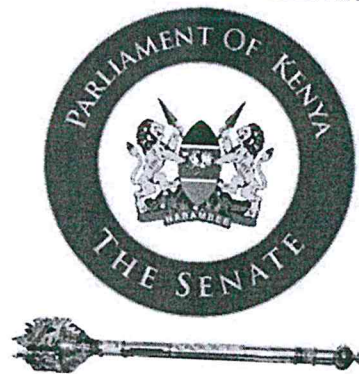


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REPUBLIC OF KENYA



THE SENATE

THIRTEENTH PARLIAMENT | SECOND SESSION

② Hon. Speaker
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19/7/23

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19/4/23

COMMITTEE PAPER NO 25

STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

REPORT ON A STATEMENT SOUGHT BY SEN. MWENDA GATAYA MO FIRE,
MP, ON THE RELOCATION OF NATIONAL GOVERNMENT ADMINISTRATION
SERVICES FROM CHUKA TOWN TO KATHWANA COUNTY
HEADQUARTERS, THARAKA NITHI COUNTY

Clerk's Chambers,
The Senate,
First Floor, Parliament Buildings,
NAIROBI.

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APRIL, 2023

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS	4
PRELIMINARIES	5
Establishment and mandate of the Committee.....	5
Membership of the Committee.....	5
CHAIRPERSON’S FOREWORD.....	7
CHAPTER ONE	14
1.0 INTRODUCTION	15
1.1 Background	15
CHAPTER TWO	17
2.0 CONDUCT OF ENGAGEMENT WITH THE STAKEHOLDERS.....	17
2.1 Cabinet Secretary for Ministry of Interior and Co-ordination of National Government.....	17
2.2 The County Assembly of Tharaka Nithi	17
2.3 The Governor of Tharaka Nithi County	20
2.4 The County Commissioner of Tharaka Nithi County.....	20
2.5 Kathwana Market Committee	20
2.6 Ethics and Anti – Corruption Commission (EACC).....	22
2.7 Controller Of Budget (COB).....	22
CHAPTER THREE	24
3.0 ANALYSIS OF THE SUBMISSIONS	24
3.1 Lack of enough Infrastructure in Kathwana.....	24
3.2 Structural Defects and Pending Construction Work.	24
3.3 Residential Quarters to accommodate Civil Servants.....	25
3.4 Grant by National Government to build County Headquarters.....	25
3.5 Allocation for Construction of the County Assembly.....	25
3.6 Ward Development Fund.	31

3.7 Mortgage and Car loans for Members of the County Assembly.....	32
3.8 Current status of reported allegations by EACC.....	26
CHAPTER FOUR.....	33
4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS	33

ABBREVIATIONS AND ACRONYMS

ACECA	Anti-Corruption and Economic Crimes Act
CASB	County Assembly Service Board
COB	Controller of Budget
EACC	Ethics and Anti – Corruption Commission
PPAD	Public Procurement Asset Disposal Act
RFP	Request for Proposal

PREFACE

Mandate of the Committee.

The Senate Standing Committee on Devolution and Intergovernmental Relations is established under the Standing Order 228 (3) and the Fourth Schedule of the Senate Standing Orders. The Committee is mandated to “*consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.*”

Membership of the Committee

1. Sen. Sheikh Mohamed Abass, MP	-	Chairperson
2. Sen. Catherine Muyeka Mumma, MP	-	Vice Chairperson
3. Sen. (Dr) Oburu Oginga, MGH, MP.	-	Member
4. Sen. Richard Momoima Onyonka, EBS, MP	-	Member
5. Sen. Peris Pesi Tobiko, CBS, MP	-	Member
6. Sen. Mohamed Said Chute, MP	-	Member
7. Sen. George Mungai Mbugua, MP	-	Member
8. Sen. Hezena M. Lemaletian, MP	-	Member
9. Sen. David Wafula Wakoli, MP	-	Member

ACKNOWLEDGMENTS

The Committee acknowledges all stakeholders who appeared before the committee for their cooperation and contributions that has made preparation of this report possible.

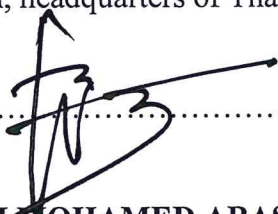
Furthermore, the Committee appreciates the Offices of the Speaker and the Clerk of the Senate for the continued and steadfast support extended to the Committee in the fulfillment of its mandate.

I also thank Members of the Standing Committee on Devolution and Intergovernmental Relations for their tireless commitment in the consideration of the Statement.

CHAIRPERSON'S FOREWORD

Mr. Speaker, It is now my pleasant duty, pursuant to standing order 53 (3) (b) of the Senate Standing Orders, to present the Report of the Standing Committee on Devolution and Intergovernmental Relations, on the Statement sought by Sen. Mwenda Gataya Mo Fire, MP regarding the relocation of Government/Administration services from Chuka town to Kathwana town, headquarters of Tharaka Nithi county.

Signed



Date.....

18/04/23

SEN. SHEIKH MOHAMED ABASS, MP

**CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS**

EXECUTIVE SUMMARY

This report highlights the consideration of a Statement by Senator for Tharaka Nithi, Sen. Mwenda Gataya Mo Fire MP.

Chapter one of the report documents the background to the Statement. At a sitting of the Senate held on Wednesday 19th October, 2022, the Senator for Tharaka Nithi, Sen. Mwenda Gataya Mo Fire MP, rose pursuant to Standing Order 53 (1), to seek a statement from the Standing Committee on Devolution and Intergovernmental Relations. The statement was on the relocation of Government/Administration services from Chuka town to Kathwana town, headquarters of Tharaka Nithi county.

In the Statement, the Senator sought that the Committee:

- i. Investigates the reasons why there are no National government officers in Kathwana, which is the gazetted County headquarters, despite public participation and consensus. This defeats the spirit of devolution as investors, business people and the public are unable to receive services.
- ii. Facilitates the operationalization of Kathwana headquarters and ensure public officers move to the designated County headquarters from Chuka Town.
- iii. Recommends for the towns of Chogoria, Chuka and Marimanti to be designated as Commercial/industrial towns.

During deliberations on the statement on 27th October 2022, the Senator for Tharaka Nithi, Sen. Mwenda Gataya Mo Fire MP who sought the Statement, explained that despite having Kathwana as the gazetted County headquarters, the National Government Administrative Services are yet to relocate to the town from Chuka town. He also stated that most residents find it expensive to access the National Government offices at Chuka town.

Chapter two of the report highlights the stakeholder engagement carried by the Committee in its consideration of the Statement.

