

COUNTY GOVERNMENT OF BUNGOMA



**COUNTY ASSEMBLY OF BUNGOMA
OFFICE OF THE CLERK**

THIRD COUNTY ASSEMBLY
SECOND SESSION

AD HOC COMMITTEE REPORT ON THE TASKFORCES' REPORTS ON:

- 1. HUMAN RESOURCE AUDIT**
- 2. SCHOLARSHIP AUDIT**
- 3. PENDING BILLS AUDIT**

**Clerk's Chambers
County Assembly Buildings
P.O BOX 1886 - 50200
BUNGOMA, KENYA**

April, 2023

TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS	7
ANNEXURES	8
CHAPTER ONE	9
1.0 Preface	9
1.1 Tabling and Committal of the Task Forces' Reports	9
1.2 Membership of the Committee	10
1.3 Terms of Reference	10
1.4 Constitutional and Statutory Oversight of the County Assembly and its Committees	11
1.5 Committee Meetings, Work Plans and Methodology	11
1.6 Acknowledgement	Error! Bookmark not defined.
CHAPTER TWO	12
2.0 Legal Framework	13
2.1 Constitutional Framework	13
2.2 Statutory guidelines with Regard to Human Resource Audit	15
The Employment Act, 2007	21
2.2.3 The Public Finance Management Act, 2012	23
2.2.4 The Constitution of the Kenya County Government Workers Union	25
2.3 Statutory Framework with Regard to the Pending Bills	26
i) The Public Procurement and Asset disposal Act, 2015	26
2.4 Statutory Framework with Regard to Scholarship	30
CHAPTER THREE	33
3.0 Interrogation of the Taskforce Report on Human Resource Audit	33
3.1. Confirmation of Court Awarded List of 463 against the Employed List of 660 Vide ELRC Petition No.1 Of 2019	33
3.2 History of Casual Workers in Bungoma County	34
3.3 Verification of Casuals by the Taskforce	35
3.4 Submission by the Taskforce Chairperson	36
3.5 Submissions by the County Public Service Board Secretary	38
3.6 Submission by the Casual Workers Leadership	39
3.7 Submission by the Bungoma County Government Workers Union	40

3.8 Verification of Casuals by the County Assembly Ad Hoc Committee.....	41
I. Court awarded list of 463.....	41
II. County Casual Workers' Association.....	42
3.9 Committee's Findings on the Report of the Taskforce.....	45
List of 194 casuals with clear files.....	46
Letters of employment from the Defunct County Council of Bungoma.....	47
3.10 Committee Observations on the Taskforce Recommendations on Casual Workers in Bungoma County.....	47
3.11. STAFF ESTABLISHMENT IN THE COUNTY.....	49
A. STATUS OF STAFF PAYROLL AND STAFF REGISTER.....	49
B. DEPARTMENTAL STAFF ESTABLISHMENT.....	50
C). STAFF DEDUCTIONS AND REMITTANCES.....	51
Introduction.....	51
Statutory Deductions.....	51
The Task force Findings on Remittances.....	53
Recommendations on Remittances.....	55
D). Burial and Benevolent Fund.....	55
Task force findings on Burial and Benevolent Fund.....	56
Taskforce Observations/Recommendations on Burial and Benevolent Fund.....	57
Committee's Observations on the Task force findings.....	58
E). COUNTY WAGE BILL.....	58
The Bungoma County Wage bill for 2022/2023.....	59
Findings on Wage Bill.....	59
Task force recommendations on the Wage Bill.....	60
F). Review of staff establishment processes.....	61
G) RECRUITMENT OF VILLAGE ADMINISTRATORS.....	62
Submissions from Witnesses.....	64
I. Chairperson, Human Resource Taskforce.....	64
II. Secretary County Public Service Board.....	65
III. County Public Service Board.....	65
Analysis of the qualifications.....	67

Committee’s Recommendations on the Task Force Recommendations	77
H) Other Matters raised in the Human Resource Audit Report	78
CHAPTER FOUR.....	80
4.0 Interrogation of the Scholarship Audit Report	80
4.1 Establishment and Objectives of the Scheme	80
4.2 Committee Findings	81
Scholarship Beneficiaries	81
Budgetary Allocations	81
4.3 Committee analysis of the taskforce report	83
i. Legislation	83
a) Approval of guidelines	83
b. Review of the Regulations	84
ii. Management of the Scheme	85
a) Books and Records of Accounts (Cash and Cash equivalents)	89
b. Ward /County Education Support Scheme Committee Operations	89
c. Internal controls and risk management of the scheme	91
d. Qualification criteria for selection of the beneficiaries	92
e. Record Keeping and Data Management	93
f. Establishment of Scholarship Directorate	95
g. Re-vetting of fifth (5 th) cohort beneficiaries	95
h) Utilization of the Bursary and Scholarship Capital	96
i) Inventory Keeping by Ward Administrators	97
j) Placement of students in schools within Bungoma County	98
k) Sustainability of the Scholarship Program	98
CHAPTER FIVE.....	100
5.0 Interrogation of Pending Bills Report of the County Government	100
5.1 Introduction	100
5.2 Flagship ProjectsMr. Speaker Sir,	100
1. Dual Carriage Way	101
Task force findings	101
Submissions by the Department of Roads	102

Committee’s Findings	103
d. Due diligence and public participation	104
e. Rate of work done vis a vis payment rate	105
f. Project Implementation team	105
g. Communication between County Government and KeNHA.....	105
h. Report by the Committee on Roads, Transport, Infrastructure and Public Works	106
2. Upgrading of Misikhu - Naitiri-Brigadier Road	108
Findings by the taskforce	108
Mr. Speaker Sir,	108
The Taskforce established that;	108
Submission by Contractor Misikhu – Naitiri – Brigadier Road	110
Submissions by the department	110
Committee’s finding	111
3. BCRH 300 Bed Maternal and Child Unit	112
Submission by the Department	113
Report by Public Administration and ICT Committee	114
4. Masinde Muliro Stadium	115
Submission by the Contractor	116
Report by Youth and Sports Committee	116
Committee’s finding	117
5.3 Departmental Reports on the Pending Bills	117
Education and Vocational Training	117
Trade, Energy and Industrialization	119
Gender, Culture, Youth and Sports	120
Tourism, Environment, Water and Natural Resources	121
Health and Sanitation	123
Roads and Infrastructure	124
Agriculture, Livestock, Fisheries, Irrigation and Cooperative Development	126
Mabanga ATC	128
Public Service Management and Administration	128
County Public Service Board	131

Lands, Urban, Physical Planning and Housing	131
Kimilili and Bungoma Municipalities	134
Finance and Economic Planning	135
5.5	137
5.6 Recommendations by the Taskforce on the Pending Bills	137
i. On the Budget Implementation Committee	137
ii. On the budget implementation reports	138
iii. On Supplementary Budgets	139
iv. Procurement opinion	140
v. Payments and vote book balances	140
5.6 Committee General Observations on the Taskforce on Pending Bill Audit	142
5.7 Committee General Recommendations	142
CHAPTER SIX	144
Conclusion	144
Adoption Schedule	Error! Bookmark not defined.

LIST OF ABBREVIATIONS AND ACRONYMS

AGPO	Access to Government Procurement Opportunities
ATC	Agricultural Training Centre
ATS	Agricultural Technology System
BBF	Burial and Benevolent Fund
BCRH	Bungoma County Referral Hospital
BQ	Bill of Quantities
CECM	County Executive Committee Member
CEF	Community Empowerment Fund
CG	County Government
COTU	Central Organization of Trade Unions
CPF	Central Provident Fund
CPSB	County Public Service Board
ECDE	Early Childhood Development Education
EFT	Electronic Fund Transfer
ELRC	Employment and Labour Relations Court
FY	Financial Year
GOK	Government of Kenya
H.E.	His Excellency
HELB	Higher Education Loans Board
HR	Human Resource
ICT	Information and Communication Technology
ID	Identity Card
IFMIS	Integrated Finance Management System
IPC	Interim Payment Certificate
IPPD	Integrated Personnel and Payroll Database
KCSE	Kenya Certificate of Secondary Education
KDSP	Kenya Devolution Support Program
KeNHA	Kenya National Highways Authority
KNEC	Kenya National Examination Council
KNQA	Kenya National Qualifications Authority
KOICA	Korea International Cooperation Agency
LAPFUND	Local Authorities Provident Fund
LAPTRUST	Local Authorities Pension Trust
LPO	Local Purchase Order
LTD	Limited
MOU	Memorandum of Understanding
NEMA	National Environment Management Authority
NHIF	National Hospital Insurance Fund
NSSF	National Social Security Fund
NYS	National Youth Service
PAYE	Pay As You Earn
PFMA	Public Finance Management Act
PPDA	Public Procurement and Disposal Act
PPRA	Public Procurement Regulatory Authority
PSSS	Public Service Superannuation Scheme
PWD	Persons with Disabilities
SACCO	Savings and Credit Cooperative Organization
SRC	Salaries and Remuneration Commission
TTC	Teachers Training College
VAT	Value Added Tax
VIP	Very Important Person
VTC	Vocational Training Centre

ANNEXURES

1. Adoption schedule
2. Human Resource Audit Report
3. Scholarship Audit Report
4. Pending Bills Audit Report
5. Committee Work plan
6. Payroll Product
7. List of 159 casuals
8. List of 29 casuals
9. List of 463 casuals
10. List of 660 casuals
11. List of 116 casuals of 292
12. Bungoma County Education Support Scheme Regulations, 2019
13. Department pending Bills
14. Complaints
15. List of casuals with questionable engagement letters

CHAPTER ONE

1.0 Preface

Mr. Speaker Sir,

On 15th March, 2023, the County Assembly debated and passed a motion moved by the Leader of Majority urging the House to form the Ad hoc Committee to consider the three Task forces' reports that had been submitted to the County Assembly. The formation of the Ad Hoc Committee was premised on the basis that the three reports contained matters whose scopes were crosscutting across five Committees of the County Assembly.

As per the Standing Orders No. 200, and with the concurrence of the Hon. Speaker, *“the deliberations of a select committee shall be confined to the mandate of the Committee and any extension or limitation of that mandate as may be directed by the House”* further Order No.1 espouses that, *“where matters are not expressly provided for by these Standing Orders or by other Orders of the County Assembly, any question shall be decided by the Speaker for the purposes of facilitating the execution of Business in the Assembly”*

For the reasons advanced above, the House resolved to constitute an Ad hoc Committee to investigate and interrogate *inter alia*, and submit a report to the Assembly within 30 days.

1.1 Tabling and Committal of the Task Forces' Reports

The Task forces' reports were forwarded to the Clerk of the County Assembly vide letter referenced ***CGB/FIN/CA/BILL/VOL.IV/66*** dated ***1st March, 2023*** and were laid on the Floor of the House by the Leader of Majority on 16th March, 2023 at 2:30 p.m.

The Hon. Speaker while committing the reports to the Ad hoc Committee directed the Committee to scrutinize the reports, review the recommendations and report the findings for consideration by the House before implementation by the County Executive.

1.2 Membership of the Committee

The Committee comprises of;

- | | |
|---------------------------|------------------|
| 1. Hon. Tony Barasa | Chairperson |
| 2. Hon. Violet Makhanu | Vice Chairperson |
| 3. Hon. Joan Kirong' | Member |
| 4. Hon. Milliah Masungo | Member |
| 5. Hon. Barasa Mukhongo | Member |
| 6. Hon. Jack Wambulwa | Member |
| 7. Hon Hentry Nyongesa | Member |
| 8. Hon. Benard Kikechi | Member |
| 9. Hon. Everton Nganga | Member |
| 10. Hon. Job Mukoyandali | Member |
| 11. Hon. Benjamin Otsiula | Member |

1.3 Terms of Reference

Mr. Speaker Sir,

The Committee adopted its terms of reference as guided by the House Resolution on March 15th, 2023; which was to scrutinize the three Task forces' reports, review the recommendations and report the findings for consideration by the House before implementation by the County Executive. The reports are;

- i. The taskforce audit on Human Resource,
- ii. The taskforce audit on Scholarship; and
- iii. The taskforce audit on Pending Bills of the County Government,

1.4 Constitutional and Statutory Oversight of the County Assembly and its Committees

The County Assembly and its committees draw their constitutional mandate to oversight the County Executive from Article 185(3) of the Constitution of Kenya, 2010; which states, *‘A county Assembly, while respecting the principle of separation of powers, may exercise oversight over the County Executive Committee and any other County Executive organs’*.

Further, Article 195(1) gives a County Assembly or any of its committees’ powers to summon any person to appear before it for the purpose of giving evidence or providing information.

Section 14 (1) (b) of the County Governments Act, 2012, provides that a County Assembly, may establish committees in such manner and for such general or special purposes as it considers fit. Consequently, under the County Assembly of Bungoma Standing Orders, Order No. 193 confers committees with the powers and privileges bestowed on the County Assembly by the Constitution and Statutes; including, ‘the power to summon witnesses, receive evidence and to request for and receive papers and documents from the government and the public.

1.5 Committee Meetings, Work Plans and Methodology

The Committee held various sittings to plan interrogate and report on the findings of the Task forces’ audit reports. The Committee invited witnesses whose submissions were necessary for the interrogation of the findings in the reports; to enable an objective analysis.

The Chairpersons of the Task forces’, the County Public Service Board, the Kenya County Government Workers Union, petitioners of ELRC case No. I of 2019, the Casual Workers Union officials, officers from the various County Government departments among other key persons appeared to clarify on some of the issues that the Committee was processing.

While observing the principle of fair hearing as stipulated under Article 50 of the Constitution of Kenya, the witnesses were heard under oath, while the proceedings were recorded on Hansard for all the sessions of the Committee. The Committee's schedule of activities is **annexed**

1.6 Acknowledgement

Mr. Speaker sir, the committee is particularly grateful to the office of the Speaker, the Clerk as well as Members of the County Assembly for the full support received as it discharged its mandate.

Mr. Speaker sir, it is therefore my pleasant duty and privilege on behalf of the Committee to table this Report and recommend it to the house for adoption.

SIGNED.....*T. Barasa*.....Dated this *28/4/* 2023

HON. TONY KHAOYA BARASA

Chairperson - Ad hoc Committee on the Task forces' Reports on: Human Resource Audit, the County Scholarship Audit and the Pending Bills Audit.

Page 12 of 146

AD HOC COMMITTEE REPORT ON THE TASKFORCES' REPORTS ON: HUMAN RESOURCE AUDIT,
SCHOLARSHIP AUDIT AND PENDING BILLS AUDIT- 2023

CHAPTER TWO

2.0 Legal Framework

Mr. Speaker Sir,

In the execution of its mandate, the Committee was guided by legal provisions in the Constitution and other enabling statutes.

2.1 Constitutional Framework

1. Article 10 of the Constitution provides that, “(1) the national values and principles of governance in this Article binds all State organs, State officers, public officers and all persons whenever any of them—

- (a) applies or interprets this Constitution;*
- (b) enacts, applies or interprets any law; or*
- (c) makes or implements public policy decisions.*

(2) The national values and principles of governance include—

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;*
- (c) good governance, integrity, transparency and accountability; and*
- (d) sustainable development.*

3. Article 27 of the Constitution provides that,

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social

origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need

4. Article 47 of the Constitution highlights that,

“(1) every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

5. Article 41 of the Constitution documents that,

“(1) Every person has the right to fair labour practices.

(2) Every worker has the right—

(a) to fair remuneration;

(b) to reasonable working conditions;

*(c) to form, join or participate in the activities and programmes of a trade union;
and*

(d) to go on strike.

6. Article 56 of the Constitution provides that,

“The State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups—

(a) participate and are represented in governance and other spheres of life;

(b) are provided special opportunities in educational and economic fields;

- (c) are provided special opportunities for access to employment;*
- (d) develop their cultural values, languages and practices; and*
- (e) have reasonable access to water, health services and infrastructure.*

7. Article 227 (1) of the Constitution of Kenya, 2010 stipulates that,

“When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective”.

8. Article 232 (1) and (2) of the constitution of Kenya provides for the Values and principles of public service of all State organs in both levels of government as follows;

- (a) high standards of professional ethics;*
- (b) efficient, effective and economic use of resources;*
- (c) responsive, prompt, effective, impartial and equitable provision of services;*
- (d) involvement of the people in the process of policy making;*
- (e) accountability for administrative acts;*
- (f) transparency and provision to the public of timely, accurate information;*
- (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;*
- (h) representation of Kenya’s diverse communities; and*
- (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—*
 - (i) men and women;*
 - (ii) the members of all ethnic groups; and*
 - (iii) persons with disabilities.*

9. Article 234 (1) provides for the Functions and powers of the Public Service Commission which shall hear and determine appeals in respect of county governments’ public service;

2.2 Statutory guidelines with Regard to Human Resource Audit

i) Fourth Schedule to the Transition to devolved Government Act

During Phase One of the transition period, the Authority shall carry out the following activities—

- (e) audit the government staff in counties, to establish the number of staff in each county by cadre, grades, gender, age and qualification;
- (f) audit the Local Authority staff in the counties, to establish the number of local authority staff in each county by cadre, grades, gender, age and qualification;

The County Governments Act, 2012 section 57 provides for the establishments of the County Public Service Board in each County, which shall be—

- (a) a body corporate with perpetual succession and a seal; and
- (b) capable of suing and being sued in its corporate name.

The Functions and powers of a County Public Service Board under section 59 (1) of the County Governments Act, 2012 specify as;

- (a) establish and abolish offices in the county public service;
- (b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
- (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;
- (d) prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
- (e) promote in the county public service the values and principles referred to in Articles 10 and 232;
- (f) evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;
- (g) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;
- (h) advise the county government on human resource management and development;

- (i) advise county government on implementation and monitoring of the national performance management system in counties;
- (j) make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees.

59 (4) In the performance of its functions under subsection (1) (e), the County Public Service Board shall have powers to—

- (a) inform and educate county public officers and the public about the values and principles;
- (b) recommend to the county government effective measures to promote the values and principles;
- (c) assist county government in the formulation and implementation of programmes intended to inculcate in public officers the duty to uphold the values and principles;
- (d) advise the county governments on their obligations under international treaties and conventions on good governance in the county public service;
- (e) visit any county public office or body with a view to assessing and inspecting the status of compliance with the values and principles;
- (f) investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any values and principles;
- (g) recommend to the relevant lawful authority, any necessary action in view of the violation of the values and principles by any person or public body;
- (h) cooperate with other institutions working in the field of good governance in the public service; and
- (i) perform any other functions as the Board considers necessary for the promotion of the values and principles.

(5) The report by the County Public Service Board under subsection (1)(f) shall—

- (a) be delivered each December to the county assembly;
- (b) include all the steps taken and decisions made by the board;
- (c) include specific recommendations that require to be implemented in the promotion and protection of the values and principles;

- (d) include specific decisions on particulars of persons or public body who have violated the values and principles, including action taken or recommended against them;
 - (e) include any impediment in the promotion of the values and principles; and
 - (f) Include the programmes the board is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.
- (6) The Board shall publish a report required under this section in the county *Gazette* not later than seven days after the report has been delivered to the county assembly.

59 (A). Independence of the County Public Service Board

In the performance of its functions under this Act, the county public service board shall—

- (a) be independent and shall not be subject to the direction or control of any other person or authority; and
- (b) adhere to the Constitution, this Act and any other relevant law.

63. Powers of the County Public Service Board to make appointments

- (1) Except as provided for in the Constitution or legislation, the County Public Service Board has the power to make appointments including promotions in respect of offices in the county public service.
- (2) The power of the County Public Service Board under subsection (1) shall be exercised—
 - (a) at the request of the relevant county chief officer of the department to which the appointment is to be made;
 - (b) *deleted by Act No. 11 of 2020, s. 20;*
 - (c) on the County Public Service Board's own motion on account of best interest of the county public service and parity of treatment of public officers taking into account the circumstances of each case.

65. Matters to take into account during appointments, etc

- (1) In selecting candidates for appointment, the County Public Service Board shall consider—
 - (a) the standards, values and principles set out in Articles 10, 27(4), 56(c) and 232(1) of the Constitution;
 - (b) the prescribed qualifications for holding or acting in the office;

- (c) the experience and achievements attained by the candidate;
- (ca) the need to ensure that the candidates proposed for appointment have knowledge and experience in diverse fields including human resource management and development and finance;
- (d) the conduct of the candidate in view of any relevant code of conduct, ethics and integrity;
- (e) the need to ensure that at least thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county;
- (f) the need for open and transparent recruitment of public servants; and
- (g) individual performance.

(2) In determining whether an appointment, promotion or re-designation has been undertaken in a fair and transparent manner, the overriding factors shall be merit, fair competition and representation of the diversity of the county.

67. Appointments to be in writing

No appointment or assignment of a duty in a county public service shall be valid unless it is evidenced in writing.

72. Power to deploy public officers

- (1) The power to deploy a county public officer within a department shall vest in the relevant county chief officer.
- (2) The power to deploy a county public officer from one department to another shall vest in the head of the county public service.

74. County Public Service Board to regulate appointment of persons on contract

The County Public Service Board shall regulate the engagement of persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices.

75. Action on irregularity of process

If it comes to the attention of the County Public Service Board that there is reason to believe that any process or decision under this Part may have occurred in an irregular or

fraudulent manner, the County Public Service Board shall investigate the matter and, if satisfied that the irregularity or fraud has occurred, the County Public Service Board may—

- (a) revoke the decision;
- (b) direct the concerned head of department or lawful authority to commence the process afresh; or
- (c) take any corrective action including disciplinary action.

77. Appeals to the Public Service Commission

(1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the "Commission") against the decision.

(2) The Commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of—

- (a) recruitment, selection, appointment and qualifications attached to any office;
- (b) remuneration and terms and conditions of service;
- (c) disciplinary control;
- (d) national values and principles of governance, under Article 10, and, values and principles of public service under Article 232 of the Constitution;
- (e) retirement and other removal from service;
- (f) pension benefits, gratuity and any other terminal benefits; or
- (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard

86. Delegation by County Public Service Board

(1) The County Public Service Board may delegate, in writing, any of its functions to any one or more of its members and the county secretary, county chief officer, sub-county or Ward administrator, village administrator, city or municipal manager and town administrators.

The Employment Act, 2007

19. Deduction of wages

(1) Notwithstanding section 17(1), an employer may deduct from the wages of his employee—

(a) any amount due from the employee as a contribution to any provident fund or superannuation scheme or any other scheme approved by the Commissioner for Labour to which the employee has agreed to contribute;

(b) a reasonable amount for any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the wilful default of the employee;

(c) an amount not exceeding one day's wages in respect of each working day for the whole of which the employee, without leave or other lawful cause, absents himself from the premises of the employer or other place proper and appointed for the performance of his work;

(d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically or his being entrusted with the receipt, custody and payment of money;

(e) any amount paid to the employee in error as wages in excess of the amount of wages due to him;

(f) any amount the deduction of which is authorized by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award;

(g) any amount in which the employer has no direct or indirect beneficial interest, and which the employee has requested the employer in writing to deduct from his wages;

(h) an amount due and payable by the employee under and in accordance with the terms of an agreement in writing, by way of repayment or part repayment of a loan of money made to him by the employer, not exceeding fifty per cent of the wages payable to that employee after the deduction of all such other amounts as may be due from him under this section; and

(i) such other amounts as the Cabinet Secretary may prescribe.

(2) No employer shall make a deduction from the wages payable to an employee as an advance of wages in consideration of, or as a reward for, the provision of employment for that employee, or for retaining the employee in employment.

(3) Without prejudice to any right of recovery of any debt due, and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of subsection (1), may be made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages or such additional or other amount as may be prescribed by the Cabinet Secretary either generally or in relation to a specified employer or employee or class of employers or employees or any trade or industry.

