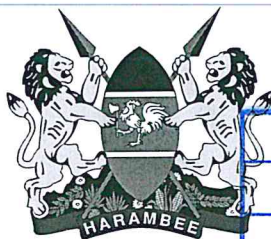


REPUBLIC OF KENYA



	PAPERS LAID
DATE	8/9/2020.
TABLED BY	CHAIR - SEN KIB RUI
COMMITTEE	FINANCE
CLERK AT THE TABLE	M. ADJIBODUN

THE SENATE

TWELFTH PARLIAMENT – FOURTHSESSION

REPORT OF THE STANDING COMMITTEE ON FINANCE & BUDGET ON THE  
PETITION PRESENTED BY SEN. ENOCH WAMBUA, MP ON NON-PAYMENT BY  
KITUI COUNTY EXECUTIVE OF PENDING BILLS INCURRED DURING FINANCIAL  
YEAR 2015/2016

CLERKS CHAMBER  
PARLIAMENT BUILDINGS  
NAIROBI

AUGUST 2020

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## PREFACE

The Standing Committee on Finance and Budget was constituted by the House on Thursday 14<sup>th</sup> December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24<sup>th</sup> June, 2020, during the Fourth Session of the Twelfth (12<sup>th</sup>) 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*

## Acknowledgement

The Committee appreciates Sen. Enoch Wambua, MP. who Presented the Petition to the Senate on behalf of contractors and business people operating within Kitui County.

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The Committee acknowledges the time and considerable effort made by all parties who provided information relating to this petition. The Committee is also particularly grateful to the 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 Committee on Finance and Budget regarding the Petition to the Senate on non-payment by Kitui County Executive of pending bills incurred during financial year 2015/2016.

**SIGNATURE:** \_\_\_\_\_



**SEN. CHARLES KIBIRU, MP.**

**(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)**

**DATE:** \_\_\_\_\_ **6<sup>th</sup> August 2020** \_\_\_\_\_

## CHAPTER 1

### 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 the Senate Standing Order No. 226 (1)(b) and 230 (2) (a) Sen. Enoch Wambua, MP on 6<sup>th</sup> December, 2018, presented a public petition to the Senate on behalf of the Petitioners, contractors and business people operating within Kitui County and other regions, on the non-payment by Kitui County Executive of pending bills incurred during financial year 2015/2016.

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

- 1) That during the Financial Year 2015/2016, the Petitioners were contracted by the County Government of Kitui through the Ministry of Lands, Infrastructure and Urban Development to carry out various works, comprising construction of drifts and road work projects in the county.
- 2) That although they discharged their contractual obligations and were issued with completion certificates thereon, they were yet to receive payments for the work done, which amounts to approximately Kshs622 million, excluding accumulated interest.
- 3) That the non-payment of monies had grossly affected businesses and subjected them to costly repayments of bank loans which they had taken to execute the county projects.
- 4) Their assets were at risk of auction by the lending banks.
- 5) The matter had affected the credit worthiness of their businesses, which were at risk of being blacklisted by the Credit Reference Bureau (CRB).
- 6) That the accumulation of the county government's debts, which they were unable or unwilling to settle, was a big threat to and undermines the very tenets of devolution,

which were meant to bring services closer to the people and spur economic development across the country.

- 7) The Petitioners had made efforts to have the matters addressed by the relevant authorities but all of which failed to give satisfactory response.
- 8) That none of these issues raised in the Petition is pending in any court of law; constitutional or any other legal body.

**The Petitioner therefore prayed that-**

The Senate investigates the matter and initiate appropriate action thereon to ensure that the Petitioners were paid their dues and that measures were put in place to comprehensively address the recurrent issue of pending bills by county governments, which risks undermining the gains of devolution.

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

## CHAPTER TWO

### CONSIDERATION OF THE PETITION BY THE COMMITTEE

In considering the Petition, the Committee invited the Petitioners, Ethics and Anti-Corruption Commission (EACC) and Kitui County Executive.

#### Submission from the Petitioners

At a meeting of the Committee held on 13<sup>th</sup> December, 2018, the Petitioners led by Mr. Alfred Mwanza, who spoke on their behalf informed the Committee that–

- a) The Petitioners were business people who were contracted by the County Government of Kitui to do some works under different contracts;
- b) The contractors were all road contractors and were contracted to do road works;
- c) In June 2015, after completion of work, they raised invoices for payment but had not received payment as at the date of the meeting;
- d) Lack of payment had resulted to some of them being auctioned due to non-payment of loans that they had secured to run the businesses; some of them had to sell their properties and some have even died as a result of the shock of their businesses going down;
- e) They were seeking the Senate's intervention to ensure that the County Government of Kitui pays them their dues;
- f) That the County Government of Kitui in 2016 could not pay them because there was an anonymous claim made to the Ethics and Anti-Corruption Commission that the projects done in 2015/ 2016 in Kitui County were ghost projects. EACC had therefore written to the County Government stopping all payments until it conducts investigations and clears the projects. In May 2018, the EACC wrote a general letter to the County government allowing it to continue with the payment but with a caution that the payments should be done in accordance with the law; it is on this basis that the Petitioners were asking for their payments; and,
- g) Petitioners felt aggrieved because the County government kept telling them that they have not received any communication from EACC and therefore cannot pay.
- h) The Petitioners had contracts awarded to them as shown in the table below-

	<b>Name of Contractor</b>	<b>Nature of contract</b>	<b>Contract sum</b>
1.	Mwingi Busara Enterprises	Construction of Garissa Road junction- Lundi Road	7,212,827
2.	County Contractors and Suppliers	Construction of Kilukuyu- Musyau Drift	10,755,221
3.	Sherine Construction Company Limited	Construction of Mwiwe Drift Mbitini Ward in Kitui Rural Sub-County	24,100,061
4.	Mwatshi Construction Co. LTD	Construction of Mui River Drift on Kabati-Itangani Road 95KM long Mutitu Kaliku Ward	14,050,696
5.	Elishek Engineering Limited	Improvement of road kitui town- Museveni-Miambani & Mutuni – Kilungu Road Katilini River (Reinforced slabs & drift repair & extension in Kitui central Sub-County, Kyangwingithya East Ward.	14,253,115
6.	Renah & Renard Ltd	Construction of Kisasi – Mbitini –Voo Road	16,734,716
7.	June Engineering Services Limited	Construction of crift Kalundu river along Kwa Ngindu- manda River – Mutune Road in Kitui Central Sub-county Kyangwithya East.	10,772,572
8.	Cherry Construction Limited	Construction of drift at Kwa Manda river & improvement of Road Kwa Ndindu- Ngiini in Kitui Central Sub-County, Kyangwithya East Ward	10,619,143
9.	Jomeg Contractors	Kisasi- Mbitini – Voo Road drift Construction works Lot 3 and 3 other streams	13,927,068
10.	Rene Industries	Construction of Mutune road through Kalundu River – Museve with a drift in Kitui Central Sub-County	24,482,891
11.	Delta Agri-Tech & Engineering (K) Ltd	Construction of Ngomola River Drift in Ngutani Ward	10,135,515



12.	Jacklo Company Ltd	Tulia Road (Kwa Ndemwa) Kwa Ilate to Kutha (Tulia- Kakeani) Road	13,348,426
13.	Three Ran's Limited	Construction of Kisasi –Mbitini- Voo Road	16,885,319
14.	Kyangonza Construction	Construction of Kwa Kamba-Katitika Catholic Church at Wikililye with a drift at Katitika Stream	9,206,111
15.	Mutindi General Contractors	Construction of Mwanianga Drifts -2NO.	9,740,150
16.	Nasicom Logistics	Procurement of external works at the County Administration Block	2,149,907
17.	Semeha Engineering Ltd	Construction of Mbitini Secondary school – Kwa Kasau – Kyamusivi Earthworks, excavation & filling for structures, culvert & drainage works, grading & gravelling works & concrete works	10,612,001
18.	Jowmime Enterprises	Construction of Sokomoko Kaliku drift & road in Kitui central Sub- County, Kyangwithya West Ward	7,416,845
19.	Afriserve International Ltd	Construction of Kisasi- Mbitini –Voo Road B	12,688,043
20.	Shatit Enterprises Ltd	Construction of Mwinga Stream Drift At Zombe/ Mwitika Ward in Kitui East Sub-County	15,056,314
21.	Landi Investments Ltd	Construction of a drift along Kiusyani-Kyaithani-Kawongo-Ngomoni-Mangongoi Primary School Kwa Nyumu Drift (Kawongo-Kamanyi)	13,759,550
22.	Diasco Limited	Construction of Kamunyu River Drift	17,852,225
23.	Nestac Agencies Ltd	Renovations of Kitui Slaughter House	2,030,945
24.	Mukesh Technical Services	Construction of Matulani- Nduundune-Ndithini Road	19,948,307

