COMMISSION ON REVENUE ALLOCATION

Promoting an Equitable Society

FIRST COMMISSIONERS' END TERM REPORT:

POPULAR VERSION

January 2011 - December 2016

Commission on Revenue Allocation

First Commissioners' End Term Report:

Popular version

January 2011 - December 2016

Table of Contents

Foreword

The first team of commissioners in the Commission on Revenue Allocation (CRA) of Kenya was ushered into office on 11 January 2011. On this day, eight commissioners were sworn in at the chambers of the Chief Justice, Evans Gicheru, at the High Court of Kenya, in the presence of Amb. Amina Mohammed the then permanent secretary Ministry of Justice and Constitutional Affairs.

Speaking on behalf of the brand new team of commissioners, I as the chairman, pledged that the Commission would allocate resources to the counties of Kenya, without crippling national government. Six years are now coming to an end. It is the end of an era. It is time to say goodbye and to make space for a new team. Yet the journey goes on. It has been a journey full of lessons for the commissioners and for the country. And there are many lessons, especially, to be passed on to those who will be privileged to run the affairs of the Commission in the years to come.

During our tour of duty, we have learnt a lot, done our bit and prepared the road into the future for those who will take over from us. We have prepared a technical report, in the usual manner and format in which such reports must be done. But we also thought it useful to tell this story in a slightly different manner. We want everybody to understand what we have been about, what we have done and why. We want the country to understand why devolution was thought to be necessary and why it will remain necessary, long after we are gone. How is it working and where could it take the country? For, if we all get this right, our generation will pass on to future generations a country with a more equitable society, with the promise of an even more bright future.

Micah Cheserem
Chairman, CRA, 2011 - 2016

Acknowledgment

The Commission on Revenue Allocation is grateful to county governments, constitutional commissions and independent offices, National Treasury, donor partners, civil society, professional bodies among others both for the cooperation that the outgoing commissioners have enjoyed in working with them and especially to all those who assisted us at the start of our work, when we groped in the dark, looking for where to begin. We thank all those who were involved in making a contribution to the making of this report, in one way or another.

Turning specifically to this report, commissioners wish to acknowledge, with thanks, support from H.E. Jaffa Amason Kingi, governor, Kilifi County, H.E. Cyprian Awiti, governor, Homa Bay County and H.E. Kinuthia Mbugua, governor Nakuru County and all their staff for making time to share with us their experiences with devolution. Their staff took us around counties to witness some of the projects that have been implemented using shareable revenue. We also thank all other governors for the many sessions we have shared with them during our tour of duty. The outcomes of these interactions are interspersed in this report.

We are grateful to the Secretariat team that has helped to implement the mandate of the Commission over the tenure of the first commissioners and who continue on. We are also grateful to the team that has put this report together. To all of you, we say thank you very much.

George Ooko
Commission Secretary / CEO

Preface

This report was prepared following interviews with a wide variety of groups of people, including the outgoing CRA commissioners and members of the CRA Secretariat, as well as interaction with a variety of reports and other documents that the Commission has prepared over the past six years. The writing also reviewed official reports on the Status of Devolution, by the Council of Governors, issued at the end of each financial year. The report has also benefited from the experience that CRA officials who were interviewed have gathered during their numerous visits across the country as well as their interactions with other state officers both in national government and county government.

The contents of the report therefore represent eclectic sourcing that includes the sentiments of ordinary citizens, county governments comprising of both county executives and assemblies, members of Parliament and a wide array of professionals from different walks of life.

The writers also had the opportunity to carry out random interviews with ordinary citizens. While these particular interviews were not scientifically structured, there is cause to believe, nonetheless that they represent the views of the people on the salient issues covered in the report – and especially the place of devolved government in the life of the people of this country. Moreover, the report also relied on various documentaries that have been produced over the past three years on the State of Devolution. These documentaries bring home the heartening reality around the country and the assurance that Kenya is on the right path, with regard to the structuring of government at the two levels of national and county governments.

1

History of the Commission

The Commission got on to its feet on 11 January 2011. Like a child who must get on its feet and begin walking at some age, it was born slightly earlier. The effective day was 27 August 2010, when the Constitution of Kenya (2010) was promulgated at a pulsating ceremony at Uhuru Park. That day must remain a historic high moment in the story of our country. It is the one day that diffused national tensions that had slowed the country for a long time. It opened up a new door of hope.

The Constitution of Kenya 2010 brought hope to the present and future generations of Kenya. The centerpiece of hope in the new Constitution was the devolved system of government.

To move the country forward, the Constitution created commissions and independent offices. Among these is the Commission on Revenue Allocation. CRA is particularly established by Articles 215 and 248 (2)f of the Constitution. Besides, the Commission on Revenue Allocation Act was enacted in 2012 and revised in 2013, to breathe life into the Commission. Put together, they define the mandate and scope of operations of the Commission.

The commissioners

The appointment and swearing in of the Commissioners was the final activity that kick started the working of CRA. Ahead of this, the positions had been advertised for competitive recruitment in 2010, soon after the coming into being of the new Constitution. Many people applied for the positions. In the end, eight persons were appointed following successful interviews and vetting, as required by law.

The President, H.E. Mwai Kibaki, appointed the Chairman in line with Article 215 (2)a of the Constitution. He was thereafter approved by Parliament, as required by the same article. Political parties appointed another two commissioners, in line with the strength of their numbers in the National Assembly and in accord with Article 215 (2)b of the Constitution.

While Article 215(b) says that another five commissioners will be appointed by political parties according to their representation in the Senate, there was no Senate at the time of these appointments. The National Assembly, therefore, played the role of the Senate – in line with the transitional mandates in the Constitution, ahead of the 2013 General Elections.

The Principal Secretary for the Ministry of the National Treasury became the ninth member of the Commission in ex officio capacity. At the time of this writing, the commissioners were:

1. Micah Cheserem, chairman
2. Fatumah Abdikadir, vice-chair person
3. Prof. Wafula Masai, commissioner
4. Rose Bosibori Osoro, commissioner
5. Prof. Joseph Kimura, commissioner
6. Amina Ahmed, commissioner
7. Meshack Onyango, commissioner
8. Prof. Raphael Munavu, commissioner
9. Dr. Kamau Thuge, Principal Secretary, National Treasury.

The Commission Secretariat

To support commissioners in undertaking their work, there is a Secretariat under the leadership of the chief executive officer and commission secretary George Ooko. Departments in existence are Fiscal Affairs, Research and Policy, Legal Services, Information Communication and Technology, Corporate Services, Natural Resources and Communication. At the time of this report the staff of the secretariat number 58.

CRA Commissioners: 2011 - 2016

CRA CHAIRMAN -
MR. MICAH CHESEREM

CRA VICE-CHAIRPERSON -
MS. FATUMA ABDULKADIR

CRA COMMISSIONER -
PROF. RAPHAEL MUNAVU

CRA COMMISSIONER -
MR. MESHACK ONYANGO

CRA COMMISSIONER -
PROF. JOSEPH KIMURA

CRA COMMISSIONER -
MS. ROSE OSORO

CRA COMMISSIONER –
MS. AMINA AHMED

CRA COMMISSIONER –
PROF. WAFULA MASAI

COMMISSIONER /
P.S THE NATIONAL TREASURY
DR. KAMAU THUGE

CRA commissioners and staff

2

Historical Origins of Unequal Development 1884 – 1885

The scramble and partition of Africa

The year 1884 is significant for the subsequent turn of events in Africa. It is significant for Kenya and for the evolution of devolution in the country. Up to this time, Africa had only recently experienced isolated encounters with European adventurers. The names David Livingstone, Mungo Park, Henry Morton Stanley, John Speke, Richard Burton and John Rebman stand out. They came in droves, pursuing goals that our people did not know, or understand. Nor did they bother to know or understand.

Yet, even then, only a few of the populations on the Eastern seaboard of the continent – mostly the coastal populations – had any significant experience with these people. The rest of the hinterland went on with its quiet life; oblivious of the rumblings that would soon go on to inform their lives and remain for a long time to come. They were rumblings that raised the curtain to the seeds of inequality.

Following their own rivalries for spheres of influence and trade in such diverse places in Africa as the Congo, Egypt and West Africa, the major European powers of the day eventually assembled in Berlin in 1884 and 1885 to share out Africa amongst themselves, without the participation of the peoples of Africa. This process has gone down in history as the Partition of Africa. The partition was preceded by a scramble for Africa, in which almost any European who could do so laid claim to a portion of the continent. They signed up treaties with African chiefs who hardly understood what they were committing to. They went on to lay special claim to those territories and attempted to lock out everybody else.

The partition of Africa, marked the beginning of what is Kenya today. At independence in 1963, segments of what is Kenya today were scattered among the following:

1. The British, as British East Africa Protectorate
2. The Sultan of Zanzibar
3. The White Highlands
4. The Mazrui Family

Earlier, the protectorate became a colony in 1923 and was named the Kenya Colony.

Kenya – Uganda Railway and origins of unequal development

From the outset, the British were quite clear about the gains they wanted to get out of the colony. First was building of the Kenya – Uganda Railway which was completed in 1901. The railway opened up Lake Victoria the source of the River Nile which goes to Egypt. Now the British wanted to control trade and other commercial activities in the Mediterranean Sea, where the River Nile ends. The building of the railway was part of strategic interests in the Nile and trade in the sea. But the railway was also important because it was going to transport from the East African hinterland raw material that British industries needed back home. These would be shipped from the Kenyan coast to Britain.

Having completed the building of the railway, the British wanted to begin farming activities that would use the railway line. From 1903 to 1939 they steadily and forcefully acquired land from the local African people for use by British farmers, who were given some of the best agricultural and range land in the country. The land that they occupied was mostly in the highlands of Central Kenya and in the Rift Valley. The only Africans who were allowed on this land were squatters, who worked as farm labourers for the European settlers.

British Policy and unequal development in Kenya

From this time, Kenya began developing in a clearly and deliberately lopsided manner. The British zoned the country into "Kenya of the Railway Line" and the rest of Kenya. Kenya of the Railway Line referred to those places that could easily be reached by rail, or those that were not too far off from the railway line. These places also enjoyed other forms of infrastructure and trappings of modernization. The rest were classified as closed districts. The British profiled them as hostile. Not only did they present them as hating outsiders, they were also profiled as hating development, or modernization. They were therefore to be locked out of the trappings of the "modern" state that the colonial government attempted to build in Kenya. Schools, hospitals, roads and all manner of social amenities were not to be found in these places. The origins of unequal development in Kenya therefore have their roots in the colonial State. At independence, the new government inherited this unequal state.

