REPUBLIC OF KENYA

OFFICE OF THE PRESIDENT

OFFICE OF THE DEPUTY PRESIDENT

STATE DEPARTMENT FOR DEVOLUTION

POLICY ON DEVOLVED SYSTEM OF GOVERNANCE

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FOREWORD

Devolution is one of the most transformative changes to Kenya's governance system brought about by the Kenya Constitution, 2010. Article 174 of the Constitution provides that the key objectives of devolution are to promote equity, social and economic development and provide proximate, easily accessible services throughout Kenya.

During the first ten years of implementation of the devolved system of government, a number of successes have been achieved. Key among them is the enactment of devolution laws, operationalization of county government structures, the transfer of functions and allocation of resources to County Governments.
The implementation of the devolved system of government has also experienced a number of challenges and has continued to evolve and face the dynamics of change as it progresses. There have been institutional, intergovernmental and resource related challenges.

The review of this Policy, therefore, seeks to address these emerging issues with a view to improving the implementation of the devolved system of government and to achieve optimal service delivery and its intended goals of deepening and sustaining devolution. The Policy ushers in next phase of consolidating devolution, clarifying and strengthening roles and responsibilities of both the National and County Governments. Now is the time to improve the existing policies to and make devolution work better and to use the experience gained since 2010 to make devolution work more effectively and efficiently for Kenyans.

Let us all support devolution. God Bless Kenya.

H.E. Rigathi Gachagua
Deputy President
State Department of Devolution

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ABBREVIATIONS AND ACRONYMS

AG Attorney General
BPS Budget Policy Statement
CDF Constituencies Development Fund
CG County Government
CIC Commission for the Implementation of the Constitution
CIDPs County Integrated Development Plans
CPSB County Public Service Board
CKRC Constitution of Kenya Review Commission
CoB Controller of Budget
CoE Committee of Experts
COG Council of Governors
CoK Constitution of Kenya, 2010
CPST Centre for Parliamentary Studies and Training
CRA Commission for Revenue Allocation
CSOs Civil Society Organisations
EACC Ethics and Anti-Corruption Commission
FBOs Faith Based Organisations
GDP Gross Domestic Product
IBEC Intergovernmental Budget and Economic Council
ICT Information, Communication and Technology
IEBC Independent Electoral and Boundaries Commission
IFMIS Integrated Financial Management Information Systems
IGRTC Intergovernmental Relations Technical Committee
IGRA Inter-governmental Relations Act
JSC Judicial Service Commission
KBC Kenya Broadcasting Corporation
KNCHR Kenya National Commission of Human Rights
KRA Kenya Revenue Authority
KSG Kenya School of Government
MDAs Ministries, Departments and Agencies
SDD State Department of Devolution
MTP II Medium Term Plan II
NAO National Audit Office
NCBF National Capacity Building Framework
NGEC National Gender and Equality Commission

NGOs Non-Governmental Organisations
NIMES National Integrated Monitoring and Evaluation System
NLC National Land Commission
NPSC National Police Service Commission
NT National Treasury
PSC Parliamentary Select Committee
PSC Parliamentary Service Commission
PSC Public Service Commission
PFM Public Finance Management
PPPs Public Private Partnerships
RRI Rapid Results Initiative
SRC Salaries and Remuneration Commission
SWOT Strengths, Weaknesses, Opportunities and Threats
TA Transition Authority
TDGA Transition to Devolved Government Act

EXECUTIVE SUMMARY

This policy has been developed by The State Department for Devolution to guide on advancing the implementation of the devolved system of government in Kenya. The policy derives its mandate from the Constitution of Kenya 2010 in particular the objectives of devolved system, Sessional Paper on Devolved Government, 2012 and national values and principles of governance.

The policy seeks to review the Devolved System of Government policy 2016 in response to the emerging gaps and weaknesses, and the evolving landscapes derailing the achievement of devolution objectives including optimal service delivery. It is intended to streamline both the national and county governments' policies to the emerging issues and trends in the devolved system of government.

This policy recognizes the existent achievements of the devolution policy 2016, however, it similarly considers the current needs and priorities identified during the review of the implementation of devolution in Kenya that limits the realization of the full potential of the devolved system of government. These issues are categorized into broad thematic areas including; institutional, resources (both human and financial) and inter and intra governmental relations and provides mechanisms to address these challenges.

This policy document is divided into various chapters
Chapter 1 describes the background to the review of the devolution policy and underscores Kenya's experience with decentralization since pre-independence. It outlines the implementation of devolution in Kenya and provides for the rationale of the policy review.

Chapter 2 presents a situational analysis of devolution in Kenya, offering insights into the current framework governing it. It delves into an in-depth review of the legal and policy framework as well as the prevalent challenges, revealing gaps between policy and practice, and highlights the critical areas requiring attention to enhance the effectiveness of governance.

Chapter 3 discusses the policy objectives, strategies, interventions and measures aimed at empowering and harnessing the potential of the devolved sector while contributing to the sustainable social and economic development of the country.

Chapter 4 provides the coordination and implementation framework and identifies the various stakeholders and their roles in the implementation of the policy.

Chapter 5 provides for monitoring and evaluation of the implementation of this policy, the resource mobilization strategies that will be put in place to enable sufficient funding for the policy, the communication, publicity and information sharing with regard to the implementation of the policy will be undertaken provides for the mid-term and end-tern review of the policy.

It seeks to ensure the continued and sustainable execution of initiatives commenced with the introduction of devolved governmental structures. This policy represents a steadfast commitment to addressing the needs and priorities identified during the comprehensive review process, ensuring that devolution remains responsive, efficient, and beneficial to all stakeholders involved

The evolving landscape presents new challenges that demand adaptation of the devolution policy. These include the impacts of climate change, regional economic blocs, digital transformation and demographic shifts.

TABLE OF CONTENTS

1. CHAPTER ONE: BACKGROUND AND INTRODUCTION 9
1.1 Background 9
1.1.1 Historical Context of devolution in Kenya 9
1.1.2 Structure of Kenya's Devolved System 12
1.2 Introduction ....**Error! Bookmark not defined.**
1.2.1 Rationale of the policy 13
1.2.2 Policy Objectives 16
1.2.3 Vision, Mission and Guiding Principles 18
2. CHAPTER TWO: DEVOLUTION IN KENYA 19
2.1 Stages of Implementing Kenyan Devolution 19
2.2 Policy, Legislative and Regulatory Environment 20
2.3 Key Achievements in the first 10 years of the Devolved system. 12
2.3 Areas of concern in implementing Devolution in Kenya 22
2.3.1 Ambiguities in Functions and Powers 23
2.3.2 Challenges relating to county government structures and operations 24
2.3.3 Challenges in Intergovernmental and Intragovernmental relations 25
2.3.4 Challenges on Public Finance Management and Fiscal Relations 28
2.3.5 Gaps in Effective Public Participation in Governance 30
2.3.6 Inadequate and un-coordinated Support to County Governments 32
2.3.7 Inconsistencies in Policy and Regulatory Framework 34
2.3.8 Lack of Clarity on National Government Institutions' Roles .... **Error! Bookmark not defined.**
2.3.9 Challenges in Distribution and Coordination of Development Partners Support 34
2.3.10 ....Challenges relating to the County Public Service 35
2.4 SWOT and PESTEL Analysis ....**Error! Bookmark not defined.**
3. CHAPTER THREE: POLICY OBJECTIVES, STATEMENTS AND INTERVENTIONS 37
3.1 Clarity on the assignment of Functions and Powers 37
3.2 Strengthening County Government Structures 38
3.3 Strengthening intra-governmental and Intergovernmental Relations 39

3.4 Enhancing Public Finance Management and Intergovernmental fiscal relations 41
3.5 Establishing Robust Mechanisms for Public Participation 42
3.6 Effective technical support to County Governments............................... 43
3.7 Strengthening the policy, legal, regulatory framework on devolution 43
3.8 Fostering peer learning and partnerships for devolution matters. 44
3.9 Strengthened and streamlined County Public Service Systems 45
4. CHAPTER FOUR: POLICY COORDINATION AND IMPLEMENTATION ... 46
4.1 Approaches for Implementing the Policy... 46
4.2 Coordination of the Policy Implementation 47
4.2.1 Role of Stakeholders... 47
4.2.2 Role of State Actors... 48
4.2.3 Role of Non-State Actors.. 48
5. CHAPTER FIVE.. 53
5.1 MONITORING AND EVALUATION 53
5.2 RESOURCE MOBILIZATION AND FINANCING 54
5.3 COMMUNICATION, PUBLICITY AND INFORMATION........................ 54
5.4 POLICY REVIEW.. 55
APPENDIX 1: Implementation Matrix 56

1. CHAPTER ONE: BACKGROUND AND INTRODUCTION

1.1 Background

This policy is designed to act as a key framework, outlining strategic interventions crucial for the effective and forward-looking realization and implementation of Kenya's devolution. It builds upon and extends the foundational policy established in 2016, refining its approach to meet contemporary challenges and opportunities.

The primary objective of this updated policy is twofold. It aims to ensure the continued and sustainable execution of initiatives commenced with the introduction of devolved governmental structures. It further seeks to improve and adapt these initiatives to more closely align with the constitutional objectives of a devolved system of government.

This policy represents a steadfast commitment to addressing the needs and priorities identified during the comprehensive review process, ensuring that devolution remains responsive, efficient, and beneficial to all stakeholders involved.

1.1.1 Historical Context of devolution in Kenya

Decentralization in Kenya has undergone systematic development since pre-independence, gaining momentum during the post-independence era and culminating in significant constitutional reforms in recent years.

During the pre-independence period, governance was highly centralized with the colonial government exercising power from the capital, with little autonomy granted to local communities. However, there were early signs of decentralization in the form of indirect rule, with local chiefs given some degree of authority over their communities. This system laid the groundwork for future implementation of decentralization and local governance.

