, could engage in candid and objective introspection. These forums should serve as spaces for collective reflection, enabling participants to appreciate successes, acknowledge failures, and strategize on addressing identified issues.
- iii. **Inclusivity and Diversity:** Embracing diversity within our workforce

was not just a moral imperative; it was also a strategic advantage. A diverse and inclusive public service better reflects the needs and aspirations of our diverse citizenry.

- iv. **Innovation and Technology:** Embracing technological advancements was crucial for streamlining processes, enhancing efficiency and delivering services in a manner that was both effective and responsive to the needs of the public.
- v. **Continuous Learning and Development:** Investing in the skills and knowledge of our public servants was paramount. Continuous learning ensured that our workforce remained agile, adaptable, and capable of navigating the complexities of the modern governance landscape.
- vi. **Citizen-Centric Approach:** Placing citizens at the centre of our decision-making processes would ensure that our policies and services were aligned with the actual needs and expectations of the people.
- vii. **Support and amplify anti-corruption initiatives:** Strengthen the commitment at all levels of government. Provide unmistakable support to these initiatives, emphasizing the need for accountability in cases of breaches of anti-corruption measures. Demonstrate a commitment to holding individuals personally responsible for any misconduct, ensuring a robust approach to combating corruption.

3.7.7 Way Forward

In conclusion, transforming the public service culture in both levels of government required a mind-set shift. Government workers must embrace a sense of purpose, accountability, and dedication to public service values. They must embrace a culture that prioritizes integrity, transparency, and responsiveness to the needs of the citizens. Attaining a transformative shift in public service culture necessitated a strategic integration of key principles, namely collaboration, inclusivity, innovation, continuous learning, and a citizen-centric approach.



The Role of Intergovernmental Relations in achieving the Vision of the Judiciary on Social Transformation through Access to Justice, Mr. Paul Ndemo Maina, OGW., Ag. Chief Registrar, The Judiciary

3.8.1 Introduction

The Chief Registrar recognized the critical role of IGRTC in facilitating harmonious intergovernmental relations between the two levels of government. He informed the meeting that the Judiciary was guided by several strategic documents which included the Judiciary Strategic Plan and the Social Transformation Through Access to Justice (STAJ). The STAJ blue print was anchored on five pillars namely;

- i) Improving access to justice which involved making legal services more affordable and available to Kenyans, simplifying court's procedures and increasing the public awareness of legal rights,
- ii) Enhancing judicial efficiency by automating court processes, reducing case backlog and improving the quality of the judicial decisions,
- iii) Promotion of judicial independence by ensuring judges and judicial officers are free from interference and can objectively uphold the rule of law,
- iv) Strengthening judicial integrity through upholding ethical standards and eliminating corruption within the judiciary, and
- v) Improving public trust in the judiciary which entails making the judiciary more transparent, accountable and approachable to the public.

Access to justice was at the core of the STAJ vision, which sought to establish an essential institution that is independent, accessible, and efficient while protecting all rights, particularly those of the most vulnerable. This would be accomplished by limiting physical proximity to courts to no more than 100 kilometres from every Kenyan. The Chief Registrar gave an overview of what had been achieved under the STAJ visionary blue print as well as challenges affecting the full implementation of the STAJ objectives.

The Judiciary was committed to have a High Court in every county, a magistrate's court in every sub-county as well as a small claims court

to be accessible at least in every sub-county. At the time, there were 45 high court stations established within 43 counties and construction of high courts is ongoing in the remaining 4 counties. The judiciary collaborated with other stakeholders, including the two levels of government and the other two arms of government, as stipulated by Article 2 of the COK which delegated sovereign power to the legislature, executive, and judicial organs. In partnership with county governments, the judiciary has had a significant impact on the justice system and Kenyan society as a whole, particularly through the donation of county government land for court establishment or through partnerships to build county courts.

While recognizing the limitations of traditional judicial systems, the judiciary embarked on a transformative journey in embracing a wave of procedural reforms aimed at bridging the gap between theory and practice. The judiciary had embraced technology through e-filing platform which provided for online case filing and initiation of proceedings remotely. The judiciary sought the support of county governments in the launching and rolling out of the e-filing platform in all the courts across the country. The electronic case management systems streamlined processes, ensured efficient record keeping and enhanced transparency in the legal system. Virtual court sessions increased access to justice amidst logistical challenges particularly for individuals in remote areas.

The Judiciary championed the utilization of alternative dispute resolution mechanisms in resolving disputes, while increasing access to justice where parties mutually agreed with the help of a neutral facilitator. These mechanisms reduced the strain on court system, offered quicker resolutions and was generally affordable. In enhancing public engagement, the Judiciary had established Court User Committees (CUCs) which involved representatives of county governments. These committees acted as a vital bridge between the public and the Judiciary.

The Judiciary had thus witnessed tremendous evolution in decentralizing judicial services in line with STAJ blueprint. This had brought courts closer to the people, while reducing geographical barriers and enhancing availability

of legal services across the country. Decentralization had enhanced engagement and public trust fostering transparency and accountability.

3.8.2 Challenges

The journey to a completely decentralized system was not without challenges. One of the most significant problems was a lack of resources which affected building the capacity in terms of infrastructure, technology, and qualified personnel. Maintaining consistent application of the law and quality of service delivery across a decentralized network required a strong approach that included the establishment of defined programs and effective communication channels. However, the Judiciary has had to struggle to achieve the initiative due to resource constraints. The other challenge was the inadequate security to those involved in the justice system which continued to derail the establishment of courts in rural locations.

3.8.3 Conclusion

The Judiciary was committed to improving access to justice in the country. It was putting efforts towards increasing judicial efficiency, promoting independence and integrity in the whole system. With intention to foster public trust, the Judiciary will continue taking a comprehensive approach to creating an accessible accountable justice system. Collaboration among judicial stakeholders would be necessary as an important role in improving the justice system. The adoption of technology, procedural improvements, and the decentralization drive are all positive initiatives that demonstrate a commitment to provide a more accessible, user-friendly, and equal justice system for all Kenyans. It was critical therefore, to celebrate the progress that had been achieved, acknowledge the challenges that lay ahead, and work together to create a future in which justice is more than simply a legal concept, but a reality to be lived by every Kenyan.

3.8.4 Recommendation

The county governments should support the judiciary in launching and rolling out of e-filing platforms in all the courts across the country. Full presentation is in **Annex 3**.



Intra-County Relationships and Impact on Intergovernmental Relations, Hon. Ndegwa Wahome, Former Speaker, County Assembly of Nyandarua

3.9.1 Introduction

The Constitution establishes a decentralized state structure, dividing the country into 47 counties, each with its own distinct government. This designates a critical role to intra-county relationships in ensuring the smooth operation of devolution. The constitutional provisions emphasize that the national and county governments are distinct but interdependent and conduct their affairs on the basis of consultation and cooperation.

The presenter observed that the success of Kenya's devolved system heavily relied on the synergy between the national and county governments, within the counties and amongst the county governments. This emphasized the need for robust intergovernmental relations. Inevitably, intra-county relationships therefore formed the backbone of effective governance at the local level. As such, the significance of fostering collaboration and coherence between different levels of government could not be overstated.

Intra-county relationships refer to the interactions, collaborations, and dynamics among various institutions and actors within a specific county. These relationships were crucial for the effective functioning of county governments and, consequently, with impact on the broader spectrum of intergovernmental relations. It also involved the effective coordination and collaboration between the two arms of the county government that is, the county executive and the county assembly. The role of the Assembly was to represent, legislate, financial authorization and oversight of resource utilization (COK, Articles 185 and 195). The county executive was responsible for implementing the legislation and development agenda (COK, Art 183), These must be looked at against the national government's overall policy responsibility in almost all areas of governance.

3.9.2 Key Aspects of Intra-County Relations: Stakeholder Engagement and Public Participation

A comprehensive stakeholder engagement throughout the development process of County Integrated Development Plan (CIDP) is critical in promoting inclusivity and ownership of county initiatives. Despite public participation being one of the national values in governance, the prevailing processes for its implementation are largely mechanical and unstructured to satisfy government constitutional requirements. As a result, there was lack of public ownership of development plans and resource utilization. This underscores the need to institutionalize structured and meaningful engagement to address conflicting interpretations and ensure stakeholder ownership.

3.9.3 Challenges on Intra- County Relations

Despite the elaborate constitutional framework, intra-county relationships face several challenges including;

i. **Conflicts between the Executive and the Assembly**

Conflicts between the executive and the assembly, particularly regarding resource designation, pose significant challenges to intra-county relations. Disagreements over budget allocation and expenditure priorities can lead to gridlock and hinder the implementation of essential programs and projects.

ii. **Implementation of Laws without Policy Backup**

The implementation of laws without adequate policy backup creates confusion and inefficiencies within the governance system. Without clear guidelines and frameworks for implementation, laws may fail to achieve their intended objectives resulting in wasted resources and diminished public trust in government institutions.

iii. **Delays in Decision-Making Processes**

Delays in decision-making processes contribute to inefficiencies and exacerbate tensions between different arms of government. Protracted decision-making processes can impede timely responses to emerging challenges and can undermine the effective delivery of public services.

iv. **Discrepancies in the Interpretation of Mandates**

Discrepancies in the interpretation of mandates between different levels of government can lead to conflicting priorities and objectives. This lack of alignment undermines coordination efforts and diminishes the effectiveness of intergovernmental collaboration.

v. **Lack of Clarity in Roles and Deficient Communication Channels**

A lack of clarity in roles, deficient communication channels and protocols further exacerbate tensions and hinder effective governance. Unclear lines of authority and responsibility can lead to overlapping jurisdictions and bureaucratic inefficiencies. Inadequate communication channels on the other hand can impede information sharing and coordination efforts. Overlapping oversight roles played by the Senate (COK, Art 96) and county assemblies (COK, Art 185 and 195) has often led to conflicts and confusion in the intra-governmental matrix.

vi. **Lack of Capacity**

Most counties lack the necessary capacity in terms of human resources, equipment, office space, and funding required for undertaking the roles sufficiently and address the gaps within intergovernmental relations.

vii. **Delays on resource transfers**

Delays in the transfer of financial resources to counties affect their ability to deliver services promptly thus leading to delays in decision-making processes and service delivery. The consequence of the delays has been the gridlock and disagreements over the available resources and the priority of programs and projects to be implemented.

The challenges identified in intra-county relationships had a cascading effect on the broader intergovernmental relations framework. When counties face internal challenges, the ability to engage effectively in intergovernmental cooperation diminishes. This, in turn, impacted service delivery and the

overall success of the devolved system of governance. To address these challenges, it is crucial to implement targeted solutions and foster a culture of cooperation, consultation, and coordination among all levels of government.

3.9.4 Emerging issues on Intragovernmental Relations

There are emerging issues in the relationship between the executive and assemblies in the counties. These are largely on the issues of CIDPs and process evaluation by the county executive members for finance.

3.9.4.1 Relationship between County Integrated Development Plans and Medium-Term Plans

There were existing concerns regarding the perceived downplaying of the relationship between CIDPs and Medium-Term Plans (MTPs). These concerns had led to a misconception that the national government was performing county government tasks. However, clarifications were made to the effect that the existing policies following the BETA plan aligns CIDPs with MTPs, ensuring coherence in planning processes.

3.9.4.2 Evaluation of Processes by County Executive Committee Members

It was observed that County Executive Committee Members (CECM) in charge of county treasuries needed to be objective and committed in evaluating the processes of their systems to enhance accountability and effectiveness in governance.

3.9.5 Recommendations

Following a comprehensive examination of intra-county relationships and their impact on intergovernmental relations, several recommendations were made to address existing challenges and optimize governance structures. These recommendations aim to foster collaboration, enhance capacity, and promote effective communication between different levels of government.

- i. **Build capacity at the county level:** It was essential to invest in targeted training programs aimed at enhancing the skills and capabilities of county officials. These programs should focus on

areas such as policy development, conflict resolution, and strategic planning to empower county governments to effectively fulfil their mandates.

- ii. **Establish a joint oversight committee:** To streamline governance functions and promote accountability, the establishment of a joint oversight committee comprising representatives from the executive, assembly, and other relevant stakeholders was recommended. This committee would serve as a platform for collaboration, coordination, and oversight ensuring transparency and efficiency in decision-making processes.
- iii. **Promote constitutionalism and professionalism:** A culture of constitutionalism and professionalism among legislators is vital for upholding the rule of law and maintaining the integrity of governance systems. Training and awareness programs should be conducted to promote adherence to constitutional principles and ethical conduct among elected officials.
- iv. **Promote intergovernmental relations:** Workshops, seminars, and awareness campaigns should be organized regularly to promote dialogue, cooperation, and understanding between different levels of government. These initiatives would facilitate the exchange of best practices, address challenges, and strengthen partnerships for effective governance.
- v. **Strengthen citizen engagement:** Citizen engagement and civil society monitoring play a crucial role in holding government accountable and ensuring transparency and responsiveness. Efforts should be made to strengthen mechanisms for citizen participation, such as public forums, town hall meetings, and online platforms, to empower citizens to actively participate in decision-making processes.
- vi. **Address delays in financial resource transfers:** Timely transfer of

financial resources to counties is essential for the effective delivery of services and implementation of development projects. Mechanisms should be put in place to address delays in resource transfers and ensure that counties receive their allocations in a timely and predictable manner.

