IPF KENYA
INSTITUTE OF PUBLIC FINANCE

MAKING REVENUE SHARING EQUITABLE:

THE CONSTITUTION OF KENYA AMENDMENT BILL (CAB) 2020 AND ITS LIKELY IMPLICATIONS ON INEQUALITY

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Contents

List of Figures

List of Tables

Executive Summary

The Constitution of Kenya Amendment Bill (CAB) 2020 proposes amendments to several articles in the Constitution of Kenya 2010. Key among these are articles that guide representation and resource allocation. The Bill proposes to increase the number of constituencies in Kenya from 290 to 360 (additional 70 new constituencies); increase equitable share of revenues raised nationally allocated to county governments from the current minimum of about 15% to a minimum of 35%; to cap allocation between counties based on per capita and to create additional constitutional offices among others.

This analysis seeks to establish the potential implications of limiting county equitable share allocation by per capita on inequalities among counties in Kenya, effect of creating additional 70 constituencies on inequalities among counties and to determine the participatory process in the Building Bridges Initiative (BBI).

The analysis established that Lamu County had the highest per capita allocation in the FY 2021/22 at Kshs. 21,579 while Nairobi County had the lowest per capita allocation at Kshs. 4,378. Subjecting the county allocations to the per capita criterion, seven counties would lose a cumulative amount of Kshs. 8.12 billion. Lamu and Tana River Counties would lose an equivalent of 39% and 36% of their equitable share allocation respectively. Tana River County will lose Kshs. 2.378 billion which is Kshs. 270 million more than its allocation to compensation of employees in the FY 2020/21 budget. All the seven counties that would lose resources through the per capita allocation criterion have higher poverty incidences as compared to the national average.

Creating additional 70 constituencies will reduce Constituency Development Fund (CDF) allocations to the existing constituencies if the CDF Act is not amended to increase the total allocation to CDF from the current 2.5% of the national government's revenue. Each existing constituency received an average CDF allocation of Kshs. 137 million in the FY 2020/21 and this will reduce to Kshs. 110 million if the CDF Act is not amended. Kisii, Garissa and Wajir counties will lose the highest amount in CDF allocation at Kshs 239 million, Kshs. 159.9 million and Kshs. 159.7 million respectively. Nairobi and Kiambu counties on the other hand will gain the highest amount in CDF allocations if the CDF Act is amended gaining Kshs. 1,645 billion and Kshs. 823 billion respectively.

Public participation in the CAB 2020 process appears to be tokenistic in nature. This led to concerned citizens and various civil society organizations to file eight constitutional petitions at the High Court of Kenya challenging the building Bridges Initiative and the subsequent CAB 2020. They raised various concerns including lack of effective public participation in the process, hurried nature of signature collection and approval and usurpation of constitutional offices by the Steering Committee. They sought the interventions of the High Court to declare the entire process unconstitutional. The High Court of Kenya concurred with the petitioners and ruled the Constitution Amendment process unconstitutional due to limited public participation.

Introduction

The Constitution of Kenya Amendment Bill 2020 seeks to amend various clauses in the constitution of Kenya 2010 through the introduction of new Articles. These articles promote regional integration, economic development, and shared prosperity; outline citizen responsibility; introduce the Offices of a Prime Minister, Deputy Prime Ministers and Leader of Opposition; alter revenue allocation basis, increase number of constituencies, among others.

This analysis focuses on three main issues: the proposed county revenue sharing measures that cap equitable share allocation by per capita; increasing number of constituencies and how it will affect Constituency Development Fund allocation and the participatory process in the Building Bridges Initiative (BBI) process. Equitable share allocation for the FY 2021/22 and CDF allocation for the FY 2020/21 was used to determine the impact of the CAB 2020 proposals on revenue sharing. Selected data on access to healthcare, education, clean and safe water and improved sanitation was used to compare inequalities among the counties and how the changing revenue sharing basis might affect them.

The analysis also seeks to answer the following questions:

- What are the potential implications of limiting county equitable share allocation by per capita on inequalities among counties in Kenya?
- What is the potential impact of creating additional 70 constituencies on inequalities among counties?
- Was the BBI process participatory?

Background

The Constitution of Kenya Amendment Bill 2020 came as a result of the March 9, 2018 'handshake' between the President of the Republic of Kenya and the Opposition leader to address the political and social crisis that affected the country post 2017 elections, the subsequent annulment of the presidential election results and protests organized by the opposition to push for reforms in the electoral process.

The Constitution of Kenya 2010 ushered in a new form of political governance, '*the winner takes all*', where the winner of a presidential election heads the government, and the losers have no formal role in political governance. This is contrary to the previous dispensation where the contestants could vie to represent the electorates in a constituency as a Member of Parliament and have the opportunity to serve as the Leader of Opposition in the National Parliament should they lose. The new form of governance therefore raised the political stakes and made elections in Kenya a matter of life and death for the politicians and their support base. Politicians used ethnicity as a mobilizing tool to seek endorsements from the public; raise queries on the revenue sharing formula and promised to deliver development projects and appointments into lucrative positions in the civil service to members of certain communities polarizing the country.

To address the aforementioned issues and supposedly achieve a stable, predictable, and democratic political process that produces a system of governance that is equitable and inclusive at both national and county levels, The Building Bridges Initiative (BBI) was launched. The President vide Gazette Notice No. 5154 of 24th May 2018 appointed the Building Bridges to Unity Advisory Task Force whose mandate was to come up with recommendations and proposals for building a lasting unity in the country. The Taskforce came up with an interim report in November, 2019.and proposed strategies to address nine (9) core challenges including divisive politics, ethnic antagonism and competition, inclusivity, shared prosperity and strengthening devolution.

On 3rd January 2020, through Gazette Notice No. 264, the President appointed the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report whose mandate was to conduct a validation exercise on the Taskforce report through consultation with the public, civil society, cultural leaders and experts; and propose administrative, policy, statutory and constitutional changes that may be necessary for the implementation of the recommendations contained in the Taskforce Report, taking into account any relevant contributions made during the validation period.

The state sponsored Steering Committee collected public views from the 47 counties in Kenya and generated a report that informed the Constitution of Kenya Amendment Bill 2020. However, there has been controversy on how the report presented to the President by the steering Committee transformed into The Constitution of Kenya Amendment Bill 2020.

The bill proposes amendments to several articles in the Constitution of Kenya 2010 key among them articles that guide representation and resource allocation. Some of these proposals include:

1. To increase the number of constituencies in Kenya from 290 to 360 (additional 70 new constituencies). The new constituencies will mainly be concentrated in developed urban settings that have higher population.
2. To increase the equitable share of revenues raised nationally allocated to county governments from the current minimum of 15% to a minimum 35% of all revenues collected by the national government.
3. To cap the allocation between counties such that, the average amount of money allocated per person to a county with the highest allocation does not exceed three times the average amount per person allocated to a county with the lowest allocation.
4. The creation of additional Constitutional offices and elected and appointed officials that will require more resources to operationalize. These are resources that could be channeled to other development purposes.

History of development planning and inequality in Kenya

In 1965, the post-independence government in Kenya adopted the Sessional paper No. 10 on African Socialism and Its Application to Development Planning in Kenya. The key policy drivers in the strategy included the attainment of political equality; social justice; equal opportunities; human dignity, including freedom of conscience; freedom from wants, diseases and exploitation and high and growing per capita incomes, equitably distributed[1].

With independence, Kenya intended to organize its resources to attain a rapid rate of economic growth for the benefit of its people. Under colonization, the people had no voice in government, the nation's natural resources were organized and developed mainly for non-Africans and the human resource was largely uneducated, inexperienced and affected by the growth of the economy[1].

The post-independence government adopted the colonial administration's development and investment framework that engendered and entrenched regional disparities[2]. This framework was highly centralized (top-down) and encouraged zoning of the country into high and low potential areas.

