The Council-Sec Monthly

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Word From The Ag. CEO

Mrs Jacqueline Mogeni

Dear Colleagues,

Welcome to the first issue of The Council E-newsletter.

The promulgation of the Constitution of Kenya 2010 marked a major milestone in the way the country is governed. It created a three year transition period within which it was expected that the functions that were assigned to County Governments by the constitution should already have transferred in totality. It stipulated the dispersal of political power and economic resources from the Centre through devolution.

THE THIRD ANNUAL DEVOLUTION CONFERENCE

The Third Annual Devolution Conference

The Council of Governors in collaboration with other stakeholders has organized annual devolution conferences every year since the country adopted a devolved system of government. The First Annual Devolution Conference was held in Kwale County in April 2014, the Second Annual Devolution Conference was held in Kisumu in April 2015 and the Third Annual Devolution Conference whose theme is "*The Promise Of Devolution: Consolidating The Gains After Transition And Looking Into The Future*" is scheduled to be held in Meru County in April 2016. The Annual devolution conferences are now seen as one of the most important events in the devolution calendar in Kenya. They provide key stakeholders especially representatives from governments who include technocrats from across the County and National Governments, representatives from academic, policy, public, private, media and civil society sectors with the opportunity to celebrate milestones, reflect on challenges, constructively critique, network, discuss emerging opportunities and showcase cutting edge innovations from the entire country and the region.

UPCOMING EVENTS

- KYISA games Kwale County-29th November to 6th December 2015
- NOREB investment conference at Eldoret Sports Club in Uasin Gishu County (19th-20th Nov)
- KEPSA –CEC training Kwale County 26th-28th November 2015

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Murang’a County Governor Impeachment Rejected

By Elizabeth Wambui

Murang’a County Governor H.E Mwangi wa Iria was impeached on 21st October after members of the County Assembly voted for his removal. 34 MCAs were in support of the motion while 15 MCAs opposed the motion. The MCAs accused the county boss of misusing cash and failing to manage the county’s debt.

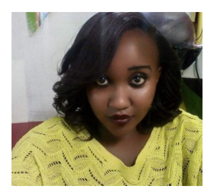
This move sparked a lot of concern from Governors. Speaking at a press briefing in Naivasha after a Council meeting, the Chairman of the Council, H.E Peter Munya said that the County Assembly acted in total breach of the Constitution and the County Governments Act stating the impeachment as null and void.

The Chairman believes that the allegations against H.E. Mwangi wa Iria is a result of the usual challenges that Governors are experiencing in their Counties, particularly delayed disbursement of funds, moreover, he stated that these are not grounds for impeachment of an elected Governor at all.
H.E Peter Munya continued to say that the citing of the Auditor-General’s report can only be concluded to be in bad faith since all Counties responded to respective audit queries and still hold that the office of the Auditor General is accountable for failure to include all responses before dissemination of the final report.
Several County Assemblies, including West Pokot, Makueni, Embu and Kericho have in the past attempted to impeach their Governors but their moves have been unsuccessful.

On Friday 6th November 2015 the Senate wrote an unforgettable chapter in the narrative of devolution. The Senate rejected the reasons advanced by the Murang'a County Assembly for his removal from office.

H.E Governor Mwangi wa Iria continues serving the people of Murang’a County.

The Stronghold of Kenya’s Social- Economic Development and the new frontier For Investment



By Anne Mukii

Tharaka Nithi County is planning to host its inaugural international investor conference on 26th-30th November 2015. Through the International Investment and Consumer fair, the county is seeking investment value, create employment, generate income, reduce poverty and enhance sustainable economic development.
Tharaka Nithi enjoys a stable political environment that guarantees security which in turn attracts investment both internal and external. Tharaka Nithi has put her people at the center of development. There is a commitment that development processes need to benefit the people. The county economy is a new frontier for investments like extractive industry, agriculture, real estate, tourism, ICT, education and Finance among others. The county boasts of all-weather roads all over the county. This means efficient delivery of farm produce and reduced travel time to other counties. The licensing policies are also investor friendly. The culture connects the community and development.