(4) An employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a), (f), (g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law, agreement court order or arbitration as the case may be.

(5) An employer who fails to comply with the provisions of subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(6) Where proceedings are brought under subsection (5) in respect of failure by the employer to remit deductions from an employees' remuneration, the court may, in addition to fining the employer order the employer to refund to the employee the amount deducted from the employees' wages, and pay the intended beneficiary on behalf of the employee with the employer's own funds.

52. Interpretation

In this Part, except where the context otherwise requires—

"employment" means employment of a child in a situation where—

(a) the child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for the purposes of payment;

(b) the child's labour is used for gain by any person or institution whether or not the child benefits directly or indirectly; and

(c) there is in existence a contract for service where the party providing the service is a child whether the person using the services does so directly or by agent.

53. Prohibition of worst forms of child labour

(1) Notwithstanding any provision of any written law, no person shall employ a child in any activity which constitutes worst form of child labour.

64. Penalty for unlawful employment of child

(1) A person who employs, engages, or uses a child in an industrial undertaking in contravention of the provisions of this Part, commits an offence.

(2) A person who uses a child in any activity constituting worst form of child labour commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(3) It shall be a defence if the accused person proves that he genuinely had reason to believe that the child was above the age limit, which is the subject of the charge.

2.2.3 The Public Finance Management Act, 2012

107. County Treasury to enforce fiscal responsibility principles

(1) A County Treasury shall manage its public finances in accordance with the principles of fiscal responsibility set out in subsection (2), and shall not exceed the limits stated in the regulations.

(2) In managing the county government's public finances, the County Treasury shall enforce the following fiscal responsibility principles—

- a) the county government's recurrent expenditure shall not exceed the county government's total revenue;
- b) over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure;
- c) *the county government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the county government's total revenue*

as prescribed by the County Executive member for finance in regulations and approved by the County Assembly;

Public Finance Management (County Governments) Regulations, 2015,

25. (1) In addition to the fiscal responsibility principles set out in section 107 of the Act, the following fiscal responsibility principles shall apply in the management of public finances—

- a) the County Executive Committee Member with the approval of the County Assembly shall set a limit on the county government's expenditure on wages and benefits for its public officers pursuant to section 107(2) of the Act;*
- b) the limit set under paragraph (a) above, shall not exceed thirty five (35) percent of the county government's total revenue;*
- c) for the avoidance of doubt, the revenue referred to in paragraph (b) shall not include revenues that accrue from extractive natural resources including as oil and coal;*
- d) the county public debt shall never exceed twenty(20%) percent of the county governments total revenue at any one time;*
- e) the county annual fiscal primary balance shall be consistent with the debt target in paragraph (d);*

In the case of **SUYIANKA LEMPAA V TEACHERS SERVICE COMMISSION & THE ATTORNEY GENERAL [2019] eKLR** where the Petitioner argued that the Respondent in putting a cap on the entry age at 45 years, were discriminatory. Further that this cap locks him out of employment on account of age which infringes on his right to be employed. Hellen Wasilwa J observed as follows;

“The issue of age does not however feature in any of these 2 articles. I take judicial notice of the fact that there is a high degree of unemployment in Kenya. People also strive due to economic hardship to go to school and some make it albeit with difficulties to make it late in life.....

The Respondent however have no justifiable reason to set regulations limiting entry of teachers in the profession at 45 years especially so due to the high unemployment rate in Kenya.

In this Court's view, the capping is discriminatory on account of age and serves no purpose in the circumstances. The capping locks out eligible teachers who may be willing to serve and the capping serves no purpose unless justified."

In so observing the court finally held that;

"1. A declaration does issue that including a must age meet condition of age 45 and below to be recruited by the 1st Respondent as a teacher in Secondary School is arbitrary, unconstitutional and thus void ab initio and violates the law and the Constitution.

2. A declaration does issue that to the extent that the 1st Respondent has sought to limit a fundamental right without a justification in law, or in fact or as contemplated under Article 24 on Limitation of rights is improper and unreasonable thus null and void.

3. That future recruitment processes by the 1st Respondent should proceed without discriminating on age or any other forbidden grounds."

2.2.4 The Constitution of the Kenya County Government Workers Union

Article 4. 4. Termination and consequences

Membership of the union is terminated when the member;

- 1) has his or her employment lawfully terminated
- 2) is expelled
- 3) dies
- 4) resigns by giving fourteen (14) days' notice to the general secretary
- 5) in any way becomes so incapacitated that he or she cannot reasonably sustain membership

4, 4 iii. Any person whose membership is terminated ceases to enjoy the services of the union with immediate effect and will be subjected to Article 4, 2 (g) (vii) above.

2.3 Statutory Framework with Regard to the Pending Bills

i) The Public Procurement and Asset disposal Act, 2015

84. Professional opinion

(1) The head of procurement function of a procuring entity shall, alongside the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings.

(2) The professional opinion under sub-section (1) may provide guidance on the procurement proceeding in the event of dissenting opinions between tender evaluation and award recommendations.

(3) In making a decision to award a tender, the accounting officer shall take into account the views of the head of procurement in the signed professional opinion referred to in subsection (1).

139. Amendments or variations to contracts

(1) An amendment or a variation to a contract resulting from a procurement proceeding is effective only if—

(a) the variation or amendment has been approved in writing by the respective tender awarding authority within a procuring entity; and

(b) any contract variations or amendments for goods, works and services shall be as prescribed.

(2) An accounting officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed Contract Agreement, may approve the request for—

(a) use of prime costs;

(b) use of contingencies;

(c) reimbursable costs; and

(d) use of provisional sums.

(2A) Despite subsection (2), an Accounting Officer of a procuring entity, on the recommendation of an evaluation committee or as prescribed in the signed contract agreement, may approve the request for the extension of the contract period, which request shall be accompanied by a letter from the tenderer making justifications for such extension.

(3) No contract price shall be varied upwards within twelve months from the date of the signing of the contract.

(4) For the purposes of this section, any variation of a contract shall only be considered if the following are satisfied—

(a) the price variation from the original price is based on the prevailing consumer price index obtained from Kenya National Bureau of Statistics;

(b) the quantity variation for goods does not exceed fifteen per cent of the original contract quantity;

(c) the price or quantity variation is to be executed within the period of the contract;

(d) the cumulative value of all contract variations for goods do not result in an increment of the total contract price by more than twenty five per cent of the original contract price; and

(e) the cumulative value of professional services does not result in an increment of the total contract price by more than twenty-five per cent of the original contract price.

(5) An accounting officer of a procuring entity shall submit a quarterly report of their varied or amended procurement contracts to the Authority.

(6) Where variations result in an increment of the contract price by more than twenty-five percent, such variations shall be tendered for separately.

(7) The method for computing price variation under this section shall be prescribed in regulations.

140. Interest on overdue amounts and liquidated damages

The following shall apply with respect to delayed performance and overdue amounts owed by a procuring entity and a contractor under a contract for procurement —

- (a) unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts;*
- (b) the contractor shall be liable to liquidated damages for delayed performance;*
- (c) the interest and liquidated damages to be paid under paragraph (a) and (b) shall be in accordance with prevailing mean commercial lending rate as determined by Central Bank of Kenya; and*
- (d) the methods of computing interest liquidated and ascertained damages shall be as prescribed in the regulations.*

142. Performance Security

(1) Subject to the regulations, a successful tenderer shall submit a performance security equivalent to not more than ten per cent of the contract amount before signing of the contract.

(2) In case the contract is not fully or well executed, the performance security shall unconditionally be fully seized by the procuring entity as compensation without prejudice to other penalties provided for by the Act.

(3) Provisions under subsection (1) of this section shall not apply to tenders related to consultant services, works and supplies where their estimated value does not exceed a threshold established by the procurement regulations, or works and supplies reserved for women, youth, persons with disabilities and other disadvantaged groups, and for these categories, the performance securities that may be waived or fixed at not more than one per cent of the contract price.

145. Recovery of the performance Security

(1) The performance security shall be returned to the successful tenderer within thirty (30) days following the final acceptance by the accounting officer of the procuring entity.

(2) For the avoidance of doubt, the thirty (30) days referred to in subsection (1) above shall include the retention period except in cases of procurement for works where the period shall commence from the date of practical completion or handover, whichever is earlier.

146. Advance payment

No works, goods or services contract shall be paid for before they are executed or delivered and accepted by the accounting officer of a procuring entity or an officer authorized by him or her in writing except where so specified in the tender documents and contract agreement. Such an advance payment shall not be paid before the contract is signed.

148. Use of advance payment

The successful tenderer shall use the advance paid only in activities related to the tender. If the successful tenderer uses the entire advance or part of it in other activities that are unrelated to the tender, the advance shall immediately be considered as a debt which shall be paid by seizing the entire security or part of it.

151. Complex and specialized contract implementation team

(1) For every complex and specialized procurement contract, the accounting officer of a procuring entity shall appoint a contract implementation team which shall include members from the procurement function, and the requisitioner, the relevant technical department and a consultant where applicable.

(2) For the purpose of managing complex and specialized procurement contracts the contract implementation team shall be responsible for—

(a) monitoring the performance of the contractor, to ensure that all delivery or performance obligations are met or appropriate action taken by the procuring entity in the event of obligations not being met;

(b) ensure that the contractor submits all required documentation as specified in the tendering documents, the contract and as required by law;

(c) ensure that the procuring entity meets all its payment and other obligations on time and in accordance with the contract;

(d) ensure that there is right quality and within the time frame, where required;

(e) review any contract variation requests and make recommendations to the respective tender awarding authority for considerations and such reviews for variation shall be clearly justified by the technical department in writing backed by supporting evidence and submitted to the head of the procurement function for processing;

(f) manage handover or acceptance procedures as prescribed;

- (g) make recommendations for contract termination, where appropriate;
 - (h) ensure that the contract is complete, prior to closing the contract file including all handover procedures, transfers of title if need be and that the final retention payment has been made;
 - (i) ensure that all contract administration records are complete, up to date, filed and archived as required; and
 - (j) ensure that the contractor acts in accordance with the provisions of the contract;
 - (k) ensure discharge of performance guarantee where required.
- (3) An accounting officer of a procuring entity may co-opt a member of the contract implementation team from another procuring entity or outsource.

152. Contract monitoring

The head of the procurement function shall prepare monthly progress reports of all procurement contracts of the procuring entity and submit them to the accounting officer.

154. Contract close out

An accounting officer of a procuring entity shall close out a procurement contract immediately after completion and the close out shall involve the following—

- (a) the head of procurement function shall issue a certificate to the contractor confirming delivery and acceptance of goods, works and services, where the contract is not complex and specialized;
- (b) where contract under (a) above is complex and specialized, the technical department will issue a certificate to the accounting officer of the procuring entity confirming the quality and quantity of such goods, works and services;
- (c) further guidelines for the receipt of goods, works and services shall be as prescribed.

2.4 Statutory Framework with Regard to Scholarship

1. The Public Finance Management Act (Bungoma County education support scheme) regulations, 2019

17. Procedure for awarding scholarship

1) All applications for scholarships shall be made to the County Education support scheme Committee through ward education Support Management committee in the form prescribed in the first Schedule.

2) The ward education support scheme Management committee shall receive the applications and submit all the applications with their recommendations to the County Education Support Scheme Committee

3) The County Education Support scheme Committee in consultation with the County Executive Committee Member responsible for Education shall constitute a scholarship sub-committee of five (5) Members to vet and recommend eligible scholarship applicants.

18. Qualification for the scholarship

An applicant shall qualify for a scholarship if the Applicant is;

- a) A resident of the county
- b) Highly talented or has exhibited outstanding excellence in his or her area of speciality
- c) Admitted, continuing or a student with an offer letter for admission to a special school, secondary, tertiary institution or a recognized university
- d) Disciplined according to the latest school or college report.
- e) Meets additional criteria set by the County Education Support Scheme committee and approved by County Executive committee member in charge of Education
- f) Is vulnerable

19. Discontinuation of scholarship beneficiary

The County Education support scheme committee shall discontinue a beneficiary from the scholarship scheme if the –

- a) Award was obtained through fraud, false information, misrepresentation or non-disclosure of material fact*
- b) Applicant ceases to be a student for reasons other than medical grounds*
- c) Beneficiary applies or is granted scholarship support from any other source after the beneficiary has been admitted to the scholarship scheme.*
- d) Beneficiary changes the course of study or defers his or her studies without authority*
- e) Beneficiary displays unsatisfactory academic performance*
- f) Is found with discipline case*

CHAPTER THREE

3.0 Interrogation of the Taskforce Report on Human Resource Audit

3.1. Confirmation of Court Awarded List of 463 against the Employed List of 660 Vide ELRC Petition No.1 Of 2019

Mr. Speaker Sir,

The transition to Devolved Government Act NO.1 of 2012 fourth schedule to thereof phase one part (f) Provides for the Transition Authority to establish the number of Local Authority staff in each County by cadre, grades, gender, age & qualification;

From the task force report the County Government of Bungoma inherited a total of 708 staff from the defunct local authorities as at April 2013 and 2,649 from the National government as at 1st January, 2014. Therefore, a total of 3,357 staff transited to Bungoma County Government and were all on permanent and pensionable terms as follows:

County Council of Bungoma- 276

Municipal Council of Bungoma- 149

Municipal Council of Webuye- 100

Municipal council of Kimilili- 60

County Council of Mt. Elgon- 37

Town Council of Sirisia- 27

Town Council of Malakisi- 59

National Government- 2,649

3.2 History of Casual Workers in Bungoma County

Mr. Speaker Sir,

From the taskforce report, the Transition Authority handed over to the County Government only the staff on the permanent and pensionable terms; however, there were casuals whom were engaged on casual basis and on renewable terms although it was not documented.

In 2014, the County Government engaged consultancy firm (Bestways Regional Development) to carry out the survey and audit of casuals employees in the County and it reported that there were 383 casuals who were regularized by the County Public Service Board on permanent and pensionable terms. After this exercise, there arose a demand of additional skilled staffs that were then hired on casual basis to offer services before the substantive recruitment of personnel.

In 2017, the County Public Service Board with the guidance of human resource guidelines undertook an exercise of vetting employees on casual basis and absorbed them on either contract or permanent terms depending on their age and qualifications. During the exercise, 402 Casuals were absorbed exclusive of health workers. Further the report details that at the close of the year 2017, the exact number of casuals was 298, but it was not clear whether the health workers were inclusive of this number.

In 2019, **463** persons went to court (Bungoma Employment and Labour Relations Court) under ELRC Petition No.1 of 2019 alleging that they worked with the Local Authorities but were left out of employment on permanent and pensionable terms. The court ruled on 13th May, 2022 in their favour as below;

- a) *The court declares that the continued employment of the listed 463 members of the petition by the despondence on casual basis is in violation of sections 5, 35 and 37 of the Employment Act No. 11 of 2007 and violates Articles 27, 28, 41 and 232 of the Constitution of Kenya 2010*
- b) *The court directs the respondent to place all the affected employees referred to above on payroll and apply to each one of them the minimum terms and*

conditins of service provided under parts II, III, IV, V and VI of the Employment Act, 2007.

- c) The respondent to compute, file and pay arrears of salary due and owing to all grievances named to this petition under their employment within 60 days*
- d) Costs follow the event.*

Arising from the court ruling, the Taskforce found that, out of the 463 persons who went to court, the County Public Service Board employed one hundred and twenty-nine (129) persons, leaving out three hundred and thirty-four (334) persons from the court awarded list.

Further the County Government employed 507 (**403 persons were neither on court list or no evidence was found that they were working with previous defunct Local Authorities within Bungoma County; 103 persons who were found to be casuals but never went to court**) and gave them letters of permanent and pensionable terms, thus bringing the total to **636** persons.

Through a tripartite meeting between the Union officials, County Executive and the County Public Service Board, the list was harmonized to 660 persons, who were issued with letters of employment on 12th and 22nd of July, 2022.

From the reviews of the list above, the 334 persons from the court awarded list is still pending.

3.3 Verification of Casuals by the Taskforce

The taskforce carried out physical verification to ascertain the actual number of Casual workers in the County Government. 721 persons were invited and only 416 persons turned up for the exercise.

From the Exercise;

1. 150 Persons at least had casual appointment or renewal letter(s).
2. 197 Persons invited had no prior appointment letter as casuals.
3. Casuals who claimed to have worked in the Defunct Local Authority were 33, some of whom were under age at the time of the alleged employment.

4. 8 Persons had contracts and casual appointment letters.
5. 7 persons came for the exercise but were not invited.
6. Some claimed to have worked as volunteers or on attachment but ended up on the list of casuals.

3.4 Submission by the Taskforce Chairperson

Mr. Speaker Sir,

The Chairperson appeared before the Committee on 12th April, 2023 and submitted as follows;

That, there is a list of 463 casual workers certified by the Deputy Registrar of the High Court Mr. Mwenda dated 17.08.2021 and a further list of 660 certified by the same Registrar and on the same date; both of which were availed to the taskforce. The authenticity of the signature on both the documents was confirmed by the current Registrar of the Employment and Labor Relations Court.

Petition No. 1 of 2019 filed at the Employment and Labor Relations Court originally had a list of 463 casual workers, who were allegedly from the Defunct Local Authorities within the County as of 28th February, 2013.

That during the taskforce interrogations, the County Secretary submitted a file from which 636 casual workers letters of confirmation into service were issued.

The County Public Service Board also presented the list of 660 bearing the certification by the Registrar of the ELRC.

That the County Executive led by the Deputy County Secretary and County Government Workers' Union held a meeting on 9th of September to 18th of September, 2020 at the Ciala Resort in Kisumu and build up the list of the 660 casual workers from the court awarded list of 463. The minutes and resolutions of the meeting were yet to be availed.

There is currently an application before the Court seeking a review of the judgement of the casual workers.

That the petitioners have since filed for contempt.

That one Mr. Moses Muyundi, who has since retired from service, is the individual who has been acting on behalf of the petitioners, contrary to the provisions of the Workers' Union Constitution.

That none of the 463 court awarded casual workers are members of any workers union. For one to be considered a member of a union, they must be:

- Registered
- Remitting monthly dues

Of the 636 persons issued with permanent and pensionable terms of employment by the CPSB, none has been posted to a duty station and have job grades A, D and F assigned.

That from the taskforce's independent findings, only 129 out of the 463 were given permanent and pensionable employment letters by the CPSB, leaving out 334.

The breakdown of the 636 workers who hold permanent and pensionable terms of employment awarded in July 2022 is as follows:

- 403- Those issued with letters of employment but were never on the court awarded list, casuals list and there exists no evidence that they were previously working with the defunct Local Authorities within Bungoma County
- 129- A section of the court awarded list of the 436 casual workers who were given permanent and pensionable letters of employment.
- 104- Casuals who never went to court

That the first CPSB of the County Government of Bungoma inherited staff from both the Defunct Local Authorities and the National Government into the County Government workforce

That no Casual Workers from the Defunct Local Authorities was absorbed into the County government by the Transition Authority; and that only employees who were on Permanent and Pensionable terms were brought on board by the County Government of Bungoma.

That casual employees from the Defunct Local Authorities hold letters of employment from the County Council of Bungoma signed by the then Clerk.

That due to the manual system of record keeping, there was room for abuse in the employment exercise.

That some letters of employment issued to the casual workers bear the signature of the current Human Resources officer for the CPSB Mr. Paul Mumelo on behalf of the County Clerk to the defunct County Council of Bungoma. He has since disowned almost three quarters of them.

That a total of 194 casual employees were maintained and paid manually by the County Government of Bungoma until 2018 when the second Governor of Bungoma stopped the payments and moved to court to have the matter addressed. Majority of them are domiciled in the departments of Finance, Agriculture and Health.

3.5 Submissions by the County Public Service Board Secretary

Mr. Speaker Sir,

The Secretary to the County Public Service Board appeared and submitted that the Board was only aware of the 463 court awarded Casual Workers.

That upon the ruling on the matter on the 13th of May, 2020, the County Executive of the second County Government of Bungoma led by the Deputy County Secretary, and the Bungoma County Government Workers' Union officials retreated to Ciala Resort in Kisumu from the 9th of September to 18th of September, 2020.

From the meeting, it was resolved that the CPSB to consider 263 of the 463 court awarded casual workers and the difference be filled by other workers who were already working in the various departments to make up to the number of 463.

The union then submitted the list of 263 as agreed; some of whom did not appear for verification, while some submitted fake documents.

That the actual number of Casual Workers that appeared for physical verification was 237 and that is the number that was given the permanent and pensionable letters of employment.

It was therefore agreed that owing to budgetary constraints and wage bill concerns, the 237 be issued with employment letters, while the remaining 200 from the 463 would be absorbed in the current financial year (2022/23).

With this arrangement, it was further agreed that the CPSB would only issue the appointment letters while the Office of the County Secretary would be in charge of deployment. No minutes to this effect were availed to the Committee.

That the 237 have undergone induction, but are yet to be deployed to duty stations.

The CPSB was never represented in court during the proceedings of the petition, but was to implement the orders of the ruling as follows:

- Immediate deployment at the minimum level of entry into service
- Award at three cadres depending on academic qualifications

3.6 Submission by the Casual Workers Leadership

Mr. Speaker Sir,

The leadership of the Casual Workers Association was represented by the Chairperson and the secretary. They submitted that;

The Casual Workers' Association represents 173 persons from nine departments in the County Government of Bungoma who are not part of the 463 court awarded list of Casual Workers of petition No. 1 of 2019 from the ELRC.

They have members that have served as casual workers from the Defunct Local authorities and Casual Workers who were not from the Defunct Local Authorities.

173 casual workers have their letters of appointment and their various renewals issued to them. The renewals were stopped in March 2019 upon filing of the petition in the ELRC.

There are Casual Workers who were serving one year contract and hold personal service numbers, while others were operating on a three months contract (renewable).

Confirmation letters appointing the 173 to permanent and pensionable basis without deployment to specific duty stations were issued in July, 2022.

3.7 Submission by the Bungoma County Government Workers Union Mr. Speaker Sir,

The Workers union Chairperson Ms. Mary Murongoro was disallowed to attend the proceedings due to conflict of interest, having been a member of the Task force on the Human Resource Audit

The Vice Chairperson submitted as follows;

That, the Bungoma County Government Workers Union was formerly the Kenya Local Government Workers' Union. The movement begun in 1953 and upon promulgation of the Constitution of Kenya, 2010, it changed to represent interest of County Government workers.

In the year 2021, the union entered into a recognition agreement with the County Government of Bungoma to represent the County Workers interests on a voluntary basis.

The union does not have a physical branch location; it has a membership of 507, each remitting Kshs. 500 monthly dues. The amounts are divided as follows; Kshs. 300 for Headquarters; Kshs. 100 for Branch and Kshs. 100 for COTU.

It held its last branch congress in the year 2021 where it also conducted officials' elections.

The union engaged the Casual Workers as anticipated members of the union and that it only recognizes the 463 Casual Workers awarded in the order of petition No. 1 of 2019 at the ELRC.

That of the 463, only 237 could be physically verified.

That post the Ciala meeting, it was resolved that the County Government considers employing 263 casual workers from the list of 463 and the remaining number be spread to the subsequent Financial Year.

3.8 Verification of Casuals by the County Assembly Ad Hoc Committee

Mr. Speaker Sir,

From the foregoing, the County Assembly Ad hoc Committee undertook a physical verification exercise to enable it objectively analyze and recommend on the situation of casual workers. Through their representatives, both oral and written invitations were issued to the diverse groups of purported casual workers, with instructions to avail themselves for the exercise.

A total of 405 persons presented themselves for physical verification. From their submissions, the Committee observed as follows:

From the 405 persons who appeared for verification.

