



**MEMORANDUM TO**  
**H.E. THE PRESIDENT, UHURU KENYATTA ON THE PROPOSED AMENDMENT TO THE**  
**COUNTY GOVERNMENT ACT, 2012**

**H.E. The President, Uhuru Kenyatta**  
**Office of the President**  
**Harambee House**

**Preamble**

The Devolution Forum (TDF) is a multi-sectoral coalition of non-state actors that seeks to promote citizen engagement in devolution. TDF was formed in 2014 and brings together over 200 civil society organizations and individuals drawn from all the 47 counties.

This memorandum submits the following with regard to the County Government (Amendment) Bill 2013 passed by the National Assembly on Thursday 3<sup>rd</sup> July, 2014.

**Principal Object of the County Government Amendment Bill**

1. The Intention of the Bill is to amend the County Governments Act, by providing for the establishment of County Development Boards in each county whose main function shall be to provide a forum for consultation between the national government and the county government, at the county level.
2. Additionally, the Boards shall also be responsible for the coordination and harmonization of county development plans and projects. The Boards are also empowered to consider and adopt the county integrated development plans and the county annual budgets before they are tabled in the county assemblies for approval.
3. It also provides for the County Senator as the Chairperson of the Board, the Elected Women Representative as the Vice- Chairperson and the County Governor as the Secretary to the Board.

In light of the foregoing, the intended amendment is not only unconstitutional but also offends the framework of devolved governance as provided for under the Constitution and the law.

**Power to Plan and Budget at County Level:**

1. Essentially, the Senate and the National Government by way of this Bill are arrogating themselves the power to Plan and make Developmental decisions at the County level in total neglect of the Distinctness of County Governments and the fact that Executive Authority at the county level is bestowed upon the office of the Governor and the County Executive thus violating the provisions of article 6(2), 174, 175, 179, 189, 220(2) of the Constitution.

The fourth schedule to the Constitution clearly assigns and confirms Planning at the County level, as a County Function which therefore means that the county has both the Constitutional and legislative wherewithal to conduct its planning activities within the prescriptions of the law and therefore not subservient to national institutions when carrying out that mandate.

Further, article 220 (2) of the Constitution is clear on the form, content and timing of budgets. The Public Finance Management Act additionally provides clarity on the timelines for the formulation of County Plans and Budgets including mandatorily requiring for Public Participation and equally defining the roles of the County Executive and County Assembly in that regard.

2. At the County level and pursuant to the Constitution and the Law (the County Government Act, Intergovernmental Relations Act and the Public Finance Management Act), the citizenry through the offices of the Governor and the County Assembly are in charge of their county affairs and priorities to the exclusion of any other authority or entity. In this regard, the law anticipates the creation of modalities and platforms for participation that includes the following requirements;
  - a. **Section 54(2) of the County Government Act** provides for the establishment in every county a county intergovernmental forum chaired by the governor and which forum shall comprise of
    - the heads of all departments of the national government rendering services in the county; and
    - the county executive committee members or their nominees appointed by them in writing.

In line with the fourth Schedule (Articles 185(2), 186(1) and 187(2) of the Constitution, the forum is responsible for—

- harmonization of services rendered in the county;

- coordination of development activities in the county;
  - coordination of intergovernmental functions;
- b. Section 91 of the **County Governments Act, 2012** mandates the county governments to establish platforms for citizen participation including participation of people's representatives, which includes members of the National Assembly and Senate.
- c. Section 137 of the **Public Finance Management Act, 2012** provides for the establishment of the County Budget and Economic Forum which inter alia comprises of the Governor, members of the county executive committee and representatives of professionals, businesses, labour issues, women, persons with disabilities, the elderly and faith based organizations. The purpose of the Forum is to provide a means for consultation by the county government on—
- preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county; and
  - matters relating to budgeting, the economy and financial management at the county level.

Since these are constitutional and legal processes, it would be a violation of the Constitution to conceptualize and assign the county development boards the responsibilities and powers envisaged under the County Government Act amendment bill.

