

REPUBLIC OF KENYA



THE SENATE

Approved
[Signature]
8/10/2020

TWELFTH PARLIAMENT – FOURTH SESSION

STANDING COMMITTEE ON FINANCE AND BUDGET

REPORT ON THE PETITION BY MR. SIMON L. KILONGA AND MR.
OLONANA D. OLELTULET CONCERNING ALLEGED CORRUPTION AND
EMBEZZLEMENT OF FUNDS IN COUNTY GOVERNMENT OF NAROK
WITH RESPECT TO AWARD OF TENDERS

CLERKS CHAMBER
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2020

Handwritten text, possibly a list or notes, located in the upper left quadrant of the page.

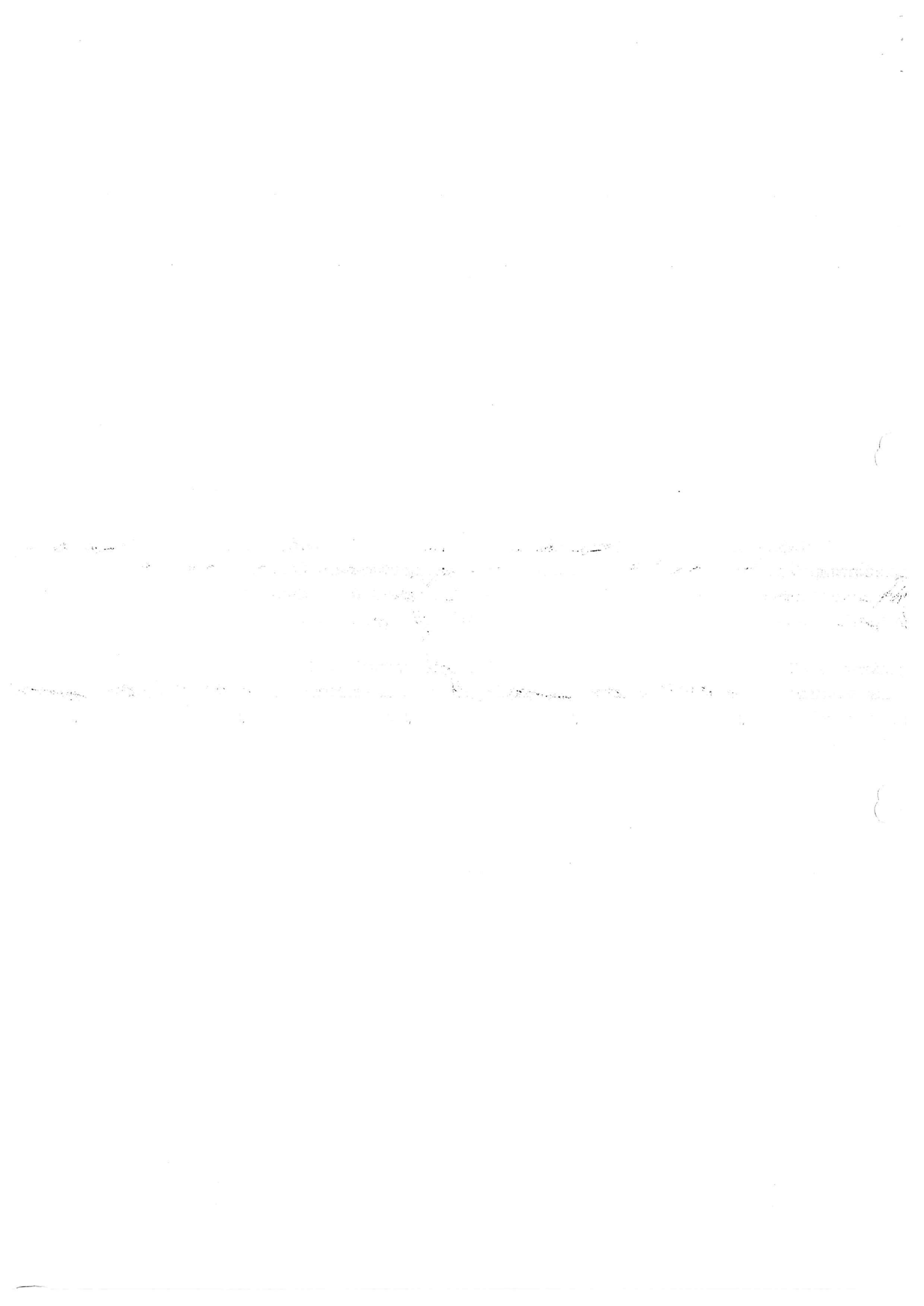
Handwritten text, possibly a list or notes, located in the upper right quadrant of the page.

