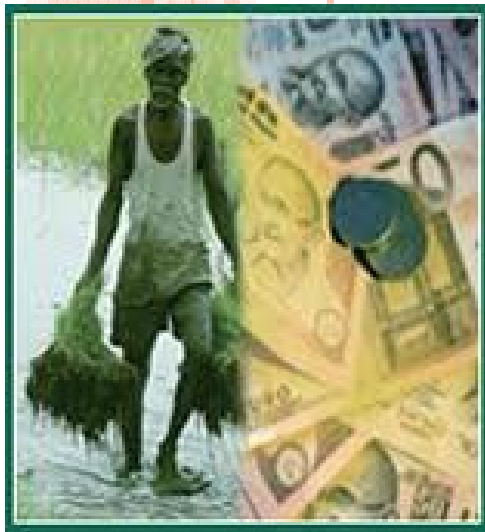


RECASTING THE QUEST FOR DEVOLVED GOVERNANCE OF AGRICULTURE IN KENYA



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CONTENT OF PRESENTATION:

- Overview of Agriculture Sector:
- Policy Framework for Agriculture
- Legal Framework for Agriculture
- Agriculture and Devolution
- Challenges



OVERVIEW OF AGRICULTURAL SECTOR

- Previously governed by over 131 pieces of legislation enacted to govern at least 10 agraric sub-sectors.
- Several institutions under each Act
- Legislation were obsolete, contradictory and overlapping
- Calls for reform of the law



OVERVIEW OF THE AGRICULTURAL SECTOR(CONTD)



- In 2000's various policies enacted aimed at legal, regulatory and institutional reforms to streamline the agriculture sector
- In 2010, new Constitution introduced **devolved governance** thus leaner government through a reduction of the number of ministries from 44 to between 14 and 22
- Need to revise and consolidate the 131 pieces of Agricultural legislation & reduce the Agricultural institutions into four legislations

OVERVIEW OF THE AGRICULTURAL SECTOR CONTD

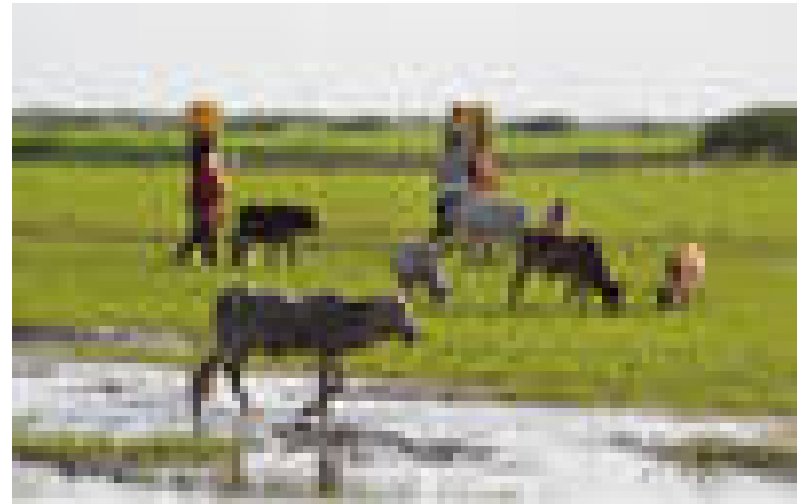


- 2013, four Key legislations enacted and institutions to be abolished but reforms still ongoing(taskforce meeting last week)
 - The Agriculture, Fisheries and Food Authority Act, 2013(AFFA Act);
 - Crops Act, 2013;
 - Kenya Agricultural and Livestock Research Act, 2013 and ;
 - Pyrethrum Act, 2013.



