

**COUNTY GOVERNMENT OF BUNGOMA**



**SECOND COUNTY ASSEMBLY OF BUNGOMA**

**FOURTH SESSION**

**PUBLIC ADMINISTRATION AND ICT COMMITTEE**

**REPORT ON THE PUBLIC INTEREST PETITION TO THE COUNTY  
ASSEMBLY FOR CONSIDERATION OF THE REMOVAL OF HON.  
WYCLIFFEE WAFULA WANGAMATI AS GOVERNOR OF THE COUNTY**

**GOVERNMENT OF BUNGOMA BY IMPEACHMENT;**

**BY BARASA KUNDU NYUKURI- PETITIONER**

**Clerk's Chambers  
County Assembly Buildings  
PO BOX 1886,  
BUNGOMA, KENYA**

**AUGUST, 2020**

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## PREFACE

### DEFINITIONS:

**Impeachment** means criminal proceedings or a charge of misconduct made against a State Officer; or an action of calling into question the integrity of a State Officer;

**Abuse of office** also called malfeasance in office or official misconduct is the commission of unlawful act, done in an official capacity, which affects the performance of official duties;

**Gross violation** means a grave violation or breach of the provision of the constitution;

**Gross misconduct** means something seen as unacceptable serious enough and possibly criminal;

**Leadership and integrity** means being honest trustworthy and reliable. Leaders with integrity act in accordance with their words and own up to their to their mistakes, as opposed to hiding them blaming their team, or making excuses; and

**Impropriety** means failure to observe standards of honesty or modesty; improper behavior or character.

### Establishment of the Committee

- The Committee is established pursuant to Standing Order no.158 of the County Assembly of Bungoma Standing Orders that sets out the composition of membership.

### Committee Membership

2. The Committee as currently constituted is comprised of the following members:-

- |                         |                  |
|-------------------------|------------------|
| 1) Hon. Majimbo Okumu   | Chairperson      |
| 2) Hon. Violet Makhanu  | Vice chairperson |
| 3) Hon. Joseph Juma     | Member           |
| 4) Hon. Francis Chemion | Member           |
| 5) Hon. EllyTindi       | Member           |

6) Hon. Stephen Wamalwa	Member
7) Hon. Meshack Simiyu	Member
8) Hon. Jack Wambulwa	Member
9) Hon. Barasa Mukhongo	Member
10) Hon. Joseph Magudah	Member
11) Hon. Tony Barasa	Member
12) Hon. Erick Wapang'ana	Member
13) Hon. Luke Opwora	Member
14) Hon. Hillary Kiptallam	Member
15) Hon. Joan Kirong'	Member

### **Mandate of the Committee**

3. The Committee on Public Administration and ICT derives its functions in Standing Order No.196 (5) which sets out the functions of a Sectoral committee as:

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operation and estimates of the assigned departments;
- b) Study the programme and policy objectives of departments and the effectiveness of the implementation;
- c) Study and review all County legislation referred to it;
- d) Study, access and analyze the relative success of the departments as measured by the results obtained as compared with the stated objectives;
- e) Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;

f) To vet and report on all appointments where the Constitution or any law requires the County Assembly to prove except those under Standing Order 185 (Committee on Appointments); and

g) Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

### **Acknowledgement**

**Mr. Speaker Sir,**

4. The Committee is grateful to the Petitioner, who submitted the Petition to the County Assembly for consideration. The Committee acknowledges the time and considerable effort made by all parties who submitted information before it.

The Committee is also particularly grateful to the Offices of the Speaker and the Clerk of the County Assembly for the support received as it discharged its mandate.

I also express my gratitude to my colleagues and the secretariat for their thoughtful input and engaging contributions to the matter.

**Mr. Speaker Sir,** on behalf of the committee and pursuant to Standing Order no. 207 it is now my pleasant and honorable undertaking to present and lay on the table of the house the report of the Committee on Public Administration and ICT regarding the public interest petition to the county assembly for consideration of the removal of Hon. Wycliff Wafula Wangamati as Governor of the County Government of Bungoma by impeachment.

**Signed;**

**DATE.....SIGNATURE.....**

**HON. HENRY MAJIMBO OKUMU, MCA- KHALABA WARD**

**CHAIRPERSON: COMMITTEE ON PUBLIC ADMINISTRATION AND ICT**

## **CHAPTER ONE**

### **INTRODUCTION**

#### **Background information**

5. The Petitioner is a resident of Bungoma County- Mr. Barasa Kundu Nyukuri; the Executive Director for Torch Africa; a Civil Society Organization.

6. A Petition refers to a written prayer to the County Assembly by a member of the public requesting the County Assembly to consider any matter within its authority, including enacting, amending or repealing any legislation. The Bungoma County Assembly's Standing Orders provides for the general form of public petitions. The right to petition Assembly is the right of every citizen of the County and is provided for in Section 15 of the County Governments Act and Standing Order No. 199 respectively. Any person, groups of people or an organization has the right to petition the County Assembly. Consistent with Standing Order no.207 (on Committal of petitions), the Petition was Committed to the Committee on 8<sup>th</sup> July, 2020.

#### **Powers and privileges of the Committee**

7. The powers of the Committee are derived from:

i. Article 195 of the Constitution of Kenya, 2010 articulates the County Assembly's power to summon witnesses.

ii. Section 14 (1) (b) of the County Governments Act states that a County Assembly may establish committees in such a manner and for such general or special purposes as it considers fit and regulate the procedure of any committee so established.

iii. The County Assemblies Powers and Privileges Act 2017.

iv. The committee further derives its powers from Standing Order No. 172 which provides that committees shall enjoy and exercise all the powers and privileges bestowed on County Assembly by the Constitution and statute including the power to summon witnesses, receive evidence and to request for and receive papers and documents from the government and the public.

## **LEGAL BASIS**

Article 1 (1) of the Constitution of Kenya provides all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

(2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

Section 88 of the County Governments Act, 2012 provides that citizens have a right to petition the county government on any matter under the responsibility of the county government; citizen petitions shall be made in writing to the county government.

Section 89 of the same Act, provides that county government authorities, agencies and agents have a duty to respond expeditiously to petitions and challenges from citizens.

The petition to County Assemblies (Procedure) Act, 2020 provides for the procedure on handling petitions.

Standing Order No 203 of the Bungoma County Assembly Standing Orders provides for the form of a petition.

Standing Order No 207(1) of the Bungoma County Assembly Standing Orders provides that every petition presented or reported pursuant to this part, shall stand committed to the relevant Sectoral committee.

(2) whenever a petition is committed to a Sectoral committee, the committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the



Table of the County Assembly and no debate on or in relation to the report shall be allowed, but the Speaker in exceptional circumstances, may allow comments or observations in relation to the petition for not more than 20 minutes.

### **Committee Proceedings**

8. The guiding principle in the Committee's approach to the petition was to reply to the prayers of the petitioners conclusively. Members of this Committee analyzed the issues to be determined from the prayers of the petitioner and identified the necessary action to be taken. The Committee adopted quasi-judicial proceedings to process the petition. The Committee conducted its investigations and proceedings on the petition by adopting an activity calendar - Annex 1: The Activity Calendar

### **PARTIES**

9. The petitioner, Mr. BarasaKunduNyukuri appeared in person whereas the respondent was represented by Mr. Makhakara of M/S. H. M.WASILWA & CO. ADVOCATES ,TRONIC HOUSE, 3RD FLOOR MOI AVENUE PO BOX 976-50200 BUNGOMA.

### **Pre-trial conference**

10. The pre-trial conference was held on **27<sup>th</sup> July, 2020 at the County Assembly plenary** to consider issues to be addressed in processing the petition. Annex 2: The pre-trial conference programme.

### **Status Conference**

11. This was held on **7<sup>th</sup> August, 2020** which basically entailed parties to confirm service of evidence, list of witnesses and list of documents. The conference was also meant to enable the parties to agree on appropriate hearing dates, though the same had been publicized in the Daily Nation to run from **11<sup>th</sup> to 14<sup>th</sup> August, 2020**. Owing to the rule of natural justice and a right to fair hearing, the hearing schedule was adjusted to run from **13<sup>th</sup> – 15<sup>th</sup> August, 2020**, as was requested by both parties for extension of time.

## **PETITIONS:**

The petition for one BARASA NYUKURI KUNDU had the following major grounds:-

- (a) Gross violation of the constitution of Kenya by H.E. the Governor;
- (b) Violation of the Rule of law, abuse of office and misconduct by the Governor;
- (c) Impropriety by the Governor.

## **EVIDENTIAL SESSIONS**

**11.** The petition hearings were conducted on 13<sup>th</sup>, 14<sup>th</sup> and 17<sup>th</sup> August, 2020 at the County Assembly Plenary. The proceedings were open to members of the public. The petitioner appeared in person and gave both oral and documentary evidence before the committee. He was cross-examined by Counsel for the Respondent and members of the committee.

The Counsel for the respondent appeared before the committee on 17<sup>th</sup> August, 2020 with two witnesses- CECM Public Administration **Mr. Richard Sabwami Keya**; and one **Cyril Weyong'o**, the Legal Advisor to the Governor who gave evidence in chief and were cross examined by the petitioner as well as the members of the committee.

After the hearing sessions parties were directed to file written submissions by close of business on 19<sup>th</sup> August, 2020.

**12.** During hearings, the Committee sought information to ascertain facts in order to qualify answers as necessary to clarify information. The Committee provided reasonable opportunity to Parties to have access to evidence before the hearing sessions.

