



LEGISLATIVE SUMMIT | 2019



THEME:

“Accelerating devolution; assessing the progress and addressing the gaps in in policy and legislation”

a) INTRODUCTION & BACKGROUND

The Constitution of Kenya provides for a devolved system of government, which is designed to promote democratic and accountable exercise of power, it provide for both National and County Governments. Each County Government comprises an executive and County Assembly. The County Assemblies constitute a Speaker who is an ex-officio member, ward representatives elected directly by the people, representatives of special interests including persons with disability, women, and youth, who are nominated by political parties in proportion to seats garnered at the general election. The County Assemblies, under Article 185 of the Constitution of Kenya, 2010 have the express mandate to carry out the functions of law making, representation, and oversight over the County Executive Committees and other executive organs.

b) THE SENATE

Chapter eight of the Constitution of Kenya (the Constitution) establishes the Legislature. Article 93 of the Constitution states that “There is established a Parliament of Kenya,” (Parliament) “which shall consist of the National Assembly and the Senate.” The two Houses of Parliament shall perform their respective functions in accordance with the Constitution as stated in Article 93 of the Constitution.

The Senate is made up of 67 members and the Speaker who is an *ex officio* member. The role of the Senate as set out under Articles 94 and 96 of the Constitution are -

- a) Representing counties, and protecting the interests of counties and those of county governments;
- b) Legislating laws concerning county governments;
- c) determines allocation of national revenue amongst counties and oversight utilization of revenue allocated to county governments; and
- d) Oversight of state officers and participate in the impeachment of the President and the Deputy President.

Under Article 110(1) of the Constitution a Bill is said to concern counties if-

- a) it contains provisions affecting the functions and powers of the county governments;
- b) it relates to the election of members of a county assembly or a county executive; and
- c) it is Bill affecting the finances of county governments.

c) THE COUNTY ASSEMBLIES FORUM (CAF)

The County Assemblies Forum [CAF] is the coordinating body of the 47 County Assemblies in Kenya. CAF seeks to institutionalize the law making, representation and oversight capacities for the County Assemblies in Kenya and form linkages with other arms of government. The primary mandate of CAF is to promote networking and synergy amongst the 47 Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development.

d) THE LEGISLATIVE SUMMIT

Devolution remains the biggest gain from the Constitution that was promulgated in August 2010, ushering in a new political and economic governance system. The Constitution created two levels of government — at the national and county level. This change made national matters, including policy and non-severable functions such as defense and security the responsibility of the National Government while local needs such as delivery of various services were made the responsibility of the 47 County Governments. Both the National and County Governments were allowed autonomy of planning, budgeting and finance within a national planning and public finance management framework.

The main objectives of this change were to bring the government closer to citizens, increase civic engagement, improve service delivery, as well as achieve equity across the nation in resource sharing. While *Section 6 (2)* of the Constitution emphasizes distinctiveness and interdependence, *Section 189* calls for closer collaboration, consultation and exchange of information between the national government and the counties. Both levels of government are meant to perform their respective functions within the framework of intergovernmental relations while also respecting the functional distinctness between them, as provided for under the Fourth Schedule to the Constitution.

In keeping with the constitutional obligations to conduct mutual relations on the basis of consultation and co-operation, the County Assemblies Forum and the Senate proposed the establishment of the Legislative Summit. The Legislative Summit was envisioned to be an annual Summit of legislatures across the country, and their staff. The conference is aimed at promoting positive engagement between the Senate, County Assemblies and other institutions relevant to devolution, as well as providing capacity-building and technical assistance to county assemblies with a view to enabling them effectively execute their legislative and oversight roles in the devolved system of government.