In the run-up to independence, two different positions emerged regarding the form of government. One advocated for a federal system of government while the other called for a unitary system of government. The compromise was the

Majimbo system that created regional governments and guaranteed some powers and resources to the regions.

However, this system was dismantled shortly after independence and replaced by a centralized and unitary system of government. The central government retained extensive powers over decision-making processes, resource allocation, and service delivery. This concentration of power resulted in exclusion, inequitable distribution of resources, imbalanced development and marginalization of certain regions and communities.

In an attempt to address the regional disparities, Kenya experimented with various decentralization strategies in the form of de-concentration, delegation, and privatization. In 1965, the Local Government Act, Cap. 265 was amended as part of the decentralization strategy to strengthen the local authorities by giving them responsibilities for local governance. However, this Act did not guarantee the autonomy of local authorities. The increased demand for local services put the delivery by and performance of Local Authorities under stress.

The government in the 1960s and 1970s adopted the Special Rural Development Program (SRDP) and the Rural Development Fund (RDF) to decentralize resources. This was followed in the 1980s by the establishment of Regional Development Authorities (RDAs). In 1982, District Focus for Rural Development was introduced to decentralize development planning and resource allocation to the district level. However, its impact was limited due to continued centralization of political power.

The decentralization agenda continued with the introduction of the Local Authority Transfer Fund (LATF) in 1998 through which five per cent of the annual income tax revenue was allocated to the local authorities. The objective was to improve and extend service delivery to the citizens, improve financial management and reduce local authority debts. In 2001, the Local Authority Service Delivery Action Plan (LASDAP) was designed to empower local communities to develop capital investment plans to meet their local needs and priorities through a bottom-up consultative approach. In 2003, the Constituency Development Fund (CDF) was introduced as part of fiscal decentralization. Further in 2008, the National

Economic Blueprint,Vision 2030, was developed which among others, emphasized decentralization of decision-making and equitable distribution of resources.

These decentralization initiatives occurred within a limited democratic space occasioned by the 1982 Constitution amendment that introduced Section 2 (A) making Kenya a de jure one party state. As the powers of the Executive expanded and political activity was restricted to the ruling party, the space for public participation in governance shrank and the struggle for constitutional change intensified. The struggle resulted in the repeal of Section 2(A) of the Constitution in 1991 that re-introduced multiparty democracy. The outcome of the multi- party elections of 1992 increased the demand for further legislative reforms resulting in the formation of the Inter-Parties Parliamentary Group (IPPG) on legal reforms.

The IPPG negotiated and recommended legislative reforms, which responded to the demands for minimum reforms before 1997 elections. The Constitution of Kenya Review Act of 1997 provided a framework for constitutional change. Following negotiations between the government and civil society, amendments were made to the Act to incorporate a people driven constitution- making process. In 2001, the Constitution of Kenya Review Commission (CKRC) was formed to steer constitutional reforms. In the period between 2001 and 2010, numerous attempts to enact a new constitution were made, including a failed referendum for a new constitution in 2005.

However the turning point in Kenya's devolution journey came with the promulgation of a new constitution in 2010. The Constitution of Kenya 2010 introduced a comprehensive framework for devolved governance, fundamentally altering the country's political administrative and fiscal structures. Devolution sought to resolve Kenya's historical challenges of exclusion, inequity, maladministration, and poor service delivery. It sought to guarantee Kenya's political and social stability particularly after the events of 2008 when the country almost slid into civil war. The devolved system sought to extend powers of self-government to the people and grant significant powers and resources to the county governments in areas such as healthcare, agriculture, urban planning, and infrastructure development.

Since the implementation of devolution through the new constitution, Kenya has witnessed a gradual but transformative process of transferring functions, resources, and decision-making authority to the county level. Devolution has led to increased citizen participation in local governance, improved access to services, and enhanced accountability through elected county representatives.

The systematic development of decentralization in Kenya has evolved from its early roots in pre-independence indirect rule to the comprehensive devolution framework established by the Constitution of Kenya 2010. This journey reflects a growing recognition of the importance of decentralized governance in addressing historical inequalities, promoting local development, and enhancing democratic participation. The necessity for investing in an effective devolved system cannot be overstated; devolution remains the principal pillar in ensuring Kenya's political, social, and economic stability.

1.1.2 Structure of Kenya's Devolved System

The Constitution of Kenya anchors the legal framework for devolution, providing for a two-tier system of government, the national govt and 47 county governments. The Constitution outlines the various functions and powers of both levels of government, defines the rules for equitably allocating resources to both levels of government and prescribes procedures for intergovernmental relations and resolving of disputes between the two levels of government.

The structure of devolution in Kenya is designed to decentralize power and resources from the national government to county governments while ensuring coordination and cooperation between the two levels of governments. It aims at promoting local development, addressing historical marginalization and enhancing the participation of citizens in decision making processes across the country. It presents a fundamental shift in governance structures and public administration promoting inclusive development, enhanced local autonomy, and strengthened democratic governance at the grassroots level.

Distribution of functions between the two levels of government is delineated in the Fourth Schedule of the Constitution outlining functions performed exclusively under either level of government including performance of concurrent functions.

The county governments are organized administratively with their own executive and legislative arms. Governors are the chief executive officers, while various county departments oversee delivery of services in the devolved and concurrent functions within their respective counties. The elected members of the county assembly are expected to make laws and provide oversight to the executive at the local level.

Fiscal arrangements play a crucial role in the structure of devolution and the Constitution allocates at least 15% of the national revenue to the county governments.

The Constitution recognizes the distinctiveness and interdependence of the National and County governments and therefore mandates them to conduct their mutual relations on the basis of consultation and cooperation. To this end several intergovernmental institutions that support implementation of devolution in Kenya have been set up. These include, The National and County Government Coordinating Summit; Inter Governmental Relations Technical Committee (IGRTC); Council of County Governors (CoG); Intergovernmental Budget and Economic Council (IBEC); Intergovernmental Sector Forums and various independent Commissions overseeing specific aspects of the devolved system.

1.1.3 Rationale of the policy

The Constitution of Kenya, 2010 established a devolved system of governance with the overarching objective of enhancing service delivery, citizen participation, equity, and inclusive development. The Policy on Devolved System of Government (2016) subsequently provided a framework for intergovernmental relations and devolution implementation. In the intervening years, the process of implementing devolution in Kenya has experienced notable achievements in advancing political, administrative and fiscal decentralization, service delivery, and local empowerment. However it has also experienced challenges including; resource adequacy, and delays in exchequer releases, capacity constraints at the county level, intergovernmental relations conflicts, and disparities in development outcomes across different counties. Efforts have been made to address these challenges through enhanced funding and timely disbursement of county funds, capacity building initiatives, legal reforms, and intergovernmental cooperation mechanisms. Continuous review, evaluation and monitoring processes are essential for assessing the impact of devolution on governance, service delivery, and socio-economic development.

The valuable experience gained through this period, highlighting challenges, gaps, and opportunities necessitates a comprehensive review of the 2016 Policy

Key Factors Driving the Review:

(a) **Evolution of Roles and Responsibilities:** The incomplete processes of transfer of exclusive functions and unbundling of concurrent functions coupled with practical operational realities have led to blurred lines and overlapping functions between national and county administrations. This necessitates a commitment by both levels of government to respect functional integrity. It also requires clear delineation of roles and responsibilities to optimize efficiency and effectiveness. It demands a more effective intergovernmental relations framework that facilitates the intergovernmental consultation and coordination and the management of intergovernmental conflicts and ensures optimal functional performance by both levels of government.

(b) **Revenue allocation:** There have been persistent complaints by county governments that the revenue allocated to them, while meeting the constitutional threshold of a minimum 15% national raised revenue remain inadequate to meet their constitutional and statutory obligations.

(c) **Financial Resource Management:** Persistent delays in the disbursement of county funds from the National Treasury impede effective planning and timely execution of critical projects at the county level. Streamlined financial mechanisms and robust resource allocation frameworks are required.

(d) **Public Financial Management:** Weaknesses in public financial management practices at both national and county levels, including issues such as pending bills, constrain efficient utilization of scarce public resources. Strengthening financial management systems and promoting fiscal discipline are crucial.

(e) **Emerging Issues:** The evolving landscape presents new challenges that demand adaptation of the devolution policy. These include the impacts of climate change, regional economic blocs, digital transformation, and demographic shifts.

(f) **Strengthening Oversight and Accountability:** Mechanisms for robust oversight, accountability, civic engagement, and inclusivity need to be strengthened to ensure the achievement of desired outcomes and uphold the principles of good governance.

(g) **Legal and Best Practice Updates:** Changes in legislation, court rulings on devolution matters, and the emergence of new global best practices necessitate an ongoing re-evaluation of the existing policy framework to maintain its effectiveness and legitimacy.

This review recognizes the dynamic nature of Kenya's devolution journey and acknowledges the complexities inherent in the system. It aims to provide a definitive guide for all stakeholders involved in the devolution process, ensuring clarity and consistency in implementation. The review focuses on streamlining the operational dynamics of the devolved system to fulfill constitutional mandates more effectively. It will target specific issues and present targeted policy objectives tailored to address the nuances and challenges within the devolution framework.

The policy emphasizes the critical role of accountability in the devolution process. Robust monitoring and evaluation mechanisms, including periodic reporting and mid-term reviews, will be established to ensure transparent and efficient implementation and address any potential issues promptly. The review of the National Devolution Policy represents a pivotal opportunity to optimize Kenya's decentralized governance system. By addressing the identified challenges and incorporating best practices, we can strengthen the devolution process and achieve its intended outcomes, contributing to a more equitable, prosperous and inclusive Kenya for all.