**13.** In the exercise of its mandate, the Committee held seven (7) deliberative sessions to consider the matter under review. The Minutes of the adoption session as well as the petition presented to the Committee are annexed to this report. Annex 3: Adoption Minutes.

**14.** The Committee undertook a number of steps to arrive at a decision. During discussions, the Committee relied on Article 159 (2) (d) of the Constitution of Kenya

which provides that: "... justice shall be administered without undue regard to procedural technicalities..."

**15.** This Committee considered the arguments of the Respondent that the Petition ought not to be allowed because the petitioner did not have the right to petition for the removal of H.E. the Governor from office as section 15 (1) of the County Governments Act, 2012 and Standing Order No. 207 of the County Assembly of Bungoma Standing Orders.

**16.** On the issue of sub judice, the Committee established that grounds 2.8 & 3.26 of the petition are before court and two special committees in the assembly and thus could not be prosecuted.

**17.** The Committee relied on the evidence adduced in responses and submissions during the evidence sessions to evaluate the grounds of the petitions.

**18.** The Committee considered the petition presented and the corresponding evidence as submitted by the Petitioners. The Committee deliberated over the narration on each of the allegations as substantiated by the petitioner, evaluated the evidence adduced and made remarks on each allegation. The committee in compliance with article 47 and 50 of the Constitution further gave the respondent's Counsel to make oral submissions with the two witnesses.

## CHAPTER TWO

### SUBMISSIONS BY BARASA NYUKURI KUNDU

#### **2.0 SUBMISSIONS ON VARIOUS GROUNDS AND PARTICULARS OF THE PUBLIC PETITION:**

1. The grounds, particulars and evidence in the Public Petition before the County Assembly of Bungoma, seeks its consideration for possible impeachment and removal of the County Governor of Bungoma, H.E. Wycliffe Wafula Wangamati relate to constitutional and legal parameters, grounds and processes stipulated in various articles of the Constitution of Kenya, 2010 including Articles 1, 2,3,10, 22, 27, 33, 35, 37, 43, 46,47, 47, 48, 50, 73, 74, 74, 118,119, 174, 183, 184,185, 195,196, 201, 226, 227, 232,258 and 259 of the Constitution of Kenya, 2010 as read together with Sections 9, 15, 33, 87, 88 and 96 of the County Governments Act, 2012 and other enabling Legislations.
2. The Public Petition invoked the delegated and indirect authority of the County Assembly of Bungoma to consider impeachment and removal of the County Governor of Bungoma, H.E. Wycliffe Wafula Wangamati pursuant to the provisions and grounds in Article 181 of the Constitution of Kenya, 2010 as read together with Sections 33 of the County Governments Act, 2012, Standing Orders No.60 and 200 of the County Assembly of Bungoma.
3. The grounds and particulars for consideration by the County Assembly of Bungoma and /or its Public Administration & ICT Committee include; ***gross violation of the Constitution of Kenya, 2010, Violation of the Rule of law and Due Process, Abuse Office, Gross Misconduct, Incompetency, Impropriety, Lack of leadership and Integrity.***

4. The Petitioner submits that **Hon. Wycliffe Wafula Wangamati**, the County Governor, Chief Executive Officer and Chairman of the County Executive of Bungoma has on several instances after his election on the 8<sup>th</sup> August 2017 and assumption of Office in the same year, grossly violated the Constitution of Kenya, 2010 and other enabling legislations, including the Public Officers Ethics Act, 2003, Transitional Authority Act, 2013, the Urban Areas and Cities Act, 2011, the County Government Act, 2012, Public Finance Management Act, 2012 and the Leadership & Integrity Act,2012.

5. The Petitioner maintains that Governor Wycliffe Wafula Wangamati grossly violated Article 187 of the Constitution of Kenya, 2010, when he directly influenced the take over the Function and Competences for the Financing and Contract for the Dualling of 6.5Km Kanduyi-Sang'alo Junction (C33) Road Section from an agency of the National Government, without fulfilling the conditionalities that accompany such kind of transfer and or delegation of powers, functions and competences. The said Section of the C33 Road belongs to the Kenya Highways Authority (KeNHA) as stipulated in the Roads Act, 2007. Indeed, Article 187 of the Constitution of Kenya, 2010 stipulates that money must follow the transfer or delegation of power or any function from one level of government to another. This was not the case in the unconstitutional, illegal and irregular transfer of the said Dual Carriage Road.

The Petitioner further maintains that the County Governor of Bungoma, H.E. Wycliffe Wafula Wangamati violated the rule of law by backdating the Contract for the 6.5Km Dual Carriage –Kanduyi- Sang'alo Junction Section of C33 Road from 1<sup>st</sup> October 2019 to 2<sup>nd</sup> October 2018 through the Kenya Gazette Notice No.9982 at Page 4198 dated 25<sup>th</sup> October 2019. There is no single provision in the Constitution of Kenya, 2010 or any other law that allows a state or public officer to back date a Contract for a period of one year. The case of backdating the

Contract for the Dual Carriage Road violated various provisions of the Public Procurement and Disposal Act, 2015 (PPDA), particularly Section 53 and the PPDA Regulations. The irregular transfer of the function and power of KenHA tantamount to amending the provisions of Article 187 of the Constitution of Kenya, 2010 through an advisory opinion published in the said Kenya Gazette. The said road has no bill boarded enacted to provide details about the contractor, engineer and other specifications to the county citizens and general public. This is contrary to universal standards and common practice in road construction and/or maintenance. This is a matter of public interest and should not be shielded or shelved from public discourse by the Committee of Public Administration under the guise of *sub judice* rule in its standing order number 85 since no orders were granted stopping the construction of the dual carriage road.

6. The County Governor failed to adhere to provisions of Article 73 of Chapter 6 of the Constitution of Kenya, 2010 on the Leadership and Integrity by sanctioning illegal,irregular and uncompetitive appointments and selections of unqualified persons in the Office of the Governor of Bungoma against the Criteria and Guidelines and Job Specification and salary scales established by the Salaries and Remuneration and the defunct Transitional Authority. These among others include the Chief of Staff, Protocol Officers, Liaison Officer(s) and other employees based on narrow partisan considerations, contrary to the national values and principles of public services stipulated in articles 10 and 232 of the Constitution of Kenya, 2010.The administrative actions undertaken by Hon. Wycliffe Wafula Wangamati in terms of hiring staff are contrary to provisions of Articles 1, 2,3,4,10,27, 47, 48, 50, 73, 232 of the Constitution of Kenya, 2010. In this context, Article73 in particular outlines the guiding principles of leadership and integrity including selection on the basis personal integrity, competence and suitability of all public appointments and nominations.

7. The Petitioner avers that Hon. Wycliffe Wafula Wangamati has on several occasions abused his Office. He has consistently interfered with the mandate and functions of the County Public Service Board of Bungoma (CPSB), which is an semi-autonomous organ of the County Government anchored in Article 232,235 and Sections 55, 56, 58, 59, 60 to 76 of the County Government Act, 2012, with regard to issues of appointments and transfers of county public service employees. For instance, through the \County Secretarythe Governor deployed the Chairman of the CPSB Mr. Jonathan Nyongesa Namulala as the Acting Chief Officer, Finance and Economic Planning without the approval of the County Assembly of Bungoma in consultation with the CPSB. The said Chair of the CPSB as the face of the Employer is in direct conflict of interest as Acting Chief Officer, Finance and Economic Planning, contrary to provisions of Article 73 of the Constitution of Kenya, 2010 as read together with Sections 45, 58 & 59 of the County Governments Act, 2012, regarding the recruitment process and functions of the Chief Officer, vis-a-viz the Chairman of the County Public Service Board of Bungoma. This is tantamount violation of the rule of law and due process, abuse of office and misconduct on the part of County Governor Wycliffe Wafula Wangamati. Furthermore, the County Governor sanctioned the appointment of Mrs. Phoebe Namukuru Buchunju as the Acting Secretary/ Chief Executive Officer of the County Public Service of Bungoma (CPSB). The County Secretary had no legal authority to appoint or deploy the Chairman of the CPSB as the Acting Chief Officer of Finance & Economic Planning.

8. The Petitioner further submits that Governor Wycliffe Wafula Wangamati abused his Office and usurped the sovereign power of the county citizens by orchestrating and initiating the process collecting signatures to suspend the County Government of Bungoma contrary to constitutional provisions of Articles 1, 2, 3, 10 & 192 as read to read together with Sections 90 and 91 of the County Governments Act, 2012.. The exercise of collection of signature that was sanctioned and sponsored

by Governor Wycliffe Wafula Wangamati using tax payers' resources has not only fueled confusion and uncertainty, but also apathy and a wait and see attitude, among a section of the members of the county assembly, staff and employees of the county government and the general public.

9. There is common information in the media and public domain to state that Governor Wycliffe Wafula Wangamati and a section of his cronies in the County Executive Committee and County Public Service have publicly stated that they will not recognize, respect and/or work with the new leadership of the County Assembly of Bungoma. Indeed, the County Governor does not respect the principle of separation of power as stipulated in various articles of the Constitution of Kenya, 2010, particularly Articles 175, 176, 183, 185, 195 and 196. This has also created suspicion, mistrust, animosity and unnecessary antagonism between the County Executive and the County Assembly.