25.	Goldex Enterprises Ltd	Street Lighting works for Kwa Vonza: KU Junction- KU Gate- 710 Metres	3,349,508
26.	Mosline Enterprises Ltd	Construction of Katulani- Ngiluni reinforced Slabs	12,282,789
27.	Jackmer Contractors Ltd	Kwa Ikolanya Drifts and Opening up of Kwa Ikolanya- Kivaloni- Ithiani Road	12,719,265
28.	Chambalili Trading Company Ltd	Construction of Drift Along Mandongoi Primary School – Kiseuni – Road Kwa Katune/ Kwa Masyuko	12,301,530
29.	Western Holdings	Construction of Drifts in the area of Nzalae- Katutu Kithyoko in Kitui West Sub- County	16,283,388
	<b>Total</b>		<b>380,957,836</b>

### **Submission from the Ethics and Anti-Corruption Commission (EACC)**

At a meeting of the Committee held on 28<sup>th</sup> March, 2019, the Commission Chief Executive Officer informed the Committee that-

- a) The Commission was aware of the investigations, which began in April 2017, into allegation of procurement irregularity at the Kitui County Executive in the construction of river drifts and road works in the financial year 2015/16. It entailed a total of 59 projects worth 891,039,308.07.
- b) The nature of the complaint was that the county was about to make KSh. 1.1 billion fictitious payments for projects which were awarded but no works were done.
- c) Through a letter Ref: EACC.6.20/1 Vol.IV (106) dated 27<sup>th</sup> April, 2017 the Commission informed the County on the ongoing investigations and advised the county to put on hold all payments in respect to the projects until further communication.
- d) Through a letter Ref: EACC/6/15/4 Vol. XVI (26) dated 11<sup>th</sup> May 2017 the Commission requested for the services of Kenya Rural Roads Authority to evaluate and audit the status of the projects.

- e) The evaluation was done and audit report on the status forwarded to the Commission on 28<sup>th</sup> September, 2017.
- f) The Commission vide a letter Ref. EACC.6/15/4Vol.XIX(211) dated 18<sup>th</sup> May, 2018 informed the county executive that payment may be made as long as they were lawful and in accordance with Public Finance Management Act, 2012, Public Procurement and Asset Disposal Act and relevant regulations.
- g) As at the date of the meeting, the investigations were 90% complete and the report on the matter would be submitted to the Director of Public Prosecutions in April 2019. The list of the contracts under investigations was as attached – Annex 1.

After deliberations, the representatives from EACC informed the Committee that-

- a) The Commission focuses more on prevention to cushion counties from loss of public funds. The actions by the Commission acts as a deterrence to misuse of funds especially funds meant for capital projects.
- b) The Commission faces challenges of timelines since there were numerous cases which are reported. Annually they receive about 4000 cases but the Commission may only handle 300 cases in a year. This is due to inadequate staffing levels.
- c) Once an allegation is made, the Commission does preliminary investigations to ascertain the facts and then proceed into detailed investigations.
- d) County governments were facing a challenge in adherence to the Public Finance Management Act, 2012, Public Procurement and Asset Disposal Act, 2015 and the relevant regulations.
- e) There was need to reconsider the existing laws with a view of setting the threshold (monetary levels, social status and economic crimes) on what constitutes corruption cases and what the Commission may institute investigations. This principle may be borrowed from other jurisdictions which have a similar Commission like the United Kingdom.

- f) To ensure efficiency of field officers, the Commission had created a Directorate in charge of field officers. Further, there would be frequent transfers of such officers to avoid familiarity in their duty stations and ensure integrity principles are maintained.

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### **Submission from Kitui County Executive**

At a meeting of the Committee held on 28<sup>th</sup> March, 2019, the County Governor informed the Committee as follows-

- a) The County Executive was aware of the pending bills and the government was committed to settling all genuine bills.
- b) The new regime of leadership inherited pending bills totalling to Kshs 1.3 billion in 2017. A verification committee was established to verify the pending bills. All the pending bills were cleared except bills worth Ksh.697,982,264 which were under active investigation by EACC.
- c) The Petitioners were indeed procured to undertake various works in Kitui County during financial 2016/2017. The number of companies contracted were eighty-nine (89).
- d) Between March and May 2016 there were semi-El Nino rains which extensively destroyed the roads infrastructure. The then administration decided to do emergency repairs of the road network. They awarded 89 contracts worth Kshs 787,404,098.47.
- e) However, before completion of the works, the EACC started conducting investigations on issues relating to awarded tenders. They visited the county offices and took/ carried all the original documents relating to the 89 projects. However, the Commission was investigating 40 projects whereas they hold original documents for all the contracted projects.
- f) The county is unable to verify the projects and process the payments since the original documents were under the custody of EACC.
- g) There were several communications between the Commission and the County Executive which include-

- i Letter Ref. no. EACC.6/15/4/VOL.XV(52) dated 24<sup>th</sup> February, 2017 from EACC requesting for original documents regarding the projects in question.
- ii Letter Ref. EACC.6/20/1 VOL.IV(96) dated 7<sup>th</sup> March 2017 which required the county to put on hold all payments relating to projects under investigations until otherwise advised by the Commission in writing.
- iii Letter Ref. CG/KTI/ANTI-CORRUPTION/VO.1/87 dated 12<sup>th</sup> April, 2017 the county executive requesting for update on the status of investigations. But there was no reply.
- iv Letter Ref. CG/KTI/ANT-CORRUPTION/VOL.3/9 dated 13<sup>th</sup> February, 2018 requesting for update on status of investigations and clearance for payments to the contracts which may have no issues.
- v Letter Ref. EACC.6/15/4 VOL.XIX(60) dated 26<sup>th</sup> February, 2018 EACC responded inviting three officials for a meeting at Integrity Centre to deliberate on the matter.
- vi Letter Ref. EACC.6/15/4 VOL.XIX (211) dated 18<sup>th</sup> May, 2018 the Commission stated that they had no objections to the payments for the projects undertaken as long as they were in accordance with the law. However, the Commission did not release the original documents to facilitate the payments.
- vii Letter Ref. CG/KTI/EACC/VOL.3/120 dated 5<sup>th</sup> June 2018 the county requested for original documents to facilitate the payments of the contracts. However, the Commission did not reply to the letter.
- h) The County Executive was committed to clearing the genuine pending bills. However, the payment may only be supported by original documents.
- i) Some contractors had gone to court seeking orders to compel the County Executive to pay (Vide Civic Miscellaneous Application no. 23 of 2018). However, the Court declined to give the orders sought on 31<sup>st</sup> January, 2019.

- j) The total contract sum was Ksh 1,182,096,159. However, what had been certified before EACC started the investigation was Ksh. 697,982,264.41. Some contracts were not fully executed after the contractors learnt about the investigation by EACC.
- 
- k) The County had sued the EACC over the matter since it was taking longer than necessary to complete the investigation and determine whether payment may be done. Further, the contractors were suffering as they accuse the county for non-payments of works done.