The Committee resolved to write to the Ministry of Interior and Co-ordination of National Government to seek information on issues raised in the Statement. The Committee also resolved to undertake a County visit to Tharaka Nithi County for further investigations on the matter.

The County visit was held on 21st January 2023 where the Committee held meetings with several Stakeholders in the effort to shed light on the issues raised. During the visit to Tharaka Nithi County, the Committee was made aware of that in 2014 the County Assembly of Tharaka Nithi had initiated the process of constructing an alter modern County Assembly in Kathwana. The project had failed to progress as anticipated due to challenges caused by lack of release of funds from the Controller of Budget (COB) following investigations by the Ethics and Anti-Corruption Commission(EACC) into the project over alleged misappropriation of funds.

The County Assembly alleged that a caveat was placed by the EACC at the COB stopping further release of funds for the project until the investigations were complete. The EACC were yet to complete the investigations by the time the Committee visited Tharaka Nithi County, in the meantime the project remained stalled.

In considering the Statement, the Committee undertook to also consider the reasons why the County Assembly project remained stalled years later.

Among the stakeholders who provided the Committee with their submissions included:

- i. Cabinet Secretary for Ministry of Interior and Co-ordination of National Government
- ii. The County Assembly of Tharaka Nithi: The Speaker and The County Public Service Board
- iii. The Governor of Tharaka Nithi County
- iv. The County Commissioner of Tharaka Nithi County
- v. Kathwana Market Committee
- vi. Ethics and Anti – Corruption Commission (EACC)
- vii. Controller Of Budget(COB)

Chapter three of the report presents an analysis of the submissions. While Chapter four presents the **observations and recommendations** as follows:

Observations

Following stakeholder engagements and an analysis of the submission from the various stakeholders the Committee made the following observations:

County Headquarters

1) Construction Of County Headquarters

During the Financial Years 2017/18, 2018/19 and 2019/20 conditional grants were allocated to **five counties** that is ‘**Category AA**’ that did not inherit adequate offices from the defunct local

authorities. The grant was intended to supplement financing for construction of county headquarters of **Lamu, Tharaka Nithi, Tana River, Nyandarua and Isiolo.**

The budget reports indicate that as at June 2020, the cumulative expenditure for the Construction of the Tharaka Nithi County Headquarters was Kshs.155Million and the project was 66% complete, in June 2021, the expenditure was 180Million and project was 77% complete. In the final report as at June 2022 the expenditure was at Kshs. 217 Million and the project was 82% complete.

2) Lack of adequate infrastructure in Kathwana

The lack of adequate infrastructure to accommodate all National government departments appeared as a major issue hindering the operationalization of Kathwana headquarters. The available offices had been allocated to six departments including the County Commissioner and the Deputy County Commissioner. Twelve other departments have no space among them the Kenya Police, the Directorate of Criminal Investigation, Land Registry and Land Control Board.

Civil servants posted to Kathwana would also face the challenge of finding accommodation since the town has no residential quarters including those of the County Commissioner and Deputy Commissioner. However, land for construction of the County Commissioner's residence had been identified and is awaiting subdivision and change of registration to accommodate new user.

Additionally, Kathwana lacks the necessary amenities for a functional County Headquarters among them good all weather roads, electricity, reliable water supply, referral hospital, Law courts, upgraded Post office with a Huduma Centre among others.

3) Structural Defects and Pending Construction Work

Despite the County Headquarter building being close to completion, there were clear signs of structural defects evidenced by large cracks in the building. The unfinished works at the headquarters include landscaping, erection of a perimeter wall, vehicle parking, water and electricity connection and installation of a transformer.

Construction of the County Assembly Chambers

4) Caveat

The Controller of Budget(COB) confirmed through evidence of correspondence that indeed her office was copied in a letter in the FY 2017/2018 in which the EACC wrote to the County

Government of Tharaka Nithi advising that the release of funds could only be considered once investigations were complete.

Subsequently, the County Assembly Clerk through a letter dated 14th July 2020 addressed to the EACC sought clarity on the position of the matter. EACC never provided any official response to the same.

It is important to note that when the EACC appeared before the Committee they stated that they did not at all stop the construction of the Tharaka Nithi County Assembly Chambers.

It was further stated that EACC had no formal obligation of advising the County Assembly on whether to continue with the construction or not but they would only urge them to adhere to the law.

5) EACC Investigation

The investigation by EACC into the resulted into two inquiries

- a. Inquiry into irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block at a tender sum of **Kshs. 62,764,622.00/=**; and
- b. Inquiry into the procurement for the construction of the County Assembly of Tharaka Nithi block at a tender sum of **Kshs. 369,642,688.00/=**

The case for the construction of the Tharaka Nithi County Assembly was first been reported to EACC in 2016. In 2018 the Commission established basis to undertake further inquiry into allegation on irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block. The Committee observed that there had been undue delay in concluding the cases despite the Commission establishing criminal culpability of several persons.

In the seven(7) years the Commission has been carrying out its investigation, it has placed a caveat at the COB stopping the disbursement of funds to the County for the project. This has consequently clawed back smooth service delivery to the people of Tharaka Nithi County.

6) Scaling down the project

The size of the proposed structure was significantly larger than what the assembly's Twenty Six (26) members actually required. During his visit to Tharaka Nithi County on 12th March

2023, His Excellency the President recommended scaling down the cost of the project to Kshs Two Hundred Million (Ksh.200,000,000) down from Kshs. 369,642,688.00/=.

Designation of Chogoria, Chuka and Marimati into Towns

- 7) The Statement sought that the Committee recommends that the towns of Chogoria, Chuka and Marimanti to be designated as Commercial/industrial towns. However, the committee observed that this is outside the mandate of the Committee as the process of granting town status is provided for in the Urban Areas and Cities Act, 2011.

Recommendations

County Headquarters

The Committee therefore recommends as follows with regard to the County Headquarters:

- 1) A Multi-agency technical committee shall be appointed/constituted with the Membership drawn from of the Office of the Deputy President- State Department of Devolution, the Ministry of interior and Coordination of National Government, National Treasury, the Ministry of Public Works, the Office of the Attorney General, the County Executive Department in charge of Public Works and Housing, Office of the Governor, the County Assembly, the Ethics and Anti-Corruption Commission, the Controller of Budget, and any other relevant entity.