10. The Petitioner maintains that the County Governor orchestrated the irregular transfers of senior personnel from the County Headquarters to field stations where they have no job descriptions and specification is an abuse of office. The Governor sanctioned the irregular deployment of ward administrators as acting Sub County Administrators in eight sub counties, Human Resource Acting Director, Acting Director Health & Sanitation, for a period of more than six (6) months without dismissal or confirmation. Interestingly, Governor Wycliffe Wafula Wangamati authorized the County Public Service Board to advertise the several jobs, including those positions that already occupied by staff on permanent and pensionable terms. This is violation of the Employment Act, 2007 and Values and Principles of Public Service in Article 232 of the Constitution of Kenya, 2010.

11. The Petitioner maintains that the County Governor sanctioned the illegal and irregular transfer of Quantity Surveyors from the Department of Roads,



Infrastructure and Public Works to the Office of the County Secretary without clear Job Description and Terms of Reference.

**12.** The Petitioner avers that the County Governor sanctioned the creation and/or establishment of illegal offices/organs/structures not recognized in the County Governments act, 2010 such as more than Ten (10) Chief Officers, more than (3) Advisors, Several Members of the Service Delivery Unit (SDU), Directorate of Legal and Cabinet Affairs, Several Protocol Officers, Several Liaison Officers and other staff including the so-called “Corridor Employees”; outside the approved Structure and Organogram of the County Government Public Service of Bungoma. The SDU was created in 2019, almost a year later after the appointment of its members in 2018, which in itself was irregular and un-procedural.

**13.** The massive and irregular recruitment sanctioned by the County Governor has raised Government’s Wage Bill that currently is far beyond the upper ceiling allowed by the Controller of Budgets, Commission on Revenue Allocation and the Senate of the Republic of Kenya. He failed to stick to the Guidelines and procedures for establishing new offices and or creating new positions from the Transitional Authority (TA) to all County Governments in the Republic of Kenya, read together with the County Government Act, 2012. Currently, the County Government of Bungoma has a bloated staff and ballooning Wage Bill of about 52%, which is far beyond the 35% ceiling as per the guidelines of the Salaries and Remuneration Commission (SRC) as read together with Section 107 (2) (a) and (c) of the Public Finance Management Act, 2012.

**14.** The Petitioner maintains that there is a serious crisis in the County Public Service Board and the County Human Resource Directorate regarding payment and confirmation to permanent and pensionable terms of the 463 Casual Workers of the defunct local authorities in April 2020 won a Petition at the Employment and

Labour Court at Kisumu. There is also another group Casual Workers employed after the inception of the devolved system of government in Bungoma, who are yet to be paid their salary arrears for the last 18 or so months. A critical analysis of the list of casual workers reveals that most of them had no letter of appointment as casual workers. The list of 163 Casual Workers in the Office of Governor is irregular and doctored to include individuals who are not directly working as casuals in the County Government of Bungoma, which is violation of the rule of law and an economic crime. The County Assembly Committee of Public Administration and ICT has a responsibility of demanding verifying and authentication of the list of casual workers in the Office of the County Governor before recommending allocation of any money for the payment of their salaries and arrears.

**15.** The Petitioner submits that there is a Report of the Ad-hoc Committee of the County Assembly that was chaired by Hon. Bethwel Mwambu, County Assembly Representative for Mbakalo Ward; that Governor Wycliffe Wafula Wangamati has through proxy used public resources to hire goons to intimidate, harass and assault a section of the members of the county assembly, a section of the leaders of civil society organizations, human rights defenders and journalists who criticize his style of leadership, governance and development of the County. The said Report is in the custody of the Office of the Clerk to the County Assembly of Bungoma and is part of the Hansard Records,

**16.** The Petitioner maintains that Governor Wycliffe Wafula Wangamati has in the past two or so years of his tenure in office been misusing county public resources to solicit services of corridor employees, online goons and keyboard warriors to violate the freedom of expression stipulated in Article 33 of the Constitution of Kenya, 2010. The hired online goons have often engaged in social media abuses, character assassination, name calling, mudslinging, verbal threats and intimidation

of members of the County Assembly, members of the National Assembly, County Woman Representative, Senator, Civil Society Critics, Human Rights Defenders and journalist perceived to be critics and those opposed to his viewpoints on various issues of public interest, regarding critical aspects of oversight, governance, planning, policy, public participation, budget making, employment and remuneration of casual workers, among others concerns.

**17.** The Petitioner avers that Governor Wycliffe Wafula Wangamati has initiated numerous flagship projects without adequate public consultation and sustainable budgetary allocation. To mention but a few of the flagship projects that may not be completed before the next general elections because of budgetary constraints include: Dual Carriage Musikoma-Kanduyi C33 Road, Masinde Muliro Stadium, Milk Processing Plant, among others. Most of these flagship projects won't be completed before the 2022 general elections and will be used as re-campaign gimmicks by the incumbent Governor.

**18.** The Petitioner maintains that the County Executive of Bungoma headed by Governor Wangamati has failed to draft bills, policies, annual budgets and supplementary budgets for approval by the County Assembly of Bungoma, within the statutory timelines. For instance, Annual Budget for the Financial Year for 2020/21 was submitted by the County Executive to the County Assembly just a few days to the statutory dateline of 30<sup>th</sup> June of every Financial Year. The late submission to the County Assembly was done without any meaningful public participation and stakeholder engagements and as well as the input of the civil society organizations and other interested parties. The last minute and/or delayed submission of the Annual Budget for the Financial Year 2020/21, together with the late Submission of the 2<sup>nd</sup> and last Quarter Supplementary budget for the Financial Year 2019/20 is an illustration of the abuse of the rule of law and non-adherence to the due process by Governor Wycliffe Wafula Wangamati and his

County Executive. Indeed, the delayed administrative and executive action of submitting the Annual Budget and Second Supplementary Budget to the County Assembly minus any meaningful public participation is contrary to provisions of Articles 1, 2, 3, 10, 183, 185, 196 as read together with Section 87 and 96 of the County Governments Act, 2012 and Sections 116, 129, 130, 131, 132 & 133 of the Public Finance Management Act, 2012.

**19.** The Petitioner submits that Governor Wycliffe Wafula Wangamati has over-centralized procurement processes in his office contrary to provisions of Article 227 of the Constitution of Kenya, 2010, as read several sections of the Public Finance Management Act, 2012, which stipulates that the Directorate for Procurement and Supply Chain Management should be under the direct supervision of the County Executive Member (CECM) for Finance & Economic Planning and not the Governor or any other entity. This has in turn affected effectiveness and efficiency in procurement of goods and services at the ward and sub county and ward levels. There is a lot of conflict of interest and corruption manifested in various tenders for goods and service such as road infrastructure, bridges, and other major public works and numerous flagship projects because of conflict of interest and incompetency of the procurement and supply chain management under the direct control and supervision of none other than H.E. Governor Wycliffe Wafula Wangamati contrary to directive principles in Article 174 of the Constitution about fair and equitable distribution of power, resources, opportunities and services to a wide cross section of the county citizens.

**20.** The Petitioner further submits that most of the companies that have won major contracts in Bungoma County are based in Nairobi and operated through proxy companies by close allies of the County Governor. The following companies have been awarded more than two road contracts in Bungoma County under suspicious and irregular circumstances: *Winger Limited, Gamma Builders Limited, Mundesi*

*Contractors Limited, Citiehills Enterprise Limited, Sonata Kenya Limited, Netima Enterprises Limited, Session Blue Contractors Limited , Lakezel Enterprises Limited, FASSTEC Suppliers, Nabwaya Contractors , Dachi Ltd, Lexah Holdings Ltd, Pidngich, Kemasha Investments, Nashab Civil Contractor Ltd, Limassol Company Ltd and Earth Care Services Limited.*

**21.** The Governor Wycliffe Wafula Wangamati Regime, Bungoma County has been in the local, national and international news because of runaway corruption and misappropriation of public resources that has affected implementation of projects geared towards addressing the economic and social (ECOSOC) rights enshrined in Article 43 of the Constitution of Kenya, 2010 including the highest attainable standards of health care, including reproductive healthcare, proper sanitation, safe drinking water, food security, education and social security. There is widespread and run away corruption and mismanagement of public resources under Hon. Wangamati Leadership as the Governor of the County Government of Bungoma. That although the County Government of Bungoma is among the top five counties that receive the highest allocation of funds from the National Exchequer but because of runaway corruption and misappropriation there is very little to show in terms of value for tax payers' value for money. Indeed, corruption has deprived citizens of this rich Bungoma County enjoyment of their basic needs, adequate and high quality public services. Most of the projects are ongoing and may not be completed within the Medium Term Expenditure Framework for the period 2018/19 to 2021/22.

**22.** The Petitioner avers that Governor Wycliffe Wafula Wangamati has not put in place any concrete administrative, policy and legislative framework to fight against corruption and mismanagement that he promised the electorates during the highly publicized debate with his competitors at Kibabii University in 2017. That during the election campaigns for the gubernatorial seat of Bungoma, Hon. Wangamati included the fight against corruption and promotion of good

governance as part of the ten bullet points in his election campaign manifesto, but the reality in the operation of his County Executive is different. Indeed, Governor Wangamati has more often than not engaged in public relations exercise and public rhetoric on matters pertaining to the fight against corruption and prudent management of county public resources. He has not shown any verifiable interest and commitment in the fight against corruption and misappropriation of county public funds and other resources.

