

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

SECOND ASSEMBLY – FOURTH SESSION

NBI CA. PLC. 2020 / (014)

12th March, 2020

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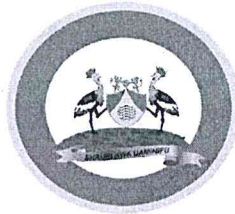
Pursuant to Standing Order 191 (6), I beg to lay the following Paper on the Table of the Assembly, today, Thursday, 12th March, 2020.

THE REPORT OF THE AD HOC COMMITTEE ON THE TRANSFER OF FUNCTIONS FROM THE COUNTY GOVERNMENT TO THE NATIONAL GOVERNMENT ON THE CONSIDERATION OF THE DEED OF THE TRANSFER OF FUNCTIONS

(Chairperson, Ad Hoc Committee on the Transfer of functions from the County Government to the National Government)

Copies to:
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The Clerk
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The Press

COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY
(FOURTH SESSION)

Paper laid
by Hon. Charles
Thuo
(Majority lead)
SCACC
12/03/2020

Approved
12/03/2020
Gm

REPORT

OF

THE AD-HOC COMMITTEE ON TRANSFER OF FUNCTIONS FROM THE
COUNTY GOVERNMENT TO THE NATIONAL GOVERNMENT

ON

CONSIDERATION OF THE DEED OF TRANSFER OF FUNCTIONS

Clerk's Chambers
City Hall Buildings
NAIROBI

MARCH, 2020

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ABBREVIATIONS

ASAL	-	Arid and Semi-Arid Lands
CRA	-	Commission on Revenue Allocation
FY	-	Financial Year
KRA	-	Kenya Revenue Authority
MCA	-	Member of County Assembly
NG	-	National Government

1.0. PREFACE

1.1. Establishment and the mandate of the *Ad-hoc* Committee

On 27th February 2020 the Speaker informed the County Assembly that she had received a Message from the Attorney General of the Republic of Kenya transmitting a Deed of Transfer of Functions from the County Government to the National Government. In particular, implementation of the following functions had been transferred to the National Government:-

- i) County Health Services;
- ii) County Transport Services;
- iii) County Planning and Development Services; and
- iv) County Public Works, Utilities and Ancillary services.

The Speaker further directed that an *Ad-hoc* Committee be established to oversee the transition and implementation of the agreement between the National Government and the County Government. Consequently, on 3rd March, 2020, the House established an *Ad-hoc* Committee on Transfer of Functions from the County Government to the National Government with the following mandates:-

- i) *Study the Deed of Transfer of Functions and un-pack its contents and implications;*
- ii) *The role of the County Assembly as far as implementation of the Deed is concerned;*
- iii) *The impact of the transfer of functions on the Budget making process for the FY 2020/2021; and*
- iv) *Propose areas that require legislation either by the Senate or the County Assembly*

As per the directives issued by the Speaker, the Committee was given a period of fourteen (14) days from the date of its establishment to deliver on its mandate.

1.2. Membership

The Committee comprises of the following Members:-

- 1. Hon. Beatrice Elachi, CBS – Speaker & Chairperson.**
- 2. Hon. Charles Thuo, MCA – Majority Leader (Vice-Chairperson)**

3. Hon. David N. Mberia, MCA – Minority Leader
4. Hon. John Kamangu, MCA – Deputy Speaker
5. Hon. June Juliet Ndegwa, MCA – Majority Party Whip
6. Hon. Peter A. Imwatok, MCA – Minority Whip
7. Hon. Francis Otieno Ngesa, MCA
8. Hon. Robert N. Mbatia, MCA
9. Hon. Emily Oduor, MCA
10. Hon. James Chege Mwaura, MCA
11. Hon. Kabiro Mbugua, MCA
12. Hon. Peter Wanyoike, MCA
13. Hon. Paul Kiguathi Kados, MCA
14. Hon. Moses Ogeto Nyangeresi, MCA
15. Hon. Michael Ogada Okumu, MCA
16. Hon. Mellab Lumalah Atemah, MCA
17. Hon. Millicent Mugadi, MCA.
18. Hon. Geoffrey Majiwa, MCA.

1.3. Committee Secretariat

The Committee Secretariat Comprises of the following Officers:-

1. Mr. Sammy Kiplimo – Principal Clerk Assistant (Committee Services)
2. Mr. Shadrack Makokha – Senior Clerk Assistant (Committee Services)
3. Mr. Adam Kibwana – Senior Clerk Assistant (Legislative & Procedure)
4. Ms. Pauline Akuku – Principal Public and Media Relations Officer
5. Mr. Paul Kimani – Ag. Principal Finance Officer
6. Mr. Erick Njoga – Clerk Assistant
7. Mr. Abel Nyagwa - Senior Hansard Officer
8. Mr. Erick Otieno – Fiscal Analyst/Budget Office.
9. Mr. Martin Mugendi – Legal Counsel.

1.4. Executive Summary

On 25th February, 2020, the nation was informed, through a Press Statement by the Office of the Spokesperson, State House, Nairobi, that in an agreement signed

at State House on 25th February, 2020, by Governor Gideon Mike Mbuvi Kioko Sonko and Devolution Cabinet Secretary Eugene Wamalwa, with the concurrence of His Excellency the President, Uhuru Kenyatta, certain functions of Nairobi City County Government had been transferred to the National Government pursuant to Article 187 of the Constitution of Kenya. The Press Statement further indicated that the National Government would take over the following functions of the Nairobi City County Government: -

- a) *County health services;*
- b) *County transport services;*
- c) *County public works, utilities and ancillary services; and*
- d) *County Government planning and development.*

The Press Statement stated that the transfer was intended to ensure that Nairobi City County residents received efficient services and that it came as a breakthrough in the running of County services that had ground to a halt. Consequently, **Gazette Notice No. 1609** dated 25th February, 2020 was published seeking to give effect to the transfer of functions of the Nairobi City County Government to the National Government. A grace period of **twenty one (21)** days before commencement of the agreement was provided. Further, the said Deed was communicated to the County Assembly on 27th February, 2020 and referred to the Ad-hoc Committee on Transfer of Functions for consideration and reporting within fourteen (14) days.

In its consideration of the Deed of Transfer of Functions, the Committee aimed to unravel the following issues:-

- i) Whether the transfer of functions was in accordance with the law particularly Article 187 of the Constitution and Part III of the Intergovernmental Relations Act, 2012;
- ii) The consequences of the transfer of functions to the County Government in terms of benefits or otherwise; and

- iii) What would be the implementation framework of the transferred functions and the role of the County Assembly with respect to its legislative and oversight mandate.

In order to address the aforementioned issues, the Committee examined in-depth the Deed of Transfer of functions, the applicable legislations, views of the public, submissions of the County Executive and experts. The Committee observed as follows:-

- i) There is a consensus that the County Government of Nairobi City, particularly the Executive arm, has failed to deliver on its mandate specifically on the transferred functions and as such, the National Governments intervention is a welcomed move.
- ii) That despite transfer of the four functions of the County Government to the National Government, the County Assembly need to continue performing its constitutional role of oversight, representation and legislation with respect to the transferred functions.
- iii) That budgeting of the transferred functions should be in tandem with the provisions of the Public Finance Management Act, 2012. In particular, projects already proposed in the planning documents approved by the County Assembly should be implemented.
- iv) Any decision made on behalf of the County Government, the County Assembly must be involved through its formal structures. In the case of preparation and execution of the present Deed of Transfer of Functions, the County Assembly was not involved.

In view of the above, the Committee recommended that the Nairobi City County Assembly adopts the Deed of Transfer of Functions from the Nairobi City County Government to the National Government with the following amendments: -

- i) The County Assembly continues to perform its constitutional roles of oversight and legislation with respect to the transferred functions. A mechanism to effect this position to be developed by the multi-agency developing a policy/framework for penalization of the Deed;

- ii) The County Assembly shall be approving, Memorandum of Understandings, Service Level Agreements, and Joint Committees contemplated in the Deed of Transfer of Functions; and
- iii) The approved County Integrated Development Plan 2018-22 and the Annual Development Plans shall be the baseline document for the implementation of the transferred functions.


1.5. Committee Meetings

The Committee held two (2) meetings and a retreat where Members reviewed the Deed of Transfer of functions and the applicable legislations. The Committee also used the meetings to review views from the public on the matter and from the County Executive Committee (CEC) Members whose functions had been transferred. Minutes of the Committee's sittings are annexed to this report.

1.6. Acknowledgement

The Committee wishes to take this opportunity to thank Offices of the Speaker and the Office of the Ag. Clerk for supporting the Committee's work. I also I wish to register my appreciation to fellow Honorable Members of the Committee for their commitment to deliver on the task despite the short period granted. The Committee also thanks Members of the Public who presented their views and the Office of the Solicitor General and consultants who digested the Deed for Members and all the applicable legislations. Finally, the Committee appreciates the support of the Secretariat for their immense support in preparing this report.

It is my pleasant duty, to table this report of the *Ad-hoc* Committee on Transfer of Functions on consideration of the Deed of Transfer of Functions from the County Government of Nairobi City to the National Government.

Signed 

Hon. Beatrice Elachi, MCA
(Chairperson)

Ad-hoc Committee on Transfer of Functions

Dated this12th.....day of.....03.....2020

2.0. INTRODUCTION

2.1. The Legal Framework on Transfer of Functions

The Constitution at Article 186 as read together with the Fourth Schedule sets out the respective functions and powers of the national and county governments. Article 187 of the Constitution contemplates a situation where a function or power at one level may be transferred to a government at the other level by agreement between the governments. The Article provides thus;-

(1) A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if-

- (a) The function or power would be more effectively performed or exercised by the receiving government; and*
- (b) The transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised*

(2) If a function or power is transferred from a government at one level to a government at the other level—

- a) Arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and*
- b) Constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.*

The afore-stated Article of the Constitution and Part III of the Intergovernmental Relations Act, 2012 provide in detail, on amongst others, the conditions to be met before such transfer, the criteria for such transfer and the procedure that is to be followed in the processing of a transfer. In the process of transfer of functions, public participation is critical. Indeed, public participation is a key pillar and recurring theme in the Constitution. Article 10(2) of the Constitution provides for various values and principles of governance that speak to the matter of public participation, including participation of the people, transparency and accountability. Section 29 of the Intergovernmental Relations Act, 2012, specifically provides for public participation in the process of transfer of functions or powers from one level of government to another.

2.2. Signing of the Deed of Transfer of Functions

On 25th February, 2020, the Governor of Nairobi City County, H.E. Gideon Mike Mbuvi Kioko Sonko and Devolution Cabinet Secretary Eugene Wamalwa, with the concurrence of His Excellency the President, Uhuru Kenyatta, signed an agreement where certain functions of Nairobi City County Government had been transferred to the National Government pursuant to Article 187 of the Constitution of Kenya. The agreement stipulates that the National Government would take over implementation of the following functions of the Nairobi City County Government: -

- i) County health services;*
- ii) County transport services;*
- iii) County public works, utilities and ancillary services; and*
- iv) County Government planning and development.*

2.3. Committal of the Deed of Transfer of Functions

On 27th February 2020 the Speaker informed the County Assembly that she had received a Message from the Attorney General of the Republic of Kenya transmitting a Deed of Transfer of Functions from the County Government to the National Government. The Speaker subsequently committed the Deed to an Ad-hoc Committee for consideration and reporting. The report of the Committee is to guide the House on the action it would take. In particular, the Committee was directed to undertake the following:-

- i) Study the Deed of Transfer of Functions and un-pack its contents and implications;*
- ii) The role of the County Assembly as far as implementation of the Deed is concerned;*
- iii) The impact of the transfer of functions on the Budget making process for the FY 2020/2021; and*
- iv) Propose areas that require legislation either by the Senate or the County Assembly.*

3.0. ANALYSIS OF THE DEED OF TRANSFER OF FUNCTIONS

3.1. Outline of the Deed of Transfer of Functions

Article 1: Contains the definition of terms used in the Deed

Article 2: Outlines the principal objectives of the Deed of Transfer being to give effect the transfer of functions from the County Government to the National Government so that residents of Nairobi City County can benefit from devolution.

Article 3 : Outlines the scope of the functions transferred to the National Government being; County Health Services, County Transport Services, County Planning and Development Services and County Public Works, Utilities and Ancillary Services.

Article 4: Provides for performance standards and reporting obligations. In particular, it provides that there shall be an annual report to be tabled before Parliament and County Assembly, Parties may form Joint Committees and may also enter into sector specific service-level agreements and/or Memoranda of Understanding to guide and achieve better performance of the agreement.

Article 5: Provides for the financing of the transferred functions. Financing shall be drawn from either or both the Consolidated Fund and the County Revenue Fund. The level of funding for each transferred function shall be determined by the National Government in consultation with the County Government. The National Government shall have the responsibility of collecting and remitting all revenue accruing from the transferred functions. In addition, Kenya Revenue Authority (KRA) shall be responsible for general coordination of revenue collection with Nairobi City County Government. The Human Resource for implementation of the agreement shall be seconded from the County Government to the National Government

Article 6: Provides for a capacity building framework where the National Government shall carry out a comprehensive capacity assessment in line with Article 190 of Constitution as read together with Section 121 of the County Governments Act, 2012

Article 7: Provides for the execution of the transferred functions. The National Government shall prescribe and establish an institutional framework for the execution of the transferred functions.

Article 8: Provides that parties to the agreement shall review the performance of the transferred functions annually.

Article 9: Provides for the duration and termination of the agreement. The effective date of the agreement shall be twenty one (21) days from the date of execution being **17th March, 2020** and shall remain in force for an initial renewable period of 24 months from the date of execution. The Deed of Transfers of Functions may only be terminated by the mutual consent of both parties expressed in common document.

Article 10: Provides for the general provisions which include; notification of the County Assembly of the Deed of Transfer of Functions, the deed may be amended or varied by both parties in writing.

Article 11: Provides for the Governing law and dispute resolution. It provides that the Deed of Transfer of Functions shall be governed by and construed in accordance with the Laws of Kenya. Dispute resolution shall be resolved amicably through negotiations or may be referred to the National and County Governments Coordinating Summit.

3.2. Implications of the Deed of Transfer of Functions

a) Legal Implications

The Deed of Transfer of functions gives effect to the provisions of Article 187 of the Constitution and Part III of the Intergovernmental Relations Act, 2012. In effect, the National Government has taken over implementation of the following functions:-

- i) County Health Services;
- ii) County Transport Services;
- iii) County Planning and Development Services; and
- iv) County Public Works, Utilities and Ancillary services.

b) Financial Implications

Article 5.1 of the Deed provides that financing of the functions shall be drawn from the Consolidated Fund and/or the County Revenue Fund. Funding of the functions through Consolidated Fund may mean that the amounts for that purpose are paid into the Fund without being disbursed to the County Governments as part of Equitable Share. On the other hand, Article 5.2 provides that the Nairobi City County Government shall ensure that the transferred functions are fully funded from the County Revenue Fund. Whereas Article 5.1 provides that the financing of the functions may include the Consolidated Fund, Article 5.2 only indicates the County Revenue Fund as the source of funding.

Article 5.3 require that the funding for each transferred functions be determined by the National Government (NG) in consultation with the County Government and budget allocation for transferred functions be not less than the amount appropriated by the County Assembly in the preceding year. The NG shall therefore take the role of the Sectors in determining the priorities then negotiating the maximum amount of resources required to deliver on those functions. The floor on *budget allocation* for the transferred functions is maintained at the figure last appropriated by the County Assembly. Determination of the floor of the allocation for the functions may be through Conditional Grants contained in the County Allocation of Revenue Act done after consultation between the Ministry of Devolution, Commission on Revenue Allocation (CRA), the County Government and Parliament. In the alternative, the County Assembly may be required to appropriate monies for the same with the allocation for the current financial year being the basis for the FY 2020/21. The table below provides data on allocation for the transferred functions in the current financial year (Kshs. Millions):-

SECTOR	Actual Expenditure FY 2018-19	Annual Allocation FY 2019-20	Salary Projections FY 2019-20	SE Allocation for the FY 2019-20
Health	5,570	7,377	5,064	7,271
Urban Planning and Lands	421	656	330	478
Public Works, Transport and Infrastructure	4,685	4,779	655	3,619
Environment, Water, Energy and Natural Resources	2,391	1,982	527	1,648
Urban Renewal and Housing	151	651	82	360
Wards Development Fund	100	1,343	14	1,343
TOTAL	13,318	16,788	6,342	14,719

Article 5.4 provides that the National Government shall have the responsibility of collecting and remitting all revenue accruing from the transferred functions therein. Article 207 of the Constitution provides that all revenue raised or received by or on behalf of the County Government shall be paid into the County Revenue Fund. Whereas the Article has not succinctly indicated where the funds shall be remitted the Constitution has left no doubt. By virtue of Article 5.5, the County Government has appointed Kenya Revenue Authority (KRA) as the principal agent for overall revenue collection. The provisions of Section 157 of the PFM Act allow the CEC Member for Finance to designate persons as collectors and receivers of county revenues. The terms and conditions forming these contractual arrangements between the County Government and KRA need to be disclosed.

3.3. Submissions by Members of the Public

As already indicated, Section 29 of the Intergovernmental Relations Act, 2012, specifically provides for public participation in the process of transfer of functions or powers from one level of government to another. In this regard, on **4th March, 2020**, the County Assembly in collaboration with the Ministry of

Devolution and Arid and Semi-Arid Lands (ASAL) organised public participation forums in seventeen (17) sub-counties. Members of the public raised various views as follows:-

1. Makadara Sub-County.

- i. That the National Government should ensure employment security of the staff who would be seconded to the National Government;
- ii. That all the County functions to be transferred to the National Government since the County has failed in service delivery;
- iii. That filling of the position of the Deputy Governor should be expedited.

2. Mathare Sub-county

- i. The public was dissatisfied with the manner in which the Deed of Transfer of Functions Deed was executed terming it an affront to devolution and a backdoor ploy by the national government to take over the management of Nairobi, which if not checked, would spill over to neighboring counties;
- ii. Further, residents expressed their displeasure at the sequence of events unfolding in the wake of the Transfer of Functions terming the public participation exercise a pretense of sanitizing the already flawed process;
- iii. The Participants did not see a compelling need for the transfer of functions given that the national government too has its own fair share of challenges in the management of its own affairs in various ministries and state agencies;
- iv. Residents wondered what would be the plight of Wards Development Fund projects given that the planning and development functions will be taken up by the national governments;
- v. Residents were also of the opinion that if, by the end of the timelines stipulated in the deed lapse, it would be prudent for the national

government to also take up the trade docket to spur revenue collection and service delivery;

- vi. Participants sought to know the roles current County Executive Committee Members and chief officers would perform in their respective dockets when eventually their functions are taken up by the national government.
- vii. The following proposals were presented by Members of the Public:-
 - The Deputy Governor's position be filled to enable the County Government to perform its functions optimally;
 - The County Assembly to continue dispensing its powers;
 - Automate revenue collection to curb leakages.
 - Fully implement the Bus Rapid Transport plan;
 - De-monopolize and liberalize garbage collection to enhance a healthy living environment; and
 - Revamp existing and put up new health facilities while ensuring optimal staffing and stocking of adequate supplies.

3. Kamukunji Sub-County

- i. On performance standards and reporting obligations; The public supported the proposal that the two levels of government may enter into sector specific service level agreements to guide and achieve better performance of the said deed. Members of the public emphasized that an implementation report of the transfer of functions be made accessible to them.
- ii. On financing the delivery of the transferred functions; the public supported the proposal that KRA would be the principal agent for revenue collection.
- iii. On execution of the transferred functions; the public was of the opinion that it would be involved in establishing the framework for the execution of the transferred functions.

- iv. On duration and termination of the public; some Members of the public were of the opinion that the deed be reviewed after 12 months instead of the stated 24 months.

4. Ruaraka Sub-County

- i. That the liquor control and management be transferred to the National Government as current status of management of liquor was not effective, as evidenced by the presence of bars near schools thus hampering the learning process;
- ii. That the transfer of health services to the National Government which include County Hospitals, Ambulance Services, primary health services, food handling licensing, veterinary services and solid waste management should translate to effective service delivery to residents;
- iii. That service delivery should be proportionate to the revenue collection. According to the residents, the Government should provide quality services in proportion to the revenue it collects;
- iv. That all the services transferred to the National Government should have a centralized contact point for the members of the public to seek services. The members of the public felt that without a centralized point of reference, they may be tossed back and forth when seeking services;
- v. That the National Government should move with speed and clear all challenges bedeviling the County in the Planning and Lands Department. In addition, the Government should provide land title deeds for all land owners in the City;
- vi. Some members of the public felt that the procedure used in executing the Agreement was incorrect noting that the County Government and the National Government should have consulted the public first before signing the Agreement;

- vii. Some Members of the public were concerned with effect of the pending Court Case on the transfer of the function. They opined that the case may delay the implementation of the Agreement thus hampering service delivery to the residents;
- viii. That public entities such as Kenya Revenue Authority should be holding public forums and interacts with the Members of the public to deter negativity on the institutions.

5. Embakasi South

Members of the public were in support of the deed transfer of functions from the County Government to the National Government for the following reason:-

- i. They indicated that most projects in their Ward have been initiated and completed by the National Government;
- ii. They feel that if the four roles are handed over to the National Government services will be available to the people;
- iii. The National Government will be efficient in delivery of services across the County.

The public further proposed that the National Government to have all Government services and offices in one area for ease of accessibility.

6. Starehe Sub-County

- i. The process of the transfer was unprocedurally because the Public Participation from where Public Views are collected ought to have been done prior to the ratification of the Deed of Transfer; and
- ii. There should be no transfer of functions from County Government to National Government because the National Government performs poorly in service delivery.
- iii. There was no guarantee or evidence in the past by the National Government of being effective in delivery of services in the sectors that have been transferred considering that the functions are shared as per the Fourth Schedule to the Constitution.

7. Embakasi West Sub County

- i. A majority of the residents agreed that service delivery in the County has been poor. As such, the National Government should second managers to the County for management of transferred functions;
- ii. That MCAs should retain oversight on the transferred functions;
- iii. That there should be accountability and transparency in funds management;
- iv. That collection and submission of local revenue should be done at the sub-county level instead of going to city hall. KRA to also have its presence in the wards;
- v. That the National Government should provide employment to the youth;
- vi. That there should be decentralization of funds and services to the Sub County headquarters;
- vii. That enforcement of standards and regulations should be done through the Sub County Administration and not the Chiefs and Police; and
- viii. That there should be another public participation after the transfer in-order to sensitize the public on how things will work, so that it is clear.

8. Embakasi North Sub-County.

- i. Members of the public raised concern on the frequent reshuffles of County senior officers leading to delays and non-continuity of seamless service delivery to the residents;
- ii. The participants generally supported the transfer of functions to the National Government;
- iii. The participants raised issue on pending bills and non-payment of youth involved in various County projects specifically cleaning services and beautification programmes;

- iv. There was a general feeling that transferring of functions could lead to loss of jobs;
- v. The participants raised concern that Nairobi City County gets the highest share of revenues collected but the same is not reflected in terms of service delivery;
- vi. The participants raised concern on assertion of Community Health Volunteers Bill no. 5 of 2019. The bill if assented to will streamline the working of Community Health workers who are key in the promotion of health in the County specifically in the informal settlements;
- vii. The residents were concerned that the transfer of functions might be a trend that other Counties could emulate thus negating the gains of devolution;
- viii. The participants were concerned on how the K.R.A will manage to streamline revenue collection in the County despite missing its annual targets on several occasions; and
- ix. The participants raised issue on the oversight role of the County Assembly on the transferred functions.

9. Westlands Sub-County

- i. A majority of Members of the public raised concern over the capacity of the national government to effectively perform the functions given that it has its own challenges. For instance, the KRA had been missing its revenue targets and that there was no guarantee that the agency will not do the same to the County revenue. Further, the National government is also guilty in misuse of public funds in its ministries, departments and agencies;
- ii. That the position of the Deputy Governor should be filled as soon as possible;
- iii. That the public was not involved in the preparation of the Deed of Transfer of Functions.

- iv. That instead of Transfer of Functions, the National Government should have seconded experts to the County Government to improve its capacity.
- v. That the action to transfer functions from the County Government to the National Government was an affront to devolution and that the National Government may subsequently acquire the same functions from other Counties.
- vi. That the agreement was not elaborate in terms of frame work and instruments for oversight and the place of County Assembly in the arrangements.

10. Dagoretti South Sub-County

- i. The public unanimously felt that the status of services delivery in the County was below average and there seemed to be no value for money. The public enumerated many challenges and expressed hope in the proposed arrangement of transferring major services to the National Government.
- ii. The public raised concern on whether the ongoing projects would be continued with or be given first priority, as they were essential to the residents.
- iii. That development projects should be distributed equitably in all the five wards to promote even development in the Sub County and be done within the time frames outlined
- iv. That the position of the Deputy Governor should be filled.
- v. That operationalization of the enacted Community Health workers Bill, 2019 be hastened to enable the volunteers receive their stipends as they are the people on the ground who offers lot of assistance to the community.
- vi. That there should be decentralization of services to the Sub County levels.

- vii. That an audit on the budget for the Financial Year 2019/2020 be done before handing over is done to enhance transparency and to identify if whether there has been mismanagement of funds,
- viii. That there should be a linkage between the MCAs, the Ward Administrators and the National Government in programmes implementation,
- ix. That Pending Bills be settled in time to facilitate completion of stalled and ongoing projects, and

11. Kasarani

- i. That the he status of county service delivery was below average
- ii. That they were in support of the transfer of functions
- iii. That the National Government should strive to deliver on the transferred functions

12. Dagoretti North Sub-County

- i. Residents were concerned with service delivery irrespective of what level of Government was performing the functions.
- ii. County Commissioners, Assistant County Commissioner and the Chiefs should be allowed to coordinate functions at the local level;
- iii. Residents were in support of KRA collecting revenue;
- iv. Provision of health services should be given priority

13. Roysambu Sub-county

- i. The public sought to know if still the Members of the County Assembly had the oversight powers.
- ii. The constituents expressed their displeasure at the sequence of events unfolding in the wake of the Transfer of Functions, terming the public participation exercise a charade geared towards sanitizing the already flawed process;
- iii. The Participants did not see a compelling need for the transfer of functions given that the national government too has its own fair

- share of challenges in the management of its own affairs in various ministries and state agencies;
- iv. Residents wondered what would be the plight of Wards Development Fund projects;
 - v. Residents were also of the opinion that if, by the end of the timelines stipulated in the deed lapse, it would be prudent for the national government to also take up the trade docket to spur revenue collection and service delivery;
 - vi. Participants sought to know the roles current County Executive Committee Members and Chief Officers would perform in their respective dockets when eventually their functions are taken up by the national government;
 - vii. That the Deputy Governor's position be filled to enable the County Government of Nairobi to perform its functions optimally;

14. Kibra Sub-County

- i. That the process of transfer of functions was not procedural;
- ii. The National Government should ensure that all pending bills are cleared before taking over the functions;
- iii. KRA may not be the ideal agency for collecting revenue since it has also been missing its targets;
- iv. The public raised concern on whether the MCAs will continue performing the oversight function especially on the transferred functions;
- v. There should be automation of revenue;
- vi. The National Government should prioritize on improving of the health sector;
- vii. The process of filling the vacancy in the Office of the Deputy Governor should be hastened.

15. Langata Sub-County

- Residents were in support of the transfer of functions as it may lead to improved service delivery particularly in the area of health, water and roads.

16. Embakasi East Sub-County

- Members of the public were in support of the deed transfer of functions from the County Government to the National Government for the following reasons that;
 - i. They indicated that most projects in their Ward have been initiated and completed by the National Government;
 - ii. They feel that if the four roles are handed over to the National Government services will be available to the people; and
 - iii. The National Government will be efficient in delivery of services across the County.

17. Embakasi Central Sub-County

- i) The Public were in agreement with the transfer of functions since the County Government had failed to deliver. Particularly, health centers and roads were in a dilapidated state; and
- ii) There is need for clarity on the status of structures to implement the transferred functions. In addition, there is need for assurance of job security for County Government employees.

The views from the public can be summarized as follows;

- i) That Members of the Public agree that the County Government has *failed* to deliver on its functions especially on the transferred functions;**
- ii) That Members of the Public are in agreement with the transfer of implementation of the transferred functions to the National Government, however, they are skeptical whether the National Government shall be able to effectively deliver since they have their own challenges;**

- iii) That Members of the Public insists that the legislative and oversight functions of the County Assembly be retained;
- iv) That Members of the Public proposes that despite the transfer of functions to the National Government, service delivery must be done at the local level;
- v) That Members of the Public want a functional County Government. In particular, the position of the Deputy Governor ought to be filled;
- vi) That Members of the Public insists that they should always be consulted before a decision affecting them is taken;
- vii) That the National Government should ensure that the transferred functions are effectively performed particularly health and roads.

3.4. Submissions by the County Executive Committee

The County Executive Committee Members whose functions have been transferred to the National Government appeared before the Committee on 11th March, 2020 and submitted as follows:-

i) General observations on the Deed of Transfer of Functions

- a) Transferred functions should not render the County Government redundant. In fact, Section 187(2) (b) of the constitution states that the constitutional responsibility for the performance of the function or exercise of their power shall remain with the government to which it is assigned by the Fourth Schedule. This means that despite the transfer of functions the County Government continues to exist. Thus, the structure of the County Executive comprising of the Governor, Deputy Governor, 10 County Executive Committee Members and the County Secretary as the Secretary to the County Executive Committee (CEC) Members should continue to exist.
- b) There should be joint Committees and joint authorities between the Nairobi County Executive and the National government.
- c) CEC Members should continue to lead policy in their sectors and Chief Officers should continue to be the Accounting Officers

ii) Specific proposed amendments to the Deed of Transfer of Functions

- a) **Article 5 :** The financing of Nairobi County to be administered as per the provisions of the Public Finance Management Act, 2012 with the Chief officers as accounting officers
- b) **Article 5.6:** The National Government staff to be seconded to the County to supervise and offer technical support towards execution of the transferred functions under their current employment terms.
- c) **The Institutional Framework to be structured as follows:**
 - Strategic Level comprising of the line or sector Cabinet Secretary and the County Executive Committee Member to be in charge of policy formulation
 - Technical Level comprising of the Principal Secretary and the County Chief Officers of the transferred functions to implement policy and oversee the execution of the functions
- d) **Review Cycle:** Review of the performance of the transferred functions to be done quarterly.
- e) **Transferred functions:** There should be clarity on the unbundling of the specific functions that have been transferred as per the Fourth Schedule to the Constitution.

4.0. COMMITTEE OBSERVATIONS

In light of the forgoing, the Committee made the following observations:

1. There is a general consensus that the County Government of Nairobi City, particularly the Executive arm, has failed to deliver on its mandate specifically on the transferred functions. As such, the current transfer of functions despite having been done out of political convenience, it can still be sanitized *expos facto*, in order to allow the implementation of the Deed for the benefit of Nairobians. This is the process the County Assembly has embarked on.
2. That despite transfer of the four functions of the County Government to the National Government, the County Assembly need to continue performing its constitutional role of oversight, representation, legislation and budget making with respect to the transferred functions. As such, a mechanism to operationalize this framework need to be developed by the multi-agency committee currently preparing a policy on implementation of the transferred functions.
3. That budgeting of the transferred functions should be in tandem with the provisions of the Public Finance Management Act, 2012. In particular, projects already proposed in the planning documents approved by the County Assembly should be implemented.
4. That pursuant to Article 176 of the Constitution, the County Government comprises of the County Assembly and the County Executive. As such, any decision made on behalf of the County Government, the County Assembly must be involved through its formal structures. For instance, in the case of preparation and execution of the present Deed of Transfer of Functions, the County Assembly was not involved at the preliminary stage. Thus, the County Assembly must be involved in preparation of future agreements including Service Level Agreements contemplated in the Deed.
5. Members of the Public were generally agreeable in the transfer of functions from the County Government to the National Government on account that

these will improve efficiency and quality of service, However, they were cautious that the National Government has had its share of challenges and may also fail. The Public also were of the view the County Executive need to be properly constituted with the appointment of the Deputy Governor being a priority to them. Equally, the appealed that in future, they should be fully involved prior to decisions being made by Government Officials.

5.0. COMMITTEE RECOMMENDATIONS

Based on its observations, the Committee recommends the following:-

1. THAT the Nairobi City County Assembly adopts the Deed of Transfer of Functions from the Nairobi City County Government to the National Government with the following amendments: -

- i) That in accordance with the provisions of Article 176, 185 and 187 (2) (b) of the Constitution, the oversight, representation, legislative and budget making functions remain with the Nairobi City County Assembly on the transferred functions;
- ii) That pursuant to Article 195 of the Constitution, the County Assembly shall have the power to summon the head of Joint committees or joint committees collectively contemplated under Article 4.3 of the Deed of Transfer of Functions or any other person involved in the implementation of the deed;
- iii) That the Joint Committees contemplated in Article 4.3 of the Deed of Transfer of Functions shall be approved by the Nairobi City County Assembly;
- iv) That the Memoranda of Understanding and Service Level Agreements contemplated in Article 4.4 of the Deed of Transfer of Functions shall be approved by the Nairobi City County Assembly;
- v) That pursuant to provisions of Section 104 of the County Governments Act 2012 and Section 126 of the Public Finance Management Act 2012, the approved County Integrated Development Plan for the period 2018 to 2022 and the Annual Development Plans shall be the baseline document for the implementation of the transferred functions;
- vi) That in accordance with the provisions of Article 229 of the Constitution, the Auditor General shall be required to prepare separate audit reports for the transferred functions and that the same be submitted to the Nairobi City County Assembly for consideration;

vii) That reporting contemplated in Article 4.2. of the Deed of Transfer of Functions should be done quarterly in accordance Section 166 of the Public Finance Management Act, 2012; and

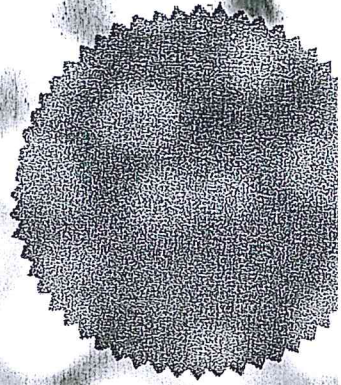
viii) That in the event of a dispute as contemplated under Article 11.2 of the Deed of Transfer of Functions; both arms of the County Government as envisioned under Article 176 of the Constitution shall be involved in its resolution.

2. **THAT** the County Assembly shall establish a Standing Committee to oversight the implementation of the agreement. For avoidance of doubt, the said Standing Committee shall be restricted to ensuring that the spirit and the letter of the agreement is conformed to while the respective Sectoral Committees shall continue oversighting the transferred functions.
3. **THAT** at the end of the term of the agreement, parties shall prepare an exit report which shall be tabled before the County Assembly and Parliament.

XXXXXXXXXXXXXXXXXXXXXXXXX END XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX



ANNEX I



THE NATIONAL GOVERNMENT
(THROUGH)
THE MINISTRY OF DEVOLUTION & THE ASALS

&

THE NAIROBI CITY COUNTY GOVERNMENT

DEED OF TRANSFER OF FUNCTIONS
FROM THE NAIROBI CITY COUNTY GOVERNMENT
TO THE NATIONAL GOVERNMENT

1



THIS DEED OF TRANSFER is made on this 25TH Day of ~~February~~ TWO THOUSAND AND TWENTY.

BY AND BETWEEN

- I. THE NATIONAL GOVERNMENT OF THE REPUBLIC OF KENYA, through THE MINISTRY OF DEVOLUTION & THE ASALS ("the *National Government*") on the first part; and,
- II. THE NAIROBI CITY COUNTY GOVERNMENT, ("the *County Government*") whose registered office is at City Hall, off City Hall Way, Nairobi on the other part.

(Each a "Party" and together the "Parties")

RECITALS AND DECLARATION OF COMMON INTENT

WHEREAS, the Constitution of Kenya, 2010 established a devolved structure of Governance with a **service-centric approach**, in which the sovereign power of the People of Kenya is exercised at two levels; being the **National Level** and the **County Level** (collectively the "**Government of the Republic of Kenya**");

Initials: _____



WHEREAS, the Principles of Executive Authority set out under Article 129 of the Constitution require that Executive Authority at both levels of Government be exercised in a manner that serves the best interest, well-being and aspirations of the People of Kenya;

WHEREAS, the **Principal Object of Devolution** is set-out under Article 174 of the Constitution as being: *"to promote democratic and accountable exercise of power, to foster national unity by recognizing diversity and to give powers of self-governance to the people and enhance the participation of the people in exercise of the powers of the state and in making decisions affecting them"*;

WHEREAS, Article 189 of the Constitution, sets out the structure for co-operation between the National and County Governments; with Government at either level being required to perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of the Government at the other level, and respects the constitutional status and institutions of Government at the other level;

WHEREAS, it is the shared aspiration of all Kenyans for their Government to operate in an effective, transparent and accountable manner with respect to the delivery of Public Goods and Services;

Initials: 



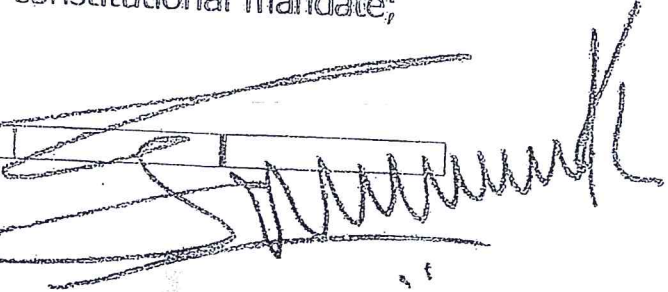
WHEREAS, it is the solemn duty of the Government to guarantee reasonable access to all Public Goods and Services in all Counties and in every part of the Republic;

WHEREAS, Article 186 of the Constitution, as read with the Fourth Schedule of the Constitution, sets out functions of County Governments to include: County Health Services, Control of Air Pollution, Control of Noise Population, Prevention of Public Nuisance, Regulation of Public Entertainment, County Transport, Trade Development, County Planning & Development, Pre-primary Education, Village Polytechnics, Firefighting Services, and Disaster Management & Control of Drugs;

WHEREAS, Nairobi City is the Seat of the Government of Kenya and the Nation's Capital City;

WHEREAS, Nairobi City is also the largest commercial hub in East and Central Africa, and home to over 4 million persons;

WHEREAS, the Nairobi City County Government seeks to foster its effectiveness in the delivery of the public good; and is considering mechanisms of embedding operational enhancements that would make the County Government better able to deliver on its constitutional mandate;

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WHEREAS, the Nairobi City County Government is conscious of its internal constraints as to the effective discharge of its functions;

WHEREAS, the Nairobi City County Government recognizes that in light of the scope of the devolved functions, some of the functions currently vested in the Nairobi City County Government would be more effectively performed and exercised by the National Government;

WHEREAS, and to enhance delivery of the public good, the Nairobi City County Government is desirous of transferring to the National Government the functions set out in **Article 3** of this Deed of Transfer of Functions;

WHEREAS, the National Government is desirous of accepting the transfer to the National Government of the functions set out in Article 3 of this Deed of Transfer of Functions from the Nairobi City County Government; and it has the requisite capacity and competence to perform the transferred functions:-

NOW THEREFORE, having considered the above, the Parties enter into this Deed of Transfer of Functions and solemnly agree as follows:

Initials: 



ARTICLE 1: DEFINITIONS

1.1 The following expressions (save where the context requires otherwise) bear the following meanings:-

1.1.1 References to an Article are (unless the context otherwise requires) to an Article respectively of this Deed of Transfer of Functions;

1.1.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa;

1.1.3. The Article and paragraph headings are for reference purposes only and shall not affect the interpretation of this Deed of Transfer of Functions.

ARTICLE 2: PRINCIPAL OBJECTS

The principal objects this Deed of Transfer of Functions are:

2.1 To give full effect of the benefits of the devolved and decentralized governance to the residents of Nairobi City County; and,

Initials: 





- 2.2 To anchor the framework of the transfer of certain functions from the Nairobi City County Government to the National Government.

ARTICLE 3: THE SCOPE OF THE FUNCTIONS TRANSFERRED TO THE NATIONAL GOVERNMENT

The Nairobi City County Government unequivocally transfers the following functions to the National Government:

- 3.1 County Health Services;
- 3.2 County Transport Services;
- 3.3 County Planning and Development Services; and
- 3.4 County Public Works, Utilities and Ancillary services.

ARTICLE 4: PERFORMANCE STANDARDS AND REPORTING OBLIGATIONS

In furtherance of the principles of good governance that require accountable and transparent management of public affairs, the performance of the transferred functions shall be undertaken in keeping with the guidelines set out herein after:

- 4.1 The Parties will harmonize the relevant sector performance contracts and service delivery indicators, as adopted by the respective governments herein and relevant departments;

Initials:



4.2 There shall be an annual report tabled before Parliament and the Nairobi City County Assembly on the implementation of this Agreement;

4.3 Pursuant to Article 189(2) of the Constitution, the Parties may form joint committees for the better performance of this Agreement; and

4.4 The National Government and Nairobi City County Government may enter into sector specific service-level agreements and/or Memoranda of Understanding to guide and achieve better performance of this agreement.

ARTICLE 5: FINANCING THE DELIVERY OF THE TRANSFERRED FUNCTIONS

The financing of the delivery of the transferred functions shall be undertaken as follows:

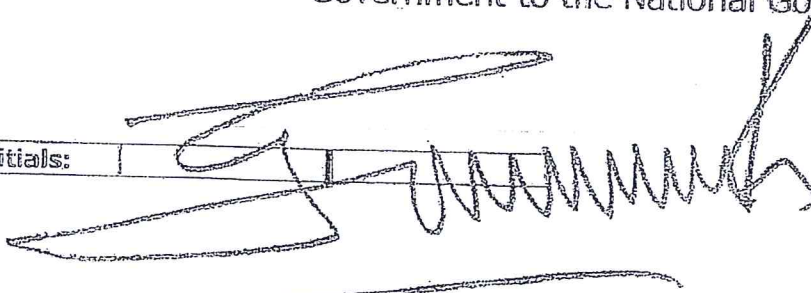
5.1 Financing for the functions herein shall be drawn from either or both the Consolidated Fund and the County Revenue Fund;

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- 5.2 The Nairobi City County Government shall ensure that the transferred functions are fully funded from the County Revenue Fund;
- 5.3 The level of funding for each transferred function shall be determined by the National Government in consultation with the County Government, but in any case the budgetary allocation shall not be less than the amount last appropriated by the County Assembly in the preceding financial year;
- 5.4 The National Government shall have the responsibility of collecting and remitting all revenue accruing from the transferred functions herein;
- 5.5 For the purposes of general coordination of revenue collection, the Nairobi City County Government appoints Kenya Revenue Authority (KRA) as the principal agent for overall revenue collection;
- 5.6 The relevant human resources for the implementation of this agreement shall be seconded from the County Government to the National Government; and

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- 5.7 The County Public Service Board shall, in consultation with the Public Service Commission, formulate the necessary instruments to facilitate the secondment and/or deployment of the necessary human resources.

ARTICLE 6: CAPACITY BUILDING FRAMEWORK

- 6.1 The National Government shall carry out a comprehensive capacity assessment in line with Article 190 of the Constitution, as read with Section 121 of the County Governments Act, 2012; and,
- 6.2 In addition to the capacity building measures identified in the Capacity Assessment Review Report (CARPS), the Parties shall develop a capacity building programme based on 6. 1 above.

ARTICLE 7: EXECUTION OF THE TRANSFERRED FUNCTIONS

- 7.1 The National Government shall prescribe and establish an institutional framework for the execution of the transferred functions.

Initials:

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[Handwritten signature]

[Handwritten initials]



ARTICLE 8: REVIEW CYCLE

8.1 The Parties shall review the performance of the transferred functions annually.

ARTICLE 9: DURATION AND TERMINATION

9.1 This Deed of Transfer shall become effective 21 (twenty one) days from the date of execution and shall remain in force for an initial renewable period of 24 months from the date of execution.

9.2 This Deed of Transfer of Functions may only be terminated by the mutual written consent of both Parties expressed in a common document.

ARTICLE 10: GENERAL

10.1 This Deed of Transfer of Functions shall be notified to the Nairobi City County Assembly pursuant to Section 26(6) of the Intergovernmental Relations Act and shall in the meantime be subjected to public participation.

Initials:

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10.2 This Deed of Transfer of Functions, together with any amendments as may be necessitated by public participation, constitute the entire Agreement between the Parties. Both parties acknowledge that they have not entered into this Agreement in reliance wholly or partly on any statement or representation made by the other except as contained or referred to herein.

10.3 No variation or addition to this Agreement and no waiver of any provision shall be valid unless in writing signed by a duly authorized officer of both of the parties. In the event of a variation or addition, all the terms of this Agreement shall apply to such variation or addition except as may otherwise be expressly provided therein.

10.4 No forbearance or indulgence by either Party in enforcing any term or condition of this Agreement shall prejudice or restrict that Party's rights or powers under this Agreement and no waiver of any breach shall operate as a waiver of any subsequent or continuing breach.

Initials:

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10.5 Any written notice to be given under the terms of this Agreement may be delivered by hand delivered to:

10.5.1 In the case of Ministry
Cabinet Secretary
Ministry of Devolution & the ASALS
The National Treasury
NAIROBI
(Marked 'URGENT'); and,

10.5.2 In case of the County
County Secretary
Nairobi City County
City Hall
(Marked 'URGENT').

10.6 This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party hereto and expressed in a common document.

ARTICLE 11: GOVERNING LAW AND DISPUTE RESOLUTION

11.1 This Deed of Transfer of Functions shall be governed by and construed in accordance with the Laws of Kenya.

Initials:

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11.2 In the event of a dispute between the Parties herein arising from a matter provided for, governed by or arising out of this Agreement, the Parties shall at the first instance endeavour to resolve the dispute amicably through negotiations, but if the dispute is not resolved amicably within 30 days from the date one Party notifies the other of the dispute in writing, the Parties shall refer the dispute to the National and County Governments Co-ordinating Summit.

IN WITNESS whereof this Deed of Transfer has been executed by the duly authorized representatives of the parties the day and year first written above.

SIGNED BY

EUGENE WAMAWA

duly authorized:

CABINET SECRETARY

MINISTRY OF DEVOLUTION & THE ASALS

In the presence of

Attorney-General

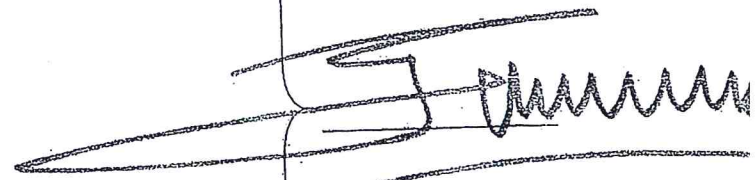
Paul Kihara Karuki

Initials:



SIGNED BY MIKE MBURI SUNDU

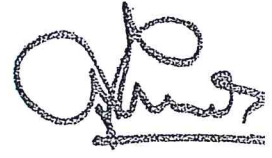
duly authorized Signatories for

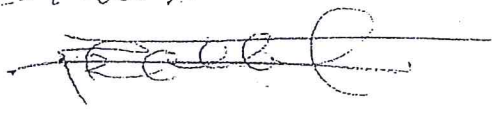


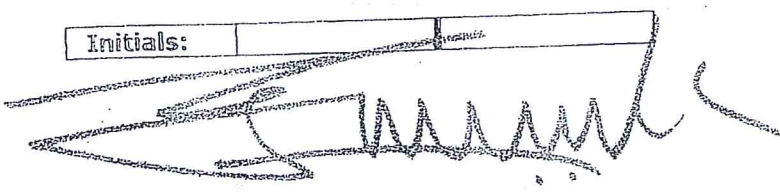
NAIROBI CITY COUNTY GOVERNMENT

In the presence of

JUSTUS KALILE



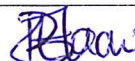



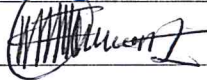
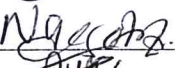




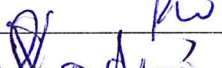
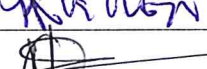

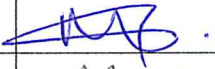


SIMON L. MERINTAT


Initials: 



**ADOPTION LIST OF THE REPORT OF THE AD-HOC COMMITTEE ON
TRANSFER OF FUNCTIONS FROM THE COUNTY GOVERNMENT TO THE
NATIONAL GOVERNMENT ON CONSIDERATION OF THE DEED OF TRANSFER
OF FUNCTIONS**

The following members appended their signatures to signify their agreement with the report:-

1.	Hon. Beatrice Elachi CBS, Chairperson.	
2.	Hon. Charles Thuo, Vice-Chairperson	
3.	Hon. David N. Mberia, MCA	
4.	Hon. John Kamangu, MCA	
5.	Hon. June Juliet Ndegwa, MCA	
6.	Hon. Peter A. Imwatok, MCA	
7.	Hon. Francis Otieno Ngesa, MCA	
8.	Hon. Robert N. Mbatia, MCA	
9.	Hon. Emily Oduor, MCA	
10.	Hon. James Chege Mwaura, MCA	
11.	Hon. Kabiro Mbugua, MCA	
12.	Hon. Peter Wanyoike, MCA	
13.	Hon. Paul Kiguathi Kados, MCA	
14.	Hon. Moses Ogeto Nyangeresi, MCA	
15.	Hon. Michael Ogada OkumuMCA	
16.	Hon. Mellab Lumalah Atemah, MCA	
17.	Hon. Millicent Mugadi, MCA.	
18.	Hon. Geoffrey Majiwa, MCA.	

**MINUTES OF THE 1ST SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY
AD HOC COMMITTEE ON TRANSFER OF FUNCTIONS HELD ON 4TH MARCH,
2020 AT 4.30PM IN COMMITTEE ROOM 5, CITY HALL BUILDING.**

MEMBERS PRESENT

Annex
2(i)

1. Hon. David N. Mberia, MCA – Minority Leader
2. Hon. John Kamangu, MCA – Deputy Speaker
3. Hon. Robert N. Mbatia, MCA
4. The Hon. Emily Oduor, MCA – Chairing
5. Hon. James Chege Mwaura, MCA
6. Hon. Christopher Kabiro Mbugua, MCA
7. Hon. Peter Wanyoike, MCA
8. Hon. Paul Kiguathi Kados, MCA
9. Hon. Moses Ogeto Nyangeresi, MCA
10. Hon. Michael Ogada Okumu, MCA
11. Hon. Mellab Lumalah Atemah, MCA
12. Hon. Millicent Mugadi, MCA.
13. Hon. Geoffrey Majiwa, MCA.

MEMBERS ABSENT

1. The Hon. Beatrice Elachi, CBS – Assembly Speaker & Chairperson.
2. Hon. Charles Thuo Wakarindi, MCA – Majority Leader, Vice-Chairperson
3. The Hon. June Juliet Ndegwa, MCA – Majority Party Whip
4. Hon. Peter A. Imwatok, MCA – Minority Whip
5. Hon. Francis Otieno Ngesa, MCA

IN ATTENDANCE - COUNTY ASSEMBLY SECRETARIAT.

1. Ms. Pauline Akuku – Head of Communication Department
2. Mr. Sammy Kiplimo – Principal Clerk Assistant (Committee Services)
3. Mr. Shadrack Makokha – Ag. Senior Clerk Assistant (Committee Services)
4. Mr. Adam Kibwana – Ag. Senior Clerk Assistant (Legislative & Procedure)
5. Mr. Erick Otieno – Fiscal Analyst/ Budget Office.
6. Mr. Paul Kimani – Ag. Principal Finance Officer
7. Mr. Martin Mugendi – Legal Counsel.
8. Mr. Erick Njoga – Clerk Assistant.

MIN 001/ADH/MAR/4/2020 – PRELIMINARY

- Members present elected Hon. Emily Oduor to preside over the meeting since the Speaker was away on official duties. The presiding Chair welcomed Members to the meeting.
- The Meeting was called to order at 4.30pm, and opening prayers were conducted by the Session Chair who then took Members through the Agenda of the meeting which was adopted as proposed by Hon. Paul Kados, MCA and seconded by Hon. Mellab Atemah, MCA as follows; -

AGENDA

- a) **Preliminaries** (prayers & adoption of the Agenda),
- b) **Tabling of the Transfer Deed** (*Familiarization of the Terms and Conditions of the agreement between the County & National Government*)
- c) **Terms of Reference (ToR) of the Committee,**
(*Committee's Mandate and timelines*)
- d) **Any Other Business,**
- e) **Adjournment,**

MIN 002/ADH/MAR/4/2020 - TABLING OF THE DEED OF TRANSFER OF FUNCTIONS

- The secretariat tabled the Deed of Transfer of Functions before the Committee following its commitment by the Speaker.
- The Secretariat further informed the Committee that in consideration of the Deed, the Committee will be guided by the applicable provisions of the Constitution, the County Governments Act, 2012, the Intergovernmental Relations Act, 2012 and the deed itself.
- The Chair then took Members through the principle objectives of the deed; however, the Committee noted that in order for the Members to understand the deed, there was need for the Secretariat to unbundle it. The Secretariat advised that the unbundling would be done during subsequent meetings.
- Members questioned on when and whether the Deed would be adopted by the Assembly. The Secretariat advised that the Assembly's role would be to express its agreement with the Deed and propose recommendations on how best it would be implemented. It was noted that in the interest of the County Assembly, it would be prudent for the Deed to be considered and adopted by the Assembly before commencement of its implementation.
- Equally, the Committee observed that the public views collected during the forums be considered by the Committee

MIN 003/ADH/MAR/4/2020 - TERMS OF REFERENCE OF THE COMMITTEE

- The Committee considered its Terms of reference as communicated by the Speaker as follows:
 - i) Study the Deed of Transfer of Functions and un-pack its contents and implications;
 - ii) The role of the County Assembly as far as implementation of the Deed is concerned;
 - iii) The impact of the transfer of functions on the Budget making process for the FY 2020/2021; and

iv) Propose areas that require legislation either by the Senate or the County Assembly.

- The Committee proposed to extend its scope and also consider on how the budget of the FY 2022/2021 would be affected and how future oversight would be done.
- The Committee directed the secretariat to prepare a work plan and plan for a retreat where Members would consider in-depth the Deed and prepare a preliminary report. Equally, the Secretariat was asked to involve National Government officials so that they can explain the spirit of the Deed. The retreat was proposed to be held as from **Sunday 8th March, 2020 to Tuesday 10th March, 2020 at Windsor Golf Club, Kiambu County.**

MIN 004/ADH/MAR/4/2020 – A.O.B & ADJOURNMENT

There being no other business the meeting was adjourned at 5.30pm, the next meeting to be held on **Thursday 5th March, 2020** at the rise of Assembly.

CONFIRMED AS TRUE RECORDS OF PROCEEDINGS

CHAIRPERSON *Beni* DATE *12/03/2020*

**MINUTES OF THE 2ND SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY
AD HOC COMMITTEE ON TRANSFER OF FUNCTIONS HELD ON 5TH MARCH,
2020 AT 4.30PM IN COMMITTEE ROOM 5, CITY HALL BUILDING.**

MEMBERS PRESENT

Annex
2(ii)

1. Hon. Charles Thuo Wakarindi, MCA – Majority Leader, Vice-Chairperson
2. Hon. John Kamangu, MCA – Deputy Speaker
3. Hon. Christopher Kabiro Mbugua, MCA
4. Hon. Peter Wanyoike, MCA
5. Hon. Paul Kiguathi Kados, MCA
6. Hon. Moses Ogeto Nyangeresi, MCA
7. Hon. Michael Ogada Okumu, MCA
8. Hon. Mellab Lumalah Atemah, MCA
9. Hon. Francis Otieno Ngesa, MCA
10. Hon. Geoffrey Majiwa, MCA.

MEMBERS ABSENT

1. The Hon. Beatrice Elachi, CBS – Assembly Speaker & Chairperson.
2. Hon. David N. Mberia, MCA – Minority Leader
3. The Hon. June Juliet Ndegwa, MCA – Majority Party Whip
4. Hon. Peter A. Imwatok, MCA – Minority Whip
5. Hon. Millicent Mugadi, MCA
6. The Hon. Emily Oduor, MCA
7. Hon. Robert N. Mbatia, MCA
8. Hon. James Chege Mwaura, MCA

IN ATTENDANCE - COUNTY ASSEMBLY SECRETARIAT.

1. Ms. Pauline Akuku – Head of Communication Department
2. Mr. Sammy Kiplimo – Principal Clerk Assistant (Committee Services)
3. Mr. Shadrack Makokha – Ag. Senior Clerk Assistant (Committee Services)
4. Mr. Adam Kibwana – Ag. Senior Clerk Assistant (Legislative & Procedure)
5. Mr. Erick Otieno – Fiscal Analyst/ Budget Office.
6. Mr. Paul Kimani – Ag. Principal Finance Officer
7. Mr. Martin Mugendi – Legal Counsel.
8. Mr. Erick Njoga – Clerk Assistant.

MIN 005/ADH/MAR/5/2020 – PRELIMINARY

— The Meeting was called to order at 4.30pm, and opening prayers were conducted by the Vice Chair who then took Members through the Agenda of the meeting which was adopted as proposed by Hon. John Kamangu, MCA and seconded by Hon. Mellab Atemah, MCA as follows; -

AGENDA

- a) Preliminaries (prayers & adoption of the Agenda),
- b) Confirmation of previous minutes
(Minutes of the 1st sitting held on 4th March, 2020)
- c) Consideration and adoption of draft work plan of the Committee.
- d) Any Other Business,
- e) Adjournment,

MIN 006/ADH/MAR/5/2020 - CONFIRMATION OF PREVIOUS MINUTES

- The Chair took Members through the Minutes of the 1st sitting held on 4th March, 2020. The confirmation of the Minutes was proposed by Hon. Mbugua Kabiyo, MCA and seconded by Hon. Geoffrey Majiwa, MCA as true records of the proceedings.

MIN 007/ADH/MAR/5/2020 - CONSIDERATION AND ADOPTION OF DRAFT WORK PLAN OF THE COMMITTEE.

- The Committee considered its work plan on consideration of the Deed of Transfer of Functions and adopted it unanimously.
- The Committee directed the secretariat to prepare for a retreat where Members would consider in-depth the Deed and prepare a preliminary report. Equally, the Secretariat was asked to involve National Government officials and County Executive Committee Members so that they can explain the spirit of the Deed. The retreat was proposed to be held as from **Sunday 8th March, 2020 to Tuesday 10th March, 2020 at Windsor Golf Club, Kiambu County.**

MIN 008/ADH/MAR/5/2020 - A.O.B & ADJOURNMENT

There being no other business the meeting was adjourned at 6.15pm, the next meeting to be held from **Sunday 8th March, 2020 to Tuesday 10th March, 2020 at Windsor Golf Club, Kiambu County.** .

CONFIRMED AS TRUE RECORDS OF PROCEEDINGS

CHAIRPERSON  DATE 12/03/2020

AGENDA

- a) Preliminaries (prayers & adoption of the Agenda),
- b) Adoption of report of the Ad Hoc committee on transfer of functions from the County Government to the National Government
- c) Any Other Business,
- d) Adjournment

MIN 010/ADH/MAR/12/2020 - ADOPTION OF REPORT OF THE AD HOC COMMITTEE ON TRANSFER OF FUNCTIONS FROM THE COUNTY GOVERNMENT TO THE NATIONAL GOVERNMENT

The Secretariat tabled the report on the transfer of functions from the County Government to the National Government.

— The report was unanimously adopted by the Committee as proposed by Hon. Peter Imwatok, MCA and seconded by Hon. June Ndegwa, MCA

MIN 011/ADH/MAR/12/2020 - A.O.B & ADJOURNMENT

There being no other business the meeting was adjourned at 12.00pm, the next meeting to be held on Monday 16th March, 2020 at Windsor Golf Club, Kiambu County. .

CONFIRMED AS TRUE RECORDS OF PROCEEDINGS

CHAIRPERSON *B. Achi* DATE *12/03/2020*

**MINUTES OF THE 3RD SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY
AD HOC COMMITTEE ON TRANSFER OF FUNCTIONS HELD ON 12TH MARCH,
2020 AT 10.30PM IN COMMITTEE ROOM 4, CITY HALL BUILDING.**

MEMBERS PRESENT

- Annex 2
(iii)
1. The Hon. Beatrice Elachi, CBS – Assembly Speaker & Chairperson.
 2. Hon. David N. Mberia, MCA – Minority Leader
 3. The Hon. June Juliet Ndegwa, MCA – Majority Party Whip
 4. Hon. Peter A. Imwatok, MCA – Minority Whip
 5. Hon. Millicent Mugadi, MCA
 6. The Hon. Emily Oduor, MCA
 7. Hon. Robert N. Mbatia, MCA
 8. Hon. Christopher Kabiro Mbugua, MCA
 9. Hon. Paul Kiguathi Kados, MCA
 10. Hon. Moses Ogeto Nyangeresi, MCA
 11. Hon. Mellab Lumalah Atemah, MCA
 12. Hon. Francis Otieno Ngesa, MCA
 13. Hon. Geoffrey Majiwa, MCA.

MEMBERS ABSENT

1. Hon. Charles Thuo Wakarindi, MCA – Majority Leader, Vice-Chairperson
2. Hon. John Kamangu, MCA – Deputy Speaker
3. Hon. Michael Ogada Okumu, MCA
4. Hon. Peter Wanyoike, MCA
5. Hon. James Chege Mwaura, MCA

IN ATTENDANCE - COUNTY ASSEMBLY SECRETARIAT.

1. Mr. Sammy Kiplimo – Principal Clerk Assistant (Committee Services)
2. Mr. Shadrack Makokha – Ag. Senior Clerk Assistant (Committee Services)
3. Mr. Adam Kibwana – Ag. Senior Clerk Assistant (Legislative & Procedure)
4. Mr. Erick Njoga – Clerk Assistant.

MIN 009/ADH/MAR/12/2020 – PRELIMINARY

- The Meeting was called to order at 11.20am, and opening prayers were conducted by the Chair who then took Members through the Agenda of the meeting which was adopted as proposed by Hon. Peter Imwatok, MCA and seconded by Hon. Geoffrey Majiwa, MCA as follows; -

FOURTH SCHEDULE*(Article 185 (2), 186 (1) and 187 (2))***DISTRIBUTION OF FUNCTIONS BETWEEN THE
NATIONAL GOVERNMENT AND THE COUNTY
GOVERNMENTS****PART 1 — NATIONAL GOVERNMENT**

1. Foreign affairs, foreign policy and international trade.
2. The use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. Police services, including—
 - (a) the setting of standards of recruitment, training of police and use of police services;
 - (b) criminal law; and
 - (c) correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular—
 - (a) road traffic;

~~EXPS~~

ANNEX 3(3)

- (b) the construction and operation of national trunk roads;
 - (c) standards for the construction and maintenance of other roads by counties;
 - (d) railways;
 - (e) pipelines;
 - (f) marine navigation;
 - (g) civil aviation;
 - (h) space travel;
 - (i) postal services;
 - (j) telecommunications; and
 - (k) radio and television broadcasting.
19. National public works.
 20. Housing policy.
 21. General principles of land planning and the co-ordination of planning by the counties.
 22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—
 - (a) fishing, hunting and gathering;
 - (b) protection of animals and wildlife;
 - (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and
 - (d) energy policy.
 23. National referral health facilities.
 24. Disaster management.
 25. Ancient and historical monuments of national importance.
 26. National elections.
 28. Health policy.
 29. Agricultural policy.
 30. Veterinary policy.
 31. Energy policy including electricity and gas reticulation and energy regulation.
 32. Capacity building and technical assistance to the counties.
 33. Public investment.
 34. National betting, casinos and other forms of gambling.
 35. Tourism policy and development.

PART 2—COUNTY GOVERNMENTS

The functions and powers of the county are—

1. Agriculture, including—

- (a) crop and animal husbandry;
- (b) livestock sale yards;
- (c) county abattoirs;
- (d) plant and animal disease control; and
- (e) fisheries.

2. County health services, including, in particular—

- (a) county health facilities and pharmacies;
- (b) ambulance services;
- (c) promotion of primary health care;
- (d) licensing and control of undertakings that sell food to the public;
- (e) veterinary services (excluding regulation of the profession);
- (f) cemeteries, funeral parlours and crematoria; and
- (g) refuse removal, refuse dumps and solid waste disposal.

3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.

4. Cultural activities, public entertainment and public amenities, including—

- (a) betting, casinos and other forms of gambling;
- (b) racing;
- (c) liquor licensing;
- (d) cinemas;
- (e) video shows and hiring;
- (f) libraries;
- (g) museums;
- (h) sports and cultural activities and facilities; and
- (i) county parks, beaches and recreation facilities.

5. County transport, including—

- (a) county roads;
- (b) street lighting;
- (c) traffic and parking;

- (d) public road transport; and
 - (e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
- 6. Animal control and welfare, including—
 - (a) licensing of dogs; and
 - (b) facilities for the accommodation, care and burial of animals.
- 7. Trade development and regulation, including—
 - (a) markets;
 - (b) trade licences (excluding regulation of professions);
 - (c) fair trading practices;
 - (d) local tourism; and
 - (e) cooperative societies.
- 8. County planning and development, including—
 - (a) statistics;
 - (b) land survey and mapping;
 - (c) boundaries and fencing;
 - (d) housing; and
 - (e) electricity and gas reticulation and energy regulation.
- 9. Pre-primary education, village polytechnics, homecraft centres and childcare facilities.
- 10. Implementation of specific national government policies on natural resources and environmental conservation, including—
 - (a) soil and water conservation; and
 - (b) forestry.
- 11. County public works and services, including—
 - (a) storm water management systems in built-up areas; and
 - (b) water and sanitation services.
- 12. Fire fighting services and disaster management.
- 13. Control of drugs and pornography.
- 14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

(b) establish the principles of governance and management of urban areas and cities; and

(c) provide for participation by residents in the governance of urban areas and cities.

(2) National legislation contemplated in clause (1) may include mechanisms for identifying different categories of urban areas and cities, and for their governance.

185. (1) The legislative authority of a county is vested in, and exercised by, its county assembly.

Legislative authority of county assemblies.

(2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.

(3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.

(4) A county assembly may receive and approve plans and policies for—

(a) the management and exploitation of the county's resources; and

(b) the development and management of its infrastructure and institutions.

PART 3—FUNCTIONS AND POWERS OF COUNTY GOVERNMENTS

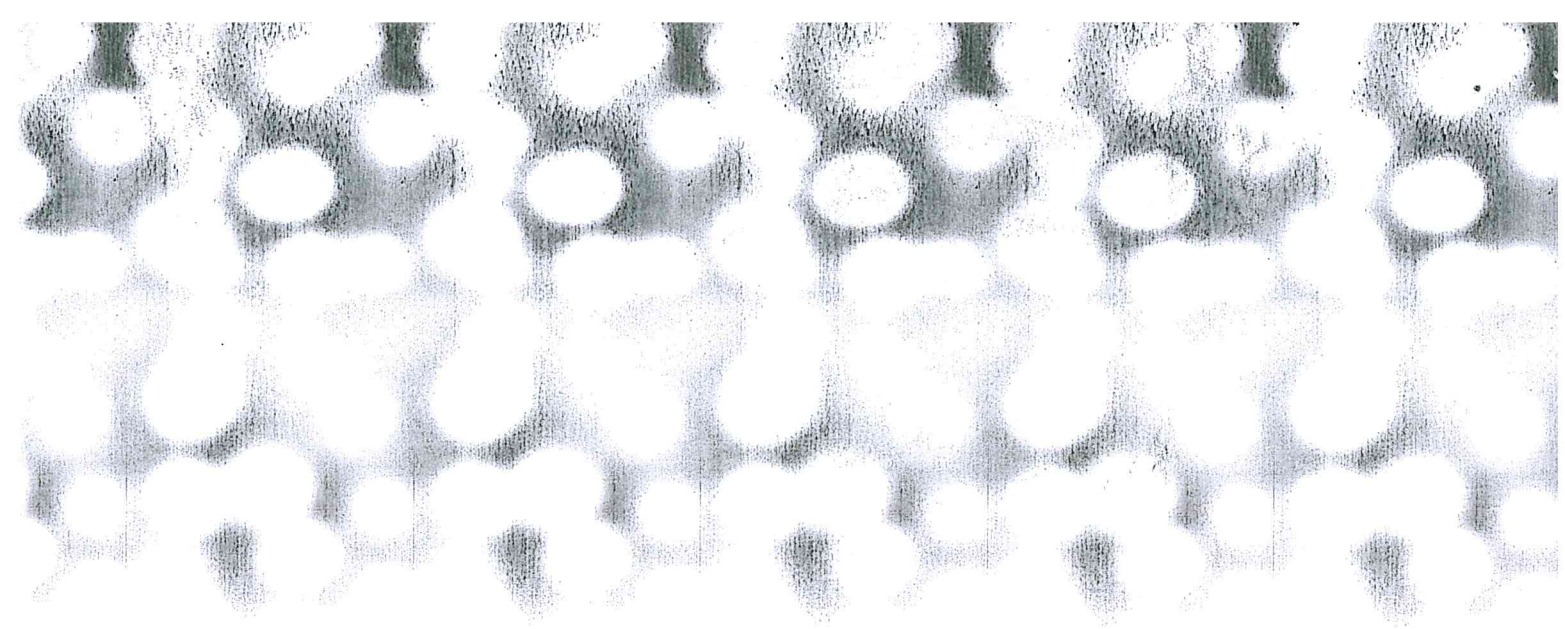
186. (1) Except as otherwise provided by this Constitution, the functions and powers of the national government and the county governments, respectively, are as set out in the Fourth Schedule.

Respective functions and powers of national and county governments.

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

(3) A function or power not assigned by this Constitution or national legislation to a county is a function or power of the national government.

(4) For greater certainty, Parliament may legislate for the Republic on any matter.



Transfer of functions and powers between levels of government.

187. (1) A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if—

- (a) the function or power would be more effectively performed or exercised by the receiving government; and
- (b) the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised.

(2) If a function or power is transferred from a government at one level to a government at the other level—

- (a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and
- (b) constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.

PART 4—THE BOUNDARIES OF COUNTIES

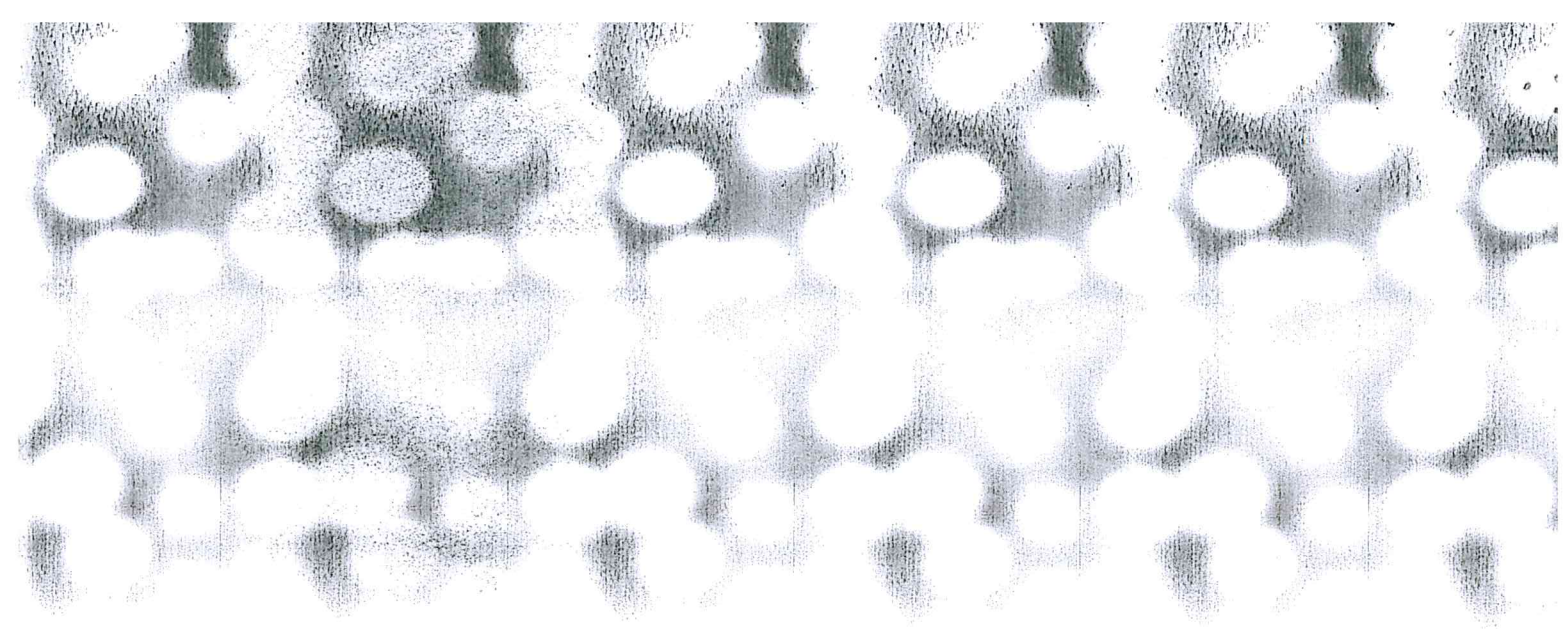
Boundaries of counties.