The Inaugural Legislative Summit was held on 22nd - 29th May, 2016 in Mombasa County. Participants shared experiences, achievements, challenges and gaps they faced, and made a raft of proposals on the way forward in line with the theme: *‘Celebrating and Entrenching Devolution through Legislation’*. The Second Annual Legislative Summit was held on 20th to 24th March, 2017 in Mombasa County with the theme *‘Effective Legislatures for Sustainable Grassroots Development’*. The participants assessed the progress made, shared experiences and proposed ways to firm the gaps towards realizing the devolution dream. The Legislative Summit 2018 was held on 20th – 25th May, 2018 in Mombasa. Being the second term of County Governments, the theme for the summit was: *“The Devolution Debate; Aligning Legislations to the Development Agenda”*

The Legislative Summit 2019 will seek to build on the gains of the first three legislative summits while providing an avenue for Kenya Legislatures to critically interrogate their roles in the devolved governance structure, six years after its implementation begun. The pioneer devolved system of government largely focused on setting up of structures and hence much of the attention was on establishing the policy, legal and institution framework for democratic governance. The theme of this summit will focus on delivering on the objects of devolution guided by the constitutionally outlined principles as stipulated in Articles 174 and 175 respectively. The proposed theme is **“Accelerating devolution; assessing the progress and addressing the gaps in policy and legislation”**.

Whereas great milestones have been achieved in devolution since 2013, there is still a lot to be done to ensure the full realization of the objects and principles of devolution. One of the resolutions of the third legislative summit was the need to harmonise laws and policies relating to devolved functions to conclude the outstanding unbundling, costing and functional assignment of devolved functions to ensure adequate resourcing of counties based on devolved functions.

Indeed, there have been challenges that have been experienced in the process of the institutionalization of devolution since 2013 most of which have to do with gaps in policy and legislation. The realization of the desired goals call for apt strategy, supported by the necessary policies, legislation and goodwill. Some of these are clearly spelt out in the Constitution, while some are not. Clarity on the sharing of responsibilities between the national and county governments still remains a challenge with overlaps when it comes to resourcing for devolution, revenue sharing, and capacity for implementation. Another challenging area is the gaps that exist due to the restructuring of the public administration and service delivery mechanisms occasioned by the devolved system of governance, just to mention a few.

Nevertheless, despite the myriad challenges, devolution represents a major transformation of the State and undoubtedly, in course of time; of the society. Devolution opens the prospects of fundamental and progressive changes in politics and in the economy. Where possible, Kenya will need to learn from the experiences of other countries that have undergone through a similar transformation.

e) OBJECTIVES

The main objectives of the Legislative Summit 2019 will be;

- i. To assess the progress made in legislations that support entrenching of devolution;
- ii. To identify the gaps and challenges in legislation that are impeding devolution and develop measures to address them;
- iii. To identify opportunities that can be harnessed to accelerate devolution
- iv. To provide a platform for dialogue amongst key actors in devolution to learn and share experiences;
- v. To strengthen inter and intra-governmental relations for effective implementation of devolution.

f) OUTCOME

The establishment of the Legislative Summit shall:

- i. Produce a progress report on the status in legislation so far, as a follow up from the previous legislative summits;
- ii. Provide a means by Members of the County Assemblies to share experiences, information, and advice on a variety of issues ranging from policy to management;
- iii. Serve as an opportunity for County Assemblies to share experiences and suggestions for the improvement in Legislations;
- iv. Develop Action Plans and Way Forward on identified key areas of challenge and opportunities.

Planning of the Summit will be through a multi-agency planning technical and steering committees, spearheaded by the County Assemblies Forum and the Senate. The committees will be meeting regularly to review progress to ensure delivery of a successful 4th Annual Legislative Summit.

6. THEMATIC AREAS

The theme and the Summit program will focus on the following key areas;

a) Aligning the Legislative agenda of County Governments with the Big Four Agenda

- Progress to date
- Areas that need urgent legislation both at the National and County level including review of obsolete laws
- Capacity building for effective legislation and oversight
- Human Rights based approach in policy and legislation (Legislation on Article 43)
- Enhancing the public participation for effective policy formulation and legislation

- b) The place of Regional Development Authorities (RDA) and Regional Economic Blocks (REBs) and their oversight in the devolved system of government**
 - Legal Framework - Role of Kenyan Legislatures
 - Resourcing (Finances and Human Resource)
 - Oversight