## CHAPTER THREE

### COMMITTEE CONSIDERATION, OBSERVATIONS AND RECOMMENDATION

During deliberations, the Committee noted various issues and requested for information from the EACC and Kitui County Executive. The Response on issues were as follows-

- a) Letter Ref. EACC.6/15/15(31) dated 9<sup>th</sup> October, 2019 – the Commission informed the Committee that the investigations had been conclude and findings forwarded to the Office of the Director of Public Prosecution (ODPP) for consideration. Further, the Commission provided the list of all the tenders/ contracts which had been awarded and were subject to investigation.
- b) Letter Ref. EACC.6/15/15(51) dated 19<sup>th</sup> March, 2020 – the Commission notified the Committee that the ODPP on 11<sup>th</sup> December, 2019 had recommended that the five senior officials of the County Government of Kitui be charge for various offences. That, on 17<sup>th</sup> January, 2020 the officials were charged before the Chief Magistrate, Kitui Law courts. The pre-trial hearing had being schedule for 23<sup>rd</sup> and 24<sup>th</sup> April, 2020.
- c) Letter Ref. EACC.6/15/15(59) dated 21<sup>st</sup> May, 2020 – The Commission informed the Committee that all the documents collected for the 89 projects had been returned to the Kitui County Executive.
- d) Letter Ref. CGKTI/OoG/ADM/23/Vol.1(22) dated 29<sup>th</sup> July, 2020 – The County Government of Kitui confirmed receipt of the documents which EACC had confiscated. The documents were received on 12<sup>th</sup> May, 2020. Further that the County government had initiated actions that would lead to the payment of these pending bills.

#### Observations

The Committee observed that-

- a) The Petitioners were contractors and business people contracted by Kitui County Executive to provide services. During the Financial Year 2015/2016, the County Government of Kitui, through the Department of Lands, Infrastructure and Urban Development contracted them to carry out various works comprising drifts and roadwork projects in the County;

- b) The documents submitted by the Petitioners on request by the Committee did not have completion certificates. However, they indicated that they alleged to have discharged their contractual obligations and were issued with Completion Certificates thereon, however, they were yet to receive payments for the work done, which amounts to approximately Kshs.622 million excluding accumulated interests;
- c) In April 2017, Ethics and Anti-Corruption Commission (EACC) started investigating the matter and payments were put on hold. However, through a letter dated May, 2018 EACC informed the county executive that the payments for the works done may be made if it were within the law.
- d) EACC was investigating the allegation of procurement irregularities in respect to award of fifty-eight (58) contracts totalling Kshs 875,549,186.80.
- e) The Petitioners were praying that that the Senate-
- ✓ urgently investigates this matter and initiates appropriate action thereon to ensure that the Petitioners were paid their dues, and
  - ✓ that measures were put in place to comprehensively address the recurring issue of pending bills by county governments, which risks undermining the gains of devolution.
- f) The EACC initiated the investigations and confiscated all the original documents relating to the said contracts. The investigation had been concluded and affected county government officials arraigned in the Court of Law.
- g) Following various communication between the Committee and the Commission, the Committee notes that out of the twenty nine (29) Contractors who had sent the Petition to the Senate its only ten (10) Contractors who were not listed by EACC to be under investigation. These were as shown in the table below

	<b>Name of Contractor</b>	<b>Nature of contract</b>	<b>Contract sum</b>
1.	Mwingi Busara Enterprises	Construction of Garissa Road junction- Lundi Road	7,212,827
2.	Sherine Construction Company Limited	Construction of Mwiwe Drift Mbitini Ward in Kitui Rural Sub-County	24,100,061



3.	Mwatshi Construction Co. LTD	Construction of Mui River Drift on Kabati-Itangani Road 95KM long Mutitu Kaliku Ward	14,050,696
4.	Elishek Engineering Limited	Improvement of road kitui town- Museveni-Miambani & Mutuni – Kilungu Road Katilini River (Reinforced slabs & drift repair & extension in Kitui central Sub-County, Kyangwingithya East Ward.	14,253,115
5.	Cherry Construction Limited	Construction of drift at Kwa Manda river & improvement of Road Kwa Ndindu- Ngiini in Kitui Central Sub-County, Kyangwithya East Ward	10,619,143
6.	Three Ran's Limited	Construction of Kisasi –Mbitini- Voo Road	16,885,319
7.	Kyangonza Construction	Construction of Kwa Kamba-Katitika Catholic Church at Wikililye with a drift at Katitika Stream	9,206,111
8.	Semeha Engineering Ltd	Construction of Mbitini Secondary school – Kwa Kasau – Kyamusivi Earthworks, excavation & filling for structures, culvert & drainage works, grading & gravelling works & concrete works	10,612,001
9.	Nestac Agencies Ltd	Renovations of Kitui Slaughter House	2,030,945
10.	Goldex Enterprises Ltd	Street Lighting works for Kwa Vonza: KU Junction- KU Gate- 710 Metres	3,349,508

- h) The Commission had returned all the documents, relating to the contracts, which were confiscated for the purpose of the investigations.
- i) The County Government of Kitui confirmed receipts of the documents which the Commission had removed from their custody. Further that actions which would lead to payment of these pending bills had been initiated.

## Recommendations

The Committee recommends that-

- a) The County Government of Kitui should expeditiously undertake due diligence and if appropriate clear all these pending Bills 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 30<sup>th</sup> 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. This is because 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, an 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.

**ANNEX 1**

**List of Tenders/Contracts awarded by the County Government of Kitui under investigations**

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
1.	CGOKTI/472/2015-2016 Construction of Kalundu-Ngindu-Manda-Mutune road & drift	June Engineering Services	10,772,572.59
2.	CGOKTI/473/2015-2016 Construction of Mutune – Kalundu- Museve road & drift	Rene Industries Ltd	26,482,891.16
3.	CGOKTI/474/2015-2016 Construction of B2 Mumbu—Mumbu—Ngomano Road & drift	Royce Building & General Contractors Ltd	19,709,954.40
4.	CGOKTI/475/2015-2016 Construction of Kangalu — Manooni - Wii Drift.	Malulani Investments Ltd	15,935,840.15
5.	CGOKTI/476/2015-2016 Construction of Kisasi - Mbitini - Voo Road B	Afriserve International Ltd	12,688,043.32
6.	CGOKTI/477/2015-2016 Construction of Kisasi — Mbitini — Voo Road C	Renah & Renard Ltd	16,734,716.49
7.	CGOKTI/478/2015-2016 Construction of Kathungi-Mbusyani -Kathungi road & drift	Glogra General Suppliers & Contractors	19,975,949.19
8.	CGOKTI/479/2015-2016 Construction of Kisasi-Mbitini - Voo Road & drift	Jomeg Contractors	13,927,068.11
9.	CGOKTI/480/2015-2016 Construction of Kisasi-Mbitini Nzeeu Drift	Quality Care Enterprises (K) Ltd	24,897,966.24
10.	CGOKTI/481/2015-2016 Construction of Kilukuya - Musyau Drift	County Contractors and Supplies Ltd	10,755,221.97
11.	CGOKTI/482/2015-2016 Construction of Musavani-Kamali Road & drift	Racdmuicity Investment Ltd	9,442,323.10
12.	CGOKTI/483/2015-2016 Construction of Enziu-Wingeni-Iviani-Ukasi road & drift	Kangama Builders Contractors Ltd	16,463,031.23
13.	CGOKTI/484/2015-2016 Opening up Katulani Market - Kwa Nguli - Ivoova Road	Watema General Supplies	18,547,778.91
14.	CGOKTI/485/2015-2016 Construction of Tiva -Oasis - Mangha road 7 drift road & drift	Syano roads and Bridges Ltd	26,843,963.20

