

PETITION TO THE SENATE BY RESIDENTS OF WAJIR COUNTY
CONCERNING ALLEGED MISAPPROPRIATION OF FUNDS BY THE
GOVERNOR AND THE COUNTY GOVERNMENT OF WAJIR, AND
OTHER GRIEVANCES

Honourable Senators,

1. Pursuant to Standing Orders 220 (1) (a), and 225(2) (b), I hereby report to the Senate that a petition has been submitted to the Speaker, through the Clerk, concerning alleged misappropriation of funds by the Governor and the County Government of Wajir.
2. As you are aware, under Article 119(1) of the Constitution, and I quote:-"Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation."
3. The petitioners, namely; Mohammed Abikar, Abdi Birik Abdinur, Abdifatah Diriye, Ahmed Abdi Sabdow, Abukari Abdullahi Sheikh, and Johara A. Hussein, are citizens of Kenya and residents of Wajir County. The petitioners state that they are also members of a lobby group made up of many residents in Wajir County and known as the Wajir Anti-Corruption and Justice Forum.
4. Honourable Senators, in their Petition, the petitioners state the following:
 - a) THAT, in the 2013/2014 financial year, the Governor and the County Government of Wajir misappropriated and/or misapplied public finances and resources amounting to slightly over Kenya Shillings One Billion (Kshs.1,000,000,000/=);
 - b) THAT, this was done through:
 - i) theft and pilferage of public resources for a period of three months upon assuming office in 2013; and

ii) single sourcing of contracts for the supply of goods and services to the County Government, whereby contracts were awarded to entities closely associated with the Governor and his team, their close family members, and to members of the Governor's clan;

c) **THAT**, in so doing, the Governor and officers of the Wajir County Government acted in violation of various provisions of the law, among them the County Governments Public Finance Management Transition Act (No. 8 of 2013), the Public Procurement and Disposal Act (Cap 412C) and Chapter Six of the Constitution of Kenya on leadership and integrity;

d) **THAT**, the Governor has failed to obey Article 27 of the Constitution, on equality and freedom from discrimination, by allocating more public resources and job opportunities to members of his clan and in the process disenfranchising other clans resident in Wajir County;

e) **THAT**, the Governor has failed to employ qualified people in his government and this has led to the residents of Wajir County not getting value for the taxes paid;

f) **THAT**, the Governor and the County Government of Wajir have failed to adhere to the guidelines on remuneration and allowances of public officers as set by the Salaries and Remuneration Commission, thus causing severe pilferage of public finances at the County Government; and

g) **THAT**, the above actions have been made possible by the weak oversight mechanisms prevailing at the County Assembly of Wajir.

5. The petitioners confirm that they have made efforts to have these matters addressed by the Ethics and Anti-Corruption Commission without success, and that the issues raised in the petition are not subject to any suit pending in court.

6. The petitioners petition the Senate, to:-
- a) Recommend to the President to form a commission of inquiry to investigate the allegations against the County Government, pursuant to Article 192 of the Constitution, with a view to suspending the County Government;
 - b) Review the Report of the Auditor-General on the accounts of Wajir County for the year 2013/2014 and recommend appropriate action on the recommendations of that Report;
 - c) Resolve that no further development funds be released to the Wajir County Government until the audit queries raised under the said Report and in the petition are addressed; and
 - d) Order for a comprehensive human resource audit to be undertaken of the entire workforce of the County Government including on the remuneration and allowances paid to the officers employed by the County Government.
7. The Petition is signed by all the six (6) petitioners.
8. Honourable Senators, pursuant to standing order 226, I shall now allow comments, observations or clarifications in relation to the petition for not more than thirty minutes.

(after comments by Senators)

Honourable Senators, pursuant to standing order 227(1), the Petition stands committed to the relevant standing committee, in this case the Standing Committee on Finance, Commerce and Budget. In terms of standing order 227(2), the Committee will be required, in not more than sixty days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner and laid on the Table of the Senate.

SCHEDULE

[Section 3.]

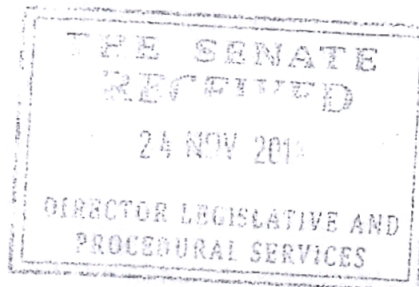
FORM OF PETITION



REPUBLIC OF KENYA

PETITION TO THE SENATE OF THE REPUBLIC OF KENYA

IN THE MATTER OF THE GOVERNOR, WAJIR COUNTY



ODPS
Please deal,
reply
21/11/14

DRAWN BY:

Ruthugua & Associates Advocates,

Corner House, 11th Fl (BTC)

Kimathi Street

P.O. Box 25479-00100,

NAIROBI

TEL: 020 27 740 140

② Mr. Mogere,
Please peruse and
prepare for presentation
at the speaker.
24/11/14

REPUBLIC OF KENYA

IN THE MATTER OF PETITION TO PARLIAMENT (PROCEDURE) CAP 7C (Act
No. 22 of 2012) LAWS OF KENYA

AND

IN THE MATTER OF ARTICLE 37 AND ARTICLE 119 OF THE CONSTITUTION
OF KENYA 2010

AND

THE GOVERNOR OF THE COUNTY OF WAJIR

PETITION TO THE SENATE OF THE REPUBLIC OF KENYA

I/WE, THE UNDERSIGNED are citizens of Kenya. We are also natives, residents and registered voters within Wajir County of the Republic of Kenya. Further we are members of a Lobby Group made up many residents of Wajir County commonly known as Wajir Anti-Corruption and Justice Forum which is just an informal gathering of several natives and local residents of the said county brought together by a common goal ensuring that acts of corruption, human rights violations and abuse of public resources and offices are highlighted to the relevant National constitutional and legal bodies.

