

COUNTY GOVERNMENT OF BUNGOMA

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

THE DAILY HANSARD

WEDNESDAY 1ST NOVEMBER, 2023

Morning Sitting

COUNTY ASSEMBLY OF BUNGOMA

THE DAILY HANSARD

WEDNESDAY 1st NOVEMBER, 2023

The house met at 9:30a.m.

(Mr. Speaker [Hon. Emmanuel Situma] in the Chair)

PRAYER

PAPERS

1. REPORT BY THE SECTORIAL COMMITTEE ON EDUCATION AND VOCATIONAL TRAINING ON THE STATUS OF SAMPLED VOCATIONAL TRAINING CENTERS IN BUNGOMA COUNTY

Hon Benjamin Otsiula (Chairperson, Education): Thank you, Hon. Speaker. I rise to lay on the Table of this Honourable House a report by the Education and Vocational Training Committee on the status of sampled Vocational Training Centers in Bungoma County.

(Hon. Benjamin Otsiula laid the paper on the table)

Mr. Speaker: Hon. Members, a report by the sectorial Committee on Education and Vocational Training is hereby tabled and formally becomes the property of the House.

REPORT BY THE COMMITTEE ON PUBLIC ADMINISTRATION AND ICT ON INQUIRY INTO THE UTILIZATION OF FUNDS ALLOCATED TO RECOVERY OF COUNTY AUTOMOBILES

Hon. Stephen Wamalwa: Thank you, Hon. Speaker, I rise to table a report by the Committee on Public Administration and ICT on the inquiry into the utilization of funds allocated to recovery automobiles.

Mr. Speaker: Hon. Members, the report by the Committee on Public Administration and ICT is hereby tabled and formally becomes the report of the House.

3. THE BUNGOMA COUNTY EXECUTIVE QUARTERLY REPORTS AND FINANCIAL STATEMENTS FOR THE PERIOD ENDED 30TH JUNE, 2023; AND

4. THE BUNGOMA COUNTY ASSEMBLY QUARTERLY REPORTS AND FINANCIAL STATEMENTS FOR THE PERIOD ENDED 30TH JUNE, 2023

5. THE BUNGOMA COUNTY GOVERNMENT RECEIVER OF REVENUE QUARTERLY REPORT AND FINANCIAL STATEMENTS FOR THE PERIOD ENDED 30TH JUNE, 2023

Leader of Majority (Hon. Joseph Nyongesa): Thank you, Mr. Speaker. Allow me table the following reports:

The Bungoma County Executive quarterly reports and financial statements for the period ended 30th June, 2023.

The Bungoma County Assembly quarterly reports and financial statements for the period ended 30th June, 2023 and lastly;

The Bungoma county government receiver of revenue quarterly report and financial statements for the period ended 30th June, 2023

(Hon. Joseph Nyongesa laid the paper on the table)

Mr. Speaker: Hon. Members, the reports are hereby committed to the relevant sectoral committees for interrogation and reporting to the House; while the Bungoma County Government receiver of revenue quarterly report and financial statements for the period ended 30th June, 2023 is hereby marked for processing by the Committee on Finance and Economic Planning.

NOTICES OF MOTIONS

REPORT BY THE SECTORAL COMMITTEE ON EDUCATION AND VOCATIONAL TRAINING ON THE STATUS OF SAMPLED VOCATIONAL TRAINING CENTERS IN BUNGOMA COUNTY

(Loud Consultations)

Mr. Speaker: Hon. Nganga, you are out of order!

Hon Benjamin Otsiula: Thank you, Hon. Speaker. I rise to issue a notice of motion that this House adopts the report by the Sectorial Committee on Education and Vocational Training on the status of sampled vocational training centers in Bungoma County.

Mr. Speaker: Hon. Members, a notice has been duly issued by the Sector Committee and I hereby direct that the same be shared with the Honorable Members and it will form Business on our Order Paper in the Course of the week or one scheduled on the Order paper by the HBC.

REPORT BY THE COMMITTEE ON PUBLIC ADMINISTRATION AND ICT ON THE INQUIRY INTO THE UTILIZATION OF FUNDS ALLOCATED TO RECOVERY AUTOMOBILES

Hon. Stephen Wamalwa: Thank you, Hon. Speaker. Allow me issue notice of motion that this House adopts the report by the Committee on Public Administration and ICT on the inquiry into the utilization of funds allocated to recovery automobiles.

Mr. Speaker: Thank you, Hon. Stephen Wamalwa. Honorable Members, a notice is hereby issued by the Committee on Public Administration and ICT on the tabled report. The same be shared as it will form Business on our Order Paper in the course of the week or once scheduled accordingly.

STATEMENTS AND QUESTIONS

Mr. Speaker: Hon Job, I am told you have firm instructions to proceed with the same.

Hon. Job Mukoyandali: Hon. Speaker, it is notified that pursuant to...

Mr. Speaker: No! You must confirm that you have instructions, because whoever is talking is Hon. Job and you must confirm on HANSARD that you have instructions.

Hon. Job Mukoyandali: Thank you Hon. Speaker for that guidance. I stand here with instructions from an Honorable Member from Misikhu, Hon. Milliah Masungu to read this statement on her behalf.

Mr. Speaker: Yes, proceed.

RESPONSE ON THE REPORT OF TASKFORCE ON LANDS

Hon. Job Mukoyandali: It is notified that pursuant to Standing Order No. 47 (2) (c) the following Member requests for a response from the Chairperson, Sectoral Committee on Lands, Urban, Physical Planning and Housing in relation to the report of taskforce on Lands. The chairperson to respond to the following:

1. The implementation status of Lawrence Sifuna Taskforce on Bungoma County Land with emphasis on:
 - a) The detail of parcels of land that was grabbed and encroached by individuals and groups
 - b) Action taken by the County Government to repossess the encroached and grabbed pieces of land
2. The list of all the identified land parcels in the county
3. The registration status of all the parcels of land; clearly indicating those with title deeds, those in process of being acquired and the extent of acquisition and those not initiated.
4. The list of all parcels yet to be utilized with reasons for non- utilization.
5. An elaborate explanation on the plans of the County Government for un- utilized pieces of land.
6. Any challenges identified in respect to County Government Land parcels

Mr. Speaker: Thank you, but I think next time; seek guidance from your colleagues on such matters because. As I sit here, that report has never come to the Floor of this House. To us it is basically a report of the executive and it is confidential.

Equally, you ought to have sought for a report by one Henry Makhakara on the same issue of land so that they all come together. Where we sit, that report ought to have come, be discussed here and then you adopt it the way it is. For now, you are seeking for money that is in somebody else's wallet.

Hon. Job Mukoyandali: Well guided Mr. Speaker.

Mr. Speaker: We proceed. Now which Chair is standing? I see two Chairs standing... This matter is talking about physical planning and if you are all in Lands, it is ok. Hon Waiti?

Hon. Wafula Waiti: Thank you, Mr. Speaker. On behalf of the Committee and my Chair, I request for 21 days so that as a Committee we come up with a conclusive response.

Mr. Speaker: You require 21 days? Hon. Mukhongo you are out of order...

(Laughter)

What is itching Hon. Mukhongo that he wants to take over the work of Hon. Waiti? I will be flexible enough and grant those 21 days.

I hope that through this statement those reports will see the light of day.

Hon Wafula Waiti: Thank you, Hon. Speaker.

Mr. Speaker: So we agree on which day so that we have specifics. Now, let me give further guidance members. When you talk of the land owned by members across the 45 wards and I am of the view that such response should come on the open forum here; where if it is in Tuuti/ Marakaru, we know which land is owned by the County Government of Bungoma, if it is Siboti or Bokoli or Kimilili or whichever ward, so that we know which specific areas. This will be an exception one and won't be going to the committee just for Hon. Milliah to appear there. Let it come to the House in the 2:30 p.m. sitting of 22nd of November.

Hon. George Makari: Thank you, Mr. Speaker. Maybe a point of clarification; nowadays you tell the Clerks- at- the- Table that let this report be posted to the Honorable Members. I have never seen any report; unless Momos sends it on what's App. I don't know if these members get these reports for debate...

Mr. Speaker: I see where the mistake is and I can confirm that they opened for all of you an official email account. I received my gadget and discovered that I was being sent documents on that address. Can Momos confirm after this that every member is receiving documents because, if they are not receiving documents, what will they be debating on?

A member shouts; "Tunaumia bana" (We are suffering!)

We will be confirming the same as they check with the ICT Department. In the meantime, some can be sent on What's App to enable members follow. When we take a break, we must have a conclusive settlement on this matter because the excuse was Wi-Fi and it was addressed; now they say the gadgets are not working.

(Loud consultations)

Wi- Fi is working the Hon. Leader of Majority.

Hon. Tony Barasa: Hon. Speaker, I think we should go back to the way we were operating during the Second Assembly...

Mr. Speaker: No! We are going to find out, you cannot all be standing, Hon. Tony... We are going to make a follow up.

Hon George Makari: Hon. Tony is out of order. I cannot stand while a senior member is also standing on the Floor.

Mr. Speaker: Above all I was not seeing the hare behind the elephant!

(Laughter)

Let me make a follow up immediately after this.

Hon. Joseph Nyongesa: Hon. Speaker, just following up on what *Mheshimiwa* George is saying that even the Wi- Fi is not working. Maybe they changed the password; the ICT department should just be reigned on.

Mr. Speaker: Let that ICT person remove the so called passwords. If you go for lunch at Hon. Nangulu premises, even children enjoy Hon. Nangulu's Wi- Fi over the fence. This is a whole Assembly...

(Applause)

If we cannot change what is available, we shall take action against him. Imagine the entire Assembly being unable to have Honorable MCAs accessing Wi-Fi; but at Hon. Nangulu's place, young boys and girls are on the fence enjoying free Wi- Fi. We need to get serious...

Hon. Stephen Wamalwa: Hon. Speaker, again, this issue has been there for quite some time. The officer in charge of that Department has been reminded. Several times you have pronounced here and it is also important that he feels the password should be used directly or they even share it today and now.

Mr. Speaker: We don't want those passwords; remove them! Previously, once at the gate, automatically the Wi- Fi picked up and you started enjoying the benefit of being here.

Hon. Stephen Wamalwa: Hon. Speaker, we don't know why you can issue a directive and an officer in this Assembly disregards. This is not the first time you have talked about this...

Mr. Speaker: I will find out once I finish this sitting and we may have some casualties!

Hon. Timothy Chikati: Hon. Speaker, I just wish to add my voice to what Honorable Members have said. Most of the Members are using the bundles on their phones to access the documents within this Assembly. It is not an issue of passwords; in the offices there is no Wi- Fi; but when you go to the Clerk and other staffs offices, they access the internet. My question is how do they access the internet, yet Members cannot?

Hon. Job Mukoyandali: Hon. Speaker, just to add on the same, even the software that we are using on our gadgets; that is Zimbra; it logs in once then for the next two weeks, you will never see it.

Mr. Speaker: It migrates?

Hon Job Mukoyandali: No, you set up the email and password, log in and it is like it never works! I have been to that office so many times, they reset every week; but at the end of the day, it refuses to work.

Mr. Speaker: Let us resume at 2:30 p.m. and we shall have a solution.

We proceed. Let others reserve comments; they may be wisdom from the elderly, but let us reserve them.

MOTION

REPORT BY THE PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE ON THE AUDITOR GENERAL'S REPORT ON FINANCIAL STATEMENTS ON BUNGOMA COUNTY YOUTH AND WOMEN EMPOWERMENT FUND FOR THE PERIOD ENDED 30TH JUNE, 2019.

Resumption of interrupted Business pursuant to Standing Order No. 35

Mr. Speaker: Hon. Nganga, proceed. You resume from the page you had reached. If you don't recall the page, we shall ask you to start from page one...

Hon. Everton Nganga (Chairperson, PAIC): Hon. Speaker, I had moved the motion, and it had been seconded; it was the Hon. Members' deliberations on it. So, I am only waiting to give feedback from...