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
15.	CGOKTI/486/2015-2016 Construction of Kithumulani-Makongo-Zombe-Mwitika road & drift	Lyjos Enterprises Ltd	9,638,931.00
16.	CGOKTI/487/2015-2016 Contraction of Ikolanya drifts and opening up of Kwa Ikolanya — Kivaloni — Ithiani Road	Jackmer Contractors Ltd	12,719,265.15
17.	CGOKTI/488/2015-2016 Construction of Kamunyu River Drift	Diasco Ltd	17,852,225.64
18.	CGOKTI/489/2015-2016 Construction of Drift along Kiusyani — Kyaithani — Kawongo — Ngomoni Primary School Kwa Muthusi (Kamanyi Ngomoni) Kanyangi/Kwa Vonza	Jonesa Enterprises Ltd	11,638,852.00
19.	CGOKTV490/2015-2016 Kisasi — mbitini — Voo road Drift Construction works lot 3 in Mbitini — Voo/Kyamatu 180m	Katungate Contractors Ltd	27,698,510.16
20.	CGOKTI/492/2015-2016 Construction of Kalundu River Drift (Masoka - Katumba) in Mulango & Kanyangi Wards	Rutgit Enterprises	12,416,973.11
21.	CGOKTI/493/2015-2016 Opening up of Road Nyanyaa (Oasis) to Mangina and Kiliko Shopping Centre to kalivini Primary School	Konza Works Construction & Engineering Ltd	27,248,647.35
22.	CGOKTI/494/2015-2016 Kisama Nai Kwa Kilei Drift	Palace Management Company	5,700,756.67
23.	CGOKTI/495/2015-2016 Construction of Drift along Mandongoi Primary School - Kiseuni Road Kwa Katune/Kwa Masyuko	Chambalili Trading Company Ltd	12,301,530.32
24.	CGOKTI/496/2015-2016 Kwa - Kondo - - Mukunu - Ithimani River - Kwa Lele Makaani road & Drift road Works Only	Miambani Valley General Contractors Ltd	16,768,686.50
25.	CGOKTI/497/2015-2016 Opening up of Road from Tiva Isevini Road Junction to Isevini Primary School & junction from Isevini Road through Kithiano River Drift to Ngengeeka Shopping Centre (5.9) & Kaliakakya Dispensary to tsevini Primary School through Kwa Wambua Kimanzi (2.7)	Lybon Company Ltd	16,583,0088.00
26.	CGOKTI/498/2015 - 2015 Construction of mathima — Ndakani — Mutha Road Mutha Word in Kitui South Sub County	Kamwando Enterprises Ltd	21,140,893.16
27.	CGOKTI/499/2015-2016 Construction of Kyume Ventred Drift	Jadotra Company Ltd	10,017,673
28.	CGOKTI/500/2015-2016 Construction of a Drift along Kiusyani — Kyaithani — Kawongo —	Landi Investments Ltd	13,759,550.54

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
	Ngomani — Mangongoi Primary School Kwa Nyumu Drift (Kawongo — Kamanyi)		
29.	CGOKTI/501/2015-2016 Drift along Kiusyani — Kyaithani — Kawongo Ngomeni — Mangongoi Primary — Ikunyi Drift (Kathome — Kawongo)	Nasicom Logistics Ltd	10,545,801.40
30.	CGOKTI/502/2015-2016 Tulia Road (Kwa ndemwa) Kwa Ilate to Kutha (Tulia kakeani) road	Jacklo Company Ltd	13,348,426.30
31.	CGOKTI/503/2015-2016 Construction of Mbitini River Drift in Mwingi West Sub-County, Kyome — Thaana Ward	Ikoo Ltd Hardware & Electrical	24,998,351.13
32.	CGOKTI/504/2015-2016 Construction of Kilonzi River Drift alone Waita — Ndithi — Maongoa Road in kWaita Ward, Mwingi Central Sub-County	Kivui General Suppliers & Contractors	9,986,592.08
33.	CGOKTI/505/2015-2016 Construction of Ngomola River in Nguutani Ward	Delta AgriTEchn & Entineering (K) Ltd	10,135,515.00
34.	CGOKTI/506/2015-2016 Construction of Tseikuru-Kalimbui Road	Taraji Company Ltd	4,818,000.00
35.	CGOKTI/507/2015-2016 Kaliluni River Drift	FeliKeys K Ltd	11,674,170.90
36.	CGOKTI/508/2015-2016 Construction of Nzukini — Ivovoa — Kyaithya Drift	Jaci General Investment	22,632,803.48
37.	CGOKTI/509/2015-2016 Construction of Drift on Muthungue— mangina Road with Road Works in Kitui Central Sub County, Kyangwithya West Ward	Mvumilivu Ventures & General Contractors Limited	21,551,770.55
38.	CGOKTI/510/2015-2016 Construction of Matulani— Nduundune — Ndithini Road	Mukesh Technical Services	19,948,307.55
39.	CGOKTI/511/2015-2016 Construction of Mwembeni River Drift	Dannycot Enterprises Ltd	16,728,389.46
40.	CGOKTI/512/2015-2016 Construction of Nzeeu River Drift at the crossing from Syombuku — Kavalula — Kalawa Stream	Carotox Supplies	14,6649,784.30
41.	CGOKTI/S13/2015-2016 Kyuso River Drift	Malili Construction and Engineering Works Ltd	18,562,086.70
42.	CGOKTI/514/2015-2016 Construction of Garissa Road Junction — Lundi Road	Busara Enterprises Ltd	
43.	CGOKTI/515/2015-2016 Kisasi — Mbitini — Voo road Drift Construction works Lot 1-3 No. (Mwiwe River Drift Repair Works, Kalovoto Stream, Kasyonoo and Kilu River Drifts)	Aridsun Contractors	22,610,133.33

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
44.	CGOKTI/516/2015-2016 Construction of Mwanianga Drifts 2 No. Drifts	Mutindi General Contractors	9,740,150.77
45.	CGOKTI/519/2015-2016 Munyumbuni — Ndithi — Kivoi Road connecting Waita upper area in Waita Road	Festo Construction & Engineering Company Ltd	27,930,428.76
46.	CGOKTI/520/2015-2016 Improvement of Road from Kalulini – Kyandula B7 Junction	Markwell Services Ltd	7,083,354.40
47.	CGOKTI/521/2015-2016 Drifts in the area of Mutonguni – Migwani- Kithyoko –Katutu	Sammaran Services Kenya Ltd	7,389,093.49
48.	CGOKTI/522/2015-2016 Construction of Nganganl A— Nganganani B Drift across Mwiwe River in Mbitini Ward in Kitui Rural Sub-County	End Engineering & Construction Company Ltd	8,827,220.45
49.	CGOKTI/523/2015-2016 Construction of Kwa Kamba-Katitika Catholic Church at Wikililye with a Drift at Katitika Stream	Kangonza Construction	9,206,111.59
50.	CGOKTI/524/2015-2016 Construction of Kathande — Kaumu Drift at Zombe/Mwitika in Kitui East Sub-County	Keith Reuben Property Group Ltd	23,130,439.10
51.	CGOKTI/525/2015-2016 Construction of Drifts in the area of Nzalae — Kabati Katutu —Kithyoko in Kitui West Sub-County	Western Holdings Ltd	16,283,388.90
52.	CGOKTI/526/2015-2016 Construction of Katse — Musyosya — Thua — Ngungani Road Mumoni Ward in Mwingi North Sub-County	Artic Builders & General Contractors	21,969,711.20
53.	CGOKTI/527/2015-2016 Construction of Mwinga Stream Drift at Zombe/Mwitika Ward Kitui East Sub-County	Shatit Enterprises Ltd	15,056,314.20
54.	CGOKTI/529/2015-2016 Bituminous surfacing — Road E709 Nguni River— Flood plain crossing	Nariana Enterprises Ltd	9,891,610.00
55.	CGOKTI/530/2015-2016 Construction of Katulani — Ngiluni Reinforced Slabs	Mosline Enterprises Ltd	12,282,789.19
56.	CGOKTI/531/2015-2016 Construction of Sokomoko — Kaliku Drift & Road in Kitui Central Sub-County, Kyangwithya West Ward	Jowmime Enterprises	7,416,845.00

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
57.	CGOKTI/91/2015-2016 Kwa Kondo — Kasanduku — Mukunu — Ithimani River— Kwa Lele Makaani road and Drift — Drift Works Only	Kasco Investment Ltd	9,880,749.35
58.	CGOKTI/Q1441/2015-2016 Grading of Kateiko Mukuka/Kyesuni — Kimongo Road (11 km)	Hildom Investment Ltd	1,395,198.00
<b>Total</b>			<b>875,549,186.80</b>





**REPUBLIC OF KENYA**

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**THE SENATE**

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**TWELFTH PARLIAMENT – FOURTHSESSION**

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**REPORT OF THE STANDING COMMITTEE ON FINANCE & BUDGET ON THE  
PETITION PRESENTED BY SEN. ENOCH WAMBUA, MP ON NON-PAYMENT BY  
KITUI COUNTY EXECUTIVE OF PENDING BILLS INCURRED DURING FINANCIAL  
YEAR 2015/2016**

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**CLERKS CHAMBER  
PARLIAMENT BUILDINGS  
NAIROBI**

**AUGUST 2020**

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## PREFACE

The Standing Committee on Finance and Budget was constituted by the House on Thursday 14<sup>th</sup> December, 2017 during the First Session of the Twelfth Parliament. The Committee was later reconstituted on Wednesday, 24<sup>th</sup> June, 2020, during the Fourth Session of the Twelfth (12<sup>th</sup>) 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*

## Acknowledgement

The Committee appreciates Sen. Enoch Wambua, MP. who Presented the Petition to the Senate on behalf of contractors and business people operating within Kitui County.