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[1] Republic of Kenya (1965), Sessional Paper No. 10 of 1965 on African Socialism and its Application to Development Planning in Kenya, Nairobi: Ministry of Planning and Economic Development

[2] Shem Otieno, Assessment of Sessional Paper no. 10 of 1965 in the Context of Equity and development in Kenya, 2016

The government had to decide whether to invest in the more or less developed provinces. They focused on investing in high potential provinces as they would yield the highest increase in output leading to faster economic growth. Coincidentally, the high potential areas were already developed by the colonial government due to them being agriculturally productive. They had abundant natural resources and good rainfall, infrastructure, and power facilities. The government believed that the surplus generated due to investing in the high potential areas could be used to provide assistance to low potential areas through subsidies and loans thereby developing them too. On the other hand, the government also encouraged the migration of people from low priority areas to high priority areas that were richer in resources. This further entrenched regional disparities and centralized resources to Nairobi and other major urban centers.

The inadequacies of the development planning framework as well as the top-down approaches in promoting economic growth and reducing poverty levels became more apparent. In 1983, the government adopted the District Focus for Rural Development Strategy[3] as a corrective measure to the defective development approaches adopted earlier. The strategy focused on decentralizing decision making at the district level and introduced district planning units that comprised district level civil servants, government officials and political leaders[4]. They spearheaded the delivery of services to the citizens and developed strategies to mobilize resources. Despite the adoption of the decentralization strategy, poverty; regional disparities and inequalities persisted. The subsequent development agendas could not address these issues. The adoption of Sessional Paper No 1 of 1986 on Economic Management for Renewed Growth worsened the situation as it integrated Structural Adjustment programs (SAPs) as a policy tool for economic management[5]. It aimed at restoring efficiency in all the sectors of the economy by enforcing drastic measures including trade liberalization and reduced government spending that led to imposition of user fees on basic services, e.g., healthcare and education, limiting the poor people's ability to access these crucial services. The country also faced slowed economic growth as compared to the earlier post-independence periods (6% between 1965 t0 1980, 4% between 1980 and 1990 and just 1.9% between 1990 and 2002). The increasing poverty levels forced the government to specifically develop a strategy to eradicate poverty and culminated in

[3] Republic of Kenya (1983) District Focus for Rural development strategy, Nairobi: Government Press

[4] Ezekiel Mbitha Mwenzwa, Joseph Akuma Misati. Kenya's Social Development Proposals and Challenges: Review of Kenya Vision 2030 First Medium-Term Plan, 2008-2012. American International Journal of Contemporary Research, Center for Promoting Ideas (CPI), 2014, 4 (1), pp.246- 253

[5] Joseph Kipkemboi Rono, the Impact of Structural Adjustment Programme in Kenya. Journal of Social Development in Africa, Vol 17 No 1 January 2002, pg. 81-98

the adoption of the National Poverty Eradication Plan 1999-2005[6]. This plan was however criticized by policy specialists as it was impossible to eradicate poverty but rather alleviate it[4].

By 2002, the quality of life of Kenyans had deteriorated due to poor economic performance as a result of poor implementation of economic policies, mismanagement, and weak governance institutions. Kenyans lost confidence in the ability of government institutions to address increasing poverty levels, unemployment, crime and deteriorating health status.

In 2003, they voted for a group of opposition leaders who had vied on a unified ticket promising to address the economic challenges and strengthen the institutional frameworks. The government adopted the Economic Recovery Strategy for Wealth and Employment Creation[7] to reverse decades of slow and stagnant economic growth that had adversely undermined the well-being of Kenyans. The strategy focused on job creation through the implementation of sound macroeconomic policies, efficient public service delivery, creating an enabling environment for the private sector and reducing the cost of doing business. The ERS was largely successful in stabilizing the economy, increasing enrolment in schools through the Free Primary Education, building the capacity of institutions to respond to citizens' needs, among others. To consolidate the positive gains and overcome the persistent development challenges, the country adopted a long-term strategy, The Vision 2030, aiming to make Kenya a globally competitive and prosperous nation with a high quality of life.

This positive trajectory was however halted by the post-election violence following the disputed 2007 presidential elections. Approximately 1,300 Kenyans lost their lives and a further 600,000 displaced. The resultant coalition government developed a new constitution that was promulgated in 2010. The new constitution ushered in a new form of devolved governance with two independent levels of government i.e., the national government and 47 new county governments. Resources were decentralized to the county governments, and each had the power to establish their own development priorities (anchored on the national development agenda) and approve their budgets to respond to their local needs. From the FY 2013/14, the county governments have been allocated a total of Ksh. 2.06 trillion to deliver the devolved functions.

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[6] Republic of Kenya (1999), National Poverty Eradication Plan 1999-2015, Nairobi: Department of development Coordination

[7] Republic of Kenya (2003), Economic Recovery Strategy for Wealth and Employment Creation, Nairobi: Ministry of Planning and National development

Article 174 of the Constitution of Kenya 2010[8] presents the objects of devolution and provides the following roles:

- Gives powers of self-governance to the people and enhances their participation in the making of decisions that affect them,
- Recognizes the right of communities to manage their own affairs and to further their development,
- Protects and promotes the interests and rights of minorities and marginalized communities, and
- Promotes social and economic development and the provision of proximate, easily accessible services throughout Kenya.

The county governments are therefore mandated to implement responsive services that improve the quality of life of citizens within their jurisdiction and reduce inequalities through the effective implementation of devolved functions.

Resource allocation framework in Kenya

Article 202 of the Constitution stipulates that the revenues raised nationally shall be shared equitably between the national and county governments. Article 203 further stipulates the criteria to be taken into account when determining the equitable share. They include:

a) The national interest

b) Any provision made in in respect of the public debt and other national obligations,

c) The needs of the national government determined by objective criteria,

d) The need to ensure that county governments are able to perform the functions allocated to them,

e) The fiscal capacity and efficiency of county governments

f) Developmental and other needs of the county governments

g) Economic disparities within and among counties and the need to remedy them,

h) The need for affirmative action in respect of disadvantaged areas and groups

[8] Constitution of Kenya 2010

i) The need for economic optimization of each county and to provide incentives for each county to optimize its capacity to raise revenue,

j) The desirability of stable and predictable allocations of revenue, and

k) The need for flexibility in responding to emergencies and other temporary needs based on similar objective criteria.

Revenue sharing is an emotive and highly political process that required an independent arbiter who considered the views of the public and other interested stakeholders to develop a formula that was agreeable to all the regions in the country. The Commission on Revenue Allocation (CRA) was therefore established to lead the revenue sharing process by making recommendations on the basis for equitable share among county governments and between the national and county governments. In doing so, they considered the criteria established in Article 203 of the constitution and shared their recommendations with the Senate, the National and County Assemblies and the National and County Executives.

The Senate on their part also determined the basis for revenue allocation once every five years, by taking into account the views of CRA, County Governors, Cabinet Secretary Finance and the public including professional bodies. Article 1 of the Constitution of Kenya 2010 gives all sovereign power to the people of Kenya. The Constitution also emphasizes on public participation and involvement of the public in legislative activities as well as decision making on resource allocation. Participatory governance in resource sharing is therefore crucial to ensuring equity in resource allocation.

Since 2013, the Commission on Revenue Allocation has recommended three (3) revenue sharing formulas (the first, second and third generation revenue sharing formulas) to guide revenue allocation among counties. The first basis for sharing revenue among counties was approved in November 2012 and was used to share revenues from the FY 2013/14 to the FY 2016/17. The second basis for revenue sharing among the counties was approved in June 2016 and was used to share revenues from the FY 2017/18 to the FY 2019/20. The third basis for revenue sharing was approved in September 2020 and is to guide revenue sharing from FY 2020/21 to FY 2024/25[9].

[9] Republic of Kenya (2020), The Budget and Appropriation Committee Report on the Third Basis for revenue Allocation among County Governments, National Assembly.

The first basis for revenue sharing was based on five parameters each assigned a different weight: Population (45%); Basic Equal Share (25%); Poverty Gap (20%); Land Area (8%) and Fiscal Responsibility (2%). The second basis for revenue sharing was slightly changed to include an additional sixth parameter, Development Factor, to minimize development gaps between the counties. New weights were attached to each parameter: Population (45%); Basic Equal Share (26%); Poverty Gap (18%); Land Area (8%); Fiscal Responsibility (2%) and Development Factor (1%)[9]

The third basis for revenue sharing was based on four objectives: improving service delivery; promoting balanced development; incentivizing counties to develop capacity to raise their own revenue and rewarding prudent use of public resources. The third basis formula had a shift towards service delivery-oriented approach to revenue sharing. New parameters including health index, agriculture services, other county services and urban services were introduced. Weights were attached as follows: equal share-20%, population index-18%, health index-17%, poverty index 14%, agriculture index-10%, land area index-8%, roads index-8% and urban services index-5%. The formula was to utilize the 2015/16 Kenya Integrated Household Budget Survey (KIHBS) poverty data and the 2019 population census statistics data[9].