Mr. Speaker: Sorry, you can come again?

Hon. Everton Nganga (Chairperson, PAIC): Hon. Speaker, the motion was moved, seconded and Honorable Members were to deliberate; Hon. Vitalis had given out his views, Hon Chemion and Hon...

Mr. Speaker: It is ok if debate was on-going. Hon Opwora?

Hon Edwin Opwora: Thank you, Hon. Speaker. Pursuant to Standing Order No. 66, I beg to move an amendment to the report by the Public Accounts and Investments Committee under the recommendations 1, 2 and 3 as follows: That recommendation one to be deleted entirely from the report since funds are meant to empower the women and youth; and winding up the Fund is disempowering the people at the bottom of the pyramid.

Under recommendation number two, delete the words "winding up process" so as to read, "appoint new officers to oversee the Fund."

That recommendation number three be amended so as to read "The CECM should file a report to the County Assembly on compliance to amended recommendation two above within 30 days upon adoption of the report.

We cannot afford to throw the baby out with the birth water and therefore I call upon Hon Otsiula to second these amendments.

Mr. Speaker: Before I allow Hon. Otsiula to come in, are you supporting the report with amendments or opposing it? You must clarify that one first.

Hon Edwin Opwora: Mr. Speaker, I am supporting the amendments...

Mr. Speaker: No! No!

Hon. Edwin Opwora: I Support the motion with the amendments.

Mr. Speaker: It is ok, you are now clear.

Hon Benjamin Otsiula: Thank you, Hon. Speaker. I rise to second the amendments put forth for the main reason that the Youth and Women Funds are at the bottom of the pyramid and in the spirit of devolution, doing away with these funds will be tantamount to derailing and killing the spirit of devolution.

These Funds were meant to empower the youth and women of this County economically and therefore doing away with the Funds will be killing the economy of this county.

I therefore second.

Mr. Speaker: Hon. Members, you know what has happened. It is a motion within a motion and so I must propose a motion for you to debate upon before we proceed.

(Question of the amendment proposed)

Hon. Allan Nyongesa: Thank you, Hon. Speaker. Before I support the amendments by Hon. Opwora, I wish to draw the attention of this House to Standing Order No. 209 (4). I am seeking your guidance before we approve this report as moved by Hon Nganga, whether the membership of that Committee is rightfully constituted; because I am afraid that we may be discussing a report that is written by members who aren't part of that Committee.

Mr. Speaker: Wait I find out...

(Loud consultations)

Hon. Allan, can you come out clearly... there are no parables here; just say what you are trying to put across for us to understand also that I give guidance. I am trying to get your microphone; it is No. 35... Where is the problem on composition?

Hon. Allan Nyongesa: Hon. Speaker, it is clear in Standing Order No. 209 (4) that a Chair of a Committee should not be a member of PAIC and in that Committee, we are having a chairperson and three vice chairpersons...Vice chairpersons are Chairpersons in the absence of a Chairperson! I need your guidance whether these members are supposed to be members of that Committee.

Mr. Speaker: I will give guidance; it is much in order...

(Loud consultations)

Members, wait first! If that is the position, it can be deferred and I write a ruling over the same; and if you insist on that one, it will affect all other committees. I have said publicly and had an opinion from the legal department advising the majority side that any member who is a Chair and not a vice chair ought to leave PAIC and I think they must be complying. Equally, you cannot be in Budget and PAIC at the same time. I have advised accordingly. As we want to remedy this one, be prepared for casualties from all sides. Are you getting it? If this will assist cure problems in your coalitions, I will assist you. Are we together?

Members shout; "Yes Speaker."

Let me listen to Hon. Hentry first.

(Loud Consultations)

Order Members!

Hon. Hentry Nyongesa: Hon. Speaker, the issue that my namesake Hon. Nyongesa is raising is squarely in the committees under the supervision of coalitions; that is the leaders of those coalitions. In our coalitions, we are not complaining of anything; I don't know why Hon. Allan is concerned about the chairmanship of committees; whether he is referring to Standing Orders, you may realize that we were guided in the nomination of members to those committees and all coalitions agreed to that and this House approved! I don't know where Hon. Nyongesa was during the approval of those names to those committees; more so to the Chairs of those committees which was approved by this House. Let us live the testimony that it is water under the bridge and we can only correct that through our coalitions.

Mr. Speaker: I approved the committee's second retreat and it will bring its report here and you will have a chance to ventilate except HBC. Hon. Tony,

Hon. Tony Barasa: Thank you, Hon. Speaker. I want to thank Hon. Ali for bring this up. As you have said this will cut both sides and it is good that the ball has started at their side. I remember well that their leadership is in PAC and they are not supposed to be there and even the commissioner who sits in Service Board is a member of Budget Committee, when he is not supposed to be there. If they have opened that door, I think that it is good we go that direction. Allow me now to go back to the motion...

Mr. Speaker: Allow people to ventilate first, the day is still young. Hon. Makari?

Hon. George Makari: Thank you, Hon. Speaker...

Mr. Speaker: Order Hon. Members. Consult in low tones.

Hon. George Makari: Hon. Speaker, I can see today Hon. Vitalis is very happy and I don't know why. My take is that we must just be able to observe our Standing Order regardless of who is who. If there are people who are in PAC and they are not supposed to be there as well as on our side, let us follow the Standing Orders.

(Applause)

The Committee on Selection led by the Leader of Majority should do the work so that those members that are appearing where they are not supposed to be, let them just be taken where they are supposed to be.

(Applause)

Hon. Jerusa Aleu: Thank you, Mr. Speaker. I just want to add on what Hon. Makari has said. It is true that Hon. Allan my son had forgotten one part of the composition of that committee. When you are in PAC, you are not supposed to be in Budget Committee. We are just going to follow the Standing Orders.

(Applause)

Hon. Aggrey Mulongo: Thank you Hon. Speaker. I think in pronounced this thing initially when these committees were being instituted. As Kimilili Sub-County, I said that we have nobody on the Budget Committee... I am building up my case, excuse me. When we are following our bible which is the Standing Orders of this House, we need to follow them fully if we want everything to go well. Today I am happy because Hon. Lwandanyi...

Mr. Speaker: There is no MCA in this House called Lwandanyi and you have to withdraw.

Hon. Aggrey Mulongo: I withdraw Mr. Speaker. I am referring to the honourable member from Lwandanyi Hon. Tony who has cited something that has been hitting this House. I want it to be quoted in the Standing Orders whereby leadership is not supposed to be on the Budget Committee. The Budget Committee, the way we understand from the Standing Orders, it talks about 9 sub counties and each sub-county to have a representative on the Budget Committee.

Secondly, about chairpersons, let us not see one another as an enemy, let us go by our Standing Orders because they will guide us and in case of complaints we will quote the same Standing Orders.

(Applause)

Hon. Everton Nganga: Thank you, Hon. Speaker. I do want to contribute on the issue of Standing Orders, I was on the motion.

Mr. Speaker: Okay. Members are talking about coalitions; I will come back to you on the motion.

Hon. Stephen Wafula: Thank you, Hon. Speaker. I think we should not belabour so much on this issue because the House has spoken. When we talk about proper conduct and adherence to the rule of law as a House we have to live by that. Let us just summarize and do away with it, that when you are on PAC you should not be on Budget Committee and that is the simple thing which is clear and express. Therefore, the Hon. Mulongo should know that

his leadership is both on PAC and Budget. We are saying this; we are not looking about who is the minority or majority; we are talking about Budget and PAC. When they mention about your leadership, they are talking about them being on PAC and at the same time on Budget. That is what they are talking about the Hon. Mulongo.

Honourable members, going forward let the Speaker give directions and move forward to dispense the motion on the floor of the House today; going forward any report coming from PAC should be from the members who are properly constituted. That you are not supposed to be on Budget and at the same time on PAC, secondly, that you are not on Service Board and at the same time on Budget Committee, that you are not a Chairperson and at the same time you are on PAC.

(Applause)

Hon. Wafula Waiti: Thank you, Hon. Speaker. It appears like the Deputy Speaker was reading my mind because he has mentioned three points which I had. One point is that as leaders we must lead by example. In this House all animals must be equal by following the law. This is our law that we must respect and it must apply to all of us. Let us be ready like myself I always move on corridors and I have no problem serving on any committee. Let us be prepared as it comes.

(Applause)

Hon. Joseph Nyongesa: Thank you Mr. Speaker. Indeed that is why we are here and learning is a process and not an event and we are still learning. I should inform members that the Selection Committee retreated and rectified such issues that you are talking about especially on my side I have no issues...

Mr. Speaker: Hon. Nyongesa, you are pre-empting the report.

Hon. Joseph Nyongesa: Mr. Speaker, we are saying that we are rectifying and if you could give a directive that every side to rectify its issues that would be better. So that when we bring the report all will be well.

(Applause)

Hon. Tony Barasa: Thank you, Hon. Speaker. I want to clarify some few issues raised by Hon. Mulongo. It is a fact I said that you cannot be a member of Budget Committee and at the same time you are on PAC. I did not say that if you are in leadership you cannot be in Budget. I want to clarify this.

Secondly, beside our Standing Orders, we have other guiding principles including conflict of interest. That is why we are saying that if a member is on Service Board and he is on Budget Committee there a conflict of interest. The statutes guides us that if you are in leadership on the Service Board then you cannot be on PAC because all those queries that will emanate from the Board you will be answerable to that. If you are a member of Budget Committee you cannot again be in PAC that is clear. Saying that if you are in leadership you cannot be on Budget Committee; those are not my words.

I thank God it has come from the good people through Hon. Allan Nyongesa, let us follow this thing to the latter. On our side I urge my leader that we do corrections but it must be followed to the latter.

Mr. Speaker: Thank you, Hon. Members. I will give guidance this way that this is not the first report being brought by the committee on PAC. We will proceed the way it is to the end. Subsequently we must comply. For the Whips and the leadership of the House, if your Coalition does not comply, the same way happened in the National Assembly; that coalitions failed to comply to the Standing Orders and the Speaker had to suspend that member from the said committee until they complied, which is punitive. Have your own time, look at your Coalitions and if you are in that state of being a chairperson, sitting on PAC or Budget Committee, you will have to lose one. I will suspend you until the Coalition complies.

(Applause)

I don't want to be the one deciding the fate of your committees. The Selection Committee report will come on the floor of this House; I am aware because I signed that report before they went out. You have time to go sit in the board room, rectify those small mistakes before you bring the report to the House. If you don't and it comes with issues that are against our Standing Orders, then I will suspend you from being a chairperson of that committee or a member to PAIC or Budget. It is simple as that, therefore, as you go away from this sitting you must go and look at your arrangements. We will proceed with a motion within a motion. Hon. Nganga?

Hon. Everton Nganga: Thank you, Hon. Speaker. I rise to go against the amendments that have been proposed by member representing Luuya/Bwake that is Hon. Opwora. He has mentioned two amendments; one on the winding up of the fund. I would like to read from the Public Finance Management Act, 2012 Section 197 (i) that the initial approval for establishment...

Mr. Speaker: Yes Hon. Deputy Speaker?

Hon. Stephen Wamalwa: Hon. Nganga, a member that I respect as a senior member of this House is the mover of this motion...

Mr. Speaker: You are wrong Deputy Speaker. It is a motion within the motion. Even the seconder of the first motion is allowed to contribute on this motion. The motion that we are debating now is moved by Hon. Opwora and seconded by Hon. Otsiula on the amendments. The main motion which was moved by Hon. Nganga he cannot contribute on that one; right now we are discussing the motion on amendments.

Hon. George Makari: (*On a point of information*) Hon. Speaker, information pursuant to Standing Order 96 (2); we were tussling about the membership of this committee, are we allowed to proceed with this motion?

Mr. Speaker: I have given directions here. It is not the first report from PAC. I have said we will deal with it the way it is but going to arrange the membership. If you refuse this one, I will ask what happens to a committee that has sat and passed similar reports numbering 20?