1.1.4 Policy Objectives

In alignment with Article 174, the objectives that define implementation of this policy are as follows:

1. **Deepen Democratic Governance:**

    1.1 Implement robust mechanisms for transparent and accountable exercise of power.

    1.2 Strengthen public participation mechanisms through citizen civic awareness, citizen engagement forums, consultations, and accessible feedback channels.

    1.3 Enhance oversight and accountability across all levels of government through empowered oversight institutions, effective independent audits, strengthened legislative oversight, and empowered citizen oversight mechanisms.

2. **Cultivate National Unity and Inclusivity:**

    2.1 Celebrate and leverage the strengths of Kenya's diverse communities to build a unified and cohesive nation, fostering a shared sense of national identity.

    2.2 Promote social harmony by actively combating discrimination against all peoples and people groups and fostering mutual respect and understanding.

    2.3 Ensure equitable access to resources and opportunities for all citizens, regardless of age, region, ethnicity, gender, or socio-economic background.

3. **Empower Communities and Local Development:**

    3.1 Devolve decision-making and resources to communities, enabling them to pursue self-governance and holistic development aligned with their needs and aspirations.

    3.2 Strengthen local governance institutions through capacity building, leadership training and enhanced financial autonomy.

3.3 Foster sustainable social and economic development at the community level by promoting local entrepreneurship, skills development and infrastructure investment.

4. Safeguard Minority Rights and Interests:

4.1 Actively protect the rights and address the specific needs of marginalized groups and minorities through targeted interventions, affirmative action policies and legal protections.

4.2 Ensure their voices are heard and actively participate in decision-making processes at all levels through inclusive forums and consultative mechanisms.

4.3 Combat discrimination in all its forms and promote social justice for all, upholding the principles of equality and non-discrimination enshrined in the Constitution.

5. Drive Equitable and Sustainable Development:

5.1 Ensure consistent and accessible delivery of essential services across all regions, prioritizing underserved areas and vulnerable populations.

5.2 Prioritize balanced social and economic development throughout Kenya, addressing regional disparities and promoting inclusive economic growth.

5.3 Promote efficient and transparent utilization of resources, prioritizing sustainable investments that maximize public benefit and minimize environmental impact.

5.4. Ensure equitable development and service delivery within counties.

6. Optimize Decentralization and Service Delivery:

6.1 Streamline the transfer of functions and services to county governments, ensuring clarity of roles and responsibilities.

6.2 Enhance the capacity and effectiveness of county administrations through capacity building, resource allocation, and performance-based incentives.

6.3 Bridge the gap between government and citizens by fostering participatory governance, improving communication channels, and promoting responsive service delivery.

6.4. Promote the principle of subsidiarity by transferring functions to the level of government best able to perform them.

7. Strengthen Checks and Balances:

7.3 Enhance institutional accountability and transparency across all levels by establishing robust reporting mechanisms, public access to information, and effective anti-corruption measures

7.1 Fortify the separation of powers within government to prevent abuse of authority and ensure each arm functions effectively and independently.

7.2 Improve intergovernmental collaboration and coordination through established frameworks and regular dialogue, promoting cooperation and joint problem-solving.

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1.1.5 Vision, Mission and Guiding Principles

Vision statement: A united Kenya, empowered by a devolved system that nurtures inclusive governance, equitable development, and boundless opportunity for all.
Mission statement: To provide clear guidance, drive robust implementation, and consolidate Kenya's devolved governance for the benefit of all citizens.

Guiding principles: The implementation of this policy shall be guided by the following values and principles:

- National values and principles of governance set out under Article 10 of the Constitution.

- The principles of devolved government that are provided for under Article 175 of the Constitution.

2. CHAPTER TWO: DEVOLUTION IN KENYA

This chapter presents a situational analysis of devolution in Kenya, offering insights into the current framework governing it. It reviews the legal and policy framework as well as the prevalent challenges, revealing gaps between policy and practice, and highlights the critical areas requiring attention to enhance the effectiveness of governance.

2.1Phases of Implementing Kenyan Devolution

The implementation of devolution in Kenya over the past ten years can be categorized into three phases defined by the electoral cycles.

The first phases, from August 2010, included the two phases of managed transition to the devolved system of government, as well as the initial term of the elective office holders which ended in 2017. While the Constitution of Kenya 2010 had provided the basic legal framework for devolution, outlining the powers and functions of county governments, as well as the mechanisms for intergovernmental relations between the two levels of government, the transition to devolved governance required significant changes in administrative structures, financial management systems, and policy and legal frameworks. This first phase saw the establishment and operationalization of the two levels of government, and especially, the development of laws, policies and institutions facilitating operationalization of County Governments and other institutions of devolved governance. A Task Force on Devolved Government was established on 22nd of October 2010 to advise on the implementation of the devolution process and recommend policy and legal and institutional frameworks for devolving power, resources and responsibilities to the people of Kenya for effective local development. Critical statutes enacted in this first phase included the Transition to Devolved Government Act (TDGA), The County Governments (Public Finance Management Transition) Act, the Public Finance Management Act (PFM), the County Government Act (CGA), and the Intergovernmental Relations Act (IGRA). The Transition Authority, established under the TDGA, oversaw the preparation of the physical infrastructure to facilitate the transition to the devolved system and the transfer of power, functions, resources, and decision-making authority from the national government to the county governments. The inaugural Ministry of Devolution in 2013, the Summit and the COG established under the IGRA guided the setting up of the intergovernmental institutional architecture to facilitate a coordinated implementation of functions during this early implementation phase.

The second phase, ending in 2022, was characterized by building capacities of the County Governments and other institutions within the devolved space to effectively undertake their functions. The Policy on Devolved System of Government was developed and implemented from 2016. The policy identified various issues, ranging from functional division, finances and resources, intergovernmental relations, further decentralization, among others. Several interventions identified by that policy have been undertaken with the aim of enhancing devolution, including strengthening of intergovernmental relations, review of policy and legal frameworks as well as capacity building and technical assistance to counties.

The next phase of implementation of devolution will build on the lessons learnt and the successes achieved to realize the objectives of devolution and to address emerging issues and challenges. During this phase, interventions will be aimed at enhancing socio, political and economic development and increased cooperation and collaboration between the national and county governments for improving livelihoods and the betterment of citizens' wellbeing.

2.2 Policy, Legislative and Regulatory Environment

The Constitution of Kenya, 2010 is the main enabling legal framework for the establishment of the basic structures in the devolved system of government. It sets out the objectives of the devolved system, creates the principal political and administrative structures of the system and distributes functions and powers between the two levels of government.

The Sessional Paper on Devolved System of Government, 2012 proposed implementation mechanisms for the devolved system of government as envisaged in the Constitution of Kenya, 2010. It identified the broad basic policy framework for legislation and administrative actions that have guided the country in development of laws and policies to operationalize the devolved system of government. This Policy has guided both levels of government in implementation of devolution to achieve optimal service delivery.

Consequently, various legal and policy frameworks have been put in place to operationalize these constitutional provisions on devolution, as follows.

The County Governments Act, 2012 operationalizes Chapter Eleven of the Constitution by providing for powers, functions and responsibilities of County Governments. It provides for powers, functions and responsibilities of various institutions including the County Assembly, County Executive, County Assembly Service Board and County Public Service Board among others.

The Intergovernmental Relations Act No. 2 of 2012 (IGRA 2012), gives effect to Articles 6(2), 187 and 189 of the Constitution. This Act establishes a framework for consultation and cooperation between the national and county governments and amongst county governments. It further provides mechanisms for the transfer of function and the resolution of intergovernmental disputes. The Act further established intergovernmental relations institutions including the National and County Government Coordination Summit, the Council of County Governors, the Intergovernmental Relations Technical Committee and mandated the establishment of Sector forums and joint committees.

The Public Finance Management Act, 2012 provides for the effective management of public finances by the national and county governments. It provides a legal framework for the oversight responsibility of Parliament and County Assemblies and the different responsibilities of government entities and other bodies in financial matters. The Act also establishes the Intergovernmental Budget and Economic Council to promote intergovernmental cooperation and consultation as well as the County Budget and Economic Forums to facilitate public participation on financial matters.

The Urban Areas and Cities Act, 2011 operationalizes Article 184 of the constitution by providing a legal framework for the governance and management of urban areas and cities. The Act establishes the criteria for classification of areas as urban areas and cities and recognizes the need for public participation in the management of urban areas.

The County Assemblies Service Act, 2017 provides for the public service that facilitates the County Assemblies to deliver on their mandates and also establishes the County Assembly Fund to promote the principles of separation of powers.

Other legislation concerning the devolved system of government include the Assumption of Office of Governors Act, 2019, County Outdoor Advertising Control Act, 2020, Early Childhood Education Act, 2021, Health Act, 2017, Water Act 2016, Office of County Attorney, 2020, Petition to County Assemblies Act, 2020, Physical and Land Use Planning Act, 2019 among others.

Administratively, **the Executive Order No. 1 of 2023** establishes the State Department for Devolution to coordinate intergovernmental Relations among the two levels. The Department is the main national government agency responsible for development and implementation of policies and legislations on devolution to among others coordinate provision of support to county governments as well as promotion of cordial relations between the two levels of government.

Situational analysis?

2.3 Key Achievements in the first 10 years of the devolved system.

In the first ten years of the devolved system the legal and institutional structures to implement devolution have been established. The country has witnessed more equitable development as resources are more equitably shared. Significant advances in economic and social development and improved service delivery have also been noted. Areas of notable developments include: -

2.3.1 Establishment of the legal, institutional, and administrative structures for the implementation of the devolved system and the delivery of devolved services in all 47 Counties.