Implications of CAB 2020 Recommendations on Inequalities

Capping county equitable share allocation by per capita

Section 50 of the Constitution of Kenya Amendment Bill 2020[10] seeks to amend Article 203 of the Constitution by inserting the clause 'The need to ensure that the average amount of money allocated per person to a county with the highest allocation does not exceed three times the average amount per person allocated to a county with the lowest allocation.' In the FY 2021/22, Lamu County has the highest per capita allocation at Kshs. 21,579 while Nairobi City County has the lowest per capita allocation at Kshs. 4,378. A total of seven counties have a per capita allocation above three times that of Nairobi City County (Kshs. 13,133.52). Other counties including Mandera and Wajir are close to this threshold but are yet to breach it.

[10] Republic of Kenya 2020 Constitution of Kenya Amendment Bill 2020, Nairobi: Government Printer

TABLE 1: AMOUNT LOST BY COUNTIES AS A RESULT OF THE PER CAPITA ALLOCATION CONDITION.

COUNTY	POPULATION 2019	EQUITABLE SHARE FY 2021/22	PER CAPITA	CAB 2020 CEILING	DIFFERENCE IN PER CAPITA	AMOUNT LOST
TANA RIVER	315,943	6,528,408,765	20,663	13,133.52	7,529.73	**2,378,966,058**
SAMBURU	310,327	5,371,346,037	17,309	13,133.52	4,175.15	**1,295,661,160**
MARSABIT	459,785	7,277,004,032	15,827	13,133.52	2,693.45	**1,238,409,997**
LAMU	143,920	3,105,649,643	21,579	13,133.52	8,445.48	**1,215,473,901**
ISIOLO	268,002	4,710,388,265	17,576	13,133.52	4,442.43	**1,190,579,488**
TURKANA	926,976	12,609,305,994	13,603	13,133.52	469.11	**434,851,098**
TAITA/ TAVETA	340,671	4,842,174,698	14,214	13,133.52	1,080.12	**367,966,386**
TOTAL	**2,765,624**	**44,444,277,434**				**8,121,908,091**

Source: Census 2019, County Allocation of Revenue Bill 2021

The seven counties lose a cumulative amount of Kshs. 8.12 billion should the CAB 2020 condition of limiting resource allocation by per capita be subjected to the FY 2021/22 county equitable share allocation. Lamu and Tana River Counties will lose the highest amounts at 39% and 36% of their equitable share allocation. Turkana and Taita Taveta counties on the other hand lose 3% and 8% of their equitable share, respectively.

Tana River County will lose Kshs. 2.378 billion through the CAB 2020. This is Kshs. 270 million more than its allocation to compensation of employees in the FY 2020/21 budget which is Kshs. 2.108 billion. Lamu and Isiolo counties also lose amounts equivalent to 85% and 83% of their allocation to compensation of employees, respectively.

Social dimensions such as the level of access to education, clean water and improved sanitation have been used to measure people's quality of life and by extension the level of inequality. Depriving people access to these essential services deepens poverty and inequality levels. Where stark differences exist in the access to these essential services, reducing poverty and inequality becomes difficult even with a growing economy.

Numerous studies have shown a positive correlation between economic growth and the proportion of the population with access to improved water supply and sanitation services. Improving access to clean water and sanitation does not only save individuals time seeking these services but also resources due to improved health status. This also reduces mortality due to disease associated with lack of access to water and sanitation services e.g., diarrhea and schistosomiasis[11]. (WHO, 2004)

Comparing the resources lost by the individual seven counties (who will be affected by the CAB 2020 revenue sharing proposal) to the budget they allocated to these three crucial departments (education, health and water and sanitation) in the FY 2020/21 budget, Tana River County loses Kshs. 135 million more than the budget they allocated to the three departments (106%). Isiolo and Lamu counties also lose a substantial amount at 72% and 64% of their allocation to these three departments.

Table 2: Comparison of resources lost by counties to allocation to crucial sectors (Kshs Millions).

COUNTY	EDUCATION	HEALTH	WATER & SANITATION	TOTAL	AMOUNT LOST
TANA RIVER	554	1,414	276	**2,244**	2,379
LAMU	324	1,286	297	**1,908**	1,215
TAITA/TAVETA	290	491	536	**1,317**	368
MARSABIT	615	2,216	692	**3,523**	1,238
ISIOLO	237	1,207	204	**1,648**	1,191
TURKANA	1,249	1,474	856	**3,579**	435
SAMBURU	570	1,492	662	**2,724**	1,296

Source: OCOB County Governments Budget Implementation Review Reports FY 2020/21

Access to education

Assessing the level of access to education, the number of people with no formal education in six out of the seven counties that are losing resources are above the national average of 16.3%. Taita Taveta is the only exception at 9%.

[11] World Health Organization, The Global Burden of Disease (2004) Update

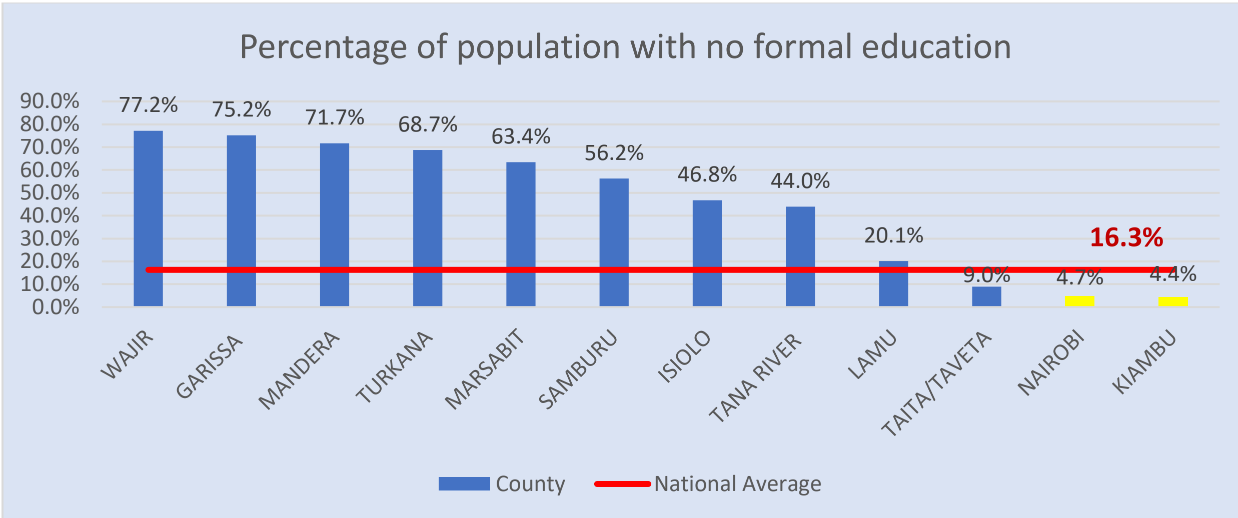

FIGURE 1: POPULATION WITH NO FORMAL EDUCATION

Source: Census 2019- Social Economic Characteristics

For the seven losing counties, Turkana County has the highest percentage of population with no formal education at 68.7%. Nairobi and Kiambu counties, who stand to gain from the new revenue sharing formula as they have the least per capita allocation among the 47 counties, have fewer people with no formal education as compared to the national average at 4.7% and 4.4% respectively.

Unimproved water sources

According to census 2019[12], 45.1% of people in Kenya use unimproved water sources. Unimproved water sources include pond, dam, lake, unprotected wells, and springs etc.[i] Having access to improved water sources reduces exposure to water borne diseases including diarrhea which is one of the leading causes of death worldwide. The percentage of people using unimproved water sources in all the seven losing counties is above the national average. More people in Turkana, Samburu and Marsabit counties use unimproved water sources as compared to the other four counties.