Handwritten text, possibly a list or notes, located in the lower left quadrant of the page.

Handwritten text, possibly a list or notes, located in the lower right quadrant of the page.

TABLE OF CONTENTS

PREFACE.....	3
INTRODUCTION.....	4
PRAYER.....	6
DELIBERATION.....	6
CONCLUSION AND RESOLUTION.....	7
ACKNOWLEDGEMENT.....	7



PREFACE

The Standing Committee on Finance and Budget was constituted by the House on Thursday, 14th December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24th June, 2020, during the Fourth Session of the Twelfth (12th) Parliament. The Committee as currently constituted, comprises the following Members-

- | | |
|--|--------------------|
| 1. Sen. Charles Kibiru, MP | - Chairperson |
| 2. Sen. (Dr.) Ochillo Ayacko, MP, | - Vice Chairperson |
| 3. Sen. Wetang'ula Moses Masika, EGH, MP | - Member |
| 4. Sen. Kimani Wamatangi, MP | - Member |
| 5. Sen. Mutula Kilonzo Junior, MP | - Member |
| 6. Sen. Aaron Cheruiyot, MP | - Member |
| 7. Sen. Rose Nyamunga, MP | - Member |
| 8. Sen. CPA Farhiya Haji, MP | - Member |
| 9. Sen. Milicent Omanga, MP | - Member |

The Standing Committee on Finance and Budget is established pursuant to Section 8 of the Public Finance Management Act, 2012 and standing order 218(3) of the Senate Standing Orders and is mandated to -

- a) *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;*
 - iv) *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*

INTRODUCTION

The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Article 37 and Article 119 of the Constitution. The right to petition is an essential citizen participatory tool that allows for direct intervention by Parliament on issues relating to the promotion and protection of the rights of citizens.

The Petition to Parliament (Procedure) Act No. 22 of 2012 makes provisions for the procedure for the exercise of the right to petition and also defines the format of petitions to be addressed to the Parliament.

Pursuant to standing orders 226 (1)(a) and 230 (2) (b) of the Senate Standing Orders, the Hon. Speaker, on 5th May, 2020, reported a public petition to the Senate on behalf of the Petitioners, residents of Narok County, Mr. Simon L. Kilonga and Mr. Olonana D. Oleltolet to the Senate. The Petition was concerning alleged corruption and embezzlement of funds in County Government of Narok with respect to award of tenders

The Petitioners drew the attention of the Senate to the following issues-

- 1) That through a letter dated 16th March, 2015 and referenced NCG/LETTER/AWARD/Vol III (52) LKS the County Government of Narok wrote to Flywheel Engineering and Construction Ltd informing them of their successful bid and award of tender No. NCG/RD/064/2015 for improvement and gravelling of Paka Nyeusi – Mashangwa Road section 1-8 Km at the contract sum of Kshs 19, 924,000.
- 2) The project was to commence on 23rd March, 2015 and was to run for 16 weeks with the agreed completion date of 23rd July, 2015. This was not done. The road was not improved nor tarmacked.
- 3) On 16th March, 2015 County Government of Narok wrote to Agus Investment Ltd via letter reference NCG/LETTER/AWARD/Vol III(51) LKS informing them of the successful bid and award of tender no. NCG/RD/063/2015 for improvement and gravelling of Paka Nyeusi- Mashangwa Road section 1-8 Km at the contract sum of Kshs. 18,980,000.