**23.** The Petitioner submits that the direct procurement of fuel by the County Government from Webmar Petrol Station in Webuye was riddled with illegalities and irregularities, contrary to provisions of Article 227 of the Constitution of Kenya, 2010 as read together with the Public Procurement and Disposal Act, 2015 and its Regulations. The circumstances that led to Direct Procurement and signing of the Framework Contract in January 2020 between the County Government and Webma Petrol Station should be investigated by the County Assembly of Bungoma in collaboration with relevant State agencies.

**24.** The Petitioner submits that the tendency over centralization of procurement of goods and services in the Office of the County Governor is contrary to the directive principle of Articles 174, 201, 226 & 227 as read together with sections, 146, 147, 148, 149 of the Public Finance Management Act, 2012. Indeed, the over centralization of procurement processes in the county government of Bungoma is the anti-thesis of Article 174 of the Constitution of Government, 2010 on the Devolved System of Government. Indeed, the behavior, conduct and actions of Hon. Wycliffe Wafula Wangamati are against the spirit and letter of devolution enshrined in the Constitution of Kenya, 2010 and enabling legislations.

**25.** The Petitioner further submits that Governor Wycliffe Wafula Wangamati as the Chief Executive Officer of the County Government of Bungoma and the overall

Accounting Officer in management of public finances; has been incompetent in performing this constitutional and legal function as stipulated in Sections 147, 148, 149, 151, 152 & 153 of the Public Finance Management Act, 2012. Indeed he has been irresponsible and in this regard, failed to ensure prudent financial management in terms of the bursary fund and scholarship fund.

26. There are several millions of tax payers' money spent by the Office of Governor Wycliffe Wafula Wangamati that is *yet to be accounted for and/or surrendered*, which was withdrawn from the bank accounts of the County Government of Bungoma vide several imprest warrants majorly by his Office, Office of His Deputy, County Secretary, *Chief Officer in the Office of the Governor, Mr. Denson Barasa and other officers in his County Executive Arm of the County Government. The following is a list of selected imprest warrants that are yet to be surrendered and cleared by the imprest holders in the office of the Governor of Bungoma County:*

S/No.	DATE APPLIED	ITEM CODE	IMPREST WARRANT No.	REMARKS BY THE RELEVANT AUTHORITY ON THE SURRENDER & CLEARANCE STATUS OF THE IMPREST HOLDER
1	15.10.2019	2210303	3544857	
2	19.11.2019	2210802	3856253	
3	11.04.2019	2210802	3551638	
4	22.11.2019	2210303	3856272	
5				

	12.03.2019	2210802	3882957	
6	11.11.2019	2210802	3856251	
7	16.12.2019	2210710	3882962	
8	12.03.2019	2210802	3856280	
9	25.09.2019	2210710	2544861	
10	19.11.2019	2210802	3856265	
11	22.11.2019	2210802	3170627	
12	27.12.2019	2211306	3882967	
13	30.12.2019	2210306	3882968	
14	17.12.2019	2210801	3882966	
15	22.11.2019	2210303	5856274	
16	19.12.2019	2210801	3882965	
17	22.11.2019	2210303	3856273	
18	14.10.2019	2210309	3551642	

**27.** The Petitioner maintains that Governor Wycliffe Wafula Wangamati chaired a County Executive Committee (Cabinet ) Meeting that approved and sanctioned the illegal and irregular borrowing as well as misappropriation of funds from Bungoma County Referral Hospital (BCRH) to the tune of KES 6,986,000/- and Webuye Sub County Hospital (WSCH) to the tune of KES 5,000,000/- .The



aforementioned amount of money which was borrowed from the Department of Health and Sanitation to Finance and Economic Planning was contrary to the directive principle stipulated in section 154 of the Public Finance Management Act, 2012 as read together with PFMA Regulation Number 147. The impugned money became the subject for investigation by the Health Committee of the County Assembly of Bungoma. The Report dated May 2020, Titled “Un-procedural Transfer of Funds from Bungoma Referral Hospital and Expenditure Touching on Covid 19 Mitigation and Other Financial Malpractices in the County Government of Bungoma should not be shielded and shelved by the Committee of Public Administration and ICT under the guise of *sub-judicere* as it is a matter of great public interest and concern. The county citizens of Bungoma and general public have an interest to know what became of the recommendations of the Health Committee regarding individuals that were found culpable in the misuse of Covid 19 funds. It is instructive to note that the said Health Committee Report contradicts Governor Wycliffe Wafula Wangamati Official Press Statement released on 11<sup>th</sup> April 2020. During his Press Release at the Compound of the Office of the Governor, he stated that no money was lost and that the 20 litre Jerricans did not cost each KES 10,000/- ;were donations from well-wishers that he (Governor Wycliffe Wafula Wangamati) is yet to name the Donor of Covid 19 Water Jerricans or inform the County Assembly, Residents of Bungoma and general public, contrary to provisions of Article 76 of the Constitution of Kenya, 2010 that requires full declaration and disclosure of any gift or donation given to any State Officer or Public Officer.

- 28.** It is in the public domain that Governor Wycliffe Wafula Wangamati is yet to implement the recommendations of the County Assembly of Bungoma Health Committee Covid Report of May 2020 with regard suspension and/or sacking to staff members who were found culpable of illegally and irregularly transferring money from Bungoma County Referral Hospital to the Department of Finance and

Economic Planning and those who misappropriated money meant for Covid 19 Pandemic. The implicated staff is still in Office courtesy of the undue influence, abuse of office and impunity of the County Governor.

**29.** The Petitioner assert that the County Executive under the leadership of H.E. Governor Wycliffe Wafula Wangamati has spent the emergency funds in disguise of fighting against Covid 19 from the emergency kit without appropriation and re-allocation by the County Assembly through a supplementary budget contrary to provisions of Sections 110, 111,112, 113, 114,115 and 116 of the Public Finance Management Act, 2012.*The* County Assembly Committee of Public Administration & ICT can on its own motion verify the authenticity or otherwise of this assertion, makes a determination and arrive at a logical conclusion on this matter of expenditure on Covid 19.

**30.** The Petitioner avers that Governor Wycliffe Wafula Wangamati is yet to inform the County Assembly and the Residents of Bungoma on why the KES 350 Million from the Industrial Park Vote head was diverted or re-allocated to other use without public participation and County Assembly approval. This is a typical example of misappropriation and mismanagement of the county public resources by the Governor.

**31.** The County Governor is yet to explain to the residents of Bungoma County why and how the County Executive has utilized the World Bank grants for Bungoma and Kimilili Municipal Boards without the involvement of the Municipal Board Members in the Financial Years 2018/19 and 2019/20. The CECM Lands, Urban/Physical Planning & Housing is yet to release most of the functions assigned to the Municipal Boards contained in the Municipal Charters. The Municipal Board Members are yet to implement those functions stipulated in the Urban Areas and Cities Act, 2011 (Amended 2019).

**32.** The Petitioner submits that according to the PFM Act, Section 147 (1) Subject to the Constitution of Kenya, 2010, the accounting officer (*read Chief Executive Officer of the County or County Governor Wycliffe Wafula Wangamati*) of a County Government shall monitor, evaluate and oversee the management of their public finances, including—

- (a) *promoting and enforcing transparency, effective management and accountability with regard to the use of their finances;*
- (b) *ensuring that accounting standards are applied,*
- (c) *implementing financial policies in relation to their finances;*
- (d) *ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources;*
- (e) *preparing annual estimates of expenditures;*
- (f) *acting as custodian of the entity's assets except as may be provided by other legislation or the Constitution;*
- (g) *monitoring the management of their finances and their financial performance;*
- (h) *reporting regularly to the county assembly on the implementation of their budget; and*
- (i) *take such other action, not inconsistent with the Constitution, as will further the implementation of the Public Finance Management Act, 2012.*

**33.** The County Governor as the Overall Accounting Officer of the County Government of Bungoma as implied by Section 149 of has failed ensure that the resources of the County are used in a way that is lawful and authorized; and effective, efficient, economical and transparent in line with the procurement and expenditure plan contained in the medium term fiscal framework and financial

objectives of the county Government of Bungoma, including employment and human resource capacity building and succession management.

**34.** The Petitioner avers that Governor Wycliffe Wafula Wangamati failed to adhere to the procurement laws and procedures stipulated in Article 227 of the Constitution of Kenya, 2010 and the Public Procurement and Disposal Act 2005 (Amended 2015), when he authorized and/or presided over direct procurement of free fertilizer under the free farm input project initiative of the County Government of Bungoma worthy millions of shillings in the Financial Year 2017/18 and 2019/20. The Governor has failed to ensure that all applicable procurement and accounting procedures are followed when acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance.

**35.** The Petitioner submits that the County Governor is yet to officially receive the Land Taskforce Report chaired by former Member of Parliament for Kanduyi Constituency Hon. Lawrence Sifuna. Indeed, Governor Wycliffe Wafula Wangamati appointed commissioned and authorized allocation of several millions of Tax Payers Money to the said Taskforce in February 2019 and up to date there is no Report has been officially received by the County Executive Committee or the County Assembly for reasons that should be explained by the Governor, CECM Lands, Chief Officer Lands, Taskforce Chairman and Members before this Committee of Public Administration & ICT or any other relevant County Assembly Committee. Information from the County Assembly PAC Report for the Financial Year 2018/19 and Quarterly Reports indicate that Governor Wycliffe Wafula Wangamati authorized and/or sanctioned the purchase of Public Land for the Chebukube Market Informal Traders at the cost of KES 81,000,000/- which is far above the current market rate of One Acre of Land in Bungoma County. The

Petitioner is wondering why the County Government of Bungoma used tax payers money to purchase public land.