The Committee acknowledges the time and considerable effort made by all parties who provided information relating to this petition. The Committee is also particularly grateful to the 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 Committee on Finance and Budget regarding the Petition to the Senate on non-payment by Kitui County Executive of pending bills incurred during financial year 2015/2016.

**SIGNATURE:** \_\_\_\_\_



**SEN. CHARLES KIBIRU, MP.**

**(CHAIRPERSON, STANDING COMMITTEE ON FINANCE AND BUDGET)**

**DATE:** \_\_\_\_\_ **6<sup>th</sup> August 2020** \_\_\_\_\_

## CHAPTER 1

### 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 the Senate Standing Order No. 226 (1)(b) and 230 (2) (a) Sen. Enoch Wambua, MP on 6<sup>th</sup> December, 2018, presented a public petition to the Senate on behalf of the Petitioners, contractors and business people operating within Kitui County and other regions, on the non-payment by Kitui County Executive of pending bills incurred during financial year 2015/2016.

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

- 1) That during the Financial Year 2015/2016, the Petitioners were contracted by the County Government of Kitui through the Ministry of Lands, Infrastructure and Urban Development to carry out various works, comprising construction of drifts and road work projects in the county.
- 2) That although they discharged their contractual obligations and were issued with completion certificates thereon, they were yet to receive payments for the work done, which amounts to approximately Kshs622 million, excluding accumulated interest.
- 3) That the non-payment of monies had grossly affected businesses and subjected them to costly repayments of bank loans which they had taken to execute the county projects.
- 4) Their assets were at risk of auction by the lending banks.
- 5) The matter had affected the credit worthiness of their businesses, which were at risk of being blacklisted by the Credit Reference Bureau (CRB).
- 6) That the accumulation of the county government's debts, which they were unable or unwilling to settle, was a big threat to and undermines the very tenets of devolution,

which were meant to bring services closer to the people and spur economic development across the country.

- 7) The Petitioners had made efforts to have the matters addressed by the relevant authorities but all of which failed to give satisfactory response.
- 8) That none of these issues raised in the Petition is pending in any court of law; constitutional or any other legal body.

**The Petitioner therefore prayed that-**

The Senate investigates the matter and initiate appropriate action thereon to ensure that the Petitioners were paid their dues and that measures were put in place to comprehensively address the recurrent issue of pending bills by county governments, which risks undermining the gains of devolution.

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

## CHAPTER TWO

### CONSIDERATION OF THE PETITION BY THE COMMITTEE

In considering the Petition, the Committee invited the Petitioners, Ethics and Anti-Corruption Commission (EACC) and Kitui County Executive.

#### Submission from the Petitioners

At a meeting of the Committee held on 13<sup>th</sup> December, 2018, the Petitioners led by Mr. Alfred Mwanza, who spoke on their behalf informed the Committee that—

- a) The Petitioners were business people who were contracted by the County Government of Kitui to do some works under different contracts;
- b) The contractors were all road contractors and were contracted to do road works;
- c) In June 2015, after completion of work, they raised invoices for payment but had not received payment as at the date of the meeting;
- d) Lack of payment had resulted to some of them being auctioned due to non-payment of loans that they had secured to run the businesses; some of them had to sell their properties and some have even died as a result of the shock of their businesses going down;
- e) They were seeking the Senate's intervention to ensure that the County Government of Kitui pays them their dues;
- f) That the County Government of Kitui in 2016 could not pay them because there was an anonymous claim made to the Ethics and Anti-Corruption Commission that the projects done in 2015/ 2016 in Kitui County were ghost projects. EACC had therefore written to the County Government stopping all payments until it conducts investigations and clears the projects. In May 2018, the EACC wrote a general letter to the County government allowing it to continue with the payment but with a caution that the payments should be done in accordance with the law; it is on this basis that the Petitioners were asking for their payments; and,
- g) Petitioners felt aggrieved because the County government kept telling them that they have not received any communication from EACC and therefore cannot pay.
- h) The Petitioners had contracts awarded to them as shown in the table below-

	<b>Name of Contractor</b>	<b>Nature of contract</b>	<b>Contract sum</b>
1.	Mwingi Busara Enterprises	Construction of Garissa Road junction- Lundi Road	7,212,827
2.	County Contractors and Suppliers	Construction of Kilukuyu- Musyau Drift	10,755,221
3.	Sherine Construction Company Limited	Construction of Mwiwe Drift Mbitini Ward in Kitui Rural Sub-County	24,100,061
4.	Mwatshi Construction Co. LTD	Construction of Mui River Drift on Kabati-Itangani Road 95KM long Mutitu Kaliku Ward	14,050,696
5.	Elishek Engineering Limited	Improvement of road kitui town- Museveni-Miambani & Mutuni – Kilungu Road Katilini River (Reinforced slabs & drift repair & extension in Kitui central Sub-County, Kyangwingithya East Ward.	14,253,115
6.	Renah & Renard Ltd	Construction of Kisasi – Mbitini –Voo Road	16,734,716
7.	June Engineering Services Limited	Construction of crift Kalundu river along Kwa Ngindu- manda River – Mutune Road in Kitui Central Sub-county Kyangwithya East.	10,772,572
8.	Cherry Construction Limited	Construction of drift at Kwa Manda river & improvement of Road Kwa Ndindu- Ngiini in Kitui Central Sub-County, Kyangwithya East Ward	10,619,143
9.	Jomeg Contractors	Kisasi- Mbitini – Voo Road drift Construction works Lot 3 and 3 other streams	13,927,068
10.	Rene Industries	Construction of Mutune road through Kalundu River – Museve with a drift in Kitui Central Sub-County	24,482,891
11.	Delta Agri-Tech & Engineering (K) Ltd	Construction of Ngomola River Drift in Ngutani Ward	10,135,515



12.	Jacklo Company Ltd	Tulia Road (Kwa Ndemwa) Kwa Ilate to Kutha (Tulia- Kakeani) Road	13,348,426
13.	Three Ran's Limited	Construction of Kisasi –Mbitini- Voo Road	16,885,319
14.	Kyangonza Construction	Construction of Kwa Kamba-Katitika Catholic Church at Wikililye with a drift at Katitika Stream	9,206,111
15.	Mutindi General Contractors	Construction of Mwanianga Drifts -2NO.	9,740,150
16.	Nasicom Logistics	Procurement of external works at the County Administration Block	2,149,907
17.	Semeha Engineering Ltd	Construction of Mbitini Secondary school – Kwa Kasau – Kyamusivi Earthworks, excavation & filling for structures, culvert & drainage works, grading & gravelling works & concrete works	10,612,001
18.	Jowmime Enterprises	Construction of Sokomoko Kaliku drift & road in Kitui central Sub- County, Kyangwithya West Ward	7,416,845
19.	Afriserve International Ltd	Construction of Kisasi- Mbitini –Voo Road B	12,688,043
20.	Shatit Enterprises Ltd	Construction of Mwinga Stream Drift At Zombe/ Mwitika Ward in Kitui East Sub- County	15,056,314
21.	Landi Investments Ltd	Construction of a drift along Kiusyani- Kyaithani-Kawongo-Ngomoni-Mangongoi Primary School Kwa Nyumu Drift (Kawongo-Kamanyi)	13,759,550
22.	Diasco Limited	Construction of Kamunyu River Drift	17,852,225
23.	Nestac Agencies Ltd	Renovations of Kitui Slaughter House	2,030,945
24.	Mukesh Technical Services	Construction of Matulani- Nduundune- Ndithini Road	19,948,307

