

**COUNTY GOVERNMENT OF BUNGOMA**

**COUNTY ASSEMBLY OF BUNGOMA**

**COUNTY ASSEMBLY DEBATES**

**THE DAILY HANSARD**

**WEDNESDAY, 4<sup>TH</sup> SEPTEMBER, 2024**

**Afternoon Sitting**

**3<sup>rd</sup> County Assembly**

**3<sup>rd</sup> Session**



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# COUNTY ASSEMBLY OF BUNGOMA

## THE DAILY HANSARD

**WEDNESDAY, 4<sup>TH</sup> SEPTEMBER, 2024**

The House met at the County assembly Chamber at 2:30 p.m.

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

### PRAYER

### PAPERS

**REPORT BY THE SECTORAL COMMITTEE ON PUBLIC ADMINISTRATION AND ICT ON THE HALF-YEAR FINANCIAL STATEMENTS FOR THE PERIOD ENDED 31<sup>ST</sup> DECEMBER 2023 IN RESPECT TO THE COUNTY SECRETARY, GOVERNOR, DEPUTY GOVERNOR AND PUBLIC SERVICE.**

**Hon. Caleb Wanjala:** Thank you, Mr. Speaker. I rise to table the report by the committee on Public Administration and ICT on the department of the County Secretary, Governor, Deputy Governor and Public Service.

*(Paper tabled by Hon. Caleb Wanjala)*

**Mr. Speaker:** The report by the Sectoral committee on Public Administration and ICT on the half-year financial statement for the period ending 31<sup>st</sup> December 2023, in respect to the County Secretary, Governor, Deputy Governor and Public Service is hereby table by the committee respectively and it becomes the property of the House accordingly.

**REPORT BY THE JOINT COMMITTEE ON PUBLIC ADMINISTRATION AND ICT AND LABOUR RELATIONS, MEMBER SERVICES AND FACILITIES, AND THE CONSIDERATION OF THE BUNGOMA COUNTY INTERNSHIP POLICY 2023**

**Hon. Metrine Wilson:** Thank you, Hon. Speaker. I rise to table a report on joint committee on Public Administration and ICT and Labour Relations, Member Services and Facilities on the consideration of the Bungoma County Internship Policy 2023.

*(Paper tabled by Hon. Metrine Wilson)*

**Mr. Speaker:** Hon. Members, a report by the Joint Committee of Public Administration and ICT and the committee of ICT and Labour Relations and the Members Services and Facilities on the consideration of Bungoma County Internship Policy 2023 is hereby tabled and formally it becomes the property of the House accordingly.

## NOTICES OF MOTION

### THE REPORT BY POWERS AND PRIVILEGES COMMITTEE ON THE INTEGRITY FRAMEWORK FOR BUNGOMA COUNTY ASSEMBLY

**Hon. Bridgit Katasi:** Thank you, Hon. Speaker. I'm on my feet to issue a notice that this House adopts the report by the Powers and Privileges Committee on the integrity framework for Bungoma County Assembly. Thank you.

**Mr. Speaker:** Hon. Members, a notice of motion has been issued by the committee of Powers and Privileges on the integrity framework for Bungoma County Assembly; I do ask the Clerks at the table to share this report with the Members.

The same would be coming up as business in the course of the week or once the same is scheduled by the HBC on our Order Paper accordingly.

### REPORT BY THE SECTORIAL COMMITTEE ON PUBLIC ADMINISTRATION AND ICT ON THE HALF YEAR FINANCIAL STATEMENTS FOR THE PERIOD ENDED 31<sup>ST</sup> DECEMBER 2023 IN RESPECT TO THE COUNTY SECRETARY, GOVERNOR, DEPUTY GOVERNOR AND PUBLIC SERVICE

**Hon. Caleb Wanjala:** Thank you, Mr. Speaker, I rise to issue a notice of motion that this House adopts the report by the sectorial committee on Public Administration and ICT on the half year financial statement for the period ended 31<sup>st</sup> December 2023 in respect to the County Secretary, Governor, Deputy Governor and the Public Service.

**Mr. Speaker:** Hon. Members, the Committee on Public Administration and ICT has duly issued a notice of motion on its half year financial statements for the period ended 31<sup>st</sup> of December 2023 in respect to the County Secretary, Governor, Deputy Governor and the Public Service accordingly.

The Clerks at the Table to share this report with the Hon. Members and the same will be coming up on Order Paper as a motion for debate or once the same is scheduled by the HBC accordingly.

### REPORT BY THE JOINT COMMITTEE ON PUBLIC ADMINISTRATION AND ICT AND LABOUR RELATIONS, MEMBER SERVICES AND FACILITIES ON THE CONSIDERATION OF THE BUNGOMA COUNTY INTERNSHIP POLICY 2023

**Hon. Caleb Wanjala:** Thank you, Hon. Speaker. I rise to issue a notice that this House adopts the report by the joint committee on Public Administration and ICT and Labour Relations, Member Services and Facilities on the consideration of the Bungoma County Internship Policy 2023.

**Mr. Speaker:** Hon. Members, a notice of motion having been issued by the joint sector Committees of Public Administration ICT and Labour Relations, Member Services and Facilities for consideration of Bungoma County Internship Policy 2023.

I direct the Clerks at the Table to have the same shared with the Hon. Members and the same will be coming up as a motion on our Order Paper in the course of the week or once the same is scheduled by the HBC on the Order Paper.

## MOTION

### RESUMPTION OF DEBATE ON THE REPORT BY PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE ON THE FINANCIAL STATEMENTS FOR THE COUNTY EXECUTIVE OF BUNGOMA FOR THE PERIOD ENDED 30<sup>TH</sup> JUNE 2023

**Mr. Speaker:** Hon. Members, we are doing the resumption of debate under Standing Order 35, we assume where we had left the first one to go is Hon. Ipara the next one will be Hon. Hentry, then I will be able to take other people's requests.

**Hon. Johnston Ipara:** Thank you, Hon. Speaker for the opportunity. Let me begin by first of all thanking the mover of the motion, I empathize with him for the long time that he stood up and how long the report was but he was able to endure it and come out.

The report did give a lot of details that required serious concentration and it give recommendations and observations that either have negative consequences or positive consequences.

