



COUNCIL OF GOVERNORS

TALKING NOTES FOR H.E. JOSPHAT NANOK, CHAIRMAN COUNCIL OF GOVERNORS

INDUCTION FOR SPEAKERS OF THE COUNTY ASSEMBLY FORUM, PRIDE INN PARADISE BEACH RESORT IN MOMBASA COUNTY 6TH OCTOBER, 2017 OPENING REMARKS

1. First, let me take this opportunity to congratulate all elected Speakers of the County assembly forum. I believe both the County executive and the County Assembly will work together to promote closer intra and inter-governmental collaboration and consultation; to strengthen the legislative, oversight and representation role of County Assemblies and public participation in governance; with the sole objective of realizing the spirit of devolution and Constitutionalism.
2. I also take this opportunity to appreciate the County Assemblies for making laws that are necessary for the effective performance of the functions and exercise of the powers of the County Government and also for exercising oversight over the County Executive Committee and other county executive organs, Receiving and approving plans and policies, Approving the budget and expenditure of the County Government, Approving borrowing by the County Government, Vetting and approving nominees for appointment to county public offices, conducting its business in an open manner, and holding its sittings and those of its committees in public and lastly, facilitating public participation and involvement in the legislative and other business of the assembly and its committees.
3. It is well noted that Article 185 (2) of the Constitution empowers a county assembly to make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the

county government under the fourth schedule and further that article 6 (2) connotes a measure of autonomy of the levels of government and that one organ of the state may not use its powers in such a way as to undermine the effective functioning of another and that the senate has the mandate of protecting devolution at the national level only and has no mandate to interfere with the functioning of County Assemblies and further that the Senates' power is limited to oversight national agencies which manage national revenue allocated to counties such as the national treasury as provided under article 96 of the constitution and that the said role does not include intermeddling in the affairs of the County Assemblies.

4. In 2016, the County Governments participated in the Launch of County Model Laws. The fifty (50) Model Laws covered areas such as Agriculture, County Health Services, Culture and Entertainment, Trade Development and Regulation, County Education, County Public Works, and Public participation & Access to Information among others. This initiative assisted County Assemblies in the law making process by providing a framework on requirements for various laws. This acted as a Reference point in legislative drafting and as a result, this has enabled the county governments to perform effectively. The performance involves the functions and exercise of the powers of the county government under the Fourth Schedule.
5. The Council of Governors has also played a coordinating and facilitative role amongst the forty seven (47) County Governments on matters of policy, legislation, administrative action and general sector development in the counties. The Council of Governors is one of the implementing partners for the UNDP funded Integrated Support to Devolution Programme. In 2016, one of the components supported was on development of model County legislation. 10 model County legislation were developed for the COG sectoral committees and forwarded to the Counties. These include:-
 - a) The County Alcoholics Drinks control Bill 2016
 - b) The County model Health Services Bill 2016

- c) The County Sand Harvesting Bill 2016
- d) The County Water and Sanitation Bill 2016
- e) The County Access to information Bill 2016
- f) The County Tourism Bill 2016
- g) The County Early Childhood Education Bill 2016
- h) The County Forest and Conservation Bill 2016
- i) The County Waste Management Bill 2016
- j) The County Outdoor Advertising Bill 2016

6. In carrying out its core mandate of strengthening devolution, the Council of Governors has instituted a number of precedent setting cases in instances where mediation failed to resolve the issues in controversy between the two levels of government. To illustrate, **Petition 229 of 2015: The County Government of Kiambu & the Council of Governors -v- The Senate & 17 others**. The Court ruled that the Senate has no powers to interfere with legislative authority of County Assemblies and that Article 96 of the Constitution doesn't confer it with such powers.
7. In **Nairobi Constitutional Petition No. 413 of 2014:-Council of Governors & 6 others v Senate**, On the issue of whether the Senate has any oversight over locally generated revenue, the Court was clear that it is only a County Assembly that can exercise such oversight. The Court stated that ***"We have already held that under Article 96(3) of the Constitution, the Senate has an oversight role over national revenue allocated to the County Governments including the expenditure of the said revenue. A County Assembly also has an oversight role over all County resources including the national revenue allocated to the Counties, grants, loans and revenue locally generated by the Counties."***
8. In the first phase of the devolved system of governance, we can celebrate successes in the relationship between the County Assembly and County Executive. The County Governments have become an important organ in the intergovernmental relations. The County Assembly together with the County Executive has formed linkages with other arms of government for smooth intergovernmental relations. The Forum has enhanced the capacity of members in promoting the objects and principles of devolution as provided by the Constitution. For the last five years, CAF remains actively involved in matters of intergovernmental

relations; it will be of interest for the County Governments to incorporate it in the legislation and have CAF anchored in Law.