I. Court awarded list of 463

Only 110 were amongst the 463 persons from the court awarded list of Petition No. 1 of 2019 and categorized as below:

- a) 64 persons out of 110 persons presented their letters of appointment into service as Casual Workers of the defunct Local Authorities. The letters were issued as follows.

No	Name	Designation	No. of Letters Issued
1.	Paul Mumelo	Administrative Officer	72
2.	Elizabeth Wanyonyi	Secretary- CPSB	2
3.	Arphaxard Wekati Walunywa	Administrative Officer	1
4.	John Juma Matsanza	Coordinator- Transition Authority	1
5.		HR Manager- Sirisia Hospital	1
6.	Reuben Wanyama	Treasurer- Mt. Elgon	1
7.	Tom Obunga	Administrative Officer	1
8.	Dan Oswan	Hospital Administrator	1

- b) 54 persons presented permanent and pensionable letters of appointment signed by the Secretary to the Public Service Board in July, 2022.
- c) Two (2) presented their letters of appointment signed by the Secretary to the Public Service Board in June, 2017 as tabulated below.

No	Name	Date of Appointment	Duty Station	Designation	Terms of Engagement
1.	Eric Masinde Kutiri	15.06. 2017	Department of Public Administration	Administrative officer II	Permanent
2.	Godffrey Simiyu Rombosia	15.06. 2017	Department of Health	Senior Support Staff	Permanent

II. County Casual Workers' Association

295 persons from the County Casual Workers' Association list availed themselves and submitted their documents for verification. From these, 88 presented their letters of engagement as casual workers, 24 had one renewal, four (4) had served as volunteers

and had no formal engagement with the county government; while 60 were not renewed upon expiry of their term of service.

There were six (6) persons who presented themselves as casual workers; and were serving on either contract or permanent and pensionable terms and hold **personal service numbers** as under listed:

N o.	Name	Personal Service Number	Duty Station	Designation	Terms of Engagement
1.	Faith Nanjala Wanjala	20170124606	Department of Public Administration	Civic Educator	Causal, Contract (2017)
2.	Millicent Nafula Mamili	20170026650	Department of Agriculture	Cooperative Officer II	Contract, Permanent (July, 2022)
3.	Collins Busuru	20170026641	Department of Agriculture	Cooperative Officer III	Contract, Permanent (July, 2022)
4.	Christine Nabalayo Nyongesa	20170026669	Department of Agriculture	Administrative Assistant	Contract, Permanent (July, 2022)
5.	Paul Maina Wekesa	20170054172	Department of Health	Senior Driver	Permanent (2017), (2022) Contract
6.	Stella Nafuna Nyongesa	20170045744	Department of Cooperatives	Senior Clerical officer	Contract, Permanent (July, 2022)

There were five (5) cases where individuals were appointed on 15th June, 2017 into permanent and pensionable terms of employment and have not been receiving

compensation/ dues. They presented themselves for verification and their details are as captured below:

N o.	Name	Date of Appointment	Duty Station	Designation	Terms of Engagement
1.	Eric Masinde Kutiri	15.06. 2017	Department of Public Administration	Administrative officer II	Permanent
2.	Godffrey Simiyu Rombosia	15.06. 2017	Department of Health	Senior Support Staff	Permanent
3.	Winy Nganga	15.06. 2017	Department of Agriculture	Assistant Cooperative Officer	Permanent
4.	Scovia Lucy Walumbe	1992	Department of Finance	Clerical Officer II	Permanent
5.	Denis Nabwela	1996	Department of Finance	Clerical Officer II	Permanent

From 405 persons who appeared for verification 259 persons held permanent and pensionable letters of employment issued by the Secretary to the Service board on July 22nd and July 29th, 2022; and were assigned to three different job categories as summarized below;

No	Job Group	Designation	Number
1.	A	Support Staff II	68
2.	D	Senior Support Staff	128
3.	F	Clerical Officer II	63
Total			259

Of the 405, 54 persons did not bear letters issued by the secretary of the County Public Service Board.

KEY OBSERVATIONS FROM THE SUBMITTED DOCUMENTS

Mr. Speaker Sir,

Some letters of appointment issued to the Casual Workers and their corresponding renewals were executed on the same date.

There were cases where the Casual Workers absorbed into Permanent and Pensionable terms of service did not have a letter of appointment, but only had with them letters of recommendation from their supervisors.

Some letter(s) of renewal issued precede the dates on the letters of employment, while others cite a non-corresponding reference number and date of employment into service. In other cases, letters of renewal for contracts were being issued to casuals while their existing term had not lapsed.

There are individuals who presented themselves for physical verification bearing only letters of recommendation for voluntary service or evidence of serving on attachment with the various County government departments.

Others could not produce letters of appointment but had with them letters of, renewal (s) and letters of confirmation into Permanent and pensionable terms.

3.9 Committee's Findings on the Report of the Taskforce

Mr. Speaker Sir,

In the year 2014, The County Government of Bungoma through the Department of Finance and the Directorate of Human Resource Commissioned a head count to ascertain the exact number of casual workers engaged in the County markets. The findings indicate that out of the total number of 383 persons who appeared for the exercise, 298 had letters of appointment.

In the recommendations of both the taskforce report, 2022 and the county Government team of 2014, the exact number of casuals engaged in the County Government of Bungoma could not be ascertained and they both recommend for a structured headcount that will enable the County filter out the exact number from the conflicting lists.

Upon perusal of the taskforce report the committee observed the following groups of purported casual workers:

No.	Group
194	From the taskforce recommendation No. 1 on the casuals with clear files in the establishment.
636	From the taskforce findings on the casuals who were issued with permanent and pensionable terms in July, 2022.
463	Court awarded list through petition NO.1 of 2019
660	The second Court awarded list through petition NO.1 of 2019, but file currently unavailable.
383	From the report of the department on engagements and utilization of casual workers- June/July,2014
298	List of casual workers as at 2017
173	Casual workers Association list

During the physical verification exercise by this Ad hoc Committee, 405 persons availed themselves for the physical verification exercise. These were drawn from the court awarded list of 463 and the casual workers union list of 173.

List of 194 casuals with clear files

The Committee reviewed the said **194 files** as indicated in the taskforce findings and recommendations. The County Director of Human Resource submitted **a list and files**

of 171 Casual workers, who were maintained and paid manually by the County Government of Bungoma until March, 2019. **(Annexed)**

From the Committee's analysis, **184 files** were provided against the payroll list of **171**. **155** of these files corresponded with the details on the payroll list **(List is Annexed)**, while **29** of these files could not be traced on the provided payroll list **(List is Annexed)**. The Committee was not seized with ten (10) files of the 194 Casual Workers.

The Committee **observed that only 155 cases had corresponding details to the payroll list as at March, 2019**. Of these, 116 had appeared during the physical verification exercise of the casual workers at the County Assembly of Bungoma.

Letters of employment from the Defunct County Council of Bungoma

There were a total of 72 letters of employment signed by Mr. Paul Mumelo who was an Administrative Officer in the County Council of Bungoma on behalf of the Clerk. The Committee allowed Mr. Mumelo to appear before it to authenticate the validity of the signature on the letters. He disowned 25 of the letters purported to have been issued under his signature that had been submitted by the Casual workers during the committee's physical verification exercise at the County Assembly. **(List is annexed)**

3.10 Committee Observations on the Taskforce Recommendations on Casual Workers in Bungoma County

Mr. Speaker Sir,

Arising from the above findings, the Committee recommends as follows:

1. On the Task force recommendation that **194 casuals** in the County Government with clear files as at 2017 be considered for absorption into the County Public Service.

The Committee **in agreeing with the recommendation in the Task force report can only account for 155 cases that have corresponding details to the payroll list as at March, 2019**. Therefore, the **155 to** be considered for absorption into the County Public Service; while adhering to the provisions of Section 107 (2) c) of the

Public Finance Management Act, 2012 as read together with Regulation 25 (1) a) and b) of The Public Finance Management (County Governments) Regulations, 2015.

2. The taskforce recommended that the County Government and the CPSB applies for a review of the list of persons who were presented as casuals in respect of petition NO.1 of 2019 in the Bungoma ELRC.

Upon scrutiny of the two list certified by the High Court Registrar dated 17th August, 2021, the Committee established that 105 persons (Annexed) appear in both lists. Therefore, the Committee finds merit on the recommendation by the taskforce that the County Government should expedite and seek for review and verification mechanisms in Petition No. 1 of 2019 to remedy the conflict from the two lists of 660 persons and 463 persons.

In so doing the County Government should indicate to the Court their expectations in the process.

3. The task force noted that the 403 persons recruited and appointed on neither of the Court awarded list nor among the list of casuals amounting to irregularities and illegalities in the recruitment process. It therefore recommended that the employment and appointment of the 403 on permanent and pensionable terms be recalled and nullified in Accordance with section 75 of the County Governments Act of 2012. It further recommends that the matter be referred to the relevant investigation authorities for appropriate action.

The Committee agrees with this finding; however the proposed action should be consequent to determination of the review on recommendation No. 2 above.

4. The Task force recommended for the development and enactment of a policy and procedure on recruitment and payroll management.

The Committee agrees with this recommendation

5. The Taskforce recommended for a head count to ascertain the exact number of casuals, especially those working without any formal letter of appointments or any records.

The Committee agrees with this recommendation

3.11. STAFF ESTABLISHMENT IN THE COUNTY

A. STATUS OF STAFF PAYROLL AND STAFF REGISTER

Mr. Speaker Sir,

(i) The task force established that the Integrated Personnel Payroll Data (IPPD) for July 2022 showed there were six thousand, three hundred and thirty one (**6,331**) employees. Of these employees, **5535** person are on permanent and pensionable, 327 persons are on contract, 468 are on probation and one on temporary terms.

The taskforce found that the staff register had a total of 6777 persons and the IPPD (Staff on payroll) had 6331 persons. A variance of 446 persons categorised as permanent detachment (deletion, retired above 60, stoppage, contract expiry and temporary employees).

Submission by the County Director Human Resource

Mr. Speaker Sir,

The County Director Human Resource appeared before the committee on 12th April, 2023 and submitted as follows;

That the County Payroll data comprised of the staff register and the IPPD, the register contains the names of all workers including those retired / dead but have not been cleared from the system. The IPPD contains active employees earning through the payroll.

Committee observation on the taskforce recommendation on Staff Payroll and Staff Register

The Committee having gone through Staff Payroll and Staff Register and the submissions by the Director Human Resource the committees agrees with the findings and recommendations as highlighted on page 55 of the taskforce report.

B. DEPARTMENTAL STAFF ESTABLISHMENT

The taskforce reviewed the staff establishment across twelve departments of County government namely;

- a) Department of Gender, Culture, Youths and Sports
- b) Department of Water
- c) Department of Trade, Energy and Industrialization
- d) Department of Tourism
- e) Department of Roads and Public works
- f) Department of Health
- g) Department of Public Administration
- h) Office of the County Secretary
- i) Office of the Governor
- j) Department of Finance
- k) Department of Education and Vocational Training and
- l) Department of Agriculture, livestock, fisheries and Cooperatives

There were three common themes emanating from the findings and recommendations of the taskforce. They include;

- i. Human resource management and development
- ii. Consideration of Technical skills
- iii.** Creation and deployment Officers to directorates

Committee's Recommendations on the Taskforce Recommendation on Departmental Staff Establishment

Mr. Speaker Sir,

The Committee recommends the specific departments to liaise with County Public Service Board to explore section 59 (1) (a) and 63 of the County Governments Act 2012, while paying attention on section 107 of the PFMA 2012 as read together with Regulation 25 of PFMA (County Governments) Regulations, 2015.

The Committee further recommends consideration of internal placements in its staff establishment.

C). STAFF DEDUCTIONS AND REMITTANCES

Introduction

Staff deductions refer to all deductions done by the employer at source before remitting the monthly net salary to the employee. There are two types of deductions, statutory deductions and third party deductions.

Statutory deductions include: National Health Insurance Fund (NHIF), National Social Security Fund (NSSF), Pay as You Earn (PAYE), Higher Education Loans Board (HELB) and Pension deductions.

Third Party deductions are deductions done by schemes or funds that are voluntarily joined by the employee. These include bank loans, SACCO contributions and loans and Welfare Associations such as Burial and Benevolent Fund (BBF).

Statutory Deductions

The task force scrutinized Payroll Schedules from IPPD, Statements from NSSF, NHIF, and LAPFUND, CPF and Electronic Fund Transfer (EFT) Documents Confirming the Actual Payments from the department of finance.

The task force established a summary as indicated in the table below;

Analysis of NHIF, NSSF, PSSS, LAP Fund and CPF Remittance status from December 2021 to August 2022

	Amount Due (KSHs)	Amount Paid (Kshs)	Variance (Kshs)
Lap Fund	239,886,220.60	50,210,615.35	(189,675,605.25)
Lap Trust Contribution	117,413,959.70	37,175,537.30	(80,238,422.40)
Lap Trust Benefits	17,963,422.25	11,028,416.75	(6,935,005.50)
NSSF	11,902,019.20	11,902,019.20	-
NHIF	64,845,300.00	7,164,845,300.00	-

PSSS	45,458,274.40	-	(45,458,274.40)
Total	497,469,196.15	175,161,888.60	(322,307,307.55)

Overall Remittance summary as from December 2021 to August 2022

S/no	Month	Amount Due (Ksh)	Amount Paid (Ksh)	Variance (Ksh)
1.	Dec 2021	51,952,579.25	29,509,366.20	22,443,213.05
2.	Jan 2022	52,248,368.70	29,065,851.40	23,182,517.30
3.	Feb 2022	52,719,028.25	13,241,966.05	39,477,063.20
4.	March 2022	57,398,123.05	13,595,070.05	43,803,053.00
5.	April 2022	56,494,088.85	13,425,181.75	43,068,907.10
6.	May 2022	56,146,047.45	9,948,848.40	46,197,199.05
7.	June 2022	56,403,056.15	9,982,167.80	46,420,888.35
8.	July 2022	57,156,470.05	22,017,035.50	35,139,434.55
9.	August 2022	56,941,434.40	34,366,401.45	22,575,032.95
Total		497,459,196.15	175,151,888.60	322,307,307.55

The Task force Findings on Remittances

Mr. Speaker Sir,

1. The County did part payment of the remittances i.e out of Ksh 497,459,196.15 only Ksh 175,151,888.60, leaving an arrears of Ksh 322,307,307.55
2. After verification of individual and pension statements, the Task force established that the employees who exited service as from the year 2019 to date have not been able to access their pension and gratuities in full.
3. The amount captured above does not include penalties and interests on the non-remitted amount.
4. The Task force observed that the amount deducted from employees and or employer contributions are remitted partially to various bodies.
5. The Task force observed that the statutory timelines for remittances were not observed by the County, attracting huge penalties;
 - i. Arrears attract a monthly penalty of 3%.
7. Based on the documents received from Lap Fund and Lap trust/CPF, the County Government of Bungoma is in arrears as follows;

i. Lapfund	522,844,905.56
ii. Laptrust/CPF	158,380,230.23
iii. PSSS	82,575,779.50
Total	<u>763,800,915.32</u>

7. The Task force established that the department had not given the exact status of payments / remittance with regard to LAP Fund and GoK-PSS schemes as at the time of writing of the Task force report

Submissions by the Human Resource Directorate

Mr. Speaker Sir,

The Director Human Resource in his written submission to the Committee stated that the County Government had initiated a reconciliation process with the LAP Trust on the settlement of the outstanding amounting Kshs.138, 823,702.73, stipulated into principal account of **Kshs. 81,848,575.95** and interest accrued from 2013 amounting to **Kshs. 56,975,126.78**

On NHIF and NSSF deductions the submissions of the statements evidenced payments being up to date

Committee's Observations Staff Deductions and Remittances

Mr. Speaker Sir,

The Committee could not find reasonable justification as to why the LAP TRUST sums were deducted and never remitted and where the deducted sums were channeled to.

This is in contravention of **Section 19 (4) of the Employment Act** which provides that the employer shall remit the deducted sums in accordance with the time period, and other requirements specified in the law, agreement court order or arbitration as the case may be.

The consequences of non-remittance of deducted sums are stipulated under subsections (5) and (6). Subsection (5) provides that **an employer who fails to comply with the provisions of subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings** or to imprisonment for a term not exceeding two years or to both.

Subsection (6) provides that where proceedings are brought under subsection (5) in respect of failure by the employer to remit deductions from an employee's remuneration, **the court may, in addition to fining the employer order the employer to refund to the employee the amount deducted from the employees' wages, and pay the intended beneficiary on behalf of the employee with the employer's own funds.**

There is therefore the risk of the County Government suffering further expenditure as a result of the defaults outlined above.

Recommendations on Remittances

1. The payroll accountant should carry out monthly reconciliation on statutory payments and report to Chief Officer Public Service and Management for onward transmission to the County Executive Committee.
2. The Personnel Emoluments Budget should be handed over to the department of Public Service Management and Administration for control and accountability.
3. The County should prioritize payment of unremitted statutory deduction to the relevant schemes/bodies to avoid incurring further penalties.
4. The statutory deductions should be paid at the stipulated time to avoid penalties resulting from late payments such as PAYE and NHIF by 9th of the Succeeding month and Lap fund and Lap trust/CPF and PSSS by 15th of succeeding month.

Committee's Recommendations on the findings of the Task force

The Committee agrees with the recommendations of the Task force as highlighted on page 72 of the report.

D). Burial and Benevolent Fund

Mr. Speaker Sir,

Burial and Benevolent Fund deductions forms part of the third Party deductions done on schemes or funds that are voluntarily joined by the employees

The Task force noted that the Burial and Benevolent Fund (BBF) was established through the Bungoma County Government Staff Burial and Benevolent Fund Constitution in 2015 by the employees of the County Government with the following objectives:

- i. To collect contributions from the fund members for purposes of pooling resources to assist families of the deceased members.
- ii. To provide monetary support to members and their immediate family members during times of bereavement.
- iii. To offer counselling and psychological support to members and their immediate family members during times of bereavement.
- iv. To offer logistical and technical support to members and their immediate family members during times of bereavement.
- v. To assist children of diseased members by establishing a scholarship programme

Status of the Burial and Benevolent Fund (BBF) Bank Account

The Director Human resource provided evidence that the account was closed by the Chief Officer of the County Secretary vide the letter dated 12/11/2023 (**annexed**) and as a result thereof as at October 2022 the account remittance had not been made. The Director however provided remittances made eight months prior to the stoppage by the Chief Officer which amount to **Kshs 9,885,239.00**

The Human resource Policies and Procedures manual for the public service provides under Section D.16 (1-4) transport facilities on bereavement; That a budgetary allocation of **Kshs 6,000,000/=** across all departments would sufficiently cater for the same.

Task force findings on Burial and Benevolent Fund

1. The taskforce observed that the fund operated so well between the years 2016 to the year 2020 when there was massive exit of the employees and complains of mismanagement.
2. The taskforce also noted that the County Secretary and the Head of Public Service through the letter Ref: CG/BGM/CS/GEN/VOL.1 dated 21st November, 2021, stopped the automatic deductions for members from the payroll effective November, 2021.
3. The taskforce observed that Regulation D.16 of the HR Policies and Procedure Manual for Public Service May 2016, dealing with transport facilities on bereavement has not been implemented by the county government.

Submission by the Director Human Resource on BBF

- **Burial and Benevolent Fund-** That the bank account for this fund was closed by the Chief Officer in the office of the County Secretary and the bank account was closed on 12th November 2021 by the Chairman of the Fund. The submission further indicated that as at from March to November, 2021 thus eight (8) months totaling to **Kshs. 9,885,299.00.**

Taskforce Observations/Recommendations on Burial and Benevolent Fund

Mr. Speaker Sir,

1. The deductions of the amounts remittable to the burial and benevolent fund ordinarily falls under section 19 of the Employment Act and proper controls thereunder therefore ought to be exercised.
2. A forensic audit of the Fund to be instituted
3. Disciplinary action to be taken against those found to have flouted the code of conduct
4. The matter to be referred to relevant investigating agencies for appropriate action.
5. The Management to facilitate proper establishment and registration of the Fund and a democratic election of the Fund leadership to be conducted
6. Any outstanding claims to be paid.

Committee's Observations on the Task force findings

Mr. Speaker Sir,

The Ad hoc Committee established that the BBF did not operate with an approved Constitution registered by the Government of Kenya.

1. After closure of the Fund the expenditure report on the amount Kshs. 9,885, 229.00 for the period March - October, 2021 was not given.

Committee's Recommendations on the Task force findings

Mr. Speaker Sir,

1. The Committee recommends that the County Directorate of Human Resource champions for the establishment of the Burial and Benevolent Fund for the County Government workers and enables the preparation of a Constitution of the Fund approved by the members and registered by the Government of Kenya.
2. The Directorate of human resource should follow up on the accountability of Kshs. 9,885, 229.00.

E). COUNTY WAGE BILL

Mr. Speaker Sir,

Wage bill is defined as total sum of gross salaries and wages. The Kenya Constitution 2010 in Article 201 on fiscal responsibility principles stipulates the measures of control in matters wage bill.

According to the PFM Act Sec 107 (2) (c), the County Government's expenditure on wages and benefits for its public officers shall not exceed the percentage of county Governments total revenue as prescribed by the County executive Member for Finance in regulations and approved by the County Assembly

Regulation 25 of the PFM (County Governments) Regulations, 2015 on County Fiscal strategy states that; (1) *In addition to the fiscal responsibility principles set out in the Fiscal responsibility under section 107 of the Act, the following fiscal responsibility principles shall apply in the management of public finances-*

- a) *The County Executive Committee Member with the approval of the County Assembly shall set a limit on the County Government's expenditure on wages and benefits for its public officers pursuant to section 107(2) of the Act;*
- b) *The limit set under paragraph (a) above, shall not exceed thirty five (35) per cent of the county government's total revenue.*

The Bungoma County Wage bill for 2022/2023

The Task force therefore sought to establish the current status of the wage bill level based on the approved budget for FY 2022/2023 as follows.

To calculate the wage bill we divided Personnel Emoluments (PE) budget (salary and wages) with the approved budget and multiplied by 100. The approved budget consists of recurrent and development budget.

Thus:

Personal Emoluments Budget		<u>5,822,747,462</u>
Approved budget	12,914,280,462	*100 =45.08%

Findings on Wage Bill

As per the above, the wage bill level for Bungoma County Government is beyond the acceptable level by 10%; thus need for control.

Submissions by the Director Human Resource

- **Position of County Wage bill-** the Director Human Resource submitted the status as at 2022/2023 being at 40% where the total personnel emoluments

stands at **Kshs. 5,957,557,511.00** against our total County Budget of **Kshs. 14,821,204,141.00**.

The required personnel ratio should be 35% which should be realized through increment in revenue raising measures and collection; withholding of new employment across all departments. This could also be achieved through internal placements; enhancement of internal controls through regular payroll cleansing.

That the current wage bill stands at 40.20% deduced from the fact that the total personnel emoluments stand at **Kshs. 5,597, 547,511.00** as against the Total County budget of **Kshs. 14,821,204.00**.

Committee's Observations on the Task Force Report on the County Wage Bill

The current wage bill is in contravention of the provisions of Section 107 (2) c) of the public finance Management Act as read together with Regulation 25 (1) a) and b) of The Public Finance Management (County Governments) Regulations, 2015, which provide that the county government's expenditure on wages and benefits for its public officers shall not exceed 35% of the county government's total revenue.

The Department proposes the following measures to comply with the legal requirement;

- a) Raising the county revenue collection
- b) Withholding new employments across all departments save for internal recruitments
- c) Enforcement of internal controls like payroll cleansing

The department never submitted any evidence of payroll cleansing or how regular the process is conducted and the regulations or guidelines under which the same is executed.

