

COMMUNICATION FROM THE CHAIR ON APPEARANCE

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BY GOVERNORS BEFORE THE SENATE AND ITS COMMITTEES

1. Honourable Senators, I wish to inform you that I am in receipt of a letter dated 17th June, 2016 from the Chairman of the Council of Governors, the Honourable Peter Munya, in which the Chairman raises concerns about the alleged harassment of Governors appearing before the Senate and its Committees. The Chairman states that Governors appearing before the County Public Accounts and Investments Committee of the Senate have complained about the manner in which they have been treated which he states has been in total disregard of the Senate Standing Orders and the Constitution.
2. The Chairman cites the alleged mistreatment of Governor (Dr.) Evans Kidero, in his appearance before the Committee on 15th March, 2016. In this regard, the Chairman attaches a letter dated 17th June, 2016, from Governor (Dr.) Kidero addressed to the Speaker of the Senate titled "Complaint against Undignified Treatment during the Senate Public Accounts and Investment Committee Presentation by Nairobi City County".
3. The Chairman goes ahead to state that based on the alleged experience of Governor (Dr.) Kidero in his appearance before the Committee and the experiences of other Governors, it was apparent that the safety and security of Governors appearing before the Senate

Committee was not guaranteed. He goes further to also state that there is a clear conflict of interest, and, I quote “*Senators sit over their own cause since they have declared openly that they will be vying for the position of Governors at the next general elections*”. It is the view of the Chairman that the Standing Orders and rules of natural justice require that any interested parties should declare their interest and should not preside in a matter in which there are indications that there will be a conflict of interest.

4. The Chairman concludes by stating that “*due to the manner in which the Governors have been mishandled as they appeared before the Senate Committee purporting to provide oversight, the Council of Governors has henceforth considered and advised its members to desist from appearing before the Senate until the issues raised are satisfactorily addressed*”. The Chairman further states that if “*the harassment continues, even the executive committee members will also be advised not to appear before the Senate Committee*”. The Council of Governors reiterates that the Governors are no longer willing to respond to any summonses that are made by the Senate and any of its Committees until the Senate puts in place mechanisms to address the serious constitutional and statutory issues raised.
5. Honourable Senators, the Chairman of the Council of Governors, in his letter, refers to the complaint by Governor (Dr.) Evans Kidero relating to his appearance before the County Public Accounts and Investments Committee on 15th June, 2016. It is important that I state

at the outset that pursuant to section 10 of the National Assembly (Powers and Privileges) Act, Cap. 6, Section 7 of the Sixth Schedule to the Constitution and Standing Order 176(5)(b), (c) and (g) of the Senate Standing Orders, I referred the complaint by Governor (Dr.) Kidero to the Senate's Rules and Business Committee for its consideration and appropriate action. In the circumstances, and on account of the fact that the matter is pending before the Rules and Business Committee, I shall say no more on this matter at this stage.

6. On the position taken by the Council of Governors to the effect that they shall not honour any summonses by the Senate and its Committees until the issues that they have raised in the letter dated 17th June, 2016, are addressed, as this purported action would affect all committees of the Senate, it is important that I state that the power of the Senate and indeed of the entire Parliament to require the attendance of any person is a power provided for under Article 125 of the Constitution. This Article provides that –

(1) Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.

(2) For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court –

(a) to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;

(b) to compel the production of documents; and

(c) to issue a commission or request to examine witnesses abroad.

7. In addition, section 14 of the National Assembly (Powers and Privileges) Act further provides as follows –

(1) The Assembly or any standing committee thereof may, subject to the provisions of sections 18 and 20, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

(2) The powers conferred by subsection (1) on a standing committee may be exercised by any other committee which is specially authorized by a resolution of the Assembly to exercise those powers in respect of any matter or question specified in the resolution.

8. Appearance before the Senate and its Committees is therefore not optional and cannot be pegged to the fulfilment of any pre-conditions set by the Council of Governors as seems to be suggested by the Chair of the Council of Governors. Appearance before the Senate and its Committees is a constitutional and non-negotiable obligation.

9. Honourable Senators, as I have previously stated in this House, the Courts have settled the question of the appearance by Governors

before the Senate and its Committees, in the matter of the *International Legal Consultancy Group versus the Senate and the Clerk of the Senate, High Court of Kenya at Kerugoya, Constitutional Petition No. 8 of 2014*, the Petitioner filed a petition challenging the decision of the Senate to summon nine Governors and County Executive Committee Members responsible for finance to appear before the Senate and produce various documents and to respond to various issues with regard to county finance and fiscal management within their counties.

10. The Court held that “*the Senate can summon Governors, County Executive Members of Finance and County accounting officers to appear before it and answer to questions on County Government finances in so far as the National revenue allocated to the respective county is concerned...*”
11. Honourable Senators, in the circumstances, on account of the provisions of Article 125 of the Constitution, section 14 of the National Assembly (Powers and Privileges) Act and the decision of the High Court in Constitutional Petition No. 8 of 2014, the position taken by the Council of Governors not to respond to summonses of the Senate and its Committees is not tenable as it contravenes and would violate the Constitution and the National Assembly (Powers and Privileges) Act and would be contrary to the judgement of the High Court on this matter.

12. Honourable Senators, in light of the above, I have responded to the letter from the Chairman of the Council of Governors setting out this position. Let me emphasise however, that despite this, the business of all Senate Committees should proceed in the usual manner in accordance with the Constitution and our Standing Orders.

I thank you.

SEN. EKWEE ETHURO, EGH, EBS, MP

SPEAKER OF THE SENATE

30TH JUNE, 2016