Hon. George Makari: What if somebody challenges this because of the constitution of the committee?

Mr. Speaker: Let him go to court and we will deal with it from the other side because we have had several reports coming from PAC previously chaired by Hon. Tendet. He was the chairperson and the composition was the same. We will clear this mischief but any report that is ready will be processed the way it is. I am sure both the majority side and the minority side, the report is ready through Selection Committee. Bring it to cure this mischief so that we can move. Hon. Nganga, you are allowed to proceed because it is a motion within the motion.

Hon. Everton Nganga: Thank you, Hon. Speaker for protecting me. I know our Deputy Speaker is an English teacher and he is not well conversant with issues with the law...

Mr. Speaker: I hope you are not referring to all teachers here? Because most of them are teachers and accounts you are endangered because it is only you and Hon. Ken. You are only 2 out of 10, therefore, you need to be careful was referring to teachers.

Hon. Everton Nganga: Thank you, Hon. Speaker for your guidance. I said that I am going against the amendments that have been proposed by Hon. Opwora MCA representing Luuya/Bwake. When you read Public Finance Management Act, 2012 Section 197 (1) (i) it reads *"the initial approval establishment of a county public fund shall be for a maximum period of 10 years..."*

Mr. Speaker: You are saying which Section?

Hon. Everton Nganga: Section 197 (1) (I)...

Mr. Speaker: Is it the constitution or regulations or what? Because 197 (1) (i) is saying "incurs wasteful expenditure..."

Hon. Everton Nganga: I am referring to Public Finance Management Act.

Mr. Speaker: What I am reading is Public Finance Management Act, 2012. Are yours regulations?

Hon. Everton Nganga: That one is the Kenya Law that is the Public Finance Management Act No. 18 of 2012.

Mr. Speaker: It is the one that I am reading and I am reading 197 (1) (i) for you on offences. Hon. Mulongo, resume your sit. Any time you look at an Act, it is always accompanied with regulations to make them operational. Subsidiary legislation cannot be an Act of Parliament. Those are regulations that you are quoting; it is not the act itself.

Hon. Everton Nganga: Thank you, Hon. Speaker for guidance. From the regulations they are talking about the lifespan of the fund. This fund has existed since 2013/2014 and this is 2023/2024 therefore, we came up with a recommendation that this fund should be wound up basing on the regulations. It has lasted for 10 years and therefore, it is supposed to die a natural death. Thereafter, the process of reconstituting this fund will start when you read Section 198 on the process of reconstituting. The CECM will again seek approval...

Mr. Speaker: Wait first. Let him finish because I would also like to ask him; that does the regulations supersede the parent Act which is the Public Finance Management Act? Those are regulations that you are reading, do they supersede the parent Act?

Hon. Everton Nganga: I know the parent Act is superior but this is my contribution Mr. Speaker.

Hon. Everton Nganga: After winding up the fund because its period has expired, the CECM will begin afresh establishment of the fund. Winding up does not mean this fund will not exist. It will be reconstituted by coming up with proper regulations or rules that will manage the fund. Upon doing this, the issue of getting back money from those who misused, it is again the CECM who will initiate the process. The fund has matured and it has to be wound up.

In recommendation two we said that the committee upon finding the Fund Administrator for the Bungoma Women and Youth Fund culpable for the observations here concluded that the Fund Administrator and the officer running the fund were in breach of the Public Finance Management Act in particular Section 156. The committee recommended that the County CECM for Finance and Economic Planning pursuant to provisions of Section 156 of PFMA 2012 to revoke the appointment of the Fund Administrator and other office bearers of the Bungoma County Women and Youth Empowerment Fund and appoint new. After the winding up he will again seek for approval from this County Assembly...

Mr. Speaker: Hon. Nganga, I am looking at what you are reading, if recommendation 2 the way you are reading that they revoke the appointment and appoint new ones to wind up. But what you are departing is different...

Hon. Everton Nganga: Mr. Speaker, the process of winding up a company for those who understands; the House pronounces itself basing on this report and then after that you can appoint a receiver who will be in charge of the winding up process before you reconstitute another one.

Hon. Tony Barasa: Hon. Speaker, I want to inform Hon. Everton Nganga Chairperson PAC that recently this House through the leadership of Hon. Ipara brought some regulations in this House to help cushion our people that are the youth, women and people living with disability. It is high time that Hon. Nganga should also understand that we have governments come with their policies. He should also understand that talking about winding up yet this House approved a motion in form of regulations to cushion our own people.

I want to agree with you that we should seriously attend sessions of this House because if he could be in this House when we passed the regulations...

Mr. Speaker: Order honourable members. Consult at low level please.

Hon. Tony Barasa: He could not have come up with such recommendation on PAC of winding up the women and youth funds. I am on a point of information Hon. Mulongo. We want to inform Hon. Nganga that it is not in order for a government initiative of promoting locals; youth and women and the procedure was followed in this House. For you to come up with a recommendation of winding up this fund on the basis of you being absent in this House not understanding...

Mr. Speaker: Hon. Tony you are out of order.

Hon. Tony Barasa: If he was in the House, he could not have come up with such...

Mr. Speaker: Hon. Members, I think what is ailing us is failing to attend these sittings.

Hon. Nganga, you are out of order. Hon. Ipara's regulations were trade loans.....

(Applause)

Members when debating be conversant of what we passed here. What I am trying to urge all of you is that attend these sittings. If you are sick let me know, don't say that you are sick and I see you walking in Bungoma town. Hon. George Makari proceed?

Hon. George Makari: Hon. Speaker, I want to support the amendments as moved by Hon. Opwora because we cannot afford to wind up a fund that is going to support our people. Even though Hon. Nganga says this fund is expiring, if it begun in 2013/2014, its lifespan is still on because 2023-2024 is not yet over. May be when the financial year comes to an end which will mark 10 years, then we can think about winding up.

For the record, let us support the amendments; let the fund run its course and when it comes to the expiry of the 10 year period it is when we can think about winding up.

Secondly, from the report by Hon. Nganga there is a good recommendation on those people that embezzled funds; that is the only place that I want to support that they should be held accountable for the misuse of those funds.

Otherwise, the rest of the report should be done away with and support the amendments so that the fund does not die.

Hon. Joseph Nyongesa: Thank you, Mr. Speaker. May be to inform the House that in 2013 Hon. Nganga was not in this House but the policies were passed in 2015. May be he could consult Hon. Mutiembu who was in this House that time. Again, it is also good to do proper research and Mr. Speaker you should not allow Hon. Nganga to mislead this House while in 2013 he was not here because the policy was passed in 2015. The policy was passed in 2015 and not 2013 and therefore, the duration is still on. Kindly let us base on the amendments that have been proposed to approval them so that we cannot wind up the fund.

(Applause)

Mr. Speaker: Hon. Edwin, on the issue of the lifespan of the fund, you must respond to it because if they are saying 10 years, you must find out when the fund commenced. If it is 2013/2014 financial year then it means the time frame of 10 years is yet to lapse.

Hon. Stephen Wamalwa: Thank you, Mr. Speaker. It is true that I am a teacher but it is like my colleague teacher who is a CPA holder is not well conversant with the law. I say this because Hon. Nganga who is the chairperson of PAC should know who actually winds up a fund. He should have told this House who is actually supposed to wind up a fund.

Mr. Speaker: Order members.

Hon. Stephen Wamalwa: Hon. Speaker, the Hon. Nganga should inform this House who has the mandate to wind up a fund. Is it a committee or a CECM Finance? Because where I sit as an member in this House and as a teacher I know the person who winds up a fund is none other than the CECM Finance and not PAC.

Mr. Speaker: Members, can we have some order. This is not a market place.

Hon. Stephen Wamalwa: Secondly, a good teacher and especially a CPA who deals with figures should know the time because we have to look at arithmetic. This fund was not established in 2013, therefore, we have to be told as a House the fund has to run the full cycle of 10 years or it is still under 10 years. Therefore, I support that the amendments should go through so that we can save the youth and women in this county.

(Applause)

Hon. Hentry Nyongesa: Thank you, Mr. Speaker. I want to support the amendments. Looking at the bottom-up transformative agenda that seeks to uplift the youth and women of this country it is clear that winding up this fund we will be moving away from the transformative agenda.

As the Leader of Majority alluded, Hon. Nganga who is the chairperson could have done a thorough research to come up with clear date when the fund was established. When we came to this House as pioneer MCAs it took us almost 2 years to come up with most of the laws and policies that is 2015. We want to agree that a fund must have a lifespan but this House must be given clear reports through committee as mandated so that we don't derail the county agenda.

The fund must continue but we will follow up and ensure that the fund operates within the set timelines. We will handle all these issues when we reach the bridge because as we speak we are yet to reach the bridge.

Therefore, I support that we have those amendments that the fund should continue.

Mr. Speaker: Members, I will ask that when we are here put your phones on a low tones. Proceed Hon. Ipara,

Hon. Johnston Ipara: Thank you, Hon. Speaker for this opportunity to make my contribution. First of all, I support the amendments from 1-3. The reason I do that is the offence committed by the purported office bearers is punishable under Penal Code Section 281 Cap. 63. When we become so lenient and pretend that we are here to be pastors yet our role is to oversight, it is sad, disappointing and a mockery to the justice of this country.

Winding up is in two categories; the first one is voluntary; are the initiators of this fund ready to wind this one? The answer is no. Number two, it is by court where the court makes a compulsory based on the evidence adduced may be there are those people that we owe some money and we failed to pay them the money on time. The answer is no. The offence committed is serious because this was the property of the County of Bungoma and it came to the possession of these particular persons who were the bearers of the office through their employment.

In summary, the offence committed is theft by servant and I don't know the reason we are lenient to this people. Particularly I want to persuade the Hon. Chair to walk away from where you stand with the rest of the county because this will enable the county to save the money and will also offer money to the women and youth who are vulnerable in this county.

We are running around the county and the country looking for money to create employment, looking for money to give to our people so that we can uplift the living standards. Here we want to use this House to cushion criminals to revoke their appointments, they walk away as heroes yet they are serious criminals. This is the worst thing that we should do and I honourably support Hon. Opwora amendments in totality.

(Applause)

Mr. Speaker: Hon. Opwora, you can now reply to the motion.

Hon. Edwin Opwora (Mover to reply): Thank you, Hon. Speaker. First of all, I want to laud all honourable members who are supporting this motion and the amendments. It is also coming to light that in terms of the lifespan of this fund, we are still within the range by virtue that Hon. Nyongesa has confirmed that indeed most of the regulations and policies were passed in 2015. If I count 10 years then we are still under 10 years and we still have room to make necessary changes and proper regulations to ensure that this fund is well utilized.

As I said we cannot afford to throw the baby out with dirty water. We have room to throughout the dirty water and let us maintain our baby. We need this fund to help our youth and our women. The mandate of the National Government is to improve our people. We are looking for ways to empower our people and it will be unfortunate for this House to be part of the group that is killing dreams of the young people and women. Therefore, I beg that this House adopts the report with the amendments.

(Questions on amendments put and agreed to)

The ayes have it.

The amendments now become part of the report before the House. Proceed on the debate. Now we will come back to ask the mover to respond to the motion. As you debate you will change your language and say that you pray that this report is adopted with the amendments as approved because the House has pronounced itself for the amendments to be part of the report.

Hon. Everton Nganga: Thank you, Hon. Speaker. First, I would like to tell honourable members that the amendments have been approved and this is not a malicious report with intention to harm or deprive anybody. We are just executing our constitutional mandates as it is required.

Hon. Sudi was here on Thursday and he raised an issue on winding up which has been accepted that the fund will not be wound up. My only worry is the going concern because this fund is not supposed to depend on any exchequer yearly disbursements, it has to depend on the fund or the amount of money that was given to it and now that the amendments have been made that the fund will continue looking at the Financial Statements that we interrogated.