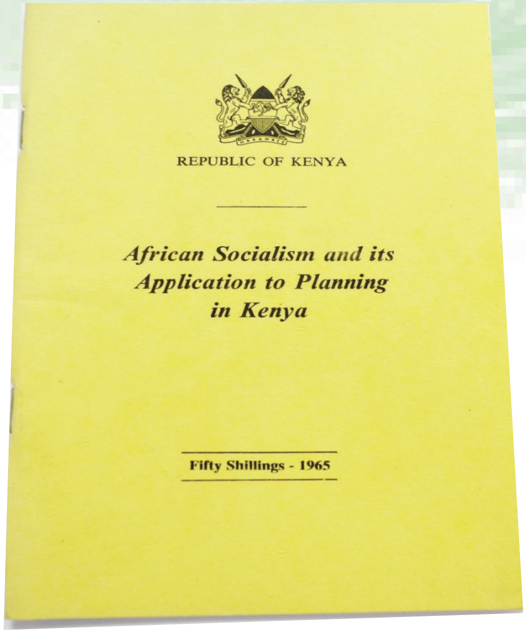
Independence, Sessional Paper No. 10 of 1965 and unequal development

Political leaders who pushed for independence worked with the British to make an independence constitution. This process took place at the Lancaster House Constitutional Conference which took place between 1960 and 1962.

Because of the fears that some Kenyan regions had about being dominated by others, the delegates agreed on a federalist constitution. There would be one Kenya, federated into eight semi-autonomous regions. These were known as *Majimbo* – Kiswahili for regions. Each region had a regional assembly and a regional council. Parliament was bicameral. There was the National Assembly and the Senate. The Senate was charged with the responsibility of protecting regional interests. It sat in Nairobi, like the National Assembly.

In 1965, Parliament made a constitutional amendment to abolish regional governments and Senate, “in the interest of national unity.” Five decades later, the country would decide that this was a wrong decision. It would, in 2010 enact a new Constitution with elements of what was abolished in 1965.

In 1965 the Kenya Government came up with Sessional Paper Number 10 on “**African Socialism and its Application to Planning in Kenya**”.



Sessional Paper No. 10 of 1965

This paper made a skewed situation worse. It significantly said that development would be deliberately directed to those parts of the country that already had a head start. The rest were expected to benefit from the trickle down. In particular, Article 133 stated as follows:

> *"To make the economy as a whole grow as fast as possible, development money should be invested where it will yield the largest increase in net output. This approach will clearly favour the development of areas having abundant natural resources, good land and rainfall, transport and power facilities and people receptive to and active in development . . . ."*

Some communities of Kenyan citizens were seen as "not being receptive to development." Nor were they seen as "active in development." They were therefore deliberately left out of strategic planning for government development and funding. This situation remained until 1983 when the government introduced the District Focus for Rural Development (DFRD) policy. The main objective of the DFRD was to shift planning, coordination and implementation of government policies from central and provincial headquarters to district level. DFRD aimed at equitable distribution of development resources to districts as well as reducing concentration of economic activities from major towns to rural areas. The DFRD was discontinued after 1989, following withdrawal of financial support to Kenya by development partners who were funding it.

Multiparty democracy, the Constitution of Kenya 2010 and devolution

Amidst worsening economic conditions, Kenyans agitated for restoration of multiparty democracy.[1] Following the return of multiparty democracy in November 1991, agitation now shifted to the need for a new Constitution. Kenyans voted for a new Constitution on 4 August 2010. The Constitution was official promulgated on 27 August 2010 as the Constitution of Kenya 2010. Two fundamental pillars stand out in the Constitution of Kenya 2010 – the Bill of Rights (Chapter 4) and Devolution (Chapter 11).

1. The country had become a one party State following a constitutional amendment in 1981, making the Kenya African National Union (KANU) the only lawful political party in Kenya.

3

Devolution: The Centrepiece of the Constitution of Kenya 2010

There are many gains in the Constitution of Kenya 2010, with devolution as the centerpiece. At the national level and at local level, citizens are expected to enjoy wholesome living. The letter and spirit of the Constitution seeks to deliver this, with devolution as the new peg.

In its assignments, therefore, the Commission has been mandated to make recommendations concerning the equitable sharing of revenue raised by national government between national and county governments and among county governments while also ensuring the promise of devolution is upheld. In addition, while upholding the promise of devolution, commissioners have been at pains to ensure that equity is not compromised.

It has been a delicate balancing act, especially when it touches on distribution of revenue, a matter that can be very emotive. Indeed, it has been emotive from time to time. This Commission has governed itself with the knowledge that resource sharing and how these resources are used will determine the success of devolution. But that is not all – we have been conscious of the fact that equity will also depend to a very great extent on how revenue is shared between national government and county governments, as well as how it is distributed among the 47 counties. The Commission has observed the need to pay attention to a number of considerations that generate equity. From the very outset this consideration guided the Commission in developing a formula for division of revenue.

4

The CRA Journey and Scorecard

Reflections on the path, milestones and lessons taken

The Commissioners recall that the positions in this constitutional commission were advertised in 2010. The appointment procedures of commissioners were clearly stated in the Constitution. Various persons applied for the positions. Political parties proposed the names of their preferred people for the positions. Successful candidates appeared before Parliament as there was no Senate at that time. On 11 January 2011, the commissioners were sworn in, in the chambers of the then Chief Justice Evans Gicheru, at the High Court of Kenya.

After the swearing in, commissioners met at National Treasury to elect the vice chairperson in accord with the law while observing the gender rule. Commissioner Fatuma Abdikadir, was unanimously accepted as the vice chairperson.

*****

Even as we commissioners groped in the dark in the first few months, we remained conscious of the fact that we were an independent commission and we were required to exercise our mandate independently. We spent the first few months trying to take off. We visited a few institutions and offices locally, to understand their expectations. We agreed to have thematic working areas being overseen by a commissioner. We spent time looking for potential offices, as we were temporarily housed at the Kenyatta International Convention Centre.

We recruited staff some of whom were on secondment from National Treasury. Work then began in earnest. We prepared our strategic plan in 2012. This would be our roadmap in the implementation of our mandate. A critical expectation of CRA in the Constitution and in the strategic plan was, equitable sharing of resources that took into account communities and groups that had been marginalized in the past.

Together with this was the place of equalization funds. Communities that had been left behind needed to be brought at just about the same level as the others before equitable sharing could be meaningful. Issues of fiscal responsibility were also important. Regarding national revenues, we saw that there was very little focus on how much revenue was being collected and how it was being collected and how it could indeed be increased.

We decided that we had to learn about equitable sharing of revenue from other dispensations, like India, South Africa, Ghana and other countries that observe a form of devolved system of governance. This would form part of our own way forward and our roadmap. Our objective remained to learn from others without necessarily wholesomely adopting their model.

One of the most exciting countries we visited and learnt from was South Africa. We were cognizant of the fact that our new Constitution had borrowed heavily from the South African model. The key lesson we learnt from the South African model of sharing revenue was that it was sector based rather than region based.

From India we learnt about the import of data collection and data integrity. We also learnt that in India commissioners stay in office only for a very short time. They make recommendations and exit. Their recommendations are final. We came back home with the lesson of gathering data, and emphasis was on official data, rather than data from other sources. We therefore use data from the Kenya National Bureau of Statistics.

We also invited Ugandans to come and share with us their experience. While Uganda is not devolved as such, they have decentralized functions. In the case of Uganda we observed, an attempt to claw back on decentralization. Ugandans advised us to be wary of the risk of recentralization, especially where things may not be firmly anchored in law.

*****

In January 2012, CRA got offices in 14 Riverside and we moved there. Focus shifted squarely to the key mandate of sharing revenue between national government and counties. There was no clear formula on how to share revenue and this remained a matter of significant concern to commissioners.

In order to develop the first revenue sharing formula, we visited all 47 counties to discuss various parameters that we were proposing to be used in arriving at our proposed formula. Population and poverty were some of the parameters we discussed. The less populated counties protested against this. Some said that we should consider the size of the county. Meanwhile everybody claimed that their county was poor, in one way or the other. There was consensus, however, that Turkana was easily the poorest county.

We did simulations of revenue allocation to give us a clearer impression of possible scenarios. The most vital parameters for the first formula shaped out as **population 45%, poverty gap 20%, land area 8%, equal share 25% and fiscal responsibility 2%.** This formula was approved by Parliament. We are gladdened that money was transferred to counties for development. This development is transforming counties.

*****

We had challenges in getting Senate to accept the second revenue sharing formula. Each senator tended to look at his individual county when trying to determine whether the formula was good or not and asked for more. They would often bring up economic considerations that were very specific to their counties. Senators eventually agreed with what CRA had proposed and the second formula was tabled to the National Assembly for approval. On 21st June 2016, the Speaker of the National Assembly ruled that the second formula had been approved by the National Assembly without amendments. **The parameters of the second formula are Population 45%, Equal Basic Share 26%, Poverty Gap 18%, Land Area 8%, Fiscal Effort 2% and Development Index 1%.**

*****

From the very outset, the Commission encouraged counties to improve their own revenues. Some counties picked up this advice and devised acceptable methods of collecting revenue, despite some initial resistance on the ground. Kiambu, Mombasa and Laikipia counties as examples, have done very well. Some counties collect more than local authorities used to do. Some counties were however, very ambitious when they came in. Their budgets were very high and therefore generated deficits, as compared to what they collected. Yet, overall, they collected more than what councils had done. There is also some incitement for residents not to pay rates and this needs to be addressed.

Summary of the CRA scorecard

Over the period, CRA has made many major strides. While a lot still remains to be realized, we are confident that we have defined the agenda, the direction and the pace for the next generation of commissioners. We especially highlight the following achievements, among many others:

Equitable sharing of revenue raised by national government:

a. Between national government and county governments

The Commission has developed recommendations for the basis of sharing revenue between national and county governments on an annual basis. The Commission further made recommendations for county governments to be given additional allocations from national government's share as conditional grants in accordance with Article 202 (2) of the Constitution.

b. Among county governments

To share revenue among county governments, the Commission developed two formulas. The first formula was used to share revenues among counties from financial years 2012/13 to 2016/17. The second formula, approved in June 2016 will be used to share revenues starting from 2017/18. In developing the formulas the Commission was guided by Article 203 which provides criteria to be taken in to account when sharing revenue. The criteria addresses national interest, public debt, need to ensure that county governments perform allocated functions, needs of national government, developmental needs of counties, economic disparities among county governments among others.

