



COUNCIL OF GOVERNORS

PRESS STATEMENT AFTER THE COUNCIL OF GOVERNORS MEETING, 23RD

OCTOBER, 2015, ENASHIPAI NAIVASHA

*Members of the Press,
Citizens of Kenya,*

1. 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 as Governors is to see to the successful establishment of County Governments, which success will be measured as against whether the objects envisaged in Article 174 of the Constitution have been 100% achieved.
2. That essential services like affordable healthcare, clean water, sanitation services, and improved infrastructure can finally be accessed at the lowest level; that financial and human resource systems in the Counties are operational; that the citizens can participate in governance, proactively contributing to legislation and policy; that the women, youth, marginalized communities and persons with disabilities can participate in procurement of goods and services; and that all of us duty bearers conduct our affairs openly, transparently and fairly.

1. Delayed disbursement of funds by the National Treasury

We acknowledge that the National Treasury has now released August 2015 disbursements. This is little progress. However, we are concerned, that despite the requirement in the Public Finance Management Act that monies must be released by 15th of every month, and further despite the fact that the National Treasury has gazetted the disbursement schedule, monies are still sent to Counties much later than expected. We cannot sufficiently underscore the fact that Counties are literally grounding to a halt.

We cannot deliver services to our people without funds; we cannot pay our workers without funds; we cannot undertake development projects in our Counties without funds. The Council emphasizes that the National Treasury must comply with the law and remain sensitive to the needs of the Counties. We believe that there is also need for serious intergovernmental consultations on matters of fiscal management and need for predictability on the release of funds. Eventually, the inordinate delays have an impact on the overall economy of the country.

2. E-procurement and IFMIS

Many Counties are still facing difficulties in the setting up and use of IFMIS and the e-procurement system. To some extent, these systems have paralysed Counties since they are unable to process simple transactions. The e-procurement system has made payment of suppliers very bureaucratic. In some Counties like Mandera, because of poor

connectivity, both systems are facing implementation challenges. The County has been unable to utilize KES 2.2 billion since payments to contractors cannot be made and development projects cannot take off. This means the County cannot develop and essential services cannot be procured.

Moreover, citizens have the right to participate in the tendering processes of the County. However, this right continues to be curtailed. How can residents without internet access benefit? And persons with disabilities. By default, the e-procurement system segregates a component of the population from tender processes. We maintain that the system has recentralized procurement and contributed to marginalization of locals in tendering.

Some Counties particularly those in northern Kenya still lack power and fiber optic infrastructure critical for implementation of e-procurement not forgetting literacy levels of most residents. The Council intends to meet with the National Treasury to iron out outstanding issues on IFMIS and e-procurement, but in the meantime the Council intends to seek judicial intervention on the matter.

3. Capacity Assessment and Rationalization of Public Service (CARPS Programme)

As you are aware, the CARPS programme has been ongoing for the last one year with the overall objective of ensuring that both levels of

government are well structures and staffed for efficient service delivery. The efficiency any human resource system is dependent on the skills and the competencies of staff, and whether or not the human capital available has been well placed for optimal output.

Albeit we agree that the programme is noble, we note that there are a number considerations that must be factored before we can adopt the report. The management of the wage bill is dependent also on the restructuring of National Government ministries, departments and agencies. The bloated workforce being witnessed is exacerbated by the fact that, even though functions like agriculture, health and water have devolved, we still have redundant parastatals and regional development authorities that continue to perform county functions. They have continued hiring and paying staff, yet they are performing functions that are constitutionally assigned to County Governments.

4. Transfer of functions

The Council notes that 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. At the moment, the inordinate delays occasioned by the various National Government institutions in the transfer of the remaining County functions have compromised implementation of the same. First, functions must be

properly transferred through the recognized legal framework if they are to be effectively implemented. Unless the Transition Authority gazettes for the transfer of a function, a County Government cannot proceed to perform that function. Subsequently, any form of service delivery and revenue collection attendant to the pending functions becomes impeded. Second, we must remember that our governance system is founded upon the '*funds follow functions*' principle. As the ground is laid for the transfer of the pending functions, so must the resources be availed for the performance of those functions. We urge the Transition Authority to gazette the remaining functions.

5. Impeachment

As you are aware, one of our colleagues, H.E. Mwangi Wa Iria, on Wednesday 21st October impeached by the County Assembly of Murang'a. We are moving into another phase of implementation, the phase where we all settle, accept that we have we have faced certain difficulties and learn lessons from those and move forward for the sake of the people who have entrusted us with leadership positions. I say this because as a Council we are concerned that there are certain Members of County Assemblies who have continued to hold the functioning of County Governments hostage through blatant violation of institutions and procedures set down by the Constitution and devolution laws.

The County Assembly of Murang'a has acted in total breach of the Constitution and the County Governments Act by not according

the Governor an opportunity to defend himself against the allegations leveled against him. The opportunity to be heard by an impartial decision maker is at the heart of the rules of natural justice and procedural fairness. On this ground alone the impeachment is null and void. Additionally, Article 181(1) of the Constitution provides for the grounds of removal of a county governor. The threshold for removal, upon which these grounds can be said to have been based, were well articulated by the Court of Appeal, the second highest court in the land. The standards set by this court were as follows:

- i. That whatever is alleged against a Governor must be serious, substantial and weighty;
- ii. That there must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law;
- iii. That the charges framed against the Governor and the particulars thereof must disclose a gross violation of the Constitution or any other written law; and
- iv. That the charges as framed must state with degree of precision the Article (s) or even sub-Article(s) of the Constitution.

We at the Council believe that the allegations against H.E. Mwangi wa Iria are a result of the usual challenges that we are all experiencing in our Counties, particularly delayed disbursements. We are informed that huge bills have accumulated most of which arising from the liabilities of the former local authorities; that the National Treasury has for over four months now failed to disburse development funds to the county leading

to more accumulated bills, amongst other challenges. These are not grounds for impeachment of an elected Governor at all. The citing of the Auditor-General's report can only be concluded to be in bad faith since all Counties responded to respective audit queries. We still hold that the office of the Auditor General is accountable for failure to include all response before dissemination of the final report.

County Assemblies must begin to be responsible and remember that they are servants, servants of the nation, servants of the County.

6. Assets and Liabilities

We note that there is need for clarity on liabilities of the former local authorities. As it is, it has been made to seem as though County Governments are the successors of local authorities. It is erroneous. There is need for the two levels, with the guidance of agencies appointed to assist the transition, to consult exhaustively on this issue so that Counties are not overburdened by liabilities that had been previously incurred by the National Government ministries.

7. Summit:

County Governments are calling for an urgent Summit meeting by the end of the year to discuss thorny issues including, the state of the economy and the slow implementation of previous Summit resolutions. Other matters we have raised here will also require the attention of the Summit.

We remain committed to the successful implementation of devolution, and despite the narrative that devolution is not working, we maintain that great strides are being made in the Counties.

Signed

H.E. Peter Munya

Chairman, Council of Governors