**36.** The Petitioner further submits that Governor Wycliffe Wafula Wangamati sanctioned and/or authorized the construction of the Milk Processing Plant on a Parcel of Land that is owned by another entity or institution other than the County Government of Bungoma. That the said land belongs to the Nzoia Water Company (NZOWASCO) which is under the auspices of Lake Victoria North Board. The said Project does not have a distinct LR Parcel Number, Official Land Search Certificate and the Green Card. It also does not have a Site Plan. In addition the Milk Processing Plant does not have all statutory approvals including – National Environmental Management Authority (NEMA) and National Construction Authority (NCA), among others. As a result of the foregoing pitfalls the Milk Processing Plant may upon its completion become dormant and a waste of public resources because of the potential dispute and conflict over the parcel of land that belongs to another institution.

**37. THAT** Governor Wycliffe Wafula Wangamati lacks the requisite leadership and integrity values to continue holding the esteemed Office of the Governor of County Government of Bungoma as stipulated in Article 73 of Chapter Six of the Constitution of Kenya, 2010. He has on several occasions resorted to unorthodox methods, including direct and indirect verbal manipulations and threats, intimidation, bribery and other forms of undue influence to some members of the County Assembly, civil society and media who are critical of his leadership style.

**38.** From the foregoing submission the Petitioner can infer that Hon. Governor, Wycliffe Wafula Wangamati does not have the leadership, integrity and moral authority to remain in the esteemed Office of the Governor of the County Government of Bungoma and therefore his continued stay in office as the Governor is untenable. It is the subjective observation of the Petitioner to observe

that the County Governor manages the affairs of the County Government of Bungoma as if was his personal property and/or private business company limited.

**39.**I lastly submit that the County Assembly Committee of Public Administration and ICT consider the possibility of initiating an impeachment and removal process of H.E. Wycliffe Wafula Wangamati from the Office of the Governor of the County Government of Bungoma.

## **2.1 RESPONDENT’S SUBMISSIONS- (represented by Mr. Makhakara of M/S. H. M.WASILWA & CO. ADVOCATES)**

### **EXECUTIVE SUMMARY**

- The Nature, Scope and Utility of Public Interest petition in the Commonwealth Parliamentary Practice
  - Introduction: Constitutional, Statutory and Regulatory Framework for the Processing of a Public Interest Petition
  - The Petition
  - The Response
  - The Proceedings
  - Issues for Determination By the Committee
    - a) The Jurisdiction of the Sectoral Committee;
    - b) Whether the Petition discloses violations of the Constitution, Statute or other Law that amounts to Gross Violation of the Constitution or abuse of Office;
    - c) Whether the removal from office of a Governor can be the proper mandate of a Public Interest Petition within the intendment of Section 15 (1) of the County Governments Act
    - d) What actions commend themselves to the Committee in its Report to the Petitioners.
- 1.1 The Nature, Scope and Utility of Public Interest petition in the Commonwealth Parliamentary Practice

a) The Right to entreaty a Public Authority by way of a Petition is enshrined in Article 1(1) of the CoK2010 stated thus:

..sovereign power shall be exercised in accordance with this Constitution

b) The Manner by which that sovereign power may be exercised is

(the power ) may be exercised directly or through their democratically elected representatives..”

c) The constitutional Junction created by Article 2 and begs the question:

Where the constitution provides a power or procedure to a specific organ or person, can that power or procedure be exercised by a citizen directly and independently of the organ upon whom such power is delegated by the Constitution?

d) Applying the above test to the Petition before this Committee, it is doubtful whether the power to initiate the removal of a governor is shared between a citizen and a member of the County Assembly

e) To understand the answer to the above question one must look at the precise wordings relating the power to remove from office of comparative state officers

(i) The Senate is empowered by Article 96(4) CoK to

“Consider and determine any resolution to remove the President or Deputy President from office ...;”

This power of removal from office is restricted to a member of the Member of the National Assembly by Article 144(1) where-under the action is initiated by a Motion in the National Assembly

This power conferred to a Member of the National Assembly is not shared with a citizen; a citizen cannot despite Article 1(1) or the right to Petition Public Authorities initiates the removal of the President or his Deputy from Office.



That is what is meant by the right may be exercised in accordance with this constitution

(ii) In contrast, the power to remove from office of a Judge is by Article 168(2) and (3) of shared between the Judicial Service Commission and a citizen

1.2 The provisions of SO No 203 require the County Assembly to

Indicate whether any efforts have been made to have the matter addressed by a relevant body or whether the response has been unsatisfactory

See SO 203(f) which imports the principle of Restraint & Exhaustion

Indicate whether the issues in respect of which the petition is made are pending before any court of law or other constitutional body

SO 203(g) Res Sub Judice

1.3 This Committee is invited to consider the options available to it in making a Report, namely

- a) Recommending to the CPSB Sanction of an officer where there is infringement, or surcharge where there is misappropriation;
- b) Reprimand
- c) Corrective or remedial measure of an administrative nature or where there are gaps in statutory or legislative framework, Legislation or Policy Shifts
- d) The need for institutional continuity
- e) Restraint; for instance deference to the Public Service Commission or the Labor Relations Court to deal with grievances on Labor or recruitment of staff or Article or the Public Procurement Tribunal to deal with grievances on tenders and contracts

1.4 What this Committee can do with this petition ultimately is prescribed by its own standing orders as:

To respond to the petitioner by way of a Report...laid on the Table of the County Assembly

See SO No. 207(2)

## CHAPTER THREE

### 3.0 COMMITTEE'S ANALYSIS OF EVIDENCE; ORAL AND WRITTEN SUBMISSIONS

#### 3.1: GROSS VIOLATION OF THE CONSTITUTION OF KENYA 2010

- a) The petitioner alleged that the Governor grossly violated Article 187 by directly influencing the takeover the Function and Competences for the Financing and Contract for the Dualling of 6.5Km Kanduyi-Sang'alo Junction (C33) Road Section from an agency of the National Government, without fulfilling the conditionalities that accompany such kind of transfer and or delegation of powers, functions and competences and backdating the date of the contract.

**The Committee observed that the petitioner had neither provided the conditionalities that accompany the delegation of power nor the particulars of the documents indicating the backdating of the contract. The Committee could not therefore make an informed determination on the matter.**

**The Committee noted that the petitioner did not demonstrate how the Governor directly influenced the takeover of the function and competencies for the financing and contract for the dualling of Kanduyi-Sang'alo road. He did not provide any evidence to link the governor to the allegation.**

**The evidence adduced was insufficient to sustain the statement.**

- b) The petitioner alleged that the Governor grossly violated Article 73 of Chapter 6 of the Constitution of Kenya, 2010 on the Leadership and Integrity by sanctioning illegal, irregular and uncompetitive appointments and selections of unqualified persons in the Office of the Governor of Bungoma against the Criteria and Guidelines and Job Specification and salary scales established by the Salaries and Remuneration and the defunct Transitional Authority. These among others include

the Chief of Staff, Protocol Officers, Liaison Officer(s) and other employees based on narrow partisan considerations, contrary to the national values and principles of public services stipulated in articles 10 and 232 of the Constitution of Kenya, 2010.

**The committee noted that the petitioner did not provide the nexus between the Governor and the appointments and selections of persons in the office of the Governor. The committee noted that the CPSB is mandated to establish offices and appoint officers pursuant to provisions of the County Governments Act, 2012 60(b).**

**The Respondent's evidence documents submitted to the committee indicate that the County Secretary and Head of Public Service signed the appointing letters. The petitioner did not provide any document proving that the Governor sanctioned any appointments in his office.**

### **3.1.1 THRESHOLD FOR GROSS VIOLATION OF THE CONSTITUTION-**

In the Supreme Court of Nigeria case of Hon. Muyiwa Inakoju & others –v- Hon. Abraham Adeolu Adedeke S.C. 272 of 2006, it was held as follows:

*“A Governor as a human being cannot always be right and he cannot claim to be always right. That explains why section 188 talks about gross violations. Accordingly, where misconduct is not gross, then section 188 weapon of removal is not available to the House of Assembly.”*

It is useful to note the various meanings of the word “gross” in relation to violation. Gross violation is a flagrant violation, a glaring error, nasty, unpleasant, vulgar or crass. It must be a severe transgression of the Constitution or a law.

In Kenya, it is useful to note the provision of Article 73 of the Constitution which deals with the responsibilities of leadership:

### ***Responsibilities of leadership***

**73.** (1) *Authority assigned to a State officer—*

*(a) is a public trust to be exercised in a manner that—*

*(i) is consistent with the purposes and objects of this Constitution;*

*(ii) demonstrates respect for the people;*

*(iii) brings honour to the nation and dignity to the office; and*

*(iv) promotes public confidence in the integrity of the office; and*

*(b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.*

*(2) The guiding principles of leadership and integrity include—*

*(a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;*

*(b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;*

*(c) selfless service based solely on the public interest, demonstrated by—*

*(i) honesty in the execution of public duties; and*

*(ii) the declaration of any personal interest that may conflict with public duties;*

*(d) accountability to the public for decisions and actions; and*

*(e) discipline and commitment in service to the people.*

In Petition No. 3 of 2014 **Hon. Martin Nyagah Wambora & 4 others –v- The Speaker of the Senate and 5 others**, the High Court held as follows:

*“To our minds therefore, whether a conduct is gross or not will depend on the facts of each case having regard to the Article of the Constitution or any written law alleged to have been violated. We find that it is not every violation of the Constitution or written law that can lead to the removal of Governor, it has to be a gross violation.”*

The question therefore is how to measure what constitutes gross violation. We are of the view that the standard to be used does not require a mathematical formula, but it must

take into account the intendment of Article 181(1) of the Constitution. In our view therefore whatever is alleged against a Governor must;

(a) be serious, substantial and weighty.

