



COUNCIL OF GOVERNORS

PRESS STATEMENT ON THE PRINCIPLE OF ACCOUNTABILITY

The Council of Governors believes in national values and principles of transparency and accountability embodied in Article 10 of the Constitution. The success of the implementation of the devolved government framework will succeed due to the observance of these core values and ideals. This drive is what informs decision making in counties and contributes to achievement of effectiveness and efficiency in the Counties. While recognizing the value and importance of accountability, Governors understand that the Constitution has laid down clear mechanisms for enhancing the aforementioned values and principles.

The Council of Governors respects the Constitutional provisions promoting the principle of accountability as contemplated in among others, Article 195 which states that a County Assembly has power to summon any person to appear for the purpose of giving evidence or providing information. The Council further recognizes that this principle of accountability is cemented in Article 174 (a) which stipulates that one object and principle of devolved government is to promote democratic and accountable exercise of power. Additionally, Article 226 (2) is clear that the accounting officer of a County Public entity is accountable to The County Assembly for its financial management. Undoubtedly, the Constitution has set the accountability mechanisms at both the County and National levels. These include adherence to the Public Finance Management framework and the attendant institutions which include: The County Assemblies, The Senate, The Auditor General, The office of The Controller of Budget, and The Ethics and Anti Corruption Commission.

However, The Senate has been summoning Governors to appear before it to ostensibly answer questions on county government finances basing these summons on the provisions of Article 125 of the Constitution.

The Public Finance Management Act 2012 provides a complete legal regime for accountability of public funds. As per this law, Chief Officers finance (the equivalent of the Principally Secretaries) are the accounting officers. The County Executive Committee members responsible for finance (the equivalent of Cabinet Secretaries) are responsible for policy execution under the direction of the Governor and the Deputy Governor. In essence, the executive authority at the County level is a collective function. In the past, these officers have sought to appear before Senate but have been chased away. Senators only want Governors to appear. In sum, the Senate is not interested in information but personalities. Counties are not about Governors, there are other persons involved. Governors don't have statutory accounting powers. It is the Chief Officers in the Counties that are required to account for legal purposes. Why chase them away when they attend Senate meetings to provide information? Why?

In keeping with the constitutional objectives on devolved government under Article 174(i), the Senate is under a duty to respect the principle of checks and balance at the County level and where necessary should invite the appropriate county executives for general clarifications and discussions in a manner that does not

micro-manage the county governments. As per Article 6(2) and 189 of the Constitution, County Governments are distinct entities. There is a further constitutional obligation to respect their status and institutions created in the structure of county governments.

The Council of Governors wishes to inform Kenyans that this issue has now been the subject matter of judicial interpretation by the Constitutional Division of the High Court. The Court confirmed the position in law that the Senate has no right to summon governors on audit queries regarding financial management at the County level as this is not its mandate. Article 226 (2) of the Constitution vests this role on the County Assemblies. The Court also confirmed that Governors are not the accounting officers of County Governments.

In addressing this delicate constitutional balance, the High Court in ***Kerugoya Constitutional Petition Number 8 Of 2014 International Legal Consultancy Group –Versus- The Senate, Clerk Of The Senate And The Senate*** held as follows:-

‘As stated earlier Article 125 of the Constitution grants the Senate and the National Assembly and their respective Committees the power to summon any person to give evidence or provide information with regard to a matter they are seized of. This Constitutional power must be respected by all public officials at all times. However, it is the respectful view of this Court that when these powers are exercised in reference to members of the County Government, there must be a measure of restraint by the Senate. Put another way, when the Senate uses its powers to summon with regard to its oversight mandate under Article 96(3) of the Constitution, it must not do so arbitrarily and capriciously. It must exercise caution and refrain from acting in a manner that could be construed as micro-managing devolved units at the county level. It must endeavor to sustain the spirit and letter of the Constitution as enshrined in Article 6(2) of the Constitution.’

The Court further stated:-

‘The Senate is therefore required by the Constitution under Article 6(2) when exercising its oversight powers over the County Governments under Article 96(3) of the Constitution to do so in a manner that

fosters and nurtures the principles of devolution in the new Constitutional dispensation. We opine therefore that before resulting to summons, the Senate should have sought consultations or mediation with the respective County Governors with regard to the concerns raised by the Controller of Budget's report issued with deference to implementation of County budgets. In order to promote harmonious co-existence between the Senate and the County Governments for the sake of harnessing the fruits of devolution for the benefit of the people of Kenya, the Senate should only issue summons to Governors or other Officers of the County Government as a matter of last resort where it is clear that the County Governors and other County Officials have declined an invitation by the Senate or its Committee(s) to answer to matters of oversight of County Funds. The Senate should endeavor to improve accountability at the County level and not cripple the County Governments.'

Furthermore, the court emphasized as follows:-

'The Senate which is one of the organs of the National Government and County Governments need to co-operate and engage on a platform of mutual relations and consultation as opposed to engaging in adversarial relations with regard to any matter touching on devolution. The Courts, therefore be used as a last point of call with respect to any dispute concerning the functional areas of any State organ under the new Constitutional dispensation.'

Kenyans are advised that before the Auditor General's report has been considered and debated before County Assemblies, the Senate ought not to usurp the role of County Assemblies and any attempt to summon Governors or County Executives would be a violation of the Constitution. Under Article 2 (4) of the constitution, such an act is null and void. The Senate must respect the constitutional mechanisms for accountability as outlined above. Governors will not honour summons that violate the spirit and letter of the Constitution. Article 3(1) obligates every person to respect, uphold and defend the Constitution. Obviously, the Senate plays an important role in protecting and safeguarding the interests of counties and their governments. This role is played at the national level. The Governors will continue to work with the Senate in the spirit of mutual respect, cooperation, and consultation.

Signed.

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