Let me begin by taking your attention to the Access to Information Act, particularly on section 18 and 19, which says that 'every public entity shall keep and maintain records that are accurate, authentic. I take you attention to page 15, the last paragraph, 'in the circumstances, the accuracy and completeness of the domestic travel and substance allowance amount of that could not be confirmed' that's why I'm saying the Access to Information Act gives it as a mandatory requirement to every government entity to make sure every other time they must have and avail an accurate and up to date record. For this case, I want to say that those who are holding this information intentionally or by default, they decided to deny the committee the information or the auditors the information that they required, knowing maybe they had other ulterior motives, not for the benefit of the county, but for the benefit of individuals. Mr. Speaker, you remember very well, we as a county, we have been taken for a ride for a long time, and we want to say any observation and recommendation that we make must be in agreement with the Kenyan law and we must not have any sympathy with any person who refuses to maintain, to keep, and provide accurate information.

On page 19, the first paragraph; the statement anomalies in cash and cash equivalents, I want to go to sentence number 4; however, bank reconciliation statements for five bank accounts reflected receipts in cash book not recorded in bank statements. The Public Finance Management Act says that all our records must be timely, accurate and comply with and you as a person, you must put in efficiency. Besides that, you must practice financial

management, which is prudent. And the reason why they say that is to control wastage, loss, and fraud of the government's cash resources.

That was not adhered to and that's why the committee was not able at that particular time to have what they required though oral evidence was adduced before the committee. And we are saying that this information should be given to the committees as they appear they are provided. So it is upon them to do the evaluation and see which was put in use and which was not put in use.

I also want to draw your attention to page 29 of the report on observation. The county asset register is in the process of being updated as indicated in appendix 004(b). The register is the first hand register that is supposed to be kept immediately you start maintaining assets. The reason why we maintain these asset registers is; so that you are able to evaluate and assess the insurance cover that you will require for that, for the centralization of information so that if today the chair for PAIC requires any information and that register is available, he is able to get the information he requires and compare the same at the shortest time possible and lastly is for asset tracking. Where we miss a very essential register like this one, we shall not be able to find where certain permanent or movable assets are. Also the other thing that we keep asset register is for maintenance and to also monitor the life cycle of an asset and particularly for movable assets.

We have been complaining here and there that when we are making budgets, we've not been able to apportion enough money for maintenance and the reason is we don't have a register to refer and see this department 'a' has how many vehicles; this department 'b' has how many tractors. We are the people who have allowed this to happen across the county and I think that this is the time that we must stand and say enough is enough and let everybody carry their own cross.

I heard the mover saying that the county has said they are going to prepare, I want to dispute that. Asset register is a standard register provided in the Public Finance Act. It is mockery when we hear that this register is not there. There are very simple things that are required to be provided in the register. One of them is the description of an item that we are talking about, is it a permanent asset in the form of land? Is it a moveable asset in the form of a vehicle? When was it purchased? Where is it stationed? How much did it cost us? And what is the condition of that particular item? And where was it purchased? And when is it due for disposal? Honorable Speaker, when somebody says that they are going to prepare, as if it is a new thing that has been brought from heaven to earth, it is so frustrating. And I think that should stop.

I saw the Leader of Majority was talking about statutory deductions. The law is very clear on statutory deductions, it says that money shall never be diverted; it will only be used for the intended purpose. Where did they derive the authority yet the law says it will only be used for that purpose that initially was intended? Where you find one who misuses those funds they

say it will attract severe legal consequences and those legal consequences one of them is penalty, the second one is criminal conviction. But when I was going through those observations and recommendations, I never saw such serious recommendations and observations. Why do you want to say that we sat down on the table with these people and we ate with them, do you want to say that you were compromised along the way to give them a lee way to abuse the law? I think we shouldn't accept to compromise where one does what is wrong and the law is very clear, diverting it constitutes to a breach of the law. It is a breach of the law but we didn't say anything on this.

The other thing that did disappoint me as a person is where I did hear the mover saying that we received some computers and laptops and what is there at this moment is only laptops and about three computers disappeared in the thin air.

In procurement procedure where you are receiving goods, the first thing that you do is that those goods are inspected by the inspection committee and acceptance, once the committee is satisfied the goods are received by those who are in charge of the stores. What they are supposed to do is those goods are taken on charge under S13 and they are recorded in S3 ledger card, the one that the mover did say and when they are recorded in the ledger card, it will show that they are in the store and are indicated in terms of the description and the quantity and the price that they purchased. They can only find their way out of that store by use of the document that the mover did say, S11, demand and issue receipt vouchers.

When we are told in this House that we were not or the issuing department was not able to give us the details where the three or four computers disappeared to, that is not acceptable unless maybe somebody wants to tell me that that is only acceptable in Bungoma County and where I am in Bungoma County, I will not accept that. I think that is stealing by use of a public servant and that person who was the custodian of those particular computers is the first person who should be held accountable and is the first suspect.

I sympathize with the Majority Leader when I heard him saying that legal services were obtained and this is confirmed on page 51, 52 and 53 of the report under the title, unsupported provisions of consultant services and I want to go to sentence number 1, 2, 3, 4, 5. However, procurement documents relating to the law firms, including advertisement, tender opening and evaluation minutes, professional opinion, letters of award and regret letters were not provided for audit.

We are told by the Kenyan law and particularly when you want to seek legal services from consultants, one, and you must define the needs that you want. Two, you must search for the consultants that are competent and are able to give you what you want. Three, you evaluate the potentiality of that particular consultant and when you are convinced you are told that's now the stage you can now forward the request for proposal and in other simple terms, it's when now you give them quotations to quote for the services that you've indicated. We were cheated to believe that under the subtitle, urgent nature of duty, the attorney was allowed to abuse all the procurement regulations of this land.

What I wanted to hear at the tail end is, we shall surcharge the attorney for acquiring those services wrongfully without complying with the law. We should not sympathize with anybody where they mess up with the scarce resources of our county. We should not.

Hon. Speaker, you are a lawyer and others, I was even wondering whether the Luseneka I'm reading here is the Hon. Luseneka who is seated here and if it is him, under conflict of interest, he could have excused himself so that we discuss this matter with an open mind without the fear of him being a friend.

The reason why I insist on this is because all of us, as we tell others to comply with the law, we ourselves in this House must be number one compliance of the law and a simple question I was working out there, a young man who is attached here was asking me, why is it necessary to operate within the precincts of the law? It tormented me. I went out to search as to why I should always operate within the precincts of the law. I noted one thing. It told me several things; One of them, legal compliance, am I complying with the law of the land? Number two, will it give me the right reputation and trust from the people I serve? Is it taking care of risk management and the other thing that it also told me is ethical obligation?

Does it portray my morals rightly? The answer is no and that's why I say, as we make these reports, I remember my granddaughter, my grandson, who happens to be coming around the town, will one time be a member of this assembly and will go through these documents and will read somewhere that his own grandfather, who was once an MCA, just approved some documents without due consideration.

Let me end there by saying I support to the extent where the report complies with the law.

**Mr. Speaker:** Where it does not comply, you reject it? Hon. Hentry!

**Hon. Hentry Nyongesa:** Thank you, Hon. Speaker.

**Mr. Speaker:** Now you see, having gone for lunch break, the energy and the sugar levels are very high. You are now able to do it justice. Proceed!

**Hon. Hentry Nyongesa:** Hon. Speaker, I want to take this opportunity also to thank the Committee on PAC that the chair has taken almost half a day reading to us the report. I want just to illustrate some issues which the committee should put a lot of emphasis and I start on page 40 when the committee was making recommendation on the extract of the revenue fund statement and they went ahead to look at, I think in liaison with the Auditor General's report. They are coming up and referring to the Auditor General to come and look at our revenue system. That one I see it as we are again delegating duties to people because we have been advised maybe our system was not doing well and the committee is recommending back to the Controller of Budget to look at the revenue system which is the obligation of the executive to look at it seriously, because if there are loopholes, then it's our entity to look at it. So, the chair could come up and explain further whether we have to refer it to the Auditor General or the executive.

On page 45; that is the excess wage bill. When you look at what has come out clearly here, it's put up in so many aspects.

Number one, the committee was looking at the health workers who are actually almost volunteers and they were going ahead and saying that they were almost 4600. They go ahead and break down that the health workers were about 3300 so when you do the summation, you find that there are other cadres which have been left out but now looking at it you find that the committee has only an answer for one entity, that those health workers were being given a stipend of 2,000 per month, that is spending 78 million. Out of 215 the committee has not said anything about it, so the chair should also come up clearly and say, now the balance out of 215 million paid to temporary workers, how was the money split among various cadres?

When you look at page 62; where we had delivery of medical equipment, the committee has made a very good recommendation that the total supply was almost 17 million, the supplier was paid 14 million and looking at the...

**Mr. Speaker:** Hon. Hentry, be very clear here. Look at what you are reading, the observations. Delivery was of 10, submission was 14. So, look at that, page 63. Under committee observations, please so that we avoid putting some figures which are not accurate on HANSARD.

**Hon. Hentry Nyongesa:** Mr. Speaker, as you are putting the observation that has been made here, the committee has made further recommendations that almost 3,222,300 was not justified,

**Mr. Speaker:** Very true. Proceed.

**Hon. Hentry Nyongesa:** Under the Procurement Act, we want the committee to justify that they looked at the documents that were there and they realized if it was clear that the county didn't lose any money in this matter and how can somebody be given a contract to a total sum of 17,000,000 and then he supplies half. As much as he was in breach of contract but have we lost any money in that aspect? That was my concern. So many things here as the leader of the majority was rising.

You might realize that most of the areas were being pampered too much. You look at an area where somebody is being surcharged and the Leader of Majority gave an area which also touches even the Assembly but there's no recommendation for somebody who was discharging that duty because you are preparing for the payment of the officers to discharge duties and he was doing that using which law or which mechanism so that that money was paid. The officer has not been given any leeway for a follow-up of the officer who was discharging that duty.

We have to bring sanity in offices where an officer must say no, where it requires no and say yes where it requires yes. I have submitted my submission partially and hopefully the documents should be scrutinized and the chair should come up out clear on the same.

**Mr. Speaker:** Thank you, Hentry. Hon. Caleb,

**Hon. Caleb Wanjala:** Thank you, Mr. Speaker. As much as I support the report, my main concern has been on the side of the pending bills, outside there, the public is beginning to feel that as an Assembly we are not doing our oversight work well and this is simply because of some of the issues that have been raised in the report, one of them being the Pending bill.

Another issue is the low absorption of funds especially on the side of the project. You realize that I don't know what mechanism the committee or the Assembly will use make sure that the

executive will take things concerning this County seriously because when it comes to procurement, you realize that the procurement process takes so long so that even after tenders have been awarded, you realize that the time frame at which the contractors take to work on the project is not enough. That means that as much as even they cleared the 600 million on the side of pending bill, there are so many pending bills that have been created in the last Financial Year simply because of procurement issue. They took so long for tenders to be awarded.

At the same time, you realize that some of the people who were awarded those tenders don't have the capacity so at the end of the day, they fumble on the projects the year ends, and nothing has been done. Some of the e members who are seated here have a lot of unanswered questions from their voters back in their wards because of negligence from the executive.

Something needs to be done on this matter, and it should be serious. I think people need to carry their own cross. Recently, when the president visited and there are some members who were with us here. When we were coming at the stadium, the public was shouting at us. They were calling us names. In fact, we were so scared, and we thank God that nothing happened to us but if things go this way, even this house will not be at peace.

I think something needs to be done, and someone needs to be put on the task.

Lastly, I hear that some of the officers who are holding the imprest are even casuals, and they are still working, nothing has been done to them. We have to do things differently and stand up for this great County of Bungoma because history will judge us, and history justifies history. Let us do things that will make us not scared to walk outside there when we are senior citizens.

**Mr. Speaker:** Thank you, Hon. Caleb. Hon. Jack,

**Hon. Jack Wambulwa:** Thank you, Hon. Speaker. First of all, let me take this opportunity to thank the committee through the Chair Hon. Nganga for having come up with this report on how County funds are being managed in this County.

My first concern and it's good that you are an advocate of the High Court of Kenya. As a county, we came up with the appointment of the County Attorney, why we passed to have an attorney, is because we wanted to have value for our monies but I am shocked to see today that as much as we have the County attorney, we have more cases given to private law firms than when it was previously being handled minus that office. Why is it that we are spending a lot of resources to advocates who have not won even a single case? You find like a single advocate handling six cases, and of the six cases, all of them are lost. Do we have value for our money?

Number two, these same advocates, they have been coming up with the cases, and you even wonder if these cases can be handled by the office of the County attorney. Then we'll be avoiding this. We give them a lot of support. I remember even as a Budget Committee, we went to a level of saying that we now merge all the funds under County Attorney, instead of putting them in departments, so that the funds are well managed and it has now become a swindling organization. Like today, you find that whoever that is there is acting and I don't know whether acting is in law. As a house, we need to come out clear on this. Do we really have the law saying acting county attorney? Then at the same time, he's a consultant who is also owed by the same county. Just like Hon. Ipara was putting it.

If we have even a colleague here who has an interest, they would rather keep off, we discuss, until when we agree on this matter, so that we can have right people working for us as a county government.

On pending bills; I will refer to the recent case. You remember when we were being brought the pending bills by the CEC Finance. It was totaling to 1.6 billion until we wondered how it came about. When they started reading out to us the pending bills that were before them, they were double-paying the contractors who had already been paid. They were now going for the second payment.

What I want to urge the committee is that let them not just comment on what irregularities have been there, but they should go further and recommend to the agencies that are concerned so that these matters can be taken up and be investigated for people to know that in Bungoma, if you want to swindle money, you have to be very careful but it's like it's a habit. As much as the PAC committee is going to recommend, it goes to them, it's a repetition the following year. It will not be proper.

As I sum up, I remember the issue of CHVs. They do a lot of work and actually we passed a law to be giving them some stipend at every end of the month.

You know what shocks me? Like now, we've closed the year. Do you know the CHVs in the whole county have not been paid for the last six months? That even as we are talking now, most CHVs are unable even to move. Just because they have not been paid, yet there was a budget. We have closed the year. You wonder where this money went to. When you start inquiring, you become an enemy of some certain people saying that you are witch-hunting them.

I want to plead with my colleagues, it is time we oversight this county. That one day, one time, we shall be held responsible, because we never did the work that we were given by the people.

Our role is Oversight, representation, and legislation. Here we are legislating, are we representing or over sighting? It's our government, yes but we must be clear on what procedures should be followed before any money is spent.

**Mr. Speaker:** Thank you, Hon. Jack. I have seen the Majority Leader. Did you want to say something?

**Hon. Joseph Nyongesa:** Thank you, Mr. Speaker. I was wondering which report my senior was referring to because I was trying to follow him, but it's like I'm lost.

**Mr. Speaker:** So, can they be able to assist you find your way back? I am invite back the Hon. Chair of the Committee to Reply but this is my observation Chair PAC. I had a chance to go to the Senate with Hon. Nyongesa and Ali Machani. We were told you cannot have the legal department and outsource the legal services. You can't have both. That's why when they are budget any money in this Assembly for legal services, we are clearing the pending bills of the lawyers who acted for us and I think it's always less than seven or eight million.

When we were in the Senate with the Hon. Majority here, there was a lawyer who came for the County Assembly of Nairobi to seek for funding of 265 million to pay seven lawyers to appear in court for one case, seven lawyers, and one case of suing Hon. Sonko; the question here was why pay 128, 140, then another 125 Million and it's just one case. On this issue of single-sourcing for lawyers outside, when you have the County Attorney and his team legal

we should have a way forward, they won't be paying them the money because I think we no longer outsource legal services here. They go to court on their own.

Hon. Nganga, you have a chance to respond!

**Hon. Everton Nganga:** Thank you, Hon. Speaker, for giving me a chance to reply on this motion. First, I would like to begin by thanking Hon. Members for their contribution and advice on this report. I would like first to begin with the issues that were raised by Hon. Leader of Majority that is Hon. Juma Nyongesa, He tried to compare the two scenarios here. The first issue was an issue on unsupported social security benefit where the auditor flagged out 44,019,521 and during his audit work, he got documents to verify that 9,010,039 shillings. The remaining figure which was 5,009,250, which the committee recommended that the Chief Officer has to be surcharged and again he also raised an issue, who is supposed to be surcharged? I want to respond to that very well.

The audit program or the audit procedure for the Financial Year 2023/ 2024, the timing of the audit, I think this is the correct time; they always start in August, September. Currently, we have auditors in this county. They are doing their work and they will submit their report to the County Executive and the County Assembly to be received by the clerk in the month of February/ March next year. Just the same way this report was received by the Clerk of the County Assembly on 15<sup>th</sup> March, 2023. The Finance Officer to be surcharged is the officer who was in the office when this happened.

**Mr. Speaker:** Finance Officer or Chief Officer?

**Hon. Everton Nganga:** Sorry, Chief Officer at that time. Chief Officer for the period 2021/ 2022, that is the Chief Officer because that is the year under review or the year when the audit was conducted.

We as PAC Committee don't have double standards. Here, relevant vouchers to justify the variance of 5,009,250 the efforts were in futility. We failed to get those documents and remember during the audit time this officer was in the office as the Chief Officer. He was the custodian of payment vouchers, Financial Statements when the auditor was doing his work. When the auditor completed his work again, he went back then again he requested again the responses from the executive where this Chief Officer was in the office. Why did she not defend herself? She failed.

**Mr. Speaker:** At the time of response, I think commissioner you cannot be able to interject. He is replying to the motion. You cannot interject. Yes Hon. Ali Machani!

**Hon. Ali Machani:** Hon. Speaker, I am aware and thank you for that advice but is it he or she?

**Mr. Speaker:** I think Chair proceed but clarify. He is asking whether he/she because it appears Hon. Ali is aware it's a she and you are insisting on he; clarify as you proceed and you know he has that sense of sensing a person. Proceed!

**Hon. Everton Nganga:** Thank you Hon. Speaker. You know when Hon. Commissioner rose up and said that there are different terms he used. Now, let me use the correct terms here. Why didn't he/she defend herself or himself? I think that is the correct way

We verified documents for 39, 000,000. We requested severally to get documents for 5,009,250, we exhausted all the avenues. They failed to give us. So, this person who was in office then deserves to be surcharged.



Hon. Nyongesa, was mentioning that they were playing safe but they were not smart. On the issue of Hon. Member's facilitation, you know with us we do not disgrace, we always look at the required documents.

On the first issue, they have mentioned documents to verify the 5,000,000 were not given out but here when you look at this report of ours for members who used, we actually made sure that the County Executive submitted a list of Hon. Members who benefitted and we have this list. Once we look at these documents then we know very well that monies were spent prudently and here we have a list of Hon. Members who were in the..

**Mr. Speaker:** That list is totaling to how much please!

**Hon. Everton Nganga:** That list is totaling to 3,699,000 and the query is asking on the 3,700,000. So, there is only a variance of 1,000 here and the documents here were availed. I do not want to read the names of Hon. but I can read; Hon. Jack Wambulwa, Erick Wapan'gana, Violet Makhanu..

**Mr. Speaker:** How can you say you don't want to read and you reading those names!

*(Laughter)*

**Hon. Everton Nganga:** Sorry, and again here we have a letter from the County Assembly that was signed by our current Clerk. So, these documents were availed. Once they are availed then we sum up the figures then we recommend that the query is resolved. It's not like the one where somebody failed to give out the vouchers for 5,000,000.

*(Applause)*

Again there was an issue on unremitted statutory contributions, where also the Hon. Nyongesa mentioned that they were putting money in the budget. Then, why is it that these monies were not used, were not enough? You know in an organization to my understanding, a budget is just a tool for communicating the activity to be done, control and monitor but however, the budget can be sufficient, which is optimal, or the budget may not be sufficient. And when you look at their responses, they have mentioned that the budget was inadequate, which means the monies budget were not enough. You budgeted, but they were not enough. You can allocate money, but due to delays in the exchequer releases, this may hinder the execution of the budget.

The management has also given out that reason, and this issue of delays in the exchequer releases, actually, that is something that is inevitable. At our level we cannot handle that but the Senate can help us.

The issue of unsupported provision on consultant services, I would like first to thank Hon. Jack Wambulwa, he has given an advice. And again, Hon. Speaker, you also mentioned that why should the county government source for lawyers when they have the office of the County Attorney? Why should the County Assembly source for lawyers when they have also legal officers? Those issues are there. However what was queried here is the procurement procedure; tender opening, and evaluation document relating to the law firms.

**Mr. Speaker:** Hon. Nganga, did you have a chance to look at the County Attorneys Act 2017 or 2020?

**Hon. Everton Nganga:** Thank you Hon. Speaker, I have not looked at that.

**Mr. Speaker:** You haven't looked at it?

**Hon. Everton Nganga:** Yes

**Mr. Speaker:** It does not allow the counties to hire lawyers once you have the county attorney in place, if you are not aware.

**Hon. Everton Nganga:** I have been very clear that actually it is not advisable to hire County Executive/Assembly to hire external legal services when already have legal departments with relevant technical officers in place. But what was flagged here is the procurement procedures on how they arrived at the list of the audit law firms here. The procedure was not properly followed according to the Public Procurement Act.

Another issue here, Hon. Ipara, you have also mentioned the issue of asset register.

**Mr. Speaker:** Honorable, he is responding. Yes, what is the issue? You should appreciate that he stood here for three hours. Now he wants to finish I and at least go home .I am sure his company must be waiting for him to escort him home.

**Hon. Henry Nyongesa:** Chair, I don't want to challenge the chair, but you are too categorical, Chair, that if so wished that the chair could even attach the cases the lawyers handled during that submission. Kindly, Chair.

**Mr. Speaker:** Yes, Hon. Nganga. Let me give you a microphone.

**Hon. Everton Nganga:** Thank you, Hon. Speaker. I would like to mention this. Those documents, we as a committee we didn't look at them. The person who verified and looked at the documents is an officer from the Office of the Auditor General. Then after doing necessary judgment, then he only mentioned the procedure. So with us, as accountants or auditors, we don't digress and look at something else. We are always straight to the point. Not like a lawyer who just watches somebody beating somebody then when he goes to the court, he changes everything. We don't want to digress.

*(Laughter)*

**Mr. Speaker:** Proceed. I reserve my comments. Proceed.

*(Laughter)*

**Hon. Everton Nganga:** Thank you, Hon. Speaker. The issue, Hon. Hentry Nyongesa mentioned the BARMS that is Bungoma Account Revenue Management System. This is a system that was developed by the county government revenue department. We recommended that, you know, the county government itself, it cannot audit that system. We recommended a forensic audit. A forensic audit, it means just on a specific issue.

This BARM system, in Bungoma County actually it is a problem. It is an issue in finance department, finance committee members, they are also handling that. It is an issue that has a number of problems that can only be flagged out by those people who did ICT, who have computer knowledge. There are mere hearsays in town that this system, once it receives money, it only submits 60 per cent, then it channels the balance 40 per cent somewhere else, I am using the word mere hearsay. It means it is not justified. But it will only be justified if we shall have a forensic audit of the system. I am seeing my vice chair of Finance is nodding his head because we are facing challenges in that committee.

On the issue Medical equipment, in the budget they only allocated 17 million but what was supplied was 14 million. We have a variance of 3 million to 22,200 shillings. Now this money, when looking at the documents and the payment vouchers, is only reflecting 14 million. Then this figure, the committee that can give us the correct is the health Committee which should report back in this house.

There are many issues. And I know we also have other pending reports. I am not saying, I don't anticipate reports, but we have other reports that will talk about the issue of revenue and so on and so on and so on. Others we have not interrogated. We shall also do the same with your permission. T

Thank you, Hon. Speaker, for allowing me to respond to issues. Hon. Members, if I have not responded to your issue, please just hold it for next time. I thank the Members who have stayed behind to listen to this motion.

*(Applause)*

**Mr. Speaker:** Thank you, Hon. Nganga. Hon. Members, he has stood here for over three hours plus this was, I think, wish him well in his journey. Hon. Members, allow me.

*(Laughter)*

He knows what I mean. Hon. Members, he told me after finishing this report is going to walk out under the escort of his followers. So I don't know which followers he meant, but we will walk out and see.

Hon. 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 financial statement of the County Executive of Bungoma for the period ending 30<sup>th</sup> of June, 2022, laid on the table of the House on 3rd of September, 2024.

*(Question put and agreed to)*

*(Applause)*

The report plus its observations and recommendations are hereby adopted by this House accordingly. Go to the next item.

Now, Hon. Nganga, you are at liberty as you told me to do so.

*(Laughter)*

## **REPORT BY THE SECTORAL COMMITTEE ON PUBLIC ADMINISTRATION AND ICT ON THE CONSIDERATION OF THE MUNGOMAM COUNTY ACCESS TO INFORMATION BILL 2024**

**Mr. Speaker:** Chair, the committee, Hon. Caleb, you have the honor of proceeding.

**Hon. Caleb Wanjala:** Thank you, Mr. Speaker. This report contains proceedings of the Sectoral Committee on Public Administration and ICT on its consideration of the Access to Information Bill (Bungoma County Bill No. 3 of 2024, published on 3<sup>rd</sup> May 2024. The Bill went through the First Reading on 15<sup>th</sup> May 2024 and was thereafter committed to the Sectoral Committee on Public Administration and ICT for consideration and reporting to the House under the provision of Standing Order 140. The Bill has twenty eight (28) clauses and seeks to give effect to the right of Access to information by citizens as provided under Article 35 of the constitution.

Following the placement of advert in the print media on 22<sup>nd</sup> May 2024 requesting comments on the Bill from members of the public and relevant stakeholders under Article 118(1) (b) of the Constitution and Standing Order 140 (2), the Committee received written memoranda from one stakeholder, The Kenya Worker's Right and Harmonization Program (KWRHP). The Committee, in line with the requirements of Article 118(1) (b) of the Constitution and Standing Order 140 (2) of the County Assembly of Bungoma held 4 meetings to consider the Bill and memoranda from the public.

Thereafter, the Committee proceeded for a report writing retreat which provided the opportunity to consider the submissions of the public and stakeholders and to further draft, consider and approve its Report.

In its consideration of the Bill, the Committee was guided by the benefits of access to information and participation, such as improved governance, enhanced citizen engagement, and prevention of corruption and to ensure the bill aligns with national laws and regulations on access to information.

On behalf of the Sectoral Committee on Public Administration and ICT and under the provisions of the Standing Order 140 (1), it is my pleasant privilege and honor to present to

this House the Report of the Committee on its consideration of the Access to Information Bill, 2024.

## **Committee Membership**

The following is the committee membership as currently constituted;

1. Hon. Tony Barasa	Chairperson
2. Hon. Caleb Wanjala	Vice chair
3. Hon. Joseph Nyongesa	Member
4. Hon. Jackson Wambulwa	Member
5. Hon. Busolo Sudi	Member
6. Hon. Francis Chemion	Member
7. Hon. Simotwo Franklin	Member
8. Hon. Grace Sundukwa	Member
9. Hon. Job Mukoyandali	Member
10. Hon. Johnston Ipara	Member
11. Hon. Cornelius Makhanu	Member
12. Hon. Timothy Chikati	Member
13. Hon. Stephen Kaiser	Member
14. Hon. Jeremiah Kuloba	Member
15. Hon. Brigid Katasi	Member

## **Acknowledgement**

The Committee extends its sincere gratitude to the Office of the Speaker of the County Assembly and the Clerk of the County Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work.

The Committee in a special way acknowledges and appreciates the participation of all Stakeholders who diligently submitted their comments on the Bill. Their insights and contributions have enriched the Committee's understanding of the various perspectives on the proposed measures.

Further, the Committee wishes to express its heartfelt appreciation to the Honorable Members of the Committee and the dedicated Committee Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report.

On behalf of the Sectoral Committee on Public Administration and ICT and pursuant to Standing Order 140 (1), it is both a privilege and an honor to present to the House, the Report of the Committee on Consideration of the Access to Information Bill No. 3 of 2024).

Report signed by Hon. Tony Khaoya Barasa Chairperson Sectoral Committee On Public Administration And ICT.

## **Background Information**

### **Introduction**

The Bungoma County Access to Information Bill, 2024 is a legislative framework designed to ensure transparency, accountability, and public participation by providing citizens access to information held by public entities and certain private bodies. This Bill operationalizes Article 35 of the Kenyan Constitution, which grants citizens the right to access information.

## **Overview of the Bill**

**Part I: Preliminary;** this part establishes the Bill's official title and defines key terms used throughout the document, such as "county executive committee member," "information access officer," and "public entity."

The Bill aims to:

- a) Enforce the right of access to information for citizens.
- b) Create a framework for public and private entities to disclose information proactively.
- c) Promote transparency, accountability, and public participation.
- d) Protect individuals who disclose information in good faith.

## **2. Part II: Right to Information**

The Bill affirms every citizen's right to access information held by the state, county, or other persons where such information is needed to exercise or protect a right.

It stipulates that disclosure must be prompt and at a reasonable cost.

The Bill favors disclosure, with non-disclosure permitted only under specific exemptions.

### **Disclosure of Information by Public Entities**

The Bill mandates public entities to facilitate access to information and outlines specific categories of information that must be disclosed, including organizational details, decision-making processes, and particulars of contracts.

### **Limitation of Right of Access to Information**

The Bill defines conditions under which access to information can be restricted, including concerns about national security, privacy, commercial interests, and the management of public resources.

## **3. Part III: Access to Information**

### **Designation of Information Access Officer**

The Bill requires each public entity to appoint an officer responsible for handling information requests.

### **Application for Access**

It also outlines the process for requesting information, including provisions for individuals with disabilities or those unable to submit written requests.

### **Processing of Application**

It sets timelines for responding to information requests, with expedited procedures for urgent requests related to the life or liberty of a person.

### **Transfer of Applications**

The Bill allows for the transfer of information requests to the appropriate public entity if the requested information is not held by the initial recipient.

### **Providing Access to Information**

It also details the procedures for granting access to information, including the provision of edited copies and the calculation of fees.

## **Fees**

The Bill further specifies that fees should not be charged for submitting requests, but may be levied for the provision of information to cover actual costs.

## **Part IV: Review of Decisions by the Committee**

The Bill establishes a mechanism for reviewing decisions related to information requests, including notifying interested parties and protecting whistle-blowers.

## **Part V: Oversight and Enforcement Functions and Powers**

The Bill confers oversight and enforcement responsibilities on the Committee on Administrative Justice, empowering it to conduct inquiries and investigations related to access to information.

## **Part VI: Provisions on Delegated Powers**

The Bill grants delegated authority to the CECM to issue regulations necessary to implement the Act.

## **Part VII: Miscellaneous Provisions**

### **Annual Reports**

The Bill requires the committee to submit an annual report to the CECM. It further stipulates what the report should entail. It further requires the CECM to submit the annual report to the County Assembly within two months of receipt in compliance with the Act.

### **Offences and Penalties**

The Bill establishes penalties for non-compliance, such as altering or defacing information, and addresses defamatory content in released information.

## **COMPLIANCE OF THE BILL WITH THE CONSTITUTION OF KENYA, OTHER LAWS, AND INTERNATIONAL CONVENTIONS**

### **Compliance with the Constitution of Kenya, 2010**

#### **1. Article 35 of the Constitution of Kenya**

Article 35 of the Constitution guarantees the right to access information held by the state and information held by another person required for the exercise or protection of any right or fundamental freedom.

The Bungoma County Access to Information Bill, 2024, directly aligns with this constitutional provision by ensuring the right of access to information for all citizens. The Bill outlines procedures for requesting information, ensuring that public entities respond within a stipulated timeframe, thus operationalizing the constitutional right.

#### **2. Article 10 - National Values and Principles of Governance**

Article 10 mandates that national values and principles of governance, including transparency, accountability, and participation of the people, bind all state organs, state officers, public officers, and all persons whenever any of them applies or interprets the Constitution.

The Bill promotes transparency and accountability by requiring public entities to proactively disclose information and establishing a clear framework for accessing information. This enables public participation and oversight, in line with the principles outlined in Article 10.

#### **3. Article 232 - Values and Principles of Public Service**

Article 232 emphasizes the need for transparency and provision to the public of timely, accurate information. By mandating public entities to provide timely and accurate information, the Bill upholds the values and principles of public service, ensuring that citizens are informed and can hold public officers accountable.

### **Compliance with Other Laws**

#### **1. Access to Information Act, 2016**

The national Access to Information Act establishes the framework for access to information held by public entities and private bodies in Kenya.

The Bungoma County Access to Information Bill aligns with the national Act by adopting similar provisions for the right to information, proactive disclosure, and the designation of information officers. The Bill complements the national legislation by addressing local specifics and ensuring that county-level public entities adhere to the same standards.

#### **2. The Public Archives and Documentation Service Act**

This Act governs the management and preservation of public records and archives.

The Bill's provisions for proactive disclosure and the management of information requests support the principles of effective records management and preservation as outlined in the Public Archives and Documentation Service Act.

### **Compliance with International Conventions**

#### **1. Universal Declaration of Human Rights (UDHR)**

Article 19 of the UDHR states that everyone has the right to freedom of opinion and expression, including the freedom to seek, receive, and impart information and ideas through any media.

The Bill supports the right to seek and receive information, thus aligning with the UDHR's principles of freedom of information and expression.

#### **2. International Covenant on Civil and Political Rights (ICCPR)**

Article 19 of the ICCPR guarantees the right to freedom of expression, including the freedom to seek, receive, and impart information. By providing a legal framework for accessing information, the Bill upholds the rights enshrined in the ICCPR, facilitating the exercise of freedom of expression and access to information.

#### **3. African Charter on Human and Peoples' Rights (ACHPR)**

Article 9 of the ACHPR states that every individual shall have the right to receive information and the right to express and disseminate opinions within the law. The Bill ensures that individuals in Bungoma County can exercise their right to receive information, thus complying with the ACHPR's provisions.

#### **4. Open Government Partnership (OGP)**

The OGP promotes transparency, empowers citizens, fights corruption, and harnesses new technologies to strengthen governance. The Bill's focus on proactive disclosure, transparency, and accountability aligns with the goals of the OGP, demonstrating Bungoma County's commitment to open governance principles.

The Bungoma County Access to Information Bill, 2024, demonstrates compliance with the Constitution of Kenya, particularly Articles 35, 10, and 232, which emphasize the right to information, transparency, accountability, and public participation. The Bill is also in harmony with other national laws, such as the Access to Information Act, 2016, and the Public Archives and Documentation Service Act, ensuring a coherent legal framework for information access at the county level.

Furthermore, the Bill aligns with international conventions and principles on access to information and freedom of expression, such as the UDHR, ICCPR, ACHPR, and the principles promoted by the OGP. This comprehensive compliance ensures that the Bill not only fulfills constitutional and legal requirements but also adheres to global standards and best practices in promoting transparency and accountability in governance.

## **Public Participation**

The requirement of the Committee to conduct public participation on the bill is a constitutional imperative flowing from Article 196 of the Constitution of Kenya, 2010 which provides that the County Assembly shall.

*Conduct its business in an open manner and hold its sittings and those of its committee in public*

b) Facilitate public participation and involvement in the legislative and other business of the Assembly and its committees. The committee is required to pursuant to Standing Order no. 140 (2), to facilitate public participation on the bill through appropriate mechanism including;

- a) Inviting submission of memoranda
- b) Holding public hearings
- c) Consulting relevant stakeholders in the sector
- d) Consulting expert on technical subjects.

## **Summary of the Public Views**

Following the call for submission of Memoranda from the public as contained in the advert in the Daily Nation on 9th of May, 2024, the committee received memoranda from the entity. The proposal was deliberated and considered by the Committee. Below are the views from the Kenya Workers Rights and Harmonization Program recommendations on the committees.

- a) The bill should make provision for public education and dissemination of information regarding the right to have access to information.
- b) Public institution have the obligation to disclose information in every member of the public has the corresponding right to receive information regardless of the form in which it is stored.
- c) The bill should provide a number of mechanisms to address the problem of culture of secrecy within the government.

- d) The bill should provide the strict time limits for the processing of the request for information and requires refusal be accompanied by submitting written reason for refusal.
- e) The bill should establish a presumption that all meetings of the government bodies are open to the public.
- f) Individuals should be protected from any legal, administrative and employment related sanctions for releasing the information.

In conclusion, the organization submitted that access to information should be guaranteed as a legal and enforceable right permitting every individual to obtain information held by the Executive, Legislature, Judiciary, as well as any Government-owned Corporation and any other body carrying out public functions.

### **COMMITTEE RECOMMENDATIONS**

The committee observed that the issues raised are captured in the entire bill and are provided for its relevant laws.

### **COMMITTEE'S OBSERVATION**

Mr. Speaker, The committee observed that the committee thoroughly viewed the bill and is pleased to report that it meets the standards of legislative drafting. The committee found no need for amendment as the bill already adheres to all relevant issues comprehensively and effectively. This level of quality reflects careful consideration and diligence in the drafting process, ensuring that the legislation will serve its intended purpose without ambiguity.

### **COMMITTEE'S RECOMMENDATION**

The committee recommends the draft for their exceptional work and comments the bill's passage without modification. Hon. Speaker, I want to ask the House to note the contents of this report.

Thank you, Mr. Speaker.

**Hon. Speaker:** You invite the seconder, or you want me to invite for you one?

**Hon. Caleb Wanjala:** I invite Hon. Joseph Nyongesa to second.

**Hon. Speaker:** Hon. Majority Leader, you have the honor of seconding the committee. You take away your water. It has been a very hot afternoon, please.

**Hon. Joseph Nyongesa:** Thank you, Speaker. First, let me appreciate my Vice-chair for taking time to take us through that report, which I think, Mr. Speaker, to me is self-explanatory.

I have seen how members are concentrating to internalize it. Mr. Speaker, it is just an issue of making public office to be accountable with the kind of information the public requires, or any office requires. Otherwise, Mr. Speaker, allow me reach their to second and ask the House to approve this bill.

**Hon. Speaker:** Thank you, Hon. Joseph Nyongesa, our Majority Leader. Hon. Members, allow me to proceed and be able to propose a motion for debate.

Hon. Members, a motion has been moved and seconded. This House notes the report by the Sector Committee on Public Administration in ICT on the consideration of Bungoma County Access to Information Bill 2024 laid on the table of the House on 4<sup>th</sup> of September 2024. I propose. Hon. Ken?

**Hon. Kennedy Wanyama:** Thank you, Mr. Speaker, for the opportunity to make contribution to the motion on the floor. Mr. Speaker, my attention was drawn to the committee's observation and recommendation that the bill does not need any amendments.

I have taken time. I have a copy of the bill. I have looked at one or two areas and I just need some clarification from the mover of the motion.

The first issue is when you go to part three of this bill, that is section 8(4) it says that a public entity may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected to the ground only that the applicant has not used the prescribed form. Now, the clarification I need, Hon. Speaker, is that on this bill, I have not seen any prescribed form. It seems like the proposal is that every public entity will prescribe its own form.

So the question to the committee is that won't this bring a lot of confusion? To me, it could have been good if there was a prescribed form where all the information is captured and it be one of the schedules on this bill. That is the first clarification I would like to get. The second clarification, Mr. Speaker, I see a proposal to form or rather create or appoint a committee which has been given very clear functions and powers, but I want to specifically look at sections under reports by public entities, that is section 27.

It reads that:

‘On or before the 30th day of June of each year, every County Government of Bungoma public entity shall submit to the committee a report covering the preceding year’.

Mr. Speaker, I want to assume or rather give an example of our County Assembly. Practically, the person who gives reports of a public entity is a Chief Executive Officer.

Now, my question is, there is a proposal to form a committee. So, for example, we will have a committee in this County Assembly headed by the clerk who is the Chief Accounting Officer. Now, how then does the CEO submit a report to the committee? I think I need some clarification on that, because naturally, reporting is bottom up.

It does not come down. Then the other clarification, Mr. Speaker, when I look at section 26, this is an open error. I am actually surprised the committee did not see it.

I want to read it. This is on annual reports. It says:

‘The committee shall submit an annual report to County Executive Committee Member and may at any time submit special reports to the County Executive Committee Member’.

So, how do you submit yourself? So, I think this is just a typo error which the Committee may have missed out. So, a clarification on that. Under interpretations, Mr. Speaker, since this is a Bungoma County Access to Information Bill, I think it will make more sense if we introduce a new definition that is a County Government.

It has not been defined there. So, a clarification on that. Then finally, when I look at the long title, yes, it's referring to article 35 of the Constitution.

But to me, it should have also referred to section 96 of the County Government's Act which provides that every Kenyan citizen shall on request have access to information held by any County Government, Unit, Department or any other state organ in accordance to article 35 of the Constitution. Thank you, Speaker. So, if I will get clear clarifications on these issues, I'll be okay. Thank you.

**Hon. Speaker:** Honorable members, before I may be able to allow another speaker, you missed something when I was, those of you who are contributing; you missed something when I was framing a Motion. This Motion is very different from any other normal motion.

They are saying you note. There is no vote after this. All your beautiful, handsome contributions let them come during the Committee of the Whole House. Where you want to propose those amendments and the changes.

Now, you have just taken note. So, as you are retreating, go and prepare those very nice proposals. You have just taken note.

Even this one, there is nothing to reply to because it does not even change anything. And I don't even put a question. After this, I declare you have taken note and we finish that motion that way. Because it is a bill going to the Committee of the Whole House on Thursday at 2 p.m., which is tomorrow.

Are we together members? So, can I see people trying to mute that you carry what you are having to the Whole House tomorrow? Even those of you who do not have cards for locking in, I have taken note and you do not have to worry about that.

## ADJOURNMENT

**Mr. Speaker:** So members that was our last motion our Order Paper. So, we'll allow that we adjourn. And now that I saw people having very nice and very beautiful views, document them. During the Whole House, propose and I think I will have more people of English. I am seeing people here of Special Education, Oscar and one English man.

We will have enough of them so that they are able to make the language look good so that they become part of the bill. Are we together? Thank you. We adjourn today.

We will see you tomorrow at 2.30 p.m. accordingly.

*The House rose at 4:14 p.m.*