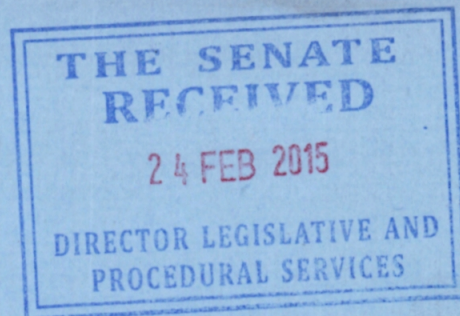


REPUBLIC OF KENYA
THE SENATE



Sen. (Prof) Peter Anyang' Nyong'o, EGH, MP
Senator Kisumu County

Parliament Buildings
Tel: +254 20 2848000
P. O. Box 41842 - 00100
Nairobi, Kenya

KICC, 4th Flr. Rm 402
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KSM/CTY/2015/LET/12



24th February, 2015

**THE CLERK
SENATE ASSEMBLY
P.O. BOX 41842-00100
NAIROBI**

① DLPS
Please process
this.
24/02/15

Dear Sir,

RE: PETITION FROM MCAS KISUMU COUNTY

I have received a Petition from MCAs Kisumu County which I attach.

I hereby give notice in accordance with Standing Order 219 to present the Petition to the Senate on Thursday February 26th.

Yours Sincerely,

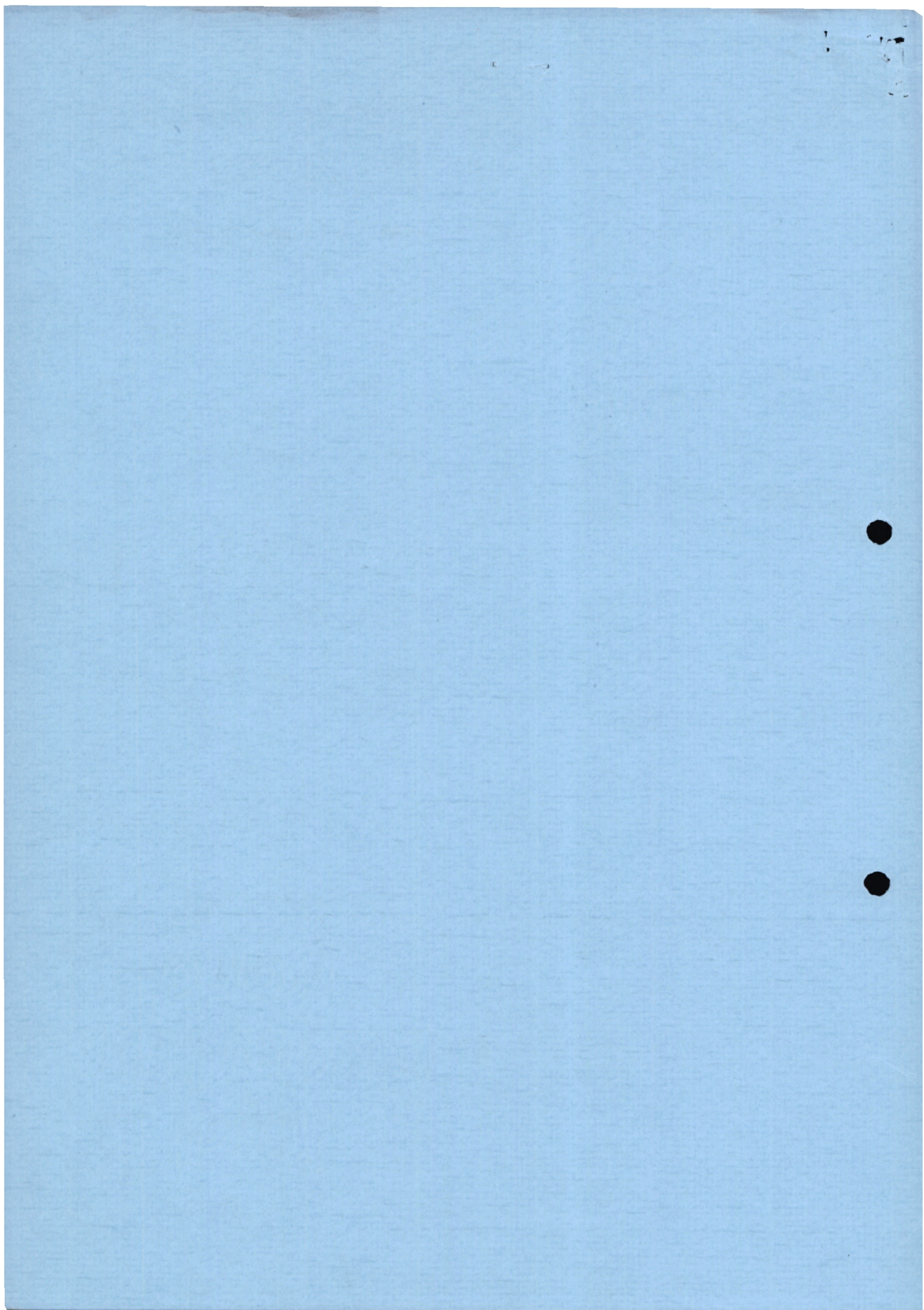
Sen. (Prof.) P. Anyang' Nyong'o, EGH, MP.
KISUMU COUNTY