(b) there must be a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.

The charges as framed must state with a degree of precision the Article(s) or even Sub-Articles(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated.”

The issue of the threshold for impeachment is complex and does not contain a simple mathematical formula. During the Senate’s consideration of the report of the Special Committee investigating the removal of the Governor of Kericho on 3<sup>rd</sup> June 2014, the Senate adopted the Committee’s recommendation that the threshold for impeachment should take into account the following considerations-

- (i) **The allegations must be serious, substantial and weighty;**
- (ii) **The violation must be a flagrant and glaring violation;**
- (iii) **There must be a nexus between the violation and the Governor;**
- (iv) **The violation must have led to harm, loss or damage to society;**
- (v) **The violation must have led to a loss of dignity in the office held and loss of confidence or trust in the person holding office to carry out the functions of that office with integrity and accountability.**

The threshold was also used by the Senate in the subsequent consideration of the proposed removal from office, by impeachment, of Honorable Mwangi wa Iria, the Governor of Murang’a County in November, 2015.

**The committee noted that the allegations against the Governor on the ground of gross violation of the Constitution were not serious, substantial and weighty and the petitioner did not demonstrate the nexus between the Governor and the alleged gross violations. The evidence adduced was insufficient to sustain the allegations.**

### **3.2: VIOLATION OF THE RULE OF LAW, ABUSE OF OFFICE AND MISCONDUCT**

- a)* The Petitioner submitted that the Governor abused his Office and usurped the sovereign power of the county citizens by orchestrating and initiating the process collecting signatures to suspend the County Government of Bungoma contrary to constitutional provisions of Articles 1, 2, 3, 10 & 192 as read together with Sections 90 and 91 of the County Governments Act, 2012. He further averred that the exercise of collection of signature that was sanctioned and sponsored by the Governor using tax payers' resources has not only fueled confusion and uncertainty, but also apathy and a wait and see attitude, among a section of the members of the county assembly, staff and employees of the county government and the general public. (**Allegations 2.1, 2.2 and 2.3 of the petition**)

**The committee noted that the petitioner did not demonstrate that the Governor orchestrated and initiated the process of collecting signatures to suspend the County Government. However, the committee takes cognizance of some media reports attributed by some top County Government officials.(pg. 37- 40 of the petitioner's evidence).**

**The petitioner did not submit any documents as proof that the Governor sanctioned and sponsored the collection of signatures.**

**The evidence adduced was insufficient to sustain the statement.**

- b)* The petitioner submitted that the Governor does not respect the principle of separation of powers as stipulated in various articles of the Constitution of Kenya, 2010, particularly Articles 175, 176, 183, 185, 195 and 196. He averred that there was common information in the media and public domain to state that the Governor and a section of his cronies in the County Executive Committee and County Public Service have publicly stated that they will not recognize, respect

and/or work with the new leadership of the County Assembly of Bungoma. He affirmed that this has also created suspicion, mistrust, animosity and unnecessary antagonism between the County Executive and the County Assembly. (**Allegation 2.4 of the petition**)

**The committee noted that the petitioner did not submit documentary evidence to prove this allegation.**

**The committee notes that the county government has its own internal dispute solving mechanism hence the petitioner cannot act on behalf of the County Assembly.**

**The evidence adduced was insufficient to sustain the statement.**

- c) The Petitioner avers that the Governor has on several occasions abused his Office by consistently interfering with the mandate and functions of the County Public Service Board of Bungoma (CPSB), which is a semi-autonomous organ of the County Government anchored in Article 232,235 and Sections 55, 56, 58, 59, 60 to 76 of the County Government Act, 2012, with regard to issues of appointments and transfers of county public service employees.

The petitioner submitted that through the County Secretary, the Governor deployed the Chairman of the CPSB Mr. Jonathan Nyongesa Namulala as the Acting Chief Officer, Finance and Economic Planning without the approval of the County Assembly of Bungoma in consultation with the CPSB.

Furthermore, the County Governor sanctioned the appointment of Mrs. Phoebe Namukuru Buchunju as the Acting Secretary/ Chief Executive Officer of the County Public Service of Bungoma (CPSB). The County Secretary had no legal authority to appoint or deploy the Chairman of the CPSB as the Acting Chief Officer of Finance & Economic Planning. (**Allegation 2.5 and 2.6 of the petition**)

**The committee noted that the chair of the CPSB acting as Chief Officer, Finance and Economic Planning, was in direct conflict of interest and**



**contrary to provisions of Article 73 of the Constitution of Kenya, 2010 as read together with Sections 45, 58 & 59 of the County Governments Act, 2012.**

**The committee equally notes that: The appointment of Mr. Jonathan Namulala to act as Chief Officer Finance was un-procedural as alleged by the petitioner. However, the petitioner failed to provide evidence to show that the appointment was done by the Governor. The committee further notes that the same was initiated and executed by the CPSB.**

**Subsequently, the secondment of Ms. Phoebe Buchunju to act as the CEO County Public Service Board was also un-procedural.**

- d) The petitioner did not submit on the allegation 2.7 and 2.8 of the petition. The committee noted that during the cross –examination of the first witness of the Respondent by the Counsel, it was discovered that there was no officer in the County Government by the name **Mr. Alex Momanyi**: and that there was no link between the said officer and the CECM Roads, Infrastructure and Public Works. Additionally, the petitioner did not submit documentary evidence to sustain this allegation.
- e) The Petitioner submitted that the Governor orchestrated the irregular transfers of senior personnel from the County Headquarters to field stations where they had no job descriptions and specification is an abuse of office. The petition averred that the Governor sanctioned the irregular deployment of; Ward Administrators as acting Sub County Administrators in eight sub counties, Human Resource Acting Director, Acting Director Health & Sanitation, for a period of more than six (6) months without dismissal or confirmation.

The petitioner further submitted that the Governor authorized the County Public Service Board to advertise for the several jobs, including those positions that were already occupied by staff on permanent and pensionable terms. This is violation of the Employment Act, 2007 and Values and Principles of Public Service in Article 232 of the Constitution of Kenya, 2010.

(Allegation 2.9 of the petition)

**The committee noted that the petitioner did not submit any documentary evidence to demonstrate that the Governor orchestrated the transfers and authorized the CPSB to advertise jobs.**

**The petitioner did not submit to the committee the extent of irregularity of the transfers.**

**The evidence adduced was insufficient to sustain the statement.**

**With regard to allegation 2.10 and 2.11 of the petition, the petitioner did not file any submission. The committee noted that the petitioner was not particular on the four (4) Chief Officer positions and the Directors mentioned in the petition. In addition the petitioner failed to demonstrate the incompetency of the Governor on the matter.**

- f) The Petitioner submitted that the Governor sanctioned the illegal and irregular transfer of Quantity Surveyor from the Department of Roads, Infrastructure and Public Works to the Office of the County Secretary without clear Job Description and Terms of Reference. (Allegation 2.12 of the petition)

**The committee noted that the deployment of the County Quantity Surveyor was undertaken by the County Secretary and Head of Public Service pursuant to the provisions of Section 72(2) of the CGA 2012.**

**The petitioner did not demonstrate that the Governor sanctioned the transfer.**

**The evidence adduced was insufficient to sustain the statement.**

- g) The Petitioner avers that the County Governor sanctioned the creation and establishment of illegal offices not recognized in the County Governments Act, 2012 such as -more than Ten (10) Chief Officers, more than (3) Advisors, Several Members of the Service Delivery Unit (SDU), Directorate of Legal and Cabinet Affairs, Several Protocol Officers, Several Liaison Officers and other staff including the so-called “Corridor Employees”; outside the approved Structure and Organogram of the County Government Public Service of Bungoma. The SDU

was created in 2019, almost a year later after the appointment of its members in 2018, which in itself was irregular and un-procedural. (**Allegation 2.13 of the petition**)

**The committee noted that the petitioner did not demonstrate that the Governor sanctioned the creation and establishment of the offices.**

**With regard to the SDU, the committee observes that in a communiqué of the sixth devolution conference from 4<sup>th</sup> to 8<sup>th</sup> March, 2019, in Kirinyaga County, the conference resolved that “County Governments shall, in the next one(1) year, establish County Service Delivery Units to monitor development projects”(Respondent’s Document Pg37)**

**The committee further observes that Section 60 (b) of the County Government Act, 2012 stipulates that: “The County Public Service Board shall establish a public office within the county public service if it is satisfied that— (b) there exists no other public office in the county public service discharging or capable of discharging the duties for which the county is requested to establish another office;**

**With regard to the Service delivery unit creation, the CECM Public Service Management and Administration, appearing as a witness in the proceedings; affirmed that indeed his office wrote to the CPSB on 31<sup>st</sup> October 2019 on the creation of the Governor’s Service unit. (Annexed on Pg. 34 of the Respondent’s document) However the CPSB had not responded to the request by the time of his appearance before the committee.**

**The CECM verbally confirmed under oath that the CPSB had not responded to the request by the CECM Public Service Management and Administration on the regularization of the appointment of the Service Delivery Unit members.**

**The Governor’s appointment of the Service Delivery unit as per the press release letters dated 29<sup>th</sup> August 2018 and submitted as annex pg. 37-41 of the petitioner’s evidence document.**

**The Governor acted in contravention of Section 60(b) of the County Governments Act, 2012 on appointment of the SDU to a unit that had not been established by the CPSB.**

**The evidence adduced on this ground was sufficient to sustain the statement.**

- h)* The petitioner submitted that the massive and irregular recruitment sanctioned by the Governor has raised the Government's Wage Bill that currently is far beyond the upper ceiling allowed by the Controller of Budgets, Commission on Revenue Allocation and the Senate of the Republic of Kenya. The petitioner alleges that the Governor failed to stick to the Guidelines and procedures for establishing new offices and or creating new positions from the Transitional Authority (TA) to all County Governments in the Republic of Kenya, read together with the County Governments Act, 2012.