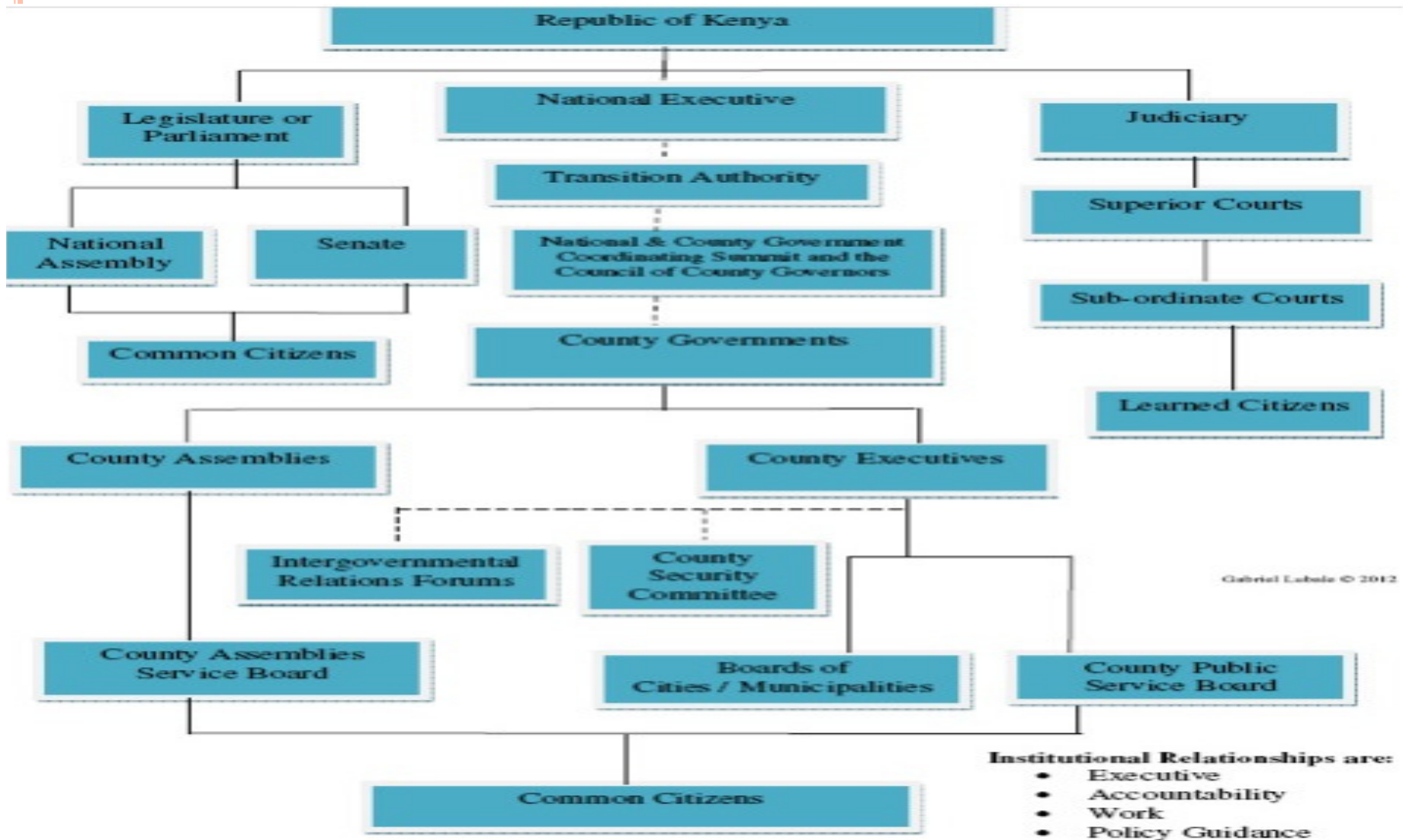
LEGAL FRAMEWORK FOR AGRICULTURE

- The Constitution, 2010
- Kenya Agricultural and Livestock Research Act, 2013
- The Agriculture, Fisheries and Food Authority Act, 2013
- Crops Act, 2013
- Pyrethrum Act, 2013.