The Equalization Fund

We identified 14 counties for the Equalization Fund. This is a constitutional fund that is supposed to help counties that have particularly been left behind to try and catch up with the rest of the country. We identified the issues as laid out in the Constitution. We advised that the money should be taken to counties, to address the issues. But, significantly, we also learnt that there is an element of marginalization and inequality in every county in the country. This challenge needs to be addressed.

Financing and financial management of counties

a. Introduction of county budget ceilings

Financial management of counties is something that the country had never experienced nor prepared for, as counties were introduced by the Constitution 2010. One of our first centres of focus was to help counties set up proper systems for financial management. Some of the financial management challenges encountered by counties included requests for payments of sitting allowances some of which were not justifiable, setting aside of development funds by members of county assemblies (MCAs). Frequent travels out of the country were also observed.

CRA introduced ceilings on recurrent expenditures of county governments so at to enhance prudence in financial management. Section 107 of the Public Finance Management Act (PFMA) 2012, provides that county governments need to spend at least 30 per cent of their budget on development and 70 per cent on recurrent needs. Section 107(2A) mandates the Commission to recommend ceiling on county government recurrent expenditures for Senate approval. While counties have demonstrated meaningful transformation, it is also evident that in some counties, very little of the revenue allocated goes to development. In some counties it is a little as 15 percent.

The Commission developed budget ceilings for county governments for 2014/15, 2015/16 and 2016/17 through a consultative process with county governments and the Senate.

CRA's financial mandate over counties however remains largely advisory. The relevant acts that govern financial management exist. They may need to be looked into again, for tighter controls against abuse of public funds at county level.

b. Capacity building of county governments

The Commission, with support from the United Nations Development Programme (UNDP), trained MCAs in all county governments to strengthen financial oversight. MCAs were trained on their roles in planning and budgeting and how to undertake their oversight function to ensure that the county executive implements the aspirations and priorities of the people as articulated in county integrated development plans (CIDPs), annual plans, county fiscal strategy papers (CFSP) and county budgets.

Since 2013 the Commission has also undertaken numerous trainings to the county executive on financial management. These have been done in partnership with United Nations Development Programme (UNDP), Ford Foundation, Office of the Controller of Budget (OCOB), National Treasury, and Strathmore College, among others.

c. Planning and budget cycle for county governments

The Constitution provides responsibility of planning to both national and county levels of government. The County Government Act (2012), requires that all county governments prepare and implement five year integrated county development plans.

The Commission, in the past six years has been supporting counties with a view to improve planning, budgeting, monitoring and evaluation. In this regard the Commission in collaboration with the OCOB, Strathmore University and counties conducted a programme called Kenya Governance Strategic Execution Support (KEGOSES). Under this programme county assembly committee members and county executives were trained on the PFMA (2012) legislation, planning and budgeting, monitoring and evaluation.

The Commission is required to ensure that counties spend their resources in the priority areas that have been assigned to them. After realising that most counties had not finalised their CIDPs in the second year of operation the Commission teamed up with the Ministry of Devolution and Planning to disseminate guidelines for developing CIDPs.

d. Recommendation on county borrowing

Article 212 of the Constitution allows county governments to borrow. The Commission in 2013 made a recommendation to the Intergovernmental Budget and Economic Council (IBEC) that counties should not borrow in their first years of their operations before laying down a policy and legal framework. This emanated from initial county budgets of 2013/2014, which showed that many counties had huge deficits that were supposed to be financed by borrowings.

The Commission's recommendation was meant to ensure that the country's public debt is manageable and sustainable. Further, it was also to allow counties adequate time to put prerequisite structures for debt management in place. The recommendation was adopted by IBEC, which resolved counties should not borrow for the first three years of their operation with effect from 2013/14.

e. Recommendations on over balanced county budgets

Emanating from initial county budgets deficits for 2013/2014, the Commission together with OCOB made recommendations to the IBEC that counties had to have balanced budgets in the first years of their operation. IBEC adopted a recommendation requiring counties to have balanced budgets whereby revenues meet expenditures with possibility of surplus for the first three years of their operation.

f. Guidelines on financing of non-core development projects

In 2013/14 and 2014/15 most counties, in their development expenditures, gave priority to construction of county offices, governors' houses, assembly speakers' houses and county assembly chambers, among others, at the expense of service delivery to the people. The Commission issued a circular to county governments in 2015 guiding them on financing of major capital projects.

The guidelines advised that non-core capital projects, like county offices, governors' houses, assembly speakers' houses and county assembly chambers among others, were not a priority in the first five years of devolution and hence such projects could be funded using long term financing of between five to ten years, unless there was compelling justification. Further the guidelines advised that county governments should seek long term financing, in consultation with CRA and the National Treasury.

Review of county planning documents

The Commission has been reviewing planning documents submitted by counties and giving feedback as required by PFMA 2012. These documents include CIDP, ADP, CFSP, and the county budget review outlook paper (CBROP). The Commission takes cognisant of the importance of planning and hence has been advising counties on objective planning, consistency and alignment of budgets to the broad national goals and objectives.

Review of county financial reports

The Commission has been reviewing financial reports, submitted by counties, and giving feedback as required by PFMA 2012. These documents include county budgets, end year county financial statements, county quarterly financial reports, receivers of revenues annual and quarterly reports.

The reviewed financial documents have brought to the fore the fact that most counties overestimate own revenues projections; some counties are still allocating their budgets towards non priority expenditures like construction of governors and speakers houses as opposed to allocating adequate resources to roads and health that benefit a wide majority. The budget implementation review reports reveal that majority of the counties are generating very little from own revenue sources. In addition there is generally very low absorption of development funds. Counties need to address the above areas.

County budget economic forum (CBEF)

Section 137 of the PFMA 2012, provides for establishment, composition and functions of the CBEF. The CBEF is a forum which provides platform for consultations by county governments on preparation of county plans, CFSP, CBROP, matters relating to budgeting, economic and financial management.

In 2015, the Commission trained members of the CBEF in counties. The trainings were done in conjunction with other stakeholders who included the Institute for Social Accountability (TISA) and the International Budget Partnership (IBP), Taita Taveta County Budget and Economic Forum and the National Taxpayers Association. From the trainings, counties have established and operationalized their CBEFs.

Public participations guidelines

Public Participation in policy making is a requirement under the Constitution. Article 201 of the Constitution stipulates that there shall be openness and accountability including public participation in financial matters. The Commission noted gaps on how public participation was being conducted by counties. In 2015 the Commission in partnership with the International Budget Partnership (IBP) developed public participation guidelines to help counties to conduct these forums seamlessly. These guidelines have been disseminated to all counties and are in operation.

County revenue automation

CRA is currently working with county governments to put in place policy and legislative frameworks for raising and enhancing counties own sources of revenue as well as its management.

5

The State of Devolution: A Story of Promise and Hope

Devolution came with the promise of transforming livelihoods. It came to fulfill the constitutional restoration of the sovereign power of the Republic of Kenya to the people. Accordingly, this power is exercised through two levels of government – national government and county government. Devolved government is expected to secure both short term and long term prosperity and happiness for present and future generations respectively. Despite all manner of hiccups, the first three and a half years have started off on a very promising note. The departing CRA commissioners have been pleased to note numerous encouraging things that are happening in counties across the country. What is on the scorecard?

In presenting what the CRA sees as the scorecard of devolution, it helps to preface this with the observation that from the very outset, the Constitution of Kenya 2010 recognized the need to factor in sufficient transition period from the old dispensation to the new. An overall period of six years was given, from the promulgation day, being an initial five years, with possibility of extension by one year for anything that remained undone. Accordingly, the transition period ended on 27 August 2016. This means that all functions assigned to devolved governments under the Fourth Schedule of the Constitution are now squarely in the ambit of county governments. Accordingly, all functions belonging to county governments are expected to be financially resourced.

Equally important is the need for funds to follow functions in counties, as laid out in the Kenyan Constitution. Indeed, even funds flow systems for conditional grants and donor funds are expected to be established in a manner that respects functional integrity of the two levels of government. State corporations and regional development authorities are expected to be restructured to be in alignment with devolution.

County governments have meanwhile begun to deliver vital services. They have kick-started local economies and helped communities to find their voices, through robust public participation in decisions on crucial matters that affect them. This has helped them contribute to shaping of the environment within which they live. A focused look at devolved sectors tells a very cheerful story, despite the attendant challenges that pertain to financial probity, incessant litigation and political wrangles within counties and between devolved government on the one hand and institutions like Senate and National Assembly on the other hand.

Agriculture

Agriculture is a devolved function and makes a direct contribution of 26 percent to Kenya's annual GDP. This contribution is presently valued at KShs. 342 billion. Indirect agro based contribution to GDP is valued at KShs. 385 billion, being 27 percent. This contribution is made through linkages with manufacturing, distribution and other service related sectors.

Devolution has brought significant reforms to this sector. Counties have invested in mechanization of agriculture, thereby reducing the cost of farm preparation and essentially leading to increased and superior crop and animal production. At the time of writing this report, some 132 agro based value addition projects have been instituted in 34 counties and 1,021 greenhouses installed in 36 counties.

The area under irrigation has increased to 69,966 hectares, substituting heavy reliance on rainfall for crop and animal production.

Apart from contributing to GDP, agriculture provides livelihoods to many Kenyans. With climate-change interfering with rainfall patterns, counties are taking the climate-smart route and continue to put more land under irrigation. This way, counties are scaling up food security and reducing vulnerability to food shortages and famine. It is heartening to note that these initiatives have tended to target small holders in agriculture, hence expanding participation by wananchi in agricultural programmes. In this regard, studies indicate that up to 541,627 farmers have been reached with extension services, countrywide. Collectively, 911 cattle dips have been constructed and others rehabilitated in 28 counties.

In the livestock sector, counties have provided artificial insemination services to over 886,147 animals in the short time that devolution has been here. A lot more can be achieved, going forward. To increase access to agricultural services, counties have bought more than 118 milk coolers, countrywide. More than 649,000 banana tissue culture seedlings have been distributed to small-scale farmers across the country.

Social Protection: Dairy Cow Project in Kakamega County

Health

Access to the highest possible standards of health is a constitutional right. This includes the right to healthcare services. To safeguard this right, health was among the very first functions to be devolved so as to bring quality service close to the people. Devolution of health, however kicked off with industrial challenges, some of which remain unresolved. Nonetheless, county governments have played a very critical role in healthcare transformation.

