



COUNCIL OF GOVERNORS

PRESS STATEMENT AFTER THE COUNCIL OF GOVERNORS EXTRAORDINARY

MEETING OF 14-1-16, COUNCIL OFFICES, NAIROBI

*Members of the Press,
Citizens of Kenya,*

We address you today after another morning of deliberations on matters affecting the 47 County Governments. As we move into the final stages of the transition period, we must evaluate our progress and explore interventions to address existing challenges, whether at a policy, legislative or administrative level. Our priority right now is to ensure that all functions, as contemplated in the Constitution, are successfully transferred to County Governments. As at 3rd March, 2016 at midnight, the transition period will have come to an end. On this premise, there are critical issues that the Council would like to bring to your attention.

1. *Sharing of revenue raised nationally between the National and County Governments for the Financial year 2016/17*

- The Council of Governors has reviewed the recommendations of the Commission for Revenue Allocation (CRA). We commend the CRA for considering allocation of funds for coordinating the participation of communities in governance at the local level,

which is a County function (function 14), under the Fourth Schedule of the Constitution. We however recommend that this kitty be increased to 10 billion.

- Additionally, we are glad that in the coming financial year, and in the spirit of the recent roads judgment, CRA has now recommended the allocation in the equitable share for County roads amounting to 27 billion. On the Road Fuel Levy Fund, CRA is recommending that Counties be allocated 15% of the fund through a conditional allocation. The Council maintains that this figure should be increased to 84% since County Governments are managing 210,000km of roads.
- On funds for the rehabilitation of primary and secondary schools, the Council expresses concern that the infrastructure of many schools remains in deplorable condition. This is because the building of schools has been left to parents. However, County Governments are best suited to construct and rehabilitate schools. In this regard, we urge the National Treasury to strongly consider setting aside conditional allocations to be disbursed to County Governments for the rehabilitation of primary schools. We are willing to dialogue with the Ministry of Education and the CRA so that appropriate mechanisms are put in place for the actualization of the same.
- For the rehabilitation of youth polytechnics, we note this is already a devolved function. The National Government has spent more

than 20% of its overall budget on education but little has been invested in financing of youth polytechnics which are essential in developing skills of youth who don't transit to higher institution of learning. Youth polytechnics, if well-equipped, are good centers of excellence to empower the youth with skills that support generation of employment opportunities. The Council recommends an increase in budget to 18 billion to fully equip these institutions.

- We have agreed with CRA that as they finalize their recommendations, they must include in the equitable share for Counties monies for the remainder of the functions that will be transferred.

2. Transfer of functions

- The timeline that had been allocated for the complete transfer of all functions assigned to County Governments lapses in March 2016. The limited transfer of functions to County Governments will inevitably culminate into a constitutional crisis if not remedied within the mentioned timeframe.
- Our Constitution unequivocally in Section 15 of the Sixth Schedule stipulates that the transition period is three years. All functions must have been transferred by 4th March 2016.
- Unless the Transition Authority and the National Government faithfully adhere to the above provision, they will have grossly

violated the Constitution and hence will attract attendant dire consequences.

- The Intergovernmental Relations Technical Committee (IGRTC) must now be strengthened, legislatively, financially or human resource wise, to take over from the Transition Authority as envisaged in statute. The role of the IGRTC in the transition period and beyond is instrumental since it also serves as the implementing body of the resolutions made in the Summit and the decisions reached by the Council of Governors. Indeed, the IGRTC serves as the Secretariat of the Summit.
- We are also proposing a legal framework to strengthen the IGRTC to be able to perform their residual functions.
- As we mention functions transfer, we must in the same breadth mention that '*funds follow functions*'. As the ground is laid for the transfer of the pending functions, so must the resources be availed for the performance of those functions. Not only must resources be availed, but also institutions must be restructured. The National Government must be ready to downsize which is expected in the restructuring.

3. County Roads

- There has been continued propaganda being perpetuated all over the country about the implication of the recent High Court judgment that declared the immediate transfer of County roads to

Counties. The Council instituted in the High Court a suit against Kenya Urban Roads Authority (KURA), Kenya Rural Roads Authority (KeRRA) and the Kenya National Highways Authority (KeNHA) to prohibit these National Government agencies from carrying out construction and maintenance work on County roads.

- In the court judgment, and recognizing that County roads had already been constitutionally assigned to County Governments, the High Court ordered the immediate transfer of County roads. The court further prohibited the advertisement of tenders with respect to County roads and County outdoor advertising.
- We demand that the Ministry of Transport, the Transition Authority and the Attorney-General to expedite the transfer of class D, E and unclassified roads to Counties in execution of the judgment.
- However, as a practical solution, the Council is now proposing that for the execution of contracts awarded on County roads in the financial year 2015/16, intergovernmental agreements be signed between the respective County Governments and the National Government ministry to ensure that ongoing projects are not stalled. All works currently being undertaken by the agencies KURA and KeRRA shall be done to completion through the above mentioned agreements under the supervision of County Governments. Where the awards for County roads' works have

not been issued to any agency, County Governments must, going forward, be involved.

- We maintain that the construction and/ or maintenance of all County roads- class D, E, and unclassified- is the responsibility of County Governments. All class A, B and C constitute National trunk roads and are therefore the responsibility of the National Government. The orders issued in the High Court petition must be obeyed to finality by all parties. In any case, the Constitution is clear that as of 4th March 2016, all functions shall have been transferred without fail. The transfer of all functions is inevitable and does not depend on whether Transition Authority's term is extended or not.

4. Gazettement of County Laws

- It has been brought to the attention of the Council that the Government Printer has been delaying or even in other circumstances, failing to publish County laws which have already been assented to by the Governors. The Government Printer is mandated to publish county legislation in the Kenya Gazette and therefore the infringement of the same is a clear violation of the Constitution. The Attorney-General and the Kenya Law Reform Commission must not overstep their roles but must in fact support the publication of County laws since County Governments have the constitutional authority to legislate.

We remain committed to the successful implementation of devolution, and maintain that great strides are being made in the Counties.

Signed

H.E. Peter Munya

Chairman, Council of Governors