② Carol, CA 1

Please peruse and
prepare for presentation
as required by Standing
orders.

24/2/2015

A friend is an enduring treasure



**PETITION BY KISUMU COUNTY LEADERS AND RESIDENTS TO
THE SENATE PURSUANT TO ARTICLE 37, 96 (1) & 125 (1),
CONSTITUTION, 2010**

THROUGH

**SENATOR
KISUMU COUNTY
HON. ANYANG' NYONG'O**

THE PREAMBLE

AWARE THAT on 4th March 2013, Kenyans of all walks of life lined up in their millions to vote for national and county leaders of their choice, in which general elections we were duly elected into office as MCAs of our various wards in Kisumu county,

TAKING INTO ACCOUNT that the general elections gave breathe to the actualization of the provisions of the Kenya Constitution 2010 regarding devolution and devolved government,

AWARE ALSO THAT all the elected MCAs represents the framework of devolved leadership at the grassroots level, and in particular the model for delivery of public services at this level through accountable representation at the county assembly,

RECALLING THAT in this representative capacity, the electorate whom we represent at the Assembly has both constitutional and reasonable expectation of us to deliver on our election manifesto and development targets of the county administration,

AND FINALLY AWARE THAT we represent the broad and varied interests of ward residents across the different constituencies of Kisumu

County including Seme, Kisumu Town East, Kisumu Town West, Kisumu Central, Muhoroni, Nyando and Nyakach Constituencies ...

We the undersigned, jointly and severally, enjoying the above mandate wishes to present this petition to the Senate in accordance with Articles 37, 96(1) and 119 of the Constitution and to plead with the Senate to receive, discuss and resolve on our prayers as herein after presented.

BACKGROUND

The County government of Kisumu is directed under the leadership of Governor Jack Nyanungo Ranguma. The deputy governor is Honorable Ruth Odinga. In the last couple of months in their administration, this team of leaders has failed to work productively, coherently and effectively for the people.

In recent times, squabbles, mischief, innuendos and outright political chicanery has taken control of the country's administration thereby hampering public representation, legitimacy of leadership and basic service delivery. Instead, social tensions, unnecessary brinkmanship and heavy political Gerry-meandering has replaced common decency in the administration leading to a near shut down that now requires urgent attention from the county leadership and its stakeholders.