Currently these funds only have a balance of 42,000,130. I am worried this fund will remain for the remaining period the way it has been mentioned that it started in 2015 for the remaining period up to 2025 it just remained dormant like that.

I am very much concerned because the amendment has been passed and the sustainability of this fund to the Bungoma County citizen is now in question because you discover that in 2015/2016, 21,000,000 was collected, 2016/2017, 3,000,000 was collected and it total

currently we have a balance of around 42,000, 130 so the fund will remain dormant and if we have to adhere to the law; the going concern and the sustainability of this fund is in suspense.

We have a problem with that and again Hon. Vitalis also raised an issue.

We had some illegal expenditure from our report and the information that we got, you discover that 2013/2014, 25,000,000 was released and used on policy formulation, regulations, recruitment of staff, launching of the fund, procurement of application forms and again in 2015, you discover that 50,000,000 was also given out to this fund and right now when you look at the objective of this fund, the reason why this fund was formed actually it was not executed.

Citizens of Bungoma County have not realised the value, you discover that 51,180,165 was utilised for purposes other than the purpose of the fund which is 68% and when you look at Public Finance Management Act, 156 provides that if the County Committee Member of the Finance reasonably believes that an accounting officer has engaged in improper conduct within the meaning of the section, the CECM Finance shall take appropriate action to address the matter in accordance to the laid down procedure.

This means those people who embezzled the funds around 51,000,000 have to repay. We also recommended that. These people have to pay and we also recommended that they have to be removed in the office.

Nobody should be worried that actually we are malicious and those people who are found culpable according to the recommendations that we made these people must be surcharged by the CECM and its the CECM who can only dissolve or wind up the fund basing on the recommendations that are normally made by our reports in this House.

I have changed the tune and said that actually the motion be passed with amendments that have been made by Honourable Opwora and I say that we actually do not have any malicious intention. We are only over sighting the executive the way it is required but now let us understand that the fund will remain dormant up to the end of ten years, if we are going to follow the law strictly. Our main reason why we suggested that it has to be wound up but the amendment has been made, we were to wind up then we reconstitute it again so that the funds can be channelled but it ...

Mr. Speaker: Hon. Nganga, having been able to remove what you had proposed, why engage in submitting in that line of winding up?

Hon. Everton Nganga: Thank you Hon. Speaker for your guidance. I urge Hon. Members to pass the motion with amendments.

Mr. Speaker: Thank you, Hon. Nganga for the reply to the motion. Honourable members, a motion was moved, seconded and debate having ensued that this House adopts the report by the Public Accounts and Investment Committee on the Auditor General's report on the Financial Statement of Bungoma County Youths and Empowerment Fund with amendments for the period ending 30th June 2019 laid on the table of the House on 3rd October 2023.

(Question put and agreed to)

The ayes have it.

The report is adopted with amendments as proposed and seconded by Hon. Edwin Opwora and Nganga respectively.

Next item,

MOTION

REPORT BY THE COMMITTEE ON IMPLEMENTATION ON THE STATUS OF IMPLEMENTATION OF REGULATIONS PASSED BY THE HOUSE

Mr. Speaker: Hon. Mulongo, proceed!

Hon. Aggrey Mulongo: Yes, I wanted that pronouncement first Sir. Thank you, Mr. Speaker for giving me this time to move a report on implementation.

Report by the implementation committee on the status of implementation of regulations passed by the House.

You will allow me to skip the second page, table of contents

CHAPTER ONE

The committee on implementation is mandated to scrutinise resolutions of the House including adopted committee reports, petitions and the undertakings given by the County executive and examine whether such decisions and undertakings have been implemented within the 60 days provided for in the Standing Orders and whether such implementation has taken place within the minimum time necessary, satisfactory explanation for the delay or partial implementation.

The committee registers its appreciation to the office of the Speaker and Clerk of the County Assembly for facilitating towards achievement of its mandate and production of this report Pursuant to Standing order 202 (7)

It is therefore my pleasant duty and privilege on behalf of the Committee on Implementation to move this report for adoption by the House.

The report has been signed by Chair Committee on Implementation.

MEMBERSHIP

The committee membership comprises of the following members;

1. Hon. Aggrey Mulongo-	Chairperson
2. Hon. Job Mukoyandali-	Vice-chairperson.
3. Hon. Aggrey Bosire-	Member
4. Hon. Jeremiah Kuloba-	Member
5. Hon. Franklin Simotwo-	Member
6. Hon. Catherine Kituyi-	Member
7. Hon. Vitalis Wangila-	Member
8. Hon. Alfred Mukhanya-	Member
9. Hon. Maureen Wafula-	Member
10. Hon. Abraham Obama-	Member
11. Hon. Alice Kibaba-	Member

INTRODUCTION

The Committee commenced to appraise itself on the regulations adopted by the House pursuant to Standing Order 212 (4) which requires the Committee to scrutinize the resolutions of the House (including adopted Committee reports), petitions and the undertakings given by the County Executive.

The Committee wrote to the Department of Finance and economic planning requesting for the status report on the Implementation of the Bungoma County Disaster Management Emergency fund regulation of 2021, and the department of Education and Vocational training on the status report on the Implementation of the Bungoma County Education Support Scheme regulations of 2019 respectively.

The report entails a compilation of the responses received in both written and oral submission during the interrogations of the departments on the status of implementation of respective regulations.

THE BUNGOMA COUNTY DISASTER MANAGEMENT EMERGENCY FUND REGULATIONS, 2021

The Public Finance Management (Bungoma County Disaster Management Emergency Fund) Regulations 2021 was approved by the County Assembly on 21st September 2021 and forwarded to the County Executive for implementation.

The areas for implementation include;

1. ESTABLISHMENT OF THE FUND

Regulation 3 requires the County executive to establish a Fund known as Bungoma County Disaster and Emergency Management Fund. The fund is established so as to enable payments to be made in respect of the County Government when an urgent and unforeseen need of expenditure arises for which there is no specific legislative authority.

Response:

The County Executive Committee member for Finance provided the request letter dated 26th April, 2023 to the committee indicating the County Government of Bungoma opening a special purpose account in the central bank of Kenya.

Implementation status:

Implemented

2. Capital of the Fund

Regulation 4 provides that the initial capital of the Fund shall be Ksh100, 000,000, the County Assembly may annually appropriate additional funds for the growth of the permanent capital and the Fund may also be financed through private sector, donor support and global climate change and disaster risk financing facilities.

Response:

During the interrogation meeting with the committee, the County Executive Committee Member for Finance indicated that the term capital should be reviewed as the money allocated to the fund is not meant to be revolving in nature as per the regulation and the PFM Act.

That money is allocated to the fund annually during the budget process and the department is yet to receive finances from any other agencies.

Implementation status:

Partially implemented

Committee recommendation

The department of Finance and Economic Planning is hereby directed to review Regulation 4 of the Regulations with a view to do away with the word “Capital” as money allocated to the disaster and emergency fund is not revolving in nature and submit the same to the County Assembly within sixty (60) days from the day of adoption of this report.

3. Object and purpose of the fund

Regulation 6 requires the committee to prepare and implement a disaster risk management plan, enhance the capacity of the County Government, relevant agencies and communities to effectively manage the impact of disasters.

Response:

THAT the development of the disaster risk management plan is underway and it will be rolled out once it is done.

Implementation status:

Not implemented

Committee recommendations

- a) The department to fast-track the preparation of a disaster risk management plan, annual work plan and submit the same to the County Assembly within a period of sixty days. Further the Fund should capacity build technical staff mandated to handle emergency and disaster in the County.
- b) The CECM Finance and Economic planning should henceforth, provide emergency contacts for residents to reach out in case of emergency such as fire outbreaks. This will enhance efficiency in service delivery to the residents of the county.

4. Expenditure of the Fund

Regulation 7(c) requires the committee to prepare annual estimates which shall make provisions for all the estimated expenditure of the fund.

Regulation 7(c) (i) stipulates that the administrative costs should not exceed three-per cent of the funds Budget.

Response:

Annual estimates and annual reports are prepared and audited annually (annexed with the auditor general's report for year ended 30th June 2022).

Implementation status

Public Accounts and Investment Committee to take up the matter

Recommendation

Owing to the fact that implementation of this regulation involves the expenditure which should be audited, the committee recommends Public Accounts and Investment Committee to take up the matter and report the same to House within 90 days from the adoption of this report.

5. Establishment of the County Disaster and Management Committee

Regulation 8 establishes a County Disaster and Emergency management committee to oversee the administration and management of the Fund.

Response:

The County Executive committee Member for Finance submitted the letters appointing the members of the County Disaster and Management Committee

Implementation Status

Implemented

6. Administrator of the fund

Regulation 11 provides the County Executive Committee Member for Finance and Economic Planning to be the Administrator of the Fund.

Response:

The CECM for Finance appointed Geoffrey Simiyu Wafula to be the Fund administrator through a letter dated 1st July 2022 in line with section 116(2) of the PFM Act 2012.

Implementation status:

Partially implemented

Committee recommendation

The committee reiterates that section 111 of the Public Finance Management Act 2012 requires the County Executive Committee member of Finance to be the Fund Administrator. However, under regulation 23 of the PFM Regulations 2015, the CECM may delegate such duties to an officer in the County Public Service with necessary skills in writing any of the accounting officer's powers or functions under the PFM Act or regulations thereof.

7. Secretariat of the Fund

Regulation 12 establishes the secretariat of the fund comprising of the directorate of disaster management and any other additional staff.

Response:

Secretariat to the fund have been appointed but not yet fully constituted, (annexed are letters of appointment of the secretariat)

Implementation status:

Partially implemented

Committee recommendations

The department of Finance and Economic Planning should establish the disaster management directorate and fully constitute secretariat as per regulation 12 of the Bungoma County Disaster management and emergency fund regulation.

8. Establishment of the Sub county Disaster and Emergency Steering committee.

Regulation 16 establishes the sub county disaster and emergency steering committee comprising of all heads of departments at the Sub county level. The committee shall be chaired by the Sub-county administrator and the sub county project officer shall be the secretary.

Response:

The CECM for Finance and Economic planning submitted that they are yet to establish the sub county disaster and emergency steering committees for each sub county. However, he committed to constitute a sub county and emergency steering committee within three months

Implementation status:

Not implemented.

Recommendation

The CECM Finance and Economic Planning should as matter urgency constitute sub- county disaster and Emergency Management steering Committee in all the nine sub-counties and provide a report to the County Assembly within 60 days from the adoption of this report.

9. Establishment of the Ward Disaster and Emergency Steering committee

Regulation 18 establishes the ward disaster and emergency steering committee comprising of all heads of department at the ward level. The committee shall be chaired by the ward administrator and the ward project officer shall be the secretary.

Response:

Ward disaster and emergency steering committees are not yet established.

Implementation

Not implemented.

Recommendation

The CECM Finance and Economic Planning should as matter urgency constitute Ward Disaster and Emergency Management steering Committee in all the 45 Wards and provide a report to the County Assembly within 60 days from the adoption of this report.

10. Standard setting and norms

Regulation 21 (2) tasks the secretariat of the fund to consolidate policies, norms and standards and disseminate them to sub counties, government agencies and development partners.

Regulation 21(3) requires the committee to prepare the disaster risk management plans and reports based on national and county policies, norms, and standards set by the National Government.

Response:

Policies, norms and standards will be prepared in line with disaster risk management plans being put in place by the department of finance and economic planning.

Implementation status:

Not implemented.

Recommendation

The secretariat should prepare policies, norms and standards and disseminate the same to sub counties, government agencies and development partner in compliance with regulation 21.

11. Criteria for accessing disaster and Emergency Funds

Regulation 25 lays down the criteria for prioritising access to disaster and emergency funds.

Response:

The department has so far been acting on need basis whereby they respond to an eventuality upon getting information.