Task force recommendations on the Wage Bill

To curb the ballooning wage bill in the County;

- 1) Optimize the collection of the own revenue to increase the receipts
- 2) Utilize the existing human resource through promoting internal recruitment to minimize on external hiring.

- 3) Efficient wage bill management and reforms in payroll system will help deliver expenditure savings.
- 4) Cleansing and regular audit of the payroll system to edge out ghost workers, strengthening of the payroll system and rationalization could result into potential fiscal savings
- 5) Ensure the operational effectiveness of the establishment control and payroll control to mitigate risks related to the accuracy of payroll transactions.
- 6) Avoid any payment within the county by use of vouchers
- 7) Avoid direct expenditure at the source

Committee's Recommendations on the Task Force Recommendations on the County Wage Bill

Mr. Speaker Sir,

The Committee agrees with the recommendations by the task force as indicated on page 75 of the report.

F). Review of staff establishment processes

Mr. Speaker Sir,

Findings on recruitments

The Task force established the following issues affecting recruitment of new staff in the County;

- Lack of approved County Staff establishment and organization
- No annual Staffing plans
- Inadequate technical staffing levels in the departments
- Lack of developed or customised policies on staff recruitment, it relies on public service circulars
- There were cases of political interference in recruitment processes

- Lack of independence in the human resource directorate, its domiciled in the office of the County Secretary
- Poor work environment in CPSB , members don't have adequate offices to operate from and lack of independence and budgetary allocation for board operations

Committee's Recommendations on the Task Force Recommendations on Recruitment

Mr. Speaker Sir,

The Committee agrees with the findings of the taskforce on lack of an approved County Staff establishment and organization; Staffing plans; Inadequate technical staffing levels in the departments; Lack of developed and customised policies on staff recruitment; political interference in recruitment processes and Lack of independence in the human resource directorate which is domiciled in the office of the County Secretary.

Further, the Committee recommends for sufficient budgetary allocations through subsequent appropriations.

G) RECRUITMENT OF VILLAGE ADMINISTRATORS

Mr. Speaker Sir,

OBSERVATIONS FROM THE TASK FORCE REPORT

The advertisement for the positions of Village Administrators was done on 2nd November, 2020. It attracted 5792 applicants, of whom 3775 were shortlisted.

The Shortlisting exercise of the 3775 applicants was done as from 29th March to 8th April, 2021.

Minutes of the recruitment process

The minutes of the different stages of the recruitment process of the Village Administrators were not provided as requested by the Taskforce and that it was reported that the minutes were not available.

Analysis of qualifications of the appointed Village Administrators

The Task force established that out of the 236 Village Administrators only 234 were deployed and put on payroll. The Task force undertook a verification exercise of the 234 and discovered as follows:

1. One (1) Village Administrator namely Namulala Oscar Manyonge of Kolani Village in Namwela Ward did not appear before it and no reason was given for his non-appearance.pg 79 of the report.
2. Eighteen (18) Village Administrators in the following Villages (,Pwani,Kibuke,Lwanja,Muchi,Chetambe,Marinda,Sinoko,Wabukhonyi/Misemw a,Bokoli,Makhanga,Miendo,Lower,Malaha,Sirende,Matulo,Upper Namutali, Mabusi, Namusasi and Chebukutumi, did not appear in the application register but were shortlisted appointed and deployed.
3. Two (2) Village Administrators for Hospital and Malaha Village Units did not apply, were not shortlisted but were appointed and deployed.
4. One (1) person (Kefa Benard Ong'ana) presented Certificates from Uganda without evidence of equation by Kenya National Qualification Authority (KNQA).
5. Two (2) persons from Mukhe and Korng'otuny village units were under age as at the date of application and appointment.
6. Twenty six (26) Persons had suspicious academic papers that required verification by the KNQA.
7. Three (3) persons did not meet the minimum academic requirement for the position of Village Administrator (Samboji/Kashok,Bukembe and Mabusi Villages.
8. Thirty (33) Persons were above Forty five (45) years of age as at the date of employment and were put on permanent and pensionable terms.
9. Four (4) persons from Sitabicha, Kapsokwony, Misimo and Chebukutumi did not present original copies of certificate on claims of either them being burned or misplaced.

10. Four (4) persons from Watoya, Matisi, Kombo and Khalumuli presented transcripts only claiming that they have not picked their Certificates on account of fee balance.
11. Two (2) Village Administrators were appointed but never deployed; however Kimurio Kipruto Fobiana of Masaek Village in Kapkateny Ward was not deployed but has been working. There is one Nicholas Chechu Chesebe, whose Ward and Village Unit of deployment is not indicated.

Taskforce Recommendation

1. The Village Administrators who did not meet minimum qualifications should have their employment revoked under Section 75 of the County Government Act.
2. Administrative action should be taken against Officers who flouted the laws in recruitment of Village Administrators.

Submissions from Witnesses

Mr. Speaker Sir,

I. Chairperson, Human Resource Taskforce

The Chairperson while appearing before the Ad-hoc Committee submitted that the process of advertising, application and shortlisting for the candidates was followed and documented. However, there were cases where some of the appointees never applied for the positions, were never shortlisted but were appointed.

He further submitted that County Public Service Board (CPSB) never availed any minutes of the recruitment process.

From its analysis, the taskforce noted that most of the successful candidates considered to the positions of Village Administrators did not attain the minimum requirement of post form four education. Additionally, posting of the village administrators in areas that were not of their origin went against provisions of the Decentralized Units Act, 2015.

II. Secretary County Public Service Board

The Secretary while appearing before the Committee submitted that there were flaws in the process of recruitment of the Village Administrators and that the County Public Service Board had initiated mechanisms to regularize the anomalies pursuant to Section 75 of the County Government Act 2012.

The Board had initiated the process of correction of administrative errors committed during the recruitment as evidenced by the provided list of revised Village Administrators.

Additionally, he submitted that correspondence had been done to the Kenya National Qualifications Authority (KNQA) to ascertain the academic qualifications of 26 Village Administrators, to guide the CBSP in the process of revocation of appointments that were deemed irregular. The Secretary stated that the recruitment process was followed up to the level of selection when rifts occurred amongst the members of the Board, which was occasioned by political interference and other varied interests.

III. County Public Service Board

Members of the Board appeared before the Committee and submitted that, the recruitment process for the Village Administrators was followed from the advertisement to Shortlisting; during which the Board Members worked as a team.

The Members admitted that they participated in selection process up to the time when they were invited to a conference in Mombasa, where they abandoned the process before they could finalize the selection of village Administrators in two Wards; in Kanduyi Sub county and Mt Elgon Sub county.

That the abrupt finalization of the recruitment process left the CPSB deeply divided as they cited political interference to have taken a toll on the process.

COMMITTEE FINDINGS

Mr. Speaker Sir,

The Committee made reference to a letter dated 4th April 2023 reference CPSBB/C.A. B/VOL.II (80) in which the County Public Service Board submitted documents on the recruitment process file for Village Administrators among other documents.

The submitted documents contained intent for Village Administrators position from the department of Public Service Management and Administration dated 9th September 2020. The intent stipulated the requirements for appointments of Village Administrators, terms of service, duties and responsibilities.

Subsequently the Public Service Board in the Standard Newspaper, Star Newspaper and County Website of 2nd November 2020 placed an advert for the position of Village Administrators in compliance with section 52(2) of the County Government Act, 2012. Following the advert, the applicants were profiled and the bio data generated for all the applicants in all the nine (9) Sub Counties. The bio data indicated the qualification of every applicant; clearly indicating applicants who never submitted the requisite documents.

On April 23rd 2021, in Standard Newspaper and County Website the names of the shortlisted candidates were published indicating the dates and venue for the interview. An analysis of the Board report on shortlisting of applicants dated 8th April 2021 and the shortlisted candidates as published in the County Website indicate a number of 3865 persons. The Taskforce report however reports a number of 3775.

The Committee concluded that the variance could be attributed to the persons who did not apply for the position but were shortlisted.

The interviews were conducted from 30th April to 2nd June 2021 in various Wards. Among the documents submitted were sample score sheets which was an indication of participation of all the members of the Board. No additional information was provided to the committee on the selection process after the interviews.

Additionally, the minutes of the CPSB during the entire recruitment process were not availed to the Ad hoc Committee for verification as had been highlighted in the Taskforce report.

Vide a letter dated 29th October, 2021, Ref. No. CPSBB/APPT/VOL.II(89), the CEO, County Public Service Board conveyed the decision of the Board that the listed 236 Village Administrators had been appointed on permanent and pensionable terms at job Group “G”.

Submission from a section of the County Public Service Board members indicated that the process followed all due procedures up to the selection stage. The Board was however divided and abandoned the process while two factions emerged; of five Board Members on one side and the Chairperson and the Secretary on the other. **(The letter dated 19th March, 2023 is annexed)**

While appearing before the Committee, the Board Members submitted that the exercise was politically interfered at the point of selection of the successful candidates.

Analysis of the qualifications

a) Non-appearance of Namulala Oscar Manyonge

The Sirisia Sub County application register (Namwela Ward, Kolani Village Unit) indicates that Namulala Oscar Manyonge supposedly applied as candidate 387 on 20th November 2020.

In the submitted bio data list/ candidate profile list, the candidate was not amongst the 18 applicants captured under Kolani Village Unit.

However, the candidate was shortlisted as candidate 219 (Pg. 61) and was scheduled to appear for interviews on 20th May, 2021 at noon.

In the appointment list, he appeared as number 147 and was indicated as PWD.

From the information, it could be inferred that the candidate in question did not apply for the position but was shortlisted, appointed and deployed.

Committee Observations:

Mr. Speaker Sir,

b) There were candidates who were not captured in the bio data but appeared in the application register, were shortlisted and consequently appointed. Absence of the candidate details in the bio data could be an indication that the name could have been inserted later in the process.

c) There are Village Administrators who did not appear in the application register, but were shortlisted, appointed and deployed.

d) The Board jointly did not follow the right procedure during the shortlisting process.

e) The Committee noted that the following 18 names were captured in the Taskforce report as not appearing in the application register. However, scrutiny of the submitted application registers revealed that 17 of the 18 applicants listed had actually applied for the position contrary to the taskforce report. Their details are as captured below.

No.	Name	Sub-County	Ward	Village Unit	Application Register	Shortlist Number	Appointment List Number
1.	Fred Juma Wafumbwa	Bumula	West Bukusu	Kibuke	825	455	64
2.	Andreas Wekesa Kiveu	Webuye East	Maraka	Muchi	289	52	4
3.	John Namisi Kiveu	Webuye East	Mihuu	Chetambe	238	92	7
4.	Martin Wasike Wamuchele	Webuye East	Ndivisi	Sinoko	247	216	16
5.	Fred Macdonald Mabonga	Webuye East	Ndivisi	Wabukhonyi/Misemwa	36	244	18
6.	Timothy Simiyu Wasike	Webuye West	Bokoli	Bokoli	506	21	19
7.	Daniel Mukhwana Omar	Webuye West	Bokoli	Miendo	405	71	22
8.	Pamela Masafu Nasimiyu	Webuye West	Matulo	Lower Malaha	355	96	24
9.	Zebedayo Walukhu	Webuye West	Matulo	Upper Matulo	481	166	28

	Kituyi						
10.	Mercy Nanjala Masibo	Webuye West	Sitikho	Namutali	78	283	39
11.	Solomon Nayele Wafula	Sirisia	Malakisi/	Solomon Nayele Wafula	207	118	141
12	Godfrey Masika Wanjala	Bumula	West Bukusu	Lwanja	411	483	65
13	Linet Nangila Barasa	Webuye West	Misikhu	Sirende	187	230	34
14	Christine Manyifu Wekesa	Bumula	Bumula	Mabusi	500	78	44
15	Peter Oduor Magero	Bumula	Khasoko	Namusasi	411	162	149
16	Martin Wafula Musekese	Webuye West	Bokoli	Mahanga	117	35	20
17	Mukanda Wanjala Justus	Webuye East	Ndivisi	Marinda	132	211	15

It was observed that the two (2) names Mukanda Wanjala Justus and Linet Nangila Barasa were erroneously captured in Makuselwa Village unit instead of Marinda and Marulo Village unit instead of Sirende in Misikhu respectively.

One Peter Wabwile Wekesa of Pwani Village unit in Naitiri- Kabuyefwe Ward admitted before the Task force that he applied for the position but was appointed and deployed. The Committee therefore observed that he was the only individual who fits in this category.

f) There were Village Administrators, who did not apply, were not shortlisted but were appointed and deployed.

The Taskforce report highlighted two names: Margaret Akinyi Arum of Hospital Village Unit, Township Ward and Rebecca Namukhosi Khaemba of Malaha Village Unit, Matulo Ward in this category.

Observation; The Committee noted that the Taskforce report erroneously indicated Hospital Village unit under Township Ward, yet it is domiciled in Matulo Ward. Scrutiny of the bio data register revealed that Margaret Akinyi Arum (23) was captured as candidate No. 44 with a computer certificate, while Rebecca Namukhosi Khaemba was registered as candidate number 92. Both of them were given appointment letters but were not in the shortlist.

The committee concludes that the two names were erroneously captured under this category and should be captured in category (b) above.

g) Ugandan Certificate

The Taskforce report highlights one Kefa Bernard Ong'ana of Kamarumba Village Unit, Kimaeti Ward who presented Ugandan O-level and A-level certificates without any evidence of equation by KNQA.

Observation; The Committee's scrutiny of the bio data register showed that the candidate's academic qualification is UCE DIV.I and was indicated as not having attained the minimum requirement. The shortlist however indicates that the candidate was shortlisted and scheduled for interviews on 6th May, 2021 at 12:00 noon; later appointed and deployed (No.59)

h) Underage Village Administrators

The report indicated that there were two persons whose records indicate they were below 25 years (requirement) at the time of application. They are;

- Sirengo Brayan Amtala of Mukhe village Misikhu ward was 23 years. The date of birth as indicated was 10th February, 1997 in both the taskforce report and the bio data register. It was however noted that the ID number indicated in the application register was 33673451 but was erroneously entered in both the bio data register, shortlist and appointment list as 2463820. This error could be attributed to administrative errors/ data entry errors.

- Chebus Esther Cherotich of ID No. 32728013 from Korngotuny Village, Chepyuk Ward was 24 years, date of birth indicated as 19th April 1996.

Observation; the Committee noted that the Taskforce had cleared one of the applicants under this category, one Chebus Esther Cherotich of ID No. 32728013 from Korng'otuny Village, Chepyuk Ward. The Committee holds both as ineligible for appointment since they were below the prescribed age at the time of application. It therefore concludes that the appointing authority did not honor the requirements as stipulated in the advert.

- The taskforce report indicated 26 persons who were employed but had suspicious academic papers that require KNQA verification. They are;

No.	Name	Sub-County	Ward	Village Unit	Biodata Qualification	Taskforce report Qualification	Remarks
1.	Khakasa Shilah Chembeni	Webuye East	Ndivisi	Sitabicha	KCSE Cert Computer Cert	KCSE Cert Cert. in Public Relations from Shifield Institute of Engineering and Technology-Nakuru	Committee to stick to qualifications submitted during the application. Candidate cleared by Board
2.	Mutali Susan	Webuye West	Matulo	Township West	Not Captured in the biodata & application register but shortlisted	KSCE cert Certificate in Community Dev. From Bungoma Institute of Business & Tech	Appointed as VA in Township West Village
3.	Konyela Phanice Nafula	Webuye West	Sitikho	Kakimanyi	Certificate in Beauty Therapy	KSCE Cert Certificate in ECDE from	Appointed as VA(35) based on cert provided during

						Milo TTC	application
4.	Masibo Minos Chelongo	Kanduyi	West Sang'alo		Not captured in the biodata ,application register & shortlist	KCSE Cert Dip.in Social Work and Community Dev. From Kobujoi Institute	Appointed as VA(75) Not Qualified
5.	Sifuna Ledycia Khaoma	Tongaren	Soysambu/Mitua	Narati	Dip. in Information Systems from Kenya College of Accountancy	KCSE Cert Foundation Diploma from IMIS from Kenya College of Accountancy(now KCA Univ)	Appointed as VA(174) Disqualified by CPSB in the revised list
6.	Wasike Jesse Wafunafu	Webuye East	Ndivisi	Lutacho	No qualifications, but was shortlisted & appointed	Dip. in Theology from Discover Bible School	Appointed as VA(13)) Disqualified by CPSB in the revised list
7.	Rael Wambulwa	Webuye East	Mihuu	Mihuu	Not captured in the bio data, but shortlisted	Cert. in Counselling psychology from Webuye Training Centre	Appointed As VA(9) Documents to be certified by KNQA as per CPSB revised list
8.	Cleopas Simiyu Wanjala	Kanduyi	Bukembe West	Nalutiri	Shortlisted & appointed but not captured in the biodata	Diploma in Public Relations from Bungoma Institute of Business Technology	Appointed VA(81) Disqualified in the revised CPSB list
9.	Toili Elizabeth	Kimilili	Kibingei	Khwiroro	KCSE Cert Diploma in	Certificate in Computer	Appointed as VA(222)

					Business Management from KNEC	Packages and result slip for Diploma in Business Management	Disqualified by CPSB in the revised list -No qualifications and did not come from the village)
10.	Wakoli Isaiah Nyongesa	Sirisia	Namwela	Kikai	KCSE Cert Diploma in Business Administration from Bungoma Institute of Business Technology	Transcript for Diploma in Business Administration	Appointed as VA(146) Disqualified by CPSB revised list due to lack of documents ¹¹ .
11.	Andreas Wekesa Kiveu	Webuye East	Maraka	Muchi	No documents submitted	Certificate from Bungoma Institute of Business and Technology	Appointed as VA(4) Disqualified due to lack of documents in the CPSB revised list
12.	Mukonambi Paul Mutai	Tongaren	Milima	Nabing'enge'	KCSE Cert Computer Cert	Certificate from Bungoma Institute of Business and Technology	Appointed as VA(160) Disqualified by CPSB in the revised list
13.	Benson Waliaula Wotia	Sirisia	Namwela	Mutonyi	KCSE Cert Diploma in Business Administration from Migori/Kenya Methodist Universty	Diploma from Migori School of Guidance and Counselling	Appointed as VA(149) Documents to be scanned & confirmed from Kenya Methodist University
14.	Justus Mukanda Wanjala	Webuye East	Ndivisi	Marinda	KCSE Cert Diploma in Computer	Certificate in Computer Studies from	Appointed VA(15) To avail documents as per the revised

					Studies from Nyanchwa Technical Institute	Nyanchwa Technical Institute	CPSB
15.	John Namisi Kiveu	Webuye East	Mihuu	Chetambe	No KCSE Cert attached in Computer Package	No KCSE cert in Computer Packages from Uptech Computer Education	Appointed as VA (7) Disqualified in the CPSB revised list
16.	Benson Lusweti Mwangale	Kimilili	Kamukuywa	Kimakwa	Not in the Biodata, but shortlisted and appointed.	KCSE Cert in Computer Packages from Cyber Cafe	Appointed as VA (215)
17.	Christopher Wafula Sirengo	Kimilili	Kamukuywa	Mbogi	KCSE Cert. in Computer Systems & Application	Computer packages as only qualification	Appointed as VA(218)
18.	Samuel Murunga Wanyama	Kanduyi	Bukembe West	Ekitale	No qualifications provided in the biodata	Computer packages as the only qualification	Appointed as VA(78)
19.	Andrew Sikwanyi Wanyama	Kanduyi	Bukembe West	Kisuluni	KCSE cert in Computer Application packages	Computer packages as the only qualification	Appointed as VA(80)
20.	Elias Kuloba Wamalwa	Kanduyi	Khalaba	Namuyemba	KCSE Cert Computer Packages	No post-secondary qualification. Only computer packages	Appointed as VA(90)

21.	Isaa Swahili Wekesa	Kanduyi	Musikoma	Sio	KCSE Cert Cert. in Computer packages	No post- secondary qualification. Only computer packages	Appointed as VA(95)
22.	Simon Gathairu Maina	Kanduyi	Township	Central Township	Not captured in the Biodata, but shortlisted and appointed	Only computer packages as post-secondary	Appointed as VA(97)
23.	David Sikiriet William	Mt. Elgon	Chepyuk	Kaimkul	No qualification s in the Biodata	Only computer packages as post-secondary	Appointed as VA(195)
24.	Benard Lukhoba Nyongesa	Bumula	Khasoko	Mungore	Computer Certificates from Glory Digital Centre	Certificate in Guiding and Counseling from Dutch Foundation White Fields International	Appointed as VA(47)
25.	Potifa Ndiwa Chesori	Mt. Elgon	Cheptais	Kipsis	Driving licence	Computer packages from Yako Digitech Computer of Science & Technology	Appointed as VA(184)
26.	Solomon Nayelee Wafula	Sirisia	Malakisi/ South Kulisiru	Chebukutu mi	Not captured in the Biodata but shortlisted &appointed	Certificate from Sang'alo Institute of Technology	Appointed As VA(141)

Observation; Persons who did not meet the minimum required of post form four qualifications were erroneously placed under this category as it was not necessary for their documents to be certified by KNQA.

The Committee concluded that a post form four qualification is one that requires mandatory completion and proof of certification of a Kenya Secondary School Examination or its equivalent prior to undertaking/ admission.

j) The Taskforce report highlighted three persons who did not meet the minimum academic requirements for the positions namely; Osibo Tobias Kimutai from Sambocho/Koshok Village Unit in Elgon Ward, Emmanuel Nyongesa Barasa from Bukembe Village, Bukembe East Ward and Christine Wekesa Manyifu from Mabusi Village, Bumula Ward.

The submitted bio data indicated that Emmanuel Nyongesa Barasa submitted a certificate in P1 from Kamagambo TTC while Christine Wekesa Manyifu had submitted certificates in General Agriculture from Gilgil NYS and computer certificates.

The committee observed that these two applicants (Emmanuel and Christine) were erroneously captured under this category.

Additionally, the report highlighted four (4) persons who presented only copies of certificates with police abstracts on basis that the certificates were either misplaced or burned.

Mwanamisi Asambo Kombo(Sitabicha Village), Protus Kiboi(Kapsokwony village) and Solomon Nayele Wafule were all disqualified by the CPSB due to lack of the requisite qualifications.

Jimmy Makuto Soita of Misimo Village (Mihuu Ward) was captured as having submitted a Diploma Certificate in Information Science from KNEC and Computer certificate. The revised CPSB list qualified his appointment.

Observation. That the CPSB did not do due diligence on the applicants documents.

k) The taskforce report further highlighted 33 persons who were appointed but were 45 years old and above as at the date of appointment. The Taskforce report indicated that

the PSSS (**public Service Superannuation Scheme**) Circular provides that persons above the age of 45 shall not automatically join the Scheme, but can voluntarily do so.

Observation; *The Labour court ruling in November 2019 on Teachers Service Commission observed the Circular limiting age of employment to those below 45 years as discriminatory, unreasonable and Constitutional*

k) The report indicated four (4) persons who presented only transcripts on claims that they had not picked their certificates on account of fees balances. Amongst them, three were disqualified in the revised list, while one Tobias Namusonge Wekesa was qualified.

General Observation

Mr. Speaker Sir,

Following the Committee's interrogation of the CPSB, it confirmed that the Board had initiated the review process of the Village Administrators' employment list pursuant to Section 75 of County Government Act, 2012 with the following summary (**Annexed**)

- 1 Category one. Those that met the qualification- 125
- 2 Category two. Those whose documents were to be forwarded to KNQA- 3
- 3 Category three. Documents not questionable after review- 37
- 4 Category four. Disqualified- 59
- 5 Category five. Under age- 2
- 6 Category Six. Not applied and not interviewed- 2
- 7 Category Seven. Not in IPPD- 2

The total number of Village Administrators who were recruited is 236. The percentage of those whose recruitment is valid stands at 52% and those with questionable issues at 48%.