25.	Goldex Enterprises Ltd	Street Lighting works for Kwa Vonza: KU Junction- KU Gate- 710 Metres	3,349,508
26.	Mosline Enterprises Ltd	Construction of Katulani- Ngiluni reinforced Slabs	12,282,789
27.	Jackmer Contractors Ltd	Kwa Ikolanya Drifts and Opening up of Kwa Ikolanya- Kivaloni- Ithiani Road	12,719,265
28.	Chambalili Trading Company Ltd	Construction of Drift Along Mandongoi Primary School – Kiseuni – Road Kwa Katune/ Kwa Masyuko	12,301,530
29.	Western Holdings	Construction of Drifts in the area of Nzalae- Katutu Kithyoko in Kitui West Sub- County	16,283,388
<b>Total</b>			<b>380,957,836</b>

### **Submission from the Ethics and Anti-Corruption Commission (EACC)**

At a meeting of the Committee held on 28<sup>th</sup> March, 2019, the Commission Chief Executive Officer informed the Committee that-

- a) The Commission was aware of the investigations, which began in April 2017, into allegation of procurement irregularity at the Kitui County Executive in the construction of river drifts and road works in the financial year 2015/16. It entailed a total of 59 projects worth 891,039,308.07.
- b) The nature of the complaint was that the county was about to make KSh. 1.1 billion fictitious payments for projects which were awarded but no works were done.
- c) Through a letter Ref: EACC.6.20/1 Vol.IV (106) dated 27<sup>th</sup> April, 2017 the Commission informed the County on the ongoing investigations and advised the county to put on hold all payments in respect to the projects until further communication.
- d) Through a letter Ref: EACC/6/15/4 Vol. XVI (26) dated 11<sup>th</sup> May 2017 the Commission requested for the services of Kenya Rural Roads Authority to evaluate and audit the status of the projects.

- e) The evaluation was done and audit report on the status forwarded to the Commission on 28<sup>th</sup> September, 2017.
- f) The Commission vide a letter Ref. EACC.6/15/4Vol.XIX(211) dated 18<sup>th</sup> May, 2018 informed the county executive that payment may be made as long as they were lawful and in accordance with Public Finance Management Act, 2012, Public Procurement and Asset Disposal Act and relevant regulations.
- g) As at the date of the meeting, the investigations were 90% complete and the report on the matter would be submitted to the Director of Public Prosecutions in April 2019. The list of the contracts under investigations was as attached – Annex 1.

After deliberations, the representatives from EACC informed the Committee that-

- a) The Commission focuses more on prevention to cushion counties from loss of public funds. The actions by the Commission acts as a deterrence to misuse of funds especially funds meant for capital projects.
- b) The Commission faces challenges of timelines since there were numerous cases which are reported. Annually they receive about 4000 cases but the Commission may only handle 300 cases in a year. This is due to inadequate staffing levels.
- c) Once an allegation is made, the Commission does preliminary investigations to ascertain the facts and then proceed into detailed investigations.
- d) County governments were facing a challenge in adherence to the Public Finance Management Act, 2012, Public Procurement and Asset Disposal Act, 2015 and the relevant regulations.
- e) There was need to reconsider the existing laws with a view of setting the threshold (monetary levels, social status and economic crimes) on what constitutes corruption cases and what the Commission may institute investigations. This principle may be borrowed from other jurisdictions which have a similar Commission like the United Kingdom.

- f) To ensure efficiency of field officers, the Commission had created a Directorate in charge of field officers. Further, there would be frequent transfers of such officers to avoid familiarity in their duty stations and ensure integrity principles are maintained.

### **Submission from Kitui County Executive**

At a meeting of the Committee held on 28<sup>th</sup> March, 2019, the County Governor informed the Committee as follows-

- a) The County Executive was aware of the pending bills and the government was committed to settling all genuine bills.
- b) The new regime of leadership inherited pending bills totalling to Kshs 1.3 billion in 2017. A verification committee was established to verify the pending bills. All the pending bills were cleared except bills worth Ksh.697,982,264 which were under active investigation by EACC.
- c) The Petitioners were indeed procured to undertake various works in Kitui County during financial 2016/2017. The number of companies contracted were eighty-nine (89).
- d) Between March and May 2016 there were semi-El Nino rains which extensively destroyed the roads infrastructure. The then administration decided to do emergency repairs of the road network. They awarded 89 contracts worth Kshs 787,404,098.47.
- e) However, before completion of the works, the EACC started conducting investigations on issues relating to awarded tenders. They visited the county offices and took/ carried all the original documents relating to the 89 projects. However, the Commission was investigating 40 projects whereas they hold original documents for all the contracted projects.
- f) The county is unable to verify the projects and process the payments since the original documents were under the custody of EACC.
- g) There were several communications between the Commission and the County Executive which include-

- i Letter Ref. no. EACC.6/15/4/VOL.XV(52) dated 24<sup>th</sup> February, 2017 from EACC requesting for original documents regarding the projects in question.
- ii Letter Ref. EACC.6/20/1 VOL.IV(96) dated 7<sup>th</sup> March 2017 which required the county to put on hold all payments relating to projects under investigations until otherwise advised by the Commission in writing.
- iii Letter Ref. CG/KTI/ANTI-CORRUPTION/VO.1/87 dated 12<sup>th</sup> April, 2017 the county executive requesting for update on the status of investigations. But there was no reply.
- iv Letter Ref. CG/KTI/ANT-CORRUPTION/VOL.3/9 dated 13<sup>th</sup> February, 2018 requesting for update on status of investigations and clearance for payments to the contracts which may have no issues.
- v Letter Ref. EACC.6/15/4 VOL.XIX(60) dated 26<sup>th</sup> February, 2018 EACC responded inviting three officials for a meeting at Integrity Centre to deliberate on the matter.
- vi Letter Ref. EACC.6/15/4 VOL.XIX (211) dated 18<sup>th</sup> May, 2018 the Commission stated that they had no objections to the payments for the projects undertaken as long as they were in accordance with the law. However, the Commission did not release the original documents to facilitate the payments.
- vii Letter Ref. CG/KTI/EACC/VOL.3/120 dated 5<sup>th</sup> June 2018 the county requested for original documents to facilitate the payments of the contracts. However, the Commission did not reply to the letter.
- h) The County Executive was committed to clearing the genuine pending bills. However, the payment may only be supported by original documents.
- i) Some contractors had gone to court seeking orders to compel the County Executive to pay (Vide Civic Miscellaneous Application no. 23 of 2018). However, the Court declined to give the orders sought on 31<sup>st</sup> January, 2019.

- j) The total contract sum was Ksh 1,182,096,159. However, what had been certified before EACC started the investigation was Ksh. 697,982,264.41. Some contracts were not fully executed after the contractors learnt about the investigation by EACC.
- 
- k) The County had sued the EACC over the matter since it was taking longer than necessary to complete the investigation and determine whether payment may be done. Further, the contractors were suffering as they accuse the county for non-payments of works done.