### **Distinctiveness of National and County Governments:**

3. National and County Governments in the context of articles 6(2) and 189 of the Constitution as well as the Intergovernmental Relations Act are distinct governments with clear roles and functions. The Constitution does not envisage a Big Brother role to be played by the National Government or National Institutions to the extent that these national institutions prefect or micromanage the counties on matters that counties have jurisdiction over.

### **Separation of Powers:**

4. Generally, Parliament has an oversight and not an implementation role in the management of Public Finances and this is premised under the Doctrine of Separation of Powers and this fact is clearly discernible from the provisions of articles 95 and 96 of the Constitution. These articles of the Constitution clearly demonstrate the fact that Senators and Members of the National Assembly have no direct role in Developmental Planning and Budgeting at the County level.
- a. Article 95 of the Constitution inter alia provides that the national assembly provides oversight over national revenue and its expenditure. It also exercises oversight over state organs.

- b. Article 96 makes it clear that the senate exercises oversight over national revenue allocated to the county governments. This does not include involvement in the formulation, and adoption of county plans and budgets by members of parliament.
- c. It is important that the National Assembly, Senate and the County Assembly get a good grip of their representative, legislative and oversight role. These entities have no implementation role as is intended under the proposed amendment to the County Government Act.
- d. The fact that members of the county assembly are expected to sit in these boards to formulate and approve county plans and budgets, yet this is a responsibility that rightfully ought to be undertaken by them whilst sitting as an assembly, is not only an absurdity in law, but also negates the principle of separation of powers. It must always be remembered that the County Executives Committees are assigned the role of formulating the budget whilst County Assemblies have the role of approving the budget and exercising oversight over the use of public funds.

**THEREFORE:**

1. The proposed amendment bill is not only unconstitutional but also not necessary as it offends the principle of separation of powers. There already exists detailed provisions in the Public Finance Management Act and the County Government Act covering county planning and budget making in light of the authority assigned the county governments under the Constitution.
2. National Government organs cannot wholesomely influence development in the County Governments - this is purely the role of the County Executive as stipulated in the Constitution and the Law.
3. This Bill negates the principle of separation of powers. The Senate, the National Assembly and the County Assembly have **ONLY** legislative and oversight roles with respect to county planning and budgeting and **NOT** implementation roles as the bill seeks to achieve.
4. This Bill attempts to claw back the powers of County Governments that are well articulated in Article 6 and 189 of the Constitution as well as the Intergovernmental Relations Act, which states national government organs, can only engage through mutual relations on the basis of consultation and cooperation; this is definitely not achieved by way of the arrangement posited under this bill, including wholesomely influencing development processes at county level.

5. The bill also contravenes the principles of Public Finance as set out in article 201 (d), that states that public money shall be used in a prudent and responsible manner. The proposed development board seeks to duplicate the role of the County Executive and shall additionally require a secretariat to manage their day today affairs in all of the 47 Counties. They shall definitely have to be paid allowances (and salaries as the case may be) for the unspecified number of meetings the boards hold, with adverse impact on the national wage bill. It cannot be gainsaid that the national wage bill is a concern and all possible avenues ought to be sought in terms of mitigating the problem, and not contributing to the same.
  
6. THUS the proposed County Development Boards are a usurpation of the powers already assigned to the County Governments via the Constitution, are procedurally not useful and a drain on scarce resources since they will duplicate the roles of the County Budget and Economic Forum (section 137 of the PFM Act) and the Intergovernmental Consultative Forum contemplated under section 54 (2) of the County Government Act.