The Terms of Reference of the Committee shall be to:

- i. Advise the National and County Government on possible additional allocation of conditional financial grants for the completion of the ongoing project.
- ii. Identify and initiate the process of acquiring land for the construction of additional offices and living quarters required for the operationalization of a County Headquarters.
- iii. Conduct an audit of the project with a view of making any structural repairs and completion of pending works before handing it over for occupation
- iv. Collaborate with other relevant state agencies to ensure amenities required for a fully functional County Headquarters are available that is; All weather roads, reliable water and power supply among others.
- v. Ensure seamless relocation of all government officers/offices required to be in Kathwana upon completion of the project. The committee where possible should

ensure government offices without space in the main office can have temporary work stations as more permanent solutions are worked out.

- vi. The committee should provide the Senate with a status report within 90 days upon adoption of this report.
- 2) The Office of the Controller of Budget and the Auditor General shall provide status reports to the Senate on the disbursement of funds and construction of County Headquarters through conditional grants within 30 days upon adoption of this report.

Construction of the County Assembly chambers

The Committee therefore recommends as follows with regard to the Construction of the County Assembly chambers:

- 3) That the County Assembly shall adopt His Excellency the President's proposal to scale down the cost of the project to Two Hundred Million (Ksh.200,000,000).
- 4) Further, the Committee adopts the recommendation made by the County Assembly in its brief to the Committee, that a multi-agency technical committee shall be appointed/constituted with the Membership drawn from of the Office of the Deputy President- State Department of Devolution, the Ministry of interior and Coordination of National Government, National Treasury, the Ministry of Public Works, the Office of the Attorney General, the County Executive Department in charge of Public Works and Housing, the County Assembly Service Board, the Ethics and Anti-Corruption Commission, the Controller of Budget, and any other relevant entity.

The Committee's Terms of reference shall be:

- i. Review the project and the contracts in totality.
- ii. The Multi-Agency Technical Committee shall also advice the National and County Government on possible allocation conditional financial grants, technical support and/or any other related issues as the committee may deem necessary.
- iii. The taskforce shall provide a progress report to the Senate within 90days.
- 5) That, upon scaling down the project cost, the Ministry of Public Works and the National Treasury in collaboration with the County Assembly allocates funds in the subsequent Budgets.
- 6) That, the EACC shall withdraw the caveat placed at the Controller of Budget to ensure that once the funds are made available in the subsequent budgets, they are released to the County. This will ensure the construction of the County Assembly continues even as EACC forwards the investigation files to the Office of Director of Public Prosecution (ODPP) to institute court proceedings.

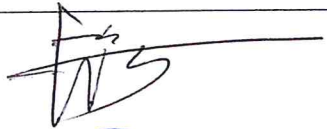
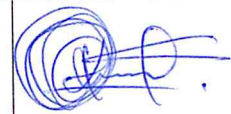
- 7) That, EACC and ODPP shall conclude on the cases related to impropriety with the construction of County Assembly chambers without further undue delays. A status report shall be provided to the Senate within 90 days upon the adoption of this report.

Designation of Chogoria, Chuka and Marimati into Towns

- 8) That the County Government shall consider the granting of town status to Chogoria, Chuka and Marimanti in line with the provisions of Section 10 (1) and (2) of the Urban Areas and Cities Act, 2011.

**ADOPTION OF THE REPORT ON THE STATEMENT SOUGHT BY SEN.
MWENDA GATAYA MO FIRE, MP, ON THE RELOCATION OF NATIONAL
GOVERNMENT ADMINISTRATION SERVICES FROM CHUKA TOWN TO
KATHWANA COUNTY HEADQUARTERS,
THARAKA NITHI COUNTY.**

We, the undersigned Members of the Standing Committee on Devolution and Intergovernmental Relations, do hereby append our signatures to adopt this Report-

Sen. Sheikh Mohamed Abass	- Chairperson	
Sen. Catherine Muyeka Mumma	-Vice-Chairperson	
Sen.(Dr.) Oburu Oginga, MGH, MP	-Member	
Sen. Richard Momoima Onyonka, EBS, MP	-Member	
Sen. Peris Pesi Tobiko, CBS, MP	-Member	
Sen. Mohamed Said Chute, MP	-Member	
Sen. George Mungai Mbugua, MP	-Member	
Sen. Hezena M. Lemaletian, MP	-Member	
Sen. David Wafula Wakoli, MP	-Member	

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background

At a sitting of the Senate held on Wednesday 19th October, 2022, the Senator for Tharaka Nithi, Sen. Mwenda Gataya Mo Fire MP, rose pursuant to Standing Order 53 (1), to seek a statement from the Standing Committee on Devolution and Intergovernmental Relations. The statement was on the relocation of Government/Administration services from Chuka town to Kathwana town, headquarters of Tharaka Nithi county.

In the Statement, the Senator sought the following information:

- i. Investigate the reasons why there are no National government officers in Kathwana, which is the gazetted County headquarters, despite public participation and consensus. This defeats the spirit of devolution as investors, business people and the public are unable to receive services.
- ii. Facilitate the operationalization of Kathwana headquarters and ensure public officers move to the designated County headquarters from Chuka Town.
- iii. Recommend for the towns of Chogoria, Chuka and Marimanti to be designated as Commercial/industrial towns.

The statement having been referred to the Committee for a response, the Committee proceeded to invite the Senator, pursuant to Standing Order 53 (3) (b), during the deliberations of the statement on 27th October, 2022. The Senator explained that despite having Kathwana as the gazetted County headquarters, the National Government Administrative Services are yet to relocate to the town from Chuka town. He also stated that most residents find it expensive to access the National Government offices at Chuka town.

Kathwana on the other hand is more accessible since it is centrally located. He requested the Committee to facilitate the actualization of the County headquarters by ensuring the government offices move to Kathwana.

The County visit was held on 21st January 2023 where the Committee held meetings with several Stakeholders in an effort to shed light on the issues raised. During the visit to Tharaka Nithi County, the Committee was made aware of that in 2014 the County Assembly of Tharaka Nithi had initiated the process of constructing an alter modern County Assembly in Kathwana.

The project had failed to progress as anticipated due to challenges caused by lack of release of funds from the Controller of Budget (COB) following investigations by the Ethics and Anti-Corruption Commission(EACC) into the project over alleged misappropriation of funds.

The County Assembly alleged that a caveat was placed by the EACC at the COB stopping further release of funds for the project until the investigations were complete. The EACC were yet to complete the investigations by the time the Committee visited Tharaka Nithi County, in the meantime the project remained stalled.

In considering the Statement, the Committee undertook to also consider the reasons why the County Assembly project remained stalled years later.