Currently, the County Government of Bungoma has a bloated staff and ballooning Wage Bill of about 52%, which is far beyond the 35% ceiling as per the guidelines of the Salaries and Remuneration Commission (SRC) as read together with Section 107 (2) (a) and (c) of the Public Finance Management Act, 2012.

**(Allegation 2.14 and 2.15 of the petition)**

**The committee noted that:**

**The petitioner did not submit documents to demonstrate and quantify the massive and irregular appointments.**

**The petitioner did not demonstrate that the Governor sanctioned the alleged massive and irregular appointments.**

**The Governor has no direct role in implementation of the circulars and guidelines on employment and that the responsibility lies with the CPSB and the County Secretary and Head of Public Service.**

**The petitioner cited wrong provisions providing for the 35% as maximum wage bill.**

i) The Petitioner submits that there is a serious crisis in the County Public Service Board and the County Human Resource Directorate regarding payment and confirmation to permanent and pensionable terms of the 463 Casual Workers of the defunct local authorities in April 2020 won a Petition at the Employment and Labour Court in Kisumu. The petitioner avers that there is also another group of Casual Workers employed after the inception of the devolved system of government in Bungoma, who are yet to be paid their salary arrears for the last 18 or so months. The list of the 163 casual workers in the Office of Governor is irregular and doctored to include individuals who are not directly working as casuals in the County Government of Bungoma, which is violation of the rule of law and an economic crime. **(Allegation 2.16 and 2.17 of the petition)**

**The committee noted that the petitioner did not submit an authenticated list of casuals in the county for verification.**

**The matter is still before court (Employment and Labour relations court at Bungoma, Petition No 1 of 2019) and the committee is constrained by the relevant statutes not to deliberate on the same pursuant to S.O No 85.**

j) The Petitioner submits that there is a Report of the Ad-hoc Committee of the County Assembly that was chaired by Hon. Bethwel Mwambu, County Assembly Representative for Mbakalo Ward; that the Governor has through proxy used public resources to hire goons to intimidate, harass and assault a section of the members of the county assembly, a section of the leaders of civil society organizations, human rights defenders and journalists who criticize his style of leadership, governance and development of the County. The said Report is in the custody of the Office of the Clerk to the County Assembly of Bungoma and is part of the Hansard Records. **( Allegation 2.18 and 2.19 of the petition)**

**The committee observes that indeed an Ad-hoc committee chaired by Hon. Bethwel Mwambu was formed to investigate intimidation and harassment of**

some Members of the County Assembly and the report was tabled and adopted by the House.

The Respondent's submission further confirms that disciplinary action was initiated on the perpetrators of the crimes.

The committee however noted that the petitioner did not demonstrate the involvement of the Governor in the actions; neither did he submit any documents as proof that public resources were used to hire the perpetrators of the actions.

### **3.3: IMPROPRIETY OF THE COUNTY GOVERNOR**

- a) The Petitioner avers that the Governor has initiated numerous flagship projects without adequate public consultation and sustainable budgetary allocation. Among them: Dual Carriage Musikoma-Kanduyi C33 Road, Masinde Muliro Stadium and Milk Processing Plant. The petitioner alleges that most of these flagship projects won't be completed before the 2022 general elections and will be used as re-campaign gimmicks by the incumbent Governor. (**Allegation 3.1 and 3.2 of the petition**)

With regard to the allegation that the Governor launched and started many major projects such as dual carriage from Musikoma to Kanduyi worth Ksh. 1.3 billion, Masinde Muliro Stadium worth Ksh. 700 million and Webuye Milk plant worth Ksh. 350 million without financial provisions, the committee noted that fiscal documents for the FY 2018/19 and FY 2019/20 indicated budgetary allocations for the aforementioned projects.

The committee further recognized during cross examination by the respondent's counsel, that the petitioner was a lead consultant in the public participation programs that generated the second generation CIDP 2018-2022

**which provided the details of the flagship projects abovementioned, the fact that the petitioner did not deny.**

**The petitioner did not demonstrate the allegation that the flagship programs would not be completed before the 2022 general elections.**

**The evidence adduced was insufficient to sustain the statement.**

- b) The Petitioner submitted that the County Executive of Bungoma headed by Governor Wangamati has failed to draft Bills, Policies, Annual budgets and Supplementary budgets for approval by the County Assembly of Bungoma, within the statutory timelines.

**(Allegations 3.1. to 3.12 of the petition)**

**The committee notes that the legislative proposals are always prepared by the respective CECMs who have expressed laxity in submission of Bills and statutory documents beyond the stipulated time.**

- c) The Petitioner submitted that the Governor has over-centralized procurement processes in his office contrary to provisions of Article 227 of the Constitution of Kenya, 2010, as read with several sections of the Public Finance Management Act, 2012

The Petitioner further submitted that most of the companies that have won major contracts in Bungoma County are based in Nairobi and operated through proxy companies by close allies of the County Governor. The following companies have been awarded more than two road contracts in Bungoma County under suspicious and irregular circumstances: *Winger Limited, Gamma Builders Limited, Mundesi Contractors Limited, Citiehills Enterprise Limited, Sonata Kenya Limited, Netima Enterprises Limited, Session Blue Contractors Limited, Lakezel Enterprises Limited, FASTEC Suppliers, Nabwaya Contractors, Dachi Ltd, Lexah Holdings Ltd, Pidngich, Kemasha Investments, Nashab Civil Contractor Ltd, Limassol Company Ltd and Earth Care Services Limited.* **(Allegation 3.13 of the petition)**

**The petitioner did not submit documentary evidence (CR 12 for the alleged companies) to demonstrate that the Governor operated through the proxy companies aforementioned.**

- d) The petitioner submitted that the Governor's regime has been in the local, national and international news because of runaway corruption and misappropriation of public resources that has affected implementation of projects geared towards addressing the economic and social (ECOSOC) rights enshrined in Article 43 of the Constitution of Kenya, 2010. The Petitioner averred that the Governor has not put in place any concrete administrative, policy and legislative framework to fight against corruption and mismanagement.

The petitioner alleged that the Governor has more often than not engaged in public relations exercise and public rhetoric on matters pertaining to the fight against corruption and prudent management of county public resources. He has not shown any verifiable interest and commitment in the fight against corruption and misappropriation of county public funds and other resources. **(Allegation 3.14 to 3.20)**

*The petitioner did not submit any audio or documentary evidence to substantiate the allegations.*

- e) The Petitioner submits that the direct procurement of fuel by the County Government from Webmar Petrol Station in Webuye was riddled with illegalities and irregularities, contrary to provisions of Article 227 of the Constitution of Kenya, 2010 as read together with the Public Procurement and Disposal Act, 2015 and its Regulations.

The Petitioner further submitted that the tendency of over centralization of procurement of goods and services in the Office of the County Governor is



contrary to the directive principle of Articles 174, 201, 226 & 227 as read together with sections, 146, 147, 148, 149 of the Public Finance Management Act, 2012. **(Allegation 3.21 to 3.23 of the petition)**

**The committee notes that the petitioner's citations do not fall under the purview of Public Procurement. Similarly, the petitioner was not able to substantiate that the county vehicles of Bungoma are directed to fuel only in total petrol station. However, the respondent was able to demonstrate that county government vehicles are authorized to fuel from any total petrol station across the country.**

- f) The Petitioner further submits that the Governor as the Chief Executive Officer of the County Government of Bungoma and the overall Accounting Officer in management of public finances; has been incompetent in performing this constitutional and legal function as stipulated in Sections 147, 148, 149, 151, 152 & 153 of the Public Finance Management Act, 2012. Indeed he has been irresponsible and in this regard, failed to ensure prudent financial management in terms of the bursary fund and scholarship fund. **(Allegation 3.24 of the petition)**

**The committee notes that the petitioner has quoted wrong citations; the respondent is not a designated accounting officer as provided for by the citations of the petitioner.**

- g) There are several millions of tax payers' money spent by the Office of the Governor is *yet to be accounted for and/or surrendered*, which was withdrawn from the bank accounts of the County Government of Bungoma vide several imprest warrants majorly by his Office, Office of His Deputy, County Secretary, *Chief Officer in the Office of the Governor, Mr. Denson Barasa and other officers in his County Executive Arm of the County Government. The following is a list of selected imprest warrants that are yet to be surrendered and cleared by the imprest holders in the office of the Governor of Bungoma County:*