[12] Kenya National Bureau of Statistics, Kenya Population and Housing Census 2019

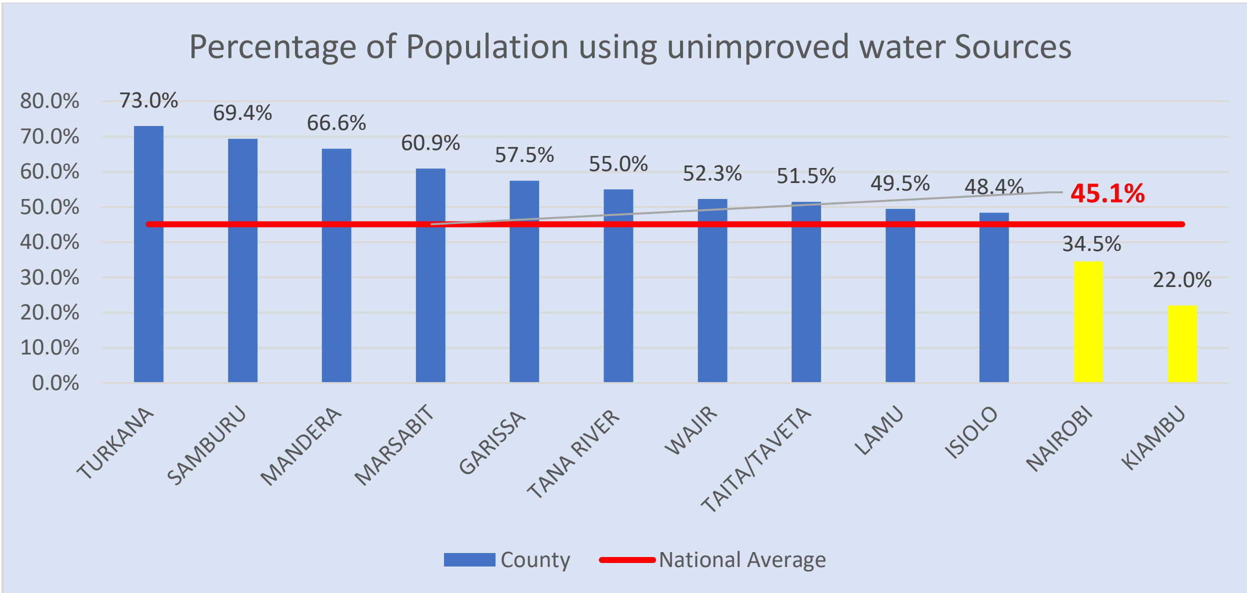

FIGURE 2: POPULATION USING UNIMPROVED WATER SOURCES.

Source: Census 2019- Social Economic Characteristics

On the other hand, Kiambu and Nairobi counties are better off as the percentage of people using unimproved sources of water are below the national average of 45.1%.

Unimproved sanitation

The percentage of people using unimproved sanitation sources in Kenya is 17.6%. Unimproved sanitation sources include uncovered pit latrines, buckets, and bush/open defecation. With the exception of Taita Taveta, all the other six counties are above the national average. The situation is more pronounced in Turkana County where 75.7% of the people use unimproved sanitation sources.

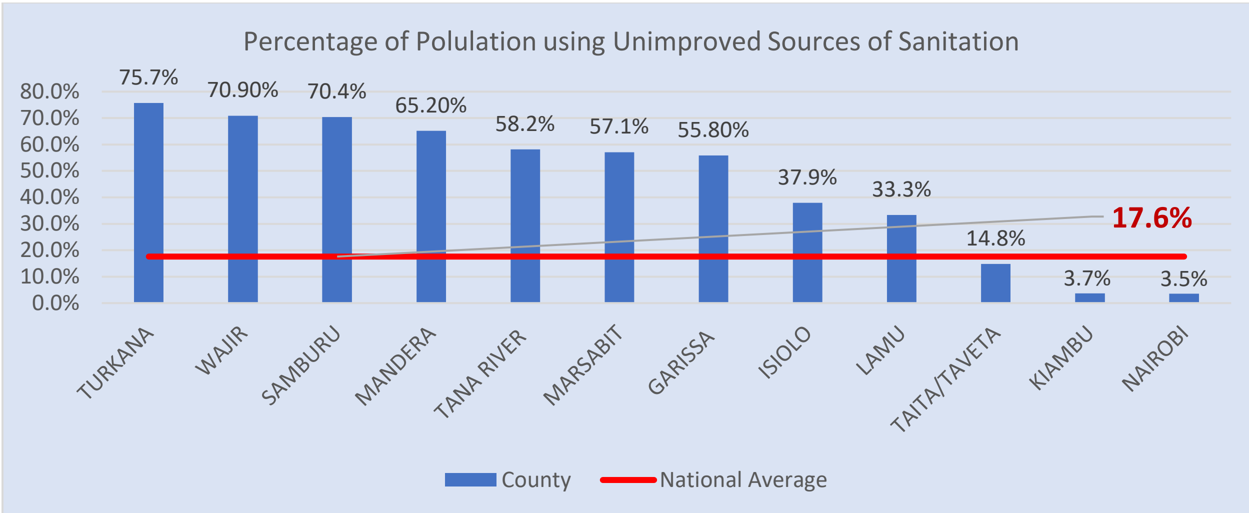

FIGURE 3: POPULATION USING UNIMPROVED SANITATION SOURCES.

Source: Census 2019- Social Economic Characteristics

The percentage of people using unimproved sanitation sources in Nairobi and Kiambu counties is less than four times the national average. The government has spent massive resources in laying down water and sewerage infrastructure in these areas translating to higher access to improved services.

Access to healthcare

Article 43 1(a) of the Constitution of Kenya provides that every person has the right to the highest attainable standard of health. Achieving universal healthcare coverage is one of the pillars of the "Big Four Agenda" in Kenya. There exist disparities with respect to access to healthcare across the counties in Kenya. On average, residents in the losing counties travel long distances to access health facilities.

TABLE 3: HEALTHCARE INDICATORS

COUNTY	HEALTH FACILITIES	HEALTH FACILITIES PER CAPITA	DELIVERIES IN HEALTH FACILITIES	LAND AREA (KM^2)	KM^2/ HOSPITAL
MARSABIT	114	4,033	26%	70,944	622
TANA RIVER	65	4,861	32%	37,951	584
ISIOLO	48	5,583	32%	25,351	528
TURKANA	158	5,867	23%	68,233	432
SAMBURU	83	3,739	25%	21,065	254
TAITA TAVETA	91	3,744	62%	17,152	188
LAMU	45	3,198	44%	6,253	139
KIAMBU	450	5,373	93%	2,539	6
NAIROBI	915	4,806	89%	704	1

Source: Census 2019, Kenya County Factsheets[13]

Turkana, Samburu, Marsabit and Tana River counties have the lowest proportion of population delivering at a healthcare facility at 23%, 25%, 26% and 32% respectively. On the other hand, Kiambu and Nairobi counties have the highest at 93% and 89% respectively.

People in Marsabit have to travel longer distances to access healthcare services as there is only one hospital facility every 622 Km^2. People in Nairobi and Kiambu counties on the hand travel shorter distances to access healthcare as there are facilities every 1 Km^2 and 6 Km^2 respectively

The incidences of poverty are higher in the counties that stand to lose as a result of implementation of the per capita revenue sharing proposal. The high poverty rates translate to low school enrolment and completion rates, poor access and utilization of healthcare services and low access to clean water and sanitation services. Rather than losing resources, these areas require more investment by the government.

Increasing the total number of constituencies from the current 290 constituencies to 360 (additional 70 constituencies)

The Constitution of Kenya Amendment Bill seeks to promote equity in representation and resource distribution. It seeks to create additional 70 constituencies increasing the total number of constituencies to 360 from the current 290. The new constituencies will be allocated based on the population quota of one Member of Parliament representing a population of 132,000 i.e., highly populated urban areas would have more constituencies. Nairobi and Kiambu counties will be the highest beneficiaries having an extra 12 and 6 new constituencies, respectively. Each constituency in Kenya has been allocated an average of Kshs. 137 million as Constituency Development Fund (CDF) in the FY 2020/21. These funds are allocated through the National Government Constituencies Development Fund.