- 4) The contract referred to in paragraph 3 (above) was to commence on 23rd March 2015 and was to run for 16 weeks with agreed completion date of 23rd July 2015. This was not fulfilled.
- 5) This means that the project of improvement and gravelling of Paka Nyeusi – Mashangwa Road section 1-8 Km had two tenders in the same financial year. Payments were made to the companies yet no work was done.
- 6) On 1st October, 2015 the County Government of Narok awarded tender No. NCG/PAN/088/2015-2016 (reference No. NCG/LETTER/AWARD/Vol III(116)) for proposed construction of water pans to Flywheel Engineering and Construction Ltd for a contract sum of Kshs 2,693,000. The project was never carried out yet payment was made.
- 7) On 12th April, 2015 the County Government of Narok Awarded tender no. NCG/WORKS/057/2014-2015 (reference NCG/LETTER/AWARD/Vol II(68)) for renovation and partitioning of boardroom to Flywheel Engineering and Construction Ltd for a contract sum of Kshs 3,491, 924. The project was never carried out yet payment was made.
- 8) On 1st October, 2015 the County Government of Narok awarded Tender No. NCG/PAN/089/2015-2016 (reference NCG/LETTER/AWARD/Vol II (115)) for proposed construction of water pans to Flywheel Engineering and Construction Ltd for a contract sum of Kshs. 2,678,000. The project was never carried out yet payment was made.
- 9) Through a letter dated 26th March, 2015 referenced NCG/LETTER/AWARD/Vol III(63) LKS, the County Government of Narok awarded to Gorgeous Construction Ltd tender No. NCG/RD/075/2014-2015 for improvement and gravelling of Sankale- Topot Road 20 km at the contract sum of Kshs 19,925,000. This contract was never performed yet payment was made.
- 10) That projects are awarded and paid without performance. Secondly, Flywheel Engineering and Construction Ltd seem to be getting all the tenders. Following the foregone, there is fear that public funds may have been misappropriated.

PRAYER

The Petitioners therefore prayed that-

- a) The relevant Senate Committee to investigate the issues and more particularly on whether kickbacks were given to any county government officer by the winners of the specified tenders;
- b) The Senate to recommend that the Narok County Government should never accept tender bids from the companies namely- Flywheel Engineering and Construction ltd, Agus Investment ltd and Gorgeous Construction ltd;
- c) The Senate recommends prosecution of persons who may have unlawfully awarded the specified tenders and fraudulently made payments when no work was done;
- d) This Petition is dealt with immediately in view of the seriousness of the issues raised.

Pursuant to Standing Order 232(1), the Petition stood committed to the Standing Committee of the Senate on Finance and Budget for consideration.

DELIBERATION

The Committee at a sitting held on 6th August, 2020 deliberated on the Petition and resolved to invite the Petitioners for a meeting. The Petitioners were invited for an online meeting scheduled on 19th August, 2020. However, they replied indicating that they were not in a position to participate in an online meeting. They further requested that the matter be deferred until it was possible to hold a physical meeting.

At a sitting held on 22nd September, 2020 the Committee considered this request and resolved that in order to expedite this matter the Petitioners be invited for a physical meeting on 1st October, 2020. The Committee also resolved to invite the Narok County Governor for a meeting on the same day to respond to the allegations.

On 29th September, 2020 the Committee received a letter dated 28th September, 2020 (Annexed to this Report) from the Petitioners indicating that they were no longer interested in pursuing the matter. They indicated that they did not have documented evidence to present to the Committee to prove the allegations, thus after retrospection, they submitted a communication giving notice of withdrawal of the Petition.

CONCLUSION AND RESOLUTION

The Committee-

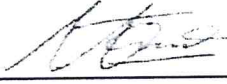
- a) observed that in prosecution of this Petition evidence to prove the allegations presented by the Petitioners was critical;
- b) observed that the Petitioners' unwillingness to proceed with the matter by providing the required evidence impedes the Committee from conclusively considering the matter;
- c) notes that the documents/ evidence from the Petitioners is vital in conducting the investigation and facilitating response to the prayers of the Petitioners;
- d) notes that it is inhibited from conclusively considering the matter due to the failure of the Petitioners to submit the necessary documents; and
- e) further notes the provisions of the standing orders 232(2) of the Senate Standing Orders requiring the Committee to report back to the House on any petitions that is referred to it.