DRAW the attention of The Senate to the following:

1. THAT in the 2013/2014 Financial Year, the Governor and the County Government of Wajir have misappropriated and/or misapplied and/or embezzled public finances and resources amounting to slightly over Kenya Shillings One Billion (Kshs 1,000,000,000/=).

REPUBLIC OF KENYA

IN THE MATTER OF PETITION TO PARLIAMENT (PROCEDURE) CAP 7C (Act
No. 22 of 2012) LAWS OF KENYA

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THE GOVERNOR OF THE COUNTY OF WAJIR

PETITION TO THE SENATE OF THE REPUBLIC OF KENYA

2. THAT these blatant acts were made possible by the aforementioned State Officers taking advantage of the weak oversight mechanisms prevailing at the County Assembly of Wajir.
3. THAT majority of the misappropriated finances were allegedly spent on single sourced procurement activities contrary to County Governments Public Finance Management Transition Act (No. 8 of 2013) and Public Procurement and Disposal Act, Cap 412A Laws of Kenya.
4. THAT besides 3 above, the said Governor and his team invented an irregular scheme of awarding huge contracts to entities that were closely associated with them, their spouses, relatives and/or nominees contract the Public Procurement and Disposal Act and Chapter Six of the Constitution of Kenya, 2010.
5. THAT in fact, the report by the Auditor General on the Financial Operations of Wajir County dated 5th December 2013 and covering the period between 1st January to 30th June 2013 points out to numerous acts open theft and pilferage of public resources for a period of 3 months after assuming office.
6. THAT the subsequent reports are likely to be more damning when they are published.

REPUBLIC OF KENYA

IN THE MATTER OF PETITION TO PARLIAMENT (PROCEDURE) CAP 7C (Act
No. 22 of 2012) LAWS OF KENYA

AND

IN THE MATTER OF ARTICLE 37 AND ARTICLE 119 OF THE CONSTITUTION
OF KENYA 2010

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THE GOVERNOR OF THE COUNTY OF WAJIR

PETITION TO THE SENATE OF THE REPUBLIC OF KENYA

7. THAT the Governor has failed to obey Article 27 of the Constitution of Kenya on equality and freedom from discrimination by allocating more public resources and job opportunities to the members of his clan and in the process disenfranchising other clans resident in Wajir County.
8. THAT the Governor has failed to employ qualified people in his government and this has led to the people of Wajir County not getting value for their taxes paid both to the National and County Governments.
9. THAT the Governor has now gone ahead and presented another budget for the year 2014/2015 which is a replica of the previous budget without any form of public participation or justification as to the method or formula used in allocation of resources to the people of Wajir County.
10. THAT the Governor of Wajir has refused and/or failed and/or neglected to adhere to the set guidelines on remuneration and allowances by the Salaries and Remuneration Commission thereby causing severe pilferage of public finances through payment of allowances not qualified for and also giving preferential treatment to junior officers to earn very high figures as allowances.

THAT, here confirm that efforts have been made to have the matter addressed by the Ethics and Anti-Corruption Commission (EACC) through a petition/complaint dated 29th July 2014 and presented on 15th August 2014 through our lobby group. Despite

REPUBLIC OF KENYA

IN THE MATTER OF PETITION TO PARLIAMENT (PROCEDURE) CAP 7C (Act
No. 22 of 2012) LAWS OF KENYA

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AND

THE GOVERNOR OF THE COUNTY OF WAJIR

PETITION TO THE SENATE OF THE REPUBLIC OF KENYA

EACC acknowledging in writing receiving our petition vide a letter dated 11th September 2014, no action has been taken so far. The Petitioners have since written to the Commission with further evidence of theft of public resources by the Governor vide a letter dated 13th November 2014.

THAT the issues raised in this petition are not subject to any suit pending in court.

HEREFORE your humble Petitioners pray that The Senate:

1. That the Honourable Senate be pleased to invoke the provisions of Article 192 Sections 1(b), 2 and 3 by recommending to the President to form a Commission of Inquiry to investigate these allegations.
2. That the Honourable Senate be pleased to direct the Auditor General to provide the Audit Report of the year 2013/2014 and recommend action on the recommendations.
3. That The Honourable Senate be pleased to order the Controller of Budget and The Treasury not to release any further development funds until the audit is dispensed with.
4. That the Honourable Senate be pleased to order for a conclusive Human Resource Audit of the entire workforce and come up with a report on

REPUBLIC OF KENYA

IN THE MATTER OF PETITION TO PARLIAMENT (PROCEDURE) CAP 7C (Act
No. 22 of 2012) LAWS OF KENYA

AND

IN THE MATTER OF ARTICLE 37 AND ARTICLE 119 OF THE CONSTITUTION
OF KENYA 2010

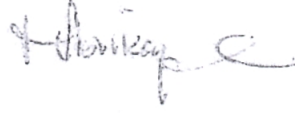
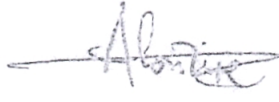
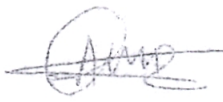
AND

THE GOVERNOR AND THE COUNTY OF WAJIR

PETITION TO THE SENATE OF THE REPUBLIC OF KENYA

qualification, gender, distribution by clan and ward, remuneration, grading, duties,
responsibilities and allowances.

