

1 ADDRESS BY H.E GOVERNOR AHMED ABDULLAHI, CHAIRMAN, FINANCE COMMITTEE OF THE COUNCIL OF GOVERNORS, DURING THE NATIONAL CONFERENCE ON MANAGING SUB- NATIONAL BORROWING HELD ON 24th SEPTEMBER 2014 AT SAFARI PARK HOTEL

Your Excellency the Governors present; CS Devolution and Planning, Ms Anne Waiguru; The CS National Treasury Mr Henry Rotich; Dr Diarietou Gaye, Country Director World Bank; Development Partners represented here, Ladies and gentlemen.

The *Transition to Devolved Government Act, 2012*, was enacted to, among other objectives, provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the National and County Governments of assets and liabilities; human resources; pensions and other staff benefits for employees of the Government and local authorities, under the old order.

Parliament enacted the National Governments Coordination Act 2012, to establish an administrative and institutional framework for co-ordination of National Government functions at the National and County levels of governance. Section 21 of the Act stipulates that all property, assets, rights, liabilities, obligations, agreements and other arrangements existing and vested in, acquired, incurred or entered into, by or on behalf of the Provincial Administration shall vest in the National Government. This meant that all assets and liabilities vested in the Provincial Administration reverted immediately to the National Government from the inception of County Governments.

Today debts inherited from the defunct Local Authorities continue to burden County Governments. Most counties, if not all, have had to make budgetary provisions to clear the debts for fear of facing court action from service providers to the old dispensation. These include statutory liabilities, such as payments to suppliers, pensions and taxes, electricity and servicing bank loans. Nairobi City County has had the highest expenditure on inherited debt repayment and pending bills. It is followed by Kiambu and Trans Nzoia Counties. In a nutshell, here is a summary of the types of liabilities:

LOANS

These include both short term and long-term loans. borrowed to defray some of the expenses of the defunct local authorities. They include:

Long-term loans from commercial banks e.g. the Ksh. 5 billion loan from Equity Bank that the Nairobi City Council borrowed to defray some its expenses.

Short term loans including bank overdrafts from commercial banks.

UNPAID EMOLUMENTS

These include unpaid salaries to the former employees of the defunct local authorities, gratuity, honorariums etc.

UNREMITTED STATUTORY DEDUCTIONS

These are liabilities that are owed by the former Local Authorities, as a result of the following:

- Unremitted taxes (PAYE) from the former employees of the defunct Local Authorities to the Kenya Revenue Authority
- Unremitted deductions from the former employees of the defunct Local Authorities to Local Authority Provident Fund (LAPFUND), Local Authority Pension Trust (LAPTRUST)
- Unremitted deductions to National Social Security Fund (NSSF), National Hospital Insurance Fund (NHIF)

UNPAID LEGAL FEES

This include unpaid costs arising from representation of the defunct Local Authorities by different law firms in court cases; out-of-court settlements; sales, purchases and securities; leases and agreements for lease of land, among others, as per the corresponding Advocates Remuneration Order.

UNPAID SUPPLIERS AND CONTRACTORS

These are firms or individuals that supplied products, for example, stationery, lubricants and oils etc., or offered certain expertise e.g. construction of markets, consultancy fees on civil works etc.

OTHER CREDITORS

These are firms or individuals that are owed monies by the defunct local authorities. They include:

- Unremitted deductions from the former employees of the defunct Local Authorities to Association of Local Government Authorities of Kenya (ALGAK)
- Unremitted deductions of staff loans to commercial banks and SACCOs
- Unpaid utility bills e.g. Electricity, Telephone, and Postal bills

TOTALS about Kshs 46 Billion

County governments were directed to take over all the assets and liabilities of the defunct local authorities vide a High Court ruling, occasioned by the fact that the determination of the assets

and liabilities of the defunct municipalities by the Transition Authority was concluded by March 4, 2013, and is no longer pending, as per the Fourth Schedule of the Transition to the Devolved Government Act.

Thus, the counties are not in a legal position to satisfy the decree ordering it to pay any debts until the Transition Authority makes a determination on the transfer of assets and liabilities.

This is a pending issue and even though some Counties have managed to pay off part of the debts, there are still gaps that need to be addressed.

THANK YOU