The National Government Constituencies Development Fund (NG-CDF) is established under the NG-CDF Act, 2015. The main purpose of the Fund is to complement the national government's development agenda and address socio-economic challenges faced by the people at constituency level thereby reducing poverty and enhancing regional equity. The fund is allocated an amount not less than

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[13] Open Institute, Kenya County Factsheets (https://opencounty.org/factsheet_all.php?com=3)

2.5% of the national government's share of revenue as allocated by the Annual Division of Revenue Act pursuant to Article 218 of the Constitution.

The National Assembly is yet to enact an amendment to the NG-CDF Act 2015 to increase the total allocation to NG-CDF, the proposition by CAB 2020 therefore may lead to two possible scenarios: where the National Assembly enacts an amendment to the CDF Act and the total allocation to CDF is increased to factor in the new constituencies; or the National assembly does not amend the Act and existing constituencies will be allocated less resources to fund the additional constituencies.

Scenario One: NG-CDF is equal to 2.5% of the National Government's revenue

This scenario assumes that the total allocation post CAB 2020 will remain unchanged at 2.5% of the national government revenues despite the additional 70 constituencies. Each constituency will lose an average of Kshs. 27 million to fund the new constituencies. Nairobi City County will have the highest increase in CDF allocation, getting an Extra Kshs. 872 million for the additional constituencies. Kisii, Wajir and Garissa counties will be among the counties losing more resources to fund the additional constituencies.

TABLE 4: NG-CDF PRE AND POST CAB 2020 ALLOCATIONS

Assuming CDF=2.5% of Revenue			
County	**CDF Pre-CAB 2020**	**CDF Post-CAB 2020**	**Difference**
Nairobi	2,331,127,948	3,203,493,153	872,365,205
Kiambu	1,647,044,552	1,988,375,061	341,330,509
Nakuru	1,508,333,672	1,767,444,498	259,110,826
Kwale	548,604,517	773,256,968	224,652,451
Kilifi	960,321,655	1,215,118,093	254,796,438
Taita Taveta	548,788,017	441,861,124	-106,926,893
Garissa	822,533,276	662,791,687	-159,741,581
Wajir	822,749,190	662,791,687	-159,957,503
Marsabit	548,355,517	441,861,125	-106,494,393
Kisii	1,234,079,114	994,187,530	-239,891,583

Source: NG-CDF Allocation 2020/21, Own computations

Scenario Two: NG-CDF is greater than 2.5% of the National Government's revenue

This scenario assumes that the total allocation post CAB 2020 will be greater than 2.5% of the national government revenues. The additional 70 new constituencies will each be allocated an average of Kshs.

137 million to be at par with the existing constituencies. Nairobi and Kiambu counties will have the highest increase in CDF allocation at Kshs. 1.6 billion and Kshs. 823 million respectively.

TABLE 5: NG-CDF PRE AND POST CAB 2020 ALLOCATIONS

Assume CDF > 2.5% of Revenue				
COUNTY	ALLOCATION FY 2020/21	AV. ALLOCATION PER CONSTITUENCY	NEW CONSTITUENCIES	ALLOCATION TO NEW CONSTITUENCIES
Nairobi	2,331,127,948	137,125,173	12	1,645,502,081
Kiambu	1,647,044,552	137,253,713	6	823,522,276
Nakuru	1,508,333,672	137,121,243	5	685,606,215
Kwale	548,604,517	137,151,129	3	411,453,388
Kilifi	960,321,655	137,188,808	4	548,755,232

Source: NG-CDF Allocation 2020/21, Own computations

The objectives of the Building Bridges Initiative included among others promoting inclusivity and shared prosperity. The propositions in the CAB 2020 however paints a different picture. Despite significant differences existing in the quality of life among the counties, Nairobi County will be the highest beneficiary in terms allocations to CDF even though it has the highest population with access to clean piped water and the lowest poverty head count.

Kiambu County, with a higher proportion of the population having access to clean piped water, attained secondary education and a lower poverty head count as compared to the national average, will be allocated more resources under NG-CDF. On the other hand, Kisii, Marsabit, Wajir and Garissa counties who are worse off as compared to the national average are not getting any additional resources despite requiring additional public investments to improve the quality of people's lives.

TABLE 6: INEQUALITY INDICATORS

COUNTY	CLEAN PIPED WATER INTO DWELLING	ATTAINMENT OF SECONDARY EDUCATION	POVERTY HEAD COUNT
Nairobi	32.20%	31.00%	0.60%
Kiambu	16.30%	30.50%	3.10%
Nakuru	7.00%	23.10%	3.70%
Kwale	6.00%	13.40%	5.90%

Kilifi	14.60%	14.80%	7.00%
Taita Taveta	9.10%	20.70%	5.30%
Garissa	4.80%	17.50%	23.80%
Wajir	1.90%	11.60%	10.50%
Marsabit	1.60%	17.00%	23.80%
Kisii	0.40%	27.20%	7.50%
National Average	**9.80%**	**22.40%**	**8.60%**

Source: Kenya Integrated Household Basic Survey 2015/2016).

Participatory Governance in the Building Bridges (BBI) Process

After the Steering Committee presented a report to the President that later became the Constitution of Kenya Amendment Bill 2020, the committee put in motion the process to collect signatures in support of the Popular Initiative associated with CAB 2020 and submitted the signatures to the Independent Electoral and Boundaries Commission (IEBC) for verification and submittal to the County Assemblies and Parliament for approval. The Senate, National Assembly and 44 county assemblies approved the CAB 2020 while only three county assemblies rejected it.

Concerned citizens and various civil society organizations filed eight constitutional petitions at the High Court of Kenya challenging the building Bridges Initiative and the subsequent CAB 2020. They raised various concerns including lack of effective public participation in the process, hurried nature in signature collection and approval and usurpation of constitutional offices by the Steering Committee. They sought the interventions of the High Court to declare the entire process unconstitutional.

The petitioners argued that[14]:

- For participatory constitutional building, the public should be directly and meaningfully engaged in the process of making the constitution as opposed to expert written Constitutions (which is the role the Steering Committee played in the development of CAB 2020 relegating the role of the public to giving consent to the final version of the draft before promulgation)
- The hurried and rushed launch of the signature collection exercise prior to availing the Bill to the public for them to study, internalize and understand in detail the issues proposed to be amended was a clear attempt to subvert people's free will to exercise their sovereign power. The public could make uninformed choices over such an important exercise due to the deliberate failure by

[14] Nairobi HC Constitutional petition No. F282 David Ndii & Others Vs. Attorney General & Others

the state to undertake thorough civic education. The public also have a right to fully participate in matters affecting their governance hence the need to be meaningfully consulted in policy making as opposed to them being coerced using state machinery into embracing a constitutional amendment process.

- The BBI-prompted constitutional amendment violates the sovereignty of the people as it did not grant them and other relevant stakeholders the opportunity to contribute to the said decision. Rather, the process was informed by ulterior motives where the political class usurped the sovereign power of the citizens and used public resources to finance, marshal and mobilize support for the said Amendment Bill.
- The BBI process was neither flagged by the citizens of Kenya nor the Parliament and therefore violates the spirit of Article 256 and 257 of the Constitution of Kenya 2010. They invite the Court to decide whether the state, through a government sponsored initiative, for purposes of a constitutional amendment can purport to directly exercise sovereign power of the people.
- The IEBC is constitutionally required to submit to the people all the proposed amendments as distinct and separate referendum questions so that the people can exercise their free will to approve or reject specific proposals to the amendment as opposed to a mere "Yes" or "No" questions to the entire amendment bill. In their view, a mere "Yes" or "No" to the entire Amendment Bill violates the Peoples exercise of free will in that it hinders the voter from making a choice between a good amendment proposal from a bad one since the good proposals could be rejected with the bad proposals and vice versa.
- The IEBC cannot conduct a referendum without registering voters. There are new voters that have attained the legal age to vote and not registering them will deny them the opportunity to have their voices heard in the amendment of the constitution.
- The process of delimitation of constituency boundaries and creation of new constituencies is the sole responsibility of the IEBC that is arrived at through public participation and stakeholder engagement. The Steering Committee neither has the power to direct IEBC to create new constituencies nor decide where they should located.