There have been many innovative efforts to improve the quality of healthcare while reducing costs. Healthcare is accordingly one of the single largest components of budgets in the counties. It accounts for nearly a quarter of the budget across counties. In 2012, there were 8,466 health centers and dispensaries in the country. Today they are more than 10,030 health facilities. Moreover, the old ones have each enjoyed some level of renovation and expansion. More expansion and renovation is going on at the time of writing of this report. Good healthcare requires adequate and competent personnel. Counties have been steadily employing quality healthcare workers each year.

As a nation, Kenya is focused on improving the healthcare system. The objective is to reach international standards. Eliminating infant mortality is a priority. Counties have invested in incubators as part of addressing this challenge. There has been a national average drop of up to 39 percent in infant deaths, compared

Workshop classrooms at Chesongoch Youth Polytechnic - Elgeyo Marakwet County

Roads and infrastructure

Much has been achieved in the roads and infrastructure sector, in spite of some degree of haziness between national and county governments on devolution of road services. The Council of Governors filed a suit in the High Court against Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA) and the Kenya National Highways Authority (KeNHA), agencies that have continued to handle county roads.

The court in its judgment ordered the immediate transfer of roads by recognizing that the construction and or maintenance of all county roads – classes D, E, and unclassified roads were the responsibility of county governments while all class A, B and C constitute national trunk roads and are therefore the responsibility of national government. It has been sad that there should be disagreement about this, needing the courts' intervention.

At the time of this report, counties had undertaken the following: tarmacking of 379 kilometers of roads, placed murram on 35,934 kilometers of roads, opened 19,148 kilometers of new roads and undertaken rehabilitation of 9,572 kilometers of roads.

Counties are also beginning to embrace innovative and advanced technologies, like the probase road construction technology that is cost effective, cheap, durable and easy to maintain.

Going forward, funding of road development will need prioritization, in view of the fact that opening up of roads opens up very many other opportunities.

to the situation before devolution.

Budgets for medicinal drugs have also improved. Hospitals are virtually at all times equipped with essential drugs that they require. Moreover, wastage has been arrested through avoidance of stocking drugs that are unlikely to be required. And more importantly, Kenyans can now access healthcare more easily. Distance to health centres has been reduced through renovation and equipment of preexisting facilities and construction of new ones. Improved road networks and availability of ambulance services in counties have been major contributing factors.

Renal Dialysis Unit awaiting to be commissioned, for use at Embu Level 5 Hospital, Embu County

Water services and sanitation

Water coverage across the country has improved tremendously ever since water and sanitation services were devolved. Household access to water has increased to over 70 percent from about 30 percent. There has been a national average of an additional 600 households in each county newly connected to piped water. Counties have rehabilitated and constructed new dams to expand the water catchment base. County governments have also initiated, supported and sustained various community water projects across the country. Providing clean water to citizens has had the extra dividend of reduced spread of water-borne diseases.

Drilling of a borehole in Machakos County

Early childhood development education (ECDE)

We have witnessed increased enrollment of children into ECDE centers by over 20 percent. It is positive to see children in what had previously been seen as "remote villages" now accessing education this early. In 2013, the ECDE enrollment was at 1,691,286. Today it stands at 2,074,060. Additionally, 30,049 teachers and assistants have been recruited to cater for the increased enrollment.

County governments have meanwhile built a total of 5,951 ECDE centres over the past four years. They have equipped them with desks and other classroom supplies to give an environment that is conducive to learning. Over 598 preexisting centres have been refurbished. The picture of dilapidated mud and wood classrooms is slowly, but surely, disappearing.

Early childhood education block in Turkana County

Youth polytechnics and empowerment programmes

Counties are investing in construction and equipment of youth polytechnics to nurture skills of young people and prepare them for the job market. Polytechnics are providing critical missing skills link in a variety of trades. The country needs masons, metal workers, water technicians, electrical and mechanical technicians, laboratory technicians, draughtsman, and many more skilled professionals.

New polytechnics have been built and existing ones renovated. For example, in Homa Bay County, six new youth polytechnics have been built. In Meru County, many of the workshops in all polytechnics have been refurbished and equipped. Enrollment in polytechnics has increased substantially. There has also been a change of curriculum for the polytechnics so that the courses offered can focus on employability.

Other youth centred initiatives in counties include establishment of empowerment centres and empowerment funds for the youth. For instance, Bungoma county has established cottage industries for the youth; Kiambu county has successfully rolled out the Biashara Fund, which provides interest-free loans of KShs. 100,000 for individuals and KShs. 500,000 for groups, especially the youth, women and persons with disabilities. The fund has disbursed KShs. 400 million to date.

Good roads translate into faster and easier access to a wide range of social amenities. No patient should lose his life, for example, just because poor roads inhibited arrival to hospital. Likewise a farmer should not watch his or her produce getting spoilt just because they cannot access markets.

Other infrastructural achievements include lighting of streets. Street lighting projects are slowly transforming many towns and their environs into 24-hour economies. Businesses are remaining open past 11.00p.m. This includes lighting of small village markets, using solar energy technology which has also been undertaken. Security has also improved because of lights. Residents admit that with streetlights having been installed at pick-up and drop-off zones, the incidence of mugging and allied petty crime is dropping.

Street lights in Kapenguria Town, West Pokot County

Trade and investment

To encourage and facilitate trading activities at local level, many counties have constructed new markets for the people. Before 2013, there were 362 markets under local authorities across the country. These were mostly in deplorable conditions. Today there are 651 markets across counties. These markets have good potential for uplifting millions of livelihoods.

Modern Market Shed at Matinyani - Kitui County

*****

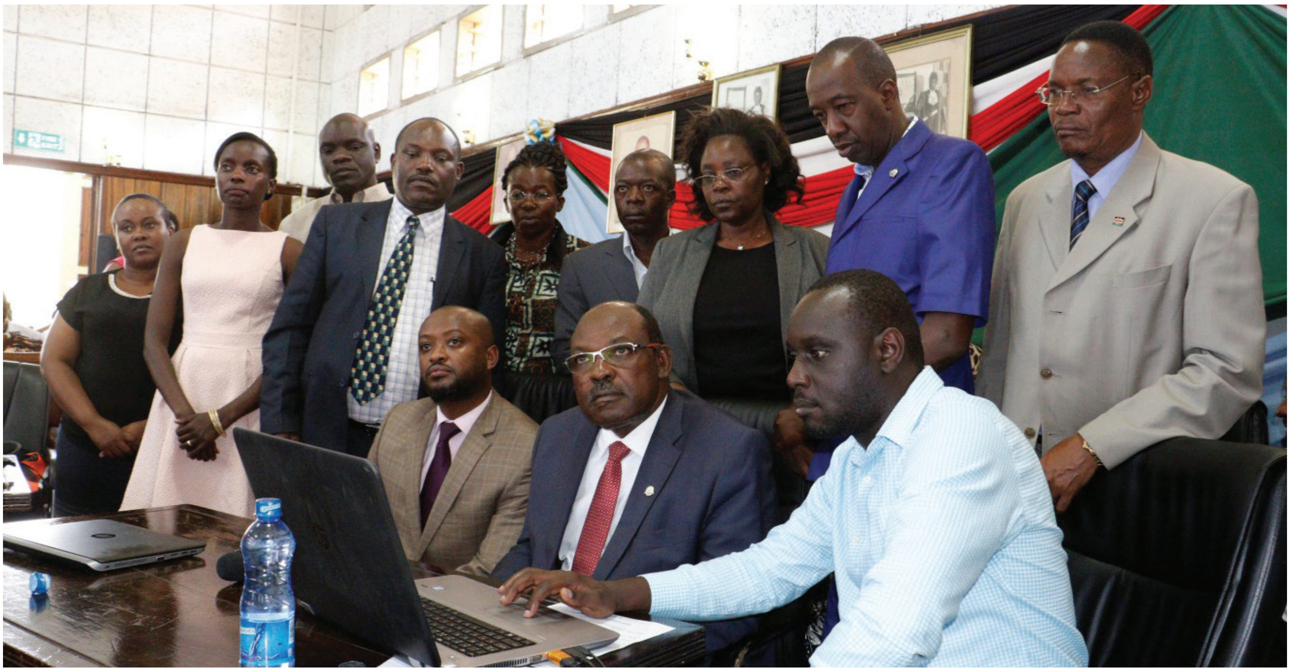
Kenya has had the most vibrant cooperative movement in Africa, beginning from independence in 1963. This movement is a key player in the economy, contributing about 43 percent of Kenya's GDP. The cooperative movement, however, took a dive in the 1990s, largely due to poor governance. The coming of devolution has nonetheless injected fresh life into this sector.

Today there are numerous new cooperative societies in agriculture and jua kali sectors. Before devolution Kenya had approximately 1,396 cooperative societies. Today the country boasts of 1,806 societies, with a turnover of KShs. 56 billion. These societies have employed more than 300,000 people, besides providing opportunities for self-employment to many more. County governments are supporting these movements as is exemplified in the testimony of Nakuru County, which is carried elsewhere in this report.

Information and Communication Technology (ICT)

In this era of information and communication technology county governments have been quick to embrace state of the art ICT. ICT is useful both as a management tool and for purposes of storage and retrieval of information. Indeed, national government has introduced the Integrated Financial Management Information System (IFMIS) to enhance accountability and probity in finance. Counties have been quick to embrace this technology, which is serving them. Challenges with IFMIS still exist and these need to be addressed.

Apart from using ICT to manage county business, many counties are now creating virtual villages. ICT centres have been created in many towns across the country, giving citizens free and easy access to the Internet. This is useful for purposes of learning on line, accessing government tendering through IFMIS, keeping informed on what is happening in the country and elsewhere in the world, studying among other things. Revenue collection in many counties is also being done online, a factor that has enhanced collection while also locking out corruption.



H.E. Jack Ranguma, governor, Kisumu City County during the launch of the automated Trade Licensing system, a web-based software application that allows business owners to apply and pay for trade licenses online at their convenience.

6

In their own Voices: Testimonies from counties

As part of preparation of this exit report, the Commission visited counties not only to see for itself where the money was going and what the counties were doing with it, but also to listen to the experience of county leaders. Accordingly, three counties were visited as a sample. What we heard and saw filled us with much hope and confidence about the future of our country under the devolved system of government. We visited Kilifi, Homa Bay and Nakuru counties.

Narratives of hope from Kilifi County

The Governor Amason Jaffa Kingi spoke to the CRA team that visited the county for this report. Later the team also had a session with the speaker of the county assembly, Hon. Jimmy Kahindi. In their own words, they reported:

> Devolution is working. And it holds even greater promise than what we can already see. The kinds of milestones that have been witnessed, even by those who may not have wanted devolution, cannot be gainsaid. This is more so in places that were previously marginalized. We see streetlights, good classrooms in schools, polytechnics and good functional hospitals. These were things that could not be talked about before devolution, except in terms of the desire to have them someday.