Briefly, let us provide some highlights that illustrate the state of degradation of the county government, which has led us to this conclusion:

- Only months away from the elections in April, **there were** early signs that things will be tottering to the wrong direction, and that the county government had misfired started with corruption allegations in the transition period to the new county authority. In early September 2013, the governor suspended six county officials over Sh1 billion graft allegations against them. The governor then explained that the suspended officials - town engineer Adrian Ouma, urban planner Absalom Ayany, computer programmer Peter

Kayila as well as clerical officers Maurice Matunga, Bertha Odera and Peter Ogada -had been implicated in gross corruption and misuse of county resources. *Nothing of these allegations was ever heard thereafter!*

- Before long, another corruption scandal broke out involving some of the new county officials over single sourcing plans for the county's solid waste disposal tenders. In the wake of these accusations, the County Financial Secretary and the Personal Assistant to the governor were suspended. *Nothing of these allegations was ever heard again!*
- At the time of writing this petition, the Executive Committee of Kisumu County is only partly constituted, more than 1/3 of the committee having been fired by the Governor. The issue is now subject of suit at the Kisumu Industrial and Labour court.
- Still, worse problems were lurking in the dark for the county. The county governor has enjoyed less than friendly relations with the Speaker, Mrs Anne Adul, and his own deputy Ms. Ruth Odinga. All these leaders have accused each other of usurping powers and acting beyond their lawful powers and articulations.
- With time, and further worrying to the county residents, accusations of political marginalization relating to the politics of nepotism, clanism, favoritism and social exclusions has been rampant in Kisumu. In recent days, this has led to open fracas in parts of Kisumu. In January 2014, a gang of people unlawfully and with utter impunity disrupted a civil society media event in the city of Kisumu, and went further to publicly declare that they will evict 'outsiders' in Kisumu, particularly people from Siaya county residing in Kisumu who oppose the administration of the county. *Despite this unlawful and shameful conduct, no action followed to apprehend the well known intruder and bring him to book!* As seen below, media reports of attacks on law abiding citizens **pointed to** persons associated with the governor.

<http://www.the-star.co.ke/news/ranguma-aide-spot-over-threat-evict-siaya-residents>

<http://mobile.nation.co.ke/counties/Activists-scamper-for-safety-as-Ranguma-aides-cause-chaos/-/1950480/2601992/-/format/xhtml/-/r8nsm9/-/index.html>

- In demonstration that the House of leadership in the county has broken down and not united anymore, a recent row between the Governor and his deputy ostensibly around the issue of alleged misuse of funds manifested itself in bitter **public exchanges**. It is a matter of public notoriety that the two differed sharply over the recent team bonding retreat organized in Nairobi.

<http://www.standardmedia.co.ke/thecounties/article/2000150087/jack-ranguma-ruth-odinga-row-in-kisumu-spins-out-of-control?pageNo=2>

- It would also be recalled that some members of the County Assembly executed a plan last year to de-seat the Speaker of the Assembly, Madam Anne Adul, in the process even disbanding the House Speaker's Panel and imposing handpicked replacements to those offices. The issue was resolved in litigation in which the magistrate court reinstated the Speaker. The Executive appealed against the order, and the issue is now a matter of active proceedings in the Kisumu Court of Appeal.
- It is more interesting that an independent monitoring report by the World Bank, recently revealed an unsatisfactory development expenditure ratio of the County, with indications that in the 2013/2014 financial year, it only spent 1% or thereabout on development despite many stalled development operations in the county.

These are issues that the county leaders need to discuss and inform themselves about in order to reach good decisions about them. This county must work for the development of its people and its future. In the current atmosphere, nothing useful is happening.

Most shockingly, in the context of the statutory re-opening of the County Assembly this month, on 10th February 2015, the Kisumu Governor Jack Ranguma failed to attend the assembly special sitting. This Assembly is a House of Rules, and such a turn of events was immature and completely uncalled for.

It is our view that this action was pre-planned, with the complicity of the 37 other MCAs who skipped it. Worse, it demonstrates our fear of a crumbling environment for any good political work in the County Assembly. In consequence, leaders continue to exchange harsh accusations in the public through media interviews and other channels.