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Delayed Transfer Of Functions To The County Governments By Rosemary Njaramba

Section 15 of the Sixth Schedule to the Constitution provides that *'Parliament shall, by legislation, make provision for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the National Government to County governments of the functions assigned to them..'.* The Transition Authority, in exercising its mandate under the Transition to Devolved Government Act, 2012 and in seeking to comply with this constitutional provision, has since transferred to County Governments functions enshrined in the Fourth Schedule of the Constitution vide two legal notices- Legal Notice No. 16 of February 2013 and Legal Notice No. 137-183 of 9th August, 2013. However, there are still a number of functions that are yet to be vested in the authority of County Governments. These are: County roads; County planning and development, including—Electricity and gas reticulation and energy regulation; and Cultural activities, public entertainment and public amenities including-libraries.

These functions have not yet been transferred and they are contained in a draft Gazette Notice that is yet to be published by the Attorney-General's Office. The Council notes that the timeline that had been allocated for the complete transfer of all functions assigned to County Governments lapses in March 2016. The limited transfer of functions to County Governments will inevitably culminate into a constitutional crisis if not remedied within the mentioned timeframe. At the moment, the inordinate delays occasioned by the various National Government institutions in the transfer of the remaining County functions have compromised implementation of the same. First, functions must be properly transferred through the recognized legal framework if they are to be effectively implemented. Unless the Transition Authority gazettes for the transfer of a function, a County Government cannot proceed to perform that function. Subsequently, any form of service delivery and revenue collection attendant to the pending functions becomes impeded. Second, we must remember that our governance system is founded upon the '*funds follow functions*' principle. As the ground is laid for the transfer of the pending functions, so must the resources be availed for the performance of those functions. On the same breadth, it is worth highlighting that there still exists State Corporations and Regional Development Authorities (RDAs) that continue to perform County Government functions. In every financial year, these state institutions and agencies continue to benefit from colossal budgetary allocations which ideally should form part of the County share of revenue.

To illustrate: in the 2015/16 budget, ongoing road construction and maintenance has been allocated KES 85.2 billion. These monies will fund state actors like the Kenya Urban Roads Authority (KURA) and the Kenya Rural Roads Authority (KeRRA) who continue to award contracts for County Roads- a County Government function. The same budget has allocated a sum of KES 79.7 billion for agriculture, specifically irrigation projects, fisheries and livestock, yet under the Fourth Schedule of the Constitution Agriculture is a fully devolved function and the National Government's mandate extends only to agricultural policy. Regional Development Authorities like the Tana & Athi River Development Authority (TARDA), Kerio Valley Development Authority, Lake Basin Development Basin and others, also continue to receive a share of the national budget only for these monies to be utilized for projects related to devolved functions. The unconstitutionality of the status quo cannot be downplayed. It was anticipated that by the lapse of the transfer period, state corporations and regional development authorities would have been restructured to conform to the devolved system, or phased out where their mandate would be proved redundant. Despite this, and as mentioned earlier, state corporations and regional development authorities have continued to engage in long-term financial commitments, in complete disregard of the underlying unconstitutionality. Further, the duplication of roles and eventual wastage of public funds cannot be ignored. National Government agencies cannot continue to perform County functions. The *Report of The Presidential Taskforce on Parastatal Reforms* recommended for discussions to take place between the National Government and County Governments regarding the future of the State Agencies which perform functions that have been devolved. These consultations are long overdue.

In conclusion, County Governments have to take over all their functions as soon as possible. Urgent transfer of pending functions must be facilitated to allow for service delivery to the residents of Counties. Further, all relevant stakeholders- the Ministry of Devolution and Planning, the Commission for Revenue Allocation, the Transition Authority and ourselves, must develop a roadmap for the phasing out of state corporations and regional development authorities that continue to undertake County functions. This will unlock more financial resources and County Governments will be able to enhance their provision of essential services like health, water, sanitation and early childhood education.

Borrowing Level Of The National Government **By Victor Odanga**

The Central Bank of Kenya has pegged the Country's debt level at Ksh 2.8 trillion which is half of what the country is able to produce meaning that the Country's Gross Domestic Product (GDP) is about Ksh 5.7 trillion. This amount of borrowing is alarming considering the fact that at June 2013 the debt level of the country was at 41% of the Gross Domestic Product.