*****

> People can now sit down with their leaders and participate in making decisions on their lives, without waiting for Nairobi to decide for them. Here in Kilifi, we have made huge strides and achieved many milestones, within only three and a half years. We are supporting even areas that are not devolved, because of being close to the people. Look at education, for example. What is devolved is nursery school

education; it is not even early childhood education as we know it. Yet we are covering more than just nursery, or preprimary school education.

*****

When we came in, nursery school children in what is now Kilifi County did not have even a single classroom. They would learn under trees, in church buildings or in some shanty. Today there are well-constructed classrooms for these young ones. We consider the formative days of the child in education very critical. The first impression they make of school and education is critical for the rest of their years in formal education. This very important impression should not be made under a tree. We have therefore provided the infrastructure.

As a county, we are also paying teachers. There are over 700 nursery school teachers. We also provide books and other learning materials. By January 2017, we expect to begin providing free meals to these children.

*****

We are also doing very well in the area of polytechnics. Polytechnics were previously run down and forgotten. They were seen as areas for failures. We have now expanded and revamped them. We were the first to have a graduation ceremony for our polytechnic graduates. Many young people are now interested in joining these polytechnics. We also have a placement programme for them once they complete their training.

Apart from training and assisting in placement, we are also helping graduates to begin self-owned businesses. We have begun a fund, called *the mbegu fund*. When they leave polytechnics, we encourage them to begin and manage their own businesses. We provide startup funds on a revolving credit platform. We also encourage them to try to team up with others and work together in their areas of training and qualification.

*****

Health is also benefitting a lot from devolution. Before devolution, we used to receive drugs as was decided by people based in Nairobi. A good portion of the drugs would be irrelevant and useless to our needs. There was a lot of wastage. Today we order exactly what we need. We don't have irrelevant drugs going to waste.

We have seven sub-counties in a very expansive county. They were previously served by two ambulances. The three major hospitals are in Malindi, Kilifi and Mariakani. Taking patients to these hospitals was a huge challenge because of the expansiveness of the county. We now have a dedicated ambulance for each sub-county. There are more than 20 state-of-the art ambulances in the county. They can handle any referral cases, within our county and even beyond if necessary.

We have traditionally had high maternal and infant mortality in the county. These have now dropped. We are soon completing a 45 bed maternity wing at Mariakani Hospital, with a proper theatre for operations. A similar facility is being put up in the sub-counties of Bamba, Marafa and Rabai. Apart from these facilities, there is a dedicated delivery room in every public dispensary, or health centre in the county. Before devolution this could only be done in Kilifi, Malindi and Mariakani.

Normal births are now being done in dispensaries at the village level. There was an acute shortage of nurses in the county. We have engaged over 300 health workers in the county. We have constructed over 20 new dispensaries, each with staff quarters. We are looking at the wage bill to see how many more we can bring on board.

In the big hospitals in the three main towns, the face of health facilities and service delivery has changed tremendously. Before devolution it was difficult to do an x-ray in government hospitals. Now we have the best machines that we can acquire on the market in our hospitals. Even private hospitals are referring patients to government hospitals for x-ray. We have even acquired MRI equipment. X-rays services are available even in sub-county hospitals and MRIs in all major hospitals.

We are putting up a modern health facility at Kilifi Hospital. Lamu and Tana River depend very much on Malindi. We do not have an high dependecy unit or intensive care unit in the three counties. The one in Kilifi is small and overstretched. We are, therefore, putting up an emergency unit, with an ICU. In future patients who need this attention will get it here. We are putting up a renal unit and a cancer unit. Currently, patients have to go to Nairobi. We want to arrest this. We also will put up two state-of-art theatres. Advertisements have already gone out inviting tenders. Drugs storage has improved tremendously. We have built our own warehouse for drugs. We don’t have to run out of supply before calling KEMSA to deliver.

*****

Turning to agriculture, this has traditionally not received due emphasis. The coast has been seen as a tourism zone and hardly as much else. The farmer at the coast has never been mechanized or seen as a serious player in agriculture. When we began our tour of duty, we saw the need to mechanize agriculture. Our farmer still uses the traditional hoe. Yet there is no way the Kilifi farmer can work on large acreage and become food secure with this kind of outmoded technology. But the ordinary farmer here cannot buy or hire a tractor. We decided to buy farm machinery for subsidized leasing to our people. We allow them to hire this machinery on loan, as part of our strategic thrust towards food security. There are over 40 tractors and ploughs. We will increase them slowly, to ensure that we have at least 70 at any given time. Where a farmer used to till one acre, they should be able to do at least twenty acres.

Kilifi County can produce maize and other staples like cassava and sorghum. Yet seeds have been a challenge for many years. Using the right seed is indeed a problem. The Kilifi farmer has not used certified seeds. He has used homegrown seed. This cannot produce high yields. We sent our agricultural officers to the ground to do soil analysis to determine what seed we should use. Every year since, the county has now procured the right seed and distributed it free of charge to farmers. The same is happening with fertilizers. The impact has been instant. For the last two seasons we have had wonderful harvests.

Nonetheless Kilifi is today in the grip of drought and hunger. It is not because farmers did not do the right thing. They did. Unfortunately the rains failed. This has thrown the county into a huge challenge. We have now commissioned seven irrigation projects that are up and running, to cushion agriculture through irrigation, going forward.

The fisherman in Kilifi had no capacity for commercial fishing. This sector remains underdeveloped at the entire Kenyan coast. It is a paradox that while Kenya exports fish, 96 percent of this is from the hinterland. Only 4 percent comes from the coast, with all the fish rich waters at the coast. As a county government, we have focused on capacity building – training and availing equipment. Through this programme we have bought some vessels for fishermen and equipped them with motorboat engines that help them move much deeper into the sea.

Safety was a challenge to fishermen. We have now developed a unit that deals with sea safety. In the event that there is an emergency at sea, there is a boat on standby. Once we get communication that there is a problem, the boat will move in quickly.

Food storage has been a problem. Now we have six fish depots. The fisherman can land his catch, clean it and store it safely. It could be sold even after a month. Exploitative middlemen have now been disabled.

Parts of the county are very good for livestock production – Ganze and Magarini, for example. We know that goats can do well here. We have done a goat meat and goat milk improvement programme. We have also provided startup dairy goats to farmers. We have build dips and crashes, as well as sale yards.

All these things in agriculture and livestock production need water. Our people need water for other use, too. By the time the life of the current county government ends, we expect to have completed 284 water projects in the county, with investment of Kshs.1.9 billion. Previously you got a water AIE of about Kshs. 1.5 million per year. There is now piped water even in places that were considered "remote" in the county, such as Chakama, Kirosa, Mlima wa Ndege and others. The method of resourcing water is multipronged. We have Mzima Springs, drill water, dams, water pumps etc.

*****

Movement in Kilifi continues to be a huge problem due to poor roads. We are, however, rising up to the challenge. Rural roads were virtually non-existent before devolution. The interior was simply inaccessible. We have graveled more than a thousand km of roads. We have paved and upgraded to bitumen standard roads in major town centres – we have done over 30 kilometeres in Kilifi, Mtwapa, Mariakani and

Malindi. Resource constraints remain, however. We have opened up over 2000 km of roads that can be used in good weather. A lot more remains to be done, however. We expect to do this once the conflict between national government and county governments on devolution of roads is over.

Upgraded bitumen standard road at Junction Mnarani to Old Ferry in Kilifi County.

All trunk roads are expected to be national government roads. All other roads should be county roads. The national government has, in our view, been reluctant to let roads go. This journey has not been smooth, therefore. The citizens are seeing us on the ground and expect that we should give them good roads. We urge national government to allow roads to be attended to according to the law.

We began engaging national government on this question quite a while ago. We eventually had to end up in Court. The national government quickly went around the problem in what we consider to have been an irregular manner. It reclassified roads to bring our roads under it. A Class E road would be reclassified as C or B. They then wanted to place these roads under national government. Moreover, piecemeal classification of roads goes on every year. This does not strike us as being in good faith.

Some roads are passed on to county governments after the budget cycle. The dilemma is that the money does not then follow the function and we are therefore not able to do anything about them. Citizens blame us for this. We have resolved some of these issues by going to court. This is sad. The relationship between national government and county governments should not be governed by court orders. We have intergovernmental relations forums, but we have not tapped their potential to establish harmony between the two levels of government.

*****

CRA has been very fair in the division of revenue. It is our considered view in Kilifi that the formula that CRA has used over the years has attempted to assist both levels of government. Unfortunately, we think, people have sometimes not wanted to listen to CRA. This includes even we in county government. We have sometimes criticized CRA's formula for revenue division without offering an alternative. Our thinking has tended to be selfish. Perhaps we need to vary the law so that where there is disagreement CRA word should be final. The latest formula that CRA brought up, for example, was fought from all manner of angles. Yet this was going to be good for marginalized counties. The counties that have traditionally got more fought the formula. They wanted things to continue to be lopsided against the rest of the counties. This tends to defeat the essence of devolution.

*****

There have been many laws on devolution. Our considered view here is that the laws that were passed before devolution came into being were quite sober. Some of those that have come afterwards, however, have not been very progressive. Sub-county laws for example are not forward looking. So, too, have been various laws in agriculture and water. We need to remind ourselves that we should not make laws based on what we consider to be expedient today. Good laws should seek to serve future generations. Moreover, the laws should be constitutional. Some of the ones the National Assembly has enacted are in our view unconstitutional, and we have even challenged some in court.

Meanwhile we have a big problem implementing the laws that our own county assembly has enacted. This is because for any law to become effective, it must first be gazzeted. It is taking the Government Printer long to gazette our laws. If you consider that there are 47 county assemblies, you begin appreciating the gravity of the challenge.

We may need new laws on how to gazette county laws.

*****

The law on impeachment has been trivialized and abused. Impeachment is good. It will help to tame errant leaders. Yet impeachment is itself such a drastic measure that the process ought to be most watertight. The provision of how to remove a governor is so casual. It has tied governors' hands. In some counties MCAs have held governors hostage. In some cases county governments are not able to function and some governors live in mortal fear of impeachment. The laws governing impeachment could borrow from the law on how to impeach the President so that there is some level of sanity in this process.