3.9.6 Conclusion

Addressing the challenges facing intra-county relationships requires concerted efforts from all stakeholders. By implementing the foregoing recommendations, county governments can enhance their capacity, streamline governance functions, and foster greater collaboration between different levels of government. By building capacity, promoting accountability, fostering dialogue, and strengthening citizen engagement, governments at all levels can work together more effectively to achieve shared development objectives and improve the lives of citizens.

3.10

Intergovernmental Relations in the Implementation of the National Medium-Term Plan, Mr Joseph Malonza, State Department for Planning

3.10.1 Introduction

The State Department for Planning is responsible for formulation, implementation coordination, monitoring and evaluation of economic development plans, policies and strategies. These responsibilities are aimed at achieving the national development agenda. The State Department provides leadership in preparation of the country's long-term development blue prints, Medium-Term Plans, Sector Plans and Public Investment Policy and Oversight. It also guides counties in preparation of County Integrated Development Plans and operationalization of Monitoring and Evaluation Systems. Planning is a concurrent function where the national government has the role of national economic policy and planning while the county governments have the role of county planning and development.

Planning formally began after independence when the first draft paper spanning a period of seven (7) years was developed. The Sessional Paper No.10 of 1965 was developed on African Socialism and its application to planning in Kenya to address poverty, ignorance and disease. At the time, planning was more centralized in a manner that the line ministries would develop their priorities and submit to the ministry in charge of planning for consolidation and budgeting. The approach changed over time and in 1983 the country experienced the first decentralized approach in terms of development planning with the establishment of District Focus for Rural Development (DFRD). The districts were made the planning units with establishment of committees which would connect the needs at the district levels, and they would then be submitted upwards. However, this wasn't working well. The DFRD lacked ownership of projects because the communities were not well informed during the process. Consequently, local authority service delivery action plans were brought on board to improve the ownership and sustainability of projects.

The Poverty Reduction Strategy Paper (2002-2004) changed the focus from poverty reduction to creation of wealth and out of this, the Economic Recovery Strategy for Wealth and Employment Creation was developed. This was the first time that the Economy grew from -0.3% to 7% in a period of 5 years. The 2007 elections and the post-election events overturned the economic growth to 1.7%. This paper proved that Kenya had the potential to grow its economy. The Kenya Vision 2030 was conceptualized after the success of this paper with a long-term focus on development.

The Kenya Vision 2030 was launched in 2008 and for ease of implementation the vision plans were structured in shorter implementation periods. This was the genesis of national medium-term planning in Kenya based on a timed longer vision implemented through the five-year medium-term plans (MTPs). In the advent of the new constitutional order, the approach to planning changed due to the devolved system of governance but still based on the Vision. Counties play a very important role in the Vision 2030 and at the time MTP-IV had been developed while the counties had done their third generation CIDPs.

During the development of these plans, priority areas for the incoming governments were flagged out and therefore the MTP-IV and CIDPs were aligned to the BETA. They were also aligned to regional and international commitments including Sustainable Development Goals, Africa's Agenda 2063, and the East Africa Community Agenda 2050.

3.10.2 Area of Focus

The implementation of the Kenya Vision 2030 through the MTPs and the CIDPs, can only be achieved through consultation and cooperation between the two levels of government. Therefore, there was need to look into the possible areas of intergovernmental relations in the development of the national medium-term plans, and the CIDPs.

3.10.3 Tracking and Reporting

The State Department for Planning advised that the MTPs should take into consideration of all projects to be done in Kenya whether by MDAs or county

governments. On the other hand, the CIDPs should cover what would be implemented by the county governments as well as what was relevant to specific counties in the national development plans.

The KDSP was integral in rolling out a national integrated monitoring and evaluation system to ensure that the county government systems were integrated into the national system. The requirement to have some mechanisms at county level led to development of County Integrated Monitoring and Evaluation System (CIMES) guidelines for monitoring and evaluation at the counties. Planning at the county should be guided by county government funds and the relevant national government policies. The State Department had made deliberate efforts to train county officials to ensure skills and knowledge are transferred to the counties.

3.10.4 Challenges

The presentation identified several challenges:

- i. Uncoordinated public participation for the development and implementation of MTPs and CDIPs.
- ii. The divergent priorities and costs between the two levels of government during the development of the CIDPs becomes a problem due to the lack of resources to fund these projects.
- iii. The absence of a framework to coordinate the national and county governments' planning process, sharing of information and financial costings.
- iv. The national government provided guidelines for development of CIDPs, sectoral plans, Annual Development Plans (ADPs), and strategic planning as well as for conducting M&E. However, only 10 counties had developed sectoral plans.
- v. Counties were not seeking technical assistance because of financial reasons. The State Department for Planning has come on board with donors to give technical assistance for development of sector plans and for the development of CIDP indicators.

3.10.5 Recommendations

The proposed recommendations were:

- i. There must be mandatory public participation in planning.
- ii. The State Department should develop policy and legislation for planning.
- iii. Kenya National Bureau of Statistics to collaborate with various stakeholders to avail data that is reliable, accurate, and up to date.
- iv. Strengthen intergovernmental information sharing to guide the planning process in the country.

3.10.6 Conclusion

Joint planning is important for the achievement of Vision 2030. Vision 2030 requires both the national and county governments to plan together for the success of medium-term planning in Kenya.

3.11

Determinant of County Government Performance Management Successes and Attendant Challenges, Ms. Mary Mwiti, Chief Executive Officer, Council of County Governors

3.11.1 Introduction

Performance Management is the communication of roles, priorities, performance expectations, its institutional structure and the individual targets for overall achievement of organization goals. It is directly correlated with county planning processes and therefore, the effectiveness of performance management takes into consideration the alignment to county planning processes. Section 47(1) of The County Government Act, 2012 provides that “The County Executive Committee shall design a performance management plan to evaluate performance of the county public service and the implementation of county policies”. The plan should provide among others objective, measurable and time-bound performance indicators. This was to ensure that not only was planning unambiguous but the success and the overall goal of the organization was achieved.

The performance management plans at the county level should also provide for linkage to the mandate of the various sectors in the county. Thus, every county performance management planning should be linked to its specific sector. This was key as it would provide input into the county monitoring and evaluation system.

It was advisable that performance management plans ensured that what was done was checked and responsive to the needs of the people, thus reports had to be provided and citizen participation allowed. County governors were expected to submit annual performance reports of the County Executive Committee and Public Service Board to the County Assembly for consideration. Finally, performance management reports needed to be made public after a review had been done to allow for citizens to further evaluate the performance.

3.11.2 Determinants of Performance Management

There was need to have a National Performance Management policy in place which determines how performance management functions should be advanced at the county level. This would be the actual anchor to ensure there were regulations that had deep effect to the policy. Without a public management framework and guideline, performance management could not advance. Thus, there was need to have a standardized approach on what should be done to ensure that results from all sectors were aligned and focused to the same goal.

The presenter opined that there was a thin line between employee competency and skills in terms of achievement of overall performance of an institution. Thus, it was critical for all public institutions to evaluate whether they had the necessary and critical employee skills/competency to ensure overall achievement of the performance management goal of the organization/institution. Consequently, there was need to differentiate between competency and skills in the achievement of set objectives of the performance management contract. Ms. Mwiti reiterated that employee motivation was important in achieving performance management goals. One of the employee motivations in an institution was the availability of a performance management plan. This ensured that employees had clarity of roles, expectations, individual targets and aspirations to the overall goal of the organization. Without providing a basis of what was expected of employee's deliverables on a daily basis, there were higher chances that the employee would never be productive.

Performance management was highly dependent on resources, thus, for every performance target, it should be accompanied with adequate resources for deliverables to be achieved. In terms of strategic flow, a sound performance management plan should be clearly linked with overall planning, that is, performance management should be aligned with long-term objectives such as Vision 2030, which is the country's blueprint. Therefore, there was need for clarity in understanding the Vision and additionally, it was important for CECs, chief officers and county secretaries

to further unbundle what Vision 2030 had for the various sectors at the county governments.

Alignment of the county level performance management plan to the sector plans was necessary as they equally fed into the overall goal of the country development agenda. Ms. Mwiti reiterated that the development of the CIDPs could not take place in a vacuum as they had to be well aligned with the sector plans and Vision 2030 as well as the plans under the BETA. With this alignment, it was then easy to evaluate the performance management system of the country. This could be achieved through a highly consultative process due to proper alignment of the third generation CIDPs to the Vision 2030 and the BETA plans. She emphasized that performance was tied to development outcomes and not inputs.

3.11.3 County performance management guidelines

COG in collaboration with the Ministry of Public Service, Performance and Delivery Management Unit had developed County performance management contracting guidelines in 2016 to support counties in implementation of performance management systems. The guidelines was to be reviewed regularly to ensure they were supporting the performance management systems in the counties.

The guideline prescribes key performance criteria that are weighted against the following parameters:

- a) Financial stewardship and discipline 10%
- b) Service delivery 8%
- c) Institutional transformation 10%
- d) Core mandate 60%
- e) Cross cutting issues 12%

The presenter revealed that so far, COG had trained 20 performance management champions to ensure they entrenched performance management system in the counties. Their role involved ensuring that counties' performance management was up to date, and that they had performance contracts with effective appraisals and prudent systematic monitoring and evaluation system. It was prudent for every county to have

in place performance contracting that ensured its performance goals were achieved.

The performance management tools used in the counties include performance contracting, staff performance appraisal system, rapid result initiative, and citizen service delivery charter. Performance contracting is a signed agreement between the employee and the employer/institution describing what needs to be done, employee's roles, targets and the greater vision in terms of contribution to the overall achievement of the government or Governor's manifesto. Staff performance appraisal system on the other hand applies to the measurement of individual's output in actualizing implementation and achievement of the standards that had been set and mutually agreed upon with the supervisor. The Rapid Result Initiative is a results-focused learning process aimed at jump-starting major change efforts and enhancing implementation capacity. It comprises specific targets that needs to be achieved very fast (within agreed period of time). The citizens service delivery charter is an institutional promise or commitment to providing quality services to its customers punctually as specified in the document. In the counties, the Service Delivery Units are anchored at the Governor's office.

3.11.4 Achievements

The presenter identified a number successes in performance management in the public service especially at the counties in the last ten (10) years:

- i. Development of performance management guidelines aligned to the Medium-Term Plan and the planning processes of the country.
- ii. Trained twenty (20) performance management champions at the COG. This is a resource that counties need to tap into as they look into entrenching performance management in their counties.
- iii. Performance management has promoted accountability in service delivery
by ensuring that tasks are performed efficiently, effectively and economically.

- iv. Twenty-seven (27) pioneer county governments signed performance contracts. This enabled at least three (3) counties namely; Kakamega, Makueni and Busia to be recognized through an award during the African Public Service Day in 2021.
- v. The COG in collaboration with the Ministry of Public Service, Performance and Delivery Management have supported at least thirty-four (34) counties in sensitization, development of performance contracting, negotiations and vetting of the performance documents.
- vi. Improved county management both in service delivery and the programs as performance management guides how resources should be utilized.
- vii. Staff motivation. Planning for performance management provides an opportunity for all staff to be engaged thus spurring the drive to exceed.

3.11.5 Challenges

The session highlighted and discussed several challenges related to the topic.

- i. Lack of a superior legal framework that insulates the performance management function even with change in political and administrative regimes.
- ii. Lack of a national performance management policy that anchors the performance management function.
- iii. Arbitrary delay in the disbursement of financial resource in the middle of a performance period.
- iv. Inadequate commitment and support on performance management from the top leadership.
- v. Inconsistent and disruptive positioning of the office in charge of

institutional performance management leading to both human and financial challenges.

- vi. Fragmented approach to performance management in which different tools are domiciled in different departments.
- vii. Lack of a special fund that would support financial performance incentives to motivate counties and individuals who excel.
- viii. Failure to deploy performance incentives and sanctions based on performance.

3.11.6 Recommendations

In conclusion, three recommendations were made;

- i. Need for county governments to develop a legal framework for performance management anchored the guidelines on a policy insulating it even with change in leadership regime,
- ii. Operationalize the National Performance Management Policy that will provide for a unified and harmonized performance management guideline both at the county and national government levels, and
- iii. Timely disbursement of resources to enable the implementing department adhere to the performance implementation cycle.