THE CONSTITUTION

- Introduced “Devolution”




MEANING OF DEVOLUTION

- Varied meaning depending on context
- ***transfer of power or functions*** from one level of government (usually the central or national government) to a lower level of government such as the local government
- devolution is sometimes considered a form of *decentralization* in which the ***authority for decision-making, functions and powers are transferred*** from the *central government* to quasi-autonomous units or levels of the *local governments*



METHODS OF DEVOLUTION

- *Administrative devolution* being the transfer of responsibility for planning, financing and management of **selected public functions** from the central government to lower units of the government;
 - *Political devolution* being the creation of sub-national levels of government that are endowed with **autonomous decision making power** within the framework of legitimately **elected local governments.**
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METHODS OF DEVOLUTION

- ***Fiscal devolution*** being the alignment of monetary functions among different levels of government whereby the different levels of government set and collect taxes and;
- ***Economic or market devolution***: which occurs through privatization and deregulation thereby shifting the responsibility for the provision of goods and delivery of services from the central government to the private sector



GENERAL METHODS OF DEVOLUTION IN THE CONSTITUTION

- Kenya's Constitution of 2010 introduces a 'cooperative form of devolved governance'
- ***administrative devolution*** is encapsulated in the *Fourth Schedule* which not only distributes but also transfers functions between the national and county government.
- ***political devolution*** has been realized in Chapter 11 which establishes the objects and principles of devolved government including electoral matters related to counties.
- ***fiscal devolution*** is entailed in Chapter twelve which enumerates matters of public finance between the national and county governments



CONSTITUTIONAL PROVISIONS ON PRINCIPLES TO GUIDE DEVOLUTION

- **Article 6 (2) :**
- **The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation**



CONSTITUTIONAL PROVISIONS ON PRINCIPLES TO GUIDE DEVOLUTION(CONTD)

- **Article 189** provides: Government at either level shall perform its functions and exercise its power in a manner that
 - respects the **functional and institutional integrity of government at the other level**
 - respects the **constitutional status and institutions of government at the other level** and, in the case of county government, **within the county level**



EXPLANATION OF ARTICLE 6(2) AND 189(1) PRINCIPLES ON DEVOLUTION

- Two levels of government: **national and county levels**
- **Principles underpinning devolution:**
 - Distinctiveness and Interdependence



THE PRINCIPLE DISTINCTIVENESS

- Each level of government is autonomous from the other- political autonomy, functional autonomy, financial autonomy and administrative autonomy.
- No level of government is sub-ordinate to the other or an agent of the other and must each respect the functional and institutional integrity of the other.



PRINCIPLE OF INTERDEPENDENCE

- Recognizes whereas the various levels of government are autonomous, they cannot operate in isolation.
- Both levels must realize that some of their functions are concurrent in nature requiring consultation and cooperation.
- An important area of cooperation and consultation is captured in Article 189(1)(b).



CONSTITUTIONAL PROVISIONS ON DEVOLVED AGRICULTURAL FUNCTIONS



- Fourth Schedule administrative devolution in the **distribution of functions between the national and county governments**; in various sectors including agriculture



CONSTITUTIONAL PROVISIONS ON DEVOLVED AGRICULTURE

- **Part 1 of Section 29 of the Fourth Schedule:** - National government is exclusively responsible for Agricultural Policy Making and Counties are to Act in accordance with policies of national government
- **Part 2 of Section 1 of the Fourth Schedule:** role of County governments is Agriculture including crop and animal husbandry, livestock sale yards, county abattoirs, plant and animal disease control, fisheries



EXPLANATION ON CONSTITUTIONAL PROVISIONS ON DEVOLVED AGRICULTURE

- National government is to act as the *'regulator'* of agriculture through policy formulation
- Counties are to *'implement'* national policies on agriculture, act as *'facilitators'* and **'providers'** of agricultural services in the various sub-sectors.
- Both government must **respect the constitutional principles** on devolution



WEAKNESS OF CONSTITUTIONAL PROVISIONS ON DEVOLVED AGRICULTURE

- Constitution does not define the term 'agriculture'. In fact, the term 'agriculture' is only mentioned twice in the Fourth Schedule of the Constitution.
- Constitution merely provides a list of the probable sub-sectors within which counties may discharge 'agriculture'.
- Descriptive Constitutional provisions resulted in enactment of AFFA Act