Committee's Recommendations on the Task Force Recommendations

Mr. Speaker Sir,

The Committee agrees with the Task Force recommendation that:

1. The Village Administrators who did not meet minimum qualifications should have their employment **reviewed** under Section 75 of the County Governments Act, 2012.

2. The Committee disagrees with the Task Force recommendation that:

Administrative action should be taken against Officers who flouted the law in recruitment process of the Village Administrators.

Due to the cited political interference in the recruitment process of the Village Administrators; consequently, the matter is already being processed by the Ethics and Anti-Corruption Commission.

H) Other Matters raised in the Human Resource Audit Report

Mr. Speaker Sir,

The Committee agrees with the Task Force recommendations on the following issues as observed in the report:

1. Appointments, probation, confirmations and contractual terms

Findings by the committee on appointments (pg.090)

Committee recommendations on appointments (pg.091)

2. Re designation and transfer

Findings by the taskforce (Pg.092)

Recommendations by the taskforce (Pg.092)

3. Performance management, strategic planning, performance contracting, staff PAS, appraisal period, Rewards,

Taskforce recommendation on performance management (pg.095)

- Promotions

Taskforce findings on Promotions (pg.096)

Taskforce findings on Promotions (pg.96)

4. Poor work environment in CPSB, Members do not have adequate offices to operate from and lack of independence and budgetary allocation for board operations

CHAPTER FOUR

4.0 Interrogation of the Scholarship Audit Report

4.1 Establishment and Objectives of the Scheme

Mr. Speaker Sir,

The County Government of Bungoma through the Department of Education and Vocational Training formulated the Education Scheme in order to support talented and needy students as part of its social responsibility. The Education Scheme provides bursaries and scholarships. It is expected that through these interventions, the performance of education and training will improve steadily.

The guiding legislation for the scheme is the Bungoma County Education Support Scheme Regulations, 2019 anchored on Section 118 of the Public Finance Management Act No.18 of 2012 (**Annexed**). The Regulation provides for among others; principles for the establishment of the fund, sources of funding, establishment of Education Support Scheme Committees both at the county and ward levels and stipulates their functions. It further highlights the qualifications of a bursary applicant, application procedure, procedure for awarding scholarship and regulations to be followed.

The Principles for the establishment of the Scheme were:

- a) Increase access to quality education and training;
- b) Support needy students proceeding to secondary, vocational , tertiary and higher institutions;
- c) Promote an integrated strategic approach in addressing education, training and skills development;
- d) Fulfill the Department's social responsibilities through funding of education institutions within the county;
- e) Reduce disparities and inequalities in provision of education and training within the county;
- f) Model an alternative framework in funding education and training programs.

4.2 Committee Findings

Scholarship Beneficiaries

Mr. Speaker Sir, from the submissions of the Department of Education and Vocational Training, a total of 12,832 students have benefited from the scholarship since its inception in the FY 2017/2018 as shown below:

Table 1: Scholarship Beneficiaries

Cohort	Status	Financial Year	Number
One	Completed	2017/2018	453
Two	Completed	2018/2019	556
Three	Form Four	2019/2020	761
Four	Form Three	2020/2021	2,192
Five	Form Two	2021/2022	8,870
Total			12,832

Source: Department of Education and Vocational Training

From the table 1, it is indicative that the number of beneficiaries has been on the rise from 453 in the first cohort to 8,870 in the fifth cohort.

The Department submitted that the taskforce fact finding activity was carried out at a time when schools had just opened hence reconciliation of records between the total amount of fees paid and returns from beneficiary schools had not been undertaken, hence the outstanding arrears could not be ascertained

Budgetary Allocations

Mr. Speaker Sir, the committee scrutinized the Auditor General Reports on the fund for the financial years 2018/2019, 2019/2020, 2020/2021, and 2021/2022 which revealed as follows:

Table 2: Scholarship and Other Educational Benefits Allocations

Financial Year	Approved Budget	Amount Released by the exchequer	Administrative Costs	Scholarship and Other Educational Benefits	Total	Balance
2018/2019	190,000,000	190,000,000	4,887,030	178,112,129	182,999,159	7,000,841
2019/2020	243,726,800	170,000,000	5,100,000	150,861,337	155,961,337	14,038,663
2020/2021	110,000,000	110,000,000	3,300,000	98,884,441	102,184,441	7,815,559
2021/2022	550,000,000	550,000,000	12,300,000	564,439,508	558,739,508	(8,739,508)
Total	1,090,000,000	1,020,000,000	25,587,030	992,297,415	999,884,445	20,115,555

(Source: Auditor General's Reports)

From the table, the total amount released from the exchequer for the funds was Kshs. 1,020,000,000 for FY 2018/2019 to FY 2021/2022. Scholarship and other Educational Benefits had an expenditure of Kshs. 992,297,415(97.3%) while Administrative Costs totaled to Kshs. 25,587,030(2.5%).

This indicates that the administrative costs were within the 3% of the appropriated amount. However, the report did not provide specific breakdown of the amounts spent on bursaries and scholarships.

The committee noted that the financial year-2022/2023 budget is currently under implementation, thus the books of accounts were yet to be prepared. However, it was noted that the Taskforce based its findings on the main budget allocations for the FY 2022/2023 which was Kshs. 400M for bursaries and scholarships.

The first supplementary budget allocated an additional Kshs.124M, thus a total allocation of Kshs.524M.

4.3 Committee analysis of the taskforce report

Mr. Speaker Sir, the committee analyzed the short, mid and long term recommendations as submitted in the Taskforce report and summarized them in two thematic areas; legislation and management.

i. Legislation

Taskforce Recommendations

Mr. Speaker Sir, the taskforce acknowledged that the Bungoma County Education Support Scheme Regulation, 2019 and the Draft Guidelines 2018 had excellent provisions and clauses for implementation of the scheme. During the implementation of the scheme, the Department however deviated from the provisions of the Regulations as highlighted in the taskforce recommendations. For better implementation of the program, the taskforce recommended as follows with regards to the Regulation and Guidelines:

1. There is need to enforce legislation on Bungoma County Education Support Scheme Regulations, 2019 as was designed to the latter.
2. The Guidelines for the management of Bursary and Scholarship Scheme under the Bungoma County Education Support Scheme dated 17th December, 2018, to be tabled in the County Assembly for consideration and approval for immediate implementation by Department of Education and Vocational Training.
3. There was need to revise the Regulation on Bungoma County Scholarship Scheme to include definitions of terms like special bursary, half continuous bursary, full continuous bursary among others.
4. Primary school heads and High School Principals should be greatly involved in identifying needy students to be beneficiaries of the Scholarship Program.

Committee Findings

a) Approval of guidelines

Mr. Speaker Sir, the taskforce report highlighted that Guidelines for the Management of the Bursary and Scholarship Scheme under the Bungoma County Education Support

Scheme dated 17th December 2018 were not signed by the CECM, Education and Vocational Training or approved by the County Assembly.

The committee observed that the cited Regulations were formulated before the enactment of the Regulations, 2019. Upon the approval and gazettment of the Regulations, the CECM issued annual circulars to guide the implementation of the scheme pursuant to Section 7(2) which stipulates that the County Executive Committee Member in charge of Education shall in consultation with stakeholders' issue guidelines on the allocation of scheme taking into consideration the limits provided in section 7 (1) (a-c) with priority given to the devolved functions.

Mr. Speaker Sir, the committee recommended that Guidelines for the Management of the Bursary and Scholarship Scheme under the Bungoma County Education Support Scheme dated 17th December 2018 were therefore deemed null and void upon gazettment of the Regulations 2019 hence no need for approval by the County Assembly.

b. Review of the Regulations

Mr. Speaker Sir, the Taskforce recommended that there was need to revise the Bungoma County Education Support Scheme Regulation to include terms like special bursary, half continuous bursary and full continuous bursary. Additionally, the Taskforce recommended involvement Head of Primary and Secondary Schools in identification of needy students.

The Committee observed that regulation 2019 on the definition of terms defines the word “bursary” to mean “payment” of a sum of money from the scheme to maintain and a needy student for educational purposes. The Regulation does not provide for the special bursary, half continuous bursary and full continuous bursary. These terminologies were introduced during the implementation of the 4th and 5th cohorts of the program to accommodate the increased number of applicants for bursary who could not be accommodated in the Scholarship program.

Mr. Speaker Sir, the Committee therefore recommends that for the sustainability of the scheme, implementation should adhere to the provision of the Regulations 2019 hence did not agree with the Taskforce recommendation.

Additionally, the Committee agreed to the Task force recommendation that primary schools head teachers and principals of secondary schools play a critical role in identification of genuinely needy students joining Form One and continuing with secondary education.

Mr. Speaker Sir, the Committee recommends the Department of Education and Vocational Training reviews the scholarship application form in the First Schedule of the Regulation; section (C) to include recommendation by the primary school head teachers for form one students and high school principals for continuing students.

ii. Management of the Scheme

Mr. Speaker Sir, the Committee noted that most of the taskforce recommendations highlighted issues on the management and administration of the scheme, a responsibility which was vested on the Department of Education and Vocational Training as per the Bungoma County Education Support Scheme Regulation 2019.

The taskforce recommended as follows with regard to management of the scheme:

1. There were inaccuracies in cash and cash equivalents from the financial statements from the report of Auditor General on Bungoma County Education Support Scheme for the year ended 30th June 2020. There is need to reconcile the records to give the true reflections of the funds of the Scheme that could aid in financial planning.
2. The Ward Education Support Scheme Committees for the forty-five (45) wards were never renewed even upon lapse of three years. These committee office bearers should be renewed or reappointed in line with the requirements as stipulated in Sections 12(5) of the regulations which stipulates that *“persons appointed under this regulation other than the Ward Administrator and*

Departmental Education Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term”

3. Schools with beneficiaries which has untraced/transferred/dropped/demised students should return the excess amounts of money to Bungoma County Education Scholarship Scheme Account.
4. Internal controls and risk management on the scholarship/ bursary disbursements from bursary identification to issuance of cheques and acknowledgement of the same firmed up. In this vein, cheques should never be written and be disbursed to schools without verifiable and reconciled previous lists from schools
5. Home visitations were poorly carried out and the tool was not fairly administered. The tool had beneficiaries who hailed from able homes. There was need to come up with the home visitations reports that clearly stipulate the qualified and unqualified beneficiaries with justifiable reasons and these lists should be made public
6. Findings indicated that there was no agreeable qualification tool for selection of the beneficiaries. There is need to come up with the tool and consistently use it at both Ward and County levels. The only availed tool was the Home Visitation Evaluation Sheet.
7. There were challenges associated with the Information Technologist’s /Data Management Staff’s inability to update the system. The system had beneficiaries who had exited (done KSCE) and changed program/schools, beneficiaries with more than one sponsor, who received double/triple payments, those dropped out of schools and those expelled on grounds of indiscipline. It is highly recommended by the Taskforce that the system be updated regularly to reflect the exact number of beneficiaries. The Department is advised to transfer the two Data Management Staff from the Department of Education and Vocational Training for failure to prudently discharge their sole mandate/duties.

8. It also recommends that once vetting is done the final list of beneficiaries to be displayed for public consumption.
9. Fees to be paid via EFT method if all beneficiary schools in Kenya can be mapped on IFMIS system. It will cut on costs and time being spent on processing the cheques.
10. The initial cut off mark of 350 in KCPE should be maintained and performance yardstick of C+ should be emphasized and implemented across all scholarship beneficiaries so that a student whose performance is below the agreed threshold of a C+ should be relocated to County/Sub-County schools. This will cut down the budget for the Scholarship.
11. For better management of the scheme, the Taskforce recommends that a Directorate be formed within the Department of Education and Vocational Training to specifically deal with management of the Scholarship program.
12. Re-vetting be carried out during the long December holiday on the 5th cohort students to ascertain the actual bona fide beneficiaries since the numbers were bloated, that is the additional 80% on the lists. This will enable the county government to sustain the program. The Department of Education and Vocational Training should emulate how other institutions (sponsors) like Equity Bank-Wings to Fly are able to identify and distinguish working class (able parents/guardians) from non-working (unable parents) by use of the identification cards among other methods. Those parents whose children are benefitting from the scholarship program and are working class (able parents/guardians), the Taskforce highly recommends their children to be removed from the scholarship program
13. From the findings, implementation of the scheme violated Regulations 7(1)(a-c). Pursuant to the Regulations, 2019, the Education Support Program should be implemented as per the approved Bungoma Education Support Scheme Regulations of 2019, 7(1) (a-c) bearing the ratios allocated to the bursary (not less than 57% and not exceeding 87%), scholarship (not less than 10% and not

exceeding 40%) and administrative costs (not exceeding 3% of the total funds). The Taskforce recommends that more funds (gifts/donations/grants/endowments) can be sought from other sources to strengthen the bursary kitty as per Regulations 11(1) (b).

14. The findings revealed that the Ward Administrators had very poor inventory keeping and were inadequate to handle scholarship/bursary effectively since they work under deplorable conditions. There is need to equip the ward offices and capacity build the human resource since the wards discharge vital roles for sourcing and vetting scholarship/bursary beneficiaries.
15. The composition and implementation of the Ward Education Support Scheme Committee and County Education Support Scheme Committee should be as stipulated in the Regulation, 2019.12(1, 2 and 3). Ward Education Support Scheme Committee was seriously violated especially for the 4th Cohort (2021) and 5th Cohort (2022).
16. The Taskforce recommends that bursars/account clerks to issue school receipts once payments are made and also prepare returns to the department for immediate update of the system. It was observed that some beneficiaries were not aware that their fees had been paid.
17. Since the Kenya Government intends to reduce its Annual Budget, the allocations to the counties will consequently be reduced. Therefore, the taskforce highly recommends reduction of beneficiaries' intake in 2023(Cohort 6) as compared to the 2022 intake. This will allow the county government to handle the huge numbers that were admitted in 2022 (Cohort 5) for sustainability.
18. Awareness should be carried out to the communities so as to encourage students to choose schools in Bungoma County during Form one selection process. Parents should be encouraged to embrace this for it reduces other incurred costs such as high fare. This will in turn lead to development of county school infrastructure and academic enhancement in our schools.

Committee's Findings

a) Books and Records of Accounts (Cash and Cash equivalents)

Mr. Speaker Sir, the Taskforce submitted that there were inaccuracies in cash and cash equivalents from the financial statements from the report of Auditor General on Bungoma County Education Support Scheme for the year ended 30th June 2020. It recommended that there was need to reconcile the records to give the true reflections of the funds of the Scheme that could aid in financial planning.

Cash and cash equivalents comprise cash on hand and cash at bank, short term deposits on call which are readily convertible to known amounts of cash and are subject to insignificant risk of changes in value.

The Committee was in agreement with the Taskforce recommendation that the scheme administrator must ensure that the cash books are reconciled and updated to reflect the true financial position of the scheme.

b. Ward /County Education Support Scheme Committee Operations

Mr. Speaker Sir, the Taskforce report indicated that the composition and implementation of the Ward Education Support Scheme Committee and County Education Support Scheme Committee should be as stipulated in the Regulation, 2019,12(1,2 and 3). Ward Education Support Scheme Committee was seriously violated especially for the 4th Cohort (2021) and 5th Cohort (2022).

Additionally, the taskforce observed that the Ward Education Support Scheme Committees for the forty five (45) wards were never renewed even upon lapse of three years. It recommended that the committee office bearers should be renewed or reappointed in line with the requirements as stipulated in Sections 12(5) of the regulations which stipulates that *“persons appointed under this regulation other than the Ward Administrator and Departmental Education Officer shall hold office for a term of three years and shall be eligible for reappointment for one further term*

Committee's Findings

Mr. Speaker Sir, the committee observed that criterion for formulation of the Ward Education Support Scheme committee is provided for in the Regulations 12(1-2). The taskforce report indicated that the committee composition was violated in cohorts four (2021) and five (2022). Out of the forty-five (45) Wards, Fourteen (14) Ward Education Support Scheme Committees provided minutes to the taskforce for data collection and the analysis which revealed as follows:

- a) Non-members were present in the meetings as proved by the minutes provided. These were CECMs, Chief Officers, and Village Administrators among others from various departments.
- b) Some Ward committees exceeded the recommended five (5) people contrary to Section 12(2) of the Regulations. Among the sampled Wards were Bumula, Khasoko, Chepyuk and Naitiri/Kabuyefwe.
- c) Lack of minutes and attendance lists in some Wards. The minutes provided were for fourteen (14) Wards against the forty (45) Wards. This was an indication of poor record keeping contrary to Regulations 9.
- d) Alteration of vetted lists by inserting hand written additional names in some Wards ;(Naitiri/Kabuyefwe and beneficiaries replaced by minutes in Siboti Ward.)
- e) Gender and regional balance not adhered to by the CECM in the composition of some Ward Committees ;(Bumula, Khasoko and Chepyuk)
- f) Ward Education Support Scheme Committee appointment and reappointment letters were missing.
- g) Regulation 10(1)(a-f) was not followed in the manner of operations of the County Education Support Scheme Committee . Some members did not turn up for meetings consistently and there were no apologies recorded in the minutes. The meetings were also attended by non-bona fide members.

An analysis of the Ward minutes provided confirmed attendance of non-members of both Ward and County Education Support Committees and membership of more than five (5) people contrary to Section 10(1-f) and 12(2).

Additionally, departmental records provided revealed correspondence from the CECM Education and Vocational Training dated 21st June 2021 extending the term of office for all the Ward Bursary Committees; however there was no evidence of appointment of specific Ward Committee members.

The committee therefore observes that the Department of Education and Vocational Training contravened sections 9(1&2), 10(1-2) and 12(2) with regard to the composition of the committees and management of the scheme.

The committee recommends that subsequent appointments and operations of the committee should adhere to the provisions of the regulations.

c. Internal controls and risk management of the scheme

Mr. Speaker Sir, the taskforce recommended that internal controls and risk management on the scholarship/ bursary disbursements from bursary identification to issuance of cheques and acknowledgement of the same should be firmed up. In this vein, cheques should never be written and be disbursed to schools without verifiable and reconciled previous lists from schools.

Additionally, the taskforce proposed that school fees were to be paid via EFT method if all beneficiary schools in Kenya could be mapped on IFMIS system. This would cut on costs and time being spent on processing the cheques.

The Committee made reference to the Auditor General Reports for the year ended 30 June 2021. In the report, the Auditor general raised the issue of unsupported award of bursaries and scholarships. Of concern was non-submission of acknowledgment receipts, hence it was not possible to verify the existence of the students who benefited from the scheme or the authenticity and validity of the awards.

The Committee concurs with the taskforce recommendation and directs the Department of Education and Vocational Training, together with beneficiary schools should ensure that individual receipting is undertaken for beneficiaries and cashless payment systems are embraced to enhance accountability.

d. Qualification criteria for selection of the beneficiaries

The taskforce report indicated that a Home Visitation Evaluation Sheet was formulated and used for beneficiary identification. It observed that home visitations were poorly carried out and the tool was not fairly administered. The tool had beneficiaries who hailed from able homes. There was need to come up with the home visitations reports that clearly stipulate the qualified and unqualified beneficiaries with justifiable reasons and these lists should be made public

Committee's Observation

Mr. Speaker Sir, the Bungoma County Education Support Scheme Regulations, 2019, Section 18 (a-f) stipulated the qualification selection tool for scholarship beneficiaries. The section stipulates that:

(18) An applicant shall qualify for a scholarship if the applicant is-

- a) A resident of the county;*
- b) Highly talented or has exhibited outstanding excellence in his or her area of specialty;*
- c) Admitted, continuing or a student with an offer letter for admission to a special school, secondary school, tertiary institution or a recognized university;*
- d) Disciplined according to the latest school or college report;*
- e) Meets additional criteria set by the County Education Support Scheme Committee and approved by County Executive Committee member in charge of Education; and*
- f) Is vulnerable.*

Additionally, the Bungoma County Guidelines for the Management of Bursary and Scholarship Scheme, 2018 stipulated guidelines which were used in the implementation of the scholarship program. Key among them was that the scheme was designed to support outstanding students from Bungoma County in national and extra county schools.

The Committee scrutinized the home visitation sheet and noted that the basic information required in the sheet included applicants name, school admitted to, Ward

and Village Unit. The key items assessed were the KCPE performance, nature of the primary school attended, nature of the bread winner, the family's financial capability, and the family living environment and conditions, family assets and the nature of disability of applicants. The sheet sought to capture basic bio data of the applicant, poverty indicators which aimed at ascertaining the vulnerability of the candidate and ascertain whether the student was newly admitted or an on-going student. However, the poverty indicators from 3 to 8 did not specify the score range to help in categorizing vulnerability of applicants.

The committee observed that that aspect of talent, outstanding excellence and discipline were omitted in the home visitation sheet. Since the criteria set out in the regulation was not fully adhered to, vetted lists contained ineligible beneficiaries which resulted in the bloated number. Students from other school categories, other national and extra county schools were awarded scholarships contrary to the guidelines.

Pursuant to Regulation 17(11), the committee concurred with the taskforce report that there was need to come up with the home visitations reports that clearly stipulate the qualified and unqualified beneficiaries with justifiable reasons and these lists should be made public and amend the Regulations to include the visitation form.

e. Record Keeping and Data Management

The Taskforce findings indicated that there were challenges associated with the Information Technologist's /Data Management Staff's inability to update the system. The system had beneficiaries who had exited (done KSCE) and changed program/schools, beneficiaries with more than one sponsor, who received double/triple payments, those dropped out of schools and those expelled on grounds of indiscipline. It is highly recommended by the Taskforce that the system be updated regularly to reflect the exact number of beneficiaries. The Department is advised to transfer the two Data Management Staff from the Department of Education and Vocational Training for failure to prudently discharge their sole mandate/duties.

Committee's Findings

Mr. Speaker Sir, Section 13(1) and (2) of the Regulation 2019, stipulates the functions of the Ward Education Support Scheme Committee among others; to receive acknowledgment receipts from the institutions. With regard to scholarships, the roles of the Ward committee as per the Guidelines 2018 are to receive the applications and enter them into a scholarship application register, undertake preliminary evaluation and submit their recommendations to the County Education Support Committee for final evaluation and decision.

The guidelines further stipulate that within one month after the cheques have been issued, the Ward Education Support Committee must submit acknowledgement letters and receipts from schools to the County Education Support Committee.

The Committee noted lack of coordination between the Ward Education Support Committee and the County Education Support Committee in that issuance of Cheques is undertaken by the County Committee but accountability in terms of submission acknowledgment of receipts is vested in the Ward Committee as per Guidelines 2018.

From the foregoing, the committee noted that the Ward Committee plays a critical role in the preparation and submission of bursary and scholarship records and reports. The Taskforce report highlighted poor inventory keeping among the Ward Administrators, and this was evidenced by lack of minutes and reports for the committee sittings and operations.

The Taskforce report associated challenges with record keeping and data management with the Information Technologist's /Data Management Staff's inability to update the system.

The Committee observed that responsibility of ensuring proper books and records of accounts are vested on the Scheme Administrator as per Sec. 9 of the Regulations and reinstate the need to regularly update the system. It however differs with the Taskforce on the recommendation to transfer the two Data Management Staff from the Department of Education and Vocational Training for failure to prudently discharge

their sole mandate on the basis that the buck stopped with the appointing authority and the Scheme Administrator.

f. Establishment of Scholarship Directorate

Mr. Speaker Sir,

The Taskforce report recommends that for better management of the scheme, a directorate be formed within the Department of Education and Vocational Training to specifically deal with the management of the Scholarship Program.