With the foregone, the Committee resolved, since it was constrained from prosecuting the Petition for lack of evidence which the Petitioners were to present, to bring this matter to a conclusion.

ACKNOWLEDGEMENT

The Committee appreciates Offices of the Speaker and the Clerk of Senate for the support received as it discharged its mandate.

On behalf of the Committee and pursuant to standing order 232 (2) it is now my pleasant and honourable duty to present and lay on the table of the House the report of the Standing Committee on Finance and Budget regarding the Petition to the Senate concerning alleged corruption and embezzlement of funds in County Government of Narok with respect to award of tenders.

SIGNATURE: 

SEN. CHARLES KIBIRU, MP.

(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)

DATE:1st October, 2020.....

28 SEP 2020

③ Close Assist - Finance & Budget
For the Committee Deal
29/09/2020

SIMON L. KILONGA,
P.O BOX 140-40700,
KILGORIS.
simonlenguyia@yahoo.com

28 SEP 2020

② Dcom

AND

Kindly deal:

EF.
29/09/20

DC (EG)
Please present to
the relevant Committee
to which it was
committed.
29/09/2020

OLONANA D. OLOLTULET,
P.O BOX 13-40700
KILGORIS.

28th September, 2020

THE SENATE OF THE REPUBLIC OF KEYA,
C/O, THE CLERK,
THE SENATE,
PARLIAMNT BUILDING,
PALIAMNT ROAD,
TEL: (254-2) 2221291 or 2848000,
E-mail: csenate@parliament.go.ke



NOTICE TO WITHDRAW PETITION

RE: PETITION TO THE SENATE ON ALLEGED CORRUPTION AND EMBEZZLEMENT OF FUNDS IN THE COUNTY GOVERNMENT OF NAROK WITH REGARDS TO AWARING OF TENDERS.

The above subject matter and your letter dated 22nd September, 2020 refer.

TAKE NOTICE that we the Petitioners in the above matter, SIMON KILONGA and OLONANA OLOLTULET, shall, when we will be required to appear before the concerned senate committee, withdraw the petition we filed on 26th September, 2019 on the following grounds:

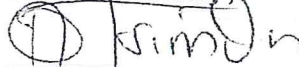
1. On 10th September, 2020, we were attacked by robbers who fled with the file where we had kept the documents we intended to rely on in this petition as well as the laptop where we saved the soft copies. Thus, we do not have any documentary exhibit to substantiate our allegations.
2. We are alive to the fact that matters touching on procurement and tender wards and the general operations of a government require examination of the documentary evidence which we do not have owing to the incident mentioned in paragraph 1 above. Indeed, you advised in your letters of 12th August and 22nd September, 2020 that we send copies of the documents we intend to rely on to your email. Without the documents,

we are left with nothing but an oral narrative which will not only fail the threshold but also pass as hearsay. Our attempts to obtain copies of the documents from the county officers have been unsuccessful.

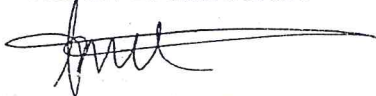
3. Our petition, among others, touched on loss of public funds, stalled works/projects some of which were completed after the petition was filed. The county government officer we spoke with informed us that the other pending projects will be completed within the next 6 months and that the county government will not incur any extra expenses on them.
4. In light of the above, we wish to withdraw the petition.

We appreciate the assistance we have received from the relevant senate offices especially from the office of the clerk on the professional manner with which our complaint was handled. The future of the country can only be bright.

Yours faithfully,



SIMON L. KILONGA



OLONANA D. OLOLITUNG

Cc

**THE CHAIRMAN,
THE SENATE COMMITTEE ON FINANCE AND BUDGET,
PARLIAMENT BUILDING,
P.O BOX 41842-00100
NAIROBI.**

MINUTES OF THE 160TH MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 6TH AUGUST, 2020 AT 9:00 AM, VIA ZOOM ONLINE PLATFORM.