CHAPTER TWO

2.0 CONDUCT OF ENGAGEMENT WITH THE STAKEHOLDERS

Upon conclusion of the deliberations on the Statement, the Committee resolved to write to the Ministry of Interior and Co-ordination of National Government to seek information on issues raised in the Statement. The Committee also resolved to undertake a County visit to Tharaka Nithi County for further investigations on the matter. The County visit was held on 21st January, 2023 where the Committee held meetings with several Stakeholders in the effort to shed light on the issues raised.

2.1 Cabinet Secretary for Ministry of Interior and Co-ordination of National Government

The Cabinet Secretary gave his submissions to the Committee in a written response dated 7th November, 2022. The Cabinet Secretary stated that in the FY 2019/2020, the Government allocated funds for construction of an office block which is currently at 99% completion with a few finishing works yet to be done. However, the building cannot accommodate all the National Government Departments due to its size.

He also highlighted some factors hindering the relocation to Kathwana which include, lack of enough infrastructure, no residential quarters enough to accommodate the officers, structural defects in the office block and lack of a perimeter wall around it.

2.2 The County Assembly of Tharaka Nithi

During the County visit on 21st January, 2023, the Committee had engagements with the Speaker of the County Assembly at the County Assembly chambers. In his remarks he stated that they have had a cordial working relationship with the National Government and pointed out on the importance of operationalization of Kathwana town to fully being the headquarters of Tharaka Nithi County.

He also highlighted the issues and challenges facing the County Assembly which they would want the Committee to address including budgetary allocation for the County Assembly, status of the construction of the Assembly, ward fund, mortgage and car loans for Members of County Assembly.

Subsequently, following the visit by the Committee, the Clerk of the County Assembly submitted a brief following further deliberations by the County Assembly Service Board (CASB) on the construction of the proposed County Assembly Chambers and offices.

In the brief the County Assembly submitted as follows:

Tender Commencement

The Tender for the construction of the Tharaka Nithi County Assembly offices and chambers was advertised on 9th December 2015 and its opening done on 23rd December 2015. After the evaluation process, Lexis International Limited being the most responsive tenderer was recommended for award of the Contract. The construction works were expected to commence on 8th March 2016 for a contract period of 80 weeks but due to unforeseen issues, the works commenced on 12th December 2016. The project managers/consultants was Baseline Architects Limited who had earlier in 2014 won the tender through a request for proposal advertised on 23rd January 2014 and opening done on 13th February 2014.

However, upon award of the tender and handing over of the site to the contractor, various issues arose and the construction stopped. Some of the issues, which were under investigation by the Ethics and Anti-Corruption Commission, included allegations of influence on the award of the tender.

Project Progress

The works stalled due to non-payment of the certificates raised in respect of the Contractor and further because of the issues around EACC investigations as well as budgetary allocations challenges. In the financial year 2017/2018, the County Assembly Service Board requested for an approval of Kenya Shillings 36,814,450.70 as payment towards the contractor as part of 10% advance payment to the contractor. The Controller of Budget did not approve the requisition and no official explanation to the same was issued to the County Assembly Management.

Ethics and Anti-Corruption Commission commenced investigation 2016. The investigations, which were premised on the Procurement process, were based on the following issues:

- a) Lack of approved architectural designs by the County Physical Planner.
- b) Payments not authorized by the Tender Committee or acceptance by the Inspection and Acceptance Committee

- c) Non- appointment of the Contract Management Committee as required by the law.
- d) The County Assembly Clerk through a letter dated 14th July 2020 Ref TNCA/ADM/2/VOL.IV/319 addressed to the EACC sought clarity on the position of the matter. EACC never provided any official response to the same.

2.3 The Governor of Tharaka Nithi County

The Committee engaged the Governor of Tharaka Nithi to get his views on the matter. From the issues raised in the statement and those raised by the County Assembly, the Committee sought to know; why the Executive had not disbursed money allocated for the County Assembly's chambers, what are the Governor's views about the MCAs demand for a ward fund, Mortgage and car loans.

On the issue of the County Assembly chambers, the governor informed the Committee that EACC had stopped the construction of the building. In regard to that, the Committee resolved to:

- i. Plan a meeting with the EACC to inquire why the construction of the Assembly headquarters was stopped and;
- ii. Plan a meeting with the Controller of Budget and inquire why they don't remit money for the Construction of the County Assembly Chambers.

The Governor confirmed that County headquarters had not fully taken off but had made remarkable progress. He also mentioned that the County government had given land for the construction of the office of the County commissioner which is complete and also more for setting up the Kenya National Police county headquarters, to the Judiciary for setting up law courts and many other departments but which the National Government has not utilized.

2.4 The County Commissioner of Tharaka Nithi County.

During the County visit, the Committee held a meeting with the County Commissioner of Tharaka Nithi County. In his submissions, the County Commissioner highlighted that around the FY 2019/2020, the government allocated funds to commence the construction of an office block which is over 90% complete. He also noted that he fully relocated to the office on 20th December 2022.

The building however has some structural defects and some pending works. Other challenges faced are lack of basic infrastructure, accommodation for civil servants and enough offices to accommodate all other National Government departments.

2.5 Kathwana Market Committee

In the course of the County visit, the Committee met the Kathwana Market Committee to get their input on the state of Kathwana County headquarters. The Chairperson of the Kathwana Market

Committee stated that the market committee fully supports the statement by the area senator and highlighted some factors that made the county headquarters to stall which include;

- i. All county departments, personnel, facilities and offices have not moved from Chuka to Kathwana.
- ii. County amenities that make the headquarters conducive like departmental offices, staff offices, reliable water supply, hospitals and other institutions were not provided for since inception.
- iii. Failure to operationalize Kathwana Municipality and give government employees house allowance.
- iv. Failure to declare Igambang'ombe subcounty to attract hardship allowances for the residents to reap big like in the case of other municipalities.
- v. Failure to provide passable/motorable road network such as Kathwana- Kamarambi road, Marima- Kathwana road, Chuka- Kamakanyaga road.

He also had some recommendations that the Senate could help address to fully operationalize Kathwana Headquarters. These are;

1. Immediately facilitate the relocation of all government administrative offices and personnel from Chuka town to Kathwana.
2. Provide a budget for the completion of the stalled county headquarters building, the construction of a referral hospital, law courts, residential houses for the county commissioner and the Deputy County Commissioner.
3. Provide Budget for conducive amenities at the headquarters e.g low-cost houses for civil servants, reliable water supply, and a recreational centre.
4. Provide personnel and operationalize Huduma centre at the headquarters.
5. Put up the National police services for security at the headquarters.
6. Facilitate electricity connectivity to all homes neighboring the County headquarters.
7. Establish land registry and land control board for Igambang'ombe Subcounty.
8. Request Postal Corporation of Kenya to upgrade the Kathwana postal office to a fully-fledged post office to offer essential services.
9. Consider all the Igambangombe schools for feeding programme.
10. Kathwana, Mandogo, Mugumoni and Kayeboni schools be improved to municipal model schools and hence centres of excellence.