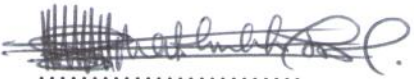
**Signed on behalf of The Devolution Forum by:**

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National Coordinator  
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**Cc:**

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## **Annex 1: This Memorandum is prepared on behalf of the following institutions:**

### **County based**

1. Coalition for constitution implementation (CCI)
2. Mabingwa players' theatre
3. The women's shadow parliament
4. Civil Society Organization-Network
5. Kenya National Association for the Deaf (KNAD)
6. Federation of Deaf Women Empowerment Network Kenya (FEDWENK)
7. Grassroots Development Initiative Foundation Kenya (GRADIF-Kenya)
8. Pastoralists Community Development Organization (PACODEO)
9. Rural community Development Agency (RCDA)
10. The Universal Bureau for Advocacy Enhancement (TUBAE)
11. Poverty Eradication Network (PEN)
12. Supreme Council of Kenya Muslims (SUPKEM)
13. Christian Partners Development Agency (CPDA)
14. Lavie foundation, Kibera
15. Center for economic governance (CEG)
16. Rural projects Support Facility
17. Mwalie health Community Based Organization
18. Peace Net Kenya
19. Hamisi Civil Society Organization Network (HACSON)
20. Abalomandala Development Foundation
21. Centre for Community Dialogue (CODE)
22. Institute for Civic Education & Development in Africa (ICEDA)
23. Centre for Human Rights and Civic Education (CHRCE)
24. Solidarity Goodwill Services
25. Ilishe Trust
26. Mbitha Paralegal
27. Bridge Partners
28. ChunyThuolo Group
29. Neighbours Peace Group
30. Langes Community Development Organization
31. Africa Youth Trust
32. NduguZangu Trust
33. Mt. Kenya Youth Group
34. Nairobi Good Governance Coalition
35. Community Aid International (CAI)
36. International Crisis Group
37. Friends Of Nomads International (FONI)
38. Centre for Youth Development (CYD)
39. NABOLE DISABLED Community Based Organization
40. Blind and Low Vision Network (BLINK)

41. Institute Of Participatory Development
42. Nyeri Disability Network (NDN)
43. Gender Equity Network (GEN)
44. National Organization of Volunteers and Charity Workers in Kenya (NOVOK)
45. Nairobi Good Governance (NGG)
46. Human Rights and Information Forum (HRIF)
47. Albinism Foundation Of East Africa (AFEA)
48. Wajir Paralegal Network (WAPNET)
49. Eshinamunyuri Youth Group (EYG)
50. TaitaTaveta Paralegal
51. Friends Of Lake Turkana (FoLT)
52. Center for Rights Education and Awareness (CREAW)
53. TROCAIRE
54. Kenya National Chamber of Commerce and Industry (KNCCI), UasinGishu
55. Community Initiative Action Group Kenya (CIAG-Kenya)
56. Center for Minority Rights Development (CEMIRIDE)
57. Amka
58. Women's Empowerment Link
59. KaziRiziki
60. Youth for Change
61. Bulamwa society
62. Tujue Katiba Institute
63. Care Ward Society (CWS)
64. Creative For Development Network
65. Bunge La Mwananchi

### **National level**

1. National Taxpayers Association (NTA)
2. The Inuka Kenya Trust
3. Institute for Education in Democracy (IED)
4. Kenya Human Rights Commission (KHRC)
5. Uraia Trust
6. Transparency International –Kenya (TI-Kenya)
7. Decentralization and Governance Non-State Actors Network (DEGONSA)
8. Constitution & Reform Education Consortium (CRECO)
9. Society for International Development (SID)
10. Kenya Correspondents Association (KCA)
11. Future of Kenya Federation
12. Kenyan Section of the International Commission of Jurists (ICJ- Kenya)
13. Citizens Coalition for Constitutional Change (4Cs)
14. Law Society of Kenya (LSK)
15. National Council of Churches of Kenya (NCCK)
16. International Budget Partnership (IBP)



17. Africa Centre for Open Governance (AFRICOOG)
18. Legal Resource Foundation (LRF)
19. Muslims Human Rights Forum (MHRF)
20. Article 19
21. MUHURI
22. CLARION
23. Youth Agenda
25. Health Rights Advocacy Forum (HERAF)
26. Kenya School of Government (KSG)
27. Jesuit Hakimani Centre
28. ACT!
29. The Institute for Social Accountability (TISA)