

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

TWELFTH PARLIAMENT

REPORT OF THE STANDING COMMITTEE ON FINANCE AND BUDGET
REGARDING THE IMPLEMENTATION STATUS OF THE SENATE
RESOLUTION ON COUNTY GOVERNMENTS' INFRASTRUCTURE
PROJECTS COMPRISING COUNTY EXECUTIVE HEADQUARTER
OFFICES, ASSEMBLY CHAMBERS & OFFICES AND COUNTY STATE
OFFICERS' RESIDENCES

CLERK CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

DATE	28/04/20
TABLED BY	Sen. Mahamud
COMMITTEE	Finance & Budget
CLERK AT THE TABLE	J.M. NYEGENYE

PAPERS LAID

APRIL 2020

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PREFACE

Mandate and Functions of the Committee

Article 124 of the Constitution of Kenya provides for the establishment of Committees by either House of Parliament. Committees are central to the workings, roles and functions of Parliament as set out in Article 94 and more specifically in Article 96 of the Constitution on the specialised role of the Senate. Article 96 (3) stipulates that the Senate exercises oversight over national revenue allocated to the county governments.

Senate Committees consider policy issues, scrutinize the workings and expenditure of the national and county governments and examine proposals for legislation. In carrying out their mandates, committees may conduct inquiries and the end result of such processes are reports which are presented to the House for adoption.

The Standing Committee on Finance and Budget is established pursuant to standing order 218(3) of the Senate Standing Orders and is mandated –

- a) *To investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to examine –*
 - i) *the Budget Policy Statement presented to the Senate;*
 - ii) *report on the Budget allocated to Constitutional Commissions and independent offices;*
 - iii) *the Division of Revenue Bill, County Allocation of Revenue Bill, and cash disbursement schedule for county governments; and*
 - iv) *to consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance and monetary policies and public debt, planning and development policy;*
- b) *pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.*

Membership of the Committee

The Committee was constituted by the House on Thursday 14th December, 2017, during the First Session of the Twelfth (12th) Parliament. The Committee, as currently constituted, comprises the following Members-

1. Sen. (Eng) Mohamed M. Mahamud, CBS, MP - Chairperson
2. Sen. (Dr) Isaac Mwaura, CBS, MP - Vice Chairperson
3. Sen. Wetang'ula Moses Masika, EGH, MP - Member
4. Sen. Mutula Kilonzo Junior, MP - Member
5. Sen. Aaron Cheruiyot, MP - Member
6. Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member
7. Sen. (Dr) Rose Nyamunga, MP - Member
8. Sen. Boniface Mutinda Kabaka, MP - Member
9. Sen. CPA Farhiya Haji, MP - Member

BACKGROUND

Article 96 (1) of the Constitution provides that the Senate represents the counties, and serves to protect the interests of the counties and their governments. Further, under Article 96(3) the Senate determines the allocation of national revenue among counties.

The Second Schedule of the Senate Standing Orders mandates the Standing Committee on Finance and Budget to *investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets.*

Standing orders 218(4)(a) of the Senate Standing Orders provides that *'The Standing Committees may, in dealing with the matters assigned to them under the Second Schedule, scrutinise the resolutions of the Senate (including adopted Committee reports), petitions and formal undertakings given by the National Executive and examine whether or not such resolutions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within a reasonable time.'*

The Committee tabled its report on County Governments' Infrastructure Projects comprising County Executive Headquarter Offices, Assembly Chambers & Offices and County State Officers' Residences on 29th November, 2018. The Chairperson gave a Notice of Motion to adopt the report on 20th February, 2019.

The Senate debated on the Report and approved the Motion on 14th May, 2019. The adoption of the report constituted a Senate resolution on County Governments' Infrastructure Projects comprising County Executive Headquarter Offices, Assembly Chambers & Offices and County State Officers' Residences.

The Senate Resolved as follows-

- a) The SRC circulars and communication dated 24th October, 2016 to county governments giving the 30th June, 2019 as deadline for option of paying rent for residence of the designated county governments' state officers should be rescinded.

b) The county governments should customise the prototype designs provided by the Ministry of Transport, Infrastructure, Public Works, Housing & Urban Development for their respective projects.

c) The county governments should ensure that the estimated costs of designated county state officers' residences do not exceed the limits as indicated below-

Residence	Maximum Costs
County Governors	Kshs. 45,000,000.00
County Deputy Governors	Kshs 35,000,000.00
County Assembly Speakers	Kshs 35,000,000.00
The size of the land should not exceed two acres and not below a quarter acre	

d) The county governments should ensure their estimated costs of construction of executive offices/headquarters did not exceed Kshs 500,000,000.00.

e) The County Governments should ensure that the cost of construction of county assemblies' chambers are within the limits provided below.

Type	House Membership	Estimated Cost (in Millions)		Total Cost (excluding the cost of the land) (in Millions)
		Chambers	MCAs offices	
1	30 and below	200	200	400
11	31- 60	250	250	500
111	61 -90	400	350	750

f) The counties which had awarded contract which were above the recommendations above should consider renegotiating with the view to of adjusting the contract sum.

IMPLEMENTATION OF THE RESOLUTION

The Standing Committee has been following up the implementation of the resolutions above as per the provisions of the Standing Orders. The Committee noted that before the passage of the Senate resolution some counties had started the construction of their infrastructure projects because of the directions given by Salaries and Remuneration Commission (SRC), through their circular dated 24th October, 2016 and *Gazette* Notice No. 6518, dated 7th July, 2017.