The court went through the petitioners' requests and ruled that[11]:

- Public Participation is one of the founding principles of good governance; a constitutional right that must be complied with at every stage. It binds all State organs, State Officers, Public Officers, and all persons in the discharge of their constitutional and statutory mandates. To meet the constitutional threshold, public participation cannot be a matter of presumption or conjecture. It must be real and effective.

- In view of the above principle, voters were entitled, at a minimum, to copies of the Constitution of Kenya Amendment Bill to read and understand what it proposed to amend. The copies ought to have been in the constitutionally required languages: English, Kiswahili, and Braille. Also, copies ought to have been made available in other communication formats and technologies accessible to persons with disabilities including Kenya Sign Language. Only then will the voters be deemed to have been given sufficient information to enable them to make informed decisions on whether or not to append their signatures in support of the proposed constitutional amendments. The BBI Steering Committee only printed the Bill in English and posted it in the internet. It did not therefore put any effort to make the Bill available to the public.
- Constitutional changes by means of an amendment to the Constitution is covered by the Constitution under Articles 255-257. Article 256 of the Constitution refers to the procedure relating to an amendment initiated by Parliament while Article 257 speaks to an amendment by the citizens themselves or the popular initiative. There is no provision for the executive in general or the President, in particular, to initiate proposals for amendment of the Constitution in the name of a popular initiative under Article 257. The BBI Taskforce which eventually morphed into the BBI Steering Committee was the President's and not the peoples' initiative. The Bill to amend the Constitution is as result of the proposals of the BBI Steering Committee and is therefore contrary to Article 257. The BBI Steering Committee was created to perpetuate what is clearly an unconstitutional purpose making it an unlawful and an unconstitutional outfit.
- What is to be subjected to the referendum is the question or questions as opposed to the Constitution of Kenya Amendment Bill itself. All the specific proposed amendments to be submitted as separate and distinct referendum questions to the people in the referendum ballot paper and to be voted for or against separately and distinctively.
- IEBC is an independent Commission. It is required to act independently and not to be subjected to the control or direction of any person or authority. The provisions in the Constitution of Kenya Amendment Bill on delimitation of constituencies explicitly direct IEBC on how to perform its functions. It directs the IEBC on what to do, how to do it, and when to do it with regard to the newly created constituencies. The Constitution of Kenya Amendment Bill not only unlawfully takes over the functions of the IEBC; but it also allocates constituencies in violation

of the constitutional principles set out in Article 89 (public participation and stakeholder engagement in the delimitation exercise) which IEBC is obliged to adhere to in executing its mandate. Public participation and stakeholder engagement is not only required during the process of delimitation itself but even after the IEBC has published its preliminary report and before publishing the final one. Despite these clear requirements in the Constitution and statutory law, the Constitution of Kenya Amendment Bill ignores the requirement of public participation and stakeholder engagement. Making the Constitution of Kenya Amendment Bill unconstitutional.

- The IEBC is under both a constitutional and statutory obligation to register voters and revise voters register at all times. The IEBC did not demonstrate the Court that it had conducted continuous voter registration. Every single day, citizens attain the voting age. These new citizens have a right to be registered as voters and to participate in any proposed referendum. Therefore, holding a referendum without first conducting voter registration would violate the right of a class of citizens who have not been given the opportunity to register and vote in deciding their destiny.

The High Court concluded that the Sovereign Primary Constituent Power is only exercisable by the People after four sequential processes namely: civic education; public participation and collation of views; Constituent Assembly debate; and ultimately, a referendum. The power to amend the Constitution through the Popular Initiative route under Article 257 of the Constitution is reserved for the private citizen. Neither the President nor any State Organ is permitted under our Constitution to initiate constitutional amendments using the Popular Initiative

Conclusion

The CAB 2020 proposes amendments to various articles in the Constitution that touch on representation and resource sharing. While the propositions touching on representation may largely be successful in addressing the objectives of the Building Bridges Initiative despite the additional costs, the propositions touching on resource sharing are not.

Article 201(b) of the constitution of Kenya 2010 provides that the public finance system should promote an equitable society, and in particular ensure that expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas. The proposition to cap resource sharing among county governments based on per capita allocation will make counties that are already marginalized and lagging behind the national averages in most development indicators lose more resources in favor of the more developed urban counties. To enable these counties to catch up and achieve increased access to basic services, more resources should be allocated to them. People in these counties require more resources per capita to enjoy the same access to basic services as people in Nairobi, Kiambu and other urban counties. The revenue sharing basis should therefore not perpetuate inequality by worsening the situation of areas that had been marginalized since independence.

The Steering Committee on the implementation of BBI provided recommendations on the revenue sharing basis. This is the mandate of the Commission on Revenue Allocation and the Senate as per the Constitution of Kenya 2010. The process is arrived at following public participation and stakeholder engagements. The criteria to be used to share revenue among counties and between national and county governments is provided in Article 202 and 203 of the Constitution. Any revenue sharing formula that is to be developed should be spearheaded the mandated authorities to ensure equity and fairness.

Public participation in the CAB 2020 process appears to be very tokenistic with the High Court ruling stopping BBI providing clarity on what constitutes public participation. The state has deliberately left out crucial steps including civic education, printing, and distributing the Constitution Amendment Bill in Swahili, braille and other forms friendly to People Living with Disabilities. The state instead used public resources to advance the amendment process and coerce citizens and Parliament to approve the Bill and ready it for referendum disguising it as a popular initiative by the people. The process to amend the Constitution is provided for in the Constitution of Kenya 2010 under Article 255-257. It is only private citizens who can initiate constitutional amendment through popular initiative and not the state or any other public officer.

The proposition to increase the number of constituencies allocates these additional constituencies to the more urban densely populated counties. The additional constituencies are allocated extra resources that can be used to boost bursary funds and construct classrooms, libraries and laboratories making these places more developed. Additionally, only the Independent Electoral and Boundaries Commission has the mandate to review the constituency boundaries. It does this through public participation and stakeholder engagement in every step.

CAB 2020 if approved and implemented may increase inequalities by allocating more resources to counties that are better off in terms of poverty indicators at the expense of under-developed counties that have largely been marginalized pre-devolution e.g., Tana River and Marsabit Counties risk losing

Kshs. 2.46 billion and Kshs. 1.344 billion respectively should the CAB 2020 be approved, and Parliament fail to amend the NG-CDF Act.

By not devolving services that should be devolved, the National government is not intent in supporting devolution. Key functions like water and irrigation should be fully devolved and attendant resources devolved to enable equitable distribution between counties.

Recommendations

Revenue sharing

a. **The National Assembly**

The National Assembly should:

- Amend the NG-CDF Act 2015 to increase allocation to the CDF kitty should the CAB 2020 be adopted. This will prevent existing constituencies from losing resources to finance the additional 70 constituencies.
- Develop legislation to further devolve functions to the county governments in line with the increased equitable share (a minimum of 35%)

b. **The Senate**

The Senate of the Republic of Kenya is mandated to by the Constitution to review the revenue sharing framework every five years. As resources allocated to counties increase, so do the conflicts on how to share among counties. To avert this, the senate should:

- Take lead in the discussions on revenue sharing especially those touching on county governments.
- Together with CRA develop a more equitable revenue sharing framework that promotes the objects of devolution.

c. **The Commission on Revenue Allocation**

Article 205 of the constitution of Kenya 2010 provides that the Commission on Revenue Allocation (CRA) makes recommendations to the National Assembly and Senate when a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published. CRA should:

- Make these recommendations public.

- Sensitize the political class on the revenue sharing basis to prevent politicization of the process and promote equity in resource sharing.
- Convene citizens' engagement forum to make future recommendations on revenue sharing process have a bottom-up democratic approach. Engagements should start at the development of revenue sharing basis rather than validation.

Participatory governance

a. National and County Executives

The High Court ruling on BBI has placed the responsibility of ensuring effective civic education and public participation on public offices and officials. Public participation materials should made available to the public beforehand, translated into the languages recognized by the Constitution (English, Kiswahili, Braille, Kenyan Sign Language etc.) and provided in any other form necessary to make them accessible to People Living with Disabilities. The national and county executives should:

- Ensure that public participation in the budget process is participatory by providing ample time for citizen engagement in the budget process,
- Upload budget and planning documents in their respective websites in a form that is accessible to all Kenyans,
- Provide citizen friendly summaries of key documents to enable citizens to effectively understand the budget and planning documents,
- Conduct civic education in the budget process and importance of public participation.