2.6 Ethics and Anti – Corruption Commission (EACC)

The Committee wrote a letter to the Ethics and Anti-Corruption Commission (EACC) inviting them to a meeting to apprise the Committee on reasons why they stopped the construction of the Tharaka Nithi County Assembly Chambers.

EACC appeared before the Committee on Thursday, 2nd March, 2023. In their written response to the Committee, EACC highlighted that:

Preliminaries: Initial Reports

On **10th February 2016**, the Ethics and Anti-Corruption Commission received a report that Tharaka Nithi County Assembly officials had been involved in procurement irregularities for the construction of the Tharaka Nithi County Assembly Block in **Tender No.TNCA/T/01/2015-2016** at a tender sum of Kshs. **369,642,688.00/=**

In the Course of its investigation, in **2018** the Commission established basis to undertake further inquiry into allegation on irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block at a **tender sum of Kshs. 62,764,622.00/=**

It is important to **note** that the said reported allegations led to:

- a. Inquiry into irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block at a tender sum of **Kshs. 62,764,622.00/=**; and
- b. Inquiry into the procurement for the construction of the County Assembly of Tharaka Nithi block at a tender sum of Kshs. **369,642,688.00/=**

2.7 Controller of Budget (COB)

The Committee resolved to invite the Controller of Budget (COB) to a meeting to apprise the Committee on reasons why remittance of monies allocated for the construction of the Tharaka-Nithi County Assembly Chambers was stopped.

The Controller of Budget appeared before the Committee on Tuesday, 21st March 2023. In their written response to the Committee, COB highlighted that in the Financial Year 2022/2023 the total

budget for Tharaka Nithi County is **Kshs 4,974,983,323/=** for the County Executive and **Kshs. 515,000,000/=** for the County Assembly adding up to a total of **Kshs.5,489,983,323/=** for the whole County.

At end of February 2023, the withdrawal sought against the budget allocation to the County Assembly of **Kshs. 515,000,000/=** was **Kshs. 235,516,685/=**. The Office of the Controller of Budget had approved the Kshs.235,516,685 for withdrawal from the County Revenue Fund in favor of Tharaka Nithi County Assembly. The exchequer issues for recurrent expenditure comprised of **Kshs.119,451,486/=** for payment of salaries, **Kshs.93,930,685/=** for Operations and Maintenance Expenditure and **Kshs.20,000,000/=** for the Assembly's Car Loan & Mortgage Scheme. The Development expenditure of **Kshs.2,134,514/=** was towards part payment for constructing the Speaker's Residence.

Further stated that the budget allocation of 30 Million to the County Assembly for development expenditure in FY 2022/2023 does not include an allocation for the construction of the County Assembly Chambers. For any approval for the withdrawal of funds, the County should first ensure the activity is budgeted and provided for in the Appropriation Act.

The Controller of Budget stated that her office had not declined or stopped the remittance of monies allocated for constructing the Tharaka Nithi County Assembly Chambers and that they do not have any pending requisitions for the County Assembly of Tharaka Nithi.

In conclusion, the Controller of Budget confirmed that her office **was aware that in the FY 2017/2018 EACC wrote to the County Government advising that the release of funds could only be considered once investigations were complete.** A copy of the letter from EACC was attached for reference.

CHAPTER THREE

3.0 ANALYSIS OF THE SUBMISSIONS

COUNTY HEADQUARTERS

3.1 Lack of adequate infrastructure in Kathwana

The lack of infrastructure to accommodate all National government departments appeared as a major issue hindering the operationalization of Kathwana headquarters. The Cabinet Secretary in his response stated that due to the size of the block, offices have been allocated for six departments including the County Commissioner and the Deputy County Commissioner. Twelve other departments have no space including the Kenya Police despite being a major department.

The County Commissioner also in his submission mentioned the need to construct a complex to accommodate all other National Government departments since the current building can only accommodate Ministry of Interior staff. He also highlighted the need to have offices for Kenya National Police Services and Directorate of Criminal Investigations.

In line with that, the County Governor noted that he gave land for construction of the County Commissioner's office which is complete and allocated more for building the Kenya National Police County headquarters, more for the Judiciary to set up law courts and to many other departments but the National Government has not utilized.

3.2 Structural Defects and Pending Construction Work

Despite the building being close to completion, there are still some structural defects that is a large crack in the building that needs to be rectified before it is fully occupied. The unfinished works at the headquarters are landscaping, erection of a perimeter wall, vehicle parking, water and electricity connection.

This came out from the Cabinet Secretary's response and the County Commissioner who emphasized on the need to finalize the connection of water and have a new transformer to serve the office.

3.3 Residential Quarters to accommodate Civil Servants

Civil servants posted in Kathwana will face the challenge of finding accommodation since the town has no residential quarters. The Cabinet Secretary in his response noted that the County Commissioner had no designated residential quarters. However, land for construction of the County Commissioner's residence had been identified and is awaiting subdivision and change of registration to accommodate new user. Furthermore, there is need to have residential quarters to accommodate officers posted to Kathwana Headquarters.

3.4 Grant by National Government to build County Headquarters.

The County Assembly stated that since the inception of County Governments in 2013, they had not received the grant from the National Government intended for construction of a new County headquarters, however the County Executive had received it.

The Governor explained that the grant which the county received was taken to the Ministry of public works making it major obstacles to the project's completion.

COUNTY ASSEMBLY

3.5 Allocation for Construction of the County Assembly

The Committee was informed that the Assembly had been allocating funding for the construction of a new building for the past eight years, however the Executive had not released the funds, claiming that the Ethics and Anti-Corruption Commission is still investigating into the construction of the building.

In response the governor stated that the size of the proposed structure was significantly larger than what the assembly's 26 members actually required. He also let the committee know that the EACC had put a stop to the building's construction in 2016. He added that the Executive's strategy is to reorganize the building's capacity and construct a chamber that is sufficient to accommodate the assembly's members if the EACC grants a permit for the construction to continue.

3.6 Existence of a Caveat

The Controller of Budget(COB) confirmed through evidence of correspondence that indeed her office was copied in a letter in the FY 2017/2018(Annexed) in which the EACC wrote to the

County Government of Tharaka Nithi advising that the release of funds could only be considered once investigations were complete.