When asked to cite an example of an emergency so far handled by the department, the CECM for Finance and Economic Planning stated that they have only worked on bridges within the county which needed immediate reconstruction after falling off or being washed away by floods.

Implementation status:

Partially implemented

Recommendation

That in future the Fund should strictly follow the provisions of regulations 25 on the laid down criteria for prioritising access to disaster and emergency.

12. Procedures of disbursement and accountability.

Regulation 34 obligates the County Executive Committee Member responsible for Finance to formulate guidelines for disbursement of funds and Accountability.

Response:

That the disaster and emergency fund account has the financial statements prepared annually and the fund is audited (annexed is the auditor general's report on the fund for year ended 30th June, 2022).

Implementation status

Not implemented

Recommendation

That County Executive Committee Member responsible for Finance is hereby directed to formulate guidelines on disbursement of funds and Accountability within 60 days from the adoption of this report.

13. Quarterly reports on projects and disbursements

Regulation 37 requires the committee on quarterly basis to submit a report to the County executive committee member responsible for matters relating to Finance affairs with a copy to the Governor.

Response:

The CECM finance and economic planning informed the Committee that the department has only been preparing annual reports but going forward as they constitute all the required disaster management committees they will be preparing quarterly reports.

Implementation status:

Not implemented.

Committee recommendation

That in future the County Disaster and Management committee should be preparing Quarterly reports and submit the same to the County Assembly in line with section 166 of the Public Finance Management Act, 2012. Further the committee directs the CECM Finance and Economic Planning to review regulations 37 with a view of aligning the same with section 166 of the Public Finance Management Act, 2012.

14. Records of disbursement to be kept.

Regulation 39 requires an accurate record of all disbursements in the fund account for financing approved interventions or projects to be kept and updated every month by the secretariat.

Implementation Status

Not implemented

Committee Recommendation

The CECM Finance and Economic Planning should forthwith ensure accurate records of all disbursements in the fund account are prepared and updated every month as per regulation 39.

15. Management reports.

Regulation 41 requires the committee to prepare monthly management reports.

Response:

The department did not share the monthly management reports for the FY 2022/2023) with the committee during the interrogation exercise.

16. Meetings of the committee

Regulation 44 requires the committee to hold quarterly meetings with additional meetings being held with the authorization of the County Executive committee member responsible for Disaster/emergencies.

Implementation status

Not implemented. There was no proof for the quarterly meetings.

Recommendation

The committee underscores the importance of meeting in day to day running of the Fund and affirms that the Fund should be holding their meeting as stipulated in this regulation.

17. Guidelines on the Fund

Regulation 46 provided for the County Executive Member in charge of Finance to develop guidelines for the proper management of the Fund.

Implementation Status

Not implemented. No guidelines exist to guide on how the fund should be managed.

Recommendations

The CECM Finance and economic planning should as matter of urgency formulate guidelines for proper management of the fund within 60 sixty days from the adoption of this report.

THE PUBLIC FINANCE MANAGEMENT ACT (BUNGOMA COUNTY EDUCATION SUPPORT SCHEME) REGULATION 2019

The object and purpose of this regulation is to:

- a) Provide for the establishment, administration, management and wind up of the Bungoma County Education support scheme.
- b) Make provision for the granting of scholarships and bursaries to eligible students from the County.

The areas for implementation are as follows:

1. Establishment of the Scheme

Regulation 5 establishes a scheme known as Bungoma County Education support scheme to provide for scholarships and bursaries to students from the County.

Response:

During the Committee interrogation, the CECM for Education and Vocational training stated and proved that The Bungoma County Education Support Scheme was rolled out and has been supporting needy bright students.

Implementation status:

Implemented

2. Initial capital

The initial capital of the scheme shall be allocated as follows;

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

Response

- There was an allocation of 3% for administrative cost (operational costs, vetting and re-vetting of bursary and scholarship beneficiaries as well as facilitating consultative meetings). The department adhered to the 3% administrative cost allocated, however, due to the huge number of form two beneficiaries and the need to reduce the numbers (1,890 up from 8,870) the department held several consultative meetings interdepartmental and intra- departmental meetings which necessitated temporary borrowing(annexed is an approval for temporary borrowing from scholarship fund).
- Regulation7(1)(b) stipulates that Not less than 57% and not more than 87% disbursed as bursary to needy students. During the year 2022/23 the county allocated Ksh 180M as bursary which translates to 34.4%.
- Under Regulation 7(1) (c) Not less than 10% and not more than 40% disbursed as Scholarship. The department was allocated Ksh 344M for scholarship translating to

65.6%, this was as a result of the total number of beneficiaries having been raised to 8,870.

Implementation Status:

Partially implemented

Recommendation

The Committee recommends that the Fund Administrator should henceforth strictly adhere to the provisions of regulation 7 (1) (a) of the Bungoma County Education Support Scheme Regulations 2019.

3. Guidelines

Regulation 7(2) requires the County Executive Committee Member in charge of Education in consultation with stakeholders to issue guidelines on the allocation of the scheme taking into consideration of the limits provided in 7(1)(a-c) with priority given to the devolved functions.

Response:

The department submitted the guidelines on the management of the ward bursary fund dated 16th February 2023, as annexed.

Implementation Status

Fully implemented

4. Scheme administrator

Regulation 8(1) obligates the Executive Committee Member to designate the administrator of the Scheme.

Response:

The department submitted an appointment letter dated 1st July 2020 designating Silas Wanyonyi as the Fund Administrator. (Annexed)

Implementation Status

Implemented

5. Annual Estimates and Work plan.

Regulation 8(2) obligates the Fund Administrator to prepare annual work plan programs and cost estimates and submit to the County Treasury and County Assembly as per the Public Finance Management Act, 2012.

Response:

The CECM informed the committee that they are considering the Ad hoc Committee report recommendations before they can provide annual work plan programs and cost estimates.

Implementation Status:

Not implemented.

The County Assembly is yet to receive any annual work plan programs and cost estimates as under regulation 8(2) of the Bungoma County Education Support Scheme.

Recommendation

The committee recommends that the Fund Administrator should henceforth prepare and submit the annual work plans and cost estimates and submit them by 30th of April each year together with Annual budget for the County Government of Bungoma.

6. Establishment of the Education Support Scheme Committee

Regulation 10 establishes a County Education support Scheme comprising of 9 members:

- a) The Chief Officer responsible for Education who shall be the Chairperson of the Scheme.
- b) An officer from the department of Education who shall be the secretary of the scheme committee.
- c) The Chief Officer responsible for Finance or representative.
- d) Two persons appointed by the County Executive Committee Member responsible for Education from a list of three names recommended by the County Education board.
- e) Two persons from the community who are knowledgeable on education matters and/or similar education support schemes appointed by the CECM responsible for education.
- f) Two members representing special interest groups appointed by CECM responsible for education.

Response:

The CECM submitted proof of the existence of a County Education Support Committee annexed to this report

Implementation status

Fully implemented

COMMITTEE GENERAL OBSERVATIONS

The committee observed as follows;

That the Bungoma County Education Support Scheme Regulation is majorly supporting programmes which are not County Government functions as stipulated in part II of the Fourth Schedule of the Constitution. This programme includes bursary and scholarship for needy students in secondary schools.

RECOMMENDATIONS

The committee recommends that;

The committee directs that the CECM Education and Vocational training to review the Regulations with a view of giving attention to the function assigned to the County Government as provided in paragraph 9 of part II of the fourth schedule of the Constitution of Kenya 2010. The functions include; pre-primary education, village polytechnic, home craft centres and childcare facilities.

The following is an adoption of the report whereby all members signed and then attached are also annexures of the report.

I call upon my Vice chair to second the motion.

Mr. Speaker: The vice chair has a name!

Hon. Aggrey Mulongo: Job Mukoyandali!

Mr. Speaker: Proceed and be able to second the motion Job!

Hon. Job Mukoyandali: Hon. Speaker, I rise to second this motion. There are some few issues that have been raised in the motion especially when you look at the Disaster Management and Emergency Fund Regulations 2021.

Recently we saw what happened in Hon. Opwora's Ward where a bridge went down and somebody died during the incident. A few wards have been affected with the rains that have been there for the past two weeks but when you look at this Disaster Management Regulation of 2021, most of the regulations are not working.

When you look at the capital fund, we have been told that it has just been partially implemented. This capital fund is the one which provides that that initial capital fund of 100,000,000 that the County Assembly appropriate annually but when you look at it, I do not know if that regulation has ever been brought here so that we appropriate that kind of money.

There is no implementation of the objectives of this fund but when we tried to interrogate the CEC, we realised that he is not able to tell us how the utilisation of the little funds that have been put in the kitty have been appropriated. We tried to find out in which wards this fund has been appropriated and there is no citation of any emergency in any of the wards. The statements given to the committee were a little bit amorphous as it did not mention some specific wards where this money has been appropriated.

We will only be told that there are bridges that have been constructed but when we enquire about specific locations, is there any evidence of the bridges that have been constructed to show how this fund has been utilised as a committee?

The CECM was not able to actually pinpoint those particular bridges and the specific words and all these is arising because you look at the objective of this fund is actually not followed in any way. When we looked at the expenditure of the fund, why we recommended that the PAC committee actually comes up and investigates the same, nothing tangible is being given to us over the expenditure of that fund.

The fund administrator was appointed and put in place. You look at our report; there are no annexures to actually affirm that this regulation 11, this fund administrator meets the qualification that are required for somebody to hold that office.

The establishment of the Sub County and Ward disaster and Emergency steering committee, these emergencies that are being handled by this fund are emanating from the wards and sub counties. When you look at the flow of information, it's supposed to begin from some particular ward.

If the regulation requires that a Ward committee is formed and in this particular case, we are utilising money without the ward committee and in our respect, when you look at it, there is some money being allocated to the ward committees.

We do not know how the CECM and maybe the county committee come to realise about the emergencies that are happening in the wards minus this emergency is being raised by the ward committees. So there are a lot of gaps in the implementation of this particular fund and a lot of money has been put in that particular in that particular fund.

Recently, you saw what happened that some money was put aside to take care of those emergencies that are happening in our wards. Up to today, we do not know how that money is getting appropriated yet these committees that are required to sit and look at these emergencies have not actually been put in place.

You look at Section 10, the standard setting of the norms, the soliciting of the norms are not in place. So if we do not have any norm or any regulation that we are following, how are we going ahead to appropriate this money. There is no policy guideline on the same. I think you realise that there are so many gaps that people are taking advantage then they utilise this fund in a wrong way.

Lastly, the criteria for assessing the disaster is not put in place, we do not have any criteria in place in terms of regulation where they are supposed to assess a disaster and maybe come up with a conclusion over the same that tied on that subsection eight and nine where there are no ward committees, there are no sub county committees.

Number 14, we do not have any records that have been kept for the disasters that have happened in the County and the kind of money that has been used to curb those disasters or to solve those disasters that happened yet. When you go ahead, you are told that money was appropriated but there are no records. No records were provided to the committee showing how this money was appropriated.

So this should be an eye opener to this House, that we actually become so strict. There is a lot of money within this county that is just being misappropriated by some quarters. If proper regulations were put in place and this money is properly utilised, maybe it could help a Bungoma citizen who is suffering in a different way somewhere.

Lastly, when you look at the Bungoma County Education scheme, there is that issue of the 3% Committee money. We were told that during the vetting there are so many committees sat at that particular time. That is reducing of the form two students who are on scholarship that so many committees sat and that's why most of the money was appropriated on that particular committee.

Finally, no annual work plan was provided and you keep on wondering without our work plan, how are you appropriating money? How do you do your budgeting and use this money minus any particular work plan being provided? So I second the motion

Mr. Speaker: Thank you, Hon. Job. Hon. Members a motion has been moved and seconded that this House adopt the report by the Committee on Implementation on the status of the implementation of the regulations passed by the House laid on the table of the 24th of October 2023, I propose

(Question proposed)

Hon. Tony Khaoya: Thank you, Hon. Speaker for giving this opportunity. Allow me to stand and from my end to oppose the motion on the following reasons. Chapter one the chairpersons forward letter it is dated on 4th September 2023. Let me go now to scheme of administrator. I am saying that because the committee has a researcher to do due diligence before the report is being forwarded to this House.