The directions given by SRC were as follows-

1. *County governments should prioritize construction of official residences for the Governor, Deputy Governor, and Speaker of the County Assemblies in the 2018/2019 fiscal year.*
2. *The option of paying rent for official residence of the county governors, their deputies and county assembly speakers would cease by 30th June, 2019.*

The Committee received-

1. Requests from some county governments for exemption from the set guidelines concerning various projects. In their letters of requests some provided information as analysed below:

County	Infrastructure	Contract sum	Completion	Amount Paid/ Certified
West Pokot County Assembly	Speaker's Residence	68 million	55%	32 million
Mandera County	Governor's Residence	258.051 million	70%	40.5 million
	Deputy Governor's Residence	78.784 million	40%	25.45 million
	Speaker's Residence	46.223 million	35%	9.667 million

Kwale	Governor's Residence	149.2 million	70%	81.337 million
Meru County	Governor's Residence	127.124 million	35%	Nil
	Deputy Governor's Residence	63.651 million	13.78%	Nil
Marsabit County Assembly	Assembly chambers	344.205 million	45%	120 million

2. A communication from the Ministry of Transport, Infrastructure, Public Works, Housing & Urban Development through a letter Ref. CG/GEN/Vol/1/13 dated 19th June, 2019. The letter requested the Committee to give guidance since some counties had commenced their projects, some of which were at advanced stages, and their budgets were above the provided limits.
3. A communication from the Commission on Revenue Allocation (CRA) Ref. CRA/CSO/P&S/11/Vol.III(14) requesting the Senate to give guidance on various requests from various county governments while at the same time recommending that counties should adhere to the set guidelines for construction of their infrastructure projects.

FINDINGS AND WAY FORWARD

The Committee considered matters raised by the Ministry, Commission on Revenue Allocation and various county governments and reiterates as follows-

- a. that the Senate passed a resolution on infrastructure development projects in the counties in which guidelines were set on the expenditure of public funds for this purpose;
- b. that the guidelines set in the resolution of the House took into account the need for county governments to develop adequate infrastructure to facilitate the discharge of their functions while at the same time ensuring prudent use of public resources;

- c. that in setting guidelines on expenditure on infrastructure projects in the counties, the House was not making a mere perfunctory statement on funds used for construction projects but was carrying out its constitutional duty as the body that oversees the prudent use of resources by the counties;
- d. that the Committee has noted that certain counties commenced their infrastructure projects before the resolution on the guidelines were made by the Senate because of the SRC circular. While the Senate cannot vary or otherwise affect the rights of contracts to which it is not party to, the resolution will however act as a guide for oversight institutions including Senate to determine whether prudent use of public funds was exercised. The Committee wishes to draw attention to Article 201(d) requiring county governments to ensure prudent and responsible use of public resources.
- e. that the resolution was setting guidelines on the scope and estimated costs, which were arrived at after consultation with the Ministry of Infrastructure, Transport, Infrastructure, Public Works, Housing & Urban Development, for county governments infrastructure projects with view to ensuring that there is harmony and uniformity in the provision of these projects across counties.
- f. It is important to note that under Article 174 of the Constitution, one of the objects of devolution is to promote democratic and accountable exercise of power. This includes prudent management of all resources that have been entrusted to the devolved governments. This principle is further buttressed by the power of other relevant state institutions set up to determine by various means whether public money has been applied lawfully and in an effective way.

In the light of the foregoing, it is therefore upon the implementing agencies to ensure that they observe the national values and principles of governance especially on good governance, integrity, transparency, accountability and sustainable development in

relation to this matter. The concern for the Senate is to ensure public resources entrusted to counties are used lawfully and in an effective way.

It is now my pleasant duty and privilege, on behalf of the Standing Committee on Finance and Budget, to present to the Senate, this Report of the Committee regarding the implementation status of the Senate Resolution on County Governments' Infrastructure Projects comprising County Executive Headquarter Offices, Assembly Chambers & Offices and County State Officers' Residences.

SIGNED:  _____

SEN. (ENG) MOHAMED M. MAHAMUD, CBS, M.P.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

Date: 27th April, 2020

ADOPTION OF REPORT

Pursuant to standing order 213 (2) of the Senate Standing Orders, the Senate Standing Committee on Finance and Budget Committee adopted its report regarding the implementation status of the Senate Resolution on County Governments' Infrastructure Projects comprising County Executive Headquarter Offices, Assembly Chambers & Offices and County State Officers' Residences. The Members of the Committee approved and supported the as shown below –

- Sen. (Eng) Mohamed M. Mahamud, CBS, MP -Chairperson -Approved
- Sen. (Dr) Isaac Mwaura, CBS, MP -Vice Chairperson -Approved
- Sen. Wetang'ula Moses Masika, EGH, MP - Member _____
- Sen. Mutula Kilonzo Junior, MP - Member -Approved
- Sen. Aaron Cheruiyot, MP - Member -Approved
- Sen. (Dr.) Ali Abdullahi Ibrahim, CBS, MP - Member -Approved
- Sen. (Dr) Rose Nyamunga, MP - Member -Approved
- Sen. CPA Farhiya Haji, MP - Member -Approved
- Sen. Boniface Mutinda Kabaka, MP - Member _____