PRESENT

- | | |
|--|---------------|
| 1. Sen. Charles Kiburu, MP | - Chairperson |
| 2. Sen. Wetang'ula Moses Masika, EGH, MP | - Member |
| 3. Sen. Mutula Kilonzo Junior, MP | - Member |
| 4. Sen. Kimani Wamatangi, MP | - Member |
| 5. Sen. Rose Nyamunga, MP | - Member |
| 6. Sen. CPA Farhiya Haji, MP | - Member |
| 7. Sen. Milicent Omanga, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|----------------------------------|---------------------|
| 8. Sen. (Dr.) Ochillo Ayacko, MP | - Vice- Chairperson |
| 9. Sen. Aaron Cheruiyot, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|--------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Ms. Lucy Radoli | - Legal Counsel |
| 3. Ms. Amran Yunis | - Fiscal Analyst |
| 4. Mr. Thomas Ogwel | - Fiscal Analyst |
| 5. Mr. Adan Abdi | - Fiscal Analyst |
| 6. Ms. Sharon Rotino | - Research Officer |

MIN. NO. 766/08/2020:

PRELIMINARIES

The Chairperson called the meeting to order at 9.13 am and thereafter followed a word of prayer.

MIN.NO. 767/08/2020:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, MP, and seconded by Sen. Rose Nyamunga, MP.

MIN.NO. 768/08/2020:

CONSIDERATION AND ADOPTION OF THE REPORT ON THE PETITION ON NONPAYMENT BY KITUI COUNTY EXECUTIVE OF PENDING BILLS INCURRED DURING FINANCIAL YEAR 2015/2016

The Committee considered the report and resolved to make the following recommendations-

- a) The County Government of Kitui should expeditiously undertake due diligence and if appropriate clear the pending Bills referred in the Petition within ninety days.
- b) The County Government of Kitui should submit to the Senate a detailed report on the progress made in clearing these pending Bills not later than 30th November, 2020.
- c) EACC should endeavour to expedite the conclusion of all pending investigations to ensure genuine suppliers are not affected negatively or suffer from delayed payments for goods/ services rendered. There is need to take appropriate action informed by the need to promote rule of law and accountability while at same time balancing the commercial interest of persons who supply goods and services to the public institutions.
- d) Where during the course of investigation, investigator requires to remove documents from the custody of the public office, the investigator shall cause to be prepared an inventory of all records and shall ensure certified copies of the same are retained by the public office.

The Committee unanimously adopted the report after it was proposed by Sen. Rose Nyamunga, MP and seconded by Sen. Milicent Omanga, MP.

MIN.NO. 769/08/2020: CONSIDERATION OF PETITIONS

- a) Reforms on the design and structure of the procurement framework in Kenya by Mr. Justus Maina, Mr. Dominic Kiplangat Bii, Mr. Langat Mathew, Mr. Paul Kiprono Bett, Mr. Benard Kirui Rono presented by Sen. Isaac Mwaura, MP

The Committee deliberated on the Petition and resolved to invite the Petitioners for a meeting to further interrogate the matter.

- b) Corruption and Embezzlement of Funds in the County Government of Narok concerning Awarding of Tenders by Mr. Simon L. Kilonga and Mr. Olanana D. Oleltulet on behalf of residents of Narok County presented by the Speaker

The Committee deliberated on the Petition and resolved to invite the Petitioners to a meeting.

- c) Alleged Irregular Purchase of National Bank of Kenya Building by the County Government of Uasin Gishu by residents of Uasin Gishu County, presented by Sen. Margret Kamar, MP.

The Committee deliberated on the Petition and resolved to invite the Petitioners to a meeting to interrogate the matter. Further resolved to request the Ministry of Transport, Infrastructure, Public Works and Urban Development to conduct an evaluation on the building and submit a report to the Committee.

MIN.NO. 770/08/2020 ANY OTHER BUSINESS

The Chairman informed the Committee that he had noted the concerns raised by the Members on the status of the Committee report on the Third Basis tabled in the Senate. He further informed that due to increased number of proposals to amend the Committee report, he intended to request the House leadership to refer the matter back to the Committee for re-consideration.