**The committee noted that the petitioner did not demonstrate the link between the Governor and the un-surrendered imprests given that the Governor is not the accounting officer of the mentioned offices.**

**The committee further noted that the petitioner did not submit approved fiscal documents to ascertain the claim of millions of the imprests.**

- h) The Petitioner submitted that the Governor chaired a County Executive Committee (Cabinet ) Meeting that approved and sanctioned the illegal and irregular borrowing as well as misappropriation of funds from Bungoma County Referral Hospital (BCRH) to the tune of KES 6,986,000/- and Webuye Sub County Hospital (WSCH) to the tune of KES 5,000,000/-.The aforementioned amount of money which was borrowed from the Department of Health and Sanitation to Finance and Economic Planning was contrary to the directive principle stipulated in section 154 of the Public Finance Management Act, 2012 as read together with PFMA Regulation Number 147. ( **Allegation3.26 of the petition**)

**The committee noted that the matter was sub-judice (Employment and Labour Relations Court at Kisumu- Petition no 23 of 2020) and could not be deliberated upon pursuant to the provisions of Standing order No. 85.**

- i) The petitioner submitted that it is in the public domain that the Governor is yet to implement the recommendations of the County Assembly of Bungoma Health Committee Covid Report of May 2020 with regard suspension and/or sacking to staff members who were found culpable of illegally and irregularly transferring money from Bungoma County Referral Hospital to the Department of Finance and Economic Planning and those who misappropriated money meant for Covid 19 Pandemic. The implicated staff is still in Office courtesy of the undue influence, abuse of office and impunity of the County Governor.(**Allegation 3.27 and 3.28**)

**The committee noted that the matter was sub-judice (Employment and Labour Relations Court at Kisumu- Petition no 23 of 2020) hence could not be deliberated upon pursuant to the provisions of Standing order No. 85.**

- j) The Petitioner averred that the Governor is yet to inform the County Assembly and the Residents of Bungoma on why the KES 350 Million from the Industrial Park Vote head was diverted or re-allocated to other use without public participation and County Assembly approval. This is a typical example of misappropriation and mismanagement of the county public resources by the Governor.(**Allegation 3.29 of the petition**)

**The committee observed that the petitioner neither cited the specific financial year nor the vote head in question.**

- k) The petitioner submitted that the Governor is yet to explain to the residents of Bungoma County why and how the County Executive has utilized the World Bank grants for Bungoma and Kimilili Municipal Boards without the involvement of the Municipal Board Members in the Financial Years 2018/19 and 2019/20. The CECM Lands, Urban/Physical Planning & Housing is yet to release most of the functions assigned to the Municipal Boards contained in the Municipal Charters. The Municipal Board Members are yet to implement those functions stipulated in the Urban Areas and Cities Act, 2011 (Amended 2019).(Allegation 3.32 of the petition)

**The committee noted that the petitioner did not demonstrate the nexus between the governor and the allegation; neither did he provide documentary evidence to prove this allegation.**

- l) The Petitioner submits that according to the PFM Act, Section 147 (1) Subject to the Constitution of Kenya, 2010, the accounting officer (*read Chief Executive Officer of the County or County Governor Wycliffe Wafula Wangamati*) of a

County Government shall monitor, evaluate and oversee the management of their public finances,

The petitioner further alleges that the Governor as the Overall Accounting Officer of the County Government of Bungoma as implied by Section 149 of has failed to ensure that the resources of the County are used in a way that is lawful and authorized; and effective, efficient, economical and transparent in line with the procurement and expenditure plan contained in the medium term fiscal framework and financial objectives of the county Government of Bungoma, including employment and human resource capacity building and succession management.(**Allegation 3.33 of the petition**)

**The committee noted that the provisions of the PFMA, Section 147 stipulate the functions of an accounting officer of the County Assembly. The petitioner erroneously quoted the wrong provisions of law; hence the governor is not the accounting officer of the county assembly. Section 149 of PFMA stipulates the responsibility of accounting officers designated by the CECM Finance and not the governor.**

### **3.4: LACK OF LEADERSHIP AND INTEGRITY**

- m) The petitioner submitted that the Governor lacks the requisite leadership and integrity values to continue holding the esteemed Office of the Governor of County Government of Bungoma as stipulated in Article 73 of Chapter Six of the Constitution of Kenya, 2010. He has on several occasions resorted to unorthodox methods, including direct and indirect verbal manipulations and threats, intimidation, bribery and other forms of undue influence to some members of the County Assembly, civil society and media who are critical of his leadership style. (**Allegations 4.1. to 4.4. of the petition**)

**The petitioner did not submit evidence to the committee to demonstrate the unorthodox methods that the Governor was alleged to have resorted to influence some members of the County Assembly, Civil Society and Media.**

## CHAPTER FOUR

### COMMITTEE'S OBSERVATIONS AND CONCLUSION

The Committee makes the following observations supported by the necessary statutes and specific evidence:

1. The committee observes that the petitioner adhered to the provisions of the Petitions to County Assemblies (Procedure Act, 2020) and the Bungoma County Assembly Standing Order No. 203 on the form of petitions.
2. The committee observes that petitioner failed to provide evidence that directly links the respondent (Governor) to the grounds of Gross violation of the Constitution of Kenya, Crimes under National laws, Abuse of office and Gross misconduct.
3. The Committee observes that there was no evidential value adduced on the grounds listed above. The Committee holds the view that the evidence of the petitioner amounts to hearsay. The Black's Law Dictionary 7<sup>th</sup> Edition defines hearsay as: *'...A testimony that is given by a witness who relates not to what he or she knows personally but what others have said and that is therefore dependent on the credibility of someone other than the witness. Such testimony is generally inadmissible under the rules of evidence...'*
4. The Committee observes that the petition is not a remedy for all incidents of maladministration or criminal conduct. Whereas allegations are made, but the committee was not able to make a conclusive finding due to the limit of its mandate, the matter is nevertheless serious in nature and may require the relevant organs of Government to pursue. The Committee's view is that some of the allegations made in the present petition merit such consideration. These include the allegations relating to-
  - a) The appointment of Mr. Jonathan Namulala to act as Chief Officer Finance was un-procedural as alleged by the petitioner.

- b) The secondment of Ms. Phoebe Buchunju to act as the CEO County Public Service Board was also un-procedural.
  - c) The appointment of members of the Service Delivery Unit was also un-procedural.
  - d) The committee further takes cognizance of the irregular and un-procedural hiring of partisan staff in the Governor's office as contained in the Auditor General's report dated 30<sup>th</sup> June, 2018.
5. The committee observes that the petitioner willingly requested allegations on ground (2.8 & 3.26) to be expunged for consideration by the committee.
  6. The committee observes that there was no evidence adduced to show that the Office of the County Secretary was acting on instructions of the Governor. The Office is created by the law and the holder has his roles clearly spelt out.
  7. The committee notes that the petitioner is of double speak; on one hand is complaining of wage bill sky rocketing and on the other hand the petitioner complains that the Respondent has failed to employ village administrators;
  8. The committee notes that the petitioner failed to prove how the Respondent engaged in public relations exercise in carrying out public participation on major projects in the County;
  9. The committee was cognizant of the provisions of Standing Order No. 85 and therefore could not discuss issues pending before court or committee (*sub judice*); Allegations 4(b) 6(a) (b) of the petition were expunged on this basis.

#### **4.1 CONCLUSION**

The removal of a Governor is a constitutional and political process. It is a *sui generis* process that is *quasi-judicial* in nature and the rules of natural justice and fair administrative action must be observed.

What standard should be applied in implementing the threshold for the removal of a Governor? There is need to maintain a high threshold for the removal of the Governor and the need to ensure that the law is strictly followed.

The standard of proof is neither beyond reasonable doubt nor a balance of probability. Noting that the threshold for the removal of the Governor involves “Gross violation of the Constitution,” we hold that the standard of proof required for the removal of a Governor is above balance of probability but below reasonable doubt.

The committee holds the view that the petitioner did not provide sufficient evidence to support the allegations presented.

#### **4.2 ADOPTION**

**Mr. Speaker Sir,**

I further wish to confirm that the contents herein were adopted by the Committee. Once again it is my pleasant duty and privilege to table this report.



## 5.0 ADOPTION SCHEDULE

We the undersigned members of the Public Administration and ICT Committee append our signatures adopting this report with the contents therein.

No.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Majimbo Okumu	Chairperson	
2.	Hon. Violet Makhanu	Vice chairperson	
3.	Hon. Stephen Wafula	Member	
4.	Hon. Joseph Juma	Member	
5.	Hon. Francis Chemion	Member	
6.	Hon. Meshack Simiyu	Member	
7.	Hon. Joseph Magudah	Member	
8.	Hon. Elly Tindi	Member	
9.	Hon. Joan Kirong	Member	
10.	Hon. Jack Wambulwa	Member	
11.	Hon. James Mukhongo	Member	
12.	Hon. Hillary Kiptalam	Member	
13.	Hon. Tony Barasa	Member	
14.	Hon. Erick Wapang'ana	Member	
15.	Hon. Luke Opwora	Member	

## **APPENDIXES**

Annex 1: The Activity Calendar

Annex 2: Pre-trial Conference Programme

Annex 3: Adoption Minutes

Annex 4: The Petition

Annex 5: The Petitioners' submissions

Annex 6: The Respondents' submissions