COUNCIL OF GOVERNORS

3rd September, 2020

STATEMENT ON DELAYED DISBURSEMENT OF FUNDS TO COUNTY GOVERNMENTS AND SUMMONS TO GOVERNORS TO APPEAR PHYSICALLY AT THE SENATE.

The Council of Governors notes with concern that County Governments have not received their equitable share of revenue three months into the current financial year 2020/21. This has had serious implications in the general operations of County Governments and payment of salaries to County staff. This is tantamount to killing devolution similar to what happened in 1964.

We express our discontent with Senate’s failure to build consensus on the 3rd generation formula which has consequently delayed the approval of the County Allocation of Revenue Act, 2020.

The Constitution under Article 190 provides that, ‘Parliament shall by legislation ensure that County Governments have adequate support to enable them to perform their functions’.

We further draw attention to the Supreme Court Advisory reference No.3 of 2019 in which it was stated that, “Without a budget and consequent financial appropriation there would be no Executive, legislature, Judiciary or County Government. Budget processing and the enactment of consequential legislation are some of the most solemn responsibilities vested upon Parliament in any given financial
year. Failure by Parliament to discharge such a critical legislative function in the absence of an emergency or any other disaster that disrupts parliamentary business not only violates the constitution but also exposes the country to existential danger. Such a Parliament is considered to have run its course, hence its dissolution.

Despite the above pronouncement by the Supreme Court, the Senate has failed to safeguard the interests of County Governments by failing to pass the 3rd generation formula. This has left Counties with no resources to effectively discharge their functions especially in the wake of the COVID-19 pandemic.

To this end, we hereby forewarn the Senate that a Petition for its dissolution can be initiated by any member of the public through the High Court as provided for under Article 258 of the Constitution.

It is unfortunate that County Governments are unable to even pay the salaries and allowances of our health workers who remain in the frontline to save lives of Kenyans. In this regard, if the prevailing situation persists, effective Thursday 17th September, 2020 Counties will have no choice but to shut down. Therefore, all County Government services will not be available in the Counties. Consequently, we shall release all county employees to proceed on leave until an amicable solution on the issue is reached.

The Constitution under Article 217(7) allows for the current 2nd revenue formula to apply until such a that the subsequent formula is approved. To this end we call upon National Treasury to release the County equitable share of revenue without further delays.

The Council of Governors takes note that the Attorney General issued an advisory that went contrary to the Constitution and the Supreme Court advisory. Indeed, the Attorney General cannot overrule the Supreme Court finding and must therefore withdraw the Advisory.
Further, we note that the Senate Committee on County Public Accounts and Investments has continued to summon Governors to appear physically despite consensus with the Council to convene all meetings virtually. It is unfortunate that some of the issues being raised by the Senate committee emanate from previous financial years dating back to 2015 which begs the question of where the Senate has been all along. We hereby categorically state that Governors will not bow down to the extortionist nature of this County Public Accounts and Investments Senate Committee and will only appear virtually until COVID-19 pandemic is over and funds has been disbursed to County Governments.

We call upon the EACC and DCI to investigate the County Public Accounts and Investments Committee of the Senate on this matter of extortion.

Signed:

H. E. Hon FCPA Wycliffe Ambetsa Oparanya, EGH, CGJ
Chairman, Council of Governors.