MIN.NO. 771/08/2020 ADJOURNMENT

There being no other business the meeting was adjourned at 10.46 am.

SIGNATURE: 
(CHAIRPERSON: SEN. CHARLES KIBIRU, MP.)

DATE: 13th August 2020

MINUTES OF THE 173RD MEETING OF THE SENATE STANDING COMMITTEE ON FINANCE AND BUDGET HELD ON THURSDAY, 1ST OCTOBER, 2020 AT 9:00 AM VIA ZOOM ONLINE PLATFORM.

PRESENT

- | | |
|----------------------------------|---------------------|
| 1. Sen. Charles Kibiru, MP | - Chairperson |
| 2. Sen. (Dr.) Ochillo Ayacko, MP | - Vice- Chairperson |
| 3. Sen. Aaron Cheruiyot, MP | - Member |
| 4. Sen. Rose Nyamunga, MP | - Member |
| 5. Sen. CPA Farhiya Haji, MP | - Member |
| 6. Sen. Millicent Omanga, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 7. Sen. Wetang'ula Moses Masika, EGH, MP | - Member |
| 8. Sen. Mutula Kilonzo Junior, MP | - Member |
| 9. Sen. Kimani Wamatangi, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|-------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Ms. Amran Yunis | - Fiscal Analyst |
| 3. Mr. Ian Otieno | - Audio Officer |

MIN. NO. 830/10/2020:

PRELIMINARIES

The Chairperson called the meeting to order at 9.27 am and thereafter followed a word of prayer.

MIN. NO. 831/10/2020:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. CPA Farhiya Haji, MP, and seconded by Sen. Rose Nyamunga, MP.

MIN. NO. 832/10/2020: CONFIRMATION OF MINUTES OF PREVIOUS MINUTES

- a) The minutes of the 164th meeting held on Wednesday, 2nd September, 2020 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Millicent Omanga, MP.

- b) The minutes of the 166th meeting held on Thursday, 10th September, 2020 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Rose Nyamunga, MP.
- c) The minutes of the 170th meeting held on Wednesday, 16th September, 2020 at 9:00 am were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Millicent Omanga, MP and seconded by Sen. (Dr.) Ochillo Ayacko, MP.

MIN. NO. 832/10/2020: CONSIDERATION OF THE PETITION ON ALLEGED EMBEZZLEMENT OF FUNDS BY COUNTY GOVERNMENT OF NAROK THROUGH AWARD OF TENDERS

The Committee noted that following invitation to a meeting, the Petitioners, through a letter dated 28th September, 2020, submitted a letter indicating that they were no longer interested in pursuing the Petition. Further that they would not attend the meeting which was scheduled on Thursday, 1st October, 2020.

The Committee was also informed that the Governor, Narok County had been invited to a meeting to respond to the allegations contained in the Petition. However, after the Petitioners' communication, a letter was sent to the Governor informing him that the meeting had been postponed.

After deliberation, the Committee resolved to conclude the matter and present a report in the House indicating the status of the Petition.

MIN. NO. 833/10/2020: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PETITION ON ALLEGED EMBEZZLEMENT OF FUNDS BY COUNTY GOVERNMENT OF NAROK THROUGH AWARD OF TENDERS

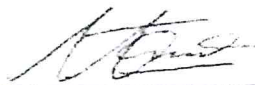
The Committee considered the report on the Petition on alleged embezzlement of funds by County Government of Narok through award of tenders and unanimously adopted it after it was proposed by Sen. Millicent Omanga, MP and seconded by Sen. Aaron Cheruiyot, MP.

MIN. NO. 834/10/2020: REVIEW OF COMMITTEE'S 4TH SESSION WORK PLAN

After presentation of the earlier approved work plan, it was noted that a number of activities were not undertaken because of the prevailing circumstances posed by Covid 19 pandemic. The Committee resolved to proceed with the same work plan but with adjustments as the situation may allow.

MIN. NO. 829/09/2020 ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business the Chairperson adjourned the meeting at 10.25 am.

SIGNATURE: 

**SEN. CHARLES KIBIRU, MP.
(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)**

DATE:1st October, 2020.....