*****

We have had challenges with the Integrated Financial Management Information System (IFMIS). The system was supposed to bring efficiency. However, it seems to have brought more problems than solutions. The system seems to be down most of the time. It's a good system, however, when it is working. Implementation is still a challenge, however. If well managed, it will serve us well. It does not lie about the audit trail. We would urge those behind it to make it more efficient.

*****

Revenue collection was a challenge from the very start. Nevertheless, we have automated revenue collection. We are negotiating a contract with Strathmore University on a facility that will enable us to do better.

*****

We are also experiencing challenges with collecting property levies. When we took over, local authorities had valuation rolls. For us to legally charge rates we had to come up with a new valid valuation roll. What was there was dated. Lots of properties that should have been captured were missing. The first thing we did was to come up with one. We need enabling legislation, however, before we can begin collecting. While our assembly has made the law, it has not been gazetted, as observed already. We cannot, accordingly, begin collecting from new properties.

*****

As a county that is adjacent to the ocean, Kilifi County has a special obligation to protect the ocean. The law requires that property should be not less than sixty metres from the ocean. We have not enjoyed cooperation from other State agencies in our attempt to carry out this duty. National Environment Management Authority (NEMA), for example. When we try to implement the sixty metres law, NEMA sometimes negates our efforts by approving construction within this space. This is confounding, for NEMA should be even ahead of us on protection of the environment. Apart from that, courts have slapped us with orders that have allowed developers to overlook the law. We are, however, using our budget on the environment well. Every financial year, for example, we are planting trees. We have a programme to plant 400 000 trees by the end of our tenure. We are keen to reach the national minimum for our county.

*****

Despite the numerous challenges, our conclusion remains that devolution is working and it is the way to go. The gear that Kenyans have engaged cannot be reversed. If there should be anybody habouring doubts about devolution, he or she should know that Kenyans, having tasted the benefits of devolution so far, are unlikely to be kind to any efforts to change direction on devolution.

Homa Bay county: Transformation in the lakeside county

We spoke to the deputy governor, H.E. Hamilton Orata, county executive members and the speaker of the County Assembly. In their own words:

The experience of devolution was new for everybody. The beginning was not therefore as smooth sailing as we probably would have loved. Regarding CRA, we consider that they have fulfilled their mandate. They arrived on a clean slate, like everybody else. They had to grope in the dark and find the direction for everybody. They developed a formula for revenue division and allocation. They later revised it. They have done a good job, in our view. Moreover, when working on this formula, they went around the counties, seeking our participation. Whatever their conclusion and decisions, we would say that they made a spirited effort to understand things from our perspective as well.

There are issues that we would like the new commissioners to look into, however. Foremost is the unique nature of a county like ours. They need to be taken into account when revenue is being allocated to the counties. Consider that we have eight islands in this county – Mfangano, Remba, Takawiri, Ringiti, Ngothe, Kiwa, Kibwoge and Ringiti. To access them, you need to do three hours on water. For us to make or repair a road on any of the islands we need additional revenue. We cannot do it at the same price as say another county trying to work on a road of a similar distance from the county headquarters. Our mobilization needs are very different from those who do not have to travel on water to reach the community that they want to serve.

This challenge affects all other services to our islands. To take medicine to the islands our costs are different from those of someone whose concentration is only inland. This is a unique case that requires unique consideration. The population in islands need development just like the rest of the county. Other than this, we consider that the CRA has done the right thing with their formula.

*****

Salaries and excess personnel establishment presents a major challenge to us. The amount of money spent on salaries is immense. We inherited seven local authorities. These were institutions with huge numbers of employees. Inheriting them meant taking care of their remuneration. We also inherited very many employees from national government. We are spending more than fifty percent of our funds on salaries alone. This is not viable. Yet, it is also true, this kind of situation is not uniform across counties. Some counties inherited fewer employees than others. There is need to look at this when allocating revenue.

There is one question people avoid asking. Do we need all these people? The answer is, “No.” Nobody wants to touch this vexed question, because it is political. Nobody wants to be seen to be making people jobless. So, here we are, stuck with staff that we do not need. As government employees, they were supposed to be absorbed in the new arrangement. Going forward, there will be need to confront this issue so that funds are released to provide services. We cannot justify paying people who do nothing, just because we want to be politically correct.

*****

As a county, and we believe in other counties, too, there is a problem with salary rationalization. At the start of devolution, some people started off with very high pay perks, out of the need to motivate them to work in the counties. Afterwards the Salaries and Remuneration Commission (SRC) came up with rationalized salary guidelines. These, however, did not affect the big salaries that had already been decided upon. Going forward, this needs to be looked into.

*****

Devolution has now taken root and there in no way you can get rid of it. We are changing people's lives. Our biggest asset is the human capital. Close supervision at the devolved level is making institutions work. Even functions that are not devolved are now working more efficiently. There is discipline and focus.

*****

Using our allocations from CRA, we are achieving what devolution was meant to. Look at education. We have employed 1,272 ECDE teachers and supervisors. Previously our children did not have the proper foundation. We were among the first counties to employ ECDE teachers and to begin these schools. The first lot is now in Class Three. ECDE has prepared the children for ICT-based learning. We are in the process of building another 90 ECDE centres. Some 31 technical training centres have been established with 128 instructors. We have also supported Tom Mboya University by funding elements of the agricultural training component. This is for purposes of supporting agriculture in our county. We have also subsidized education via bursary. Some 11,240 learners have benefited from this, with a minimum of KShs. 5000 paid per child.

*****

We have opened 727 km of access roads in the county. These are all weather roads, with 33 km of them being bitumen roads. When we took over there was only 103 km of bitumen roads in the county. It had taken fifty years – perhaps longer – to do this 103 km. Thirty-three is a major improvement, when we look at things proportionately.

We are however handicapped with regard to building roads in the islands, as explained already. We have done ring roads on Mfangano Island, however. But this has been very costly. Yet we cannot run away from the need for good roads on these islands. Even sometimes, contractors do not want to work there due to high costs that they can incur in undertaking projects. Education, health, virtually all areas are suffering. We need to get some funds from the Equalization Fund to enable us take development to these islands.

*****

Most health facilities were rundown when we arrived. There was no referral hospital beyond level 4. We embarked upon improvement of health facilities in the county. We are refurbishing the referral hospital. We have bought critical equipment, while we also got some from the national government. We have employed 345 personnel, apart from the doctors. Every sub-county has a level 4 hospital. Power outages were slowing us down. But we now have generators. We have done 3 ultra modern maternity hospitals. We have set up a medical training centre in Oyugis, in concert with Kenya Medical Training College (KMTC). We are giving out training bursaries in health.

Each sub-county has an ambulance, with 8 in all. There is a dispensary in every ward. We have trained over 4,200 health workers at the community level, to deal with prevalent killers in the county, especially childhood killers. In this regard, we have worked with the United Nations Children's Fund (UNICEF) and with other development partners. The health workers constitute the first line of intervention. They look after a number of specific households. They keep proper records of the drugs that they have used. The patients may be graduated steadily to the next level of healthcare, if need be. They are each paid an allowance of KShs. 2,000 per month.

*****

We have the highest incidence of HIV and Aids in the whole country. When we took over the numbers were standing at slightly above 27,000 cases. While we have reduced the cases to about 25,000 the challenge is set to remain with us for a while. There could be need for special consideration for counties like ours with regard to the war against HIV and Aids. These could come in the form of special grants. The irony with things like HIV and Aids is that you cannot restrict them to one county. In the fullness of time, a case contracted in one county carries the virus to some other county. Part of the solution rests in injecting more resources to fight it in places like our county, where it is a huge menace.

*****

We have achieved a lot in trade within a very short time. We are trying to set up industries in the county. Previously we had only one industry. We have established an animal feed industry. That is 60 percent complete. Also complete is a maize production project. The nearest animal feeds factory is in Nakuru. We produce 70 percent of omena fish, used in industries across the country. But there has been no industrial contribution from the county. This is why we have come in. The feeds seek to be available, qualitative and affordable. We expect the private sector to take over from us once we have developed production plants to certain viable levels.

*****

Maize production is very important for us here, because maize is our staple food. When you secure maize you give people food security. We have put up a maize store and a giant maize mill in Gwassi. This is minimizing the impact of middlemen who used to ferry all the maize away, leaving our people exposed to famine. Once the plant is adequately functional, we will expect to bring in the private sector as a crucial partner.

Equally important is poultry production. Previously most of the eggs eaten in this county came from Busia County. Now we have an egg and poultry production programme. We have provided hatcheries to several community based groups and our monitoring and evaluation shows that 75 percent have succeeded.

*****

We are supporting small-scale traders in the county. We have introduced a policy that supports micro enterprises. We give seed money to such enterprises. This was launched recently and is already having promising impact. The boda boda, people, for example, have a Savings and Credit Cooperative Organisation (SACCO) that we began for them. Most used to hire motorbikes. Now there is a scheme that allows them to own the bikes. The one thing that will need to be addressed here is discipline on the roads.

*****

As part of food security, we are taking agriculture very seriously. We have bought a tractor for each sub-county as part of economic stimulus. We are also subsidizing agriculture in other ways – such as free seed and subsidized manure. This has taken off well. We are doing fishponds in every ward. There are six such ponds per ward in the 42 wards in the county. They are at varying degrees of success. We prepare fingerlings, which people buy from Homa Bay and take all the way to other counties.

*****

There are two greenhouses in every ward. In dairy farming we are facilitating cross breeding, in collaboration with International Livestock Research Institute (ILRI). We have milk coolers in waiting for consumers.

*****

Fishing is serious business. We have bought coolers to help fishermen keep their fish fresh and to sell it at good prices. In the past fish used to go to middlemen cheaply, because fishermen were wary of seeing it go bad without a buyer. We have also tried to bring in fish processing. But it has suffered security related setbacks.

*****

We have great potential as a tourist destination. We have mapped and classified tourist attraction sites. The products include historical sites, beaches, safaris, wellness centres and bird watching. Three of them are fully developed. We have done 37 community fields. They are fenced, pavilioned and gated. The Homa Bay Stadium is being upgraded. It’s about 40 percent complete.

*****

Youth and women affairs are only partly devolved. However, we are going on with training of 100 youth and women from each ward, in entrepreneurship. The women have been trained on procurement, attitude change and allied competencies that are necessary for entrepreneurship.

*****

We place heavy premium on water. There are 57 boreholes, 13 of which have electric pumps that are powered by solar panels.

The lake was the main source of water before devolution. The average water search distance was 5 km. The distance has been reduced to 3 km and also eased pressure on the lake. We have piped water centres, roughly on a radius of 10 km throughout the county. One borehole serves about 500 households. We aim to reduce the households further. Some of these boreholes have been rehabilitated over and above the 57 new ones. This has reduced waterborne diseases.