9. Moving forward, National Government, CAF and CoG should jointly undertake planning and preparation for future devolution conferences so as to celebrate the devolution milestones in unison.
10. The Council of Governors and CAF should also ensure a close working relationship between the two secretariats. This relationship should extend to the preparation of joint memoranda to be submitted to parliament for purposes of bills and policies that affect the operations of County Governments.
11. In the next five (5) years, as stakeholders in devolution, we need to adopt measures and mechanisms for Alternative Dispute Resolution on matters policy and legislation. We may explore establishment of an *ad hoc* intergovernmental committee that brings together the County Executive and the County Assembly to seek consensus in legislative instruments that affect County Governments. This will ensure that we do not constantly resort to judicial proceedings when a dispute arises.
12. It is worth noting that some County Assemblies have raised concern on the **Intergovernmental contributions** made by county governments to the Council of Governors. The National Treasury has for the past Four years not been adequately funded for the operation of the activities of the Council of Governors. This is understood in the context of an attempt to undermine County Governments and not support devolution. Indeed to protect devolution the Council of Governors has filed numerous cases against the National Government and its state corporations which through policy and legislations have undermined devolved functions.
13. The success of the council in litigation has not gone down well with these agencies. Therefore they have deliberately frustrated the financing of the Council Activities. However, county governments, have, through budgetary allocations of the county level made contributions to the council. These contributions have enabled the council to undertake its activities most of which involve policy, and legislative review (of National

Government instruments), coordination of policy and legislative initiative amongst the counties, fostering administrative cooperation between the National and County Governments at sub-sectoral level (for example the Council of Governmental consultative forum for Agricultural Sector, the forum provides opportunity for technical consultation between the National and County Governments on Agricultural matters on the view of minimizing the conflicts between the two levels of governments).

14. The Council of Governors also has technical negotiations with National Treasury to streamline the division of revenue, management of conditional grants and relationships with development partners. At the County level, the Executive Authority is vested to the County Executive Committee. Given that the functions of the Council of Governors are for the benefit of the counties, **it is perfectly in order for a county government to budget for funds for intergovernmental relations. It is not illegal and unconstitutional for a County Government to include in its budget an expenditure item that will assist the county to promote its intergovernmental relations agenda.**
15. I therefore appeal to you to support the Council of Governors by approving budgets for the intergovernmental contributions and in the same vein, it is not illegal for a county assembly to budget funds for legislative intergovernmental relations and expend through County Assembly Forum or any other forum that the county assembly deems fit.
16. The framework for funds flow system for conditional grants and donor funds must be finalized. A draft document on the administration and reporting of conditional grants has been generated but not yet adopted. Where donor funds are related to County functions, they should be disbursed to the Counties, not held at national ministries. The National Government should set up a unit at the National Treasury to manage conditional grants. The use of National Government agencies to hold funds for County functions undermines devolution.

17. Lastly, Pursuant to section 22 of the Intergovernmental Relations Act, the Council is required to submit an Annual Statutory report to the Summit, Senate, National Assembly and County Assemblies. The Annual Reports reflects the activities for the period 2015/2016 and provides a comprehensive assessment of the progress made by CoG towards achieving its mandate. The Report also highlights successes, challenges, lessons learnt and opportunities for the CoG for coming years. In this regard, the County Assembly should, upon receipt of the same, give feedback on the report to the Council

18. I kindly urge the speakers to exercise their powers accordingly with a view to promoting devolution and upholding the constitution of Kenya in letter and spirit.

Thank you

H.E. Josphat Nanok
Chairman, Council of Governors