They are saying that one Silas Wanyonyi is fund administrator. They are saying he was appointed on 1st July 2020. In the Wisdom of the committee; they could also have been observed in their observation, that indeed Silas Wanyonyi was a fund administrator by this date and things changed along the way because as we speak, the fund administrator is not one Silas Wanyonyi, they have changed several fund administrators and the person in office now is different.

The committee could have observed that this is the trend, because the forwarding letter is 4th of September 2023, which by now the committee could be able through their research, they could give us a concrete report that we can believe as a House.

The issues to do with scholarship, the mover of the motion, recently in the public engagement said that we want to applaud because in the last regime the issue of scholarship was very key and paramount to our students. For him to come here and tell us to wind up and tell us that the scholarship is now something useless and it is not providing the needy. to me The scholarship issue I know it's not County Government function but how I wish if we could restrict ourselves by pronouncing the issues to do away with scholarship for needy and bursary but use a certain language, maybe if we can observe the rules and the regulation that were passed in this House because if we follow the regulation to the latter, in fact the bursary and scholarship has not been given the higher percentage.

It is the issues to do with vocational training centres but recommending that the issues to do with a scholarship which is supporting the needy students in Bungoma County, this House to approve that going forward although we know it's not a County Government issue, but it's a very emotive issue in our county. To me that committee is harsh. If I pass it personally as Tony, knowing very well how it is emotive to Bungoma County, it is going to paint a certain image and the Honourable member who has moved this motion immediately we pass this one will be attending funerals and he will say this regime has now declined to support the needy to students. So that is my observation

(Applause)

I want to rest my case and say I'm not supporting because it has touched the emotive cases of needy students in Bungoma County. I don't support.

Mr. Speaker: Yes Hon. Makari then I will have... Hon. Mulongo you want to contribute again? You write what you want to say. If you have been called a chief mourner well and

good there is no problem. You are always a chief guest in fundraising, in the funeral you are chief mourner

Hon. George Makari: Thank you, Hon. Speaker. The chair is known for talking in funerals about this. It is good he has brought the report in the House and he is supporting the same thing. When he is in a funeral, Away from what Hon. Tony has said I want to support the report and especially when they the seconder was speaking, I was picking out something. This issue of a disaster fund, it has been misapplied in this County.

I remember in the last regime, there the person in charge of disaster management who was called Buyela, She used to implement these issues of disaster only in Webuye East where she comes from.

Mr. Speaker: That's not true I come from Webuye East.

(Laughter)

Hon. George Makari: Hon. Speaker, you could be a beneficiary of these projects if you come from Webuye East and now be it as it may, during that time will could see disaster always happening in Webuye not in other places but now here we are. There is a new management, one year down the line I have not seen any money being used on disasters that have happened in my ward. There's a bridge that went down, other wards things have gone or it is happening only in Lwandanyi where Hon. Tony is coming from

(Applause)

(Loud Consultations)

Mr. Speaker: Order members please

Hon. George Makari: Hon. Speaker, this disaster kitty it's a time we looked at it critically. It is being misapplied and we have seen the committee saying even there are no records to show actually what has been done. If there is a bridge that collapsed in Lwandanyi, where are the records to show that we used 20 million? We had the record to show we put mattresses for this school, there is another school around in Butonge, I think if they did take the money to purchase mattresses and iron sheets, how much was used and where are the records? That's what we are talking about because the way it is doubt if it is applied correctly.

I also want to point out something you look at the committee of implementation led by my good friend Hon. Mulongo and the composition is down there. Now this House passed the resolutions and recommended for implementation and they are also passing resolutions and recommending now who is implementing for whom because we passed House resolutions. Now they went down to the executive, the executive failed to implement. Now it went through the Implementation committee. Now the Implementation committee is also recommending 60 days. They are now recommending back to us again. What are we doing?

Like number nine establishment of the ward disaster management steering committee not yet formed recommendation, CECM to establish the above committee in the 45 wards and provide a report to the County Assembly within 60 days from the adoption of the report. They are also recommending again, now after the 60 days are going to go on to sit and write to recommend for another recommendation. There's a problem somewhere maybe but I can see very good people like Hon. Job in that committee, Hon. Alice Kibaba, Hon. Jeremiah. I don't know if they saw these or not.

So that is my take. I really didn't want to oppose it especially but there are issues in the report that needs serious note and away from education. I have seen the one that is touching on disaster management, especially on the CEC of finance. He is very notorious for not implementing resolutions of the House. So this Implementation committee, when it will look at this recommendation they have again recommended let the committee be serious. Let them not again return the recommendation to the House to pass the resolution. Then go again and the seat and pass another recommendation then back to the House. You must be the final people. Thank you

Mr. Speaker: Thank you Hon. Tony what is the information? Let me allow Hon. Henry first you have spoken

(Loud Consultations)

Hon. Tony Barasa: Hon. Speaker, I was mentioned by my good friend Hon. George Makari about issues of money of disaster may be coming to Lwandanyi and it was laud by my good friends from opposition side. I want to be on record that there is no day that money of disasters come to Lwandanyi and if there is any proof. When El Nino came I lost over 140 houses that were smashed by floods up to date we are still waiting, there is no single cent has come to Lwandanyi. We went to my neighbour Hon. Mutiambu, the school who was smashed by wind and it was even promised a million shillings to that particular place. It has not been there. So we don't need and I want to be on record. I don't want anybody

Mr. Speaker: Information can't have information. Let him wind up first please

Hon. Tony Barasa: I want to inform because people are like all disaster money is coming to Lwandanyi. It has never been and if it is there Lwandanyi is part of Bungoma County and it must benefit. So anybody who has evidence that Lwandanyi is actually benefited for 50 million for emergency bring and table here.

Mr. Speaker: Yes Hon. Kawa, let's have your information.

Hon. Jack Kawa: Thank you, Mr. Speaker. This is a House of rules and procedures and we know what is going on in every ward in this County. I want to inform my good brother Hon. Tony that on the 20th of October 2023 when you go to Governor's speech you will find the name Lwandanyi in Sirisia Sub County mentioned, and that means it benefited.

Mr. Speaker: Hon. Tony, you are out of order!

(Loud Consultations)

Members, if somebody is aggrieved look at the Governor's Mashujaa day speech, I was in Ndivisi. If you have what you want come here and debate it, so let us move on.

Hon. Henry, proceed.

Hon. Hentry Nyongesa: Thank you, Mr Speaker.

Mr. Speaker: Members, let's have order or else, I will ask you to go out.

Hon. Hentry Nyongesa: Thank you, Mr. Speaker. I will not look at what's happening but I have risen to contribute on the motion that is on the floor. As members are mentioning, every committee here, is guided by our Standing Orders and what is stipulated in the Standing Orders guiding the committee and I was listening very keenly when the chair and the seconder were putting the issues on the floor.

The Implementation Committee is supposed to scrutinise all the reports and recommendations that have been made by the House for instance the Committee on Health, for example, has made a report that we have a lot of patients maybe at the hospital who are not given medication. I wish that in future they even come with the photos of those patients in the hospital that are lying there and not being assisted.

If we want the implementation committees reporting on the dead body, they must bring the photos of the dead bodies. So when I was listening to, for example, Hon. Mukoyandali saying that some two bridges were made in some wards and the particulars or the details is not there. This is a very serious offence that is supposed to be reported to ICC, I mean EACC.

(Loud Consultations)

Mr. Speaker: Order members. Or he may have named the international not the one in Kenya.

(Laughter)

Hon. Hentry Nyongesa: Mr. Speaker, I don't know why Hon...

Mr. Speaker: You know they are always scared by the name ICC, so you mentioned the one for Hague...

Hon. Hentry Nyongesa: I'm saying that in the future, when we are having such reports, let the report remain within the mandate and handle it within their mandate as Implementation committee. I rest my case.

Mr. Speaker: Thank you, Hentry Nyongesa. Hon. Joseph Nyongesa, our Majority Leader.

Hon. Joseph Nyongesa: Thank you, Mr. Speaker. Actually, this is a serious report and we urge this House to look into it critically because the Committee on Implementation should work with finality because as a House we depend on them. We have been following although it came late, but we have seen some gaps.

Personally, I disagree with this report on the criteria, criteria for accessing the disaster and emergency funds. The committee is blowing warm and cold. They are not straight forward because they say they were never given the information on how many bridges may be were done but on the implementation status, they are saying partially implemented. Now, my concern is this partial means at least they have evidence of one or two three bridges which have not been mentioned to here.

So if we pass such a report we will also be demeaning the dignity of this House. We have the researchers here and the assembly has got the powers with the High Court. How can you tell us that information was not given to you as a committee? What were you in a hurry to bring to unjustified report to this assembly for us to approve or what happened? because we should be accountable. Now here are we accountable?

On the issue of education, they are saying the CEC explained they were supporting needy students but on the implementation status they say fully implemented. In their recommendation they are saying it should be wind away. So if we are keenly the following. If we pass such a report then we shall be demeaning the dignity of this House although it came late but it has gaps I do not support.

Mr. Speaker: Yes, Hon. Ipara.

Hon. Johnston Ipara: Thank you, Hon. Speaker. You have witnessed a situation where Jesus Christ was denied by his own disciple.

Mr. Speaker: I did not witness, I only read and believe...

(Laughter)

...I did not witness at all, but I have had a chance to be personally in a place called Gethsemane. Let's proceed

Hon. Johnston Ipara: Thank you, Hon. Speaker. I will spend much of my time on compliancy because it is an area that has let this County down and particularly when talk about implementation. Implementation involves the use of resources that are scarce all over and when you find the people fighting, it is always because of scarce resources. Based on the details of the report, you will find that the reports and bills that have always been forwarded to the executive have never been implemented or even followed.

They have never even obeyed those laws and regulations that do exist in the performance of their work and this one when you are not operating within the law, and then it means either you are preparing to fail or you will divert the intended resources to other purposes that were not budgeted for. The mover didn't have the correct details of projects undertaken, incomplete, projects on progress but immediately when I did consult Hon. Martin MCA, he immediately confirmed that the emergency fund was used to construct a bridge in the Cheptais.

I don't see any problem, whether a project is done in Lwandanyi or Cheptais, these two wards belongs to this County, whether it is done or not they belong to this county and they also have a right to have their share of the cake. Key matters to consider is whether we accountable to what we do. This one reveals that we are not accountable to what is happening within the county.

Every one of us here will confirm that we have never at any time seen the work plans of respective departments not only the emergency, but all respective departments and even if they show they show it partially, so we lack accountability and transparency.

Heavy rains don't only fall in Lwandanyi and Cheptais; they fall across the whole county. So what we demand in the future that transparency must be the cardinal of direction, so that there is no inequality in the distribution of resources. The expenditure of this fund is supposed to be brought in this County Assembly by the finance department, who are supposed to file a statement of the expenditure. What was spend on which project and where?

For over one year and some months that I have been here, I have never seen this and I want to say this without minding about the side we stand, whether the government or the opposition, we must make sure that at least this House is fully participating in what happens within the County.

Lastly, this brings the question of integrity on every one of us, because if we say this belongs to us and that belongs to them, it is them who have said it is not us who have said then we shall not assist this County government realise the dreams of the rest of the people of Bungoma County. I rest my case.

Mr. Speaker: Thank you, Hon. Ipara. I will allow Hon. Chemion.

Hon. Francis Chemion: Thank you, Hon. Speaker. I have listened to the contributions. I have also read the report and I know the Implementation Committee have done some work, but from the contributions were having here and looking at the recommendations and the sufficiency of the information. I stand under Standing Order No. 64 (b) that we adjourn this debate to allow the committee time to get more of those documents that we are requesting so to beef up the report.