AND your humble PETITIONERS will ever pray

<u>Name of Petitioner</u>	<u>Full Address</u>	<u>National ID or</u> <u>Passport No.</u>	<u>Signature/Thumbprint</u> <u>impression</u>
Mohammed Abikar TEL 0714533553	P.O. Box 149 Wajir	1699287	
Abdi Birik Abdinur TEL 0729 707 463	P.O. Box 149 Wajir	0177295	
Abdifatah Diriye	P.O. Box 149 Wajir	24080716	
Ahmed Abdi Sabdow	P.O. Box 149 Wajir	4884394	

Abukari Abdullahi Sheikh P.O. Box 149

[Handwritten signature]

Wajir 9989200

Johara A. Hussein

P.O. Box 149

[Handwritten signature]

Wajir 0055706

DRAWN & PRESENTED BY:

Ruthugua & Associates Advocates

Corner House, 11th Fl (BTC Ltd)

Kimathi Street

P.O. Box 25479-00100

NAIROBI

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

*Rt Hon Speaker, this is
endorsed for your approval
for Tabling
28/04/16*

ELEVENTH PARLIAMENT – FOURTH SESSION

REPORT OF THE SENATE STANDING COMMITTEE ON FINANCE,
COMMERCE & BUDGET
ON

THE PETITION RESIDENTS OF WAJIR COUNTY CONCERNING ALLEGED
MISAPPROPRIATION OF FUNDS BY THE GOVERNOR AND THE COUNTY
GOVERNMENT OF WAJIR, AND OTHER GRIEVANCES

Approved
[Signature]
Speaker
PARLIAMENT BUILDINGS
NAIROBI

28 APRIL 2016

PREFACE

Mr. Speaker Sir, on behalf of the Members of the Finance, Commerce and Budget Committee and as required under the Senate Standing Orders, I hereby present to this House, the Committee's Report on the petition by Residents of Wajir County concerning alleged misappropriation of funds by the Governor and the county government of Wajir, and other grievances, that was presented to the Senate by Sen. Ekwee Ethuro, Speaker of the Senate.

The petition was brought to the attention of the Senate by Mr. Mohamed Abikar, Mr. Abdi Birik Abdinur, Abdifatah Diriye, Ahmed Abdi Sabdow, Abukari Abdullahi Sheikh and Johara A. Hussein who are citizens of Kenya and residents of Wajir County. The petitioners are also members of a lobby group consisting of residents of Wajir County, known as Wajir Anti-Corruption and Justice Forum Lobby Group. The petition was then tabled in the Senate on 21st May, 2015 and thereafter, committed to the Standing Committee on Finance, Commerce and Budget for consideration and determination.

Mr. Speaker Sir, it is significant to mention that the purpose of the approval of this report is to protect and enhance the process of enacting legislation in the County Governments and set the benchmarks for developing a shared vision in the management of public finance.

Further, the County governments should appreciate the importance of development planning and budgeting in meeting the increasing demands in service delivery and limited resources. The committee hopes that this report will assist in entrenching the independence of county assemblies in performing their functions of representation, legislation and oversight as espoused in Section 9 of the County Governments Act, 2011.

Mr. Speaker Sir,

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:

- a) Discuss and review the estimates of County governments and make recommendations to the Senate;*
- b) Examine the Medium term Budget Policy Statement presented to the Senate;*
- c) Examine and report on the Budget allocated to constitutional commissions and independent offices;*
- d) Examine bills related to the Counties;*
- e) Examine the Budget, including the Division of Revenue Bill; and*
- f) Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.*

Mr. Speaker Sir,

The Committee on Finance, Commerce and Budget was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MBS, MP. -Chairperson
2. The Hon. Sen. Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.
5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. (Dr.) Boni Khalwale, MBS, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. (Dr.) Zipporah Kittony, MBS, OGW, MP.
10. The Hon. Sen. Aaron Kipkirui Cheruiyot, MP.
11. The Hon. Sen. Catherine Mukite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP.

PRAYERS OF THE PETITIONERS FROM WAJIR COUNTY

Pursuant to provisions Article 119 of the Constitution of Kenya and part XXIV of the Senate Standing Orders, the petitioners sought answers to the following prayers -

- (1) A recommendation to the President that a Commission of Inquiry be formed to investigate the allegations against the County Government of Wajir pursuant to Article 192 of the Constitution, with a view of suspending the County Government;
- (2) A review of the report of the Auditor General on the accounts of Wajir County Government for the year 2013/2014 and to recommend appropriate action to be taken on the recommendations contained in that report;
- (3) A resolution that no further development funds be released to Wajir County Government until the audit queries raised under the said report and in the petition are addressed;
- (4) An order that a comprehensive human resource audit to be undertaken of the entire workforce of the county government including the remuneration and allowances paid to the officers employed by the County Government.

Committee sittings

In deliberating on issues on the Misappropriation of funds by the Governor and the Wajir County Government in the 2013/2014 financial year and other grievances, the committee held a total of two (2) sittings and received both oral and written submissions from the petitioners and the Governor of Wajir County Government, Hon. Ahmed Abdullahi.

Committee General Recommendations

The committee having considered the matters in the petition recommends as follows:

That –

- (i) The Sessional Committee on County Public Accounts and Investments should examine the Wajir County Government audit report of financial year 2013/2014 and the recommendations therein. The Committee's report to the Senate should recommend actions to be taken on irregularities found.
- (ii) On the prayer that the Senate recommends to His Excellency the President to form a commission of inquiry to investigate the allegations against the Governor and the County Government, the petitioner should comply with Article 192 of the Constitution and Section 123 of the County Government Act.
- (iii) The Committee finds that there is substance to the allegation by the petitioner and the Director of Public Prosecutions should investigate and take necessary action against the county government for abuse of office in the award of contracts and tenders.
- (iv) The issues advanced by the petition touching on the violations of procurement laws through single sourcing of various procurement activities and irregular schemes of awarding contracts should be investigated by the Ethics and Anti Corruption Commission and Director of Public Prosecution with a view to taking appropriate legal action.
- (v) The Committee recommends that DPP immediately commence investigations into the procurement process used by the county in contracting the services of Takaful Insurance Africa with a view to taking legal action.