Subsequently, the County Assembly Clerk through a letter dated 14th July 2020 (Annexed) addressed to the EACC sought clarity on the position of the matter. EACC never provided any official response to the same.

It is important to note that when the EACC appeared before the Committee they stated that they did not at all stop the construction of the Tharaka Nithi County Assembly Chambers.

EACC also noted that it emerged in the course of its investigation that the land where the Assembly chambers is being constructed had an ownership dispute and this might have led to the halt of the construction.

It was further stated that EACC had no formal obligation of advising the County Assembly on whether to continue with the construction or not but they can urge them to adhere to the law.

3.7 Current status on the investigations by EACC

A. Inquiry into allegations of irregular procurement of design for the construction of County Assembly of Tharaka Nithi County

In respect to investigation on irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block at a tender sum of **Kshs. 62,764,622.00/=**, the investigations established as follows;

- i. The Tharaka Nithi County Assembly had advertised for expression of interest for consultancy services for architectural designs on 23rd January, 2014;
- ii. There were no approved architectural designs by the County Physical Planner;
- iii. There was no Contract Management Committee to advise on the payments;
- iv. Payments were authorized by the County Clerk and the Principal Finance Officer and made without the Procurement Department approval or acceptance by the Inspection and Acceptance Committee.

Section 35 of Anti-Corruption and Economic Crimes Act (ACECA), 2003, provides that;

- 1) Following an investigation the Commission shall report to the Director of Public Prosecutions on the results of the investigation and

- 2) the Commission's report shall include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime.

Therefore, a Statutory Report was compiled and forwarded to the Director of Public Prosecutions on 23rd October 2019 with recommendations that several persons including the Speaker, the Clerk, the Principal Finance Officer, the Senior Legal Counsel Baseline Architects Limited and Senior Quantity Surveyor, be charged with various offences under the Anti-Corruption and Economic Crimes Act, 2003.

Following an independent review of the inquiry file, the Office of the Director of Public Prosecutions returned the inquiry file on 28th April, 2020 for further investigations, with recommendations to cover additional areas to strengthen the evidence already on record. The EACC is currently addressing a number issues raised by the Office of the Director Public Prosecutions.

B. Inquiry into allegations of irregular procurement for the proposed construction of Country Assembly of Tharaka Nithi County.

In respect to alleged irregular procurement and award of tender for the construction of Tharaka Nithi County Assembly Block at a tender sum of Kshs. 369,642,688.00, the investigations were completed hence it was established that the said tender was irregularly procured in contravention with the public procurement laws and regulations.

The investigation also established criminal culpability of several persons and in line with the provisions of section 35 of the Anti-Corruption and Economic Crimes Act, the Commission will forward to the Director of Public Prosecution together with the file relating to consultancy services for independent review and necessary appropriate action, upon covering points in the related file. EACC clearly stated that they did not at all stop the Construction of the Tharaka Nithi County Assembly Chambers.

EACC also noted that just one issue that emerged in the course of its investigation was that the land where the Assembly chambers is being constructed has got an ownership dispute and this might have led to the halt of the construction.

It was further stated that EACC had no formal obligation of advising the County Assembly on whether to continue with the construction or not but they can urge them to adhere to the law.

3.8 Submissions and proposed recommendations by the County Public Service Board the construction of the proposed County Assembly Chambers and offices.

The Ethics and Anti-Corruption Commission commenced investigation 2016. The investigations, which were premised on the Procurement process, were based on the following issues:

- a) Lack of approved architectural designs by the County Physical Planner.
- b) Payments not authorized by the Tender Committee or acceptance by the Inspection and Acceptance Committee
- c) Non- appointment of the Contract Management Committee as required by the law.
- d) The County Assembly Clerk through a letter dated 14th July 2020 Ref TNCA/ADM/2/VOL.IV/319 addressed to the EACC sought clarity on the position of the matter. EACC had never provided any official response to the same.

1) Whether there was an approved Architectural design by the county Physical Planner:

The subject procurement was procured under Sections 76-87 of the Public Procurement and Assets Disposals Act (PPAD), 2005. The said Section details how request for proposals are invited by a Procuring Entity (PE), evaluated, awarded and completed.

This was a procurement of Professional Services, which only required the production, and the submission of the architectural designs to the County Assembly. Baseline Architects Limited submitted the architectural designs in the year 2015 to the Physical Planner's Offices for approval and the same were duly approved in the year 2019.

Neither Baseline nor the County Assembly had an absolutely control on the approvals procedures considering at that moment in-time the County offices for public works were just setting up.

2) On whether no Contract Management Committee was appointed

The County Assembly on the 27th September 2017 appointed a Contract Implementation Committee for the purposes of managing and monitoring the construction of the Assembly building. That included Mr. M.K. Kariuki (Former Clerk of the County Assembly), Mr. Peter Muniu, Mr. Erick Nthumbi, Mr. Erick Murimi, Mr. Festus Kinoti and the Managing Director of the Baseline Architects Ltd.

The 2005 Public Procurement Asset Disposal Act (PPAD) and the 2016 PPAD Regulations through Legal Notice No.174 of 2006 under which regime the procuring of the architectural services was done and implemented did not, specify that the procuring entity must establish a contract management committee for all the tenders and Request for Proposals (RFPs) entered into by the procuring entity. That notwithstanding the Contract Management Committee was duly appointed by the procuring entity.

3) On Payments not authorized by the Tender Committee or acceptance by the Inspection and Acceptance Committee Issue

The work of Inspection and Acceptance Committee is only provided for in the 2015 PPAD Act. The 2005 Public Procurement Asset Disposal Act being the law under which the subject services were procured and delivered did not demand the appointment of the Inspection and Acceptance Committee.

The County Assembly however, as a matter of caution did appoint a Contract Management Committee that undertook the work of management of the process. However, a clear reading of the 2015 Act does not make the appointment of the Inspection Committee mandatory. It was at the discretion of the Accounting Officer.

The Contract Management Committee did the work as would have been done by the Tender Inspection Committee had one been appointed which again was not mandatory under the Acts regulating public procurement at the time.

4) Non- Approval of requisition by the Controller of Budget

During the Financial Year 2017/2018 there was an allocation for Kenya shillings 100 million. The County Assembly made a requisition of Kenya shillings 36,814,450.70 being the 10% advance payment to the contractor. The Office of the Controller of Budget did not approve this requisition and no reasons were provided for the same. This kept the project in limbo due to lack of funds to both the contractor and the consultant.