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3.12

Impact of Land Issues on Intergovernmental Relations, Mr. Gershom Otachi Bw'Omanwa, EBS, Chairperson, National Land Commission

3.12.1 Introduction

This presentation discussed some of the concerns that had arisen in implementing devolution since 2010 in regard to the land sector. The COK provided the architecture on how the Commission dealt with land issues and in-particular the introduction of the aspect of community land. Chapter 5 of COK deals with and underlines the importance of land. Further, there were many land-related laws and the national land policies that guided the country in land management. These laws and policies inform the changes made in the management of land leading to the creation of the National Land Commission (NLC). The Constitution classifies land into three categories namely; private, community, and public land. The presentation focused on the unique functions of IGRTC as specifically provided, while pointing out the areas of cooperation and coordination in regard to land issues within the mandate of the NLC.

The presentation captured the mandate of the NLC as provided for in the Constitution, the National Land Commission Act and other related legislation. One of the most important functions of the Commission is the management of public land on behalf of the national and county governments. The other functions include:

- i) Recommending policies on land to the national government. Currently the Commission has the National Land Policy of 2009 which provided basis of what we have in the 2010 Constitution. The policy has however not been revised to-date and the Commission is in the process of doing so;
- ii) Advising the national government on comprehensive program for the registration of title in land throughout Kenya
- iii) Conducting research on land-related issues;

- iv) Initiating investigations, on its (NLC) own motion or on a complaint, into present or historical land injustices, and recommending appropriate redress;
- v) Encouraging the application of traditional dispute resolution mechanisms in land conflicts; and
- vi) Providing oversight function on land use.

3.12.2 Issues and Key Focal Points/Findings

The presentation highlighted the engagement of the Commission with IGRTC in the overall context of issues that revolved around devolution and land matters.

The first was the aspect of transfer of assets from national government to county governments that began immediately devolution became operational and counties having been set up in 2013. This required transferring of assets of devolved functions from the national to county governments. It also required the reorganization and transfer of institutions that were precursor of the county governments such as the municipals and county councils. The transfer of assets exercise started off with the defunct Transition Authority (TA). So far, the identification of the assets had been completed and valuation of the same was on-going pending transfer. There were however, some residual issues that had not been concluded and the Commission was working with IGRTC particularly around matters of asset valuation.

The presenter observed that there were some sticky areas that still lingered both in terms of the transfer and understanding of what aspect of land belonged to what level. Some of the cases where land disputes had been observed during identification and valuation stages of transfer was in primary schools, such as, the case of Nairobi County and indeed in most counties where the land occupied by schools hosted both Early Childhood Development Centre (ECDE) and primary school. Since ECDE was a function of the county government and primary schools being a function of the national government, it had become challenging to determine which

level of government had control over the land and facilities therein. The same scenario was observed in agriculture and health sectors where institutions performing the functions were national government entities while the functions themselves were devolved.

Most of these disputes were brought to the Commission to resolve while others chose to be quiet on them until the conflict erupted. These were matters that needed be kept in mind in the context of devolution. Major land disputes would usually take up one of the following dimensions:

- i. The social dimension which involved human settlement, housing, population growth, urbanisation, land for agriculture and food security.
- ii. The political dimension which included issues of land governance and land tenure.
- iii. The economic dimension that included agriculture and the environmental dimensions.

To resolve the land disputes between national and county governments, the Commission continued to work closely with IGRTC to resolve them.

Meanwhile, there were areas of convergence including the fact that:

- i. Kenya was one nation, one people and the Kenyan Constitution recognized that land sovereignty rested with the people of Kenya despite its various dimensions;
- ii. There were some cross-cutting investment projects that provided mutual benefit to all irrespective of the level of government for example, the heavy infrastructural investment such as roads, railways, dams and ports. Thus, there was need to focus more not on the way the county governments and national government were distinct from each other but how they should work together;
- iii. The aspect of government service delivery approach; and

-
- iv. Establishment of regional economic blocs: This was where county governments had clustered themselves based on geographical, locational, resource base and or desired interest to collectively lobby for economic, social or political empowerment of its people. In these configurations, sometimes to question to counties had been issue of duplication of efforts. For example, if Kiambu County establishes a special economic zone must the other neighbouring county also do one right next to it? Would it not be better to re-think of the other priorities and look at the matter from a regional perspective and benefit from economy of scale? In this way, counties could make development decisions based on what they were best at to avoid duplication of efforts.

3.12.3 Challenges

The presenter flagged out some major challenges affecting the management of land in the country;

- i. Discomfort between the national and county governments over some categories of land. Disputes as to whether a certain category of public land was national or county such as the case of Kenyatta International Conference Centre building which is a property of the national government, but is adjoined by piece of land that is under dispute and which the courts have since determined that under the Constitution, the land belonged to the County Government of Nairobi. The second case was the Embakasi Barracks housing. Whereas defence was a function of the national government, the barracks sat on County Government land as determined by the court,
- ii. Inter-county boundary disputes that arose due to resources found within a specific parcel of land. The Commission had observed existence of county boundary disputes especially where there was a commercial area such as a township with high revenue collection potential. The disputes were also prevalent in county boundaries endowed with natural resources thus exciting a lot of interests between county governments, and

- iii. Disputes attributed to the function of planning. Spatial planning are functions of county governments. However, when undertaking this activity most county governments plans fail to merge. This had resulted into disputes, especially on boundary clarity on which county owns those parcels of land. This was the case of residents identifying themselves as living in Nairobi yet in real sense they resided either in Kiambu, Kajiado or Machakos counties. This had been experienced more so due to emergence of metropolis across boundaries escalating disputes over revenue collection. In such instances the Commission alongside IEBC and IGRTC had been detailed by courts to assist in establishing the boundaries.

1.1.4 Recommendations

The paper made key recommendations.

- i) There was need to respect the existing conflict resolution mechanisms and explore other ways that could make arbitration more effective.
- ii) Expedite legislation to set up land commissions to help address boundary disputes especially in areas such as Kisii/Nyamira, Kericho/Kisumu, Kisumu/Vihiga, Machakos/Makueni, Makueni/Kwale, Kitui/Tana River.
- iii) Exercise the people's sovereignty of the Kenyan people as provided for in the COK.

3.12.5 Conclusion

The Chairperson observed that in as much as the COG claimed that they were being undermined by the national government, the county governments also had their own issues that required to be resolved. The over-arching perspective of how to address these issues was to understand and appreciate that institutions were all working for the good of every Kenyan as the sovereignty of the land rested with the Kenyans.



3.13

Political Economy of Devolution and Implications for Intergovernmental Relations, Prof. Peter Wanyande, Professor of Political Science, and former Commissioner, CIC

3.13.1 Introduction

The presentation on the political economy of devolution and the implications for intergovernmental relations delved into the understanding of the factors that influence the relationship between the national and county governments from a political economy standpoint.

The presenter indicated that the Constitution of Kenya established two levels of government: the national and county governments. The national government had three arms: The Executive, The Legislature and The Judiciary, while each county government had an executive and legislative arm. The COK also created a dual legislature, the National Assembly and the Senate. The Senate was mandated to represent counties and protect their interests, participate in Parliament's law-making functions, determine the allocation of national revenue among counties, and exercise oversight over national revenue to county governments.

The Senate plays a critical role in moderating relations between the national government and counties and county governments. It represents counties and serves to protect their interests, ensuring that the national government does not undermine the powers and functions of county governments, including resource capacity in the form of revenue belonging to counties. The performance of its role would facilitate and contribute to a better interaction and relationship between the national and county governments as envisaged in the Constitution.

Prof. Wanyande reiterated that managing the implementation of a devolved system of government was complex and unique. It could not be based on what other states did. Each case had to take into account the nature of the system being introduced as well as the history of the country's governance

experience. In the Kenyan devolution, each level of government competed to wield as much power and authority over the other, often at the expense of serving the people of Kenya.

This desire for supremacy was as a result of resources that were linked to the functions performed by a level of government, and an actor bent on amassing political power could struggle to cling to more functions, including those allocated to the other level by the Constitution.

3.13.2 The Political Economy

In the presentation, Prof. Wanyande opined that politics and economics were often considered separate activities, but they were in constant interaction, affecting each other in fundamental ways. The parallel existence and mutual interaction of state and market created a political economy, which affected many other human activities. Power played a crucial role in economic life, as it determined the relationship between authority and the market. Markets could not play a dominant role in a political economy unless allowed to do so by those who wielded power and authority.

3.13.3 Principles of Devolution

The presenter alluded to Chapter Eleven of the Constitution of Kenya, 2010 which outlined the principles of devolution aimed at addressing governance challenges and issues of people-centred development associated with the centralization of political and economic power. Devolution sought to introduce a more democratic and accountable power, serving the people rather than focusing on the exercise of power. It thus aimed at addressing centralized power challenges and established a democratic governance structure. The objectives of devolution are listed in Article 174, including promoting democratic and accountable exercise of power, fostering national unity by recognizing diversity, and giving powers of self-governance to the people. The objectives further include recognizing the right of communities to manage their affairs, protecting and promoting the interests and rights of minorities and marginalized communities. It provides for ensuring equitable sharing of national and local resources, decentralizing state organs from the capital, and enhancing checks and balances and separation of powers.

The presenter posited that implementation of devolution had been recognized as both a political and administrative endeavour. Leadership commitment and alignment with the ideology of devolution were identified as crucial elements. The Constitution envisioned a consultative and cooperative system for government to ensure that different levels of government carried out their functions and exercise their powers while respecting the constitutional status and institutions of the other levels. To facilitate this, laws had been passed by Parliament and county assemblies. Implementation structures had also been put in place including various commissions and independent offices to safeguard the efficacy of the Constitution.

3.13.4 Implications on Intergovernmental Relations

The constitutional design for devolution emphasized a consultative and cooperative approach between diverse levels of government. The framework established various commissions and offices, including the Commission on Revenue Allocation, Controller of Budget and Office of the Auditor-General to facilitate effective intergovernmental cooperation. The presenter observed that IGRTC, a secretariat of the Summit as established under the Intergovernmental Relations Act., 2012 focused on harmonious intergovernmental relations for the success of devolution.

He (the presenter) emphasized that Intergovernmental relations, particularly between national and county governments, were influenced by various factors. One of the key factors was the political nature of devolution, which required both technical and administrative aspects to be successful. In Kenya, the implementation of devolution in the form adopted by the country made the observation true. Cooperation and agreement to share political power and economic resources were essential for the successful implementation of devolution. The relations were however affected by the lack of clarity on how some functions were financed and performed. This was evident in functions such as agriculture, health, and infrastructure-related sectors. The non-clarity had led to arguments and friction between the two levels of government, with counties arguing that these resources should be devolved rather than goods and infrastructure being provided to counties in kind.

Prof. Wanyande opined that financial resources were key not only for financing development but also for buying political loyalty and support. There were reports by the Auditor General about monies being used in an opaque manner, including expenditure without accompanying accounting documents. The Head of the Public Service had earlier discussed the issues of corruption in county governments arguing that there was the possibility of some resources finding their way into unplanned projects. It was observed that the relationship between the two levels of government would benefit greatly from synergy between different actors and institutions, as well as information sharing between various actors within any level of government and between the two levels of government.

In summary, the implementation of devolution and relations between the two levels of government was not a matter of law, policies or regulations. If this was the case the issues being raised regarding the problematic relationships between national and county governments would not be a problem today. Political economy, examining the interaction of the state and market, indicated the inseparable link between politics and economics. In the Kenyan devolution context, power struggles between different government levels overshadow the goal of serving the people, with resources becoming a focal point. Understanding political economy was crucial for decoding the complexities of devolution, especially in power struggles between national and county governments.

3.13.5 Challenges

The presenter identified challenges affecting political economy of devolution as it impacted relations between the levels of government.

- i) The culture of Kenyan politics
- ii) Failure to adhere to constitutionalism
- iii) The skewed manner of National Treasury in funding both levels of government. It tends to lean towards national government.
- iv) Primacy to power, which was a recipe to turf wars over control of power and resources
- v) Lack of clarity on financing devolved functions

3.13.6 Recommendations

A number of recommendations were made. In the overall, the following recommendations would collectively contribute to creating a more collaborative and effective framework for intergovernmental relations, aligning with the objectives of devolution in Kenya:

- i. Strengthen intergovernmental relations structures - Ensure that these structures operate independently, neutrally, and with a clear mandate to serve both national and county governments;
- ii. Fostering a collective understanding of political economy dynamics is crucial. This involves recognizing the intricate interplay between politics and economics, and acknowledging that these realms are inherently intertwined.
- iii. Encourage collaboration among different levels of government that is grounded in the principles of power-sharing, prioritizing the objectives of devolution over unnecessary power struggles;
- iv. Develop and implement a comprehensive communication strategy that highlights the democratic and accountable nature of devolution. This strategy should aim to educate the public and stakeholders about the benefits and goals outlined in Chapter Eleven of the COK;
- v. Maintain stakeholder support and regularly engage with various parties, including the public based on principles of devolution.
- vi. Strengthen the role of the Senate considering its significance as a critical entity in moderating relations between national and county governments. Effective representation of counties by the Senate ensures that the interests of devolved governments are safeguarded. Additionally, recognizing and emphasizing the pivotal role of the Senate in facilitating smooth intergovernmental relations, particularly in dispute resolution, is essential;

- vii. Establish clear frameworks for conditional grants, particularly focusing on sector-specific funding. This proactive measure aims to prevent disputes over resource control. The framework should also offer transparent guidelines for the allocation and management of funds;
- viii. Implement a robust system for monitoring and evaluating intergovernmental relations. This system should allow for timely interventions on any emerging challenges;
- ix. Undertake regular review of policies based on the findings in order to keep abreast with the evolving dynamics of devolution;
- x. Promote public participation in decision-making processes so that citizens are informed and engaged in their public affairs; and
- xi. Enhance and continuously build the capacity at both levels of government.