The reality is that Kenya's debt level is sustainable; meaning that the country can service its debt and still offer quality basic services to its citizens without straining current and future generations. The fact that in the span of two financial years, the country's debt level has increased by 10% and to have such a debt level, bearing in mind the fact that County Governments are yet to borrow is worrying considering that we just ushered in a new system of governance. The fiscal responsibility principles as identified in the Public Finance Management Act provides that both the counties' and national debt shall be maintained at a sustainable level and the fiscal risks shall be managed prudently, meaning that money borrowed must add value to the economy and regenerate income that can be able to repay the loan.

The East Africa Monetary Union pegs the debt ceiling at 50% of a country's own GDP, by Kenya surpassing this not only means that we are dangerously within the red flag but we risk joining countries that have previously been marked as Highly Poor and Indebted Countries (HPIC) leading loan defaulting and refinancing processes.

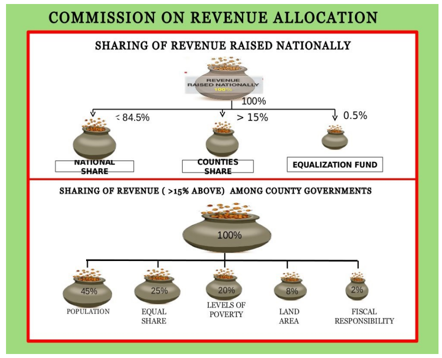
The National Government has been borrowing money both domestically and internationally for cash flow maintenance and infrastructure projects that are not picking up or are being misappropriated hence not leading to any value addition on the economy. The debt strategy paper for the National Government released a few weeks ago highlighted the need to reduce the domestic borrowing levels which had almost reached 25% of the GDP. This borrowing is dangerous as it involves high interest rates provided for by commercial banks and any default leads to even higher interest rates.

The following aspects could be relooked into to reduce the high debt levels in the Country:-

1. The National Government must stop borrowing funds for already devolved county functions. Such loans from the multilateral agencies such as World Bank, African development Bank and International Development Association must be stopped.
2. The large infrastructure projects that are expected to bring returns to the country are not been undertaken yet monies have been borrowed by the national government from Bilateral Countries such as China, Japan and Canada. The National government should seek to undertake one long-term infrastructure project at a time and not commit the country to huge debts that might lead to unsustainable levels.
3. The National Government should reduce its domestic borrowing as it scrambling for the available local resources with the private sector which will reduce the amount available for borrowing by the private sector leading to slow growth of the economy as private sector plays a huge role in the growth of the economy.
4. The country should only borrow externally through concessional channels which allows for sufficient maturity rate of the loan.

5. County Governments should be allowed to borrow individually as has been provided for in the constitution through national government's guarantee.
6. Both the two levels of government must develop budgets with minimal deficits allowing for minimal borrowing to finance the gaps.
7. Both the two levels of government must improve their fiscal effort to enable less borrowing and more internal resources.

Otherwise if the national government continues to borrow without enabling corresponding growth in the economy, the country risks losing in the long run and specifically counties as they will not be able to borrow for their own internal use. It is however to be noted that no country can sustain itself with only internal revenue collected if it has no reserves. It is therefore advisable for both the National Government and County Governments to provide for internal reserves systems.



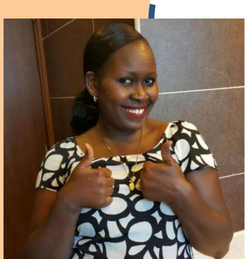
It is imperative for both levels of government to establish an enabling environment for the private sector and the small and medium enterprises to enable their contribution to the growth of the economy.

As the Council of Governors, we are raising these issues because we are worried at the level of how our economy will eventually turn out. It is noted that just over 8 months from November 2014- June 2015, the National Government has gotten into 14 loan agreements mainly touching on County Governments' functions. This illustrates how the National Government is not genuine in its national mandate of ensuring our debt management is sustainable. It is borrowing on what it does not require.

The Constitution under Article 206 provides that all monies raised or received by or on behalf of the National Government shall be paid into the Consolidated Account unless excluded from the Fund by an Act of Parliament.