I am doing so that we don't reach an extent where this report is defeated; it will stay for another six months for it to be brought back. I want us to just adjourn to give you sufficient time to get the documents of how the money was spent. So that when we debate it, we do it with proper information. So I ask the our Deputy Speaker to second the adjournment of that debate.

(Applause)

Mr. Speaker: Hon. Deputy Speaker,

Hon. Stephen Wafula: Thank you Honourable Speaker. I stand to second the adjournment of the debate so that we can allow the Committee on implementation to actually have some extra time in refining the report to be presented to this House. As I second this, I want to say the following that when it comes to the issues of the emergency fund, they have made a recommendation that the word Like capital changes, but how I wish that because as they state in that report that it is not a revolving fund, even the word fund itself should also change because, a revolving fund is a fund that generates revenue again, in addition to what they get us revenue from other donors or financiers be it private or whatever. So there are very many issues that the committee has not actually come out strongly to elaborate and give its opinion firmly.

It is partial like what has been mentioned, I don't want to repeat, if we are talking of partial implementation, then you have to have the evidence. We can even have annexures, if not annexure then we have concretely to say that such and such a project was done as opposed to 10 of them. We are not having such proofs meaning the committee was not decisive and this points to a situation where we want to believe that the committee has not utilised the Department of research in this assembly. So we want to call upon the committee to go out and utilise the Department of research within the assembly.

I want also to call upon the Committee on implementation, led by the Hon. Waialua that we should live true to being leaders elected to articulate honest issues. We cannot come in this assembly and recommend that we want the government of the day in Bungoma to live within the structures and requirements of devolved functions. While we are in this assembly, when we go outside, we say that the government is not implementing those issues or programmes outside the requirements of devolution.

The Honourable Chair of Implementation, in numerous occasions has pronounced himself that the government is not addressing the issues of scholarship and in this report, he is tasking the CEC finance to come up with issues that are within the devolved requirements. The issue of pre-schools that is ECDE , the issues to do with vocational training, the issue to do with the day care centres which have not heard the Honourable Chair of Implementation, articulating the same to the people outside this Assembly.

So I want to call upon the chair implementation to be strong enough to stand outside in different fora and tell the people the truth, as we give you a chance to go and fine tune the report, Honourable Chair we equally want to ask each one of us to tell our electorate the truth about why we are here and the functions of devolutions as given to the county government.

I second that this debate is deferred so that we give the committee enough time to go and bring a report that actually be fit the standing of this assembly. As I finish on the issue of disaster management. It doesn't matter if a project is being done in Lwandanyi or Cheptais or Soysambu or wherever the bottom line is, the programmes that have to be done through the emergency actually have to satisfy every resident of Bungoma County.

If it happens in Webuye East then the person living in Kanduyi should actually realise that it's true. That programme was supposed to be done courtesy of the disaster that befell those people and therefore we need to have and the committee should come up and expressly tell the House that the regulations are tight enough such that the fund is utilised in a very proper manner. So that every person can be satisfied irrespective of whether a programme is being done for him or her or another person I second.

Mr. Speaker: Hon. Members, once again that is a motion within motion. Foremost let me propose a motion for debate or if there is no debate, we will go back to the main motion but I will have a chance to give Hon. Aggrey Mulongo time to be able to get the indication if it goes through the adjournment.

Hon. Members, a motion has been moved and seconded that this House adjourns its debate on the motion beforehand to allow the committee time and be able to give up its report, I propose

(Question proposed)

Yes Hon. Job,

Hon. Job Mukoyandali: Thank you, Hon. Speaker. First, let me support the motion within a motion. That actually this motion is adjourned but as I stand here I am so much aggrieved because I am really reading a lot between the lines especially when it comes to a way in which the debate has moved.

At any particular time, as a Committee on Implementation when we sit down and we are looking at the extend within which a certain report has been implemented, I think it is wise enough that we come to report to the House what exactly we have gotten on the ground and how this report has been implemented. As a committee we will go and sit back and look at it again but you don't expect this committee to bring to the floor of this House the evidence that has not been provided to it, when you go to the HANSARD of the committee sittings when we called in the CEC, we were asking these questions, some of us are on record asking about some of these things that are being raised here. If maybe the CEC is not able to give any

evidence that we are asking for it would be so much unfair for us to come here or for us to cook a report...

Mr. Speaker: Hon. Mukoyandali, I think now the chairperson of the committee is failing you. You have powers of the high court, I remember last Assembly I fined the CEC of Education Kshs200, 000, if someone fails to bring a report, sanction him/her and as a House we will declare that whoever has failed to come before the committee of the House can't come to this House, we will sanction him.

You know we want to avoid the situation of what they are saying Webuye East... Webuye East, I come from Webuye East if you don't know, they were saying everything Webuye East but the members are there, Hon. Alfred is here and Hon. Violet is here, we want to see the beneficiaries. If you are talking of a bridge in Lwandanyi, let us have photos so that this idea of blame game of things being taken to Luhya/Bwake alone comes to an end. Above all, I will let you know before you finish up.

Honourable Chairperson has disappeared? We had a chance with the Leader of Majority here to attend an integral meeting of swearing in members of the Disaster Management committee, we have the committee in place representing all the Sub-counties. Bishops and members of that committee should seek their audience, if you say they failed to come then I blame your chairperson squarely, as a chairperson you have the powers to sermon and if he fails to come, report back to me. I will write to them declare them *persona non grata*, that you are not allowed to come before the Assembly House until you purge that contempt that you are doing.

So there is nothing like *kubembeleza mtu hapa*, let them comply with what we are saying, if they don't we will punish them. This disaster management kitty was misused; there is allegation that it is only Webuye East which knows that Fund and yet we are suffering like any other person. Don't bring the issue of Lwandanyi or Webuye East here again, let us be fair to everybody. Proceed.

Hon. Job Mukoyandali: Well guided Mr. Speaker and that is why we asked for that evidence. I am not saying that the CEC didn't appear, the CEC appeared but that evidence was not presented to the committee when we asked for it and that is why our report looks the way it looks because they were not able to provide us with what we are able to bring to the House.

We are guided, when this House gives us a chance of going back and looking into it, we are guided it will be more thorough so that we get to the point where everything is brought out in a very clear manner to this House.

Secondly, this is a report that was moved sometime back and we are only looking at its implementation status, so it will also be unfair for an honourable member maybe to rise on the floor of this House and demand that we bring in the current one fund manager to shade light.

Our issue in this particular report was not to look at how the fund is managed right now but how it was managed at that particular time. So when we are being directed by an honourable member that we now look at what is happening presently, I think it will be out of the report and it will be unfair to the committee. Otherwise we are guided. I support the motion.

Mr. Speaker: Thank you, Hon. Mukoyandali. Hon. Nganga,

Hon. Everton Nganga: Thank you, Mr. Speaker, with me I am not supporting the motion that has been moved by Hon. Chemion and the reason why I am doing so is one, I am looking at the Standing Order No. 212(4): The committee shall scrutinize the resolutions of the House including adopted committee reports, petitions and undertakings governed by the County Executive and examine;

- a. Whether or not such decisions and undertakings have been implemented or not
- b. Where implemented the extent to which they have been implemented
- c. Whether such implementation has taken place within the minimum time necessary.

In this House we normally pass recommendations and the final committee to make sure that they have been implemented or to confirm the implementation status is the implementation committee. In most cases, the Implementation committee normally relies on the recommendations that have been given out from the reports of the committees in this House. What normally happens is they sermon the CECM or the person who has been mentioned at whatever level to ascertain to which degree implementation has been done with regards to recommendations. The person appearing before the committee will provide evidence which is highly relied on by the committee.

The work of the Implementation Committee is just to justify, check if the recommendation that was made by the committee or the resolution that was passed is it true or not. They have to ask the executive to which percentage implementation has been done. Actually you can say partially or fully basing on the information that the executive will give you because this recommendation emanated from the relevant committees...

Mr. Speaker: Before you wind up Hon. Nganga, I want to seek your guidance, you have the report? Look at page number 10, item 9 which talks about recommendations. How do you want us to approach it as a House? Item number 9 on page number 10.

Hon. Everton Nganga: Let me read it to comprehend it. *The CECM Finance and Economic Planning should as a matter of urgency constitute Ward disaster and Emergence management steering committee in all the 45 Wards and provide a report to the county Assembly within 60 days from the adoption of this report.*

You know I am looking at the confidence level or the degree of acceptance. You know some reports have 99 per cent acceptance and 1 per cent of...

Mr. Speaker: The committee has recommended to the House that the CEC goes and forms the committee, in case they fail the you come back and pick it up and follow up again, is that the way it goes?

Hon. Everton Nganga: You know we are on the motion that has been raised by Hon. Chemion, it was just to give them time, and we are on that one but we are not back to the real motion.

Mr. Speaker: I have heard your submissions and that is why I was trying to refer on how to handle it, you are saying that as a committee you handle it partially.

Hon. Everton Nganga: Hon. Speaker, you know Honourable members we have a lot of work to do, my recommendation...

Mr. Speaker: This is your core work as an MCA.

Hon. Everton Nganga: I am not running away, you know when you read this recommendation, it is not a problem on your side that is the problem of the relevant secretariat, and how you can come up with this, in fact I didn't want to shout on the floor of the House but you have forced me to say this...

(Laughter)

Mr. Speaker: Hon. Nganga, one of the things that we have in this House is protection

(Loud Consultations)

Order members!

We have protection, that is why you can't be arrested in this House and you are protected so there is nothing like failing to shout, just say what you want to say.

Hon. Everton Nganga: Hon. Speaker, allow me to continue. I want to wind up; it is hard for the Implementation Committee actually to come up with evidence when the evidence is found in the previous reports that were given out in this House.

Mr. Speaker: You know we have a motion ahead of us for Powers and Privileges and a third reading. Hon. Chemion, reply to the motion please.

Hon. Francis Chemion (Mover of the motion): Thank you, Hon. Speaker. Basing on what Hon. Nganga has read, it is one of the mandates of the Implementation committee to examine, you read the word examine, and examining means you look into it critically. Secondly, Hon. Nganga shied- away from reading number 5.

Mr. Speaker: Hon. Nganga is never shy.

Hon. Francis Chemion (The mover of the motion within a motion): He didn't read part 5 of that Standing Order that says the committee may propose to the House sanctions against any member of the County Executive Committee who fails to report. You have heard from our discussion here that there was failure to provide some of the documents. You have the power to sanction such a member, so this does not cure whatever we are saying or what Hon. Nganga has said. We are saying we need a water tight report so that members do not quarrel.

You have heard exchange of words, why was it there? Because the report was not very clear, some members were thinking it is only in Kaptama Ward where emergencies are done because the report is not giving us evidence to exonerate Hon. Tony from the blame that is now here.

Members, I wish to ask all of us that we are not putting this report down, we are only giving time for the committee to go and look at it critically and come up with a better report and it will be passed.

After passing this report, it will be put on our website, it will be read by the whole world so we want a report that if any other person reads they know that the prominent and eminent members like Hon. Mukoyandali was in that committee and it was chaired by the most senior Honourable member of this House Hon. Mulongo. Allow this thing go through, you be given time by the House so that you come up with a water tight report.

Mr. Speaker: Thank you. Before I put a question before the House, let me seek clarification from Hon. Aggrey, suppose the House approves this adjournment motion, how long do you require?

Hon. Aggrey Mulongo: Thank you, Mr. Speaker Sir. 2 weeks is enough.

Mr. Speaker: He is the one who has said 2 weeks is enough, the rest keep off.

Hon. Aggrey Mulongo: 2 weeks is enough because 1 week we shall be going out. This is an eye opener, at least for today I have a tooth to bite, a full tooth to bite now. Thank you for that guidance and thank you for keeping me...

(Loud Consultations)

Mr. Speaker: Hon. Members can you give Hon. Aggrey time

Hon. Aggrey Mulongo: Thank you for giving us this extension, it is just the same way when PAIC also messed up , it is the same way and there is a reference, there was also a motion in motion.