5) Justification of fees paid to consultants

As per the CAP 525 of the Architects and Quantity Surveyors Act provides for circumstances under which an Architect or a Quantity surveyor would be paid and as such the stages are provided in the schedule in accordance to the Act. The whole consultant is paid 18% of the construction contract amount which was tabulated as follows $368,144,507 \times 18\% = 66,266,011$. In accordance with the guide of the Cap 525 of the said act on the stages that the consultants are supposed to be paid, Up to Scheme design the consultants are supposed to be paid $1\% + 2.5\% = 3.5\%$ of 6%. This translates to $3.5/6 \times 66,266,011 = 38,655,173$, being the amount due to the consultants by the time the drawings were being submitted. However, the employer had only paid ksh.20,000,000 which is almost half of what was due to the consultants by the time this payment was being made. Therefore, the payment to consultants is in accordance with the law and financial procedures on advance payments to contractors and consultants.

6) Was the Contract valid on the basis of approved drawing

The Planning Act 2009 and Physical and land use Act, states no construction should commence without approved drawing. This Act does not forbid the employer to engage the contractor for construction; once the contract was awarded, however; the contractor should wait for the approval of the drawing to commence the works. Further, the Act in Sec. 57(6) states that upon drawings being submitted and no response received within 60 days, then the drawing is deemed to be approved. The Architect submitted the drawings for approval and by the time the contractor started works 60 days had lapsed and thus the approval was deemed approved and valid. The official approval, which is currently at the disposal of the Baseline consultants, was however received in 2019 later after works had commenced.

In the brief, the County Assembly Service Board(CASB) made the following recommendations and way forward

- a. Notwithstanding that, EACC had been investigating the said subject matter for seven (7) years thus clawing back smooth service delivery to the People of Tharaka Nithi County. Considering that in their submission number of the issues under investigation were administrative procedures on the process, which can be attributed to the capacity and lack of relevant support institutions like public works during the inception of devolution.

The CASB recommended that EACC terminates the investigations forthwith and provide an administrative advisory to the procuring Entity that is the County Assembly Service Board within 30days; such Administrative action be geared towards making administrative correction in the procurement process of the construction of the Chamber and the offices.

- b. That taking into account the recommendations of His Excellency the President on scaling down the cost of the project to Two Hundred Million Ksh.200,000,000 during his visit to Tharaka Nithi County on the 12th March 2022. A task force or a joint technical committee be appointed/constituted with the Membership drawn from of the County Assembly Service Board, the County Executive Department in charge of Public Works and Housing, National Treasury and the Ministry of Public Works to review the project and the contracts in totality. The Committee/Taskforce shall also advice the National and County Government on possible allocation conditional financial grants, technical support and/or any other related issues as the committee may deem necessary. The taskforce shall provide a progress report to the Senate within 90days.
- c. It is also recommended that upon scaling down the project cost, the Ministry of Public Works and the National Treasury allocates a grant of Kenya Shillings Two Hundred Million Ksh.200,000,000 in the subsequent Budgets. This will be taking into account that Tharaka Nithi County is one of the counties that was to benefit from the conditional grant from the National Government for the construction and setting up of the County Headquarters.

OTHER ISSUES RAISED

3.6 Ward Development Fund

The County Assembly members requested the committee to help them establish in Law, a ward fund for ward development projects. Since there is no such fund anchored in the law, the Governor suggested that having a good working relationship with the Executive will allow the Members to identify development projects in their wards. The Executive could then find a way to fund them so that they participate fully in development.

3.7 Mortgage and Car loans for Members of the County Assembly

The Senate through the committee was requested to help advocate for mortgage and car loan benefits for Members of the County Assembly. The Governor explained that in 2014, the County set aside funds to allow all 26 MCAs to obtain mortgages. However, by 2018, all funds allocated for mortgages and car loans had been converted to grants rather than loans, causing MCAs who were making payments to stop and those who had already made payments to receive their money back, causing the County to lose all funds set aside for that purpose.

However, he informed the Committee that the Executive had included thirty million Kenyan shillings in the budget for this year, which would be distributed to the County Assembly in batches of ten million shillings every two months in order to access mortgages.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 OBSERVATIONS

Following stakeholder engagements and an analysis of the submission from the various stakeholders the Committee made the following observations:

Observations

Following stakeholder engagements and an analysis of the submission from the various stakeholders the Committee made the following observations:

County Headquarters

1) Construction Of County Headquarters

During the Financial Years 2017/18, 2018/19 and 2019/20 conditional grants were allocated to **five counties** that is ‘**Category AA**’ that did not inherit adequate offices from the defunct local authorities. The grant was intended to supplement financing for construction of county headquarters of **Lamu, Tharaka Nithi, Tana River, Nyandarua and Isiolo**.

The budget reports indicate that as at June 2020, the cumulative expenditure for the Construction of the Tharaka Nithi County Headquarters was Kshs.155Million and the project was 66% complete, in June 2021, the expenditure was 180Million and project was 77% complete. In the final report as at June 2022 the expenditure was at Kshs. 217 Million and the project was 82% complete.

2) Lack of adequate infrastructure in Kathwana

The lack of adequate infrastructure to accommodate all National government departments appeared as a major issue hindering the operationalization of Kathwana headquarters. The available offices had been allocated to six departments including the County Commissioner and the Deputy County Commissioner. Twelve other departments have no space among them the Kenya Police, the Directorate of Criminal Investigation, Land Registry and Land Control Board. Civil servants posted to Kathwana would also face the challenge of finding accommodation since the town has no residential quarters including those of the County Commissioner and Deputy Commissioner. However, land for construction of the County Commissioner’s residence had been identified and is awaiting subdivision and change of registration to accommodate new user.

Additionally, Kathwana lacks the necessary amenities for a functional County Headquarters among them good all weather roads, electricity, reliable water supply, referral hospital, Law courts, upgraded Post office with a Huduma Centre among others.

3) Structural Defects and Pending Construction Work

Despite the County Headquarter building being close to completion, there were clear signs of structural defects evidenced by large cracks in the building. The unfinished works at the headquarters include landscaping, erection of a perimeter wall, vehicle parking, water and electricity connection and installation of a transformer.

Construction of the County Assembly Chambers

4) Caveat

The Controller of Budget(COB) confirmed through evidence of correspondence that indeed her office was copied in a letter in the FY 2017/2018 in which the EACC wrote to the County Government of Tharaka Nithi advising that the release of funds could only be considered once investigations were complete.

Subsequently, the County Assembly Clerk through a letter dated 14th July 2020 addressed to the EACC sought clarity on the position of the matter. EACC never provided any official response to the same.

It is important to note that when the EACC appeared before the Committee they stated that they did not at all stop the construction of the Tharaka Nithi County Assembly Chambers.