## CHAPTER THREE

### COMMITTEE CONSIDERATION, OBSERVATIONS AND RECOMMENDATION

During deliberations, the Committee noted various issues and requested for information from the EACC and Kitui County Executive. The Response on issues were as follows-

- a) Letter Ref. EACC.6/15/15(31) dated 9<sup>th</sup> October, 2019 – the Commission informed the Committee that the investigations had been conclude and findings forwarded to the Office of the Director of Public Prosecution (ODPP) for consideration. Further, the Commission provided the list of all the tenders/ contracts which had been awarded and were subject to investigation.
- b) Letter Ref. EACC.6/15/15(51) dated 19<sup>th</sup> March, 2020 – the Commission notified the Committee that the ODPP on 11<sup>th</sup> December, 2019 had recommended that the five senior officials of the County Government of Kitui be charge for various offences. That, on 17<sup>th</sup> January, 2020 the officials were charged before the Chief Magistrate, Kitui Law courts. The pre-trial hearing had being schedule for 23<sup>rd</sup> and 24<sup>th</sup> April, 2020.
- c) Letter Ref. EACC.6/15/15(59) dated 21<sup>st</sup> May, 2020 – The Commission informed the Committee that all the documents collected for the 89 projects had been returned to the Kitui County Executive.
- d) Letter Ref. CGKTI/OoG/ADM/23/Vol.1(22) dated 29<sup>th</sup> July, 2020 – The County Government of Kitui confirmed receipt of the documents which EACC had confiscated. The documents were received on 12<sup>th</sup> May, 2020. Further that the County government had initiated actions that would lead to the payment of these pending bills.

#### Observations

The Committee observed that-

- a) The Petitioners were contractors and business people contracted by Kitui County Executive to provide services. During the Financial Year 2015/2016, the County Government of Kitui, through the Department of Lands, Infrastructure and Urban Development contracted them to carry out various works comprising drifts and roadwork projects in the County;

- b) The documents submitted by the Petitioners on request by the Committee did not have completion certificates. However, they indicated that they alleged to have discharged their contractual obligations and were issued with Completion Certificates thereon, however, they were yet to receive payments for the work done, which amounts to approximately Kshs.622 million excluding accumulated interests;
- c) In April 2017, Ethics and Anti-Corruption Commission (EACC) started investigating the matter and payments were put on hold. However, through a letter dated May, 2018 EACC informed the county executive that the payments for the works done may be made if it were within the law.
- d) EACC was investigating the allegation of procurement irregularities in respect to award of fifty-eight (58) contracts totalling Kshs 875,549,186.80.
- e) The Petitioners were praying that that the Senate-
- ✓ urgently investigates this matter and initiates appropriate action thereon to ensure that the Petitioners were paid their dues, and
  - ✓ that measures were put in place to comprehensively address the recurring issue of pending bills by county governments, which risks undermining the gains of devolution.
- f) The EACC initiated the investigations and confiscated all the original documents relating to the said contracts. The investigation had been concluded and affected county government officials arraigned in the Court of Law.
- g) Following various communication between the Committee and the Commission, the Committee notes that out of the twenty nine (29) Contractors who had sent the Petition to the Senate its only ten (10) Contractors who were not listed by EACC to be under investigation. These were as shown in the table below

	<b>Name of Contractor</b>	<b>Nature of contract</b>	<b>Contract sum</b>
1.	Mwingi Busara Enterprises	Construction of Garissa Road junction- Lundi Road	7,212,827
2.	Sherine Construction Company Limited	Construction of Mwiwe Drift Mbitini Ward in Kitui Rural Sub-County	24,100,061



3.	Mwatshi Construction Co. LTD	Construction of Mui River Drift on Kabati-Itangani Road 95KM long Mutitu Kaliku Ward	14,050,696
4.	Elishek Engineering Limited	Improvement of road kitui town- Museveni-Miambani & Mutuni – Kilungu Road Katilini River (Reinforced slabs & drift repair & extension in Kitui central Sub-County, Kyangwingithya East Ward.	14,253,115
5.	Cherry Construction Limited	Construction of drift at Kwa Manda river & improvement of Road Kwa Ndindu- Ngiini in Kitui Central Sub-County, Kyangwithya East Ward	10,619,143
6.	Three Ran's Limited	Construction of Kisasi –Mbitini- Voo Road	16,885,319
7.	Kyangonza Construction	Construction of Kwa Kamba-Katitika Catholic Church at Wikililye with a drift at Katitika Stream	9,206,111
8.	Semeha Engineering Ltd	Construction of Mbitini Secondary school – Kwa Kasau – Kyamusivi Earthworks, excavation & filling for structures, culvert & drainage works, grading & gravelling works & concrete works	10,612,001
9.	Nestac Agencies Ltd	Renovations of Kitui Slaughter House	2,030,945
10.	Goldex Enterprises Ltd	Street Lighting works for Kwa Vonza: KU Junction- KU Gate- 710 Metres	3,349,508

- h) The Commission had returned all the documents, relating to the contracts, which were confiscated for the purpose of the investigations.
- i) The County Government of Kitui confirmed receipts of the documents which the Commission had removed from their custody. Further that actions which would lead to payment of these pending bills had been initiated.

## Recommendations

The Committee recommends that-

- a) The County Government of Kitui should expeditiously undertake due diligence and if appropriate clear all these pending Bills 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 30<sup>th</sup> 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. This is because 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, an 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.

**ANNEX 1**

**List of Tenders/Contracts awarded by the County Government of Kitui under investigations**

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
1.	CGOKTI/472/2015-2016 Construction of Kalundu-Ngindu-Manda-Mutune road & drift	June Engineering Services	10,772,572.59
2.	CGOKTI/473/2015-2016 Construction of Mutune – Kalundu- Museve road & drift	Rene Industries Ltd	26,482,891.16
3.	CGOKTI/474/2015-2016 Construction of B2 Mumbu—Mumbu—Ngomano Road & drift	Royce Building & General Contractors Ltd	19,709,954.40
4.	CGOKTI/475/2015-2016 Construction of Kangalu — Manooni - Wii Drift.	Malulani Investments Ltd	15,935,840.15
5.	CGOKTI/476/2015-2016 Construction of Kisasi - Mbitini - Voo Road B	Afriserve International Ltd	12,688,043.32
6.	CGOKTI/477/2015-2016 Construction of Kisasi — Mbitini — Voo Road C	Renah & Renard Ltd	16,734,716.49
7.	CGOKTI/478/2015-2016 Construction of Kathungi-Mbusyani -Kathungi road & drift	Glogra General Suppliers & Contractors	19,975,949.19
8.	CGOKTI/479/2015-2016 Construction of Kisasi-Mbitini - Voo Road & drift	Jomeg Contractors	13,927,068.11
9.	CGOKTI/480/2015-2016 Construction of Kisasi-Mbitini Nzeeu Drift	Quality Care Enterprises (K) Ltd	24,897.966.24
10.	CGOKTI/481/2015-2016 Construction of Kilukuya - Musyau Drift	County Contractors and Supplies Ltd	10,755,221.97
11.	CGOKTI/482/2015-2016 Construction of Musavani-Kamali Road & drift	Racdmuicity Investment Ltd	9,442,323.10
12.	CGOKTI/483/2015-2016 Construction of Enziu-Wingeni-Iviani-Ukasi road & drift	Kangama Builders Contractors Ltd	16,463,031.23
13.	CGOKTI/484/2015-2016 Opening up Katulani Market - Kwa Nguli - Ivovoa Road	Watema General Supplies	18,547,778.91
14.	CGOKTI/485/2015-2016 Construction of Tiva -Oasis - Mangha road 7 drift road & drift	Syano roads and Bridges Ltd	26,843,963.20