*****

In Homa Bay town we have a water company, Homabay Water and Sewerage Company (HOMAWASCO). There was a huge water problem when we arrived. We have now fixed this.

Close to water is the environment. We have three water towers K'Owire, K'Odera and Gwassi as major towers. We found when they were badly abused by deforestation. We have made forest cover a priority. During the time we have been around, we have raised forest cover in the county from 0.3 percent to 2.3 percent.

Dams and pans are also a priority. We have 13 pans and we inherited six dams, which we have been de-silting. All these have been rehabilitated.

*****

We have embraced solar energy technology. We have installed 600 solar energy street lights in the county. Every trading centre in the county has solar lights. Solar lighting is transforming the county to a 24-hour economy. It is helping with revenue generation. In Homa Bay town insecurity has been reduced. The town has 220 solar energy street lights, over and above the 600 that are spread across the rest of the county.

Previously, power outages in Homa Bay were a hindrance to business growth. Our address of outage is now spawning industry. The Jua Kali industry can now go on with minimum power outage. We also have a renewable energy programme in the islands: There are mini power plants for each of the eight islands. This is what powers the milk coolers.

We also want to set up a 40 megawatts plant at Nyakwere Hills. We have meanwhile placed 56 schools as well as a number of hospitals on solar energy.

*****

A lot of people in the county did not have title deeds. We began addressing this concern as soon as we arrived. We have distributed over 80,000 across the county.

Related to land is the question of urban planning and development. We recognize that devolution is transforming traditional rural communities in to quasi urban settlement. We want this to develop in a conscious and planned manner. We have, therefore, negotiated a programme with Symbio-cities to address this.

*****

Revenue collection and management has presented a challenge from the outset. The people doing this have not always been honest. We have tried to automate collection. But this has not helped much either. We have not seen it increase revenue collection. In point of fact, it has sometimes lowered revenue collection. However we are still working on this.

*****

Going forward, some laws on devolution will need to be reviewed. The laws on water, for instance, need to be looked into afresh. Water is a basic right and a necessity for survival. The power bills for water companies need to be considerably lowered and protected by law.

*****

Nakuru county: Strengthening diversity through devolution

We had a session with Governor Kinuthia Mbugua and his county executive team, in Nakuru. We also visited some of the projects that the county has done. In their own words, they reported:

Nakuru County is a diverse county that represents the face of Kenya. Virtually every Kenyan community is represented in this county. Together, we are laboring to make devolution work.

Our experience so far has led us to conclude that devolution was long overdue. It is a model that we should have gone into even earlier. People have accepted it. They feel that they own it. They own their government. If you were to ask them to go back to the past before devolution, you can be sure that they would reject.

We are aware of what informed the clamour for the new Constitution that brought devolution. Some of the concerns included the issue of distribution of resources across the country. Kenyans were at a point where they thought the economic model was wrong. Development priorities and resources were lopsided. There were serious disparities in the country. There were those who were perceived to be far ahead while others were seen as not having benefitted at all. This was one of the elements leading to the push for a new Constitution.

Even access to national resources was seen as being unfair, both in the public and private sectors. There was the feeling that if it was jobs they were going to one or two communities. There were those who felt that access to participating in leadership was circulating within limited circles. The rest of the population was seen as neither participating in leadership, nor leading. They felt that they had been blacked out in influencing public decisions. Devolution came to help address these concerns. As Nakuru County, we are satisfied that devolution is working and we see even better days ahead.

****

Issues of security were an important consideration for devolution. Because of devolution, we have been able to address security in our county. The main test of this was the first election under the new Constitution. Because of anticipation for devolution, the elections were conducted peacefully. Peace has also continued to prevail since.

Here in Nakuru we had no option but to negotiate how to include all communities in the foundational government, as a way of creating harmony and peace among the tribes in the county. We had to find a way of making all tribes feel that they had ownership in the government. Members of the county executive are from a cross section of communities in the county. They feel like they share in the government. This adds to the feel good factor and to peace and security. For the first time in a long while, there is no tribal tension among tribes, with only a few months left to the elections.

*****

We have made huge strides in different devolved sectors and even supported others that are not devolved. This is not to say that we have not had problems and challenges. In health, for example, there were initial misgivings from the health service professionals. They could not understand how they could be, in their view, “reduced” to working in “a local authority.” They did not quite understand devolution and the new county government. They felt that the governor was like “a mayor” or “chairman” of a county council. They felt demeaned. They were at the best non-committal and at the worst resistant to working in the county.

We sat with them several times and made them understand that the calibre of people who had offered to serve in the county government were in many respects professionals. Governors include former cabinet ministers and principal secretaries. Health professionals – and especially doctors – slowly began to appreciate how close they now were to decision makers. They got to understand that all their issues could be sorted out in the county. They no longer needed to go all the way to Nairobi to have their concerns addressed. That got them thinking afresh.

We have since done very well in the health sector. Physical infrastructure in the sector has grown by 40 percent. This includes health centres, hospitals, maternity wards, equipment – the data and the equipment is there. The money spent on medicine alone amounts to about Kshs. 600 million over the period. In the old days, it would not even be one third of this. There is visible increase in the number of people seeking medical attention in our hospitals.

*****

We have also made major strides in road construction, repairs and maintenance. Most roads in the county were completely impassable. We targeted developing 10,000 km of access roads for the first five years. We have achieved about 5,000 km. We have graded and graveled many roads. We have built about 60 bridges, and about 20 km of line drains. The gains are that the populations in rural areas are able to reach markets, hospitals, schools and other social amenities. We doubt that this would have been done even over another ten years under the old system. The equipment that we now own makes it easy to maintain these roads and to build new ones.

*****

One area that represents major milestones is education. We deal with early childhood and polytechnics. We targeted to have an ECD in every primary school. We have about 600 primary schools in the county. We have constructed over 400 ECDEs. We have realized about two-thirds of our ECDE targets. We will close in to 600 or reach the target, by the time our present tenure is up. If we had moved at this rate at independence, this would have been done in the 1960s.

*****

We found a most pathetic situation on the ground regarding teachers for ECDE. We have yet to get out of the woods on this one. There is a tug of war between national government and county governments about who should recruit teachers. We have advertised several times and had to withdraw because of court cases. Litigation has been a hindrance in many respects. We still have had some temporary teachers and we have been paying them. In the end, the matter has been settled in favour of the counties. We now hope to recruit more teachers without hindrance.

*****

Polytechnics have done well in the county. We have 16 new ones and 11 rehabilitated polytechnics. The focus has been on jobless youth. The biggest aim is to give them skills for self-reliance. Put together with the youth fund, the polytechnics are changing lives. The youth are also taught to look at the needs of the community in their search for skills.

Polytechnic teachers were devolved without being placed on the TSC payroll. We have since absorbed them on to the county payroll. Some of these instructors are very well educated and this is a big motivating factor to the trainees.

*****

We have developed the Trade Act. Accordingly, we have moved hawkers to new market places. Our traders are by and large happy. We are also educating people about cooperative societies and encouraging them to find ways of working together through such societies. We have introduced them to micro finance opportunities. Before money is given there must be clear plans about what they want to do with it. We give out such money under a revolving credit arrangement.

We have developed good market places and revamped old ones. We run the market places through committees. Our Wakulima Market has 36 convenience facilities. Lighting, electricity and water is well supplied to the markets. We have markets in Mai Mahiu, Naivasha, Gilgil, Bahati, and in other sub-counties, too. We see it as a reality to move to a 24 hour economy.

*****

Nakuru as a county capital was under the weight of the informal sector. The challenge of unplanned urban areas had more political considerations than professionalism. We have embarked on a comprehensive spatial development plan for all the sub-counties.

*****

Some of the functions under environment, natural resources and water remain under national government. Where the functions are devolved, we began by putting our boards in order. We started with the water sector. We have three boards – one each for Nakuru, Naivasha and for the rural areas. We give them subsidies and assist them to ensure that they are giving our people water.

We have done more than 250 small community water projects. We have moved the water coverage from 48 percent to 63 percent. Water borne diseases are on the decline as a result. The people also don’t waste time looking for water. So, too, do hospitals, schools.

*****

The environment did not have a full-fledged department. We established a department under a director. We zoned our towns for purposes of garbage collection. We are partnering with community based organisations, women and youth groups to collect garbage. We do not collect revenue from them for this. We are collecting some small fee from homeowners for garbage collection.

The city of Nakuru is clean. Now we are beautifying it. We have the Lions Garden City Park for our people to enjoy. Kioto Dumpsite is located within the city. It was begun in 1974. Acquiring a new site became difficult. We therefore looked at how to make it work without messing up the environment. We have created more space there and are seeing how best to use it. We have tried to procure new sites, but it is a huge challenge. Going forward we are pursuing more sustainable methods of waste disposal. This may include waste recycling.

*****

Devolution has now brought management of the human resource function to the county. The presence of the employer is being felt at the place of work. Absenteeism is no longer an issue. It is not one of the challenges of public service. We are also training personnel as required by law.

We have about 6,000 employees. They are a strain to the payroll, as we do not need all these. Our emphasis is on service to the people. Some of the people's needs are not just needs. They are rights. We inherited four local authorities, all now rolled into one. We began with a very heavy load. We could not retrench staff, or dismiss them. The devolved functions came with the resources and personnel. Then we had new people to put on the payroll. This notwithstanding we spend 45 percent on development while 55 percent goes to emoluments. Going forward, the country must make a bold move to downsize staff in the public service.

*****

We are in the process of making the valuation roll that should bring efficiency to revenue collection. Once we are done, our revenue will increase. The sources of revenue collection, so far, include: single business permits, parking meters, environment and trade.

*****

CRA has done very good work. It could not have done better, under the circumstances. We see many achievements. Some of these include: Undertaking an advisory role: this has been done with distinction. Sharing of revenue to county governments: They struggled for allocation of funds to counties. They achieved this under a lot of resistance. CRA ensured counties were allocated funds to enhance public participation.

Conditional grants: CRA did a marvelous job in defending this, especially relative to the health sector. Incoming commissioners should look at the possibility of championing for conditional grants to counties that are burdened by wage bills.

CRA did a sterling job of collating views of county government, national government, Senate and the Budget Office. If not for CRA there would have been a lot of difficulty in harmonizing various views. They always came up with very workable solutions, especially where there were conflicting views. They always did good research and understood the status of our country and each county. They had a very thorough overview, which made the work of everybody very easy and their recommendations on revenue sharing and allocation very objective. The CRA has had the respect of county governments, Senate, Budget Office and the Treasury. There has been that feeling of credibility when they take a stand.

