



COUNCIL OF GOVERNORS

OWNERSHIP AND MANAGEMENT OF WATER SERVICES PROVIDERS (WSPs)

PRESS STATEMENT

The Council of Governors is utterly disturbed by the statement of the Cabinet Secretary (CS) for Water and Sanitation Hon. Simon Chelugui on 19th October 2018 in regard to the Ownership and Management of Water Utilities in Kenya, following a meeting held on 8th October 2018 at the Council of Governors Offices where Hon.Simon Chelugui, the Ministry of Devolution and ASAL Cabinet Secretary, Hon. Eugene Wamalwa, Governors and CECs in Charge of Water were present.

The meeting unanimously agreed that as per the Water Act, 2016 Water Service Providers (WSPs) are agents of County Governments. As such, WSPs are the responsibility of County Governments who have the mandate to provide water services. In the case of ownership of Murang'a Water Sewerage Company (MUWASCO) and 4 other utilities (Gatanga, Gathamati, Kahuthu and MUSWASCO) – it was agreed that the institutions be handed over to Murang'a County Government with immediate effect. Subsequently, the Directors of the WSPs in Muranga to change their Articles and Memorandums of Association to reflect the ownership by the County Government in order to resolve the ongoing water wrangles in the County.

Therefore, the statement from the CS is against the spirit of the Intergovernmental Coordination and Cooperation Mechanism signed between the Ministry of Water and Sanitation and the Council of Governors during the Kenya Water Summit held in Naivasha on 2nd March, 2018 whose goal is to steer the attainment of a sustainable water sector in Kenya including addressing any issues that may arise in the management of water and sanitation services in the sector.

The Council of Governors notes that the Constitution has placed the management of water affairs to the two levels of government as set out in the Fourth Schedule which delineates the functions of the National Government under part 1 and County Governments under part 2. With regards to the water function, the Constitution assigns the responsibility of water supply and sanitation service provision to the 47 County Governments as provided for under Part 2, function 11 (b) of the Fourth Schedule.

Further, the Kenya Gazette Supplement No. 116 of 9th August, 2013 further unbundled functions relating to the water and sanitation services to include: Rural water and sanitation services, provision of water and sanitation service in small and medium towns without formal service providers ,

water harvesting (specific to counties) and urban water and sanitation services with formal service provision including water, sanitation and sewerage companies, excluding Water Service Boards.

From the above facts, the Council of Governors would like to reiterate the following:

1. That County Governments have the mandate to handle implementation of the water function independently. This position is echoed in section 6 of the County Governments Act which states that a County Government is a body corporate with perpetual succession and as such, it shall have all the powers necessary for the discharge of its functions. The County Governments Act also buttresses the aforementioned provision as section 5 (1) (a) states that, a County Government shall be responsible for any function assigned to it under the Constitution or by an Act of Parliament. Both levels of government have an obligation to ensure the right to clean and safe water as espoused in Article 43 of the Constitution. To achieve the goal of the aforementioned provision, it is important for both levels of Government to be guided by Article 6 of the Constitution which determines that the national and county governments are distinct and should conduct their mutual relations on the basis of consultation.
2. That CoG is committed to protecting the gains achieved in the Water Sector through Reforms Agenda since 2002. As such, the Council will endeavor to ensure that the WSPs (who are agents of County Governments), remain Commercially viable through ring-fencing of revenues and that the tenets of Good Corporate Governance are upheld in the Sector.
3. That the Counties are ready to take over all the Assets and Liabilities from the WSBs once the provision in the Water Act on Asset Transfer for the Water Services Boards to the County Governments takes effect in June 2019.
4. *That the National Government should consult Counties and obtain clearance while investing in water utilities. Further, all programs, projects and investments by the national government through the water utilities should get a No Objection Letter from the Counties.*
5. That Counties who are yet to fully own WSPs should be supported accordingly as the same are agents of County Governments. The Council shall stand and support County Governments in their quest to fully own WSPs within their jurisdiction so as to ensure effective service delivery of the Water & Sanitation Services function as per the CoK 2010.

Signed

H.E. Josephat Nanok
Chairman
Council of Governors