THE PETITION

On behalf of the people of the County of Kisumu, and in accordance with articles **37, 96(1) and 119** of the Constitution of the Republic of Kenya, we would like to present the following petition to the Senate so as to take action to save the County from collapsing. **Presented here are key problems of corruption, gross management and neglect of duty on which we pray for action and rectification.**

1. Employment Issues:

- a) **Chief Officers:** The County Government through the County Public Service Board advertised in the dailies 10 positions for chief officers. The Board went and ahead and shortlisted and carried out interviews for the 10 positions. Having concluded the interview exercise, the Board forwarded to the Governor the list of suitable candidates who then went ahead and appointed 14 Chief Officers without any explanation as to what necessitated the adjustment from 10 to 14 and what informed the final appointments. The Governor then proceeded to forward the names of the 14 to the Assembly for vetting. The Assembly successfully vetted four nominees and sent back the other thirteen with queries. Instead, the Governor went ahead to appoint all the fourteen to office without the constitutional requirement for vetting in contravention of section 45 (a) and (b) of the County Government Act. (Ref. Kenya Gazette Notice of 6858 of 3rd October 2014 Pg 2629). How then, can persons be employed to positions they never applied for and how can positions never advertised/existed be filled?
- b) **Nepotism and Clanism:** The recruitment of persons to key positions in the County of Kisumu is riddled with nepotism and clanism.

The Public Service Board: The Board which has a membership of seven has four members related to the Governor. The Chair, Engineer Oguya from Kano in Nyando Sub County is a cousin. Mr. Odingo, a member from Kano in Nyando Sub County is a first Cousin. Mr. Odeny Oyoo from Nyakach Sub County is an Uncle. Mrs. Asuna from Muhoroni is a Sister in Law.

Chief Officers: Six of the 14 Chief Officers come from Kadibo clan of Kano in Nyando Sub County where the Governor hails from. They are Dr. Ojwang Lusi – Health, Mr. Samuel Ondolla – Transport and Infrastructure, Mr. Derrick Obura – Lands, Physical Planning, Housing and Urban Development, Mildred Omoro – Environment

Staff in The Governor's Office: The Chief of Staff, the personal Assistant and the Private Secretary in the Governor's office are closely related to him. The Chief of Staff and the Personal Assistant are his Nephews while the secretary is a daughter in law.

Ward Administrators: 15 of the 35 ward administrators hail from Kano of Nyando Sub County, the home of the Governor.

- c) **Deliberate delay of employment:** In December 2013, the Kisumu County Public Service Board placed an advert for suitable persons to be recruited as health practitioners in different cadres. Interviews were carried out in September 2014, nine months after the advert was placed. To date not one person has been recruited in those positions. Was there really a need for this exercise? It's important to mention that salaries for these personnel had been factored in the budget. Is this the wage bill the county is suffering from? Likewise, the same fate has befallen recruitment of ECDE Assistants. One year down the line we are still awaiting the filling

of these positions. Who is benefitting from the salaries of these officers?

The position of the **County Secretary** is a very crucial office in the running of the county. **Notwithstanding this**, an interim officer **has held it for over 2 years** despite interviews being conducted and shortlist presented to governor over a year ago which did not include the incumbent interim office holder. The same goes for the position of the Chief Finance Officer which was also advertised and interviews conducted over a year ago. The PSB was not satisfied with applicants for this position and immediately advertised. One year down the line, no interviews have been conducted and office still held by one who in the thinking of the PSB is not suitable since he was one of the failed applicants. Why is it mandatory for the Governor to keep these two interim officers in the office even after failing interviews?

- d) **City Manager:** The acting city manager was unlawfully appointed to office without the approval of the Assembly. There was the acting city manager who should have taken over the office as a substantive office holder was sought. Why was it necessary to bring somebody from outside unprocedurally? In fact the appointee was before that a personal appointee of the Governor in the office of Resource Mobilization which was also created without reference to any constitutional office.