3.13.7 Way Forward

The political economy of devolution and its implication on intergovernmental relations presented challenges that required continuous attention. The emphasis should therefore be to make sure that there was no clawing back on gains made in devolution. Synergy, information-sharing, and a culture of constitutionalism were crucial for effective intergovernmental relations. Constitutional provisions on functional responsibilities should be clear to avoid interpretation disputes.

PART FOUR: BREAK-AWAY SESSIONS



Break-away Session One

4.1 Topic 1: How to Improve Intergovernmental Relations

Session Chair/Moderator: Mr Kinuthia Wamwangi, Former Chairman, defunct Transition Authority

4.1.1 Introduction

The discussion focused on exploring strategies to enhance intergovernmental relations in the country. The group deliberated on various recommendations aimed at strengthening intergovernmental structures, clarifying roles and responsibilities, and promoting collaboration between the national and county governments. The constitutional foundation of intergovernmental relations is Article 6 (2) which provides that governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. Article 189 stresses that government at either level shall perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level.

4.1.2 Recommendations

From the deliberations and discussions, the following recommendations were made to improve intergovernmental relations:

- i) **Strengthening Intergovernmental Relations Structures:** The group emphasized the need to strengthen IGRTC as a body formed by an Act of Parliament. It was recommended that IGRTC should be autonomous and hold parties accountable for implementing decisions of the Summit, particularly those related to devolution. The IGRTC should help establish frameworks for consultation, cooperation, and dispute resolution among county governments.
- ii) **Operationalization of Intergovernmental Sector Forums:** It was observed that operationalization of intergovernmental sector

forums would facilitate consultation, coordination, and collaboration between the national and county governments. These forums would serve as platforms for harmonizing policies, sharing resources and information, resolving conflicts and monitoring sector priorities.

- iii) **Defining roles and responsibilities:** Clear roles and responsibilities of IGR institutions should be defined to avoid duplication and promote synergy. A high-level meeting between IGRTC, State Department for Devolution, COG, and IBEC was recommended to build consensus on the establishment and convening of intergovernmental sector forums.
- iv) **Development of Regulations for Intergovernmental Sector Forums:** Regulations governing the constitution of intergovernmental sector forums should be developed through a participatory process to ensure transparency and inclusivity.
- v) **Involvement of IGRTC in Drafting Intergovernmental Partnership Agreements:** IGRTC should be involved in drafting and be a witness in the signing of any intergovernmental partnership agreements between the national and county governments to ensure alignment with established frameworks and principles.
- vi) **Timely Disbursement of Funds to Counties:** Adequate and timely disbursement of funds to counties was highlighted as crucial for enhancing service delivery and reducing friction between the two levels of government.
- vii) **Operationalization of Intergovernmental Relation Units:** Guidelines should be developed to establish intergovernmental relation units at both levels of government to enhance harmonious working relationships and strengthen intergovernmental relations.
- viii) **Development of Framework for Concurrent Functions:** A framework for performance of concurrent functions should be

developed to reduce ambiguity and duplication of functions between the national and county governments.

4.1.3 Conclusion

The recommendations put forward by the breakaway group provide valuable insights into strategies for improving intergovernmental relations in the country. By strengthening structures, defining roles and responsibilities, and promoting collaboration and cooperation, the national and county governments could work together more effectively to address challenges and achieve shared development goals. It is imperative for stakeholders to collaborate and implement these recommendations to foster a conducive environment for intergovernmental relations and promote sustainable development across all levels of government.

4.2 Topic 2: How to Improve the Culture of Public Service at National and County Levels

Session Chair/Moderator: Mr. Frank Muchina, County Secretary, Nyandarua County

4.2.1 The culture of public service and recommendations on improvement:

i) Corruption:

In order to curb corrupt practices, the group recommended the following:

- a) Introduce proper internal controls.
- b) Introduce an educational curriculum that is transformative to instill good social ethics from a formative age all the way into the job market.
- c) Undertake continuous institutional capacity building
- d) Establish anti-corruption units within public offices to help deal with corruption cases.
- e) Undertake induction activities for new employees
- f) Solicit political goodwill
- g) Have a national dialogue on the corruption vice.

ii) Absenteeism: Adopt a biometric system integrated with payroll followed by appropriate action. This will ensure that people are paid for what they

have worked for and for what they haven't, let the deductions be made on their salaries.

iii) Servant-centred service: Public institutions should offer a servant-centred service and continuous sensitization of citizens on their rights so as to empower them.

iv) Nepotism and tribalism: To address these vices, there was need to;

- a) Convene a national dialogue,
- b) Introduce inter- county transfer of employees for national cohesion and integration,
- c) Apply sanctions on County Public Service Boards where county recruitment processes do not adhere to the constitutional threshold. This is especially, to have at least 30 percent of workers in the county recruited from the marginalized or other communities to foster national unity and cohesion, COK article 175(c), and
- d) Regularly submit recruitment reports to the Auditor General

v) Laxity (laissez-faire attitude): Administrative action should be taken accordingly.

vi) Non-responsiveness: Advocate for civic education so that citizens can be enlightened on their rights and obligations. This will enable them to respond and seek for the solutions on the issues affecting their lives.

vii) Structural rigidity and bureaucracies: Adopt an open-door policy in all public offices

viii) Impunity due to political connections: There should be a national dialogue addressing the enforcement of prudent human resource practices

ix) Money-driven public service:

- a) Entrench the value of contentment amongst public servants.
- b) Enforce policies, circulars and training of employees.

x) Lack of a proper performance management measures:

- a) Enforce monitoring and evaluation structures
- b) Manage performance with rewards and sanctions

xi) Long disciplinary processes: County government are yet to standardize their disciplinary processes. Expedite introduction of these processes.

xii) Transfers: The culture of transferring civil servants due to disciplinary issues only serves to escalate the problems. Apply action oriented disciplinary measures where an indiscipline case is dealt with at the same place.

xiii) Silos and lack of collaboration:

- a) Undertake continuous teambuilding
- b) Introduce open communication culture including sharing of information

xiv) Resistance to change: Encourage employees to be open to changes and training

xv) Lack of transparency:

- a) Encourage a culture of transparency
- b) Develop clear communication policy to ensure clear, respectful and timely communication.
- c) Ensure proper distribution of workload.
- d) Develop proper and clear job descriptions
- a) Reward performance and sanction non-performance
- a) Introduce performance-based promotions and salary increments

4.3 Topic 3: Working with Politics to Make Devolution Work

Session Chair/Moderator: Ms. Winnie Lichuma, Advocate of the High Court of Kenya and Former Chairperson, National Gender and Equality Commission

Session Objective: The objective of the discussion was to identify challenges related to working with politics in the context of devolution and propose actionable recommendations to address these challenges.

4.3.1 Introduction

The discussion focused on the political dynamics of intergovernmental relations in the country. Effective functioning of devolution in Kenya required a delicate balance between political dynamics and governance structures. Strategies for navigating the intersection of politics and devolution to ensure optimal outcomes were discussed. The following were the challenges, and recommendations identified for making devolution work in the political landscapes.

4.3.2 Challenges

a) Imbalance of Power Relations in Counties

- i. The section of the Public Finance Management Act (PFMA) limiting county assemblies' budgetary changes affects power dynamics, giving the executive undue control over finances.
- ii. Financial dependence of county assemblies on the county executive limits their ability to conduct effective oversight.

b) Disempowered Citizens through Lack of Public and Civic Education

The absence of adequate public and civic education hampers informed participation in governance, leaving citizens unaware of their roles, responsibilities, and rights in the devolved system.

c) Oversight and Accountability

Conflict between the Senate and county assemblies in oversight functions results in inefficiencies, owing to duplication of efforts and failure to hold county governments accountable effectively.

d) Lack of Implementation of Audit Recommendations

Audit recommendations are not effectively implemented, resulting in a lack of accountability and transparency in the use of public funds.

e) Unclear Timelines for Passage of Policies and Legislation

Lack of clear guidelines hinders the legislative process, leading to delays and confusion in passing of crucial policies and legislation.

f) Silo mentality

Lack of information sharing and collaboration among political actors hinders effective governance, as different government agencies and officials work independently without coordination.

g) Lack of political goodwill

Political goodwill towards devolution is inadequate, affecting its success, as some political actors prioritize personal agenda over the common good.

h) Power Politics over Resources

Resource allocation have been politicized leading to inefficiencies and favouritism in service delivery. This is because resources are distributed based on political allegiance rather than need.

i) Corruption in Counties

Corruption undermines the effectiveness of devolution, diverting resources meant for development projects and services. This diminishes public trust in the devolved system of governance.

4.3.3 Recommendations

In pursuit of strengthening devolved governance in Kenya, a set of recommendations were made to address the key challenges and improve the effectiveness of the devolved system. The recommendations made and their potential impact on enhancing oversight, accountability, and citizen participation in governance included:

- i) **Give financial autonomy to county assemblies:** Granting financial autonomy to county assemblies will empower them to exercise effective oversight over county government expenditures for transparency and accountability in financial management;
- ii) **Share reports through IGRTC:** Sharing reports with county assemblies and stakeholders via the IGRTC will facilitate information dissemination and promote collaboration in addressing governance issues;
- iii) **Formalize civic education:** Formalizing civic education with a developed curriculum and allocated resources will empower citizens


with the knowledge and skills necessary for informed participation in governance processes;

- iv) **Focus public education on informed citizenship:** Prioritizing public education on informed citizenship will cultivate a politically aware and engaged populace. This will foster active participation in decision-making and holding leaders accountable;
- v) **Empower women for societal progress:** Empowering women in leadership roles will contribute to societal progress through diverse perspectives in governance and decision-making processes;
- vi) **Clarify roles of Senate and county assemblies:** Clarifying the roles of the Senate and county assemblies in oversight functions will streamline governance processes and minimize duplication of efforts, enhancing efficiency and effectiveness;
- vii) **Develop a working framework between Senate and county assemblies:** Establishing a working framework between the Senate and county assemblies will promote cooperation and coordination in addressing governance challenges and advancing devolution;
- viii) **Establish frameworks for implementing audit recommendations:** Developing frameworks for implementing audit recommendations will enhance accountability and transparency in the use of public resources, improving governance outcomes;
- ix) **Form implementation committees:** Forming implementation committees at both the Senate and county assemblies will ensure timely execution of decisions and recommendations, facilitating effective governance and service delivery;
- x) **Strengthen inter and intra-governmental relations:** Strengthening inter and intra-governmental relations will foster political negotiations and consensus-building, facilitating effective decision-making and governance at all levels;

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- x) **Enhance mechanisms for partnership and information sharing:** Enhancing mechanisms for partnership and information sharing will promote collaboration among government agencies, civil society, and other stakeholders, maximizing resources and expertise for effective governance;
 - xii) **Conduct research on devolution:** Conducting research on devolution through IGRTC will provide valuable insights into governance challenges and opportunities, informing evidence-based policy and decision-making;
 - xiii) **Review statutes to reflect devolution experiences:** Review statutes to reflect devolution experiences will ensure legal frameworks are aligned with the evolving governance landscape, promoting coherence and effectiveness in governance processes;
 - xiv) **Professionalize the public service:** Professionalizing the public service will enhance capacity and competence among government officials, improving service delivery and governance outcomes;
 - xv) **Implement anti-corruption measures:** Implementing anti-corruption measures will safeguard public resources, promote integrity in governance, enhance public trust and confidence in the devolved system; and
 - xvi) **Decentralize devolved services:** Decentralizing devolved services beyond county headquarters will improve access and delivery of services to citizens, promoting inclusivity and equitable development across regions.

4.3.4 Conclusion

The recommendations put forward during deliberations provide valuable insights into strategies for improving intergovernmental relations in the country. By strengthening structures, defining roles and responsibilities,



and promoting collaboration and cooperation, the national and county governments can work together more effectively to address challenges and achieve shared development goals. It is imperative for stakeholders to collaborate and implement these recommendations for a conducive environment that improves intergovernmental relations and promotes sustainable development across all levels of government.

4.3.5 Way Forward

There should be concerted efforts from government institutions, civil society, and citizens to prioritize and implement these recommendations effectively. Continuous monitoring, evaluation, and adaptation of strategies will be essential to ensure progress and sustainability in nurturing devolution in Kenya.

PART FIVE: OFFICIAL CLOSING



Closing Remarks

The closing remarks were given by invited guests as well as the IGRTC leadership. It was presided over by the Senate Speaker, Rt. Hon. Amason Kingi who was represented by Bomet Senator, Hon. Hillary Kiprotich.

5.1 Prof. Karuti Kanyinga, Lead Moderator

Prof. Kanyinga acknowledged the attendees' dedication and commitment throughout the symposium. He emphasized the importance of devolution in Kenya's governance system and highlighted its potential to benefit all communities and regions. He summarized the key themes that were addressed during the symposium as follows;

Key Themes Addressed: The speaker touched on several key themes discussed during the symposium, including:

- a) The significance of devolution as a lifeline for Kenya's future development;
- b) Challenges such as recurring grievances of marginalization and the need for equitable development;
- c) The importance of intergovernmental relations in addressing governance challenges and promoting collaboration between national and county governments;
- d) Concerns regarding the utilization of resources by counties and the retention of functions by the national government; and
- e) The role of the Senate in supporting the IGRTC and resourcing intergovernmental relations efforts.

Proposed solutions to address the challenges identified included:

- a) Increasing resources for the IGRTC to enhance its capacity and effectiveness;
- b) Improving coordination and harmonious relationships between national and county governments; and
- c) Addressing conflicts and enhancing cooperation among counties, particularly those sharing borders or revenue-sharing arrangements.

He underscored the collective responsibility to deepen and make devolution work for the benefit of future generations. He urged stakeholders to reflect on the challenges identified and take proactive steps to address them. Prof. Kanyinga concluded his summary by reaffirming the importance of devolution and the need for concerted efforts to ensure its success. He called for further action. He thereafter invited the IGRTC chairman to lead the next steps.

5.2 CPA Kithinji Kiragu, Chairperson, IGRTC

The Chairperson expressed his gratitude for the presence of the Senate at the symposium and emphasized the importance of its role in safeguarding devolution. He recognized the responsibility of Senate in facilitating intergovernmental cooperation and ensuring the success of devolution.

The Chairperson called for continued collaboration by emphasizing on the need for ongoing collaboration between the Senate and IGRTC in addressing challenges and promoting effective intergovernmental relations. He proposed further sessions to facilitate communication and consultation between the Senate and county assemblies, recognizing the importance of enhancing dialogue between the two legislative bodies.

In conclusion, Mr Kiragu affirmed the value of the symposium as a learning process and invited the Bomet County Senator Hillary Kiprotich to deliver closing remarks from the Senate Speaker. He once again reiterated the

importance of collaboration and dialogue in advancing devolution and intergovernmental relations in Kenya. The signed communique is presented as **Annex 6**.

5.3 Senator Hillary Kiprotich, Bomet County

Senator Kiprotich who represented the Senate Speaker, Rt. Hon. Amason Kingi expounded on his own behalf, the role of Senators in various committees within the Senate.

Mindset Shift and Cooperation: The senator emphasized the need for a mindset shift on how the national and county governments perceive their relationship. He advocated for a shift from viewing each other as competitors to seeing themselves as complementary partners in service delivery. This change in perspective, he argued, was crucial for effective governance and better service delivery.

Commitments and Support: The Senator made specific commitments to support legislative amendments and proposals that emerged from the symposium. He pledged to leverage on his position in Senate committees to advance legislation that would strengthen devolution and address its challenges. This demonstrated his proactive approach and willingness to take action to support devolution.

Closing and Transition: The Senator concluded by reiterating his commitment to supporting devolution and ensuring that legislative proposals from the symposium received prompt attention in the Senate. He thereafter read the closing statement by the Speaker of the Senate, underscoring his role as a messenger conveying an important message on behalf of the Senate.

5.4 Closing remarks from Hon. Amason Jeffah Kingi, Speaker of the Senate delivered by Senator Hillary Kiprotich, Bomet County

Senator Hillary Kiprotich expressed his gratitude for the opportunity to represent the Speaker of the Senate, Hon. Amason Jeffah Kingi, at the

symposium. He acknowledged the importance of the event and thanked the organizers extending the invitation. The following were the key points drawn from the speech:

Key Senate Roles and Contributions: The speech highlighted the key role of the Senate in representing counties and protecting their interests, particularly in matters related to devolution and intergovernmental relations. It emphasized the collaborative efforts between the Senate, the IGRTC, and other stakeholders in advancing devolution goals.

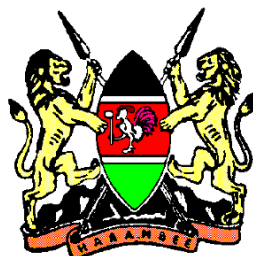
Identified Challenges and Proposed Solutions: Several challenges facing devolution were addressed in the speech, including the transfer of functions and resource allocation to county governments, high pending bills in counties, and recurring boundary disputes. The speech outlined specific initiatives and legislative efforts by the Senate to address these challenges, such as the establishment of an independent county boundaries commission and amendments to the Intergovernmental Relations Act, 2012.

Legislative Support and Collaboration: The Speaker emphasized the commitment of the Senate to advancing legislation that supported devolution and intergovernmental relations. He encouraged continued collaboration between the IGRTC and the Senate, particularly in providing input during the legislative process and aligning laws with the constitution.

Appreciation and Call to Action: The speech concluded with expressions of gratitude to the presenters and organizers of the symposium and a call to action for participants to implement the resolutions and lessons learned from the event. It underscored the shared purpose of upholding devolution and ensuring better service delivery to Kenyan citizens. Full speech is presented as **Annex 4**.

ANNEXES

Annex 1: Speech by H.E. Rigathi Gachagua, EGH., the Deputy President of the Republic of Kenya



Office of the Deputy President

Remarks by the Principal Secretary, State Department of Devolution
During the Second Inter-governmental Relations Symposium Sawela Lodges
Naivasha

5th March 2024

Theme: Platform for In-Depth Deliberation for Deepening and Strengthening
Intergovernmental Relations and Devolution Practices Within the Devolved
Governance System

Our Chief Guest and my Boss, His Excellency the Deputy President
of the Republic of Kenya, Hon. Rigathi Gachagua, Distinguished Cabinet
and Principal Secretaries Present, Your Excellency Governors present,
Chairman, IGRTC and Committee members, Distinguished Participants,
Invited guests, Ladies and gentlemen

Good morning

It gives me great pleasure to be part of this auspicious occasion of the
2nd symposium which seeks to hold in-depth deliberations to deepen and
strengthen intergovernmental relations and devolution practices within our

country's devolved governance system.

This is as it should since in 2010, we as Kenyans bequeathed ourselves a very progressive Constitution which, in Chapter Eleven, put in place the devolved governance system. Article 175 (a) of the Constitution on the Principles of devolved government avers that; County governments established under the Constitution shall be based on democratic principles and the separation of powers. The constitution recognises that for effective service delivery, the two levels of Government must work together, in harmony and such a way that any arising disputes are collaboratively addressed. Indeed, Article 189 (4) on cooperation between national and county governments provides that the national legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration. Operationalization of the Constitution in Section 121(1) of the County Government Act (2012)

on support to county governments identified the need for a Ministry or Government Department responsible for matters relating to intergovernmental relations, to provide support to county governments to enable them to perform their functions. Establishment of the State Department for Devolution and assigning of her mandate is premised on this background.

Ladies and gentlemen, Your Excellency's State Department has been on the front line in deepening and strengthening intergovernmental relations through coordination, consultations and collaborations with various Ministries, State Departments, Agencies and the Counties. The engagements have brought to the fore the realization that, the success of Kenya's future development path will depend on how well coordinated the intergovernmental responses are to the frequent governance shocks. These shocks have had significant negative impacts on the economic performance. Appropriate and sustainable solutions must therefore be established and put in place for devolution to work.

An overview of the Symposium's 3-days program shows that the dialogue

endeavours to find homegrown solutions to make devolution work for efficient service delivery. Many have undertaken surveys and studies on our system governance since we started working on it, with some of the recent focusing on our performance over the decade that we have been busy with its implementation. I could cite several, but in the interest of time Your Excellency, please allow to refer only to the World Bank Report of 2022 on How the World Bank is Supporting Kenya's Promise of Devolution in which it cites one of their reports Making devolution work for service delivery in Kenya. The report points to a number of proposals but let me just point out a few that I consider key for our consideration during the dialogue here. The Bank proposes;

- Deliberation on a joint plan of action where national and county governments can address residual ambiguities or disputes over functions;
- Enhancement of the adequacy, efficacy, equity, and reliability of county revenues;
- Improvement of intergovernmental coordination
- Promotion of devolution beyond the county government to the point of service delivery;
- Adoption of strategic, result oriented, and coordinated approach to HRM reforms in the county governments;
- Enhancement of structures for meaningful public participation;
- Enhancement of county planning, budgeting, and execution; and
- Investment in data to build an evidence base for devolved sectors to strengthen results monitoring.

Ladies and gentlemen

I am happy to inform this Convention that in response to these proposals, the State Department has, with the support of the World Bank, developed the Kenya Devolution Support Program II (KDSP II) as the vehicle to address the myriad of bottlenecks that hamper effective working of devolution. The second Key Result Area (KRA) of the Program is most relevant to our Symposium. Its focus is, to 'support national and county government initiatives towards the strengthening of intergovernmental coordination, institutional performance, and Human Resource Management.'

As we engage in the dialogue to strengthen intergovernmental relations, it is important to note that, the KRA was born following a situational analysis on the performance of IGR in devolved governance. The analysis revealed that:

- i. Our intergovernmental structures are not fully operationalized, leading to disputes from overlapping institutional mandates and duplication of functions between governments;
- ii. County departmental structures and requisite staffing are not fit for purpose, efficient nor aligned to support performance and service delivery objectives exacerbated by weak payroll management controls; and
- iii. Human Resource (HR) records are not up to date to inform decision-making on Human Resource Management (HRM) issues such as redeployment, succession management, and filling of skill gaps.

Dealing with these challenges is the responsibility of us all and therefore this symposium is a welcome initiative to do just that. Your Excellency, your State Department for devolution is leading from the front in addressing the noted challenges and more. Her implementation of KDSPII is a commitment to:

- i. Enhance devolution sector engagements that brings together many institutions at the national and county levels of government with defined functional mandates;
- ii. Enhance the effectiveness and sustainability of devolved sector operations by strengthening governance systems and structures at the county level through the strengthening of the coordination of devolved sectors through the Devolution Sector Working Group (DWSG), and intergovernmental sectoral forums;
- iii. Facilitate the achievement of Kenya's Nationally Determined Contributions by strengthening the institutional capacity and intergovernmental coordination to enable Kenya deliver on its mitigation and adaptation targets in line with the sectoral adaptation actions of Kenya's National Adaptation Plan (NAP 2015–2030); and

- iv. Strengthen the Devolution Sector Plan (DSP) as the overall umbrella strategic framework for devolution towards realization of the 2024–2028 theme: “the acceleration of the performance of devolution” to be realized by:
- 1) improving capacity in service delivery, resource management, and accountability;
 - 2) improving access to decentralized services;
 - 3) ensuring effective participation by communities in governance and socioeconomic development; and
 - 4) strengthening intergovernmental cooperation and collaboration for resolution of emerging issues in devolution.

Lastly, Your Excellency, Ladies and gentlemen,
As we look forward to the deliberations here, the State Department for Devolution hopes that, when we hold the 3rd Symposium on the same theme, our stocktaking on the resolved intergovernmental governance bottlenecks will feature milestones on:

- Improved coordination of functions and mandates for service delivery
- Consolidated HR data for decision-making evidenced by having improved payroll integrity and budget control on staffing, and improved accountability for results through integrated performance management.

As I conclude, may I take this opportunity to thank you Your Excellency for finding the time to join us here today as we engage on this worthy discussion. May I also thank the organisers of this event for your commitment to ensuring devolution works and for assembling some of the best cast of actors in the devolution space to participate in the dialogue. Your Excellency's State department commits to facilitating relevant actions towards the implementation of the Symposium's resolutions.

Pamoja, tuimarisha ugatuzi God bless you all,

God bless Kenya,

Thank you

Teresia Mbaika

Annex 2: Keynote Address by Rt. Hon. Moses Wetangula



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

OFFICE OF THE SPEAKER OF THE NATIONAL ASSEMBLY

“Towards a More Harmonious and Productive Intergovernmental Relations”

Remarks By:

The Rt. Hon. (Dr.) Moses F. M. Wetang’ula, Egh, Mp.