The Committee noted that the Regulations provide structures for the administration and management of the scholarship scheme as stipulated in sections 8, 9 and 11. The Regulations establish the County Education Support committee and gives powers to the Executive Committee Member to designate the administrator of the fund. Creation of a distinct directorate to deal with issues scholarship would result in duplication of functions.

Additionally, establishment of the directorate is the mandate of the County Public Service Board pursuant to Section 59 of the County Government Act, 2012. Implementation of the recommendation by the taskforce would result in increase of the wage bill.

g. Re-vetting of fifth (5th) cohort beneficiaries

Mr. Speaker Sir, the taskforce report recommended that re-vetting be carried out during the long December (2022) holiday on the 5th cohort students to ascertain the actual bonafide beneficiaries since the numbers were bloated, that is the additional 80% on the lists. This will enable the county government to sustain the program. The Department of Education and Vocational Training should emulate how other institutions (sponsors) like Equity Bank-Wings to Fly are able to identify and distinguish working class(able parents/guardians) from non-working (unable parents) by use of the identification cards among other methods. Those parents whose children are benefitting from the scholarship program and are working class (able parents/guardians), the Taskforce highly recommends their children to be removed from the scholarship program.

The Committee observed that approximately 843 students were already enrolled in the program, consuming approximately Kshs 30 Million are in 6th Cohort, 8870 students consuming approximately Ksh 310 Million for 5th cohort, 2192 students consuming approximately 77 Million and 556 students consuming approximately 20 Million.

All cohorts will require approximately 437 Million annually excluding arrears. This poses a great risk on sustainability which could affect other programs in the Department.

The Committee recommends re-vetting of the 5th cohort as per the Regulations to a manageable number for sustainability purposes.

h) Utilization of the Bursary and Scholarship Capital

The Taskforce noted that implementation of the scheme violated Regulations 7(1) (a-c). It recommended that the Education Support Program should be implemented as per the approved Bungoma Education Support Scheme Regulations of 2019, 7(1) (a-c) bearing the ratios allocated to the bursary (not less than 57% and not exceeding 87%), scholarship (not less than 10% and not exceeding 40%) and administrative costs (not exceeding 3% of the total funds). The Taskforce further recommended that more funds (gifts/donations/ grants/endowments) could be sought from other sources to strengthen the bursary kitty as per Regulations 11(1) (b).

Committee Findings

Mr. Speaker Sir, the committee made reference to Section 7(1) (a-c) which stipulates that the initial capital of the Scheme shall be allocated as follows:

- a. An amount not exceeding three(3) per cent of the total funds shall be allocated for the administration purposes of the scheme;*
- b. An amount not less than fifty seven(57) percent and not exceeding Eighty Seven(87) per cent of the fund shall be disbursed as bursaries to needy students;*
- c. An amount not less than ten (10) percent and not exceeding forty (40) percent of the funds shall be disbursed as scholarship targeting secondary school students with outstanding performance.*

The Taskforce based its findings on the main budget allocations for the FY 2022/2023 which was Kshs. 400M for bursaries and scholarships. The approved budget had an allocation of Kshs. 12M for administrative cost, Kshs.228M for bursaries and Kshs. 160M for scholarships. There was no allocation for VTC capitation. The first supplementary budget allocated an additional Kshs.124M, thus a total allocation of Kshs.524M.

During the interrogation by the Ad hoc Committee, the Department submitted that of the Kshs.524M was distributed as; Bursary (Kshs. 180M- 34.4%) and Scholarship (344M-65.6%). It was further submitted that for effective implementation of the program, Kshs. 955,811,250 was required by 30 June 2023.

With an allocation of Kshs.524M, a deficit of Kshs. 431,811,250 still remains outstanding. From the foregoing, it was evident that the scholarship program has taken the lion's share of the fund contrary to the provisions of the Regulations.

The committee was in agreement with the Taskforce recommendation and emphasizes that subsequent disbursement of the scheme fund should comply with provisions of regulation 7(1) (a-c).

i) Inventory Keeping by Ward Administrators

Mr. Speaker Sir, the Taskforce findings revealed that the Ward Administrators had very poor inventory keeping and were inadequate to handle scholarship/bursary effectively since they work under deplorable conditions. There is need to equip the ward offices and capacity build the human resource since the wards discharge vital roles for sourcing and vetting scholarship/bursary beneficiaries.

The committee noted that out of the forty-five (45) Wards, only fourteen (14) Ward Education Support Scheme Committees provided minutes to the taskforce for data collection and the analysis. Additionally, the department did not submit any reports of minutes pertaining to the Ward Committees for verification.

The committee therefore concurs with the taskforce report that for effective management of the program, the Ward Administrators need to be capacity built on the

requirements of the Regulations and should be provided with ideal working environment.

j) Placement of students in schools within Bungoma County

Mr. Speaker Sir, the taskforce recommended that awareness should be carried out to the communities so as to encourage students to choose schools in Bungoma County during Form One selection process. It further suggested that parents should be encouraged to embrace this for it reduces other incurred costs such as high fare. This will in turn lead to development of county school infrastructure and academic enhancement in our schools.

The Committee observed that placement of students in secondary schools is undertaken by the Ministry of Education through the National Education Management Information System (NEMIS) and learners are placed based on performance, schools of choice and capacity of the schools to promote national cohesion.

The committee disagreed with the Taskforce recommendation.

k) Sustainability of the Scholarship Program

Mr. Speaker Sir, the taskforce report indicated that since the Kenya Government intends to reduce its Annual Budget, the allocations to the counties will consequently be reduced. Therefore, the taskforce highly recommends reduction of beneficiaries' intake in 2023(Cohort 6) as compared to the 2022 intake. This will allow the County Government to handle the huge numbers that were admitted in 2022(Cohort 5) for sustainability.

Since the introduction of Scholarship Program in the FY 2017/2018 as a corporate social responsibility initiative of the County Government, there has been an increase in enrolment of students into the Scholarship Program without sufficient budgetary allocation.

With the rising numbers of beneficiaries from the 453 in the first cohort to 8870 in the fifth cohort; and increased expenditure coupled with the shrinking resource envelope; the Committee is concerned that the Scholarship Program is unsustainable in the long run.

The Fourth Schedule of the Constitution of Kenya, 2010 lists the devolved functions to County Governments under the Education department to include pre-primary education, village polytechnics, home craft centres and childcare facilities; where least focus has been applied.

The obligation of secondary and tertiary education institutions falls under the National Government functions.

The Committee recommends that for sustainability of the Bursary and Scholarship Scheme, the Department of Education and Vocational Training **MUST** adhere to the provisions of the Bungoma County Education Support Scheme Regulations, 2019.

Subsequently, guidelines formulated to operationalize the Regulations pursuant to Section 7(2) should be aligned to the Regulations and approved by the County Assembly.

CHAPTER FIVE

5.0 Interrogation of Pending Bills Report of the County Government

5.1 Introduction

Mr. Speaker Sir,

The Task force on pending bills was appointed by His Excellency the Governor, Hon. Kenneth Makelo Lusaka vide Gazette Notice No. 11273 under Section 17 of the County Governments Act on 16th September, 2022. The Task force was to advise and guide the Bungoma County Government on the settlement of genuine pending bills thus classified them as eligible and ineligible.

Their findings were arrived at through verification of the availed documentary evidence, field visits and relevant explanations considering the consolidated main budget, supplementary budget, procurement PPDA procedures and regulations, PFM Act and regulations and other relevant laws and regulations.

They sampled out pending bills of Kshs. 1,021,892,030 across all the departments that were verified but they did not mention the total pending bill in which they sampled from. They also verified pending bills for four flagship projects; the Dual carriage way, the Misikhu- Naitiri Brigadier road, Masinde Muliro Stadium and Mother and Child 300 bed capacity hospital. From the verified amount Kshs. 439,976,825 were indicated as eligible while Kshs. 581,915,205 ineligible.

5.2 Flagship Projects

Mr. Speaker Sir,

The Task force examined pending bills for four flagship projects as follows;

1. Dual Carriage Way

Task force findings

The Task force established that;

- i. The project has a pending Bill of Kshs. 168, 597,364.00 includes Kshs. 108,540,363.00 claim on delayed payment to the contractor.
- ii. The identity of ZHONGMEI ENGINEERING GROUP LTD is questionable. The official search document (CR12) is supposed to indicate the shareholders / directors of the company details; name, number of shares held by each shareholder and percentage shareholding, however the CR12 provided lacked shareholders information since it only showed the directors names, description, address and nationality. Further whereas the certificate of compliance was issued to ZHONGMEI ENGINEERING GROUP LTD on 3rd November, 2009, the company changed its name from JIANGXI ZHONGMEI ENGINEERING GROUP LTD TO ZHONGMEI ENGINEERING GROUP LTD on 15th November, 2012.
- iii. Variation of contract sum by Kshs. 191,202,204.40 (14% of the contract sum). Whereas the variation of the contract sum was within the approved limit of 25% as per PPAD Act 2015. The evidence of submission to PPRA was missing.
- iv. Overstated revised contract sum; the original contract sum of Kshs. 1,382,442,975.76 was varied upwards by Kshs. 191,202,264.40 totaling to Kshs. 1,573,645,180.16 however the revised contract sum as indicated was Kshs. 1,573,728,108.16 hence an overstatement by Kshs. 82,928.00 (1,573,728,108.16 -1,573,645,180.16).
- v. The original budget for the FY 2019/2020 was 271,912,595 (1.81km at 150M per Km) was reduced to Kshs. 241,459,064 which translates to 1.61km (a reduction of 0.2km). During the same Financial Year, two interim payment certificates no. 2 and 3 were processed whose sum was Kshs. 355,102,566.30. The amount processed exceeded the budgeted allocation by Kshs. 113,607,502. There is no evidence of communication between County government of Bungoma and KeNHA.

- vi. Bid bond was provided however it was not sealed nor rubber stamped by the bank to confirm the authenticity. The bid bond amount was Kshs. 25,000,000,000.
- vii. There is no evidence of due diligence and public participation conducted on this project.
- viii. The payments made to date are contrary to the completion rate of the works done
- ix. There is no evidence of the implementation team constitution and approval on this flagship project.

Submissions by the Department of Roads

Mr. Speaker Sir,

CECM gave highlight of the procurement process which was an open tender where two bidders showed interests; Zhongmei Engineering Group Limited and Sakam Enterprises Limited. The tender opening minutes were not submitted.

The Bid bond submitted lack the signed date, seal and stamp from the bank hence need to confirm its authenticity.

Two copies of CR12 dated 16th July, 2019 and 5th June, 2020 were submitted yet the contract agreement for the project was signed on 15th January, 2019. The department did not explain how the CR 12 was submitted after signing of the contract.

The report on the variation was submitted where the contractor had presented an appraisal of the works in February 2022 that was to increase the value of the contract by Kshs. 348,593,572 translating to 20.13% and later he submitted an addendum of Kshs. 490,000,000 translating to 35.4% of the contract sum. The evaluation committee on variation works analysed the submission from the contractor and approved the increment of the contract sum by Kshs. 191,202,264 translating to 13.85% of the original contract sum of Kshs. 1,382, 442,975.

The department confirmed that the total payment for Dual carriage was Kshs. 1,050,623,080 and the total pending bill of Kshs. 544,899,240 comprising Kshs. 108,597,364 on claim on delayed payment and Kshs. 436, 301,866 on work done.

The work done is at 94% and the last payment was made more than a year ago.

Committee's Findings

a. Contract agreement

Mr. Speaker Sir,

The contract was entered into on 15th January 2019 between the County Government of Bungoma and Zhongmei engineering group LTD for CONSTRUCTION OF KANDUYI – SANGALO JUNCTION TO DUAL CARRIAGE ROAD (C33). CONTRACT No. BGM/CNTY/OT/RPW/184/2018 – 2019.

The contract sum as per the agreement is Kshs. 1,382, 442,975.76 and the contract period is 24 months with the commencement date being 22nd October, 2019.

Directorship of Zhongmei Engineering LTD

Two CR12 dated 16th July, 2019 and 5th June, 2020 respectively were availed both indicating the directorship as follows;

Pang Yankun	- Director	- Foreigner
Dai Longpei	- Director	- Foreigner
Cheng Xiayu	- Director	- Foreigner
Patrick Wangalwa Oundo	- Local representative.	- Kenyan

The Registrar of Companies' reference in the two CR12 is the same – CF/2009/13377. Change of name from JIANGXI ZHONGMEI ENGINEERING GROUP LTD to ZHONGMEI ENGINEERING LTD does not necessarily alter the registration details of the company.

b. Contract Variation

Mr. Speaker Sir,

From the report of the evaluation committee the contractor submitted an appraisal of the works done or anticipated to be done which constituted 35.4% of the contract sum. The evaluation committee on interrogation of the same and considering the bills of quantities and the contractor rates recommended a variation of Kshs. 191,202,204.40 which constitutes 14% of the contract sum. Section 139 of the Public Procurement and Asset Disposal Act provides that;

(1) An amendment or a variation to a contract resulting from a procurement proceeding is effective only if—

- a) the variation or amendment has been approved in writing by the respective tender awarding authority within a procuring entity; and*
- b) any contract variations or amendments for goods, works and services shall be as prescribed.*

(5) An accounting officer of a procuring entity shall submit a quarterly report of their varied or amended procurement contracts to the Authority.

There was no evidence of any reports as prescribed under Section 139(5) of the Public Procurement and Asset Disposal Act above. It is worth noting that non-compliance with the above provision does not necessarily invalidate the variation.

c. Bid bond

Mr. Speaker Sir,

The Bid bond was provided however it was neither sealed nor rubber stamped by the bank to confirm the authenticity. The bid bond amount was Kshs. 25,000,000,000.

The bid bond submitted is dated 20th November 2018 by Equity Bank. The same is stated to be valid up to the time of execution of the contract agreement.

d. Due diligence and public participation

Whilst the Task force noted that there is no evidence of due diligence and public participation conducted on this project the committee agrees that contracts of such a magnitude of works should commence with due diligence pursuant to Section 83 of the

Public Procurement and Asset Disposal Act. This includes; feasibility study/market survey and bench marking and public participation.

e. Rate of work done vis a vis payment rate

Mr. Speaker Sir,

The payments made to date are contrary to the completion rate of the works done. The department confirmed that the total payment for Dual Carriage was Kshs. 1,050,623,080 and the total pending bill of Kshs. 544,899,240 comprised Kshs. 108,597,364 claim on delayed payment and Kshs. 436, 301,866 on work done. The work done is at 94% and the last payment was made more than a year ago as submitted by both the department and the contractor.

f. Project Implementation team

The Task force noted that there is no evidence of the implementation team constitution and approval on this flagship project. The Task force recommended that the department should form a project implementation committee on the project to ensure proper completion and handover including surrender of project assets to the client.

The agreement for transfer of powers between KeNHA and the County Government of Bungoma for the financing and contract for the dualing of 6.5 Km Kanduyi – Bungoma – Sangalo Junction (C779) road section provides under *Article V clause 5.5 that;*

“A joint implementation team shall be created comprising of members from both parties to this agreement who will be actively playing the joint role aimed at ensuring effective implementation of the project.”

During the interrogation, the department submitted minutes of a technical meeting consisting of the CECM roads, the Chief Officer, the assistant Resident Engineer, the contractor’s country director and the contractor’s site agent and stated that the same was the project implementation committee.

g. Communication between County Government and KeNHA

Mr. Speaker Sir,

The Task force observed that the original budget for the FY 2019/2020 was 271,912,595 (1.81km at 150M per Km) was reduced to Kshs. 241,459,064 which translates to 1.61km (a reduction of 0.2km). Further that during the same Financial Year, two interim payment certificates no. 2 and 3 were processed whose sum was Kshs. 355,102,566.30. The amount processed exceeded the budgeted allocation by Kshs. 113,607,502. The taskforce noted that there is no evidence of communication between County government of Bungoma and KeNHA and recommended that such contracts that have an adverse effect to the budget must co-opt the National government authorities (KeNHA) for partnerships and approvals.

The department submitted the agreement for transfer of powers between KeNHA and the County Government of Bungoma for the financing and contract for the dualing of 6.5 Km Kanduyi – Bungoma – Sangalo Junction (C779) road section. The agreement is signed by the director Highway Planning and Design, KeNHA and the Chief Officer Roads, Transport, Infrastructure and Public Works, County Government of Bungoma. Under **Article II** of the said contract **clause 2.0** of the said contract provides;

“the county government of Bungoma covenants on demand by the contractor to pay all monies, obligations and liabilities whether principal, interest or otherwise which may now or at any time in the future be due, owing or incurred by the contractor or KeNHA, whether actual or contingent and whether alone, severally or jointly or otherwise and in whatever name or style and together with interest, charges and other expenses from time to time as well after as before any demand made or judgment obtained hereunder in relation to the project.”

h. Report by the Committee on Roads, Transport, Infrastructure and Public Works

Mr. Speaker Sir,

The County Assembly Committee on Roads, Transport, Infrastructure and Public Works in its report on the status of construction of the Kanduyi-Sanga'lo junction (c33) road to dual carriageway contract no. bgm/cnty/ot/184/2018-2019 made the following observations;

1. **THAT**, the dual carriageway project was substantially complete and was currently in use by motorists and other road users.
2. **THAT**, the project contract timelines had lapsed and that the project now operates within the defects liability period of 24 months since July 2022.
3. **THAT**, the contract has already explored 13.5% of the contract sum in variations on the project. A sum of Kshs. 191 million was approved by the accounting officer as price variation, while there is a contractor's claim 1 of Kshs 108 million in lieu of time variation.
4. **THAT**, the County Government of Bungoma owes the contractor a sum of Kshs. 438, 275, 620 on valued works on the project i.e. from certificates 7, 8 and 9.
5. **THAT**, the outstanding payments owed to the contractor are attracting interest as per the conditions of contract (Clause 60.1) and that the employer is at risk of being charged for defaulting on payment.
6. **THAT**, the a sum of Kshs. 300 million that was proposed in first supplementary budget for the project was later reduced to Kshs. 106 million; an amount which has not yet been released to the department to enable the department pay the contractor for valued works on the project.
7. **THAT**, the KeNHA is willing to take over the project and upgrade it to the Highway standards; provided that the County Government honors the conditions that it has set out.
8. **THAT**, quantities in some of the bills namely; 1.09, 5, 8, 12, 13, 14, 17, 20 and 26 increased due to changes in prices of commodities brought about by the global inflation

From the foregoing the County Assembly Committee on Roads, Transport, Infrastructure and Public Works made the following recommendations with regard to the project;

1. **THAT**, the department should ensure that the contractor completes the dual carriageway project and fully hands it over to the County Government within the stipulated contract time lines.
2. **THAT**, the department should ensure that all outstanding payments to the contractor are fully paid to avoid accrual of interest on delayed payments and instances of litigation for defaulted payment by the contractor.
3. **THAT**, the department should allocate more funds in the subsequent financial years towards the project to cover for the challenges arising from global inflation so as to fast track the project completion and to enable a smooth handing over to the KeNHA

2. Upgrading of Misikhu - Naitiri-Brigadier Road

Findings by the taskforce

Mr. Speaker Sir,

The Taskforce established that;

- i. Copies of all IPCs were not availed. Out of Kshs. 828,794,128.37 interim certificates only Kshs. 521,618,118. Hence could not verify Kshs. 307,176,010 (37%).
- ii. Contract variation report to support Chief Officer Roads letter dated 20/09/2019 regarding price adjustment of 1.124. There is need to verify the effect of this variation on the entire contract.
- iii. Minutes supporting the extension of contract period by 12 months letter done by the Chief Officer Roads dated 12th Dec 2018. This did not go through the project implementation committee.
- iv. IPC No 16. Seeks release of retention of Kshs. 37,943,405.87. Tabulation to support this figure from paid IPCs was not provided.
- v. The taking over certificate raised on 18/11/2019 indicates that 8.5 km of road had been done and defects liability period had expired. The contractor on his part vides correspondence of July 9, 2020 indicated 18.65 km. The contractor

- also claimed to have been paid Kshs. 617,583,269.62 which translates to **55.43%**. However the contractor has only done **22%** of the road. Physical verification of the road shows it is far from completion.
- vi. Complete review of tender document to be done. The bid bond should remain in place the entire period of the contract.
 - vii. The National Government committed to support through conditional grant of Kshs. 200 million. This amount was to be channelled through KeRRA who were to complete the Naitiri-Misikhu Road /Nzioa Bridge-Matunda. How the transition to KeRRA was communicated to the contractor to be ascertained.
 - viii. Probable pending Bill amount of Kshs. 273,988,705 arising from claim on reimbursements from certificate number 4 was not verified.
 - ix. The highest contract value carried out by Midland was Kshs. 203 million. Did they have enough capacity for this contract of Kshs. 1.115 billion
 - x. Need documentation to understand clearly who initiated contract closure: contractor or the County government so as to assess the culpability or otherwise.
 - xi. The legal opinion recommended by the County Attorney on 9/02/2021 indicated that final projects accounts be submitted. This was not availed. Neither is there a snag list.
 - xii. Avail due diligence report before the contract was awarded.
 - xiii. Provide the original and supplementary budgets for 2016/2017 FY to establish whether there were sufficient funds to award the contract.
 - xiv. Confirm recovery of balance of advance payment of Kshs. 97,414,014. An amount of Kshs. 14,179, 905 has since been recovered vide certificate number 10 – Kshs. 10,354,416 and certificate no. 13 – Kshs. 3,825,489.09. The total advance was Kshs. 111,593,919 issued through advance payment certificate of 14/02/2017.

Submission by Contractor Misikhu – Naitiri – Brigadier Road

Mr. Speaker Sir,

The director and project manager appeared before the committee and submitted that construction of the road; 42km road and 3 bridges was awarded to them on 19th December, 2016 but the actual work began in May 2017 due to delay in formulation of design. With the cash flow problems the works stopped but they managed to complete 20km and handed over on 18th November, 2019.

The director stated that on 7th September, 2020, they had a meeting at the Cabinet Secretary Transport, Infrastructure, Housing and Urban Development Office where the Cabinet Secretary, 2 directors from KeRRA, the County Attorney, CECM Roads and Public Works and Chief Officer Roads and Public Works were present where they discussed on winding up of the agreement and taking over the project by KeRRA.

They stated that the contract sum of the project is Kshs. 1.1 Billion out of which Kshs. 612,494,045.68 had been paid and there was a pending bill of Kshs. 107,946,648.41 due to interest on delayed payment and a retention of Kshs. 12,620,458.40 totalling to Kshs. 120,567,106.81, and once the funds are paid, the contractor was willing to go back to the site to complete the works.

On the current status of the road, Mr. Divyesh indicated that as per the Bill of Quantity, the road was for low volume but while they were still working on it cane tractors were plying it hence alleged potholes. It was the responsibility of the County Government to ensure that the road is used as intended

Submissions by the department

Mr. Speaker Sir,

The department submitted that the contract sum for the project is Kshs. 1,115,939,198 out of which Kshs. 595,617, 235 has been paid. There was no pending payment for the work done but the County owes the contract Kshs. 120M for claims on delayed payments and retention fee. Overall Work done is at 48%.

Out of a total payment of Kshs. 595,617,235, Certificates of payments were provided amounting to Kshs. 252,652,997.97. The payment certificates were;

- Certificate NO.2 Kshs. 59,475,875.75
- Certificate NO. 3 Kshs. 46,560,437.72
- Certificate NO. 6 Kshs. 33,726,327.40
- Certificate NO. 8 Kshs. 87,968,044.20
- Certificate NO. 13 Kshs. 24,922,312.90

The certificates for the payments amounting to Kshs. **342,964,238** were not availed to the Committee.