188. (1) The boundaries of a county may be altered only by a resolution—

- (a) recommended by an independent commission set up for that purpose by Parliament; and
- (b) passed by—
 - (i) the National Assembly, with the support of at least two-thirds of all of the members of the Assembly; and
 - (ii) the Senate, with the support of at least two-thirds of all of the county delegations.

(2) The boundaries of a county may be altered to take into account—

- (a) population density and demographic trends;
- (b) physical and human infrastructure;
- (c) historical and cultural ties;



- (d) the cost of administration;
- (e) the views of the communities affected;
- (f) the objects of devolution of government; and
- (g) geographical features.

PART 5—RELATIONSHIPS BETWEEN GOVERNMENTS

189. (1) Government at either level shall—

Cooperation between national and county governments.

- (a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;
- (b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
- (c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

(2) Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

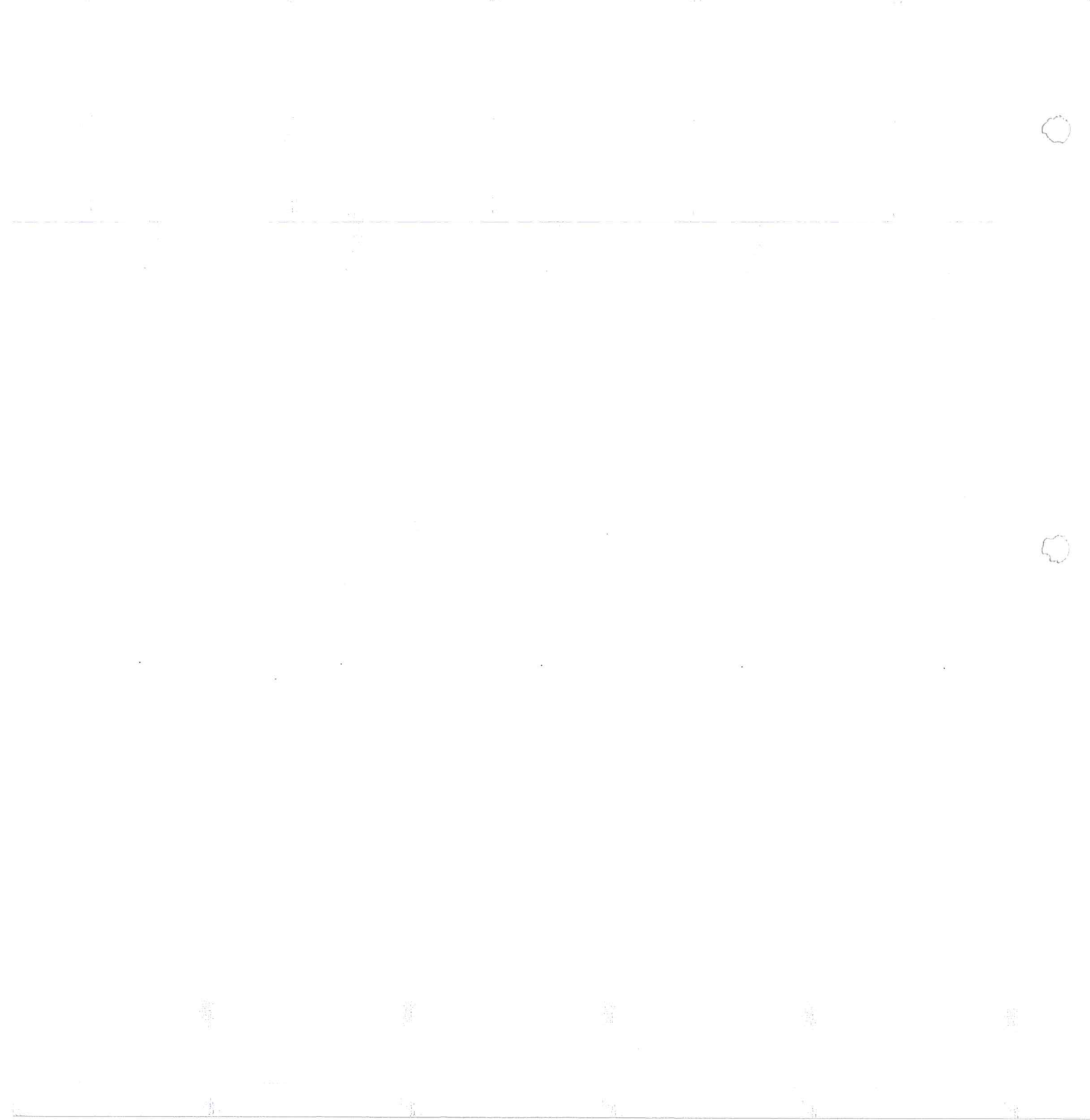
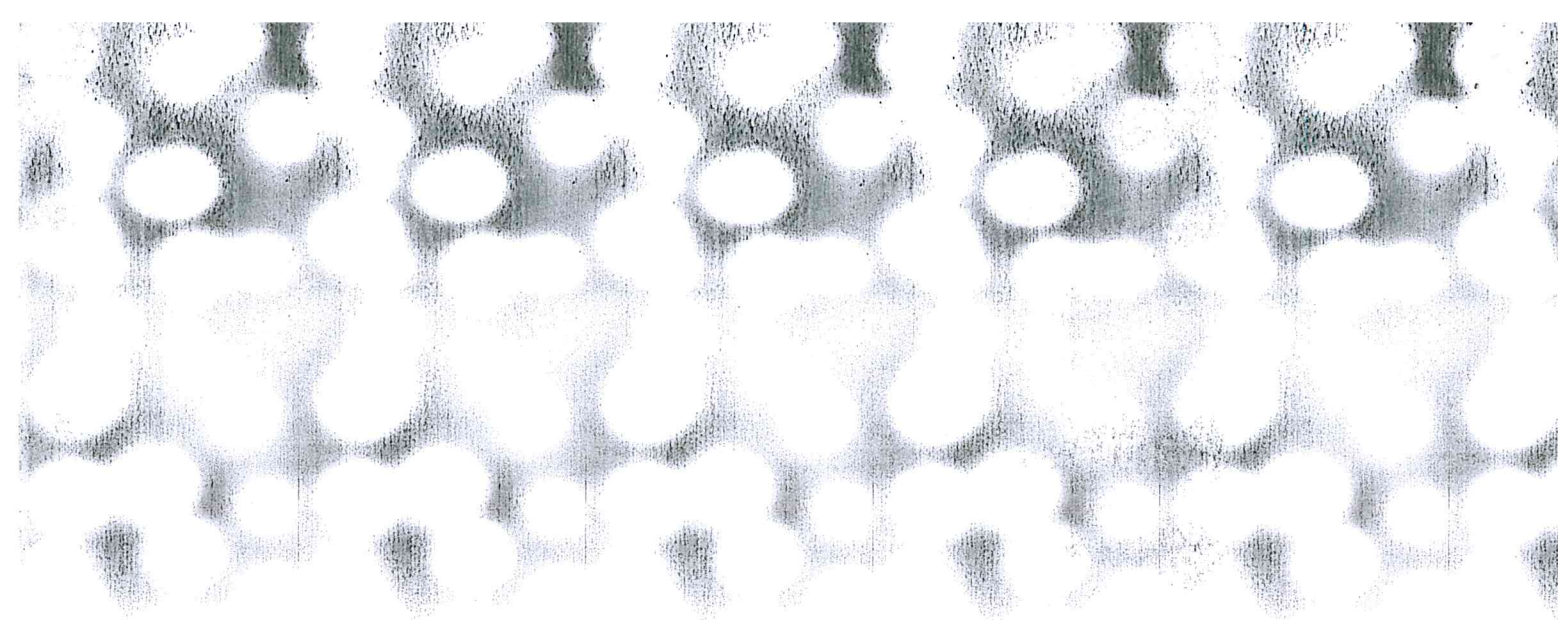
(3) In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation.

(4) National legislation shall provide procedures for settling inter-governmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration.

190. (1) Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions.

Support for county governments.

(2) County governments shall operate financial management systems that comply with any requirements prescribed by national legislation.



ANNEX 3
(4)

- (d) dispute resolution between counties within the framework provided under this Act;
- (e) facilitating capacity building for governors;
- (f) receiving reports and monitoring the implementation of inter-county agreements on inter-county projects;
- (g) consideration of matters referred to the Council by a member of the public;
- (h) consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties; and
- (i) performing any other function as may be conferred on it by this Act or any other legislation or that it may consider necessary or appropriate.

(2) The Council shall have powers to establish other intergovernmental forums including inter-city and municipality forums.

(3) The Council may establish sectoral working groups or committees for the better carrying out of its functions.

21. Meetings of the Council

- (1) The Council shall meet at least twice a year.
- (2) The meetings of the Council shall be as provided in the Schedule.

22. Reports by the Council

(1) The Council shall submit an annual report to the Summit, the Senate and the National Assembly.

(2) The report under subsection (1) shall be transmitted to the county assemblies within three months after the end of every financial year.

23. Joint committees

The national or a county government may establish a joint committee with a specific mandate where such a committee is necessary for the achievement of—

- (a) the objects and principles of devolution provided in Articles 174 and 175 of the Constitution; and
- (b) the objects and purposes of this Act.

PART III – TRANSFER AND DELEGATION OF POWERS, FUNCTIONS AND COMPETENCIES

24. Transfer and delegation of powers, functions and competencies

Subject to Article 186 and Article 187 of the Constitution, either level of government may—

- (a) transfer its powers, functions or competencies to the other level of government; or



- (b) delegate the exercise or performance of its powers, functions or competencies to—
 - (i) joint committees, authorities or entities;
 - (ii) other decentralized units; or
 - (iii) urban areas and cities.

25. Principles of transfer or delegation of powers, functions and competencies

A government transferring or delegating a power, function or competency under this Part shall—

- (a) ensure the assignment is to the level of government best placed to exercise or perform the power, function or competency in accordance with Article 187 of the Constitution;
- (b) ensure that adequate resources are provided to carry out the power, function, or competency;
- (c) ensure that the transfer is in accordance with the procedures set out under this Act or prescribed by regulations made under this Act; and
- (d) ensure a transfer or delegation under this section does not transfer constitutional responsibility assigned to that level of government.

26. Agreements on transfer or delegation of powers, functions or competencies

(1) A transfer or delegation of powers, functions or competencies under this Part shall be by a written agreement.

(2) The agreement for the transfer or delegation under subsection (1) shall include—

- (a) the function, power or competency transferred or delegated;
- (b) the specific legal provisions supporting the transfer or delegation;
- (c) the reasons for the transfer or delegation;
- (d) the performance standards and frameworks in respect of the transfer or delegation;
- (e) the resourcing framework for delivery of the powers, function or competency transferred or delegated;
- (f) the capacity of the receiving entity to exercise or perform the powers, function, or competency transferred or delegated;
- (g) the capacity building framework for enhancing any deficits identified in the entity to which the transfer or delegation has been effected;
- (h) the method of resolving any dispute that may arise under the agreement; and
- (i) the terms and conditions for the exercise or performance of the power, function or competency including the time frame.

(3) The agreement shall be—

- (a) signed by an authorized person or officer; and



- (b) published in the Kenya Gazette and the county Gazette in respect of the county to which it relates, at least fourteen days before the effective date of the transfer or delegation.

(4) The National Assembly shall be notified of the decision to transfer a national government power, function or competency.

(5) A county assembly shall be notified of the decision to transfer a county government power, function or competency.

27. Service standards

(1) For each power, function or competency, there shall be minimum service standards or norms of performance provided under relevant laws.

(2) Any transfer or delegation of powers, functions or competencies shall be accompanied by adequate resources to ensure minimum service standards are achieved.

28. Criteria for transferring powers, functions or competencies

The criteria for the transfer or delegation of powers, functions or competencies shall include—

- (a) the capacity of the entity to which the power function or competency is being transferred or delegated;
- (b) the extent to which the transfer or delegation would allow for accountability;
- (c) the extent to which the power, function or competency would best be performed by a single authority across a county, city, municipality or the Republic;
- (d) the existence of the level of technical and managerial expertise required to perform a transferred or delegated function or competency; or
- (e) whether the provision of the service requires substantial inter-county or large-scale infrastructure.

29. Public participation

The framework for public participation in the transfer or delegation of powers, functions or competencies by either level of government under this Part shall be provided by Regulations.

PART IV – DISPUTE RESOLUTION MECHANISMS

30. Application of this Part

(1) In this Part, unless the context otherwise requires, "dispute" means an intergovernmental dispute.

(2) This Part shall apply to the resolution of disputes arising—

- (a) between the national government and a county government; or
- (b) amongst county governments.



31. Measures for dispute resolution

The national and county governments shall take all reasonable measures to—

- (a) resolve disputes amicably; and
- (b) apply and exhaust the mechanisms for alternative dispute resolution provided under this Act or any other legislation before resorting to judicial proceedings as contemplated by Article 189(3) and (4) of the Constitution.

32. Dispute resolution mechanisms

(1) Any agreement between the national government and a county government or amongst county governments shall—

- (a) include a dispute resolution mechanism that is appropriate to the nature of the agreement; and
- (b) provide for an alternative dispute resolution mechanism with judicial proceedings as the last resort.

(2) Where an agreement does not provide for a dispute resolution mechanism or provides for one that does not accord with subsection (1), any dispute arising shall be dealt with within the framework provided under this Part.

33. Formal declaration of a dispute

(1) Before formally declaring the existence of a dispute, parties to a dispute shall, in good faith, make every reasonable effort and take all necessary steps to amicably resolve the matter by initiating direct negotiations with each other or through an intermediary.

(2) Where the negotiations under subsection (1) fail, a party to the dispute may formally declare a dispute by referring the matter to the Summit, the Council or any other intergovernmental structure established under this Act, as may be appropriate.

34. Procedure after formal declaration of a dispute

(1) Within twenty-one days of the formal declaration of a dispute, the Summit, the Council or any other intergovernmental structure established under this Act shall convene a meeting inviting the parties or their designated representatives—

- (a) to determine the nature of the dispute, including—
 - (i) the precise issues in dispute; and
 - (ii) any material issues which are not in dispute; and
- (b) to—
 - (i) identify the mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist in settling the dispute, including a mechanism or procedure provided for in this Act, other legislation or in an agreement, if any, between the parties; or
 - (ii) subject to Article 189 of the Constitution, agree on an appropriate mechanism or procedure for resolving the dispute, including mediation or arbitration, as contemplated by Articles 159 and 189 of the Constitution.

MPs rail at Somalia war that is now spilling into Mandera

The government has failed to protect Mandera residents from the fighting between Jubaland and the Somalia army, local leaders have said.

The seven legislators from Mandera said several residents had been displaced and their property destroyed after being caught between the warring troops.

Yesterday Mandera Senator Mahamud Maalim said Kenyan authorities had not made any attempts to repulse the foreign troops. Mr Maalim said yesterday morning the Kenya-Somalia border in Mandera witnessed intense fighting between the two rival troops. "There is a lot of fighting going on at the border on the Kenyan side and it is not yet clear

whether there are casualties," said the senator.

Mandera East MP Omar Maalim said the government should take responsibility for any destruction caused by the troops. Somalia has accused Kenya of harbouring Jubaland security minister Abdirashid Janan, who is considered a fugitive in Somalia. [Moses Nyamori]

NAIROBI CITY COUNTY ASSEMBLY



PUBLIC PARTICIPATION NOTICE

TRANSFER OF FUNCTIONS FROM THE NAIROBI CITY COUNTY GOVERNMENT TO THE NATIONAL GOVERNMENT

The Residents of Nairobi City County and the General Public are hereby notified that the Nairobi City County Government and the National Government executed a Deed of Transfer of Functions to the National Government dated 25th February 2020; which was carried in the Kenya Gazette vide Gazette Notice No. 1609 of 2020, published in Issue No. Vol. CXII-No. 38 of 25th February, 2020.

The Deed is available for download at www.devolutionalsas.co.ke and www.nairobi.go.ke.

The functions transferred by the Nairobi City County to the National Government are:

1. County Health Services;
2. County Transport Services;
3. County Planning and Development Services; and
4. County Public Works, Utilities and Ancillary Services

The Nairobi City County Assembly has been notified of the Transfer of the above mentioned Functions as codified in the Deed of Transfer of Functions in fulfillment of the legal obligations set out under Section 26 (5) of the Intergovernmental Relations Act (Act No. 2 of 2012).

In view of the above and pursuant to Article 196(1) (b) of the Constitution which provides that "a County Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees" the Nairobi City County Assembly is agreeable and partners with the Ministry of Devolution and ASALs to invite residents of Nairobi City County and all members of the public to submit their views and comments on the Deed of Transfer of Functions to the Cabinet Secretary, Ministry of Devolution and ASAL or the County Secretary, Nairobi City County through the emails transferagreement@devolution.go.ke or countyattorney@nairobi.go.ke or speaker@nairobiassembly.go.ke or through written memoranda in an envelope marked "Public Participation on Transfer of Functions from Nairobi City County Government to National Government" addressed to:

The Cabinet Secretary,
Ministry of Devolution and ASAL
National Treasury Building 10th Floor,
P.O. Box 30004 - 00100, NAIROBI

Or submitted in any of the following offices:

1. Nairobi City County, City Hall, City Hall Way, P.O. Box 30075 - 00100 NAIROBI
2. The Principal Secretary State Department for Devolution Teleposta Towers, 6th Floor P.O. Box 30004 - 00100 NAIROBI
3. Nairobi City County Assembly City Hall, P.O. Box 45844-00100 NAIROBI

In addition the Ministry of Devolution and ASAL and the Nairobi City County Government have organized an open public forum for public participation on Wednesday, 4th March 2020, between 9.00 a.m. and 1.00 p.m. at the Kenya School of Government, Lower Kabete Campus, off Lower Kabete Road.

Further, Ward based Consultative forums have been scheduled at the same date and time (4th March 2020 between 9.00 a.m. and 1.00 p.m.) in the 17 sub counties at the venues listed below:

S/NO	SUB-COUNTY	VENUE
1.	Dagoretti North	Muslim Primary School
2.	Dagoretti South	Waithaka Social Hall
3.	Embakasi Central	Kayole II Social Hall
4.	Embakasi North	Dandora III Social Hall
5.	Embakasi South	Mukuru Health Centre (Imara Daima)
6.	Embakasi East	Embakasi Social Hall
7.	Embakasi West	Sub-County Administration Grounds - Umoja I
8.	Makadara	Jericho Social Hall
9.	Ruaraka	Ruaraka Resource Centre - CDF
10.	Roisambu	Kahawa West Market Parking Area
11.	Kasarani	Maji Mazuri
12.	Kamukunji	Eastleigh North Social Hall
13.	Langata	Karen Social Hall
14.	Mathare	Undugu Social Hall, Mabati Ward
15.	Kibra	Joseph Kangethe Social Hall (Woodley Grounds)
16.	Westlands	Parklands Day Nursery School
17.	Starehe	Kariakor Social Hall

The representations may be received on or before Friday, 6th March, 2020 at 5.00pm.

SPEAKER, NAIROBI CITY COUNTY ASSEMBLY

Security. Tension as neighbours fight near border

Somali troops clash sets panic in Mandera town

Fleeing residents fear Monday's heavy gunfight might spill over into Kenya.

By Cyrus Ombati
newsdesk@standardmedia.co.ke

Fear gripped Mandera town yesterday following clashes between Somalia troops and Jubaland forces across the border.

Communication was cut in the town for the better part of the day as the clashes went on in Bula Hawa town on the other side of the Kenya-Somalia border.

A number of residents fled Mandera on Monday fearing that the fighting might spill over into the town. Dozens of fleeing Jubaland troops crossed the border into Kenya and were held at a local police

station where they debriefed the Kenya Defence Forces that patrolled the town's streets.

Heavy gunfire and explosions could be heard from Bula Hawa as black smoke billowed in the horizon. The clash brought business to a standstill with most of the shops in Mandera town remaining closed.

The Somali troops are said to have been camping in Bula Hawa for the past month planning a raid to capture a fugitive Jubaland minister said to be hiding in Mandera town.

Officials said former minister Abdirashid Hassan Abdirnur alias Abdirashid Janan arrived in Mandera town on January 30 and was booked in a local hotel after he escaped from a Mogadishu prison, where he had been held since August 31, 2019.

He later rented a house at

Border Point 1 on the Kenyan side of the border, further stoking tension.

Mandera Governor Ali Roba called on the government to intervene and have the fugitive minister removed.

Meanwhile, Kenya has denied claims by Somalia that it is encroaching its borders. A statement from the Ministry of Foreign Affairs described allegations from the Somalia side as 'baseless.'

"These baseless accusations are part of a growing and persistent pattern of ill intent to use Kenya as a scapegoat and tool to justify unfulfilled and legitimate social demands in Somalia and for the political mileage," said the ministry.

Somalia's Ministry of Foreign Affairs had on February 27 accused Kenya of undermining the country's stability and sovereignty.



VACANCY RE-ADVERTISEMENT

The National Authority for the Campaign Against Alcohol and Drug Abuse (NACADA) was established vide an Act of Parliament in July 2012, and mandated to coordinate a multi-sectoral effort aimed at preventing, controlling and mitigating the impact of alcohol and drug abuse in Kenya.

NACADA wishes to recruit a dynamic, result-oriented and self-driven Kenyan citizen to fill the following vacant position:

POSITION/TITLE	REF. NO.	NO. REQUIRED	Terms of Service
Manager Corporate Communication	NAC/MCC/01/20	1	Permanent & Pensionable

Interested candidates should forward their applications by post, email, courier or hand-delivery, enclosing current and detailed CV, copies of academic and professional certificates, day time telephone contacts, current and expected remuneration, notice period required to take up the appointment if successful, and names, addresses and emails of three (3) professional referees to:

Chief Executive Officer,
National Authority For the Campaign Against Alcohol and Drug Abuse,
NSSF Building, Block A, Eastern Wing, 18th Floor,
P.O. Box 10774-00100 GPO
Email: careers@nacada.go.ke,
NAIROBI.

Qualified and interested candidates are invited to visit NACADA website at www.nacada.go.ke/vacancies for detailed job profile.

All applications MUST have the job reference number clearly marked on the envelope OR subject line so as to reach the undersigned not later than Friday 20, March 2020.

Shortlisted candidates will be required to satisfy the requirements of Chapter Six (6) of the Constitution of Kenya 2010. In fulfilment of this provision, the following compliance certificates should be submitted:

- Certificate of Good Conduct,
- Clearance Certificate from Higher Education Loans Board;
- Tax Compliance Certificate;
- Clearance from the Ethics and Anti-Corruption Commission and
- Report from an Approved Credit Reference Bureau.

NACADA is an Equal Opportunity Employer. Any form of canvassing will lead to Automatic disqualification.

ONLY SHORT LISTED CANDIDATES WILL BE CONTACTED.
NEED SOMEONE TO TALK TO ON ALCOHOL & DRUGS?
CALL OUR HELPLINE NUMBER 1192, FREE OF CHARGE.

Annex 4 (5)

