



**REPUBLIC OF KENYA**



**COUNTY ASSEMBLIES FORUM (CAF)**

Presentation to:

# **BUILDING BRIDGES INITIATIVE**

**11<sup>TH</sup> JULY, 2019**





# CAF'S PROPOSAL TO THE BUILDING BRIDGES INITIATIVE



# INTRODUCTION OF CAF

- The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya.
- The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development.



# OBJECTIVES OF CAF

- promote the objects and principles of devolution through legislation, representation and oversight at the county level
- act as a coordinating body for County Assemblies
- facilitate capacity building
- undertake research and policy advocacy
- provide a platform for consultation amongst members
- champion for their welfare
- consultation and cooperation with national government and other Constitutional bodies at the national level
- collective voice for County Assemblies
- link between County Assemblies and the Senate
- engage citizens on the roles and functions of County Assemblies
- facilitate networking with other stakeholders in devolution



# HISTORY OF CAF

- In 2013, County Assemblies found themselves without a coordinating and unifying body, owing to an oversight/omission by the drafters of statute on the important role of County Assemblies.
- The Speakers of County Assemblies came together to form the County Assemblies Speakers' Forum (CASF).
- In December 2013 it was expanded to include all Members of County Assemblies, establishing the County Assemblies Forum (CAF).
- CAF is registered as a Society under the Societies Act, Laws of Kenya
- CAF has its head office in Nairobi, where its Secretariat is based.

# CHALLENGES FACED BY COUNTY GOVERNMENTS

- 1) Lack of Financial Autonomy of County Assemblies and dependence of County Executive arm (CEC for Finance) which hampers oversight function
- 2) Inadequate Revenue Allocation
- 3) Inadequate Own Source Revenue Collection
- 4) Quality of Legislation
- 5) Lack of clarity in impeachment Procedures
- 6) Relationship b/n Senate & County Gvoernemtns & Senate & The National Assembly
- 7) Corruption
- 8) Inclusivity

# CHALLENGES FACED BY COUNTY GOVERNMENTS

## Inadequate Revenue Allocation;

- Fiscal devolution has been described by many as the major breakthrough that the national decentralization system has brought to Kenya. Article 202 provides for equitable sharing of a 15% minimum of national revenue to the 47 counties.
- There are several technical issues surrounding the revenue allocation process such as:
  - Delays in disbursement of funds to counties by the national government
  - Challenges related to the basing of county funding shares on audited accounts of the national budget that date back a number of years
  - Treasury has proposed a Sh9 billion cut of the base allocation of the county governments' equitable share in the 2019/2020 budget. This will compound the problem by affecting programs and projects, affecting county assemblies operations too
  - The current proposal by the Commission of Revenue Allocation linking allocation of revenue to service delivery provides a more realistic assessment of expenditure needs than population and land size generalized as was the case with the previous formulae. While the formula is not perfect, it is a move in a positive direction

# CHALLENGES.....

## Financial Autonomy of County Assemblies:

- County assemblies do not have financial autonomy and as a result need permission from the executive to spend.
- Members cannot effectively perform their oversight and legislative roles if they have to depend on county treasuries for funds.

# CHALLENGES.....

## Own Source Revenue Collection;

- Counties revenue collection has been below the set targets for consecutive years. According to the Controller of Budget Half Year Report for Financial Year 2018-19, the counties collected only Sh15.37 billion (30.1 per cent) against an annual target of Sh51 billion between July and December 2018. This is hurting services and projects.
- The reduction in revenues both from the national government and own source revenues will affect the proportion that county assemblies will receive since county assemblies are entitled to receive a maximum of 10 percent of the entire County budget according to ceilings issued by the [Commission on Revenue Allocation](#)

# CHALLENGES.....

## Quality of Legislation;

- There exists weak capacity in law making, conducting legislative research, and effective utilization of evidence. There is a huge capacity gap in knowledge and skills in law making among Members of County Assemblies (MCAs) and this has meant that many bills are drafted by county assembly staff, who in most cases also lack capacity for conducting proper legislative research.
- Persisting poor relations between county executives and county assemblies has had adverse effects on the effectiveness of law making and the subsequent use of evidence in law making processes in some counties.