The extension of contract period by 12 months did not go through the project implementation committee.

On the recovery of the amount advanced to the contract, it was submitted that out of Kshs. 111,593,919 advanced, Kshs. 46 million had been recovered.

The County Government vide letter reference KeRRA/ 06/1/4692 dated 2nd November,2020 forwarded the minutes of the meeting held on 7th September, 2020 between the Cabinet Secretary Ministry of Transport and Infrastructure and the Governor resolving on improvement to Bitumen Standard of Naitiri-Makunga-Misikhu Brigdier –Matunda Roads in which KeRRA was to get authority from the Ministry of Transport to document and package balance of works and tender for the same through open tender with the financing from the National Treasury under development budget.

The initial MOU between the County Government and KeRRA on the road was not availed but the CECM submitted that after consultation meetings, the road from Naitiri to Brigadier was awarded to a Chinese contractor who was on site and the scope of work for Midland Construction Ltd was to change from low volume road to bitumen standard.

Committee's finding

Mr. Speaker Sir,

From the submissions of the department and the contractor, the Committee observed that;

- i. Interim Payment Certificate No 16. Seeks release of retention of Kshs 37,943,405.87. Tabulation to support this figure from paid IPCs was not provided.
- ii. The department did not avail all the interim payment certificates for all the payments.
- iii. The CR 12 provided indicated a certificate from the companies registry dated 15th June ,2022 with company number C166229 in the name of Mid land Construction Company Ltd registered on 16th December,2008. The directors are Divyesh Kotecha Ramesh as the Director and Richard Mundia Kariuki the secretary
- iv. The contract closure was initiated by the County Government to allow the National Government to take up the project.
- v. Section 83 (1) of Public Procurement and Disposal Act provides for conducting of due diligence report on the winner of the contract before award of the tender. This was not justified by the department when they appeared before the Committee.

3. BCRH 300 Bed Maternal and Child Unit

Mr. Speaker Sir,

On the BCRH 300 Bed Maternal and Child Unit, the Task force found out that;

- i. The project was to be funded by County Government of Bungoma, World Bank and National Government totaling to Kshs. 35,616,518.03 which is far much below the contract amount of Kshs. 239,665,436 by Kshs. 204,048,918. It is against the PPAD Act 2015 to start any project with insufficient funds.
- ii. Further, the budget for FY 2018/19 only provided for Kshs. 35,000,000 against the contract sum of Kshs. 239,665,436.60. Yielding an adverse variance of Ksh 204,665436.60. The current total payment amounts to Kshs. 177, 565,786.60 (certificates 1 -7).
- iii. First interim certificate Kshs. 25M was paid by Health department while other certificates were paid by the County Secretary office. Besides, one payment

voucher without supporting documents amounting to Kshs. 54,443,857.60 was paid however it could not be clearly verified by the Ministry Health or the County Secretary's office because of the blame game.

- iv. The contract extension period of 6 months from 6/08/2021 should end on 06/02/2022 and the extension was not communicated to PPRA.
- v. Professional opinion attached has been grossly violated by the Ministry of Health
- vi. That soon the Ministry of Health will receive request for variation to enable the contractor complete the works.

Submission by the Department

Mr. Speaker Sir,

The CECM submitted that the initial contract sum for the project was Kshs. 239 million where the County Government contributed Kshs. 27 million while KDSP contributed Kshs. 212 million. The project began in July 2019 and it is expected to be completed by October, 2023.

The representative of the County Secretary, Mr. Joseph Kisindai informed the committee that the project was a conditional grant from the World Bank and initial BQ had 3 floors but it was adjusted by the County Government to 5 floors hence necessitating the provision of extra funds by the County Government.

On the variations on the project, the Finance Officer stated that the contract sum was increased by Kshs. 59, 704,620 due to change on site location from the BCRH to pediatric wing, external works, drainage and sewerage, water supply, introduction of bed lift, change of structure design, provision of gas line, construction of a generator house and 3 phase power supply.

At the time of interrogation, the department didn't have any pending bill on the project. The variation was to facilitate the completion of the remaining works on the project.

Report by Public Administration and ICT Committee

Mr. Speaker Sir,

The Committee on Public Administration and ICT made the following observations in its report on the 300 bed maternity wing;

1. That the KDSP project for the construction of the 300-bed maternity wing at BCRH is domiciled in the Office of the County Secretary. However, the project implementation and supervision is coordinated by the Department of Health which is the beneficiary /user, hence the confusion on who between the Chief Officer Health and Sanitation and Chief Officer-Office of the County Secretary; should be the accounting officer for the KDSP funds.
2. That the project is managed by a project Implementation Committee chaired by the Project Manager and consists of members drawn from the departments of Health, Roads and Public Works, Procurement, Public Health and stakeholders.
3. That the project is planned to be implemented in two phases: phase one construction of the facility while phase two-equipping of the maternity wing.
4. That the total projected cost of the project is Kshs.339,000,000; broken down as Kshs.239M co-funded between the Ministry of Devolution-KDSP project at a cost of Kshs.212M and County Government of Bungoma Kshs.27M for phase one and phase two at Kshs.100,000,000 fully funded by the KDSP.
5. That the Department of Health as the user Ministry budgeted Kshs.34,999,980 in the FY 2018/19 for the project as the County Government's contribution.
6. That the procurement procedures were duly followed pursuant to Sections 46, 74, 80 and (2 (2) of the Public procurement and Disposal Act,2015.
7. That the contract was awarded to M/S INTERLECT Contractors limited at a quoted sum of Kshs. 239,665,436.60.

8. That the project commenced on 7th June 2019, with the completion date expected to be 7th August 2021. The committee however noted that this might not be achieved based on the slow progress of works as observed during the site visit.
9. That the slow progress of works was attributed to variations made in the course of implementation of the project. However, the committee was not seized of any document as proof of variation of the project. In the absence of the documentary proof the accuracy of the procurement process during the variation could not be ascertained.

Committee findings/ observations

1. Variations were approved by the Director Public Works for the Chief Officer vide letter dated 21st January, 2022 but the minutes for approval of the variations by the evaluation committee and request for the variations on the works were not availed.
2. The department of Health budgeted for Kshs. 34,999,980 in the FY 2018/19 for the project as the County Government's contribution yet its contribution to the project was Kshs. 27 million. The department needs to give the expenditure report of the allocation.
3. The department should re-look at the time frame of the project which was earmarked for 6 months in the variations bearing in mind the delays that may be caused by the appropriation processes.

4. Masinde Muliro Stadium

Mr. Speaker Sir,

In ascertaining the value for money for Masinde Muliro Stadium, the Task force established that;

- i. There was a payment voucher of Kshs. 19,551,438 without documentary evidence or explanations attached to the pending bill of Kshs. 70,905,309.65 for the financial year 2022/2023. This amounts to an irregular payment.

- ii. The procurement plan and the budget (including the supplementary budgets) don't align with the contract sum. The procurement plan total to Kshs.477, 798,058 against the contract sum of Kshs. 679,386,376. Yielding a variance of Kshs. 201, 588,318.
- iii. Contract period initially dated 14th June 2019 – 14th June 2021 extended to 14th June 2023 by 2 years contract period. This amounts to 100% extension period yet the payment amount of 502,942,756.73 not in tandem with the reason of extension. Furthermore the value for money of the need for the stadium to the community and other stakeholders at large is compromised.
- iv. The paid amount to date is Kshs. 502,942,756.73 vis-à-vis the contract sum of Kshs. 679,386,376.00 amounts to 82% completion rate yet the interim certificate 8 claiming pending bill of Kshs. 79,905,309.65 has a percentage completion of 74%.
- v. No previous interim certificates attached
- vi. No payment vouchers attached
- vii. County expenditure form never signed at all
- viii. No evidence of market intelligence on the prices of the Bill of Quantities

Submission by the Contractor

The Director and the Quantity Surveyor appeared and informed the Committee that the project had no pending bill and the works were at 80% completion. The total payment for the project that they had received was Kshs. 477,439,780.

He added that they had not raised any variation but due to price fluctuation, preliminaries for the extension of the contract and additional works that were not in the original BQ, they were working on the variation.

Report by Youth and Sports Committee

Mr. Speaker Sir,

The Committee on Youth and Sports reports on the status of stadia in Bungoma County made the following observations;

1. According to the contractor, Phase one of the project was 78% and 74% done according to the executive. It included construction of the VIP launch and

terracing, administrative offices, fencing of the stadium, parking and grassing of the football pitch.

2. The payments done so far did not tally with the actual work done on the site. The County Government seem to have paid much vis a vis the works.
3. Some section of the stadium appeared to have been encroached by human settlement and the contractor distanced himself from the issue.
4. The contractor was working out of the specified timeframe.
5. The major challenge sited by the contractor was flow of funds to complete the project as the amount of money paid against the work done did not match. The County Government has paid 85% which is equivalent to five hundred and seventy seven million, four hundred and seventy eight thousand, four hundred and twenty shillings (Ksh 577,478,420) out of the six hundred and seventy nine million three hundred and eighty six thousands three hundred and seventy six (Ksh 679,386,376)
6. All the payment certificates accrued interests which in turn cost the County Government an extra of twelve million four hundred and twenty-seven thousand seven hundred and eighty two shillings and fifty one cents (Ksh 12,427,782.51). These moneys are usually paid in subsequent payment certificates.
7. There was a contract extension agreed on 26th April 2019 that gave the contractor two more years to complete the project beginning 14th June 2021 to 15th June 2023. This was agreed upon consideration of the funding of the project.

Committee's finding

From the list of pending bills submitted by the department of Gender, Culture, Youth and Sports, there was no pending bill in respect to Masinde Muliro Stadium therefore it has no pending bill.

5.3 Departmental Reports on the Pending Bills

Education and Vocational Training

Mr. Speaker Sir,

The Task force report highlighted pending bills of Kshs. 33,591,699 comprising Kshs. 32,643,049 for development and Kshs. 948,650 for recurrent. Those indicated as eligible were Kshs. 16,503,495 and ineligible were Kshs. 15,230,471.

The main reason for ineligibility of the pending bills were attributed to;

- Use of restricted tendering
- Projects were not in the procurement plan
- Lack of evidence for project period extension
- The projects were not complete

Submission by the department

The CECM Education and Vocational Training appeared before the Committee and submitted that the department had no recurrent pending bill while development had total pending bill of Kshs. 83,335,451 comprising Kshs. 50,855,143 for Ward Based Project and Kshs. 32,480,308 for vocational training centre projects. Also the project status report for Ward Based Projects as at 9th April, 2023 was submitted.

He also submitted copies of letters for the extension of contract for the projects whose contract period had lapsed and termination letters for the stalled projects.

Committee's findings

1. All the recurrent pending bills flagged out by the Taskforce had been paid yet they were marked as ineligible.
2. The taskforce did not indicate the financial year in which the projects were initiated.
3. Retention has a separate account and cannot therefore be considered as pending bill but the report listed some projects' retention as pending bills.
4. From the list of pending bills submitted by the department, only one item; the construction of ECDE classroom at Nakhwana, Bitobo and Kitabisi appeared in the pending bills list flagged out by the Taskforce. Others are retentions, commitments or already paid.

5. The taskforce report did not differentiate between pending bills and commitments. It was noted that the amounts payable for some Ward Based Projects were not consistent in the taskforce report and the project status report as shown below:

	PROJECT	Pending bill as per the taskforce report	Payable balances as per the project status report for Ward Based Projects
1.	Construction of 1 ECDE classroom and 2 door pit latrine at Kostoi, Cherongos and Chelilde primary Schools.	748,549	2,977,016
2.	Construction of 1 no. ECDE classroom and 2 no. door pit latrine at Kaboroit, Chepkowo and Kimurio primary schools.	1,896,032	3,270,060
3.	Construction of 1 no. ECDE Classroom at Samoya, Musikoma, Walala, Muslim, and Siritanyi primary schools	3,589,782	3,382,096
4.	Construction of 1 ECDE classroom at Lumasa, Buema, Bukusu, Mungeti, Sitoma and Nakayonjo primary in Tuuti/Marakaru ward	805,277	118,570
5.	Proposed erection and completion works for 1 no. ECDE classroom and Office at Mupeli and Central Baptist primary Schools. Pending bill 1,139,000 eligible while Kshs 1,139,000 ineligible	1,139,000	4,389,000

Trade, Energy and Industrialization

The Task force highlighted pending bills of Kshs. 14,116,640 that at the time of this committee interrogation, they had all been paid although pending bill worth Kshs. 1,029,844 had been indicated ineligible.

The Chief Officer informed the Committee that the department currently has a pending bill of Kshs. 19,565,175 in respect to Ward Based Projects.

Gender, Culture, Youth and Sports

Mr. Speaker Sir,

The Task force highlighted pending bills of Kshs. 21,699,861 out of which Kshs. 14,398,429 was indicated as eligible while Kshs. 7,301,432 was ineligible.

The Task force interviewed the accountant and the procurement officer as a basis of their findings on all the pending bills in the Gender, Culture, Youth and Sports Department.

The ineligible pending bills were in respect to the construction of Maeni Youth Empowerment centre with a pending bill of Kshs. 1,666,282, service for reviewing Bungoma Youth Fund Regulation with a pending bill of Kshs. 2,400,000, completion works for High Attitude Training Centre with a pending bill of Kshs. 4,786,705 and Kshs. 848,445 in respect to Sang'alo multipurpose hall.

Submission by the department

The outstanding pending bill for the department as at 30th June, 2022 was Kshs. 33,513,172 out of which Kshs. 18, 150,923 had been paid leaving a balance of Kshs. 15,362,248.

Committee's findings

- The construction of watching stand at Mbakalo stadium has two pending bills of Kshs. 2,923,740 and Kshs. 914,582 and the Taskforce approved for payment after verification by an independent quantity surveyor on the percentage of completion.
- On the pending bill for the review of Bungoma Youth Fund Regulations, the taskforce observed that the payment vouchers were being prepared but they recommended that the payment was subjected to verification by interviewing the public participants thus the recommendation is not in line with the observation.

- On the pending bill for the construction of Maeni Youth Centre, the taskforce observed that it was a commitment yet the structure is in place therefore it's a pending bill.

Tourism, Environment, Water and Natural Resources

Mr. Speaker Sir,

The Task force presented a total pending bill of Kshs. 73,582,467 broken down as; eligible Kshs. 17,692,991 and ineligible Kshs. 55,889,486.

The ineligibility of the pending bills was based on;

- Negative vote book balances and the taskforce recommended that budget to be harmonized through the supplementary budget or payment be made in subsequent financial year.
- Full board conference services at Satelite Hotel and Minata Hotel and use of direct procurement in sourcing for services from Minata Hotel
- Lack of post mechanical inspection reports
- Discrepancy in the computation of the VAT and Withholding tax
- Lack of necessary supporting documents on the payment voucher.
- Need to verify the existence of the upgrading of borehole to solar pumping system, construction of 1 water kiosk, pipe laying at Namutokholo Borehole, Namwela ward.

Submission by the Department

Mr. Speaker Sir,

The Chief Officer elaborated that the 20 days full board conference facility pending bill was for evaluation of the Ward Based Project and it was done in two phases of 10 days each. There was need for the evaluation team to work at night because the accessibility of the IFMIS is effective off peak hours hence full board conference service.

The department resolved to use direct procurement since no hotel had submitted its quotation within the period required and the tender on proposed construction of Perimeter Fence and Office at Bungoma Dumpsite had been closed and given the stipulated timelines for evaluation and compliance to the court and NEMA. They resolved to use Minata Hotel since it was among the local pre-qualified hotels within Bungoma County and who were willing to offer the services.

On the Khasoko Water Projects the specific projects include;

- Upgrading of Mungore Dispensary Borehole
- Drilling of Namusasi and Namanze health centre borehole
- Rehabilitation and protection of 6 water springs
- Drilling of 2 boreholes and equipping with Solar Pump and Protection of Khulutende Spring.

On upgrading of borehole to solar pumping system, construction of 1 water kiosk, pipe laying at Namutokholo Borehole, Namwela ward, the department confirmed that the project was completed and paid for.

The department has a total pending bill of Kshs. 118,369,664 comprising Kshs. 75,424,766 for Water and Natural Resources and Kshs. 42,894,921 for Tourism and Environment.

Committee's findings

The Committee observed that;

- The computation of the VAT and Withholding tax are automatically calculated in the IFMIS therefore the Task force may not have been aware of the tax rates applied and their computations.
- The Task force did not carry out physical verification of all projects to ascertain their existence hence the need to verify their physical location before making payments.

- Most of the pending bills are due to lack of funds in the specific vote books and this does not make them to be ineligible.
- The department justification for full board conference facilities within Bungoma County is executable.

Health and Sanitation

Mr. Speaker Sir,

The Task force report raised 57 pending bills under the department of Health and Sanitation. 47 of these were pending bills for construction works, seven (7) for supplies and three (3) for outsourced services.

40 of the pending bills have been cited as ineligible for payment and the totals are as summarized in the table below.

Category	Amount (Kshs)
Eligible	29,639,998.60
Ineligible	81,244,591.70
Total	110,884,590.30

The issues that the task force qualified the ineligibility on include:

- a) Bills payable upon provision of missing documents
- b) Bills payable upon reconciliation.
- c) Bills whose files were not availed for verification
- d) Bills whose sums exceed budgeted amounts

The report however does not indicate the financial year from which these bills were analyzed.

The department submitted a list of pending bills for both development and recurrent expenditure categorized as Community Empowerment Projects (CEF) or head quarter/ department initiated projects.

The status is summarized below.

No.	Financial Year	Project category	Nature of Bill	Amount (Kshs)
1	2017/18	CEF	Development	4,097,938.72
2	2018/19	CEF	Development	4,410,502.43
3	2018/19	Headquarters	Development	9,659,827.36
4	2019/20	CEF	Development	27,347,546.46
5	2019/20	Headquarters	Development	1,362,559.20
6	2020/21	Headquarters	Development	24,784,273.86
7	2020/21	CEF	Development	41,428,757
8	2021/22	-	-	213,215,852
9	-	-	Recurrent	154,298,173
10	-	Sanitation	development	17,376,711.00
	Total			497,982,121.02

Comparatively, there were variances in figures as drawn from the pending bills' taskforce report *vis a vis* the pending bills status report from the department. Some of the pending bills as captured in the report could not be located on the list that was submitted by the Department of Health. **(Annexed)**

The Committee further observed that the Pending bills for Supplies and services as raised in the taskforce report corresponds with the figures in the summary that was provided by the department.

Roads and Infrastructure

Mr. Speaker Sir,

The Task force flagged out pending bills of Kshs. 235,675,925 out of which Kshs. 150,930,944 had been categorized as eligible; Kshs. 80,403,760 as ineligible and Kshs. 7,770,240 had not been categorized.

The main reasons for ineligibility were;

- Need for attachment of relevant documents than included; e-procurement forms, advert, procurement requisition form, acceptance letter, professional opinion, documents not serialized, payment voucher not signed, county expenditure forms not duly signed and rubber stamped.
- The specific roads maintained had not been mentioned
- Similar photos attached to two different roads
- The works specified in the BQ had not been completed

Submission by the Department

The CECM Roads provided a copy of contract agreement for routine maintenance of roads in Kabuchai, Sirisia and Mt. Elgon sub counties. As per the contract the following roads were to be maintained;

- Proposed construction of Archbishop Wabukala- Namwesi Twin Box culvert
- Spot improvement at Kapkirongo Embakasi Road
- Bisunu Chepkutumi – Butonge Road
- Kipsigon Kapsikei Junction – KOICA Water
- Kaptama Police Chelite - Chwele Ndogo Market

On the supporting documents that were missing on the payment voucher, the CECM confirmed that they had worked on them and attached accordingly.

On the roads that had similar photos, the correct photos for the projects were attached and clarified that it was an error that has been corrected on the payment vouchers.

The current pending bill for the department is Kshs. 393,565,741 in respect to ward based project and Kshs. 436,301,876 for dual carriage.

Committee's findings

There were some differences on the amount of project pending bills between taskforce report and the departmental submission. **Annexed**

Agriculture, Livestock, Fisheries, Irrigation and Cooperative Development
Mr. Speaker Sir,

The Task force flagged out pending bills worth Kshs. 111,483,984 out of which Kshs. 33,073,120 had been indicated eligible and Kshs. 78,410,864 was ineligible.

Supply and delivery of certified Hybrid Maize Seeds by Kenya Seed Company Ltd and basal planting / top dressing fertilizers to the 45 wards had pending bill of Kshs. 27,260,000 and Kshs. 22,296,000 respectively but indicated as ineligible due to lack of evidence of distribution to the intended farmer. The procurement process of the supply and delivery of the basal planting /top dressing fertilizer was also questioned where only one bidder responded.

Tree planting at Mbakalo primary school, Kibisi Secondary school and Karima primary school Mbakalo ward had a pending bill of Kshs. 962,000 but there was no certification from both the county and respective schools that trees were planted.

Fuel Supply by M- Big Service Station had total pending bill of Kshs. 6,905,020 and marked as ineligible due to inadequate budget and also recommended that the payment be made after harmonization in the second supplementary budget.

Some pending bills were marked as ineligible because the projects were not in the procurement plan and the vote book balance was insufficient and it was recommended that the payment to be made through harmonization in the second supplementary budget.

Proposed Erection and completion of coffee drying table at Kibingei FCH, Misikhu FHS, Sirandafu FCH, Lukusi FCH Kapsacho FCH, Tuikut FCH and Makhanga FCH with a pending bill of Kshs. 3,087,864 and Construction of Coffee Drying Table at Chesikaki ward with a pending bill of Kshs. 3,099,999 were marked as ineligible because the tables were verified to be existing however, they didn't merit the criterion laid by the Bill of Quantities guidance.

Submission by the department

The CECM confirmed that the department has total pending bill of Kshs. 209,633,553.

On the Supply and delivery of certified Hybrid Maize by Seeds Kenya Seed Company Ltd the CECM explained that the entire contract sum of Kshs. 58,460,000 had never been paid.

The tender opening minutes and evaluation report for supply and delivery of basal planting/top dressing fertilizer to the 45 wards was provided where the committee confirmed that only one bidder responded but the CECM clarified that open tender has no limit on the number of bidders to respond for the process to continue.

On tree planting at Mbakalo Primary, Kibisi Secondary and Karima Primary, the CECM confirmed that trees were only planted at Mbakalo Primary but dried up. She promised to look into the issue of the trees that were supplied from the National Government.

On the fuel supply by M- Big Service Station, fuel register and statement of fuel consumption showing the date, invoice number, vehicle number plate, LPO number, litre of fuel and the cost were provided.

On the evidence of the receipt of the seeds and fertilizer by the farmers, sample of 15 lists of input support programme beneficiaries from 15 wards was availed to the committee.

Committee's findings

There are some discrepancies on the pending bill on the supply and delivery of seeds to 45 wards where the taskforce reported Kshs. 27,260,000 while the department records showed a pending bill of Kshs. 58,460,000. The department is required to provide the evidence of the termination of the contract to the initial contractor, minutes of the award to Kenya Seed Company Ltd and the award letter for the payment to be effected.

The main reason for the ineligibility of the pending bills in the department was due to insufficient funds in the vote book and the Taskforce went out of their mandate by

anticipating the second supplementary that was to harmonize the vote book for the payment of the pending bills.