(Laughter)

Mr. Speaker: Hon. Nganga, you will be sent out of this House, we will not allow that to happen here, when your colleague is speaking allow him to do so. You will be given a chance, but grabbing him because of his small body will not be allowed here, even the small ones found their way here rightly. Avoid sitting next to such individuals next time

Hon. Aggrey Mulongo: Thank you, Mr. Speaker for protecting me. Learning is a process. When I was appointed or rather elected as a chairperson, I knew that all these reports that we were looking at were all recommendations. We have now been told that we are the final people in this County Assembly as an implementing organ, so we need to come up with all

the recommendations even if it means people being surcharged, it is us to come up with such recommendations. Thank you for giving us guidance.

Mr. Speaker: Thank you, Hon. Members. I will put up a question to the said motion

(Question put that the House adjourns debate agreed to)

The motion moved by Hon. Aggrey Waliaula Mulongo and seconded by Hon. Job Mukoyandali is now adjourned, you are given 2 weeks. Once you are ready bring back the report to the HBC to be put on the Order Paper.

Next item,

REPORT BY THE POWERS AND PRIVILEGES COMMITTEE ON COMPLIANCE WITH WEALTH DECLARATION BY HONOURABLE MEMBERS

Hon. Bridgit Katasi: Thank you, Honourable Speaker. I am on my feet to move a motion...

Mr. Speaker: The microphone is meant for you.

Hon. Bridgid Katasi: Thank you, Hon. Speaker. I am on my feet to move a motion of the Committee on Powers and Privileges on compliance with wealth declaration by Honourable members. I will skip table of contents and move to chapter one.

Preface

The objectives of the Report are:

- a. To establish the level of compliance by Members of the County Assembly in initial declaration of their income, assets and liabilities
- b. To make recommendations for enhancing compliance on the implementation of DIALs.

Establishment and Mandate of the Committee

The County Assembly Committee of Powers and Privileges is established under section 15(1) of the County Assemblies Powers and Privileges Act, 2017 (CAPPA) and the County Assembly of Bungoma Standing Order 215.

Membership

The Committee as currently constituted comprises of the following Members:

Name	Designation
1. Hon. Emmanuel Situma	Speaker /Chairperson
2. Hon. Bridgid Katasi	Vice Chairperson
3. Hon. Joseph Juma	Member
4. Hon. Miliar Masungu	Member
5. Hon. Vitalis Wangila	Member

6. Hon. Ali Machani	Member
7. Hon. Tony Barasa	Member
8. Hon. Jack Kawa	Member
9. Hon. Orize Kundu	Member
10. Hon. Eunice Kirui	Member
11. Hon. Moureen Wafula	Member

I will skip mandate of the committee.

Acknowledgement

The Chairperson of the Committee takes this opportunity to thank all Members of the Committee for their immense contribution. In equal measure, the Committee conveys its gratitude to the Offices of the Speaker and Clerk of the County Assembly for the support accorded to it in the execution of its mandate during the compilation of the report.

It is therefore my pleasant duty and privilege on behalf of the Committee of Powers and Privileges, to present the report to the House.

The report is signed on 18th of July by Hon. Emmanuel Situma Speaker of the County Assembly/Chairperson.

Background

The fight against corruption provides detailed information on the value of asset and interest declaration systems and how to effectively implement them. Public disclosure of private assets of public officials and family members does not clash with the rights to privacy and data protection. Both rights are not absolute and can be restricted provided there is a basis in law and a legitimate public interest justifies the restriction. Prevention of corruption and exposing unexplained wealth of officials are serious and legitimate public interests.

Access to declared information can greatly increase the ability of disclosure systems to deliver results. Further, limitations on the privacy of public officials by requiring them to disclose their income, assets and liabilities serves the public interest.

In the quest of pursuing leadership and integrity, asset declaration systems have increasingly become a multipurpose tool. In this regard, there is need for state and public officers to declare their wealth for the following reasons:

- a) To increase transparency, accountability and the trust of citizens in public administration;
- b) To help heads of public institutions prevent conflicts of interest among their employees, build and promote broader integrity within their institutions;
- c) To monitor wealth variations of individual state and public officers as it contributes to transparency of ownership and support supervision efforts;

- d) To help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence. Consequently, this helps detect unjustified assets.

Declaration of Income, Assets and Liabilities therefore, combines prevention and enforcement purposes.

Legal Framework

The Public Officer Ethics Act, 2003 (POEA) requires that each public officer adheres to a code of conduct and ethics for public officers and further requires financial declaration from certain public officers. Section 3 of the Public Officer Ethics Act, 2003 assigns different Commissions or Committees to be in charge of the implementation of the provisions of the said Act.

Section 3(2) (a) partly states that the Committee of the National Assembly responsible for the ethics of Members is the responsible Commission for implementation of the Act with respect to Members of the National Assembly. This section applies to the County Assembly with necessary modifications. Further, Section 3(11) provides that a body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission. In line with the aforementioned, the County Assembly Committee on Powers and Privileges is the responsible Commission/Committee for purposes of implementing the Public Officer Ethics Act, 2003 pursuant to section 3(2) and (11) of the Act as outlined above.

The National instruments that form part of the legal framework for DIALs include: The Constitution of Kenya, 2010; Leadership and Integrity Act (LIA), 2012; Public Officer Ethics Act (POEA), 2003; Public Officer Ethics Regulations, 2003; Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011; and National Ethics and Anti-Corruption policy, 2018.

The Constitution of Kenya, 2010

The Constitution of Kenya provides the normative framework for good governance and an ethical society. Articles 10, 73, 74, 75 and 232 of the Constitution set out the principles of governance and national values which bind all State organs, State and Public Officers. In essence, the above provisions of the Constitution encompass everything that is required to set, maintain or raise the standards in management of public affairs.

Chapter Six of the Constitution specifically outlines the guiding principles of leadership and integrity which include selfless service based solely on the public interest. This is demonstrated by honesty in the execution of public duties and the declaration of any personal interest that may conflict with public duties. The implementation of the Constitution directly rests on the legislation and/or statutes which include; the Leadership and Integrity Act, 2012 and the Public Officer Ethics Act, 2003 that provide a framework on principles of public service.

Leadership and Integrity Act, 2012 (LIA)

The Leadership & Integrity Act No. 19 of 2012 was enacted pursuant to Articles 79 & 80 of the Constitution. The Act was enacted for the purpose of giving effect to and establishing procedures and mechanisms for effective administration of Chapter Six of the Constitution. The primary purpose of the Act is to ensure that state and Public Officers respect the values, principles and requirements of the Constitution. Section 6 of the Act states *that; the provisions of the Public Officer Ethics Act (2003) form part of the Leadership and Integrity Act by virtue of subsection (3)*. This includes the provision on the declaration of income, assets and liabilities under part IV of the Public Officer Ethics Act, 2003.

Ethics and Anti-Corruption Commission Act, 2011

Article 79 of the Constitution provides that Parliament shall enact legislation to establish an independent Ethics and Anti-Corruption Commission with the status of independent Commissions under Chapter 15 of the Constitution. All public institutions are required to prepare and submit to the EACC their specific code of conduct for approval by the EACC. Further to the provisions of the LIA, the EACC Act mandates the EACC to oversee enforcement of codes of conduct of public entities. With reference to state officers, the Commission is mandated by Section 11 of the Act to:

- a) develop and promote standards and best practices in integrity and anti-corruption
- b) develop a code of ethics
- c) work with other state and public officers in development and promotion of standards and best practices in integrity and anti-corruption
- d) receive complaints for breach of code of ethics by public officers
- e) investigate and recommend to the director of public prosecutions crimes related to anti-corruption and economic crimes
- f) recommend appropriate action against state officers engaged in unethical conduct
- g) oversee enforcement of codes of conduct

Anti-Corruption and Economic Crimes Act, 2003

The Act provides for the prevention, investigation and punishment of corruption and economic crimes. It sets out various offences that relate to public office holders. In this regard, the public office holder commits an offence if he or she:

- a) acquires private gain in a contract, agreement or investment connected with a public body;
- b) offers gain to another person or soliciting a benefit to give advice
- c) takes part in bid rigging (giving, receiving or soliciting or agreeing to receive a benefit that is an inducement or reward; withdrawing or changing a tender, proposal or bid)
- d) fraudulently fails to pay taxes, fees or levies chargeable by a public body or fraudulently acquires public property
- e) abuses office to improperly confer a benefit to himself or anyone else
- f) deals with suspect property

- g) attempts, conspires, or incites another to commit an offence involving corruption or economic crime

Public Officer Ethics Act, 2003 (POEA)

The Public Officer Ethics Act, 2003 (POEA) is another extensive legislation that was enacted to advance the ethics of public officers by providing for a code of conduct and ethics for public officers under Part III. Further, Part IV of the Act provides for declaration of income, assets and liabilities by public officers. Sections 26 make it mandatory for every public officer to submit their declaration once every two years to a responsible commission for self, spouse(s) and dependent children under the age of 18 years. The statement date for a biennial declaration is the 1st day of November of the year in which the declaration is required. A public officer is also required under Section 27 to submit an initial declaration within thirty days of joining public service. The statement date is the first date the officer becomes a public officer. An officer who exits the public service is required to further submit a final declaration within thirty days after ceasing to be a public officer. The statement date of a final declaration is the date the public officer ceases to be a public officer.

Section 26 Declaration required

Under Section 26, every public officer shall, once every two years as prescribed by section 27, submit to the responsible commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years. The declaration shall be in the form set out in the Schedule and shall include the information required by the form.

Section 27 when declarations must be made

Section 27 of the Act provides that:

- 1) The declaration shall be submitted in December of every second year.
- 2) The statement date of a declaration under subsection (1) shall be the first day of November of the year in which the declaration is required.
- 3) Within thirty days after becoming a public officer, the public officer shall submit an initial declaration.
- 4) The statement date of an initial declaration under subsection (3) shall be the date the public officer became a public officer.
- 5) Within thirty days after ceasing to be a public officer, the former public officer shall submit a final declaration.
- 6) The statement date of a final declaration under subsection (5) shall be the date the public officer ceased to be a public officer.
- 7) The following shall apply with respect to a person who is a public officer on the day the administrative procedures relevant to that public officer are first published under section 33
- 8) the public officer shall submit an initial declaration within sixty days after the administrative procedures are published; and

- 9) The statement date of an initial declaration under paragraph (a) shall be the date the administrative procedures are published.

Section 28: Clarifications

(1) A person who has submitted a declaration to a Commission shall provide, without undue delay, any clarification requested by the Commission if the request is in writing and is made within six months after the declaration was submitted to the Commission. (2) Without limiting what a request for clarification may include, such a request may include –

- a) a request that any information that may have been omitted be provided; or
- b) A request that any discrepancy or inconsistency, including a discrepancy or inconsistency arising because of information other than information included on the declaration, be explained, or corrected.

Section 29: Information to be correct

A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct, to the best of his knowledge.

Section 30: Access to declarations

The Section provides that the contents of a declaration or clarification under the POEA shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of the Act.

Further, no information obtained shall be published or in any way made public except with prior written authority of the responsible Commission. Any person who contravenes the provisions shall be guilty of an offence and liable on conviction to imprisonment for five years or to a fine not exceeding five hundred thousand shillings or to both.

Section 31: Retention of information

A Commission shall keep information collected under this Part concerning a person for at least five years after the person ceased to be a public officer.

Section 32: Offences

A person who fails to submit a declaration or clarification as required under this Part or who, submits, in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both...

ADJOURNMENT

Mr. Speaker: Hon. Members, looking at our Standing Order No. 33(2 we will adjourn our sitting, since there was no extension motion from any member. We will resume at 2:30p.m

from where we have reached. The other item on our Order paper is taken to 2:30 p.m for continuation. We adjourn.

(House adjourns)