Speaker of The National Assembly

H.E. The Deputy President of the Republic of Kenya, Hon. Rigathi Gachagua, EGH;

Distinguished Guests;

Esteemed Ladies and Gentlemen;

1. It is a great honour and pleasure for me to be here today for the Second Intergovernmental Relations Symposium. Allow me to commend the Intergovernmental Relations Technical Committee for organizing this Symposium. It is certainly a demonstration of your commitment towards enhancing the intergovernmental relations between the two levels of government.
2. As the Speaker of the National Assembly, I have had the opportunity to interact with Kenyans in all 47 Counties having been to every corner of this Country. To this end, I am delighted to attest that I have seen devolution at work and fourteen years after the promulgation of the 2010 Constitution, devolution is undoubtedly the key towards promoting

the social and economic development of counties and the provision of essential services to the people of Kenya.

Ladies and Gentlemen

3. Having said that, allow me to note that the journey towards devolution has not been without challenges despite the robust legal framework that exist. The drafters of the Constitution in Article 6 defined the nature of the relationship between the two levels of government by first acknowledging that although the governments at the national and county levels are **distinct**, the two are also **inter-dependent** and are required to conduct their mutual relations on the basis of **consultation and cooperation**.

Ladies and Gentlemen

4. Article 189 of the Constitution further defines in detail the ambit of the consultation and cooperation envisaged by the Constitution. In this regard, Article 189 provides that the government at either level shall perform their respective functions, **in a manner that respects the functional and institutional integrity of government at the other level; and assist, support and consult the other level of government.**

Ladies and Gentlemen

5. The **Intergovernmental Relations Act, 2012** further extrapolates on these constitutional provisions that I have just highlighted by providing a framework for consultation and co-operation between the national and county governments and resolution of intergovernmental disputes where they arise.
6. I note that Part IV of the Act has elaborate provisions on dispute settlement mechanisms and provides that the national and county governments **shall take all reasonable measures to resolve disputes amicably; and apply and exhaust the mechanisms for alternative dispute resolution before resorting to judicial proceedings.**

Ladies and Gentlemen

7. One pertinent question that therefore arises is why with such an excellent legal framework in place, disputes between the two levels of government have often threatened to dilute the objects of devolution and always find their way in the courts of law. In the words of the **40th President of the United States “Ronald Reagan”** he once stated and I quote **“Peace is not the absence of conflict, it is the ability to handle conflict by peaceful means”**. Differently, put and in keeping with the theme of this Symposium which is **geared towards more harmonious and productive intergovernmental relations**, I would say **“Harmony is not the absence of conflict, it is the ability to handle intergovernmental disputes through harmonious means”**.

Ladies and Gentlemen

8. Indeed, for us to achieve productive intergovernmental relations, we must first appreciate that disputes are inevitable. With this realisation in mind, we must work towards more productive intergovernmental relations. Looking at the experience of Parliament, as you are aware, disagreements between the two Houses have often stalled the processing of legislation relating to devolution. To this end, we are in the process of harmonizing bicameral relations between the two Houses towards more effective bicameral relations. **The Houses of Parliament (Bicameral Relations) Bill, 2023** is currently before the National Assembly and is pending Second Reading. The Bill seeks to streamline the bicameral legislative processes. This in our view will ensure that both Houses pass legislation touching on the functions of the county governments devoid of any disputes on the respective legislative mandates of both Houses.

Ladies and Gentlemen

9. It is also worth noting that as Parliament, we have adopted consultation in our legislative processes on matters relating to financing of county governments. As a result of this, disagreements that often rocked the consideration of **the Division of Revenue Bill, the County Allocation of Revenue Bill and the County Government Additional Allocations Bill** were not witnessed in the last financial year. The Budget and

Appropriations Committee of the National Assembly has been leading from the front by engaging and consulting the Council of Governors, the National Treasury, the Commission of Revenue Allocation and the Senate whenever it is considering any of the Annual Bills.

10. To this end, I am delighted to note that last week, the two Houses of Parliament approved the **Mediated Version of the County Governments Additional Allocations Bill, 2023 which has allocated a total additional allocation of approximately Kshs. 46 billion to counties for the FY 2023/24.**
11. Whereas the enactment of the Bill comes at the tail end of this financial year due to the usual legislative processes which often become protracted, I am glad that the Bill has been approved by both Houses and in the financial year 2024/2025, we shall strive to be more effective, so that the necessary legislation is passed in time.

Ladies and Gentlemen

12. Permit me to also note that if we are to move towards harmonious and productive intergovernmental relations, we must embrace **pre-consultations**. Ordinarily, by the time a dispute arises, it is usually at the point of decision making. Where there are pre-consultations, it means the subject of negotiations is already agreed on even before the issue comes up for consideration and decision making.
13. Case in point, would be the disagreements on the equitable share of revenue allocated to Counties that are usually witnessed every financial year and which always find their way to Parliament.
It is my view that with more intentional pre-consultations between the Council of Governors, Commission of Revenue Allocation and the existing intergovernmental relations structures, we shall certainly enhance devolution.
14. This means the legislation that finds its way to Parliament for the financing of county governments should in my view be based on pre-

agreed negotiated positions by all Parties, so that unnecessary conflicts do not paralyse the functioning of counties occasioned by delay of disbursements of funds to counties. Noting the centrality of legislation for financing county governments, pre-consultations before the formulation of the relevant laws are key towards negating any potential deadlocks.

Ladies and Gentlemen

15. It is however unfortunate that for the 2024/2025 financial year, whereas there have been ongoing pre-consultations between the Intergovernmental Budget and Economic Council chaired by His Excellency The Deputy President, the Council of Governors and other stakeholders including the National Treasury and the Commission on Revenue Allocation (CRA), there is still no consensus on revenue sharing for the Financial Year 2024/25.
16. It is my sincere hope that the concerned parties shall agree, conscious that the people of Kenya delegated their sovereign power to them to make decisions that embody the public interest at heart. Consequently, we must never forget that devolution encompasses the aspirations of the people of Kenya and this calls for the need to always find solutions towards productive intergovernmental relations.
17. In this regard, as we engage, we must therefore aspire to reach consensus and avoid creating stalemates that may jeopardize the annual financial cycle. Indeed, the answer to unlocking the stalemate lies in finding an appropriate way of taking into consideration the valid concerns of the Council of Governors on the need for additional funding vis-à-vis appreciating the tight fiscal space we find ourselves in as a country.
18. Allow me to applaud the current efforts by H.E The Deputy President as Chair of the IBEC towards resolving the stalemate and I am sure that soon, there shall be consensus on the quantum of the equitable share of revenue. What is encouraging is that the margins on what forms the basis of the stalemate are minimal.

Ladies and Gentlemen

19. Further, I note that over the years, the disagreement on what should be the equitable share of revenue occurs nearly in every year. For instance, in this financial year, the request by the Council of Governors for 450 Billion as equitable share of revenue to counties is based on the **rising cost of inflation across various devolved sectors; rising cost of running the counties; and the expenditure arising out of the enhanced NSSF contributions, the Social Health Insurance and the Housing Levy contributions.** The National Government is also experiencing reduced revenue growth coupled with huge expenditure incurred towards financing repayment of debts. With this reality in mind, as we move ahead, a cost analysis of the transferred functions should be undertaken so that it is clear on what are the exact costs of running county governments. This should form the basis of allocation to counties in every financial year.
20. Additionally, counties should devise ways of increasing Own Source of Revenue to bridge the revenue gap. It is worth noting that the dispute between the two levels of government is always largely about the financing of the county governments.
- If this is resolved, we will move towards more productive intergovernmental relations. Enhancement of own source of revenue for counties is hence critical towards ensuring adequate funding of the counties.
21. I am delighted to note that Parliament is keen on enhancing the sources of revenue for Counties. As you may be aware, **the County Governments Additional Allocations Bill, 2024** which was approved last week by Parliament allocated counties **unconditional allocations** from **Court fines and Mineral Royalties** amounting to **Kshs.3 Billion.** The allocation is geared towards the enhancement of County Governments' Own-Source-Revenue, from the share of Mineral Royalties to county Governments and court fines levied by the National Government from contravention of county legislation.

However, beyond legislation, Counties need to enhance their source of revenue by embracing technology in revenue collection and minimizing leakages of public funds.

Ladies and Gentlemen

22. Moving on, to achieve more productive intergovernmental relations there is also need to move away from adopting an adversarial approach towards dispute resolution between the two levels of government.

23. As stated earlier, the Intergovernmental Relations Act, 2012 emphasises the need for all parties to amicably resolve any dispute before resulting to judicial proceedings.

I however note that this has not always been the case. Recently for instance, a case relating to the Road Maintenance Levy Fund was filed in Court challenging its allocation as equitable share of revenue. Notably, this was done amidst on-going discussions between the National Assembly Committee on Transport and Roads with the Council of Governors and other relevant stakeholders on the need to review the relevant law to anchor the allocation of RMLF to counties, as conditional allocations. The case nearly threatened to paralyse the consideration of the County Governments Additional Allocations Bill, 2023.

24. Whereas it is notable that the case has since been withdrawn, had the concerned parties embraced alternative dispute resolution before running to court, this would have facilitated the formulation of the appropriate solutions towards addressing the issue in question.
25. Consequently, to move towards more productive intergovernmental relations, there is need to embrace the existing dispute resolution structures by the two levels of government.

Ladies and Gentlemen

26. Finally, allow me to conclude by noting that the journey towards harmonious and productive intergovernmental relations cannot be achieved without strengthening the existing intergovernmental structures. This calls for goodwill from the two levels of government to ensure the

implementation of negotiated positions between the relevant parties on any matter that is brought for resolution. Without this, even with the best dispute resolution mechanisms, stalemates will be inevitable. I am however delighted that the debate towards harmonious and productive intergovernmental relations is already here with us and looking at the programme for this Symposium, I have no doubt that we shall reroute devolution to a trajectory of greater success.

With these few remarks, I wish you fruitful deliberations.

I thank you!

Annex 3: Presentation by the Acting Chief Registrar, Hon. Paul N. Maina, OGW, “ndc, K”



**THE JUDICIARY
OFFICE OF THE CHIEF REGISTRAR**

Remarks by the Acting Chief Registrar, Hon. Paul N. Maina, OGW, “ndc, K”, During the Intergovernmental Relations Symposium Held between 4th to 6th March, 2024 in Naivasha

The role of intergovernmental relations in achieving the vision of the Judiciary on social transformation through access to justice - STAJ

- The Chairperson and members of the Intergovernmental Relations Technical Committee
- Distinguished Guests,
- Ladies and Gentlemen,

Good Morning!

1. I am privileged to be among you this morning at this second symposium of the intergovernmental relations symposium. The Intergovernmental Relations Technical Committee has been a critical organ in the coordination and provision of secretariat services to the county governments coordinating summit and the council of Governors. I will address you on **“The role of intergovernmental relations in achieving the vision of the Judiciary on social transformation through access to justice - STAJ.”**
2. The Judiciary is guided by several strategic documents including the Judiciary Strategic Plan and a detailed blueprint currently known as the **Social Transformation Through Access to Justice – STAJ**. The STAJ blueprint stands on five pillars;

- i. Improving access to justice:** This includes making legal services more affordable and available to everyday Kenyans, simplifying court procedures, and increasing public awareness of legal rights.
 - ii. Enhancing judicial efficiency:** This involves automating court processes, reducing case backlog, and improving the quality of judicial decisions.
 - iii. Promoting judicial independence:** This means ensuring that Judges and Judicial Officers are free from any interference and that they can objectively uphold the rule of law.
 - iv. Strengthening judicial integrity:** This requires upholding ethical standards and preventing corruption within the Judiciary.
 - v. Improving public trust in the judiciary:** This entails making the Judiciary more transparent, accountable, and approachable to the public.
- 3.** Access to justice is at the core of this vision; it aims to create a vital institution that is independent, accessible, efficient, and protects all rights, especially the vulnerable. This will be achieved by reducing the physical proximity to courts to not more than 100 kilometers for any Kenyan. The Judiciary remains committed to having a High Court in every County, a magistrate's Court in every Sub-County, and for the Small Claims Courts to be accessible in at least every sub-county.
- 4.** Towards this end we are glad to report that we currently have 45 High Courts stations established in 43 counties. Out of the seven remaining counties without High Courts, four have ongoing constructions. We thank the respective county governments for their continued cooperation.
- 5. Working with other state actors**

To achieve this vision, the Judiciary requires to work with other state actors including the other two arms of government and the two levels of government; National and County government. On this, we are guided by Article 3 of the Constitution which delegates sovereign power to the Legislative, Executive and Judicial state organs to perform their mandates in accordance with the Constitution at both levels of government.

6. The Judiciary, by establishing robust relationships with other state actors, can leverage collective expertise and resources. Case studies abound of successful partnerships, especially with county governments, that have positively impacted the justice system and, consequently, the Kenyan society as a whole.
7. **Procedural Reforms towards Enhancing Access to Justice**
In its mandate of the administration of justice, the Kenyan Judiciary has embarked on a transformative journey. Recognizing the limitations of the traditional legal system, we have embraced a wave of procedural reforms, aiming to bridge the gap between theory and practice.
8. One cornerstone of this transformation is **technology**. Gone are the days of lengthy physical journeys and arduous paperwork. The Judiciary has prioritized online case filing, allowing individuals to initiate proceedings remotely, regardless of their location. This has been through the launch of the e-filing platform in select courts since 2018. As of March 2024, we will be launching e-filing in all the courts in the country. The support of the County Governments will be greatly appreciated in that regard.
9. Additionally, **electronic case management** systems streamline processes, ensuring efficient recordkeeping and enhanced transparency throughout the legal journey. Moreover, virtual court sessions offer an innovative solution, minimizing travel burdens, particularly for individuals in remote areas, and facilitating access to justice even amidst logistical challenges.
10. Beyond technological advancements, the Judiciary champions **alternative dispute resolution** (ADR) mechanisms. Recognizing the limitations of costly and lengthy litigation, the Judiciary actively promotes alternate options like mediation and arbitration. These processes provide a platform for parties to reach mutually agreeable solutions with the help of a neutral facilitator.
11. This approach fosters several benefits: firstly, it reduces the strain on the court system by diverting cases away from traditional proceedings. Secondly, ADR offers quicker resolution, enabling parties to access remedies and move forward with their lives faster. Finally, compared to litigation, ADR is generally more affordable, making justice a more

accessible reality for individuals with limited financial resources.

12. On this front, we have had collaboration and support of various county governments where disputes relating to border disputes and resource management have been addressed.
13. Further, the Judiciary acknowledges the importance of public engagement in shaping an effective justice system. To ensure reforms reflect the needs of the community, they have established **Court User Committees** (CUCs). Which incorporate critical members including representative of County Governments. These committees act as vital bridges between the public and the Judiciary. They offer citizens valuable avenues to voice concerns, suggest improvements, and provide feedback on the efficacy of implemented reforms. Additionally, CUCs play a crucial role in educating the public about their rights and available legal resources. By empowering individuals with knowledge and fostering awareness, they contribute to a more informed and engaged citizenry.

14. Decentralization of Judicial Services

About a decade ago, the only way to access government services was to physically visit the office, wait in a queue and hope to be attended. The last decade has seen a lot of evolution in the public sector with improved corporate governance and adoption of technology. This has been the journey at the Judiciary too and in line with the STAJ blueprint, the objective is to avail judicial services to Kenyans from all walks of life regardless of their social, economic, or political status. This initiative aims to bring courts closer to the people, reducing geographical barriers and enhancing the availability of legal services across the country. While decentralization has yielded significant successes, certain challenges need to be addressed for a truly equitable and efficient justice system.

15. One of the most compelling triumphs of decentralization is the **increased access and accessibility to justice**. Individuals living in remote corners of the country, previously facing insurmountable logistical and financial hurdles, can now access legal services within their own communities. This not only reduces the burden on individuals but also alleviates the strain on the previously centralized system, leading to **reduced congestion and faster resolution of cases**.

16. Furthermore, decentralization fosters a sense of **greater engagement and trust**. By bringing courts closer to the public, it creates an environment where individuals can observe legal proceedings firsthand, fostering transparency and accountability within the system. This enhanced engagement is crucial for building a strong foundation of public trust in the judiciary.
17. However, the path to a truly decentralized system is not without obstacles. One of the most pressing challenges lies in **resource constraints**. Distributing qualified personnel, infrastructure, and technology equitably across diverse geographical regions remains a hurdle. This can lead to potential disparities in the quality of services offered in different locations.
18. Another challenge lies in **ensuring standardization and consistency**. Maintaining consistent application of the law and quality of service delivery across a decentralized network requires robust measures. This involves establishing clear training programs and effective communication channels within the judiciary to maintain a uniform legal framework throughout the nation.
19. Finally, **security concerns** cannot be ignored. Establishing courts in remote areas necessitates implementing adequate security measures for both personnel and participants in the legal system. This ensures the safety and well-being of all involved in the pursuit of justice.
20. Despite the challenges, the potential of decentralization to revolutionize access to justice in Kenya remains undeniable. By addressing resource constraints, establishing consistent practices, and ensuring robust security measures, the Kenyan Judiciary can pave the way for a future where justice is not a distant mirage, but a tangible reality within reach for every citizen.
21. **In conclusion**, the journey of the Kenyan Judiciary towards achieving the vision outlined in the Social Transformation Through Access to Justice (STAJ) blueprint is marked by significant strides. The commitment to improving access to justice, enhancing judicial efficiency, promoting independence and integrity, and building public trust demonstrates a comprehensive approach to creating a justice system that is not only efficient but also accessible and accountable.

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- 22.** The Judiciary's collaboration with other state actors, especially at the county level, has proven instrumental in positively impacting the justice system, reflecting a commitment to collective expertise and resources. The embrace of technology, procedural reforms, and decentralization initiatives are promising steps that underscore a commitment to a more accessible, user-friendly, and equitable justice system for all Kenyan citizens.
- 23.** However, as the Judiciary continues on this transformative journey, challenges must be addressed to ensure the success of these initiatives. Resource constraints, standardization issues, and security concerns associated with decentralization require careful consideration and strategic planning. The commitment to resolving these challenges will determine the extent to which the vision outlined in the STAJ blueprint becomes a tangible reality.
- 24.** The Kenyan Judiciary, in collaboration with other stakeholders, is poised to overcome these obstacles, and by doing so, they can set a precedent for a justice system that truly serves the diverse needs of all citizens, irrespective of their social, economic, or political status. As we move forward, it is crucial to celebrate the progress made, acknowledge the challenges ahead, and collectively work towards a future where justice is not just a legal concept but a lived reality for every Kenyan.

Thank You All

Annex 4: Official Closing Speech by Rt. Hon. Jeffah Kingi, EGH.

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | FOURTH SENATE
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2ND INTERGOVERNMENTAL RELATIONS SYMPOSIUM

4th - 6th March, 2024

Naivasha, Nakuru County

CLOSING REMARKS BY HON. SEN. KATHURI MURUNGI, MP

DEPUTY SPEAKER OF THE SENATE

H.E The Deputy President of Kenya, Hon. Rigathi Gachagua, EGH, Chairperson, Council of Governors, H.E Governor Anne Waiguru, EGH, OGW, Governor of Nakuru County, H.E Governor Susan Kihika, Principal Secretary, State Department for Devolution, Ms. Teresia Mbaika, Chairperson, County Assemblies Forum, Hon. Philemon Sabulei, All Governors present, All Members of Parliament present, All Stakeholders and Development Partners present, Distinguished guests, Ladies and Gentlemen,

Good afternoon,

1. It is indeed my pleasure to be here with you and I take great honour to thank the Chairperson of Intergovernmental Relations Committee (IGTRC), Mr. Kithinji Kiragu for the invitation to join this Second

Intergovernmental Relations Symposium. This important forum has given us the opportunity to take stock of the state of intergovernmental relations and devolution at large.

Ladies and Gentlemen,

2. The key role of the Senate as provided for under **Article 96** of the **Constitution of Kenya 2010** is to represent counties and protect the interests of the counties and their governments. As a key partner in the devolution journey, the Senate has worked closely with IGTRC and other stakeholders, and collaborated particularly the Council of Governors (COG) and the County Assemblies Forum (CAF) to ensure that the dream of devolution as espoused in the Constitution is realised.
3. From this symposium, various issues have been discussed which relate to the Senate mandate. These included-
 - (a) the successes and challenges of intergovernmental relations;
 - (b) areas of collaboration between intergovernmental relations stakeholders;
 - (c) the efficacy of current constitutional and statutory intergovernmental structure;
 - (d) inter-county and intra-county relations and the impact on intergovernmental relations;
 - (e) impact of land issues on intergovernmental relations, among other pertinent issues
4. The Senate at one point or another has considered similar matters since we share a common purpose and interest to protect devolution and enhance intergovernmental relations.

Ladies and Gentlemen,

5. I have been briefed about the vibrant and enriching engagements as well as expert presentations shared at this symposium since Monday. Indeed, most challenges encountered and highlighted have been recurrent since the onset of devolution. I would like to point out a few issues that I believe require some emphasis going forward.

6. The First one is the matter on the transfer of functions and resource allocation towards devolved functions to county governments. The Fourth Schedule of the Constitution sets out the functional assignment between the two levels of Government. We are still building on the immense work done by the Transition Authority led by former Chairman, Mr. Kinuthia Wamwangi and I commend IGTRC for delivering on their mandate on this front. However, some of the devolved functions under the Fourth Schedule are still heavily funded at the National Level among them Agriculture, Health, Water. Additionally, some functions belonging to Counties are still in the process of being unbundled, costed and transferred to Counties together with their facilitating resources. The Senate Committee on Devolution and Intergovernmental Relations is working with IGTRC to ensure functions are conclusively transferred and adequately resourced.
7. Secondly, the issue of high pending bills in the counties remains a major challenge facing devolution and if unchecked, will threaten the financial sustainability of Counties as well as putting many Kenyans doing business with the counties at risk of ruining their livelihoods. Senate, through the Committees of County Public Accounts chaired by Sen. Moses Kajwang', MP, and the County Public Investments and Special Funds chaired by Sen. Godfrey Osotsi, MP has been working closely with the Office of the Controller of Budget, the Auditor-General as well as the National Treasury to ensure this matter is conclusively addressed. We urge the Governor to cooperate with the Senate on this matter to improve service delivery for the people of Kenya.
8. Thirdly, is the emergence of recurring boundary disputes which in some cases have escalated into violent confrontations between communities as evidenced by various Petitions presented to the Senate. Some of these disputes have persisted since the onset of devolution and are mainly caused by land ownership disputes, perceived marginalisation, fight for resources, ethnic rivalry and also political differences. Towards this end, the Senate is considering the County Boundaries Bill (Senate

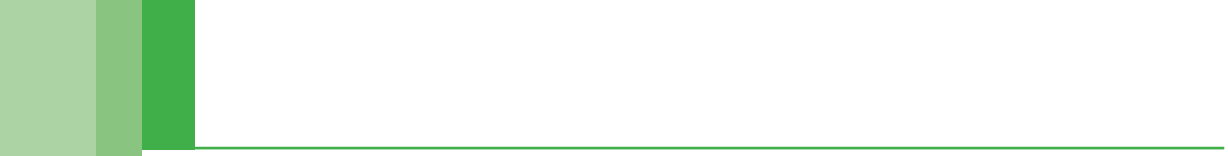
Bills No. 6 of 2023) (sponsored by Sen. Moses Kajwang', MP) which is currently at Second Reading stage.

9. The Bill seeks to give effect to Article 188 of the Constitution to establish an Independent County Boundaries Commission. Additionally, the Bill seeks to define the boundaries of the counties in Kenya; and provide a procedure for the resolution of county boundary disputes through the establishment of ad hoc county boundaries mediation committees. As we consider the Bill, which still has to be referred to the National Assembly, I would **urge and encourage** IGTRC to put in place alternative dispute resolution mechanisms that would enable mediation of current disputes and document the ongoing challenges.

Ladies and Gentlemen,

10. The Senate, through the Committee on Devolution and Intergovernmental relations continues to hold engagements with IGTRC in a bid to strengthen the institutional structures that support devolution. The Committee is considering an amendment to the Intergovernmental Relations Act, 2012 to give clarity on issues relating to intergovernmental relations; establish clear roles for the Inter-Governmental Relations Technical Committee (IGTRC), the COG Secretariat as well as the County Assembly Forum (CAF); and further give clarity on Alternative Dispute Resolution mechanisms.
11. With respect to legislation, the Senate continues **to undertake audit** of the laws that are yet to be aligned to the devolved system of Governance through its various Committees to align them to the Constitution to further enhance Devolution and by extension intergovernmental relations. I would like to encourage IGTRC to continue partnering with the Senate to give views on upcoming legislation at the public participation stage. Your **regular sharing** of input is valuable in ensuring sound legislation and protecting the interests of counties. I hope that the IGTRC will further engage with Senate in the effort to actualize the resolutions of this Symposium.

Ladies and Gentlemen,



12. **In conclusion**, I would like to extend my gratitude to our distinguished presenters, whose expertise and passion have enriched our discussions. I also want to express my appreciation to the organizing committee, and everyone behind the scenes who has worked tirelessly to make this symposium a great success. I am looking forward to further engagements in the spirit of upholding devolution.

13. Finally, we all have a shared purpose, which is to honour the trust bestowed upon us by the people of Kenya and realize their hopes and aspirations for the future. I encourage each one of us to take the lessons learned from this symposium and transform them into action. I believe by implementing resolutions from this symposium and through similar engagements we can come up with a common strategy to ensure better service delivery to the citizenry.

Thank You.

