



COUNCIL OF GOVERNORS

27th May, 2021

PRESS STATEMENT AFTER COUNCIL OF GOVERNORS FULL COUNCIL MEETING

The Council of Governors has just concluded a full-council meeting to discuss issues affecting County Governments in accordance with the Intergovernmental Relations Act 2012. We would like to address you on the following resolutions from the meeting.

1. Safeguarding Devolution

The Council appreciates the principles of accountability, transparency and integrity in the management of public affairs in the Counties.

We however take note of the conduct of the oversight bodies in the recent processes for impeachment of County Governors. While we appreciate the fact that impeachment is both a legal and a political process, it is imperative that the institutions involved observe strict compliance with the rule of law.

The Council also notes the inconsistency of standards applied in impeachment cases. Particularly of concern, is that similar allegations are treated differently leading to uncertainty in the outcome of the processes and also violates the principles of the rule of law.

Impeachment proceedings are governed by the provisions of Article 181 of the Constitution and section 33 of the County Governments Act.

Presently, there is no legislation that substantively covers the issue as the Impeachment procedure Bill has not been passed by the National Assembly.

The Court of Appeal has clearly stated that there must be a nexus between the Governor and the alleged gross misconduct. That is to say, the wrongful act must be done with the personal knowledge, consent or connivance of the Governor. This includes intentional, brazen or willful gross violation of the Constitution or other written law.

A closer comparative analysis to other jurisdictions shows that the process has to be complied with. In Nigeria for instance in 2014, the Court of Appeal overturned the impeachment of Governor Martin Nyako of Adamawa state. The reason given by the court was of procedural impropriety by the State Assembly of Adamawa.

In view of this, the Council of Governors is concerned that the Counties will be exposed to unnecessary impeachments if the current tide is not checked. Consequently, we intend to go to court to seek clarity on the threshold of impeaching a Governor and the attendant process of assumption of office.

2. Conditional and non-conditional grants legal framework for Financial Year 2021/2022

The High Court ruling on Petition No. 252 of 2016 made on 3rd **December 2020**, directed the Senate standing Committee of Finance to establish a multi-agency technical committee to develop a legal framework for disbursement of Conditional and Non Conditional Grants to Counties.

The committee established comprises of:-

- Senate Finance Committee;
- Parliamentary Budget Office-National Assembly Committee;
- Office of Attorney General;
- Commission on Revenue Allocation and;
- Council of Governors

The committee deliberated and made the following recommendations:-

- i. That, the Division on Revenue Bill (DoRB), 2021 be amended to exclude any reference to conditional and Non-conditional allocations by deleting the schedule and substituting the same with a new schedule providing for the following four items;
 - Total sharable revenue
 - National Government share
 - Equalization fund
 - County equitable share

We wish to inform you that, the bill has since been considered and approved and is the Division of Revenue Act, 2021.

- ii. That, the Committee will propose a legal instrument that guides funds flow and utilization at County level which the Controller of Budget can rely on in approving requisition for Conditional and Non conditional funds by County Governments.

3. Disbursements of County Equitable Share of revenue

We note that, as at **26th May 2021**, the County Government equitable share disbursements for the Financial Year 2020/2021 amounts to **Ksh. 242,686,833,790.00 (inclusive of Ksh.26.9 Billion arrears for FY 19/20)**

The current outstanding amount owed to County Governments is **Ksh. 105.9 Billion** as follows:-

- **Ksh.3.5 Billion** owed to Nairobi City County Government as arrears for 2019/2020
- **Ksh.3.9 Billion** owed to Nairobi City County Government for the month of January and February
- **Ksh.15.3 Billion** owed to 47 County Governments for the month of March.
- **Ksh.28.5 Billion** owed to 47 County Governments for April
- **Ksh.25.3 Billion** owed to 47 County Governments for May
- **Ksh.26.7 Billion** owed to 47 County Governments for June

This delay has continued to derail our response measures to the pandemic, payment of pending bills and service delivery to Kenyans. As a matter of urgency, we call upon the National Treasury, to immediately release these funds to Counties.

4. Pending Bills

County Governments remain committed in ensuring that all eligible pending bills are settled. In view of the meeting held today with the Controller of Budget, we note that there is need for consideration on processes of paying old pending bills.

We therefore call upon the Controller of Budget to allow County Governments the discretion to prioritize the settlement of both inherited and current pending bills.

5. 7th and *Final Annual Devolution Conference*

The Council of Governors together with other devolution partners has been organizing the 7th Annual Devolution Conference which will be held from 23rd to 26th **August, 2021** at **Makueni Boys High School, Makueni County**. The theme of the Conference is; ***Multi-Level Governance for Climate Action: Sub-National Mobilisation in unlocking the Full Potential of Climate Action during and after Pandemics.***

To this end, the Steering Committee of the 7th Annual Devolution Conference held a meeting with the Ministry of Health and resolved that:-

- All delegates, participants and the residents of Makueni County must be fully vaccinated three weeks prior to the conference.
- The Council of Governors will develop a critical list of registered participants and share the same with the Ministry of Health who will facilitate vaccination of all delegates.
- The delegates will be identified by region to enable the Ministry identify specific medical centres for vaccination of delegates.

In line with the Conference theme, the multi-agency committee in collaboration with the Counties in the South Eastern Regional Economic Bloc, as well as Kajiado and Embu Counties. The target is to grow two million trees before the dates of the Conference. We have so far grown, **701, 469 trees**. We will hold another tree growing exercise on **11th June 2021** in Embu County.

His Excellency the President, will grow the two millionth tree in Makueni County during the official opening of the Conference.

Conclusion

We remain committed to safeguard devolution and the gains made thus far.

Asanteni sana.

Signed

H.E Hon. Martin Wambora, EGH
Chairman Council of Governors