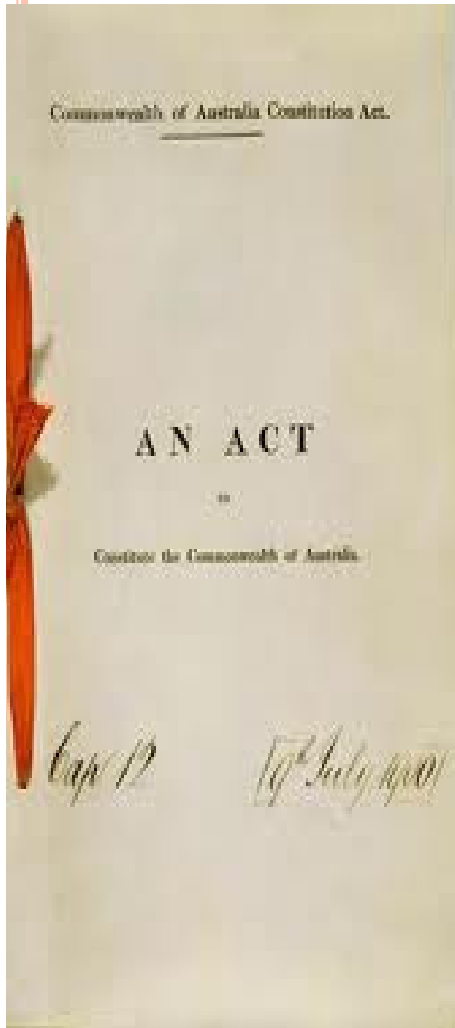


THE AGRICULTURE, FISHERIES AND FOOD AUTHORITY ACT(AFFA ACT)

- [T]o provide for the **consolidation of the laws** on the regulation and promotion of agriculture generally, to provide for the establishment of the **Agriculture, Fisheries and Food Authority**, to make provision for the respective roles of the national and county governments in agriculture *excluding livestock* and related matters in furtherance of the relevant provisions of the **Fourth Schedule to the Constitution** and for connected purposes



AFFA ACT AND DEVOLUTION



- Section 29 (1) and (2) of the AFFA Act provides that:
- (1) Each county government shall within its **area of jurisdiction be responsible, for agricultural matters** in accordance with Part 2 of Fourth Schedule to the Constitution. .
- (2) The national government shall, in accordance with Part 1 of section 29 of the Fourth Schedule to the Constitution, be responsible for **agricultural policy and for assisting the county governments on agricultural matters.**

AFFA ACT VS. DEVOLUTION



- Section 4 -The Authority shall, in **consultation** with the county governments, perform the following functions—
- (a) **Administer** the Crops Act, and the Fisheries Act in accordance with the provisions of these Acts;
- **promote best practices in, and regulate,** the production, processing, marketing, grading, storage, collection, transportation and warehousing of agricultural and aquatic products *excluding livestock* **monitor agriculture**



AFFA ACT VS. DEVOLUTION



Section 4 -The Authority shall, in **consultation** with the county governments, perform the following functions—

- (d) **Be responsible for determining the research priorities in agriculture and aquaculture and to advise generally on research thereof;**
- (e) **Advise the national government and the county governments on agricultural and aquatic levies for purposes of planning, enhancing harmony and equity in the sector.**
- (f) **Carry out such other functions as may be assigned to it by this Act, the Crops Act, the Fisheries Act and any written law while respecting the roles of the two levels of government**



AFFA ACT VS. DEVOLUTION EXPLAINED

- The aspect of ‘*promoting best practices in agriculture, monitoring agriculture, collecting and collating agricultural data and being responsible for research priorities for agriculture*’
 - ***creates confusion and conflict*** in relation to devolved agricultural functions at the county level.
 - It is neither apparent nor implied what would be the ***role of counties as facilitators*** and providers of agricultural services;
 - AFFA Authority will overstep on the functional and institution distinctiveness of counties



QUESTIONS TO PONDER

- Role of AFFA Authority vs. Counties?
- Can national state corporation purport to overstep the principle of distinctiveness of government?
- Is devolved agriculture a reality or mirage?





....the end.....