2.3.2 Enhancement of service delivery in devolved functions. Sectors in which service delivery has improved include health where significant expansion in the level of and access to health services have resulted in notable improvements in health including improved maternal health care and decreased infant mortality. Investments have also been notable in service delivery infrastructure for Early Childhood Education and Agriculture.

2.3.3 Investments in urban and rural development including improved rural access roads, rural water and sanitation development, enhanced urban center development with notable expansions in markets and urban infrastructure including solid waste management, parking, and street lighting.

2.3.4 Enhanced equity in resource allocation to all of Kenya's regions thus ensuring equitable development across the country.

2.3.5 Increased citizen participation, more responsive and accountable government at the local level and increasing mechanisms of horizontal accountability and citizen oversight.

2.4 Areas of concern in implementing Devolution in Kenya

This part delves into the hurdles that have prejudiced the successful realization of the devolution mandate in Kenya, broadly classified into the following thematic areas.

2.4.1 Incomplete transfer of Functions and Powers

The transition to a devolved system in Kenya has revealed pronounced challenges, particularly in fully transferring exclusive functions and delineating concurrent functions and powers across government tiers. The incomplete transfer of exclusive functions and ambiguities in concurrent functions have led to disruptions in service delivery due to functional overlaps, unclear role assignments, intergovernmental jurisdictional conflicts and inter-agency conflicts. The specific challenges are:-

(a) Overlaps in Concurrent Function

The shared or concurrent functions provided in Article 186(2) present a challenge due to unclear functional boundaries leading to uncertainties about which government tier should handle particular responsibilities. This leads to duplicated roles, misaligned budgeting, and inefficiencies underscoring a need for clear functional analysis, unbundling, assignment, and appropriate funding.

(c) Issues in Function Unbundling, Costing and Transfers

A pivotal, yet incomplete element of the devolution process is the full unbundling of all functions and the accurate costing thereof. The negative impact of this aspect is most acute for concurrent functions where unbundling of most functions has not occurred. This has led to unfair allocation of resources prejudicing the principle that resources should be appropriately allocated to the level of government performing the functions. In regard to residual functions, the lack of a process of unbundling prejudices the capacity of both levels of government to agree on possible intergovernmental transfers of components of the functions on the basis of subsidiarity.

(a) Inadequate Mechanisms for Mutual Agreements for intergovernmental transfer of functions.

There exists no structured mechanisms that facilitate agreements between the two levels of governmental for the transfer of exclusive functions on the basis of the subsidiarity principle. In many instances either level of government has engaged in the performance of functions assigned to the other level without pursuing intergovernmental agreements as anticipated by the constitution.

2.4.2 Challenges relating to county executive structures and operations

The county executive structures, through which county functions are performed, face significant challenges. These range from the management of rapidly urbanizing areas, the establishment of additional decentralized units within counties and the efficiency of county executives. The specific challenges are:-

(a) Urban Area Governance and Management Challenges

Urban areas in Kenya, experiencing accelerated growth, are grappling with infrastructural deficits and sprawling informal settlements. In many counties, the governance of these areas is marred by inadequate institutional capacities, and unclear roles between county executives and the urban area boards. Furthermore, there's a lack of structured funding mechanisms, autonomy in financial management, and improved public participation to enhance self-government, and improve service delivery and accountability. Some urban areas also transcend beyond county boundaries further complicating their management.

(d) Obstacles in Further Decentralization of county units

Despite constitutional provisions, the process of decentralizing governance to lower levels within the counties is impeded by resource constraints, inadequate infrastructure, and a lack of clear delegation systems. The village level, intended as the nucleus of local governance, often operates without the necessary structures or systems, leaving a gap in effective local governance.

(e) National Government's Decentralization Shortcomings

The national government's failure to effectively decentralize services undermines the devolution process, evident in areas like national registration services which directly impact other essential services like health insurance. Additionally, the absence of harmonious operations between national and county governments within decentralized units is conspicuous.

(c) Inefficiencies within County Executives Operations

County executives, mirroring executives at the national government level, display evident shortcomings in human resource management, project execution processes and public finance management. These inadequacies are reflected in adverse audit reports for both levels of government issued by the Auditor General and other oversight institutions.

(f) Governance Challenges in County Corporations

While counties are empowered to establish their own entities, many counties lack the legal and regulatory framework for establishing and managing county corporations. There is also a lack effective standards guiding the operation of these institutions, leading to inefficiencies and potential mismanagement.

2.4.3 Challenges relating to County Assembly structures and operations

The constitution recognizes the critical role of County Assemblies in representation of the people, legislation, and oversight over the executive. Challenges have been identified in financial autonomy, and the capacity of county assemblies to perform their functions adequately. Specific challenges include:-

(a) Financial autonomy of County Assemblies

County Assemblies face hurdles in accessing allocated operational funds which are managed by the County Executive. This prejudices the ability of the County Assemblies to plan for their operations and also incapacitates their ability to perform their oversight function over the Executive.

(b) Legislative Challenges in County Assemblies

County Assemblies confront several challenges including ineffective legislative development, unfunded legislative proposals, limited stakeholder engagement, and inadequate and non-harmonized documentation of county legislation. Cohesion between assemblies and county executives is often lacking, leading to dysfunction in implementation of legislation and institutional conflicts.

(b) Oversight by County Assemblies

The capacity of County Assemblies to perform oversight over the executives is complicated by several factors including the political party structures where the County Executive and the Legislative majority emanate from the same political party. Oversight is also constrained by capacity challenges and the lack of financial autonomy where the assembly is dependent on the executive for its financial needs.

The oversight functions of the Senate and County Assemblies, crucial for accountability in devolved units, is also complicated by role duplication between County Assemblies and the Senate resulting in inefficiencies. Streamlining these functions could enhance the oversight process, ensuring more transparent and accountable county governance.

© Representation of the people

The role of County Assemblies in representation of the people has been insufficiently performed. This is notable from the low investment civic education which the effective performance of this role demands and the lack of consistent and structured public participation that incorporates vibrant feedback mechanisms between County Assemblies and the citizens.

2.4.4 Challenges in Intergovernmental and Intragovernmental relations

The intermingling of functions and powers within the devolved system necessitate dynamic interactions among various government entities, both at the national and county levels. This intricate web of intergovernmental and intragovernmental relations, though essential for harmonious governance, is fraught with the following challenges.

(a) Coordination Hurdles

At the heart of the devolution framework, consultation and coordination remains a significant hurdle. The fragmented relations between the National Government and County governments have hindered synergy between these two levels of government and the effective operations of the existing intergovernmental organs. The absence of robust legal frameworks for establishing, financing, and overseeing joint authorities, regional economic blocs and committees exacerbates these coordination challenges.

(b) Ineffective Dispute Resolution Mechanisms

Although the Intergovernmental Relations Act (IGRA) aims to streamline relations and resolve disputes, its mechanisms often fall short. Persistent disagreements and unresolved conflicts threaten the unity and smooth functioning of both levels of government and institutions thereunder.

(d) Underfunded Sectoral Forums

The sectoral forums, as envisioned under the County Governments Act, and the Intergovernmental Relations Act have a crucial role in bolstering intergovernmental relations at sectoral level. However, they are beset by challenges including lack of legal authority, haphazard meetings and inadequate funding, rendering their decisions less impactful.

(e) Challenges in resolving critical intergovernmental agendas

The effectiveness of the Summit, designed as the apex intergovernmental decision-making organ, is weakened by the lack of resolution of critical intergovernmental agenda items and lack of timely implementations of its resolutions.

(a) Inadequate Mechanisms for Implementing IBEC Resolutions

While the Public Finance Management Act establishes the Intergovernmental Budget and Economic Council (IBEC) as an intergovernmental forum for addressing issues relating to intergovernmental fiscal relations, resolutions adopted have no legal or binding force. As a result, despite intergovernmental financing issues affecting counties such as the issue of persistent delays in the disbursement of the equitable shares having been discussed at the forum little has been done in practice to resolve the matter.

(b) Inadequate Alignment between National and County Plans

There is no legal and policy framework to give effect to Article 220 (2) and the Fourth Schedule of the Constitution, which assigns the function of national economic policy and planning and coordination of planning of the county governments to the national government. Currently county governments' plans are not aligned to national plans and therefore undermining the promotion of social and economic development and service delivery.

2.4.5 Challenges in Revenue Allocation and Own Source Revenue collection

The adequacy of resources to finance county functions and operations has been a perennial challenge since the commencement of devolution. Insufficient funding to Counties either through the equitable share or from Own Source Revenue prejudices the full attainment of the objectives of devolution and is a threat to the country's political, social, and economic development.

The outlined are some of the key challenges.

(c) Legislative Stalemates on Revenue Allocation

The annual Division of Revenue Allocation (DORA) process sometimes witnesses prolonged disagreements between the National Assembly and the Senate. This often results in delayed approval of the Division of Revenue Bill, causing planning and service delivery disruptions at the county level.

(d)Delayed Disbursement of County Revenue Shares

Contrary to the Constitutional mandate under Article 219, counties sometimes experience significant lags in the receipt of their equitable shares from national revenue. This directly hampers county governments' planning and service delivery capacities.

(e)Over-dependence on Equitable Shares

Many counties lack sufficient sources for own source revenue or lack capacity or political will for own source revenue generation. They thus demonstrate a strong reliance on their equitable shares, leading to lessened horizontal accountability and restricted fiscal autonomy.

(f) Challenges with politically sensitive Own-Source Revenue (OSR)

The constitution assigns revenue sources to counties which are politically sensitive. These include market levies and property rates. The property rates could for instance significantly bolster counties' own-source revenue, but there exists tpolitical sensitivities around them, combined with a lack of updated valuation rolls and property registers, inhibit their potential.

(g)Revenue Leakages and Under-reporting

The Controller of Budget (COB) has, over time, highlighted instances of revenue leakages, spending at source without proper reporting, and utilization of manual revenue collection systems. These discrepancies compromise the financial integrity of the counties revenue collection processes.

(h)Inequity in expenditure on national government programs

While the division of revenue between national and county governments is based on clear rules and procedures, the national government distribution of resources and development programs is largely discretionary. There have been concerns that some counties, particularly those with fewer resources and revenue-raising capacity, are disadvantaged. Disparities in infrastructure development between counties remain a concern, some countries struggle to provide basic infrastructure and services, while others progress more rapidly.

(i) Underutilized Equalization Fund

The Constitution establishes the Equalization Fund to address disparities in marginalized areas. Despite its potential, the fund has seen sporadic allocations and inconsistent policy implementations, including initial non-allocation and under-implementation of policies meant to guide the fund's use.

2.4.6 Gaps in Effective Public Participation in Governance

Public participation is an essential element in government systems. In Kenya, the constitution and other laws place public participation at the Centre of governance and imposes obligations on both national and county governments to facilitate public participation to enhance efficiency, accountability, and inclusivity in the devolved system of government.

Despite the enormous benefits to be derived from public participation, the experience of the past ten years of devolution in Kenya discloses that this requirement has not been fully operationalized by both levels of government. Notable challenges include:

(a) Low Awareness of Civic Responsibilities

There is low or no governmental funding of civic awareness and hence low awareness of civic responsibilities by the citizens on roles of elected leaders which has undermined effective civic participation in governance. The provision of civic education by state and non-state actors still remains a challenge. Public awareness plays an essential role in promoting transparency, accountability, and good governance, which are pillars of democratic governance.

(b) Inadequate Standards in Public Participation

Lack public participation diminishes the ability of individuals or groups to have a meaningful say in decisions that affect them. The lack of defined thresholds for public participation may result in insufficient and tokenistic participation and lead to biased or one-sided decision-making. This may result in negative outcomes particularly for marginalized communities or those that are already at a disadvantage.

(c) Weak Coordination of Public Participation

Weak coordination of public participation across county governments and amongst stakeholders can result in inequitable participation amongst citizens and negatively impact the effectiveness of decision-making by all members of the public impacted by governmental decisions.

(a) Public Participation and Accountability

The constitutional requirement for public participation in county-level decision-making serves to provide a platform aimed at securing accountability. However, despite all these systems, reports from the controller of budget as well as external audit reports from the OAG disclose counties continue to exhibit fiscal indiscipline. The repetitive nature of these findings underscores the need for county assemblies to enhance executive accountability.

(d) Inadequacies in Access to Information

Inadequacies in access to information undermines citizens' ability to participate fully in public decision-making processes. Access to information is a fundamental right that enables citizens to make informed decisions, hold public officials accountable, and participate effectively in governance processes.

(e) Inadequate Capacity Development and Structures for Civic Engagement

Inadequate capacity development and effective structures for civic engagement impede citizens' ability to participate effectively in decision-making processes. Capacity development refers to the skills, knowledge, and resources that individuals or groups obtain or possess in order to engage effectively in decision-making, while effective structures for civic engagement refer to the mechanism that allows citizens to engage in decision-making processes efficiently.

(f) Weak Learning and Feedback Mechanisms

Weak learning and feedback mechanisms undermines the ability of citizens and their representatives to learn from each other, monitor progress, and assess the impact of policy decisions. This results in citizen apathy in participation in decision making processes.

(g) Inadequate Inclusivity

Inadequate inclusivity in public participation limits the effectiveness of public engagement. Inclusivity refers to the extent to which all members of society, irrespective of their social status or identity, can participate in decision-making processes.

(h) Inadequate Funding for Public Participation

Public participation requires funding to ensure that all members of the community can participate fully in decision-making processes. When county governments allocate insufficient funds, public engagement efforts may be limited in scope, impeding efforts to reach out to the wider community. This can result in a process that only involves those who have the resources to attend, thus excluding marginalized groups from public participation.

2.4.7 Inadequate and un-coordinated Support to County Governments

The establishment of the national and county governments institutions through the devolved system required some new capabilities to enable them to perform their functions. The need for these new capabilities is informed by the unique nature of the devolved system as well as high expectations of the citizens for the governments at either level to respond to their ever changing needs for equitable services. The constitution mandates the national government to facilitate the building of capacity for county governments to enable them better perform their roles and improve their engagements with the citizenry.

County governments have experienced the following challenges on the issue of support and capacity enhancement:

(a) Inadequate Training and Technical Assistance

County governments often have insufficient capacity to effectively develop and implement policies and programs. Training and technical assistance affect the ability to manage devolved functions.

(b) Inadequate Mechanisms for Performance Assessment

Inadequate objective mechanisms to assess the performance of county governments that would provide reliable disaggregated information to guide in determination of support needs. Currently, county governments are offered uniform support that does not take into account their unique needs leading to misapplication of resources in ineffective capacity building initiatives.

(c) Uncoordinated Support to County Governments

Good practice require a coordinated and demand driven approach in provision of support to county governments. However, different national government institutions offer support on an ad-hoc basis to county governments resulting in supply driven and fragmented approaches that do not meet the intended purpose. Inadequate coordination has also contributed to duplication of efforts in provision of support leading to wastage of public resources. The supply driven approach has resulted in provision of support in areas that the county governments already have capacity or are not consultative to ensure alignment to their strategic needs.

(d) Undefined Criteria for National Government Interventions in County Governments

The current legal framework permits the National Government to intervene in situations where a County Government fails to deliver services or implement the recommended financial management system. However, the criteria for determining a County Government's inability to perform its functions or its failure to operate within the financial guidelines are not clearly defined. This lack of objective criteria could lead to unjustified interventions, potentially violating constitutional principles related to devolution. Additionally, the ambiguous threshold may prevent necessary interventions in cases where there are valid reasons for doing so, ultimately resulting in a denial of essential public services to citizens. This calls for a more clearly defined and objective set of criteria to guide such interventions, ensuring they are justified, timely, and in line with constitutional mandates.

2.4.8 Inconsistencies in Policy and Regulatory Framework

There are notable inconsistencies and conflicts in laws and policies at various levels of government that have hindered the effective functioning of devolution. This includes inadequate alignment between national laws and the constitution and between national and county legislation that has led to violations of the constitution and conflicts between the two levels of governments and agencies thereunder. This has arisen due to the delays in review of laws and policy to accord with the constitution or the enactment of laws that offend constitutional provisions particularly on assignment of functions and powers.

Some of the policies and laws establish regional authorities, parastatals and national government corporations that undertake functions assigned to the county governments. This results in further duplication of functions and wasteful expenditures.

These challenges require a comprehensive review of all existing policies and laws to align them with the Constitution and the devolved system. This is necessary to avoid clawing back on devolution and the functions and powers of county governments through policies and legislation.

2.4.9 Challenges in Coordination of Development Partners Support

The Government works with Development Partners and donors to achieve various development goals. The roles played by the Development Partners include capacity building, lobbying and advocacy, resource mobilization, project planning, financing, technical assistance, and budget support to the National and County Governments. However, the following challenges impede the effectiveness of this collaboration:

(a) Uneven Distribution of Development Partner Support

Development partner interventions often concentrate on specific regions, neglecting others with equally pressing needs. This uneven distribution of resources leads to significant development disparities across counties, hindering overall progress.

(b) Duplication of Development Partner Support

Multiple development partners may undertake similar activities in the same geographical area, leading to inefficient allocation of resources and neglecting other areas in need. This redundancy dilutes the impact of development initiatives and impedes optimal utilization of resources.

(c) Inadequate Coordination Mechanisms

The lack of clear and structured mechanisms for coordinating development partner support with county governments creates communication gaps and misalignment of priorities. This can result in interventions that do not address the specific needs of communities and hinder effective implementation. Further, the existing system for monitoring and evaluating development partner support is inadequate to ensure that desired outcomes are achieved and resources are utilized effectively. This lack of robust monitoring and evaluation hinders accountability and reduces transparency.

The absence of robust accountability mechanisms increases the risk of misappropriation of funds and undermines trust in development partnerships. This can lead to unmet development goals and negatively impact the lives of intended beneficiaries.

2.4.10 Challenges relating to the County Public Service

The Constitution requires county governments to establish their public service within a framework of uniform norms and standards and are responsible for the recruitment, promotion, and discipline of county public servants through their respective County Public Service Boards (CPSB).

The CPSBs however undertake their responsibilities albeit in a constrained environment leading to inefficiencies in service delivery. The main challenges include;

(a) Absence of Uniform Norms and Standards Framework

In the absence of a framework of uniform norms and standards across all counties regarding recruitment, terms and conditions of employment and career progression it has been difficult for the counties to implement performance management, which has adversely affected service delivery to the citizenry. The determination of optimal establishments, competency gaps, and supersession due to the lack of career guidelines has also contributed to unmotivated workforce, especially from the professional and unskilled cadre.

(b) Political interference of County Public Service Boards (CPSBs)

Independence in decision-making on recruitment, promotion, and constant political interference affects its mandate and efficiency. Several legal battles have also been reported in various county governments that have led to unnecessary expenditure by various organs of government that goes against prudent management and use of resources.

© Non- compliance with the County Government Act on inclusivity and diversity in recruitment of county staff.

While the County Government Act requires that at least 30% of the County personnel should emanate from marginalized groups within the Counties, yearly reports by government agencies indicate a persistent non-compliance with this requirement.

(d) Insufficient Frameworks on Inter and Intra-governmental Transfer of Services

In the absence of a framework or guidelines to guide on transfer of services on either inter or intragovernmental, the management of skilled workers by the County Public Service in Kenya has been a complex and challenging process. Skilled and professional workers have also faced the challenge of optimal establishments, competency gaps, and supersession due to the lack of career guidelines that has contributed to an unmotivated workforce.

(e) Lack of Standardized Organizational Structures

Lack of standardized organizational structures and job descriptions results in skill mismatch to address staff career progression. The same situation also applies to city/municipal/urban areas therefore guidance is required for county governments to fast- track development of organizational structures. While the National Public Service Commission has made necessary support to the counties towards this end, multiple challenges still exist hence the need to have harmonized structures. It has also been established that a lack of organizational structures has resulted in huge wage bills, unnecessary casual engagements, ghost workers, and uncontrolled staff recruitment in the counties.

(f) Unharmonized Pension Schemes

The transfer of functions resulted in officers from the national government being transferred to the county government with their pension scheme. The deferred local authority officers also served on a separate pension scheme while the newly recruited county government staff were recruited on another scheme. This has led to compliance challenges to the pension scheme's legal provision and further complications in the harmonization of retirement benefits. There have also been challenges to the remission of pension statutory deductions to the pension schemes and delays in pension payment caused by a lack of funds and pending bills.

The implementation and management of the County Public Service in Kenya has been a complex and challenging process. These challenges have influenced the performance of the county workers and consequently the performance of the counties since the issues adversely have a causal effect.

3. CHAPTER THREE: POLICY OBJECTIVES, STATEMENTS AND INTERVENTIONS

This chapter presents the policy objectives, strategies, interventions and measures aimed at empowering and harnessing the potential of the devolution sector while contributing to the sustainable social and economic development of the country. The key priority areas for policy intervention are as discussed.

3.1Clarity on the assignment of Functions and Powers

***Policy Objective*:** To provide clarity in the assignment of exclusive, concurrent and residual functions. to national and county governments.

Policy Strategies

The National Government in consultation with county governments will facilitate the establishment of a mechanism for the effective transfer of all remaining functions in accordance with the Constitution. In order to achieve the policy objective, the following interventions shall be implemented:

(a) The establishment of a joint intergovernmental mechanism to audit and review the process of analysis, unbundling costing and transfer of functions to inform appropriate funding for all transferred functions.

(b) The development of a framework for the completion of the transfer of assets and liabilities of former local authorities.

(b) The development of a framework for unbundling, transfer and improved coordination of concurrent functions and sharing of resources in relation to the functions.

(c) The stablishment of legislative framework for the full unbundling costing and transfer of all exclusive functions as envisaged under Article 187 of the Constitution and the Transition to Devolved Government's Act, 2012.

(d) The comprehensive restructuring of parastatals, Regional Development Authorities and other institutions at the national level to accord with the devolved system of government .

€ The review of existing laws relating to devolved functions to ensure their compliance with the devolved system of government .

3.2 Strengthening County Government Executives, Institutions and Structures

***Policy Objective*:** To provide for the strengthening of the County Executive and structures thereunder to ensure their effective governance and optimal performance of their functions.

Policy Strategies

The National Government in consultation with County governments will put in place measures:-

(a) To strengthen County Executives performance through the training and capacity building of county public service in human resource management, project execution, monitoring and evaluation and other identified areas.

(b) To facilitate the establishment and strengthening of urban areas and cities as provided in the Urban Areas and Cities Act including ensuring their financial autonomy.
(c) To facilitate the full decentralization of county governments up to village level and the setting up of appropriate governance structures.
(d) To facilitate the decentralization of service delivery by the national government to the lowest level and to align such decentralization structures with those of county governments.
(e) To improve the governance and operations of county corporations

3.3 Strengthening County Assemblies and their Structures

Policy Objective: To provide for the strengthening of County Assembly institutions and structures to ensure their effective governance and optimal performance of their functions.

Policy Strategies

The National Government in consultation with County governments will put in place measures:-

(f) To strengthen County Assemblies' legislative performance through the training and mentorship of County Assembly Departmental Committees and county legislative affairs technical officers.
(g) To strengthen the County Assembly members oversight capacity through training and capacity building on audit, monitoring, and evaluation.
(h) To strengthen the capacity of County Assembly members in facilitating public engagement in decision making and participation in the Assembly's processes and functions.
(i) Provide a mechanism of clarifying and setting threshold for the respective oversight roles of the Senate and the County Assembly with regards to the County governments.

3.4 Strengthening intra-governmental and Intergovernmental Relations

Policy Objective: To strengthen intergovernmental and intra-governmental relations.

Policy Strategies

The Government in consultation with County governments will provide structures for horizontal and vertical intergovernmental relations mechanisms between the two levels of government, for the better performance of their respective and shared functions. In order to achieve the policy objective, the Government will put in place the following measures:

(a) Ensure the mainstreaming of intergovernmental relations at all levels of government.

(b) Undertake comprehensive capacity building for organs at national and county level to improve the understanding of the concept of cooperative devolved government and intergovernmental relations, including a focus on the role of the Executive, Constitutional Commissions, and a Bicameral Parliament as constitutional institutions with significant intergovernmental responsibilities.

(c) Facilitate the establishment and operationalization of structures for intergovernmental relations at all levels of government.

(d) Facilitate the establishment of a framework for adequate funding for all intergovernmental organs including the Council of Governors and its secretariat.

(e) Facilitate the establishment of a comprehensive legal and regulatory framework to establish, operationalize and strengthen sectoral intergovernmental institutions .

(f) Establish a framework for intra-county consultations between National government departments operating at counties and the host County governments.

(g) Establish, operationalise and ensure effectiveness of an intergovernmental dispute resolution mechanism that accords with Article 189(3) and (4) of the Constitution.

(h) Review the conduct of business mechanisms for the Summit to clarify agenda setting, implementation of decisions and feedback on resolutions.

(i) Review the membership, structure and conduct of business mechanisms for the Intergovernmental Budget and Economic Council (IBEC) to ensure implementation of decisions and feedback on resolutions.

(a) Establish a framework that facilitates consultations between national and county governments when developing national priorities.

(b) Facilitate the completion of the process of transferring assets and liabilities of former local authorities.
(j) Develop mechanisms for establishment, funding, oversight and effective operationalisation of joint authorities and committees in accordance with Article 189(2) of the Constitution.
(k) Develop a policy, legislative and regulatory framework for the establishment and operationalization of regional economic blocks.
(l) Development and operationalization of an effective policy for borrowing by County governments.
(m) Development and operationalization of an effective policy for Public Private Partnerships that recognizes the unique circumstances of County governments.
(n) Development of a framework for the strengthening of the Senate as an intergovernmental institution supporting the devolved system of government.
(o) Develop and comprehensive communication strategy to support intergovernmental relations.

3.5 Enhancing Revenue Allocation and Own Source Revenue collection.

Policy Objective: To provide sufficient resources to enable county governments undertake their functions.

Policy Strategies

The National Government in consultation with County governments and applicable stakeholders will ensure equitable revenue allocation to County governments and facilitate the enhancement of own source revenue generation to enable County governments effectively perform their functions. In order to achieve the policy objective, the following interventions will be undertaken;

(c) Ensuring the full application of Articles 202 and 203 of the constitution for the allocation of adequate revenue to county governments to enable thme perform their functions.
(d) Implementing specific administrative measures to facilitate timely and regular disbursement of county revenues to County governments as envisaged by Article 219 of the Constitution .
(e) Establishing a structured system for the management of conditional grants.

(f) Undertaking a comprehensive mapping of potential revenue streams at the county level to project revenue potential accurately.
(g) Establishing mechanisms for generation and collection of own source revenue including incentivizing enhanced revenue collection.
(h) Strengthening mechanisms for reviewing the performance of institutions responsible for oversight roles and implementing audit report recommendations.
(i) Implementing specific administrative and legislative measures to facilitate rapid disbursement and effective appropriation of the Equalization Fund and fulfilling the constitutional mandate of promoting regional equity.

3.6 Establishing Robust Mechanisms for Civic Education and Public Participation

Policy Objective: To provide a robust civic education and public participation framework in governance that is inclusive, transparent and responsive to the needs and expectations of citizens, enhancing the efficiency and effectiveness of decision-making processes and promoting accountability and trust in government.

Policy Strategies

The National Government in consultation with County governments and applicable stakeholders will establish a robust framework in governance that supports civic education and public participation through clear guidelines and mechanisms, resource and support provision and feedback mechanisms.In order to achieve this policy objective, the following interventions will be put in place:

(a) Development of a model curriculum for civic education providers.
(b) Establishment of a sustainable funding mechanism for civic education.
(c) Establishment of an institutional framework at national and county levels for purposes of facilitating and implementing civic education programmes.
(d) Design and implementation of a framework for monitoring and evaluating the effectiveness of civic education and public participation programmes.
(e) Provision of a mechanism for National and county governments to partner with other non-state actors in public participation.
(f) Development and implementation of a policy on the production and dissemination of citizen friendly information to improve quality of public participation.

3.7 Effective technical support to County Governments

Policy Objective: To provide effective and sustainable support to County Governments to enable them to perform their functions.

Policy Strategies

The National Government in consultation with County governments will put in place measures to objectively determine, plan and budget for, and coordinate support needs of County Governments. In order to meet the Policy objective, the following measures will be undertaken:

(a) Determination through research, the capacity needs of each county government in order to develop a comprehensive capacity building plan for the county governments.

(b) Development of a framework for coordination of support provision by various institutions to County Governments.

(c) Development of a framework for assessment of capacity gaps of each respective County Government.

(d) Coordination and alignment of resources for development projects at the county level, while at the same time ensuring that technology and skills transfer underpin the implementation of all government projects at the county government level.

(e) Creation of research and data repositories for information-sharing and knowledge management across the national and county government's programmes and projects.

(f) Development of a framework for self-assessment within and peer review amongst county governments.

3.8 Strengthening the policy, legal, regulatory framework on devolution

Policy Objective: To put in place policies, laws, regulations and institutional structures that are aligned to the Constitution and the devolved system of government.

Policy Strategies

The National Government in consultation with County governments and applicable stakeholders will ensure that the devolved system of government is underpinned by a policy, legal, regulatory and institutional framework aligned with the 2010 Constitution and the devolved system. In order to achieve the policy objective, the following measures will be undertaken:

(a) Review of existing policies, laws, regulations and institutional frameworks impacting the devolved system of government for consistency with constitutional provisions and devolution goals.
(b) Establishment of coordination and cooperation mechanisms between national and county governments in the development of policies, laws and regulations.
(c) Investment in capacity-building initiatives for all the relevant national and county government institutions involved in policy and legislative development and reform.

3.9 Fostering Coordination of Development Partners Support.

Policy Objective: To provide a framework for coordinating development partner support for County governments.

Policy Strategies

The National in consultation with county governments and applicable stakeholders will develop a framework to coordinate, guide and strengthen development partner support, providing for equitable support while respecting development partner autonomy, and develop accountability and oversight mechanisms. In order to achieve the Policy objectives, the following measures shall be undertaken:

(a) Development of a framework for coordination of development partner support in the devolution sector.
(b) Development of framework for distribution and prioritization of development projects by development partners that balances equity, development partner autonomy and community goals and needs.
(c) Ensuring that the national government plays a facilitative role in individual county engagements with donors.
(d) Development of a mechanism to promote and strengthen partnerships and peer learning locally, regionally and internationally.

3.10 Strengthened and streamlined County Public Service Systems

Policy Objective: To provide a policy that establishes norms and standards for the effective management and development of County public service.

Policy Strategies

The National government in consultation with county governments will provide a legal framework for the regulation, governance and management of human resources by both the national and county governments to address the challenges currently experienced by public servants working at both levels of government. In order to address the policy objective, the following measures will be undertaken:

a. Development of norms and standards for county public service in line with Article 235 of the Constitution.
b. Strengthening of performance management systems.
c. Development of a policy and legislative mechanism for transfers of staff and skills between and among the two levels of governments.
d. Development of an administrative structure to provide for cross-county sharing of critical or technical skilled personnel.
e. Development a framework to guide the administration of county pensions that is aligned to the pension system at the national government level.

4. CHAPTER FOUR: POLICY COORDINATION AND IMPLEMENTATION

4.1Approaches for Implementing the Policy

The coordination and implementation of the Policy objectives, priority areas, programmes, projects and activities by all stakeholders shall be based on the following fundamental approaches as guiding philosophy:

Coordinated Approach

The Policy interventions during the implementation of this Policy cut across various sectors and will be undertaken simultaneously by multiple partners and stakeholders. The Policy shall ensure an adequately coordinated approach to enable proper targeting, prioritization, pooling of resources and monitoring of impact of the various interventions. All stakeholders will therefore align their activities with the coordination guidelines to be developed.

Evidence Based and knowledge Sharing Approach

This Policy holds that all stakeholders will, in designing and implementing devolution programmes, projects and activities, endeavor to act based on evidence-based strategies. In addition, this Policy holds that stakeholders will work to establish a baseline data bank on all areas of focus to set a foundation for measuring impact.

Orientation to county governments (Co-creation)

This policy emphasizes that the county governments will be placed at the core of all efforts undertaken in advancement of devolution programmes and projects and shall therefore be the drivers of interventions. This Policy therefore adopts the principle of co-implementation and anticipates that the county governments will be co-creators of solutions and actively engaged as "solvers".

Sustainable Development

This Policy upholds the approach of continuous investment in the development of improved services and opportunities for a sustainable long term impact and development.

Stakeholder Collaborations

All relevant state actors will promote and facilitate collaborations among stakeholders with common interests and goals that may arise during the policy's implementation.

Monitoring and Evaluation

Implement monitoring and evaluation mechanisms in accordance with this policy.

4.2 Coordination of the Policy Implementation

The State Department responsible for Devolution shall oversee the overall coordination of the Policy implementation and ensure requisite resource mobilization, coordinate, and involve stakeholders and coordinate monitoring, evaluation, and impact assessment. Effective coordination of the Policy is a priority not only to the National Government and County Governments, but also to non-state actors who are committed to supporting the devolved system of governance to enhance the true potential of county governments while promoting the active social, economic and political contribution at National, County, and to other decentralized structures.

The Policy implementation process shall include development of an implementation plan detailing strategy, activities, target group, performance indicators, responsibility holders, timelines and resource requirements (both financial and non-financial). The implementation will be undertaken through a collaborative framework involving relevant government MDAs, County Governments and all other relevant non-state actors. The implementation plan shall be reviewed and set targets assessed on an annual basis.

4.2.1 Role of Stakeholders

There are many actors involved within the devolved structure of governance in the country. Improved coordination requires that the responsibilities, mandate and roles of each actor and stakeholder be established and monitored by the State Department. Enhanced coordination will be made possible through a defined coordination structure. The structure will include:

National level: Activities will be coordinated by the State Department of Devolution.

Sectoral level: Various ministries, departments, and agencies (MDA's) will ensure the mainstreaming and coordination of devolution priority areas in their respective sectors.

County level: County Governments shall mainstream the devolution policy priority areas in their plans and programmes.

4.2.2 Role of State Actors

The State Department will ensure the full implementation of this Policy. In addition, it will provide the overall national coordination of sectoral and non-state actors initiatives geared towards the implementation of activities identified in the Policy. Further, the Department with support from stakeholders will undertake civic education on the Policy, research, monitoring, evaluation and annual reporting on Status of Devolution in the Country.

The State Department will also ensure periodic review of this Policy to ensure its effective implementation. Other state actors, including Ministries/Departments, state agencies, and semi-autonomous state agencies shall mainstream devolution priority issues into their policies, strategies and activities.

4.2.3 Role of Non-State Actors

Non-state actors include a wide array of entities across the formal and informal sectors and constitute an important category of employers and enablers. Non-state actors shall be involved in advocacy, resource mobilization, training, sensitization and monitoring. They shall also ensure equitable development by employing strategies that ensure their input is relevant and witnessed in all county governments.

Among the non-state actors in the formal sector are the private companies, development partners, civil society and charitable foundations. Civil society includes Non-Government Organizations (NGO's), faith-based organizations, Community-Based Organizations (CBO's), the print and electronic media, among others.

The Policy provides for the role of local communities in key government policies aimed at social and economic empowerment and development. The bottom-up approach that enables the communities to identify interventions shall be adopted. The table below presents a detailed account of specific roles of the various actors involved in devolution in the country.

Stakeholder	Roles in Policy Implementation
State Actors	
Executive – Public Service	
At the National level, this includes the entire public service	(i) Ensure the full implementation of the Constitution (2010), with emphasis on continuing civic education for optimal people participation and mainstreaming of devolution priority matters in development agenda; (ii) Provide visionary leadership for all development interventions, e.g. *Kenya Vision 2030* and its successive Medium Term Plans while prioritising devolution priority matters; (iii) Ensure implementation of the Policy, starting with its entrenchment and mainstreaming into all national policies, strategies and interventions; (iv) In collaboration with MDAs and other public and private partners undertake capacity development programs for the players in the devolved structure of governance; (v) Develop appropriate monitoring and evaluation frameworks for the Policy possibly linked to the Planning Ministry's National Integrated Monitoring and Evaluation framework; (vi) ; and (vii) Implement the findings of the monitoring

	and evaluation work through cross-sectoral and multiagency approach.
At the County level	(i) Develop policies, strategies and enact county assembly legislation that reflects the policy strategies; (ii) Develop an integrated county development plan reflecting the priority needs of the county; (iii) Integrate policy implementation priorities in all county departments, their plans and strategies
County Assemblies	
Intergovernmental bodies	
Private Sector	
Development Partners: Bilateral and Multilateral	
Development partners support public investment spending across all Sectors through financing projects or technical assistance.	(i) Support the country to implement the Policy; (ii) Assist in monitoring and evaluation of performance regarding policy interventions
Civil Society	(i) Continue its work of mobilization and sensitisation on the Policy
Community Based Organizations	(i) Espouse the national values and principles of transformative leadership contained in the Constitution; (ii) Assist in mobilising citizens to support devolution programmes and projects initiatives; and (iii) Champion a revamped system of community leaders that also promotes representation across various age groups.
State Agencies	

Statutory bodies, SAGAs, constitutional commissions, and independent offices	Statutory bodies, SAGAs, constitutional commissions, and independent offices shall: (i) Ensure equitable employment across all diversities such as gender, age, ethnicity and persons with special needs; (ii) Promote mainstreaming of devolution priority interventions in the institutional strategies; (iii) In collaboration with other public and private partners undertake capacity development programs; and (iv) Promote research on devolution issues to support implementation of the Policy with evidence.
Legislature	(i) Oversee the full and timely implementation of the Constitution and ultimately provisions targeting the devolution sector; (ii) Ensuring the Executive at National and County levels espouses equity as a basis for national development; and (iii) Ensure the timely passage of any bills arising from the adoption of the Policy.
Public	Participate in policy formulation and implementation processes and to provide feedback on areas of policy improvement.
Media	(i) To disseminate information on the devolution policy priorities and activities (ii) Medium for awareness creation
Academia	(i) Provide complimentary data and information on devolution; (ii) Support capacity building initiatives in the sector

This policy shall be implemented by both National and County Governments, and Non-State actors. The State Department which has the oversight role in the implementation, will map and collate a database on Stakeholders supporting and facilitating devolution initiatives, activities and programs across the Country.

Further, the Department together with the other intergovernmental bodies and relevant sector partners will institutionalize roles of each stakeholder in the Country and formulate a calendar of events every year. The Stakeholders will account for and report on their specific activities on a regular basis to the State Department.