- (vi) The Committee recommends that the County Assembly of Wajir should take a more proactive role in ensuring effective public participation in the development of key budget documents so as to avoid skewed allocation of resources. The County Assembly should further ensure the County Budget and Economic Forum operates pursuant to section 137 of the PFM Act, 2012.
- (vii) The Committee recommends that the National Cohesion and Integration Commission pursuant to section 65 of the County Government Act, should undertake an evaluation of the ethnic diversity of the staff at all levels of the Wajir county public service and table its report in the Senate and County Assembly of Wajir within three months.
- (viii) The Committee finds that the primary oversight role lies with the county assembly and they should take up their mandate as per Article 185 of the Constitution. The Committee further recommends that the Senate fast tracks the enactment of the Petition to County Assemblies Bill that will provide for the residents of the counties to engage their county assemblies proactively in ensuring they execute their oversight mandate effectively.
- (ix) The Committee recommends that the County Assembly Committees should exercise keen oversight in the implementation of the Budget to ensure the County Executive adheres to agreed development priorities, as per the County Integrated Development Plan as this will ensure regional balance in implementation of development projects.
- (x) The Committee finds as per the auditor generals report that there were irregular payments of salaries and allowances to some staff of the county government. The committee recommends that all persons found to have been irregularly paid should be surcharged.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee is grateful to the Petitioners and the Governor, Wajir County who appeared before the Committee to share on their roles and the how their actions may have impacted on the Misappropriation of funds by the Governor and the Wajir County Government in the 2013/2014 financial year and other grievances

The Committee is also particularly grateful to the Offices of the Speaker, the Clerk of Senate for the support received as it discharged its mandate. The Committee also wishes to thank the Senators who participated in the process to ensuring that the Committee completes its report and also the Senators from Wajir County who attended the Committees Sittings.

Mr. Speaker Sir,

On behalf of the committee, and pursuant to standing order 203(6), It is therefore my pleasant and honourable duty to present and lay on the table of the house the report of the Finance, Commerce and Budget Committee regarding the Petition on Wajir County on the Misappropriation of funds by the Governor and the Wajir County Government in the 2013/2014 financial year and other grievances on the issues raised for consideration and subsequent adoption.



THE HON. SENATOR BILLOW KERROW, MP

CHAIRMAN, FINANCE, COMMERCE AND BUDGET COMMITTEE

Date: April, 2016

I. INTRODUCTION

REVIEW OF THE PETITION TO THE SENATE OF THE REPUBLIC OF KENYA IN THE MATTER OF THE GOVERNOR, WAJIR COUNTY

Brief on the Wajir Petition

1. The Constitution under Articles 37 and 119 grants every Kenyan a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. The Petition to Parliament (procedure) Act No. 22 of 2012 makes provision for the procedure for the exercise of the right pursuant to those Articles. The Act also defines the format of petitions to be addressed to the Senate or National Assembly.
2. The Wajir anti-corruption and justice forum lobby group has presented the petition. The group according to the petition is made up of citizens of Kenya who are natives, residents and registered voters within Wajir County of the Republic of Kenya. All the six (6) petitioners on behalf of the lobby group have signed the petition.
3. According to the petition, Wajir anti-corruption and justice forum lobby group is an informal gathering of several natives and local residents of Wajir County. The group is brought together by a common goal of ensuring that acts of corruption, human rights violations and abuse of public resources are highlighted to the relevant national constitutional and legal bodies.
4. In line with Section 3(f) of the Petition to Parliament (procedure) Act No. 22 of 2012, the petition state that efforts have been made to have the matter addressed by the Ethics and Anti-Corruption Commission (EACC) through a petition/complaint dated 29th July 2014 and presented to EACC on 15th August 2014.
5. The petitioners wrote to the EACC again with further evidence of theft of public resources by the Governor vide a letter dated 13th November

2013. According to the petitioners, EACC had not taken any action on their complaint as at the date of the petition.

II. HIGHLIGHTS ON THE ISSUES PETITIONED

The Petitioners allege that-

- (1) The Governor and the County government of Wajir misappropriated and misapplied public finances and resources amounting to slightly over Kenya Shillings One Billion (Kshs. 1,000,000,000/=) in the 2013/2014 financial year;

The misappropriation was done through –

- (a) theft and pilferage of public resources for a period of three months upon assuming office in 2014;
 - (b) single sourcing of contracts for the supply of goods and services to the county government and awarding of contracts to entities closely associated with the Governor and officers of Wajir County Government, their relatives and to members of the governor's clan;
 - (c) violation of the provisions of the Constitution, the County Public Finance Management Transition Act, No. 8 of 2008 and the Public Procurement and Disposal Act, Cap 412C of the Laws of Kenya;
 - (d) discrimination in the allocation of public resources and job opportunities in favour of areas in which members of the Governor's clan reside contrary to the provisions of Article 27 of the Constitution on equality and freedom from discrimination;
 - (e) failure to adhere to the Salaries and Remuneration Commission guidelines on salaries and allowances of public officers thus causing pilferage of public finances at the County Government; and
- (2) That this situation had been made possible by weak oversight by the County Assembly of Wajir over the County Executive.

III. PRAYERS OF THE PETITIONERS

The petitioners' prayer was that the Senate of the Republic of Kenya intervenes and: -

- (1) recommends to the President that a Commission of Inquiry be formed to investigate the allegations against the County Government of Wajir pursuant to Article 192 of the Constitution, with a view to suspending the County Government;
- (2) reviews the report of the Auditor General on the accounts of Wajir County Government for the year 2013/2014 and recommends appropriate action to be taken on the recommendations contained in that report;
- (3) resolves that no further development funds be released to the Wajir County Government until the audit queries raised under the said report and in the petition are addressed;
- (4) orders a comprehensive human resource audit to be undertaken of the entire workforce of the county government including the remuneration and allowances paid to the officers employed by the County Government.

IV. SUBMISSION FROM PARTIES

In establishing facts, the committee invited and met with the Petitioners and the Governor Wajir County.

Submission by the petitioners

The petitioners appeared before the committee on 2nd July, 2015 to make their presentation with regard to the contents of the petition before the committee.