Public participation is enshrined in the Constitution and all public officers should ensure that they engage all relevant stakeholders to prevent against litigations.

References

[1] Republic of Kenya (1965), Sessional Paper No. 10 of 1965 on African Socialism and its Application to Development Planning in Kenya, Nairobi: Ministry of Planning and Economic Development

[2] Shem Otieno, Assessment of Sessional Paper no. 10 of 1965 in the Context of Equity and development in Kenya, 2016

[3] Republic of Kenya (1983) District Focus for Rural development strategy, Nairobi: Government Press

[4] Ezekiel Mbitha Mwenzwa, Joseph Akuma Misati. Kenya's Social Development Proposals and Challenges: Review of Kenya Vision 2030 First Medium-Term Plan, 2008-2012. American International Journal of Contemporary Research, Center for Promoting Ideas (CPI), 2014, 4 (1), pp.246- 253

[5] Joseph Kipkemboi Rono, the Impact of Structural Adjustment Programme in Kenya. Journal of Social Development in Africa, Vol 17 No 1 January 2002, pg. 81-98

[6] Republic of Kenya (1999), National Poverty Eradication Plan 1999-2015, Nairobi: Department of development Coordination

[7] Republic of Kenya (2003), Economic Recovery Strategy for Wealth and Employment Creation, Nairobi: Ministry of Planning and National development

[8] Constitution of Kenya 2010

[9] Republic of Kenya (2020), The Budget and Appropriation Committee Report on the Third Basis for revenue Allocation among County Governments, National Assembly.

[10] Republic of Kenya 2020 Constitution of Kenya Amendment Bill 2020, Nairobi: Government Printer

[11] World Health Organization, The Global Burden of Disease (2004) Update

[12] Kenya National Bureau of Statistics, Kenya Population and Housing Census 2019

[13] Open Institute, Kenya County Factsheets (https://opencounty.org/factsheet_all.php?com=3)

[14] Nairobi HC Constitutional petition No. F282 David Ndii & Others vs. Attorney General & Others

[15] Kenya National Bureau of Statistics, Kenya Integrated Household Basic Survey (KIHBS) 2015/2016).

Annexes

Annex 1: County Allocation (Per capita)

COUNTY EQUITABLE SHARE			
COUNTY	**POPULATION 2019**	**FY 2021/22 ALLOCATION**	**PER CAPITA**
MOMBASA	1,208,333	7,567,354,061	6,263
KWALE	866,820	8,265,585,516	9,536
KILIFI	1,453,787	11,641,592,941	8,008
TANA RIVER	315,943	6,528,408,765	20,663
LAMU	143,920	3,105,649,643	21,579
TAITA/TAVETA	340,671	4,842,174,698	14,214
GARISSA	841,353	7,927,212,254	9,422
WAJIR	781,263	9,474,726,151	12,127
MANDERA	867,457	11,190,382,598	12,900
MARSABIT	459,785	7,277,004,032	15,827
ISIOLO	268,002	4,710,388,265	17,576
MERU	1,545,714	9,493,857,338	6,142
THARAKA NITHI	393,177	4,214,198,593	10,718
EMBU	608,599	5,125,243,762	8,421
KITUI	1,136,187	10,393,970,413	9,148
MACHAKOS	1,421,932	9,162,304,232	6,444
MAKUENI	987,653	8,132,783,562	8,234
NYANDARUA	638,289	5,670,444,228	8,884
NYERI	759,164	6,228,728,555	8,205
KIRINYAGA	610,411	5,196,177,952	8,513
MURANG'A	1,056,640	7,180,155,855	6,795
KIAMBU	2,417,735	11,717,525,720	4,846
TURKANA	926,976	12,609,305,994	13,603
WEST POKOT	621,241	6,297,284,329	10,137
SAMBURU	310,327	5,371,346,037	17,309
TRANS NZOIA	990,341	7,186,157,670	7,256
UASIN GISHU	1,163,186	8,068,858,318	6,937
ELGEYO/MARAKWET	454,480	4,606,532,480	10,136
NANDI	885,711	6,990,869,042	7,893
BARINGO	666,763	6,369,394,593	9,553
LAIKIPIA	518,560	5,136,265,679	9,905
NAKURU	2,162,202	13,026,116,323	6,024
NAROK	1,157,873	8,844,789,456	7,639
KAJIADO	1,117,840	7,954,768,229	7,116
KERICHO	901,777	6,430,664,924	7,131
BOMET	875,689	6,691,099,118	7,641

COUNTY EQUITABLE SHARE			
COUNTY	**POPULATION 2019**	**FY 2021/22 ALLOCATION**	**PER CAPITA**
KAKAMEGA	1,867,579	12,389,412,168	6,634
VIHIGA	590,013	5,067,356,827	8,589
BUNGOMA	1,670,570	10,659,435,192	6,381
BUSIA	893,681	7,172,162,009	8,025
SIAYA	993,183	6,966,507,531	7,014
KISUMU	1,155,574	8,026,139,240	6,946
HOMABAY	1,131,950	7,805,353,300	6,895
MIGORI	1,116,436	8,005,020,448	7,170
KISII	1,266,860	8,894,274,509	7,021
NYAMIRA	605,576	5,135,340,036	8,480
NAIROBI CITY	4,397,073	19,249,677,414	4,378
TOTAL	**47,564,296**	**370,000,000,000**	**7,779**

Source: Census 2019, County Allocation of Revenue Bill 2021

Annex 2: CDF Allocation by County (assuming NG-CDF Act is amended)

CDF ALLOCATION WHEN TOTAL ALLOCATION IS INCREASED (CDF > 2.5% OF REVENUE)					
COUNTY	**FY 2020/21 ALLOCATION**	**AVERAGE ALLOCATION PER CONSTITUENCY (A)**	**ADDITIONAL CONSTITUENCIES (B)**	**ALLOCATION TO NEW CONSTITUENCIES (A*B)**	**TOTAL ALLOCATION**
MOMBASA	823,355,275.86	137,225,879.31	3	411,677,637.93	1,235,032,913.79
KWALE	548,604,517.24	137,151,129.31	3	411,453,387.93	960,057,905.17
KILIFI	960,321,655.17	137,188,807.88	4	548,755,231.53	1,509,076,886.70
TANA RIVER	411,266,637.93	137,088,879.31	-	-	411,266,637.93
LAMU	274,221,758.62	137,110,879.31	-	-	274,221,758.62
TAITA/TAVETA	548,788,017.24	137,197,004.31	-	-	548,788,017.24
GARISSA	822,533,275.86	137,088,879.31	-	-	822,533,275.86
WAJIR	822,749,189.75	137,124,864.96	-	-	822,749,189.75
MANDERA	822,533,275.86	137,088,879.31	1	137,088,879.31	959,622,155.17
MARSABIT	548,355,517.24	137,088,879.31	-	-	548,355,517.24
ISIOLO	274,177,758.62	137,088,879.31	-	-	274,177,758.62
MERU	1,233,927,913.79	137,103,101.53	2	274,206,203.06	1,508,134,116.85
THARAKA NITHI	411,266,637.93	137,088,879.31	-	-	411,266,637.93
EMBU	548,401,517.24	137,100,379.31	1	137,100,379.31	685,501,896.55
KITUI	1,097,144,034.48	137,143,004.31	-	-	1,097,144,034.48
MACHAKOS	1,096,913,034.48	137,114,129.31	3	411,342,387.93	1,508,255,422.41
MAKUENI	822,738,275.86	137,123,045.98	1	137,123,045.98	959,861,321.84