- c) Good governance and accountability**
 - Measures for oversight- to include role of the public
 - The role of the legislative arm in both levels of government
 - The role of the Judiciary and other related institutions
 - Legal Framework

- d) The 3rd Basis for equitable sharing of Revenue**
 - How effective is it?
 - Financial Autonomy of County Assemblies

- e) Public Finance Management in Kenya**
 - Financial Oversight in Kenyan Legislatures
 - Financial Autonomy of County Assemblies for effective oversight
 - Audit function for effective Oversight

- f) Enhancement of County Governments Own Source Revenue**
 - Policy and legislation
 - Capacity building
 - Best practices
 - Oversight

- g) 2019 Census and delimitation of boundaries**
 - 1st Census under devolved system of government
 - Coordination between national and County Governments
 - Level of preparedness
 - Advocacy and Civic Education

- h) Discussion on Constitutional Review**
 - Protecting and strengthening gains of devolution
 - Interest of the Public and Non-State Actors
 - Inclusivity and gender perspective

7. ORGANIZATIONAL STRUCTURE

To achieve the objectives stated above, the summit is designed to ensure that Members of the County Assemblies and their respective secretariats are adequately involved in the discourse, interact positively among themselves and with other stakeholders essential to

the process of implementing devolution. In order to bring out inclusivity and diversity, also actively participating in the summit will include International and Regional Experts, Speakers of the East African Region, devolution experts, policy & legal analysts, academics, experts in governance specifically decentralization, development partners as well all the institutions involved in devolution implementation.

Attendees to the summit will be drawn from governmental and non-state sectors to include: representatives from National Government, County Governments and their officials, independent offices, constitutional commissions, civil society organizations, academia & think tanks, the media, religious institutions, professional bodies, private sector practitioners and other associations. The program will be designed to ensure there is meaningful participation by all together with facilitating the exchange of ideas and learning.

8. THE LEGISLATIVE SUMMIT PROGRAMME

The Legislative Summit will be held for three days. Each day shall cover at most three thematic areas identified above through presentations and panel discussions on the subject matter through plenums. There will be expert moderators and discussants for each of the plenaries, drawn from the vast field of experts, the Senate and the County Assemblies. There will also be a rapporteur assigned to each plenum, whose notes will be used to play back the discussions and resolutions during the closing ceremony of the Summit.

In identifying tools and methods of facilitating or moderating the sessions during the summit, due attention will be made of the diverse backgrounds and interests of the participants, and the need to generate as much current and accurate information as possible, but also allow for dialogue and recommendations. For this reason, due attention will be paid to the sitting arrangement, use of dynamic and non-traditional group discussion methods.

There will also be a booth/ cafe to show case specific best practice examples on oversight, law making and representation through publications, including video footage.

9. PRE-CONFERENCE ACTIVITIES

There will be activities that will be held as build up to the main conference as follows;

a) Pre-summits on Gender, Youth and People Living With Disability

The Constitution has placed a lot of emphasis on gender representation at all levels of leadership and there has been a lot of debate on this. The youth also play a key role in the current and future economy of the country. PWDs are equal members of the society and are not to be discriminated in any way.

The pre-summits on these special groups will review progress made in implementation of the resolutions of the previous Summits and develop new action areas in line with the theme of the Summit for consideration during the Summit. These Pre-summits will be held prior to the Summit on 13th April (Youth and PWD) and 14th April (Women) 2019.

10. DATE AND VENUE

The Legislative Summit, 2019 is proposed to be held on 14th -18th April, 2019 in Kisumu County.

11. OUTPUT

At the end of the Summit, a *joint communiqué* will be prepared outlining the resolutions of the deliberations. The resolutions will be geared to further strengthen the position of legislatures in Kenya within the context of the devolved system of government. Further, the communique will adopt a drafting formula that captures actionable resolutions containing a logical action points and an accountability plan for implementation by respective institutions.

12. BUDGET IMPLICATION

Financial support for the Summit will be sought from development partners as well as corporates who will be invited to support the Summit. A budget for the Summit will be developed by the planning secretariat that will be charged with exploring other avenues for raising additional resources.