Mabanga ATC

Mr. Speaker Sir,

The Taskforce reports highlighted pending bill of Kshs. 15,900,380 in respect to Mabanga ATC comprising;

- Supply and delivery of 1 standby diesel generator for Mabanga ATC had a pending bill of Kshs. 6,150,000.
- Proposed completion works of zero grazing unit at Mabanga ATC had a pending of Kshs. 1,520,000.
- Proposed renovation works of 2 Hostels and 1 classroom Block at Mabanga ATC had a pending bill of Kshs. 5,805,400.
- Provision of comprehensive insurance cover for Mabanga tractor had a pending bill of Kshs. 878,620.
- Completion and renovation of Mabanga dining Hall had a pending bill of Kshs. 2,424,980.

The Taskforce noted that these pending bills were ineligible because they were not in the procurement plan hence insufficient funds and they further recommended that the payment to be done after harmonization in the second supplementary Budget.

Submission by the Principal

The principal submitted that the current total pending bill for Mabanga ATC is Kshs. 13,475,400. He did not mention the pending bill of Kshs. 2,424,980 in respect to the construction and renovation of Mabanga dining Hall.

In addition, he informed the committee that various County departments owe Mabanga ATC, Kshs. 5,779,900 for conference services affecting daily operations of the institution.

Public Service Management and Administration

Mr. Speaker Sir,

The report flagged out pending bills of Kshs. 35,477,561 out of which Kshs. 6,261,137 classified as eligible while Kshs. 29, 261,137 as ineligible and they observed as follows;

- i. That the accountant asserted that all the pending bills for development projects are commitments.
- ii. That they had a number of Topflight Security Services pending bill amounting to Kshs. 16,634,016, NewHam Security security services kshs. 6,732, 000.00, the cleaning crew cleaners amounting to Kshs. 3,457,955.00 but the documents were being processed at treasury for payment as instructed by controller of budget
- iii. That there was evidence of double claim by the administration police assigned to the Governor's residence for May 2021 amounting to Kshs. 186,000.00
- iv. That some pending bills seem to have been paid or some pending bills seem to be hidden only to be availed for supplementary budget consideration.

The department on the other hand provided responses and documentation as follows;

The department provided the Salaries and Remunerations Commission circular on House benefit for Deputy Governor that provides the rate of Kshs. 90,000 per month.

That the funds for First Lady Office rent are budgeted under the Governor's office and the lease agreement for the office was submitted.

The department did not provide a copy of the adverts of various positions in Finance department that had a pending bill of Kshs. 1,014,249.

There are two security companies; M/S Top Flight Security Limited and M/S Newham Services International Limited that the County Government has signed contract agreement from 1st November, 2021 to 31st October, 2023 that is 2 years contract, copies of the agreement were availed.

Copies of duty roster for the Administration Police that shows; their names, service number, places they were attached, date and amount to be paid were availed.

The department of Public Service Management has a total pending bill of Kshs. 34,918,065 comprising Kshs. 23,985,771 for contracted services, Kshs. 4,942,000 for recurrent and Kshs. 5,990,294 for development while the office of the County Secretary has a pending bill of Kshs. 12,526,110.

Committee observations

This Committee established that;

1. The Task force flagged out most of the pending bills under the department of Public Administration Management as ineligible because non-attachment of relevant documentation save for the following projects;
 - a) Repair services of **KBY 365C** where the recommendation is post-repair inspection is required before payment is made
 - b) Evaluation committee full day conference and accommodation on 6 pax 10 days at **JOVENTURE HOTEL LTD** where the recommendation advanced is that the bill exceeds budget allocation
 - c) Day conference hotel services for 6 days 20 pax (10 o'clock tea, lunches and 4 o'clock tea & refreshments) at **MILLVIEW HOTEL** where the recommendation advanced is that the bill exceeds budget allocation
2. There is no evidence of advertisement of the positions in the finance department that occasioned the pending bill of Kshs. 1,014,249 as the department did not provide a copy of the adverts.
3. The department submitted Copies of duty roaster for the Administration Police that shows; their names, service number, places they were attached, date and amount to be paid from which the Committee has not noted any instance of double claim or payment.
4. The circular by SRC issued on 20th May 2019 indicates that during the 196th commission meeting the commission issued advice on the House benefit in the sense that the deadline for payment of rent for Governors, Deputy Governors and County Assembly Speakers was set at 30th June 2022 to allow counties that had not started the construction of houses time to allocate funds and prioritize construction.

5. The department submitted a lease agreement dated 16th April, 2019 for the First Lady's office which agreement had some pages missing and majority of the terms are not discernible save that clause 1 thereof provides that the lease is for a time period of 5 years and six months.
6. The total pending bill as serialized by the Task force for ATS travel stands at Kshs. 2,408,410.00. The accountant in his response stated that part of those bills had been paid, however no documentation was submitted in support of this
7. From the contracts with the security firms the commencement dates are stated to be earlier than when the contractors executed the agreements. For example NEWHAM SECURITY SERVICES executed the 1st agreement on 22/1/2021 when the commencement date is 1/11/2020. TOPFLIGHT executed an agreement on 18/5/2022 when the commencement date thereof is 1/11/2021. The contracts' binding effect begins only at execution.

County Public Service Board

Mr. Speaker Sir,

The Task force report considered a pending bill of Kshs. 8,782,487 out of which Kshs. 6,606,887 was categorized as eligible while Kshs. 2,175,600 ineligible. The ineligibility was citing non-attachment of the requisite documents on the payment vouchers. The pending bills were for conference services, air travel and service of motor vehicle.

Submission by Secretary to the Board

The Secretary submitted all the supporting attachments for the services provided that had pending bills.

He informed the Committee that at the beginning of 2022/2023, the Board had pending bills of Kshs. 9,049,181 but as at 5th April, 2023, Kshs. 6,346,101 had been paid and therefore the outstanding pending bill is Kshs. 2,703,080 and their payment process had been initiated awaiting exchequer release.

Lands, Urban, Physical Planning and Housing

Mr. Speaker Sir,

The report flagged up a total of 12 pending bills amounting to Kshs, 16,451,899 of this amount a total of bills worth Kshs. 5,008, 762 were classified as eligible while bills worth 11,443,137 were ineligible.

The Task force generally observed as follows;

- i. Mis-allocation of funds evidenced, for instance the purchase of land for Cheswe ECDE in Cheptais ward amounting to Kshs 2,200,000. The land title deed No. N.Malakisi/W.Sasuri/1425 is registered under Ajuk Eric Ongurapusi Lok'Oleketete who is different from M/S Ajucksmart Company Limited.
- ii. Furthermore the available budget of Kshs. 9,700,000 for the purchase of land in Ward-Based Project of Kamukuywa, Kapkateny, Kimilili, South Bukusu, Matulo, Luuhya/Bwake, Siboti which do not include Cheptais.
- iii. Consultancy services for the preparation of integrated urban development Plan for Naitiri Trading Centre not provided for in the budget and procurement plan.
- iv. In the Consultancy services for preparation of Kimilili integrated development plan review checklist for Kimilili LPDP is similar to Kapsokwony and Naitiri.
- v. That M/S WORTHVIEW GENERAL SUPPLIERS's company incorporation certificate indicates general suppliers.

Submissions by the department

The Department appeared before the Committee and submitted the following information;

- Procurement documents for renovation and refurbishment of 6 units at the public works quarters and awarding M/S Worth view General Supplies Ltd to construct 6 units at the cost of Kshs. 2,142,172.00 for the project.
- Documents for the purchase of the land for cheswe ECD in Cheptais.
- Documents showed that the current status of the pending bills of Kshs. 10,577,354 was at the IB.

The Chief Officer explained that M/S Worthview General Supplies Ltd was awarded the tender for renovation and refurbishment of 6 units at public works staff quarters yet its incorporation certificate indicates general suppliers because it was the lowest bidder.

Committee observations

From the Task force report and the departments' submission, it was observed that;

1. On the renovation and refurbishment of 6 units at public works staff quarters the contract sum was Kshs. 2,142,172, the payment of Kshs. 1,657,763.50 had been prepared and is pending for payments.
2. On the consultancy services for the preparation of integrated urban development plan for Naitiri Trading Centre, the Task force report indicated that it was not in the procurement plan but the department confirmed that it was in the procurement plan.
3. The total pending bill for the department is Kshs. 7,054,334 comprising of Kshs. 3,000,001 for Housing and Kshs. 4,054,333 for Lands, Urban and Physical Planning.
4. The documents supplied by the department with regard to the Tender for THE PROPOSED RENOVATION OF 6 UNITS AT PUBLIC WORKS QUARTERS AND A GATE AT PUBLIC WORKS IN KANDUYI SUBCOUNTY TENDER NEGOTIATION NO. *899071 – 2021/2022 include a certificate SN. 417930 issued on 9th August 2021 pursuant to the National Construction Authority Act and Regulation no. 7 of 2014 to Worthview General Suppliers Ltd as such it qualifies to be awarded the tender.
5. Concerning the purchase of the LR. No. N. MALAKISI/W. SASURI/1425 the committee noted the following;
 - a) *The sale agreement submitted shows that the vendor is one AJUK ERIC ONGURAPUSI LOK'OLEKETE.*
 - b) *That the certificate of official search shows that the said AJUK ERIC ONGURAPUSI LOK'OLEKETE is the absolute registered proprietor of the LR. No. N. MALAKISI/W. SASURI/1425.*

- c) *That vide a letter dated 11-11-2021 one CHRISTINE APIYO AJUK whilst acknowledging to be the legal wife of the vendor, expressly gives her consent for the sale of the LR. No. N. MALAKISI/W. SASURI/1425*
- d) *That Clause 4.1 of the sale agreement provides that the purchaser shall pay to the vendor the whole of the purchase price after the signing of the transfer forms.*
- e) *That clause 6.1 of the sale agreement provides that the purchaser shall take vacant possession of the said parcel of land immediately after the execution of the agreement.*
- f) *That clause 8.1 of the sale agreement provides that in the transfer of the land to the purchaser, the purchaser will covenant to perform the obligations arising under the sale in so far as the vendor remains bound by them after the date of transfer and to indemnify the purchaser against any liability for future breaches of any of them*

The Task force ought to have therefore confirmed the current registration status of the subject parcel and whether the County Government had taken vacant possession thereof.

Kimilili and Bungoma Municipalities

Mr. Speaker Sir,

The Task force report flagged out pending bills of Kshs. 2,176,199 for Kimilili Municipality where Kshs. 1,138,000 had been indicated eligible and Kshs. 1,038,199 indicated ineligible due to lack of requisite supporting documents.

Kimilili Municipality has current pending bill of Kshs. 2,286,000.36 while Bungoma Municipality had no pending bill.

Committee's findings

There are some discrepancies on the amount of pending bills on some items, for instance on the supply and delivery of ICT items, the pending bill indicated by the Taskforce was Kshs. 1,138,000 while the municipality manager indicated that it has

pending bill of Kshs. 1,189,000 and provision of catering service for capacity building by Joventure Hotel as per the Taskforce report has a pending bill of Kshs. 382,000 while municipality manager indicated a pending bill of Kshs. 383,000.

Finance and Economic Planning

Mr. Speaker Sir,

The Task force team flagged out pending bills of Kshs. 31,458,911 where eligible pending bills were Kshs. 16,986,725.02 and Kshs. 14,472,186.55 as ineligible pending bills.

The ineligible pending bills were due to;

- Missing attendance list and lack of proper authorization for the recurrent pending bills
- Projects for routine maintenance of a road and provision of a boda shade that were under Finance and Economic Planning department but they lacked requisite documentations.
- Payment voucher not attached on the request for the development, design and printing of policy and standard operating procedures on planning, budgeting, revenue, expenditure and reporting.

Submissions by Department

The Director Accounting Services appeared before the Committee on behalf of the CECM Finance and submitted that the Bungoma County pending bills as at 30th June 2022 was Kshs. 1,761,466,662 and as at the date of the interrogation, they had paid Kshs. 288,959,395 across all the departments thus a balance of Kshs. 1,472,507,267. He confirmed that the Treasury was paying all the pending bills that are presented to them as long as all the necessary documents are attached irrespective of the Task force recommendations as eligible or ineligible.

A copy of the contract agreement for the development, designing and printing of policy and standard operating, procedures manual on planning, budgeting, revenue, and expenditure and reporting was availed. Also copies of Finance Policy Manual, Public Financial Management Standard Operating Procedures Manual and County Public

Procurement and Asset Standard Operating Procedures Manual that were prepared submitted.

He further added that the department of Finance and Economic Planning had a pending bill of Kshs. 554,983,590 out of which Kshs. 484,077,313 is in respect to LAPTRUST contribution balance brought forward from previous financial years.

Submissions by Director Procurement

Mr. Speaker Sir,

When asked on his opinion on the procurement process of the Dual Carriage way, the Procurement Director stated that he was not in possession of procurement documents for Dual Carriage since it had undergone several investigations but promised to establish where the project files were for him to give his opinion since he was not in office during the process.

On the number of bidders in an open tender, he explained that in open tender, the law does not provide for the limitation on the number of bidders for the procurement process to proceed.

He further informed the Committee that terminations and direct procurement are required to be communicated to PPRA but the law does not provide for the communication of the project variation to the authority and the variations can be initiated by either the contractor or the client.

When asked on whether the Project Manager for a project should be within the organization or sourced outside, he stated that he can be sourced outside but if the organization has the technical personnel, he can be picked within.

Committee's findings

The Committee observed that;

1. Some of the Task force findings were not in line with the project name, for instance, on the provision of conference facility for profiling of Ward Based

Projects for financial year 2020/2021 at Divine Homes Resort, the Task force observed that there was no acceptance of award and that two members participated in both opening and evaluation of tender committee

2. The county treasury has made payment for the pending bills that have all the necessary documents attached irrespective of the Task force recommendation has been eligible or ineligible.
3. The pending bills for LAPTRUST contribution have accrued to Kshs. 484,077,313 hence the County employees are missing out on the interests that are earned from the contributions.

5.5 Complaints Received by the Taskforce

The Task force received 19 complaints from various suppliers that the County Government owed them. The complaints received totalled to Kshs. 80,363,448 out of which Kshs. 60,780,525 were indicated as eligible and Kshs.19,582,922 as ineligible.

The ineligible pending bills were for Mukokwe enterprise for partitioning of County Executive, construction of Lagoons external works and fencing for tannery in Bungoma South District and Bungoma Tannery with a total pending bill of Kshs. 17, 717,775 that required in depth analysis of the works by a quantity surveyor and Hedka Agencies for grading and gravelling of wings- Wambiya road in Township Ward with a pending bill of Kshs. 1,856,147 that required a neutral road engineer to be co-opted for verification.

The Committee noted that the County Government of Bungoma owes Joventure Hotel Kshs. 30,340,200 for conference facilities accrued from the FY 2016/17.

5.6 Recommendations by the Taskforce on the Pending Bills

i. On the Budget Implementation Committee

Mr. Speaker Sir,

Although the Task force recommended that *“there is need to establish a Budget implementation committee for each department to oversee the budget lines and related expenditures. Furthermore aid in advisory services on Supplementary Budgets preparations to avoid reading of Negative Vote books at any given time due to un-professional virements during supplementary budget preparations. This is in line with circular 7/2019. This therefore calls for reshuffling of staff members for each department so that there is equitable distribution of human capital visa-vis the professions available. Furthermore some staff members have overstayed in one department, which renders them rigid to technological dynamic nature of the society.”*

Regulation 18 (1) Of the Public Finance Management (County Governments) Regulations, 2015 provides for establishment in every county government entity a public finance management standing committee to provide strategic guidance to the entity on public finance management matters and discharge of the responsibilities outlined under **Regulation 19**. This committee therefore recommends compliance with regulation 18 in the sense of establishment of standing committees and not the budget implementation committee as recommended by the Task force.

The issue of staff reshuffles is a Human resource issue which this committee recommends compliance in pursuance of the deployment mechanisms by invoking the relevant powers under Section 72 of the County Governments Act and other relevant policies, guidelines and/or manuals.

ii. On the budget implementation reports

Mr. Speaker Sir,

The Task force recommended that; *“The draft financial statements as at 30th June, 2022 having a preliminary list of pending bills by the entire county was not provided. Therefore the County was not aware of her total liabilities. It is recommended that such a list is available to make the financial statements be complete and reliable. The*

government is desirous to ensure that all the AGPO related bills are given priority in settlement as per Circular ref OP/CAB.1/8A of 14th May, 2019.”

Section 166 of the Public Finance Management Act, 2012 provides that an accounting officer for a county government entity shall prepare a report for each quarter of the financial year in respect of the entity and not later than one month after the end of each quarter, the treasury should have a consolidated report for all the entities.

The Committee is in agreement with this recommendation, the task force carried out its audit in October, 2022; four months after the end of the financial year yet the financial report for FY 2021/22 was not availed. When the quarterly reports are prepared and submitted timely, the amounts of pending bills will be easily tracked and managed.

iii. On Supplementary Budgets

Mr. Speaker Sir,

The Task force observed and recommended that;

“Preparation of supplementary budgets up to two in a Financial Year indicates weaknesses in the budgeting system of the County. The PFM regulation 2015 S.40 (3) indicates that a supplementary budget can only be prepared under:

- a. Unforeseen and unavoidable circumstances*
- b. Unavoidable circumstances where there is an existing budgetary provision which however is inadequate. S.40 (6) items list of information to be included in the supplementary budget.*

It was observed that the supplementary budgets were used as avenues to violate the commitments. This interferes with the implementation of the County integrated Development plan.”

The Committee notes that the instructive provision on supplementary budgets is **Regulation 39** of the Public Finance Management (County Governments) Regulations, 2015 and not section 40 (3) as put forth by the Task force. Apart from the provision under **Regulation 39 (3)** on the unforeseeable and unavoidable circumstances, **Regulation 39(5)** provides that Accounting Officers may seek supplementary budget if the expenditure cannot be met by budget reallocation under Section 154 of the Public Finance Management Act.

It is the Committees considered view that preparation of 2 supplementary budgets in a financial year therefore is not necessarily indicative of weakness in budgeting systems. This is coupled with the Task force's failure to appear before the Committee and/or offering explanations as to how supplementary budgets were used to violate commitments and the nature of violations committed. The Committee therefore differs with the Task force respectfully on their recommendation.

iv. Procurement opinion

Mr. Speaker Sir,

Whilst the Task force recommended that;

“The Chief Officers need to consider the professional opinion granted by the Director Supply chain management. However, the Director Supply chain management MUST at all times make a follow up on implementation of his/her opinion through all available structures.”

This Committee finds that an opinion issued by the director cannot be followed up as no structures or legal provisions exist for such kind of follow up. This is mainly because section 84 (1) of Public Procurement and Disposal Act provides;

(1) The head of procurement function of a procuring entity shall, alongside the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings.

(2) The professional opinion under sub-section (1) may provide guidance on the procurement proceeding in the event of dissenting opinions between tender evaluation and award recommendations.

Subsection (2) above uses the word ‘**may**’ and is not couched in mandatory terms thus the follow up is unachievable in the sense that the Chief Officer is not bound by the opinion. The committee therefore respectfully differs with the Task force.

v. Payments and vote book balances

Mr. Speaker Sir,

The Taskforce made the following recommendation on the payments and vote book balances.

1. There is more reliance on manual systems than IFMIS. The vote book balances are manually updated in the PVs indicating wrong vote heads. We recommend full utilization of the IFMIS system from procurement to financial module as per regulation 49 (2) & (3) of the public Procurement and Asset Disposal regulations, 2020.
2. Delays in payments processing should be minimized by officers concerned with payments processing as this is a high risk area exposing the county to unnecessary penalties and interests.
3. Documents authorizing payments MUST be fully signed and rubber stamped to avoid fraud at any given point of processing payments
4. After partial payments have been made, it's the Internal Auditor's duty to conduct an audit on existence of procured Assets. This will minimize loss of public Money through fraudulent deals.
5. The exchequer requests and payments releases seem not to adhere to the payables due. This is the reason why some pending bills have negative vote book balances yet they proceed to internet banking ready for payments only to be frozen by lapse of time for payments. There is need for strict adherence for payments in tandem to the exchequer requests made.

Mr. Speaker Sir,

From the above recommendations, the Committee noted that all the payments in the county are made through the IFMIS contrary to the Task force findings that there is more reliance on the manual system. The vote books are supposed to be updated both manually and in the system.

Delays in payments are not only caused by the concerned officers not attaching all the payment supporting documents but also caused by delays in exchequer releases, system failure, not completing the projects within a financial year and the decision making at top management level that have the final say on what to pay. At the time of processing payment, the vote book must have the required amount up to the

internet banking but when funds are released, they are deviated and paid to different projects or activities that were not intended for hence a negative vote book balance in the system and yet the project has not been paid for. The Treasury should come up with a policy guideline that will ensure that all the payments in the internet banking are paid for the intended purpose but not deviating the funds to other projects.

5.6 Committee General Observations on the Taskforce on Pending Bill Audit

Mr. Speaker Sir,

The Ad-hoc Committee made the following general observations on the Task force report on pending bills;

1. The criteria for verification of the pending bills was not uniform across the departments; verification was done through; field visits, reviewing of documents, interviewing of the accountants and procurement officer.
2. Despite the Task force classifying the pending bills as eligible and ineligible, most of the pending bills highlighted by the Task force have been paid.
3. The report did not distinguish the retentions and commitments, they were all considered as pending bills.
4. The financial years in which the projects were initiated was not indicated in the report making it hard to track the projects.
5. Section 139 (5) of the Public Procurement Act mandates the accounting officer of a procuring entity to be submitting quarterly reports of the varied or amended procurement contracts to the Public Procurement Regulatory Authority. There was no evidence of such communications on all the variations that had been made.
6. The contract agreements provide for the claim on delayed payments not considering the causes of delayed payments like system failures and delays in exchequer releases hence need for proper drafting of the contracts to consider such aspects.
7. There was no evidence of due diligence, feasibility studies and public participation prior to project initiation particularly the flagship projects.

5.7 Committee General Recommendations

Mr. Speaker Sir,

The Ad-hoc Committee made the following general observations on the Task force report on pending bills;

1. That going forward on such elaborate issues touching on pending bills, the County Executive should embrace instructing external auditors to conduct a special audit rather than appointing a Taskforce to conduct an exercise relating to audits.

2. That the County Executive **MUST** ensure compliance with Section 139 (5) of the Public Procurement Act by the accounting officer submitting quarterly reports of the varied or amended procurement contracts to the Public Procurement Regulatory Authority.

3. That the Executive through the County Attorney's office **MUST** ensure that contract agreements are properly analysed and opinions sought on the terms and conditions so as to provide clauses that cushion the County Government against penalties and interests arising from unforeseeable occurrences that occasion delayed payments like system failures and delays in exchequer releases.

4. That the County Executive **MUST** ensure that due diligence, feasibility studies and public participation must be conducted prior to project initiation particularly the flagship projects that have got great effect on county expenditure.

5. That the County Executive **MUST** ensure that due diligence is undertaken prior to making any payments of all the pending bills.

CHAPTER SIX

Conclusion

Mr Speaker Sir,

The Committee having confined itself to the terms of reference prescribed by this House and considered all available documents, witness evidence and relevant legal provisions in the production of this report; I urge this Honorable House to adopt this report with the recommendations herein.

Adoption Schedule

We the undersigned Members of the Ad Hoc Committee hereby adopt this report on the Task forces' reports audit findings with the recommendations therein.

NO	NAME	TITLE	SIGNATURE
1	Hon. Tony Barasa	Chairperson	
2	Hon. Violet Makhanu	V/Chairperson	
3	Hon. Joan Kirong	Member	
4	Hon. Millia Masungu	Member	
5	Hon. Jack Wambulwa	Member	
6	Hon. Barasa Mukhongo	Member	
7	Hon. Hentry Nyongesa	Member	
8	Hon. Everton Nganga	Member	
9	Hon. Bernard Kikechi	Member	
10	Hon. Benjamin Otsiula	Member	
11	Hon Job Mukoyandali	Member	