CDF ALLOCATION WHEN TOTAL ALLOCATION IS INCREASED (CDF > 2.5% OF REVENUE)					
COUNTY	**FY 2020/21 ALLOCATION**	**AVERAGE ALLOCATION PER CONSTITUENCY (A)**	**ADDITIONAL CONSTITUENCIES (B)**	**ALLOCATION TO NEW CONSTITUENCIES (A*B)**	**TOTAL ALLOCATION**
NYANDARUA	685,760,396.55	137,152,079.31	-	-	685,760,396.55
NYERI	823,008,275.86	137,168,045.98	-	-	823,008,275.86
KIRINYAGA	548,906,517.24	137,226,629.31	1	137,226,629.31	686,133,146.55
MURANG'A	960,096,655.17	137,156,665.02	1	137,156,665.02	1,097,253,320.19
KIAMBU	1,647,044,551.72	137,253,712.64	6	823,522,275.86	2,470,566,827.58
TURKANA	822,695,275.86	137,115,879.31	1	137,115,879.31	959,811,155.17
WEST POKOT	548,355,517.24	137,088,879.31	1	137,088,879.31	685,444,396.55
SAMBURU	411,270,637.93	137,090,212.64	-	-	411,270,637.93
TRANS NZOIA	685,499,396.55	137,099,879.31	2	274,199,758.62	959,699,155.17
UASIN GISHU	822,671,275.86	137,111,879.31	3	411,335,637.93	1,234,006,913.79
ELGEYO/ MARAKWET	548,380,517.24	137,095,129.31	-	-	548,380,517.24
NANDI	822,568,275.86	137,094,712.64	1	137,094,712.64	959,662,988.50
BARINGO	822,712,275.86	137,118,712.64	-	-	822,712,275.86
LAIKIPIA	411,275,637.93	137,091,879.31	1	137,091,879.31	548,367,517.24
NAKURU	1,508,333,672.41	137,121,242.95	5	685,606,214.73	2,193,939,887.14
NAROK	822,533,275.86	137,088,879.31	3	411,266,637.93	1,233,799,913.79
KAJIADO	685,444,396.55	137,088,879.31	3	411,266,637.93	1,096,711,034.48
KERICHO	822,658,275.86	114,240,732.76	1	114,240,732.76	936,899,008.62

CDF ALLOCATION WHEN TOTAL ALLOCATION IS INCREASED (CDF > 2.5% OF REVENUE)					
COUNTY	**FY 2020/21 ALLOCATION**	**AVERAGE ALLOCATION PER CONSTITUENCY (A)**	**ADDITIONAL CONSTITUENCIES (B)**	**ALLOCATION TO NEW CONSTITUENCIES (A*B)**	**TOTAL ALLOCATION**
BOMET	685,444,396.55	137,088,879.31	2	274,177,758.62	959,622,155.17
KAKAMEGA	1,645,561,551.72	137,130,129.31	2	274,260,258.62	1,919,821,810.34
VIHIGA	685,444,396.55	137,088,879.31	-	-	685,444,396.55
BUNGOMA	1,233,956,913.79	137,106,323.75	3	411,318,971.26	1,645,275,885.05
BUSIA	959,894,155.17	137,127,736.45	-	-	959,894,155.17
SIAYA	822,799,275.86	137,133,212.64	1	137,133,212.64	959,932,488.50
KISUMU	960,144,755.17	137,163,536.45	2	274,327,072.91	1,234,471,828.08
HOMABAY	1,097,004,034.48	137,125,504.31	-	-	1,097,004,034.48
MIGORI	1,097,150,034.48	137,143,754.31	-	-	1,097,150,034.48
KISII	1,234,079,113.79	137,119,901.53	-	-	1,234,079,113.79
NYAMIRA	548,381,517.24	137,095,379.31	1	137,095,379.31	685,476,896.55
NAIROBI CITY	2,331,127,948.27	137,125,173.43	12	1,645,502,081.13	3,976,630,029.40
TOTAL	**39,767,501,214**		**70**	**9,576,774,428**	**49,344,275,642**

Source: NG-CDF Allocations FY 2020/21, Own Computations

Annex 3: CDF allocation by County (assuming NG-CDF Act is not amended)

CDF ALLOCATION WHEN TOTAL ALLOCATION IS NOT INCREASED (CDF = 2.5% OF REVENUE)			
COUNTY	**FY 2020/21 ALLOCATION**	**NEW ALLOCATION WITH ADDITIONAL CONSTITUENCIES**	**DIFFERENCE**
MOMBASA	823,355,275.86	994,187,530.35	170,832,254.49
KWALE	548,604,517.24	773,256,968.05	224,652,450.81
KILIFI	960,321,655.17	1,215,118,092.65	254,796,437.48
TANA RIVER	411,266,637.93	331,395,843.45	(79,870,794.48)
LAMU	274,221,758.62	220,930,562.30	(53,291,196.32)
TAITA/TAVETA	548,788,017.24	441,861,124.60	(106,926,892.64)
GARISSA	822,533,275.86	662,791,686.90	(159,741,588.96)
WAJIR	822,749,189.75	662,791,686.90	(159,957,502.85)
MANDERA	822,533,275.86	773,256,968.05	(49,276,307.81)
MARSABIT	548,355,517.24	441,861,124.60	(106,494,392.64)
ISIOLO	274,177,758.62	220,930,562.30	(53,247,196.32)
MERU	1,233,927,913.79	1,215,118,092.65	(18,809,821.14)
THARAKA NITHI	411,266,637.93	331,395,843.45	(79,870,794.48)
EMBU	548,401,517.24	552,326,405.75	3,924,888.51
KITUI	1,097,144,034.48	883,722,249.20	(213,421,785.28)
MACHAKOS	1,096,913,034.48	1,215,118,092.65	118,205,058.17
MAKUENI	822,738,275.86	773,256,968.05	(49,481,307.81)
NYANDARUA	685,760,396.55	552,326,405.75	(133,433,990.80)
NYERI	823,008,275.86	662,791,686.90	(160,216,588.96)
KIRINYAGA	548,906,517.24	552,326,405.75	3,419,888.51
MURANG'A	960,096,655.17	883,722,249.20	(76,374,405.97)
KIAMBU	1,647,044,551.72	1,988,375,060.70	341,330,508.98
TURKANA	822,695,275.86	773,256,968.05	(49,438,307.81)
WEST POKOT	548,355,517.24	552,326,405.75	3,970,888.51
SAMBURU	411,270,637.93	331,395,843.45	(79,874,794.48)
TRANS NZOIA	685,499,396.55	773,256,968.05	87,757,571.50
UASIN GISHU	822,671,275.86	994,187,530.35	171,516,254.49
ELGEYO/ MARAKWET	548,380,517.24	441,861,124.60	(106,519,392.64)
NANDI	822,568,275.86	773,256,968.05	(49,311,307.81)
BARINGO	822,712,275.86	662,791,686.90	(159,920,588.96)
LAIKIPIA	411,275,637.93	441,861,124.60	30,585,486.67
NAKURU	1,508,333,672.41	1,767,444,498.40	259,110,825.99
NAROK	822,533,275.86	994,187,530.35	171,654,254.49
KAJIADO	685,444,396.55	883,722,249.20	198,277,852.65
KERICHO	822,658,275.86	773,256,968.05	(49,401,307.81)

CDF ALLOCATION WHEN TOTAL ALLOCATION IS NOT INCREASED (CDF = 2.5% OF REVENUE)			
COUNTY	**FY 2020/21 ALLOCATION**	**NEW ALLOCATION WITH ADDITIONAL CONSTITUENCIES**	**DIFFERENCE**
BOMET	685,444,396.55	773,256,968.05	87,812,571.50
KAKAMEGA	1,645,561,551.72	1,546,513,936.10	(99,047,615.62)
VIHIGA	685,444,396.55	552,326,405.75	(133,117,990.80)
BUNGOMA	1,233,956,913.79	1,325,583,373.80	91,626,460.01
BUSIA	959,894,155.17	773,256,968.05	(186,637,187.12)
SIAYA	822,799,275.86	773,256,968.05	(49,542,307.81)
KISUMU	960,144,755.17	994,187,530.35	34,042,775.18
HOMABAY	1,097,004,034.48	883,722,249.20	(213,281,785.28)
MIGORI	1,097,150,034.48	883,722,249.20	(213,427,785.28)
KISII	1,234,079,113.79	994,187,530.35	(239,891,583.44)
NYAMIRA	548,381,517.24	552,326,405.75	3,944,888.51
NAIROBI CITY	2,331,127,948.27	3,203,493,153.35	872,365,205.08
TOTAL	39,767,501,214	39,767,501,214	0

Source: NG-CDF Allocation FY 2020/21, Own Computations