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
15.	CGOKTI/486/2015-2016 Construction of Kithumulani-Makongo-Zombe-Mwitika road & drift	Lyjos Enterprises Ltd	9,638,931.00
16.	CGOKTI/487/2015-2016 Contraction of Ikolanya drifts and opening up of Kwa Ikolanya — Kivaloni — Ithiani Road	Jackmer Contractors Ltd	12,719,265.15
17.	CGOKTI/488/2015-2016 Construction of Kamunyu River Drift	Diasco Ltd	17,852,225.64
18.	CGOKTI/489/2015-2016 Construction of Drift along Kiusyani — Kyaithani — Kawongo — Ngomoni Primary School Kwa Muthusi (Kamanyi Ngomoni) Kanyangi/Kwa Vonza	Jonesa Enterprises Ltd	11,638,852.00
19.	CGOKTV490/2015-2016 Kisasi — mbitini — Voo road Drift Construction works lot 3 in Mbitini — Voo/Kyamatu 180m	Katungate Contractors Ltd	27,698,510.16
20.	CGOKTI/492/2015-2016 Construction of Kalundu River Drift (Masoka - Katumba) in Mulango & Kanyangi Wards	Rutgit Enterprises	12,416,973.11
21.	CGOKTI/493/2015-2016 Opening up of Road Nyanyaa (Oasis) to Mangina and Kiliko Shopping Centre to kalivini Primary School	Konza Works Construction & Engineering Ltd	27,248,647.35
22.	CGOKTI/494/2015-2016 Kisama Nai Kwa Kilei Drift	Palace Management Company	5,700,756.67
23.	CGOKTI/495/2015-2016 Construction of Drift along Mandongoi Primary School - Kiseuni Road Kwa Katune/Kwa Masyuko	Chambalili Trading Company Ltd	12,301,530.32
24.	CGOKTI/496/2015-2016 Kwa - Kondo - - Mukunu - Ithimani River - Kwa Lele Makaani road & Drift road Works Only	Miambani Valley General Contractors Ltd	16,768,686.50
25.	CGOKTI/497/2015-2016 Opening up of Road from Tiva Isevini Road Junction to Isevini Primary School & junction from Isevini Road through Kithiano River Drift to Ngengeeka Shopping Centre (5.9) & Kaliakakya Dispensary to tsevini Primary School through Kwa Wambua Kimanzi (2.7)	Lybon Company Ltd	16,583,0088.00
26.	CGOKTI/498/2015 - 2015 Construction of mathima — Ndakani — Mutha Road Mutha Word in Kitui South Sub County	Kamwando Enterprises Ltd	21,140,893.16
27.	CGOKTI/499/2015-2016 Construction of Kyume Ventred Drift	Jadotra Company Ltd	10,017,673
28.	CGOKTI/500/2015-2016 Construction of a Drift along Kiusyani — Kyaithani — Kawongo —	Landi Investments Ltd	13,759,550.54

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
	Ngomani — Mangongoi Primary School Kwa Nyumu Drift (Kawongo — Kamanyi)		
29.	CGOKTI/501/2015-2016 Drift along Kiusyani — Kyaithani — Kawongo Ngomeni — Mangongoi Primary — Ikunyi Drift (Kathome — Kawongo)	Nasicom Logistics Ltd	10,545,801.40
30.	CGOKTI/502/2015-2016 Tulia Road (Kwa ndemwa) Kwa Ilate to Kutha (Tulia kakeani) road	Jacklo Company Ltd	13,348,426.30
31.	CGOKTI/503/2015-2016 Construction of Mbitini River Drift in Mwingi West Sub-County, Kyome — Thaana Ward	Ikoo Ltd Hardware & Electrical	24,998,351.13
32.	CGOKTI/504/2015-2016 Construction of Kilonzi River Drift alone Waita — Ndithi — Maongoa Road in kWaita Ward, Mwingi Central Sub-County	Kivui General Suppliers & Contractors	9,986,592.08
33.	CGOKTI/505/2015-2016 Construction of Ngomola River in Nguutani Ward	Delta AgriTEchn & Entineering (K) Ltd	10,135,515.00
34.	CGOKTI/506/2015-2016 Construction of Tseikuru-Kalimbui Road	Taraji Company Ltd	4,818,000.00
35.	CGOKTI/507/2015-2016 Kaliluni River Drift	FeliKeys K Ltd	11,674,170.90
36.	CGOKTI/508/2015-2016 Construction of Nzukini — Ivovoa — Kyaithya Drift	Jaci General Investment	22,632,803.48
37.	CGOKTI/509/2015-2016 Construction of Drift on Muthungue— mangina Road with Road Works in Kitui Central Sub County, Kyangwithya West Ward	Mvumilivu Ventures & General Contractors Limited	21,551,770.55
38.	CGOKTI/510/2015-2016 Construction of Matulani— Nduundune — Ndithini Road	Mukesh Technical Services	19,948,307.55
39.	CGOKTI/511/2015-2016 Construction of Mwembeni River Drift	Dannycot Enterprises Ltd	16,728,389.46
40.	CGOKTI/512/2015-2016 Construction of Nzeeu River Drift at the crossing from Syombuku — Kavalula — Kalawa Stream	Carotox Supplies	14,6649,784.30
41.	CGOKTI/S13/2015-2016 Kyuso River Drift	Malili Construction and Engineering Works Ltd	18,562,086.70
42.	CGOKTI/514/2015-2016 Construction of Garissa Road Junction — Lundi Road	Busara Enterprises Ltd	
43.	CGOKTI/515/2015-2016 Kisasi — Mbitini — Voo road Drift Construction works Lot 1-3 No. (Mwiwe River Drift Repair Works, Kalovoto Stream, Kasyonoo and Kilu River Drifts)	Aridsun Contractors	22,610,133.33

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
44.	CGOKTI/516/2015-2016 Construction of Mwanianga Drifts 2 No. Drifts	Mutindi General Contractors	9,740,150.77
45.	CGOKTI/519/2015-2016 Munyumbuni — Ndithi — Kivoi Road connecting Waita upper area in Waita Road	Festo Construction & Engineering Company Ltd	27,930,428.76
46.	CGOKTI/520/2015-2016 Improvement of Road from Kalulini – Kyandula B7 Junction	Markwell Services Ltd	7,083,354.40
47.	CGOKTI/521/2015-2016 Drifts in the area of Mutonguni – Migwani- Kithyoko –Katutu	Sammaran Services Kenya Ltd	7,389,093.49
48.	CGOKTI/522/2015-2016 Construction of Nganganl A— Ngangani B Drift across Mwiwe River in Mbitini Ward in Kitui Rural Sub-County	End Engineering & Construction Company Ltd	8,827,220.45
49.	CGOKTI/523/2015-2016 Construction of Kwa Kamba-Katitika Catholic Church at Wikililye with a Drift at Katitika Stream	Kangonza Construction	9,206,111.59
50.	CGOKTI/524/2015-2016 Construction of Kathande — Kaumu Drift at Zombe/Mwitika in Kitui East Sub-County	Keith Reuben Property Group Ltd	23,130,439.10
51.	CGOKTI/525/2015-2016 Construction of Drifts in the area of Nzalae — Kabati Katutu —Kithyoko in Kitui West Sub-County	Western Holdings Ltd	16,283,388.90
52.	CGOKTI/526/2015-2016 Construction of Katse — Musyosya — Thua — Ngungani Road Mumoni Ward in Mwingi North Sub-County	Artic Builders & General Contractors	21,969,711.20
53.	CGOKTI/527/2015-2016 Construction of Mwinga Stream Drift at Zombe/Mwitika Ward Kitui East Sub-County	Shatit Enterprises Ltd	15,056,314.20
54.	CGOKTI/529/2015-2016 Bituminous surfacing — Road E709 Nguni River— Flood plain crossing	Nariana Enterprises Ltd	9,891,610.00
55.	CGOKTI/530/2015-2016 Construction of Katulani — Ngiluni Reinforced Slabs	Mosline Enterprises Ltd	12,282,789.19
56.	CGOKTI/531/2015-2016 Construction of Sokomoko — Kaliku Drift & Road in Kitui Central Sub-County, Kyangwithya West Ward	Jowmime Enterprises	7,416,845.00

	<b>Tender/Contract Number &amp; Name</b>	<b>Contractor</b>	<b>Tender/Contract Sum</b>
57.	CGOKTI/91/2015-2016 Kwa Kondo — Kasanduku — Mukunu — Ithimani River— Kwa Lele Makaani road and Drift — Drift Works Only	Kasco Investment Ltd	9,880,749.35
58.	CGOKTI/Q1441/2015-2016 Grading of Kateiko Mukuka/Kyesuni — Kimongo Road (11 km)	Hildom Investment Ltd	1,395,198.00
<b>Total</b>			<b>875,549,186.80</b>



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