We have learnt with dismay that despite the Acting City Manager not having applied for the position of the City Manager when the applications were called, she has gone ahead to be shortlisted and interviewed for the same. Advertisement and interviewing of the City Manager by PSB should only be done as a directive from the City Management Board **in accordance with** the Urban Areas and Cities Act. Where is the City Management Board that's supposed to run the city? Who therefore oversights the City Manager? Is this

omission deliberate so as to pilfer the coffers of the county? **The** City is the main revenue earner but without an oversight body and with an acting manager whose qualifications and competence has not been tested, the situation gets quiet fluid. Does it need any rocket science to understand why we had a deficit of 336 million in our revenue collection for the last financial year in the City alone? In the previous regime the Mayor and councillors played an oversight role to the clerk. Who now does this necessary role? Instead the City Manager reports not even to any minister but directly to the Governor.

2. **Flawed Tendering Issues:** The Government set out to carry renovations to the 9th floor of Prosperity House to be used by the Governor, the Deputy Governor and the County Secretary. The County Engineering department was instructed to prepare estimates for the same through the CEC for Public Works. The estimates returned an estimate of Kshs 7.8 million to comprehensively do the job. No further instructions were received from the County Secretary with regard to this project. The next **thing** that was seen was renovation works going on at the said 9th floor. On inquiry by the Assembly committee on Transport and Public Works, the procurement unit informed the assembly that a consultant was single sourced by the Executive who estimated the works at 26 million and the job further singularly awarded to a contractor (Skylark Ltd) with total disregard to the procurement laws **related to this** magnitude of tender which should ideally be an open tender. The contractor has been finally paid.
3. **Budget Making Issues:** The PFM Act 2012 Article 137 dictates the formation of a COUNTY BUDGET AND ECONOMIC FORUM whose main responsibility is to play a consultative role in the budget making process. Kisumu County Budget and Economic Forum to

date sat only once during the preparation of the supplementary budget for the FY 2013/14. The forum was never convened for the budget process of the FY 2014/15 and including the supplementary budget that has been prepared for the same year. This is a clear breach of the said article of the PFM Act 2012.

The Budget for the FY 2014/15 was passed by the Assembly and duly forwarded to the controller of budget. Today, before implementing this budget, the county government has decided to set aside the entire development vote of the budget in the supplementary budget and to use the same to fund the development projects for the FY 2013/14. What became of the funds for development projects for 2013/14? Does the government have a right of setting aside the whole budget without reverting back to the people who approved it as enshrined in Article 1 of the Constitution through Public Participation?

4. **Revenue Collection:** The issue of revenue collection in Kisumu County has been something akin to musical chairs. The **County Government** has increasingly presented figures purporting to be the county revenue collection that in close scrutiny equals to what the city alone is collecting. Illustrated in the figure below is the comparison of the figures presented as the revenue collection against what the city collected in the same period in review.

Year	Municipal Council Of Kisumu	County Government of Kisumu	Variance
2011/12	522,302,295	552,302,295	30,000,000
2012/13	581,350,954	581,358,954	8,000
2013/14	522,509,851	621,861,798	99,352,219

Considering that Kisumu is made up of five former local authorities, it is inconceivable that what is presented would be the collection. Whose interest should it be that revenue figures should underquoted as is the glaring case in point?

The Auditor General in his report in the last financial year clearly showed that Kshs 31,596,706.00 was collected and not banked, to the extent that in one month; there was more banking than collection. Is there a possibility that more revenue is not being banked than what the Auditor General caught up with?

5. **Stagnation of the Health Care System:** The CRA allocated a conditional grant to all the level five hospitals in the country. Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu County was allocated Kshs 396 million in the FY 2013/14. Of this figure, the hospital only received Kshs 72 million in the whole year from the county treasury. **It is alleged that Kshs 187 million was requested by the Hospital but not received notwithstanding the**

fact that The County Government contends the money was actually disbursed. The hospital has had a lot of challenges in getting regular and consistent funding from the Chief Finance Officer. They were actually denied funding and it took the intervention of the UNDP consultants who were carrying out the mid-year performance review to publicly expose this dire situation and forced the county to send some money to the hospital account. The question is why would the executive be hell bent in bringing the health sector to its knees? The District hospital, now called the county hospital has not been spared either. The situation gets so bad that they have utilities such as water and electricity regularly disconnected.