5. CHAPTER FIVE

5.1MONITORING AND EVALUATION

The Kenya Devolution Policy M&E framework will be guided by the National Monitoring and Evaluation Policy and other relevant policies.

The National Monitoring and Evaluation Policy provides for the roles and responsibilities of all state and non-state institutions in the implementation of public projects and programmes by enhancing accountability, efficiency, effectiveness, transparency, and utility.

For the State Department to effectively monitor and evaluate the status of implementation of the policy, the following interventions will be put in place:

(a) Build human and institutional capacity within the relevant institutions to effectively undertake monitoring and evaluation.
(b) Establish a sector-wide monitoring and evaluation framework and plans to ensure policy interventions are achieved.
(c) Undertake monitoring through continuous data and information collection during the policy implementation period.

The data and information will inform the quarterly and annual reports which will be amalgamated at the Departmental level and presented to the Principal Secretary of the State Department for Planning to inform policy decisions.

Data and information will be presented in annual reports which are made accessible to the stakeholders. Reports relating to sectoral and sub-sectoral issues including those relating to lessons learnt will also aid in the monitoring and evaluation aspects of this policy.

The assessment of the policy will be undertaken annually to gauge the implementation progress. The impact evaluation of the policy will be undertaken after every three years to analyze the extent to which the objectives have been achieved.

5.2 RESOURCE MOBILIZATION AND FINANCING

Resources and support required for implementation of this policy shall be mobilized from both public and non-state actors with the twin objective of strengthening their support and commitment as identified by the Policy.

The interventions and initiatives identified in this Policy shall be supported through mobilization of monetary and non-monetary resources from National Government, County Governments, private sector, development partners, Non-Government Organizations (NGOs), communities and individuals, among other stakeholders.

All funding sources and strategies will be required to balance the short- and long-term goals. A sector wide approach shall be adopted at national and county levels in planning, budgeting, programming, implementing, monitoring and evaluating initiatives targeting the devolved sector.

The Policy implementation mechanism will be operationalized through annual action plans detailing policy priorities, key actions, indicators, timelines, responsibility, and estimated budgets. The Government shall allocate adequate resources in the annual budget to devolution programmes and activities as contained in the Medium-Term Plan IV.

5.3 COMMUNICATION, PUBLICITY AND INFORMATION

The State Department for Devolution shall develop mechanisms using formal and informal channels, print and electronic media in developing a robust and multi-faceted communication strategy for the Policy and the programme activities to all relevant stakeholders. This will also include capacity building of intergovernmental organizations on the Policy and the roles in implementation, monitoring and evaluation and impact assessment.

The State Department shall facilitate the communication of results on the strategies through quarterly reports and biannual sector reviews.

The State Department shall develop an Annual Presidential Report on The Status of Devolution in the Country.

5.4 POLICY REVIEW

This policy shall be reviewed at the mid-term level and at the end-term period to in order to address emerging issues and allow for adoption of new startegies, where the proposed ones do not sufficiently address the issues.

APPENDIX 1: Implementation Matrix

Policy Objectives	**Strategies**	**Indicators**	**actors**
To provide clarity in the assignment of functions to national and county governments, including the management of concurrency, exclusivity and residual functions	Establishment of a joint intergovernmental mechanism to audit and review the process of analysis, unbundling and transfer of functions to inform appropriate funding for all transferred functions.	Joint intergovernmental mechanism committee. Report	SDD IGRTC NT CG KLRC AG COG CRA
	Development of a framework for the operationalization of concurrent functions and sharing of resources in relation to the functions.	Developed Framework	SDD IGRTC COG CRA KLRC AG
	Establishment of legislative framework for the transfer of functions as envisaged under Article 187 of the Constitution and the Transition to Devolved Government's Act, 2012 (lapsed).	IGRA & PFM Regulations on transfer of functions developed.	SDD IGRTC COG KLRC AG
To provide for the full implementation and effective governance of county institutions and governance	The Government will put in place measures for developing legislative performance capacity of county assemblies.	No. of capacity building programs developed.	SDD KLRC CG CAF Parliamentary Service Commission.

Policy Objectives	Strategies	Indicators	actors
structures and processes.			SOCAT
	Develop and initiate measures to facilitate and ensure the effectiveness of levels below counties.	Guidelines for further decentralization for both levels developed	SDD CG COG PSC
	Ensure the implementation of the Capacity Assessment and Rationalization of Public Service (CARPS) Report.	CARPS implemented	State Department for Public Service. CPSB PSC CASB
	Provide a mechanism of clarifying and setting threshold for the oversight roles of the Senate and the 47 County Assemblies with regards to the County governments.	Guidelines developed	Senate CG CAF Parliamentary Service Commission CASB
To strengthen intergovernmental and intra-governmental relations at the national, county, sub-county and other levels of decentralization.	Provide structures for intergovernmental cooperation at different levels.	Establish IGR units at the county level.	SDD,IGRTC ,CG,COG
	Establish, operationalize and ensure effectiveness of an intergovernmental dispute resolution mechanism that accords with Article 189(3) and (4) of the Constitution.	Framework developed	IGRTC,SDD ,CG,COG ,IGRTC,MDAs
	Constitute and	Guidelines	SDD,IGRTC

Policy Objectives	Strategies	Indicators	actors
	operationalize forums for formal consultation and cooperation between the national and county governments, between county governments and within each county government.	developed	,COG,CG
	Provide clarity on the role of the specific national government Ministry or Department in the management of Devolution and coordination in intergovernmental relations.	Amend CGA & IGRA to specify the roles of the department responsible for intergovernmental relations.	SDD
	Review the structure of the Summit to enhance the participation of both levels of government and its effectiveness as the apex intergovernmental body.	Develop regulations for the IGRA	IGRTC,SDD ,CG,COG,NT
	Develop mechanisms for establishment, funding, oversight and effective operationalization of joint authorities and committees in accordance with Article 189(2) of the Constitution	Develop regulations for IGRA	SDD,CG,IGRTC,NT,MDAs

Policy Objectives	**Strategies**	**Indicators**	**actors**
To provide a conducive policy, legislative and regulatory framework for Public Finance Management and intergovernmental fiscal relations.	Development of a legal framework that fosters consultation between county governments and Senators in order to strengthen the legal framework and enhancing consultation mechanisms in order to support their active participation in shared rule at the national level.	Framework developed	SDD,CG,IGRTC,NT,KLRC
	Review existing statutory intergovernmental relations (IGR) structures with a view to making them more robust to support better financial management and support in particular in relation to bolstering county own source revenue capacities.	Reviewed IGR Structures	SDD,IGRTC,CG,COG,NT
	Establish a framework that facilitates consultations between national and county governments when developing national priorities	Develop IGR Framework for Economic Planning	SDD,IGRTC,COG,CG,NT,CRA,COB
	(Amend the Public Finance Management Act (PFMA) to enhance Intergovernmental Fiscal Relations.	PFMA amendment bill.	SDD,NT,IGRTC,COG, NT,CRA COB,OAG
	Establish mechanisms for reviewing the performance of institutions responsible for oversight roles and	Guidelines Developed.	SDD,OAG, CG,NT,COB,CRA OAG

Policy Objectives	Strategies	Indicators	actors
	implementing audit report recommendations.		
	Put in place a legislative framework for the disbursement and budget execution for the Equalization Fund and fast-track the suspension of the timeline to recover lost time between 2013 and 2021 when the regulations for the Equalization Fund came into force.(Article 204)	Framework developed	SDD,NT,CG,COG,IGRTC,KLRC
To provide a robust public participation framework in governance.	Establish a sustainable funding mechanism for civic education and public participation	% change in budgetary allocation.	SDD, National Treasury, CG, County Treasury, Non State actors
	Develop and implement an accreditation system for civic education providers.	An Accreditation System Established.	SDD,IGRTC,CG,MDAs
	Provide a mechanism for National and county governments to partner with other non-state actors in public participation.	Guidelines developed	CG, NG, MDAs, CBOs, CSOS, Media,SDD
To provide effective and sustainable support to	Determine through research, the capacity needs of each county government in order to develop a comprehensive	No. of surveys conducted	SDD,CG, NG, MDAs, IGRTC, AG

Policy Objectives	Strategies	Indicators	actors
County Governments to enable them to perform their functions.	capacity building plan for the county governments	No. of Counties assessed.	
	Develop a framework for performance assessment of County Governments.	Performance Assessment Framework developed	SDD, CG, IGRTC, PSC, MDAs
To put in place policies, laws, regulations and institutional structures that are aligned to the Constitution and the devolved system of government.	Evaluate with a view to amending, existing policies, laws, regulations and institutional frameworks for consistency with constitutional provisions and devolution goals.	Policy and Legal Audit conducted and implemented. Multiagency Committee Established	SDD, KLRC ,IGRTC ,CG, AG, MDAs ,COG
To establish a framework for peer learning and partnership to realize best practices and support.	Develop a standard framework to guide donor support, coordinating, regulating and ensuring equity and accountability.	Framework developed	SDD,KLRC,IGRTC,AG
To provide a policy that establishes norms and standards for the effective management and	Develop norms and standards for County Public Service in line with Article 235.	Norms and Standards Developed	SDD, PSC, Senate, County Assemblies, COG, IGRTC, CPSBs, KLRC, AG

Policy Objectives	Strategies	Indicators	actors
development of County public service.			
	Develop a policy and legislative mechanism for transfers of staff and skills between and among the two levels of governments.	Policy and Legislation Developed	SDD,AG,CPSBs, PSC, COG, Senate ,CG,CASB,KLRC
	Develop a framework to guide the administration of pension at the county level.	Framework Developed	SDD, National Treasury, PSC, SDPS, COG,CPSBs Senate, KLRC,AG