# CHALLENGES.....

## Corruption;

- On devolution and governance in Kenya; corruption remains the most pressing problem and remains the biggest threat to devolution that both the National & county governments should address.
- Tackling corruption and unethical conduct requires continuous flow of information to guide initiatives aimed at combating and preventing their occurrences.
- According to the Auditor general reports, there are many cases of misuse of public funds recorded in several counties.

# CHALLENGES.....

## Inclusivity;

- The coming in of devolution was meant to address, among many other issues, the issue of employment and decision making at the lowest levels.
- Exclusion, however, of different communities living in the different counties was not foreseen and currently remains a big challenge across all Counties in particular in achieving the percentage requirement for employment of all communities.
- There is absence of diversity in the composition of the county assemblies' representatives from marginalised groups and minorities.

# CHALLENGES.....

## Impeachment Procedures

- There is lack of clarity on the procedure and the threshold expected in the performance of the oversight role of a County Assembly through impeachment of non-performing or corrupt members of the Executive

# CHALLENGES.....

## Relationship between Senate & County Governments and Senate & The National Assembly.

- The oversight role between Senate and county assemblies over county governments is a contentious issue particularly the Senate probing the Auditor General's report on spending by counties
- Members of the National Assembly have in the past accused the Senate of overstepping its mandate over legislation
- Senate has also been accused of duplicating work leading to wastage of public resources

# PROPOSED CONSTITUTIONAL AMENDMENTS

In view of the discussions and public debates on going on the referendum issue, CAF proposes that;

1. Any amendment that will not prejudice Devolution and the gains made so far is welcome!
2. The voice of the citizen must be the overall voice in the referendum debate.
3. Aim must be to strengthen devolution and not rhetoric that claws back the gains of devolution.

# 1. Financial Autonomy of County Assemblies

REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

Since 2013, the County Assemblies have been run as departments of the County Executive, under the directions, authority and financing discretions of the County Executive arm of the County Government.

The experiences of the County Assemblies as a result of the County Executive managing, authorizing payments and operating the respective County Assembly Accounts have been;

- Reallocation of County Assembly budgetary provisions in total disregard of the applicable laws.
- Denial of services by contractors and suppliers to the County Assembly as a result of non-payment of services rendered ( Pending Bills).
- Blackmailing of the Members of the County Assembly(lies) to approve particular matters in the ulterior interest or motive of County Governor(s).
- Selective treatment of particular committee(s) or sections of leaderships based on perceptions of loyalty against or for the County Governor.
- Lack of oversight and representation of the Citizens wishes in the County Assembly as a result of blackmail.

# Financial Autonomy Cont.....

To cure this, through the Constitution;

- There is need to amend the powers of the Governors/Executive. The current constitution gives governors more control over funds disbursed to counties and by extent control over county assembly budgets. This limits the budget autonomy of county assemblies, and thus reduces the effectiveness of Assemblies to oversight the Executive.
- To make county assemblies independent from the executives, CAF proposes amendments to the constitution to limit the powers of the county executive from influencing the county assemblies using annual budgets. Assigning an independent vote to county assemblies will improve the oversight role of the assembly.

## 2. Revenue Allocation & flow

- a) Revise the National Treasury framework for County Equitable Revenue Share in accordance with the Constitution of Kenya, 2010 and support actual devolution needs by adoption of the Commission on Revenue Allocation's proposed formula.
- b) Develop mechanism to allow speedy resolution of matters regarding Division of Revenue Bill, 2019 between the National Assembly and the Senate.
- c) Resources to the Counties be increased from 15% to 40% in tandem with the economic growth realized across the Country in the recent years.

# Revenue Allocation Cont..

- d) Amendment of Article 203 (3) of the Constitution to facilitate timely approval of audited accounts on whose basis shareable revenues are allocated. The approval should be based on the audited books of the previous year. The County Allocation Revenue Bill (2019) for instance proposed a Sh371 billion allocation to counties, which is equivalent to 36 per cent of Sh1 trillion 2014/15 Financial Year audited revenues, being the most recent accounts approved by the National Assembly.
- e) The National Treasury should address delays in release of the equitable share. This will boost timely execution of planned activities by counties.



# 3. Own Source Revenue Collection

- a) Intervention should be undertaken to boost the counties capacity to collect revenues.
- b) Provision in the constitution on the sources of revenue for county governments and mechanism to strengthen/enhance own source Revenue collection and utilization.
- c) Intervention should be undertaken to boost the counties capacity to collect revenues.

# 4. Quality of Legislation

- a) The number of wards and county assemblies should be maintained as per Chapter 7, 8 and 12 of the constitution on representation.
- b) Amendments should be made in the light of strengthening wards and county assemblies.
- c) Develop plan to build the capacity of MCAs and county assembly staff in order to ensure high quality of Legislation but also oversight mandate of County Assemblies is upheld and undertaken without any prejudice..
- d) Strengthen the relationships between the MCAs and the county executive.



# 5. Clarity on impeachment Procedures

That the constitution should clarify with detailed procedures/provisions for impeachment procedures for County Assembly Speakers/leadership for stability of county assemblies as follows;

- The threshold for removal of a County Assembly Speaker to retained as provided by Section 11(1) of the County Government Act,2012.
- The procedure for removal of County Assembly Speakers to be a two-tier system.

# Impeachment Procedures.....

- The procedure of removal should be in the form that once a notice of motion is approved and passed by 75% of the Members of a County Assembly, the resolution should be submitted to the Speaker of the Senate. The Speaker shall then present the charges to the Senate and form a special committee to address the legality and viability of the grounds of removal.
- The County Assembly speaker to be required to make an appearance before the special committee and be heard. If the special committee is not satisfied with grounds of removal, the impeachment motion fails.

# 6. Relationship between Senate & County Governments/Assemblies & Senate & National Assembly

REPUBLIC OF KENYA



COUNTY ASSEMBLIES FORUM (CAF)

The Senate has continuously prevailed upon County Governments to appear before Senate to respond to issues of Accountability that affect County Governments. The constitution must;

- a) Clarify first call of oversight ( the County Assemblies) at the Sub-National Level/ County Government Level.
- b) Clarify role of Senate in the protection of interests of County Governments/Assemblies and the subsequent support/relationship with the County Executive vis-à-vis the National Assembly.
- c) Clarify mandates and roles of the National Assembly & Senate in law making and oversight responsibilities to avoid crisis and acrimony at the national level.
- d) The oversight role of counties should be exercised by county assemblies with Senate on coming in when outstanding matters are brought into their attention.

# 7. Corruption

- a) Include an Article in the Constitution to provide for implementation/ enforcement of the Chapter on Integrity for all State Officers to bar all from being involved in corruption. No official/ person should be allowed to participate in Politics or hold Public office if he/she does not adhere to the provisions of Chapter six ( 6) of the Constitution.
- b) MCAs should deepen their legislative and oversight role as this will help in reducing corruption
- c) Counties should fast tract the establishment of internal audit committees to fulfill the Public Finance Management Act
- d) Lay a mechanism for corruption education, detection & prevention at all levels .
- e) Streamline procurement and staff hiring. This will help reduce wastage of devolved resources

# 8. Inclusivity

- A mechanism to allow any Kenyan to work anywhere and in any county and make the provision punishable if not adhered to.
- Those in charge of various government agencies must deliberately use those positions to promote inclusivity in staffing and in delivery of services
- To operationalize The Elections Act which provides for special representatives from marginalised groups and minorities in county assemblies, a clear criteria for identification of special representatives from marginalised groups and minorities in county assemblies should be developed