The petitioners requested the Finance committee of the Senate to look into the prayers of the petition and informed the Committee that;

The Petitioner in their submission to the Committee further allege that the County Government of Wajir –

- (1) made irregular payments for goods and services; the irregular payments was done through –
 - (a) fabricated motor vehicle maintenance services;
 - (b) falsified motor vehicle insurance services;
 - (c) unjustified payments for hire of transport services;
 - (d) irregular payments of salary arrears to former Councillors in the defunct Wajir County Council;
 - (e) irregular payments for unjustified consultancy services; and
 - (f) irregular payments for motor vehicle maintenance services.
- (2) Engaged in in human resource management malpractices. The human resources malpractices was done through –
 - (a) employment of various cadre staff without competitive recruitment;
 - (b) irregular promotions contrary to the relevant laws;
 - (c) employment of unqualified staff; and

- (d) disparities in salaries and allowances of public officers employed by the Wajir County Government contrary to the Salaries and Remuneration Commission guidelines.

The Petitioners in their submissions to the Committee prayed that the the County Government of Wajir provides-

- (1) the Wajir County Development Plan for the year 2013/2014 and 2014/2015;
- (2) the Wajir County Integrated Development Plan;
- (3) the Wajir County Financial Strategic Plan for the year 2013/2014 and 2014/2015;
- (4) copies of the Budget Statements (Appropriation Bills) as passed by the Wajir County Assembly and assented to by the Governor for the year 2013/2014 and 2014/2015;
- (5) the list of suppliers awarded contracts for provision of goods and services in the County, and documentation for the entire tender process for the year 2013/2014 and 2014/2015;
- (6) reports of the County Efficient Monitoring Unit for the year 2013/2014 and 2014/2015;
- (7) the list of projects undertaken by the County Government of Wajir for the year 2013/2014 and 2014/2015 giving the location of the projects in terms of the sub-county where it was undertaken and the vote head for all the expenditures for the year 2013/2014 and 2014/2015;
- (8) a ledger for all the equipment and stationary acquired by the County Government for the year 2013/2014 and 2014/2015;
- (9) evidence of public participation in the budget making process for the year 2013/2014 and 2014/2015;
- (10) the staff pay roll ledger for Wajir County Government;

(11) local revenue collection reports for the county for the year 2013/2014 and 2014/2015; and

(12) the emergency fund ledger.

The Petitioners in their presentation to the Committee further sought for the following reliefs -

- (1) a forensic audit of the financial affairs of Wajir County for the financial year 2013/2014 and 2014/2015;
- (2) a forensic audit on the employment records of Wajir County Government since the inception of the county government;
- (3) a forensic audit of the procurement process in Wajir County for the year 2013/2014 and 2014/2015;
- (4) submission of the audited accounts of Wajir County Government for the year 2013/2014 and 2014/2015;
- (5) a recommendation by the Senate that the County Government of Wajir should only access 50% of national funding pending conclusion of the full audit; and
- (6) a recommendation of the prosecution of the culpable officers upon conclusion of the investigation and the dissolution of the County Government of Wajir.

Submission by Hon. Ahmed Abdullahi - Governor Wajir County

The Governor appeared before the committee on 2nd September, 2015 to make his presentation and on behalf of the County Government of Wajir with regard to the contents of the petition before the committee.

- (i) He submitted a written response to the allegations in the petition. He further advised that the Auditor General had audited the funds of Wajir in the financial year 2013/14 and from his report there is no misappropriation of funds in Wajir County.

- (ii) In response to the allegation that there was theft in the first 3 months, he countered that this was the transition period where Kshs. 361 million was used in setting up systems as well as paying salaries, for both the assembly and the executive. Expenditure for this period was duly audited.
- (iii) As regards procurement, he stated that the county has a county tender committee, which ensures that relevant public procurement regulations have been adhered to. Further, the Public Procurement Oversight Authority (PPOA) reviewed its processes and in its report asserted that Wajir had a working procurement system.
- (iv) With respect to employment, the Governor stated that he had appointed all his county executive committee members, his chief officers as well as the county public service board on merit as well as in adherence to regional county balance.
- (v) As regards development, the county relies on the county integrated development plan (CIDP) 2013-2017 which lists all its projects and from the evidence submitted, the county has done well on that. They are in the process of submitting the CiEP plans for 2013-2014.
- (vi) For the fiscal year 2013/14, the county spent Kshs. 1.96 billion, 32% of which was spent on recurrent expenditure while the remaining 58% on development. This data is available in the Controller of Budget's Report. Based on the county's numbers for this year, these figures currently stand at 39% recurrent and 61% development based although the Auditor General's report on the same is not yet out. From the county's lists of projects, they have doubled their water, improved their road system and increased dispensaries in the county.
- (vii) The County Government has employed highly qualified people to work in the county with the County Public Service Board taking into account the Salaries and Remuneration Regulations in their work. The county endeavours to pay salaries on time every month and hasn't had any quarrels with their workers.

- (viii) As regards the oversight role of the County Assembly, it has carried out its mandate.
- (ix) The Governor further contended that the petition favours the petitioner as opposed to the person being petitioned because once a petition is brought before the Committee, one is forced to respond. He hoped that the Senate will conduct its due diligence on the character of the petitioners, are they residents of Wajir County? Are they on the ground and privy to all these issues that they have raised?
- (x) In response to Senator Nyong'o's query on response 1B on their written response to the allegations on whether the amount indicated has been accountably used as per the Auditor General's report, the Governor responded that the money was appropriated by the county government in the interim period and there is an Auditor General's Report on the same. Most of this money was used to set up the Hansard department as well as digging boreholes for the county. Sen. Kagwe further added that while the Auditor General and the Transition Authority contend that most counties did not account for that money in the interim period, most of the money was in fact spent prior to the setting up of structures for such projects as renovating offices etc.
- (xi) In response to Senator Nyong'o's query as regards the Kshs. 341 billion, the CEC Finance stated that the Auditor General's report on the same is available. The county has not submitted that report, however they have the 2014 report and another report which they will endeavour to submit later.
- (xii) In response to Senator Nyong'o's query on why the Governor had not submitted the alleged PPOA report, the Governor stated that the county out of its own confidence in its systems invited PPOA to look into their matters. He added that based on a review that was done by the Commission on Revenue Allocation (CRA) on the use of IFMIS in the county; Wajir County was rated as one of those in the green with

over 90% use of ICT. This, for a county that did not inherit a computer or authority is exemplary.