Annex 5: Provisional Program for the Second Intergovernmental Relations Symposium



**PROVISIONAL PROGRAM FOR THE SECOND INTERGOVERNMENTAL RELATIONS SYMPOSIUM
MARCH 4TH TO 6TH, MARCH 2024
SAWELA LODGES**

THEME: The state of intergovernmental relations, consolidating and deepening devolution in Kenya

TIME	AGENDA	PRESENTER	MODERATOR
	<p>DAY ONE: SUNDAY, 3RD MARCH, 2024 TRAVELLING</p>		
	<p>DAY TWO: MONDAY, 4TH MARCH, 2024</p>		
	<p>OVERALL MODERATOR: PROF. KARU-TI KANYINGA</p>		

TIME	AGENDA	PRESENTER	MODERATOR
0830	Registration	Secretariat	
0930	Introductory Session	Dr. Kipkurui S. Chepkwony, Chief Executive Officer, IGRTC	Ms. Saadia Kontoma, Vice Chairperson, IGRTC
		Mr. John Kimwela IGRTC Member	
	Opening Remarks	Ms. Judy Oduma	
		H.E. Stephan Schonemann, Ambassador, Royal Danish Embassy	
		Chairperson, County Assemblies Forum	
		Welcoming Remarks and Workshop objectives	
		Team Leader, Kenya Devolution Program, ACT	
		Chairperson, Devolution Donor Working Group	

TIME	AGENDA	PRESENTER	MODERATOR
	Chairperson, Senate Committee on Devolution and Intergovernmental Relations	Sen. Abbas Sheikh	
	Chairperson, IGRTC	CPA Kithinji Kiragu, MBS, OGW	
	Principal Secretary, State Department for Devolution	Ms. Teresia Mbaika	
	Governor, County Government of Nakuru	H.E. Governor Susan Kihika	
	Chairperson, Council of County Governors	H.E. Governor Anne Waiguru, EGH, OGW	
	Opening Address	Hon. Rigathi Gachagua, EGH	
1100	GROUP PHOTO AND HEALTH BREAK		

TIME	AGENDA	PRESENTER	MODERATOR
1130	<p>Keynote Address: Towards More Harmonious and Productive Intergovernmental Relations</p> <p>Launch of IGRTC Strategic Plan 2023-2027</p>	<p>Hon. Moses Masika Wetangula, EGH, MP</p> <p>Speaker of the National Assembly</p>	<p>CPA Kithinji Kiragu, MBS, OGW</p> <p>Chairperson, IG-RTC</p>
1200	The Efficacy of the Current Constitutional and Statutory Intergovernmental Structures	Prof. Winnie Mitullah, Research Professor of Development Studies, Institute of Development Studies, University of Nairobi and UNESCO	
1230	Panel Discussion: Successes and Challenges in Intergovernmental Relations	<p>Discussants:</p> <p>i) Mr. Kinuthia Wamwangi, Former Chairman, Transition Authority</p> <p>ii) Justice Charles Nyachae, Former Chairman, CIC; Judge, East African Court of Justice; and Chairman, Kenya School of Government Council.</p>	Professor Karuti Kanyinga, Research Professor, Institute of Development Studies, University of Nairobi

TIME	AGENDA	PRESENTER	MODERATOR
		iii) Con Osendo- Governance Advisor FCDO iv) Ms. Winnie Lichuma, Advocate of the High Court of Kenya and Former Chairperson, National Gender and Equality Commission	
1330	LUNCH		
1430	Optimizing Socio-Economic Transformation in the Current Constitutional and Political Economy Environment	Dr. David Ndiir, Chairperson President's Council of Economic Advisors	Ms. Linet Mavu, IGRTC Member
1500	Achieving Cost-Effective and Economy in National Resources Use in the Devolved system of Governance - Evaluating Resources Utilization between the two level of government	Mr. Albert Mwendu Director-General, Fiscal and Monetary Affairs, The National Treasury	
1530	The Nexus of Devolution and BETA Plan, and Implications for Intergovernmental Relations	Dr. Irene Asiega Advisor, budget and Fiscal Policy	

TIME	AGENDA	PRESENTER	MODERATOR
1600	Brief on County Aggregation and Industrial Parks	Dr. Juma Mukhwana, CBS PS, State Department for Industrialization	Professor Karuti Kanyinga
1620	Plenary Discussions		
17.00	HEALTH BREAK AND END OF DAY ONE		
	DAY THREE – TUESDAY, 5TH MARCH 2024		
	TOPIC	PRESENTER	
0900	Implementation of the National Integrated Public Performance Management Policy for Enhanced Productivity	Mrs. Lyn Mengich, EBS Chairperson, Salaries and Remuneration Commission	Mrs. Angeline Hongo, MBS IGRTC Member
0930	A Whole Government Approach to the Transformation of Public Service Culture	Hon. Felix Koskei, EGH Chief of Staff and Head of the Public Service	
1000	Plenary		Professor Chweya, Director General, Kenya School of Government
1030	HEALTH BREAK		

TIME	AGENDA	PRESENTER	MODERATOR
1100	The role of intergovernmental relations in achieving the vision of the Judiciary on social transformation through access to justice (STA)	Hon. Paul Ndemo Maina, OGW., Ag. Chief Registrar, The Judiciary	Mrs. Alice Mayaka, IGRIC Member
1130	Towards More Effective Intergovernmental Structures and Relationships	H.E. Governor Mutula Kilonzo Jnr Governor of County Government of Makueni	
1200	Intra-County Relationships and Impact on Intergovernmental Relations	Hon. Ndegwa Wahome, Former Speaker, County Assembly of Nyandarua	
1230	Plenary Discussion		Professor Karuti Kanyinga
1300	LUNCH		
1430	Intergovernmental Relations in the Implementation of the National Medium-Term Plan	Mr. James Muhati, CBS PS, State Department of Planning	Dr. Perminus Ndimitu, IGRIC Member
1500	Determinants of County Governments' Performance Management successes and Attendant Challenges	Mary Mwiti, Chief Executive Officer, COG	

TIME	AGENDA	PRESENTER	MODERATOR
1530	Break-away Session		Professor Karuti Kanyinga
1600	Plenary Discussion		
1630	HEALTH BREAK AND END OF DAY TWO		
DAY FOUR - WEDNESDAY, 6TH MARCH 2024			
0900	Impact of Land Issues on Intergovernmental Relations	Mr. Gershom Otachi Bw/Omanwa, EBS Chairperson National Land Commission	Mr. Wilson Pere IGRTC Member
0930	Challenges in the Implementation of Public Participation as Stipulated in the Constitution	Mr. Evans Kibet, National Convener, Kenya Devolution Civil Society Organizations Working Group	
1000	Political Economy of Devolution and Implications for Intergovernmental Relations	Prof. Peter Wanyande, Professor of Political Science, and former Commissioner, CIC	

TIME	AGENDA	PRESENTER	MODERATOR
1030	Break-away Session		Professor Karuti Kanyinga
1100	Plenary Discussion		
1130	HEALTH BREAK		
1200	Closing Address	Rt. Hon. Amazon Jeffah Kingi, EGH Speaker of the Senate	Ms. Saadia Kontoma Vice Chairperson, IGRTC
1230	Communique	Chairperson, IGRTC	
1300	LUNCH AND DEPARTURE		

Annex 6: Symposium Communique



ACKNOWLEDGING the Constitutional tenets on the relations between the two levels of government and amongst county governments as enshrined in Articles 6 (2) and 189;

RECOGNIZING that harmonious relations between the two levels of government and amongst county governments is the corner stone for the attainment of the objects and principles of devolution envisaged in Articles 174 and 175 of the Constitution;

NOTING that a decade into the implementation of the devolved system of governance, major strides have been achieved, thus positively impacting the political and socio- economic development of the country;

CONCERNED that there still exist glaring governance challenges and gaps that continue to be an impediment to the attainment of the objects and principles of devolution;

RESOLUTE that spirit and letter of the Constitution in relation to the implementation of the devolved system of governance is entrenched on consultation, cooperation and coordination amongst the established intergovernmental structures and the two tiers of government;

NOW THEREFORE, the 2nd Intergovernmental Relations Symposium resolves as follows:


1. **THAT** IGRTC shall deepen engagements with Parliament and County Assemblies through a coordination framework that guides tabling and feedback on Summit reports as provided for by Section 10 of the Intergovernmental Relations Act, 2012.
2. **THAT** devolution and intergovernmental relations shall be promoted and facilitated by all stakeholders for effective and efficient service delivery for all.
3. **THAT** IGRTC develops a framework to guide the implementation of intergovernmental relations in Kenya.
4. **THAT** IGRTC shall coordinate a ten-year cost analysis for the implementation of devolved functions to inform resource allocation to both levels of government.
5. **THAT** both levels of government shall adhere with the provisions of the IGR Act, 2012 and embrace amicable resolution of disputes

- through the available alternative dispute resolution mechanisms.
6. **THAT** the Intergovernmental Relations Act, 2012 be reviewed to strengthen IGRTC to give it power and authority by:
 - i. Securing greater autonomy and independence for performance of its mandate including holding both levels government accountable on the implementation of Summit and sector working groups resolutions
 - ii. Providing clarity on resolution of inter and intra governmental disputes
 7. **THAT** the roles and responsibilities of intergovernmental institutions be defined to avoid duplication and create synergy. A high-level meeting of SDD, COG, CAF, IBEC and IGRTC be convened to build consensus on establishment and convening of intergovernmental sector forums
 8. **THAT** both levels of government shall enhance monitoring and evaluation and risk management on public resources to enable realization of the objects of devolution
 9. **THAT** the Presidential Economic Transformation Secretariat (PETS) engages extensively with the county governments and Ministries, Departments and Agencies (MDAs) to align Bottom-Up Economic Transformation Agenda (BETA) plans and priorities into county and national government periodic development plans.
 10. **THAT** both levels of government shall strengthen structured intergovernmental consultations on the implementation of County Aggregation and Industrial Parks so as to ensure increase in exports from 10% of the GDP to 30% and also raise the manufacturing contribution to GDP from the current 7% to 15%.
 11. **THAT** county governments shall enhance intra-county relationships and harmonize collection of CESS and other market levies to avoid multitaxation that makes doing business in Kenya uncompetitive
 12. **THAT** IGRTC will have focal officers at the county governments to facilitate effective intergovernmental relations.
 13. **THAT** the mechanism for effective integration of national and county planning as anchored in law should be operationalized and implementation guidelines developed.
 14. **THAT** both levels of government shall establish mechanisms to ensure fiscal sustainability of the total public wage bill as provided by the PFM Act, 2012.

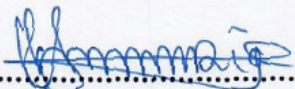
15. **THAT** both levels of government shall enhance performance and productivity of the public service at institutional and individual levels through performance management.
16. **THAT** IGRTC shall engage the Public Service Commission and County Public Service Boards on human resource matters to address disparities in the public service
17. **THAT** both levels of government shall ensure a coordinated intergovernmental approach in service delivery by harnessing resources and expertise through a whole-government approach
18. **THAT** there is need for enhanced continuous capacity building at both levels of government by the national government as provided by the Constitution
19. **THAT** IGRTC shall in collaboration with the relevant stakeholders undertake a comprehensive Assessment of Performance of Devolved Functions, at both levels of Government.
20. **THAT** there is need to operationalize intergovernmental structures as provided for by the County Governments Act, 2012.
21. **THAT** the County Assemblies be given the independence and resource autonomy to effectively discharge their mandate.
22. **THAT** the National Land Policy and other land laws be reviewed to align them to the Constitution and devolution.
23. **THAT** public participation and civic education should be defined, unbundled and costed to enhance involvement of the citizens in decision making
24. **THAT** the National Land Policy and other land laws be reviewed to align them to the Constitution and devolution.
25. **THAT** public participation and civic education should be defined, unbundled and costed to enhance involvement of the citizens in decision making
26. **THAT** A steering committee to implement this communique shall be constituted of the following institutions;
 - a. IGRTC
 - b. County Governments
 - c. County Assembly Speakers
 - d. The National Assembly
 - e. The Senate
 - f. Commission on Revenue Allocation
 - g. The Office of the Attorney General

- h. Public Service Commission
- i. County Public Service Boards
- j. National Lands Commission
- k. State Department for Devolution
- 1. Council of Governors
- m. Development partners
- n. Civil Society Organizations

**THIS COMMUNIQUE SIGNED BY THE CHAIRPERSON, IGRTC
CPA KITHINJI KIRAGU, OGW, MBS**

..... DATE 6/03/2024

**THIS COMMUNIQUE WITNESSED BY HILLARY KIPROTICH
SIGEI, SENATOR BOMET COUNTY**

..... DATE 06/03/2024



REPUBLIC OF KENYA



Intergovernmental Relation Technical Committee
P.O. Box 44880 - 00100, Parklands Plaza, 3rd Floor,
Chiromo Rd / Muthithi Road, Nairobi - Kenya.

✉ info@igrtc.go.ke

🌐 www.igrtc.go.ke

☎ (+254) 20-2101489

in IGRTC

✕ IGRTC_KE

f IGRTC-Intergovernmental Relations Technical Committee

@ IGRTC

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Timiza Ugatuzi
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