Kenya through the National Treasury raised a Euro Bond. Available information indicates that net proceeds from the Sovereign Bond of USD 1,999,052,872.97 out of the total amount of USD 2,000,000,000.00 were received on 24 June 2014 and deposited into an offshore account, contrary to Article 206 of the Constitution of Kenya and Section 17(2) of Public Finance and Management Act, 2012 which requires that all money raised or received by or on behalf of the National Government be paid into the Consolidated Fund.

Decentralization Is A Work In Progress



By Yvonne Ogwang

For a period of 50 years, Kenya had a centralized system of Governance. This meant that important decisions about Kenya had to come from the Central Government. It is also during this period of time that Kenya faced misuse of power, bad governance, and serious human rights violations due to the autocratic presidency that Kenya had.

During the centralized system of Government, Kenyans from the different tribal lines were marginalized due to skewed distribution of resources and political power hence rendering some parts of the country to poverty and disempowerment which made it hard for these Kenyans to ever imagine that their destiny could ever be different than that which their very own state had sentenced them to.

Then came the promulgation of the Constitution and Kenyans had the chance to change and decide the fate of their country, was it going to be 'YES' or 'NO' . Kenyans voted 'YES', which meant that Kenya would then have a devolved system of Government where there would be equitable distribution of resources, Political power would have to be devolved to the counties and various functions would also be devolved. This also meant that Kenya would be divided in counties and not provinces as it was earlier during the centralized system of government. Hence, these counties would operate like any other functional government to ensure that its people would benefit politically, economically and socially.

It has been 2 years since devolution started and I would confidently say that devolution is work but it works. Two years down the line we can see the changes in our health centers, our roads and infrastructure, the agricultural sector, water and sanitation even access to our political leaders and in this case the Governors. The youth have also been given amazing opportunities to better themselves, and currently, gender issues are being addressed. Devolution has allowed for a third rule to be applied hence proper representation of both gender in any kind of set up. The public participation in issues that relate to development, the civic education that has had to be put in place so that at least every Kenyan knows their civic rights and can hold the Government accountable whenever they breach their rights. Generally, the awesome development has been experienced in the counties since devolution started.

Devolution may take time before we experience its benefits, but just like a child who needs nurturing, it is our due responsibility as Kenyans, as leaders and as voters to ensure that we nurture devolution and ensure that it succeeds. We can only do that through proper governance, accountability and patience.

Inter County Collaboration-Regional Cooperation And Economic Blocs By Samuel Mutisya

In research; critics of decentralization argue that of all three aspects; *de-concentration, delegation and devolution*; it is the *devolution* of political, fiscal and administrative responsibilities and powers from the central government to intermediate and local governments that is the true measure of decentralization of public service delivery.

Devolution, altered the expectations of the Kenyan population because of the ever increasing demands and transient nature of response to citizen needs that were previously unachievable under the centralized system of government. However, Kenya's devolution did not envision County Governments working in isolation akin to a federal system but rather inter dependence and inter county collaboration. Counties have been working hand in hand on regional blocs to leverage on economies of scale. The focus is on delivering on the 14 functions based on the collective strength of the counties lying within similar economic zones. The need to establish economic blocks is motivated by the fact that no county can survive exclusively and independently of other counties thus requiring the establishment of a mutually benefiting relationship. "While counties are emerging as key units of economic development, they stood to gain greatly by pooling individual resources for strategic initiatives," former Council of Governors Chairman H.E. Isaac Ruto said during the launch of the Lake Region Economic Basin blue print by President Uhuru Kenyatta after officially opening the Second Annual Devolution conference in Tom Mboya Labour College, Kisumu on 21st April 2015.

The following are the upcoming economic blocs currently in place.