6. **Payment of Services:** Procurement of goods and services and payment of the same continue to pose untold questions.

The government purchased sorghum seeds for distribution to farmers last year worth Kshs 12 million. This was in the financial year 2013/14. To the dismay of all, the same voucher has reappeared this financial year and the CEC who was sacked, Dr. Stephen Orot, was asked to pay for it again.

The Governor recently bought vehicles (without the involvement of the ministries) only to present the ministries with the invoice from CMC to share out the cost of the vehicles. Where would this expenditure being forced down the throat of ministries be paid from considering they were not budgeted again? What would be the fate of those programs where the monies have been drawn from? Is the Governor being respectful to the procurement laws?

7. **Autonomy of the Assembly:** The constitution envisages separation of powers in the different arms of government. The PFM Act 2012 requires that the County Assembly is allocated her own funds that shall be overseen by the County Assembly Board as per the county appropriation act. Since the Assembly accounts were opened in December 2013, not a single coin has been disbursed to those

accounts and the assembly has to rely on the executive for survival. This has greatly compromised the assembly's capability to effectively play her oversight role. The executive is hell bent on controlling the Assembly thereby making it subservient and mellow. The consolidation of funds in one office affects the ministries who cannot carry out their development agenda as appropriated. This consolidation has enable the executive to continually reallocate funds as they so wish without seeking approval from the assembly.

Case in Point:

The Assembly appropriated Kshs 200 million in FY 2013/14 for purchase of land which was put in the Governor's office. We are yet to know the fate of this allocation as no land worth this amount has been pruchased. A further Kshs 72 million was also appropriated for the purchase of vehicles for the CECs for the same financial year. A report on the same is yet to be tabled.

8. **Financial Reporting:** It might interest **the Senate** to note that eight months into the new financial year, the cabinet and indeed the county assembly is yet to set eyes on the comprehensive county financial report for the FY 2013/14. The PFM Act 2012, Article 163,164, 165 and 166 talks about preparation of comprehensive annual financial reports by the County Government to be delivered to the Auditor General, Controller of Budget, Commission on Revenue Allocation and the County Assembly within certain stipulated timelines. How did the County Government prepare the Budget for this financial year in the absence of this report? When is it intended to reach the cabinet and the assembly? Now a supplementary budget for this financial year has been prepared and just about to be forwarded to the assembly for debate. What are we supplementing when not one single development project has been initiated in the whole year? Is this a government just for paying personnel emoluments?

9. **Misuse of public resources:** The governor's wife is allocated a vehicle for her personal use. The Governor has been allocating non county employees' fueled vehicles with drivers to represent him at funerals and political functions. An MCA one purporting to be the acting speaker has also been allocated a vehicle and a driver that is also fueled from the County coffers. All these in contravention of article 15 of the Public Officers Ethics Act 2003.

The Executive went to Court of Appeal to challenge the verdict of the High Court and the Industrial in the litigation of the Speaker Vs The County Assembly. In respect of the separation of powers as enshrined in the constitution of Kenya, what interest did the executive have in this case to warrant spending public resources? How Kshs 10 million of tax payers money be spent on a matter that has no beneficial effect on the people yet no funds are channeled to development projects? Is the work of the Governor to massage his ego in trying to control the assembly?

10. **Mismanagement of Donor Programs:** The Kisumu Urban Project funded by the French Government through AFD is hanging in the balance and might not absorb all the funds within the stipulated period, which is to end by 2016.

Schools Tender: One of the projects to be funded in this project is the construction of five primary schools. The KUP team with the blessing of AFD planned the tender for the five schools in two lots of three and two schools. Due to the value of the tenders, the Governor's cronies were not able to meet the tender requirements. The City Manager then intentionally kept the evaluation process beyond the PPOA stipulated period and the process lapsed. They then decided to break the schools into five lots of one school each to accommodate their interests. AFD is yet to give their no objection while time is

running by. This is in contravention of prudent use of public resources. It's important to mention that this grant to Kisumu from the French Government is a loan to the people of Kenya.

