



**COUNCIL OF GOVERNORS**  
**PRESS STATEMENT, 5<sup>TH</sup> OCTOBER 2015**

**Members of the Press,**  
**Members of the Public,**

We address you today on the following pertinent issues touching on the implementation of the devolved system of governance:-

**1) Equalization Fund**

- 1) The Constitution under Article 204(1) established the Equalization Fund into which was to be paid one half percent (0.5%) of all revenue collected by the National Government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.
- 2) In the 2014/15 financial year KES 3.4 Billion was allocated to the Fund by the National Government while in the 2015/16 financial year KES 6.0 Billion has been allocated. To date the accumulative amount of KES 9.4 Billion has not been disbursed to any benefitting County Government.
- 3) Dear Kenyans, the Council would like to reiterate that this fund as established in the constitution of Kenya was meant to assist identified marginalized areas in the provision of basic services to the extent meant to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation.
- 4) The fact that it has been three years since the inception of devolution, and no disbursement towards the fund has been realized shows the unwillingness of the National Government to implement the fund's objectives.

The Council of Governors would like to highlight to Kenyans the legislative proposals of the National Assembly with respect to this fund:-

- a) The Assembly ignoring its constitutional mandate as provided for in Article 95 of the constitution as that of a legislative house and oversight institution, passed a Bill to give itself through the members of Parliament a direct role in the implementation of the Equalization Fund.
- b) This offends the principles of separation of powers and good governance.
- c) The fact that the High Court of Kenya in its judgment on the PETITION NO. 71 OF 2013 found the CDF as being unconstitutional due to its mode of transfer and implementation clearly shows that the role of Members of Parliament in the implementation of the Equalization Fund is not by any means zatio constitutional. quali

The Court found out that Section 4 of the CDF (Amendment) Act offended the principles of public finance and division of revenue as the Constitution does not envisage any other organ, body or fund to have a share of all the revenue collected by the national government before it is shared as between the two levels of government established under Article 1(4) of the Constitution.

The Council of Governors maintains that:-

In line with Article 204 (3) (b) which stipulates that ‘The national government may use the Equalization Fund— (a) only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by Parliament; and (b) either directly, or indirectly through conditional grants to counties in which marginalized communities exist’.

(c) It is also worthy of note that the Equalization Fund aims to benefit marginalized areas at the county level.

**d) In light of the above in (b) and (c), the Council maintains that the Fund should go directly to counties, and should be managed by counties. This is because the functions to be implemented by the fund are all devolved**

**functions to the county governments. (Health, Roads, Water and Electricity)**

**The bill has to go through the Senate.**

## **2. County Borrowing**

- 1) The Council of Governors notes that the National Government has consistently borrowed on behalf of County Governments' without involving the Counties in the process.
- 2) In the past 8 months the National Government has entered into 14 loan agreements with development partners for functions that are mainly Counties.
- 3) We understand that these loan agreements affect the equitable share of revenue annually allocated to county governments as debt obligation is annually catered for before monies are subjected to allocations to the two levels of Government.
- 4) The Council's position is that no loan agreement concerning County Governments' functions should be entered into by the National Government.

## **3. Land Bills**

- 1) The Council is concerned that the proposed laws on Land are yet to be withdrawn from the National Assembly despite the Council's proposal on the same.
- 2) The said Bills undermine the role of the National Land Commission in land management as well as that of County Governments.
- 3) These laws concern counties as far as they touch on functions or mandates of county government and hence need to be interrogated by both levels of government. All pieces of legislation should uphold the spirit and letter of the constitution 2010.
- 4) The proposed amendments are opening up room for centralizing land management by national government. This will introduce institutions and

practices that Kenyans have tried to do away with e.g land control boards etc.

- 5) The proposed amendments of National Land Commission Act have reduced NLC to be under a ministry which takes us back to where we began. Removing section 18 of NLC Act in the proposed amendments removes the county land management boards established by NLC. These are the boards that would be empowered to oversee management of public lands.
- 6) The proposed community land bill sidelines counties by giving national government more powers close to autonomy to manage communally held lands or trust lands (lands held in trust by defunct local authorities for communities)
- 7) Further Physical planning bill seeks to set up national institutions to manage physical planning which has been devolved. Further it proposes to amend the County Government Act by taking away approval powers from county assembly and county executive to the cabinet secretary at national government and proposes to amend the County governments Act.