



COUNCIL OF GOVERNORS
Press Statement

Members of the Press,
Citizens of Kenya,

As County Governments wind up their first terms, we take cognizance of teething challenges that require urgent attention in order to secure a seamless transition to the next regime. There is overwhelming evidence that County Governments have in the past four years made significant strides in critical sectors like health, water, agriculture, early childhood education and roads. Despite instances when goodwill for the success of devolution has come in short supply, we have managed to utilize our resources to achieve optimal results in service delivery. To continue building on these gains, we believe certain steps must be taken to provide an enabling environment for devolved governments to thrive.

FINANCE

- a) The Council of Governors has on numerous occasions raised concerns on the deficiencies and shortfalls of the Integrated Financial Management System (IFMIS). As we address you here today, we are aware that the system has not worked since Monday, April 3.

- b) Operations across the 47 County Governments have been disrupted and paralysed; service delivery is nearly grinding to a halt; Counties are unable to promptly pay pending bills to contractors and suppliers thereby causing anxiety and giving an impression that Counties are unable to settle their bills; and development projects have stagnated. In essence, we will not be able to timely absorb our financial allocations for this quarter. Even as County Governments experience interruption in the performance of their functions, it is worth noting that National Government and its agencies have not been affected.
- c) It was envisaged that through IFMIS, County Governments would experience efficiency in planning, budgeting, procurement, expenditure management and reporting. But the persisting difficulties faced in the use of IFMIS have proved time and again that the system is unreliable and in this regard, the National Treasury must with utmost urgency address emerging challenges to cushion County Governments from public onslaught.
- d) We are of the view that this is a deliberate attempt to slow down County Governments' expenditure as the general elections draw nearer. Delivery of services to Kenyans cannot and should not be pegged on elections or any event for that matter.

LAWS

- e) The Council takes great exception with the Election Laws (Amendment) Bill 2017. The Bill seeks to amend the Elections Act No. 25 of 2011 and introduce requirements, among others, allowing only one appeal in an election petition thereby limiting the jurisdiction of the courts to hear and determine election petitions. Undoubtedly, this is a contravention of Article 48 on access to justice and Article 50 on fair hearing. Additionally, the Constitution has unequivocally provided for the jurisdiction of the High Court, the Court of Appeal and the Supreme Court; which jurisdiction cannot be impeded by a statute.
- f) We oppose the Bill as it seeks to oust the jurisdiction of the Supreme Court entrenched in Article 163 of the Constitution and limits the right of Appeal by proposing that one cannot seek redress in the apex court on an election petition related to the office of the Governor, Senator or Member of the National Assembly. The right of appeal is integral in the fulfilment of Article 50 on the right to fair hearing. And the Constitution has gone further to protect this right by, at Article 25, stating that it cannot be limited.
- g) A Bill of this nature goes against the will of Kenyans who overwhelmingly endorsed the Constitution which explicitly provides for access to the highest court in the land.
- h) As a matter of fact, in various election petitions emanating from the 2013 General Elections, the Supreme Court pronounced itself on the parameters of appeals it can entertain. It is already set in jurisprudence that for interpretation of the Constitution and matters of high public interest, appeals shall lie up to the Supreme Court. Indeed, this Bill is unconstitutional.

- i) On another note, the Council is dismayed that the President assented to the Appropriation Bill while mediation on the Division of Revenue Bill is still ongoing. His actions undermine the mediation process which will settle on the allocation of revenue to both levels of government. The Division of Revenue Bill informs the County Allocation of Revenue Act, which distributes the equitable share amongst the forty-seven (47) County Governments. Therefore, the signing of the Appropriation Bill is premature since the allocations for both levels of government are yet to be agreed on.

- j) Further, assenting to the Appropriation Bill will interfere with legislative timelines and processes as the Senate cannot debate on the County Allocation of Revenue Bill while the Division of Revenue Bill has not yet fully gone through the motions of mediation. The Council opposes the Appropriation Act and will take relevant legal measures to ensure successful mediation for the Division of Revenue Bill.

Thank you.

H.E. Peter Munya

Chairman Council of Governors