- (xiii) In response to Senator Kagwe's query regarding the expenditure made in rents being way above market value which brings the possibility of collusion/corruption and further the allegation that the Agriculture Ministry was moved from its original building to some four rooms belonging to the former clerk of Wajir county for Kshs. 600,000 per month, the Governor stated that the county rents on a need to basis. As it did not inherit a lot of infrastructure, office space had to be rented of course after due valuation was done in line with government policy and procedure. Further, the offices where the Agriculture Ministry was headquartered is being used to construct a ladies hostel facility for the Medical Training College as it is situated close to the hospital. As there aren't many decent buildings in Wajir County they are forced to rent from NGOs whose prices are steep. The CEC Finance further clarified that the Kshs. 600,000 as indicated in petition was for space contracted in June 2015 to be used for rents of 22 offices for the Ministry of Agriculture, Education, Livestock and Fisheries, a main conference hall plus an open parking space. The county at all times however gets value for money. He added that the county executive endeavours to move to their own headquarters by February of 2016 while the assembly will move by June 2016.
- (xiv) In response to the query from Sen. Kagwe as regards 30 boreholes that were dug but whose whereabouts are unknown or if known, are faulty and further that the job was sourced to persons related to the Governor, the Governor stated that the county inherited 90 boreholes and the figure currently stands at 176. He added that the county has brought down the cost of drilling boreholes from Kshs. 10 million to Kshs. 4 million, making it the cheapest in the region. He further stated that he does not ask for the clans or subtribes of his contractors. The procurement process goes through a tendering

process as required by law and decisions are made in the best interests of the county. Sometimes, they fail to find water or they are of low yield and dry up after a while, he contended however most are successful, finishing off by inviting the Committee to see this success for themselves. He further invited the Senate to do a comparative analysis of the cost of projects in Wajir be it boreholes or road construction vis a vis the surrounding counties in the region. For example, the county is currently constructing a 28 km stretch of road at Kshs. 1.3 billion shillings which is 40% cheaper. He allayed fears that they might be of poor quality by stating that the county has hired a consultant to ensure that the county gets good value for their money. The Governor resolved to give a report on the number of boreholes dug by the county, their whereabouts, their costs and their working conditions.

- (xv) In response to Sen. Nyong'o's query on irregular hiring of Motor Vehicles, the Governor lamented that he did not have the details of those allegations. He nevertheless contended that it cannot be possible that the county hired 200 Motor Vehicles, on average they usually hire 5-7 vehicles on a need to basis from pre-qualified transport service companies and the market rates for such hiring is well known being Kshs. 5000-10000 for a land cruiser. He resolved to furnish evidence of this information to the Committee.
- (xvi) In response to Sen. Nyon'go's query on whether the county conforms to Article 27 of the Constitution, the Governor stated that the politics of the county, even elective politics, is very inclusive with the Senator, Governor and Deputy Governor being from different clans. From the onset, Wajir County has not been affected by exclusion predominant in pastoralist communities. He finished by stating that he has provided a matrix of all employees as part of his submitted evidence which serves as proof of this equity in his county.
- (xvii) In response to Sen. Nyong'o's invitation to state anything else he wishes the Committee to know as regards the petition, the Governor

lamented on the injustice of having to answer to a petition because whether one is cleared of the allegations or not, the damage to one's reputation is usually manifest. He invited the committee to look into the character of the petitioners behind these allegations. He was however cautioned to refrain from getting personal on the character and conduct of these petitioners.

V. KEY ISSUES TO BE ADDRESSED IN THE PETITION

The Petitioners allege that-

- i. The Governor and the County government of Wajir misappropriated and misapplied public finances and resources amounting to slightly over One Billion Kenya Shillings (Kshs. 1,000,000,000/=) in the 2013/2014 financial year;

The misappropriation was done through –

- (a) theft and pilferage of public resources for a period of three months upon assuming office in 2013;**

Committees Observation

The Committee observed that during the first year of transition almost all counties experienced challenges in the adherence to Public Finance Management principles due to capacity constraints among their staff.

Committees Recommendation

The Committee notes that the issues raised in the petition are contained in the Auditor Generals report of FY 2013/2014 that is currently before the Senate Committee on County Public Accounts and Investments. The Committee's report with recommended interventions will be tabled in the Senate.

- (b) Single sourcing of contracts for the supply of goods and services to the county government and awarding of contracts to entities closely associated with the Governor and officers of Wajir County Government, their relatives and to members of the governor's clan;**

Committees Observation

The Committee observed that the county has a county tender committee, which is charged with ensuring that relevant public procurement regulations have been adhered to. The Public Procurement Oversight Authority (PPOA) had also reviewed the county's processes and the County and PPOA had signed

and action plan for implementation of agreed benchmarks to improve procurement systems so as to ensure compliance with the requirements of the Public Procurement and Disposal Act and its regulations **(See Annex 4)**.

The Committee noted that part of the evidence submitted by the Governor indicated several quotations and payment for transport services. The Committee observed that the transport services were not competitively advertised to allow for procurement from a list of prequalified suppliers. The committee further observed that there was no adequate justification provided for the hire of the cars, raising concerns about value for money in the procurements.

The Committee also observed that the petitioners had brought evidence showing that the Governor was allegedly awarding contracts to Members of the County Assembly. The petitioners alleged that the shareholders of Sakafa Construction Company Ltd. and Hamos Enterprises Ltd were members of the County Assembly **(See Annex 9)**. The Committee finds that the evidence was not rebutted.

Committees Recommendation

The Committee finds that there is substance to the allegation by the petitioner and the Director of Public Prosecutions should investigate and take necessary action against the county government for abuse of office in the award of contracts and tenders.

(c) Falsified motor vehicle insurance services:

The County Government of Wajir single sourced Takaful Motor Vehicle Insurance and awarded a tender to Takaful Insurance Africa to provide insurance services for county vehicles. Takaful Motors Insurance was paid approximately Kshs. 5,141,383 for motor vehicle insurance services without proper and/or adequate documentation. The insurance services were procured

through single sourcing and no valuation was provided for the motor vehicles, which would be used to determine premiums.

Committees Observation

The Committee observed that evidence was submitted of payments of premiums made to Takaful Insurance of Africa.

The Committee further noted from the evidence submitted that the county government alleged that Takaful Insurance was not the only insurance underwriter as the county had initially contracted Real Insurance. However, in their submissions, the county government had alleged that the services of Real Insurance had cost the county more money, as they had no physical presence in the county. The Committee further observed no advertisement was submitted for procurement of provision of insurance services for the county. There was also no evidence provided of the tender process used to contract the services of Takaful Insurance Africa and the technical criteria put up for award of the contract.

The Committee finds that there appeared to be undue advantage awarded to Takaful Insurance Africa and further investigation needed to be done on the procurement process employed.

Committees Recommendation

The Committee finds that there is substance to the allegation by the petitioner and the DPP should immediately commence investigations into the procurement process used by the county in contracting the services of Takaful Insurance Africa with a view to taking necessary legal action against the county government for contravening the Public Procurement and Disposal Act.

(d) Violation of the provisions of the Constitution, the County Public Finance Management Transition Act, No. 8 of 2008 and the Public Procurement and Disposal Act, Cap 412C of the Laws of Kenya;

Committees Observation

The Committee observed that as per the Auditor General's report on the financial statements of the County for the year ended 30th June 2014, various concerns were noted relating to adherence to Public Finance Management and Public Procurement requirements **(See Annex 3)**. The Auditor General in his report provided a Qualified Opinion in respect to a number of matters listed in the report, but noted that the financial statements presented fairly, in all material aspects, the financial position of the County Government of Wajir as at June 30th 2014 and of its financial performance and cash flows for the year then ended, in accordance with the Public Finance Management Act, 2012 and County Government Act, 2012.

The evidence submitted by the county government of his submissions provided an action plan signed in August of 2014 for implementation of agreed benchmarks between the count and PPOA to improve procurement systems so as to ensure compliance with the requirements of the Public Procurement and Disposal Act and its regulations. This highlights that the County was aware of existing challenges in its procurement system and appeared to be making efforts to address it.

Committees Recommendation

The Committee notes that the issues raised in the petition are contained in the Auditor General's report of FY 2013/2014 that is currently before the Senate Committee on County Public Accounts and Investments. The Committee's report with recommended interventions will be tabled in the Senate.

- (e) Discrimination in the allocation of public resources in favour of areas in which members of the Governor's clan reside contrary to the provisions of Article 27 of the Constitution on equality and freedom from discrimination;**

Committees Observation

The Committee observed that the County had adopted a County Government Integrated Development Plan (CIDP), which had been prepared following consultations with various stakeholders as required by law **(See Annex 5)**. The CIDP submitted to the Committee shows proposed implementation of projects and programmes in all sub counties that were agreed upon consultatively.

The Committee further observed that the County Assembly of Wajir passed the County Fiscal Strategy Paper for 2014 and 2015, copies of which were submitted to the Committee **(Seen Annex 6 and 7)**. The County had also implemented its Budget, which was approved by the Controller of Budget.

Committees Recommendation

The Committee recommends that the County Assembly of Wajir should take a more proactive role in ensuring effective public participation in the development of key budget documents so as to avoid skewed allocation of resources through ensuring establishment of the County Budget and Economic Forum pursuant to section 137 of the PFM Act, 2012.

- (f) Discrimination in the allocation of job opportunities in favour of areas in which members of the Governor's clan reside contrary to the provisions of Article 27 of the Constitution on equality and freedom from discrimination;**

Committees Observation

The Committee observed that the submitted employees payroll for the period up to July 2015, largely reflected a consideration of regional balance **(See Annex 8)**, however as the ethnic communities were not indicated for several officers it was not possible to determine the actual allocation per clan relative to their population proportion. The Committee further observed that the evidence of submitted advertisements for recruitment of chief officers and various other positions in the county were not copies of the actual advertisements and thus it was not possible to ascertain if newspaper advertisements were actually published. The interview scores of each candidate were also not provided.

Committees Recommendation

The Committee recommends that the National Cohesion and Integration Commission pursuant to section 65 of the County Government Act, should undertake an evaluation of the ethnic diversity of the staff at all levels of the Wajir county public service and table its report in the Senate and County Assembly of Wajir within three months.

(g) Failure to adhere to the Salaries and Remuneration Commission (SRC) guidelines on salaries and allowances of public officers thus causing pilferage of public finances at the County Government;

Committees Observation

The Committee observed that there was no evidence submitted by the county government on the remuneration of public officers employed by the County Government. This made it difficult for the Committee to assess adherence by the county to SRC guidelines. The Committee further observed that the petitioner had presented a list of alleged irregular payments to casual workers and former councillors, but the same were not supported by evidence of actual payment vouchers. The Committee however noted that the Auditor General's report had highlighted significant discrepancies in payment of allowance and salaries for some county staff **(See Annex 2)**. The Committee also observed that the county government did not submit the muster roll for the period in question.

Committees Recommendation

The Committee notes that the issues raised in the petition pertaining irregular payment of salaries and allowances are contained in the Auditor General's report of FY 2013/2014 that is currently before the Senate Committee on County Public Accounts and Investments. The Committee's report with recommended interventions will be tabled in the Senate.

(h) That this situation had been made possible by weak oversight by the County Assembly of Wajir over the County Executive.

Committees Observation

The Committee observed that the concerns raised by the petitioners might be a reflection of a weak oversight framework in the county, which is primarily the responsibility of the County Assembly. The County Assembly, the

Committee observed, needed to take a more proactive approach in ensuring citizens were aware of the budget making process and were able to critically engage with it. The qualified opinion on some matters by the Auditor General should aggressively be taken up by the County Assembly to ensure that the County adheres to all applicable laws and systems established to ensure any lapses are captured early and addressed.

Committees Recommendation

The Committee finds that the primary oversight role lies with the county assembly and they should take up their mandate as per Article 185 of the Constitution. The Committee further recommends that the Senate fast tracks the enactment of the Petition to County Assemblies Bill that will provide for the residents of the counties to engage their county assemblies proactively in ensuring they execute their oversight mandate effectively.

VI. COMMITTEE RESPONSE TO PRAYERS OF THE PETIONER

- (i) The petition that the Senate recommends to His Excellency the President to form a commission of inquiry to investigate the allegations against the Governor and the County Government is inconsistent with the procedures to be followed in suspending a county government in exceptional circumstances as outlined in Article 192 of the Constitution and Section 123 of the County Government Act No. 17 of 2012. Such petition should be addressed to the President and should be supported by the signatures of not less than ten percent of the registered voters in the county.
- (ii) The petitioner's prayer that Senate directs the Auditor-General to provide the Wajir County Audit Report of 2013/2014 financial has been overtaken by events since the report has already been provided and is available to the public at the website of Kenya National Audit Office (KENAO). The audit report and the recommendations therein are now subject of examination by the Sessional Committee on County Public Accounts and Investment in line with its mandate as per Senate Standing Order No. 212(3).
- (iii) The prayer that Senate resolves to order the Controller of Budget and the National Treasury not to release any further development funds to Wajir County Government until the audit is dispensed with has also been overtaken by events since the audit has been done and report made public and submitted to the Senate.
- (iv) The prayer that the Senate be pleased to order for a conclusive human resource audit of the entire workforce of Wajir County can be considered by the Senate Standing Committee on Labour and Social welfare in line with its mandate as per the Second Schedule of the Senate Standing Orders.

Committee recommendations

The committee having considered the matters in the petition recommends as follows:

That –

- (i) The Sessional Committee on County Public Accounts and Investments should examine the Wajir County Government audit report of financial year 2013/2014 and the recommendations therein. The Committee's report to the Senate should recommend actions to be taken on irregularities found.
- (ii) On the prayer that the Senate recommends to His Excellency the President to form a commission of inquiry to investigate the allegations against the Governor and the County Government, the petitioner should comply with Article 192 of the Constitution and Section 123 of the County Government Act.
- (iii) The Committee finds that there is substance to the allegation by the petitioner and the Director of Public Prosecutions should investigate and take necessary action against the county government for abuse of office in the award of contracts and tenders.
- (iv) The issues advanced by the petition touching on the violations of procurement laws through single sourcing of various procurement activities and irregular schemes of awarding contracts should be investigated by the Ethics and Anti Corruption Commission and Director of Public Prosecution with a view to taking appropriate legal action.
- (v) The Committee recommends that DPP immediately commence investigations into the procurement process used by the county in contracting the services of Takaful Insurance Africa with a view to taking legal action.
- (vi) The Committee recommends that the County Assembly of Wajir should take a more proactive role in ensuring effective public

participation in the development of key budget documents so as to avoid skewed allocation of resources. The County Assembly should further ensure the County Budget and Economic Forum operates pursuant to section 137 of the PFM Act, 2012.

- (vii) The Committee recommends that the National Cohesion and Integration Commission pursuant to section 65 of the County Government Act, should undertake an evaluation of the ethnic diversity of the staff at all levels of the Wajir county public service and table its report in the Senate and County Assembly of Wajir within three months.
- (viii) The Committee finds that the primary oversight role lies with the county assembly and they should take up their mandate as per Article 185 of the Constitution. The Committee further recommends that the Senate fast tracks the enactment of the Petition to County Assemblies Bill that will provide for the residents of the counties to engage their county assemblies proactively in ensuring they execute their oversight mandate effectively.
- (ix) The Committee recommends that the County Assembly Committees should exercise keen oversight in the implementation of the Budget to ensure the County Executive adheres to agreed development priorities, as per the County Integrated Development Plan as this will ensure regional balance in implementation of development projects.
- (x) The Committee finds as per the auditor generals report that there were irregular payments of salaries and allowances to some staff of the county government. The committee recommends that all persons found to have been irregularly paid should be surcharged.

ANNEXES

- i. Annex 1:** Submission of Response to the Petition Against the County Government of Wajir.
- ii. Annex 2:** Auditor General Report on the Financial Operations of Wajir County Executive for the Period 1st July 2013 to 30th June 2014
- iii. Annex 3:** Auditor General report on the Financial Statements of the County Government of Wajir for the Year Ended 30th June 2014
- iv. Annex 4:** Action Plan for Implementation of Agreed Benchmarks Between County Government of Wajir and PPOA
- v. Annex 5:** First County Integrated Development Plan
- vi. Annex 6:** Wajir County Fiscal Strategy Paper, February 2014
- vii. Annex 7:** Wajir County Fiscal Strategy Paper, February 2015
- viii. Annex 8:** Wajir County CPSB Employed Employees in the Payroll up to July 2015
- ix. Annex 9:** Petitioners' Presentations on Petition Against Governor Wajir County
- x. Annex 10:** Petition Against Governor Wajir County
- xi. Minutes**