Land Fill: The County Government through the Kisumu Urban Project funded by the AFD is set to relocate the dumpsite from the city to a land fill that will be built out of town. The search of a suitable land ended with the identification of LR 3087/14 which is a 30 acre piece in the chemelil area. The market area of land in that area is currently standing at about kshs 250,000. The Government valuer was invited to value the land and he returned a valuation of Kshs 400,000 per acre bringing a total of Kshs 12,000,000. The Governor through the city manager has brought pressure to bear on the Government Valuer to vary the figure to Kshs 30,000,000 and that has stalled the purchase of the land. There is now a plan to call for stage managed tenders to circumvent the valuation report. This is outright theft of public funds.

11. **Propagating constitutional illegalities:** The law dictates that the official opening of the Assembly after any recess must be gazzeted and in line with County Assembly Standing Order No 24 (1). This was done by the Clerk of the County Assembly and followed by further adverts in two widely circulated newspapers in this country. The official opening was boycotted by 37 MCAs and the Governor in the hope that the Court of Appeal would give them a conservatory order preventing the Speaker, Madam Anne Adul from presiding. The opening as mentioned in the introduction was attended by only 12 MCAs and concluded by the customary entertainment of the invited guests as budgeted by the assembly. To the dismay of all, the Governor and his cronies in the Assembly organized another "official opening of the assembly" on the 17th of February 2015. This purported opening, besides being an illegality since the house cannot be "officially" opened twice and without any gazzetment, incurred colossal amounts of tax payers' money in the guise of "entertaining

the invited guests". Besides the violation of the standing orders, why must the Governor be allowed to flush public money down the drain at will in serving his personal interests?

12. **Unauthorized reallocations of budgetary votes:** In the 2013/14. Budget 56 million was transferred for flood mitigation from the ministry of water to so called Special Programs docket. This money has not been accounted for. This special Programs docket is headed by a Mr. Odida, a nephew to the governor.

13. The Governor received 26 computers from UNDP for the establishment of a county Huduma Centre. All the computers vanished from his office and to date nobody has been made to account for this loss. What message are we sending to our development partners?

According to Section 96 (i) of the Constitution, 'the Senate represents the counties, and serves to protect the interests of the counties and their governments'. Without the intervention of the Senate, Kisumu County would be faced with an imminent shut down.

Devolution remains an important tool to promote decentralized governance, and this must be protected at all costs. We believe that the anticipated intervention will strengthen our county's ability to deal with its leadership role and ensure better service delivery for the betterment of our future children and their families.

Following the above narrative, we wish to pray the Senate to do the following:

1. Set up a special investigation on the County of Kisumu **to look into the** enumerated issues that continue to undermine the spirit of Devolution **and to take action appropriately.**
2. Present a special request to the Commission on Revenue Allocation and the Controller of Budget, to cease any further disbursement of

funds to Kisumu County until such a time that a Forensic Audit of the County fiscal management is carried out and concluded.

3. Invite the Auditor General to set up a team to carry out a Forensic Audit of the County with a view to unearthing the glaring financial malpractices as per the dictates of the constitution 229 (4 and 6).
4. Commence the removal from office of the Governor of Kisumu County if found to be culpable in running the county ultra vires the Constitution.

SIGNED

1. Hon. Joseph Osano, MCA, Chemelil Ward

SIGN:

2. Hon. Aggrey Ogosi, MCA

SIGN:

3. Hon Edwin Phillip Anayo, MCA - Market/Milimani Ward

SIGN:

4. Hon. Prisca Misachi (Mrs), MCA -

SIGN:

5. Hon. Pamela Jossy (Mrs), MCA -

SIGN:

6. Hon. Elijah Omondi, MCA - Central Nyakach Ward

SIGN: