



THE DEVOLUTION FORUM (TDF) PRESS STATEMENT ON THE EQUALIZATION FUND

Continental House, Wednesday, 7th August 2015

About The Devolution Forum

The Devolution Forum (TDF) is a multi-sectoral alliance of like-minded networks, organisations and individuals united for the promotion and protection of Devolution and its implementation as enshrined in the Constitution of Kenya 2010.

Introduction

We have here today submitted a memorandum to the Senate calling on its members to reject the *Memorandum on the Constitution of Kenya (Amendment) (NO.2) Bill, 2013* which seeks to amend Article 204 -2 and 3(b)- the effect of which is to direct the funds to the constituency under the management of members of parliament.

1. **Amendment is unconstitutional:** The proposed amendment is unconstitutional because it offends the principle of separation of powers between the executive and legislature, and offends the functional distinctness of the county governments by seeking to establish the constituency as an administrative unit. It is also not clear what if any public participation has taken place on the proposed amendment.
2. **Disregard of Court Ruling:** It is our view that the National Assembly seeks to circumvent the CDF high court ruling through the proposed

amendment. This is blatant impunity and must not be entertained in any form of manner.

3. **12 months to revamp CDF:** On 20th February 2015, the High Court ruled that the Constituency Development Fund was unconstitutional and rendered it null and void. This nullification was suspended for 12 months to give the National Assembly time to revise the CDF to conform to the constitution. The National Assembly was directed to ensure that they respect the structures and mandate of the county governments and respect the principle of separation of powers. The court ruled that the constitution does not permit Senators, Members of Parliament and MCA's to get 'involved in the administration and implementation of development projects in the counties.'
4. **Women's fund also offends constitution:** Instead of complying with the court ruling on 11th March 2015 the Cabinet Secretary gazetted guidelines for the Affirmative Action Social Development Fund or Women's fund. This fund is similar to the CDF and is also unconstitutional.
5. **National Assembly offender of constitution:** We note that the National Assembly has become one of the biggest offenders of the constitution. They have become wolves greedily devouring all our resources. When the upholders of the law become its aggressors; our country is at great risk.
6. **Failure of leadership** At every stage of this bill there are responsible officers who should have advised and rejected this preposterous amendment. This includes the Clerk of the National Assembly whose has the responsibility under National Assembly standing order 114 (2 (c) to ensure 'whether the legislative proposal conforms to the Constitution...'; there is also the Speaker who is the head of the Assembly; there is the chair of the budget committee which makes proposals on all financial bills.

It is our opinion that these officers have failed in their duty under the constitution. They have failed the people of Kenya. We hereby put them on notice: we will take the necessary action to stop them from abusing their elected or appointed mandate; to stop them from undermining the sovereign will and interests of the people of Kenya.

- 7. Citizens need to defend the constitution** It is evident that there are public officers in this country who spend precious tax-payers money plotting of ways to kill devolution. These are the ones who do not want power and the opportunities it brings to move closer to the people. We want to remind Kenyans that you cannot keep electing wolves and expect them to look after your sheep. You need to elect leaders of integrity and you need to hold them to account for their performance during their term and not just after five years.

Conclusion:

- i. We hereby call upon the Senate to put a stop to this madness by rejecting the constitutional amendment bill no. 2.**
- ii. We also call for a review of the equalization grant guidelines.**

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