1. **Lake Region Economic Basin**

The bloc is made up of Bungoma, Busia, Homa Bay, Kakamega, Kisii, Kisumu, Migori, Nyamira, Siaya,Vihiga, Bomet, Trans Nzoia and Kericho with a total population of **12,074,498**. The Lake Region bloc is expected to act as a one-stop shop for investors seeking opportunities in the region. It identifies seven strategic intervention areas, namely Agriculture, Tourism, Education, Health, ICT, Financial Services and Infrastructure. The bloc has already put in place a blue print to guide actualization of this vision. The blueprint was developed through a consultative process by the county governments as well as members of the public and coordinated by Deloitte East Africa. It also drew from individual counties' integrated development plans. For each of the intervention areas, the blueprint has designated a flagship project to be implemented in the region which include an agricultural commodities exchange, a regional bank, specialist hospitals and educational centers of excellence in each county, creating a Lake region ring road and tourism circuit. According to Kisumu's Governor H.E. Jack Ranguma, the blueprint will enable individual counties that are sometimes too small to leverage economies of scale, to jointly implement massive projects. "Many counties are grappling with insufficient resources for meeting competing needs in the county. This is the reason we in the Lake Basin came together to join forces and pull together," H.E. Ranguma added.

The counties are planning to set up a secretariat to coordinate its implementation.

2. **Jumuiya ya kaunti za Pwani**

Jumuiya Za Kaunti za Pwani is an initiative that will see the six Counties of the Coastal region unite and work with a group of professionals to foster social, economic and political development in the Region. In the Coast region the counties are: Lamu, Kilifi, Kwale, Mombasa, Tana River and Taita Taveta Counties have already formed an economic union.

The total population is **2,675,376**

The collaboration is aimed at solving various challenges facing the region including resuscitating tourism, education and taking advantage of the maritime component.

The bloc has already put in place a website: http://jumuiayapwani.org/ .

The bloc has already signed MOUs with the academic institutions: Pwani University, Technical University of Mombasa, Taita Taveta University and Umma University to help the take charge in research and innovation towards tackling socio economic challenges.

3. North Rift Region Economic Bloc

In the North Rift region, eight counties formed an economic bloc recently, banking on a common market targeting a population of about **4,983,496**.

The plan will be implemented through the new economic bloc which comprises Uasin-Gishu, Baringo, Trans Nzoia, Nandi, West Pokot, Turkana, Samburu and Elgeyo-Marakwet counties.

"We intend to come up with inter-county tariffs, which will also be harmonised to make it easier to do business," said Uasin-Gishu County Governor H.E. Jackson Mandago.

"We want to take advantage of the region's huge potential especially in tourism. This will also promote trade between the citizens of Uganda and Kenya," said the governor.

The governors from the North Rift also seek to find a lasting solution to cattle rustling, especially in Baringo and Turkana counties. The menace has undermined development in the region.

Baringo County Governor H.E. Benjamin Cheboi said although security is a national function, the trading bloc would have a bigger say on the matter.

"This is a noble idea (North Rift unity) because the bigger you are, the more bargaining power you have on issues such as security," Mr Cheboi said.

Uasin Gishu County Government is working with the Kenya Airports Authority and Moi University to expand the Eldoret airport to promote domestic flights which will open up all the eight counties in the region. The counties are seeking to rebrand the region, harmonize policies and inter-county tariffs and hold joint trade missions that would culminate in a joint investment conference in November.

The trading bloc would seek markets for agriculture produce. "Production is not an issue but marketing is. The only way to improve our economy is to expand the markets and utilize advantages such as Eldoret International Airport, where cargo planes come in full but leave empty," said Dr Lagat.

4. **The Mt Kenya, part of Rift Valley and Aberdare counties trade bloc**

The focus is on county governments now to offer their local entrepreneurs wider markets for the products made in the counties.

The counties are Nyeri, Murang'a, Kiambu, Nyandarua, Kirinyaga, Embu, Meru, Tharaka Nithi and Laikipia.

Under the trade arrangement, the regional governments will encourage trade between the member counties by coming up with relevant policies and regulations.

The Council of Governors has already signed a Memorandum of Understanding with Kenya National Chamber of Commerce and Industry (KNCCI).

COUNCIL
OF
GOVERNORS

OUR VALUES

Our core values reflects what is truly important to us as the Council. These values are

- ♦Professional
- ♦Independence
- ♦Equality and Equity
- ♦Cooperation

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To have prosperous and Democratic Counties Delivering services to every Kenyan

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