



Consultation, Cooperation & Coordination in Devolution

APPRAISING IGRTC CAPACITY IN DELIVERING THE BIG FOUR AGENDA

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# Outline

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- ▶ Dispute Resolution in Intergovernmental Disputes
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# Introduction

- ▶ The Constitution of Kenya 2010 establishes a devolved system of governance with two levels of government- National and County Governments
- ▶ Each level of government has separate functions as enunciated in the Fourth Schedule of the COK
- ▶ The COK and other enabling statutes have further established the principles of engagement between the two levels of government, commonly referred to as intergovernmental relations,
- ▶ Specifically, **Article 6** of the COK provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of 'consultation and mutual cooperation while **Article 189(1)** provides that government at either level shall perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of the government at the other level, and respects the constitutional status and institutions of government at either level.

# Introduction

- ▶ **Article 189 (4)** further states that national legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms including negotiation, mediation and arbitration.
- ▶ To effect these constitutional provisions, the Intergovernmental Relations Act, 2012 was enacted for purposes of operationalizing devolution and intergovernmental relations.
- ▶ Section 4 of the IGRA 2012 sets out the principles of intergovernmental relations, in particular, section 4 emphasizes the need for the two levels of government to minimize intergovernmental disputes
- ▶ Both the Constitution and the law require that where there is delegation of functions formal agreements be signed between cooperating governments

# Role of IGRTC in Intergovernmental Relations

- ▶ The Intergovernmental Relations Technical Committee (IGRTC) is established under Section 11 of the Intergovernmental Relations Act, 2012. The functions of the Technical Committee are provided for in Section 12 of the Act and include facilitating the activities and implementing the decisions of the National and County Government Coordinating Summit (The Summit) and the Council of Governors (COG) Specifically

# Functions of IGRTC

Section 12 of the Act provides that the Technical Committee shall:

- a) Be responsible for the day to day administration of the summit and of the Council and in particular-
  - i. Facilitate the activities of the Summit and of the Council; and
  - ii. Implement the decisions of the Summit and of the Council;
- b) Take over the residual functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity
- c) Convene a meeting of the 47 County Secretaries within 30 days preceding every Summit meeting; and
- d) Perform any other functions as may be conferred on it by Summit, the Council, the Intergovernmental relations Act or any other legislation.

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- ▶ The Summit is the apex body for intergovernmental relations
- ▶ It comprises of the President and the 47 County Governors, and is chaired by the President deputized by the Chairperson of the Council of Governors. (Section 7 of the IGR Act, 2012)
- ▶ As the institution tasked with ensuring seamless intergovernmental relations and as the secretariat of the Summit and the Council of Governors, the mandate of IGRTC must be understood purposively with the functions of the Summit as provided in Section 8 of the IGR Act, 2012 given that IGRTC is the implementer of Summit decisions

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- ▶ It is also noteworthy that IGRTC inherited the residual functions of the defunct Transition Authority in accordance with Section 12 (b) of the IGR Act, 2012.
- ▶ The residual functions which IGRTC inherited from TA include the unbundling of functions, transfer of functions and the verification and transfer of assets and liabilities of defunct local authorities and other public entities.

# Dispute Resolution in Intergovernmental Disputes

- ▶ The COK and the IGR Act, 2012 provide that in any intergovernmental dispute, the governments shall make every reasonable effort to settle the dispute through alternative dispute resolution.
- ▶ Section 33(2) of the IGR Act, 2012 provides that parties to an intergovernmental dispute may formally declare such dispute to the Summit, the Council or the intergovernmental structure established under the IGR Act, 2012, which in this case is the IGRTC
- ▶ So far IGRTC has resolved 8 of the first 14 disputes reported
- ▶ IGRTC has facilitated negotiations and signing of more than ten (10) agreements on the transfer of projects from national to county governments

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- ▶ Given that the implementation of the Big Four Agenda entails enhanced intergovernmental relations between the two levels of government, IGRTC shall play a critical role in the development of agreements between national and county governments. IGRTC will play a role in facilitating amicable resolution of intergovernmental disputes that may arise from the implementation of the Big Four Agenda.

# Intergovernmental Agreements

- ▶ Section 24 (b) (ii) of the IGR Act provides that either level may delegate its functions, powers or competencies to the other and may also establish joint committees, authorities or entities. Section 26 (1) of the Act further provides that such delegation shall be by way of written agreement.
- ▶ IGRTC is committed to facilitating discussions and negotiations on joint projects as well as preparation of MOU/ MOA between the two levels of government and amongst county governments.

# Conclusion

- ▶ IGRTC is an intergovernmental body obliged to play a critical role in ensuring a harmonious working relationship between the two levels of government, more so in helping the parties amicably resolve intergovernmental disputes that may arise from the implementation of the Big Four Agenda
- ▶ In the last three years we have developed the skills and the capacity to handle issues emerging from interactions between national and county governments



End

**Thank You**