The secretariat has been very competent. We trust that the new commissioners will continue to be focused and dedicated like the outgoing commissioners.

Unfinished business

1. Criteria for revenue allocation: CRA has done well to have the indexes well understood. Could CRA, however, consider some of the unique features in counties?

2. Some aspects of resource allocation – like the Equalization Fund – have never been fully implemented. There is need to address this.

3. The geographical expanse: has remained difficult. The administrative overload of counties needs to be considered when distributing revenue. The population needs service. But it needs an administrative infrastructure. This is a challenge to areas with huge geographical expanse.

4. At the Council of Governors we have tried to have counties with many employees to be considered when allocating revenue. When huge swathes of funds go to emoluments, the rationale of this is difficult to see. Unfortunately this is also resisted by some of our own colleagues, the governors.

5. The fiscal effort criteria may not work very well. It looks like punishing counties that have limited resource base for revenue collection.

6. Going into the future there is need to find a formula for reduction of personnel.

7. There is also need to address gratuity and retirement benefits for former councilors and allied staff. They keep coming to the governor to ask for their benefits. The same is true for the aged who are looking for social support. Indeed local authorities left behind a lot of liabilities. These need to be dispensed with.

7

The State of Devolution: Projects by National Government

National government projects

During our tenure, as commissioners, the national government has rolled out a number of flagship projects, courtesy of its share of the national revenue, over and above paying for recurrent needs and critical services like national security. The projects largely fall under the functions that the Constitution has set aside for national government, under the Fourth Schedule. While a lot is being achieved, the following few projects are worth highlighting.

a. The Standard Gauge Railway (SGR)

Construction of the standard gauge railway (SGR) by national government is ongoing. The first phase of the SGR will be from Mombasa, Kwale, Taita Taveta, Makueni, Machakos and Kajiado to Nairobi. Construction work on this phase is expected to be completed by mid-2017. The second phase will cover Naivasha, Narok, Bomet, Nyamira, Kisumu, Yala, Mumias to Malaba. Once complete, the SGR is expected to spur economic development across counties.

b. Free maternity

The national government has championed and facilitated free maternity for mothers in public hospitals throughout the country. The government has reported that the population of women who have sought these services has soared by a cumulative 50 percent over the period.

c. Huduma centres

Through the Ministry of Devolution, the national government has established Huduma Centres throughout the country, in a bid to bring services closer to the people. This one-stop shop brings all government services under one roof and increases efficiency in service delivery.

d. Electricity

Official sources indicate that 325 megawatts (MW) of power have been injected into the national grid over the period. About 280 MW of this energy was generated from Olkaria I and IV. Another 25 MW has come from geothermal power while 20 MW is wind driven in Ngong Hills. The national government is also connecting 22,000 primary schools to the national power grid and to solar energy.

e. Development of roads

The national government embarked on the tarmacking of 10,000 km of road network to be implemented through the Annuity Financing Programme. The programme seeks to make Kenya a low-cost investment and trading destination, to promote national integration, and to improve security due to connectivity of regions and communities. At least 3,000 km contracts have been given to private sector developers.

f. Education

Capitation for primary schools has been increased by 40 percent and secondary schools by 35 percent. The budget for free primary education has been steadily on the rise.

h. Fertilizer subsidies

In 2013 the cost of fertilizer for a 20 kg bag was KSh 2,700. The national government has subsidized this and brought the cost down to KSh 1,800. Barring adverse weather conditions, this should boost food production in the country.

8

Recommendations to future commissioners

The incoming Commissioners will serve most of their term during the second five years of both national and county governments under the Constitution of Kenya 2010. They have the advantage of beginning from the lessons that the outgoing commissioners have learnt and starting off with the infrastructure and systems that the first commissioners put in place. As part of their inception and induction, they will do well to bear the following concerns in mind.

1. **Harmony among all stakeholders:** There has been a tendency for institutions to engage in needless turf wars. There has been conflict between national and county governments; senators and governors; governors and deputy governors; governors and county assemblies; senators and National Assembly.

   If we recognize that our mandate, regardless of our institution, is service to the people, we are likely to avoid these turf wars and focus more on how different institutions could work together for the benefit of the people. Many of these turf wars tend to gravitate around funds. The commissioners should continue going the extra mile to seek harmony between state institutions for the good of the citizens.

2. **Duplication of services:** There is duplication of administrative services between national and county governments. This is largely a factor of the Provincial Administration not having been adequately restructured. The Constitution anticipates that the restructuring will bring Provincial Administration in line with devolved government. As things stand, it seems to be more in competition rather than harmony with county governments. When this has been addressed, there should be significant saving of revenue to address other needs at both national and county government levels.

3. **The wage bill:** We have observed in this report, that the wage bill in counties is unnecessarily bloated, due to the size of staff, many of whom are redundant. Going forward, there will be need to make a bold move and establish a formula for separation. Retrenchment would appear to be inevitable, in the end.

4. **Security in counties:** Security in counties remains a matter of grave concern. Most devolved situations in the world have two police systems, one falling squarely under national ambit while the other one is managed by devolved units. Kenya may want to consider bringing the Administration Police under counties.

5. **Fighting corruption:** There is corruption claims galore in the country. The signs point to the possibility that some of these claims are likely to be valid. If cases will be vigorously investigated and some corrupt individuals jailed, it is just possible that the war against corruption could start succeeding.

6. **Funds following functions:** The Constitution states that funds should follow devolved functions to the counties. In a number of areas, national government has tended to hold on to funds for functions that are already devolved. In future, there could be need to lobby for funds to follow functions in such areas as agriculture, health, water and roads.

7. **Induction programmes:** Among the very first tasks for the new commissioners should be induction programmes in liaison with other stakeholders. These would include the next team of governors, senators and county assemblies.

8. **Election of women:** The two-thirds gender rule requires that neither gender should take up more than two-thirds of all the positions in public service. In the case of county assemblies the balance is to be realized through nominating the disadvantaged gender to the assembly. If political parties will give tickets to the disadvantaged gender in what are considered safe constituencies, there would be no need to balance the equation through nomination. This would represent significant saving on emoluments, with the balance going towards development.

9. **Excessive borrowing:** Kenya seems to be borrowing excessively. It is important to keep pointing out to the national Treasury the dangers inherent in unending borrowing.

10. **Financial discipline:** Financial probity seems to be a major challenge in counties. There is a lot of wastage on unnecessary trips, sittings and all manner of allowances. There is need to discourage this kind of wastage and instead channel funds to benefit residents.

11. **Counties financial absorption capacity:** Counties have been accused of lacking absorption capacity for funds. Yet we have noted that there is a genuine sense in which, while meaning well, IFMIS has sometimes frustrated counties. IFMIS has tended to slow down and sometimes even stagnate circulation of funds. When counties want to access funds, they often find that the system has either temporarily broken down, or it is not open. IFMIS needs to be reformed to be more of a facilitator than an inhibitor.

12. **The CoG Secretariat:** The CoG set up a secretariat to coordinate the governors' collective activities. The Council, moreover is a crucial forum for conflict resolution across counties, as well as an invaluable platform for engagement with other state organs. The existing secretariat needs to be strengthened to ensure it is efficient, professionalized and well-organized.

13. **The challenge of national debt and allocation to counties:** We have observed a number of concerns around borrowing and national debt on one hand and allocation to counties on the other hand. The audited national revenue for the year is shared between national government and county governments on the agreed formula, taking into account national priorities like repayment of national debt. The commissioners note that when negotiating and entering into borrowing arrangements, national government does not consult county governments. Consultations between national and county governments should be undertaken through intergovernmental relations forums – such as IBEC to build consensus on national debt. Viable policy guidelines will need to be developed to govern national debt.

14. **Latest audited accounts as approved by the National Assembly:** The Constitution requires that the revenue to be shared between the two levels of government must first have been audited and after that approved by Parliament. The process is however painfully slow. Even after revenue has been audited, it takes inordinately long for the audits to be tabled before Parliament. This has made it necessary to continue sharing revenue on the basis of the same old revenue base. For a more dynamic devolved delivery of services, it will be necessary to make it mandatory that the

revenue is audited and tabled and conclusively discussed in Parliament within very clear timelines. The alternative is to remove the notion of National Assembly from the approvals.

15. **Public participation:** The Constitution and a number of other laws talk about public participation in decisions that affect them. This includes matters like budgeting and development decisions on major projects. Most counties have tried to involve the public. However, commissioners take note of the need to make public participation more structured. The exercise as undertaken today is open to abuse by being done lackadaisically. Clear policy guidelines that structure and discipline the process of public participation will be necessary, going forward.

16. **Constituency Development Fund (CDF):** CDF is a product of the Constituency Development Act, which was enacted by the 9th Parliament in 2003. The objective of the Act was to remove the burden of harambees from the people of Kenya, while also accelerating development at the grassroots under the tutelage of members of Parliament. It was also believed that parliamentarians would be less prone to undue influence and they would work more conscientiously if they had a kitty to buttress their financial resource base for development. In a sense, this was an attempt to devolve development from national government, even before the enactment of the Constitution of Kenya 2010. The Commission has followed closely the debate on the CDF, including the judicial review of the same by the High Court.

    It is easy to understand the human factors that make sitting MPs insist on having this kitty under their umbrella. There is a sense in which it gives them clout and a head start over their competitors. The fund, however, is contrary to the law. The Constitution recognizes that national revenue will be shared between national government and counties. The National Assembly does not fall under either of the two. If CDF is a devolved fund, then the right place for it to fall under is county governments.

    If it is the wish of national government to set aside funds for individual constituency development, then such funds are best disbursed as conditional grants, in the spirit of the Constitution, to be administered by county governments. As it is, this fund is being abused in various constituencies across the country.

    What is even more worrying is that MCAs have also been arm-twisting governors to set aside for them what they are calling Ward Development

Fund. On their part, senators have also been angling for a fund, just as have been women county representatives. The Commission has advised concerned parties that these funds that people are pushing for are illegal from the very start. Going forward, the country will need to regularize CDF by placing it under counties and, at the same time, discouraging the mushrooming of other funds that seek to address the political needs of those managing them than they seek to address citizens' needs.

Notes

Notes

COMMISSION ON REVENUE ALLOCATION

14 Riverside Drive Grosvenor Block, 2nd Floor
P.O. BOX 1310 – 00200
NAIROBI
TEL: +254-(020) 4298000
Email: info@crakenya.org
Website: www.crakenya.org

CRA 34