It was further stated that EACC had no formal obligation of advising the County Assembly on whether to continue with the construction or not but they would only urge them to adhere to the law.

5) EACC Investigation

The investigation by EACC into the resulted into two inquiries

- a. Inquiry into irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block at a tender sum of **Kshs. 62,764,622.00/=**; and

- b. Inquiry into the procurement for the construction of the County Assembly of Tharaka Nithi block at a tender sum of Kshs. 369,642,688.00/=

The case for the construction of the Tharaka Nithi County Assembly was first been reported to EACC in 2016. In 2018 the Commission established basis to undertake further inquiry into allegation on irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block. The Committee observed that there had been undue delay in concluding the cases despite the Commission establishing criminal culpability of several persons.

In the seven(7) years the Commission has been carrying out its investigation, it has placed a caveat at the COB stopping the disbursement of funds to the County for the project. This has consequently clawed back smooth service delivery to the people of Tharaka Nithi County.

6) Scaling down the project

The size of the proposed structure was significantly larger than what the assembly's Twenty Six (26) members actually required. During his visit to Tharaka Nithi County on 12th March 2023, His Excellency the President recommended scaling down the cost of the project to Kshs Two Hundred Million (Ksh.200,000,000) down from Kshs. 369,642,688.00/=.

Designation of Chogoria, Chuka and Marimati into Towns

- 7) The Statement sought that the Committee recommends that the towns of Chogoria, Chuka and Marimanti to be designated as Commercial/industrial towns. However, the committee observed that this is outside the mandate of the Committee as the process of granting town status is provided for in the Urban Areas and Cities Act, 2011.

Recommendations

County Headquarters

The Committee therefore recommends as follows with regard to the County Headquarters:

- 8) A Multi-agency technical committee shall be appointed/constituted with the Membership drawn from of the Office of the Deputy President- State Department of Devolution, the Ministry of interior and Coordination of National Government, National Treasury, the Ministry of Public Works, the Office of the Attorney General, the County Executive Department in charge of Public Works and Housing, Office of the Governor, the County Assembly, the Ethics and Anti-Corruption Commission, the Controller of Budget, and any other relevant entity.

The Terms of Reference of the Committee shall be to:

- i. Advise the National and County Government on possible additional allocation of conditional financial grants for the completion of the ongoing project.
 - ii. Identify and initiate the process of acquiring land for the construction of additional offices and living quarters required for the operationalization of a County Headquarters.
 - iii. Conduct an audit of the project with a view of making any structural repairs and completion of pending works before handing it over for occupation
 - iv. Collaborate with other relevant state agencies to ensure amenities required for a fully functional County Headquarters are available that is; All weather roads, reliable water and power supply among others.
 - v. Ensure seamless relocation of all government officers/offices required to be in Kathwana upon completion of the project. The committee where possible should ensure government offices without space in the main office can have temporary work stations as more permanent solutions are worked out.
 - vi. The technical committee should provide the Senate with a status report within 90 days upon adoption of this report.
- 1) The Office of the Controller of Budget and the Auditor General shall provide status reports to the Senate on the disbursement of funds and construction of County Headquarters through conditional grants within 30 days upon adoption of this report.

Construction of the County Assembly chambers

The Committee therefore recommends as follows with regard to the Construction of the County Assembly chambers:

- 2) That the County Assembly shall adopt His Excellency the President's proposal to scale down the cost of the project to Two Hundred Million (Ksh.200,000,000).
- 3) Further, the Committee adopts the recommendation made by the County Assembly in its brief to the Committee, that a multi-agency technical committee shall be appointed/constituted with the Membership drawn from of the Office of the Deputy President- State Department of Devolution, the Ministry of interior and Coordination of National Government, National Treasury, the Ministry of Public Works, the Office of the Attorney General, the County Executive Department in charge of Public Works and Housing, the County Assembly Service Board, the Ethics and Anti-Corruption Commission, the Controller of Budget, and any other relevant entity/ stakeholder.

The Committee's Terms of reference shall be:

- i. Review the project and the contracts in totality.
 - ii. The multi-agency technical committee shall also advice the National and County Government on possible allocation conditional financial grants, technical support and/or any other related issues as the committee may deem necessary.
 - iii. The multi-agency technical committee shall provide a progress report to the Senate within 90days.
- 4) That, upon scaling down the project cost, the Ministry of Public Works and the National Treasury in collaboration with the County Assembly allocates funds in the subsequent Budgets.
 - 5) That, the EACC shall withdraw the caveat placed at the Controller of Budget to ensure that once the funds are made available in the subsequent budgets, they are released to the County. This will ensure the construction of the County Assembly continues even as EACC forwards the investigation files to the Office of Director of Public Prosecution (ODPP) to institute court proceedings.
 - 6) That, EACC and ODPP shall conclude on the cases related to impropriety with the construction of County Assembly chambers without further undue delays. A status report shall be provided to the Senate within 90 days upon the adoption of this report.

Designation of Chogoria, Chuka and Marimati into Towns

- 7) That the County Government shall consider the granting of town status to Chogoria, Chuka and Marimanti in line with the provisions of Section 10 (1) and (2) of the Urban Areas and Cities Act, 2011.

ANNEXTURES

- 1) Annex 1: The Statement
- 2) Annex 2: Minutes
- 3) Annex 3: Submissions:
 - a) Cabinet Secretary for Ministry of Interior and Co-ordination of National Government
 - b) Controller of Budget
 - c) EACC
 - d) County Assembly of Tharaka Nithi

Annex 1:

The Request for Statement

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - (FIRST SESSION)

THE SENATE

REQUEST FOR A STATEMENT ON THE RELOCATION OF GOVERNMENT/
ADMINISTRATION SERVICES FROM CHUKA TOWN TO KATHWANA TOWN
HEADQUARTERS, THARAKA NITHI COUNTY.

Mr. Speaker, Sir,

I rise, pursuant to Standing Order 53 (1), to seek a Statement from the Standing Committee on Devolution and Intergovernmental Relations, regarding the relocation of government/administration services from Chuka town to Kathwana Town Headquarters in Tharaka Nithi County.

In the Statement, the Committee should:-

1. Investigate the reason(s) why there are no ^{National} government officers in Kathwana, which is the gazetted county headquarters despite public participation and consensus. This defeats the spirit of devolution as investors, businesspeople and the public are unable to receive services;
2. Facilitate the operationalization of Kathwana headquarters and ensure the public officers move to the designated County headquarters from Chuka town; and
3. Recommend for the towns of Chogoria, Chuka and Marimati be designated as Commercial/industrial towns.

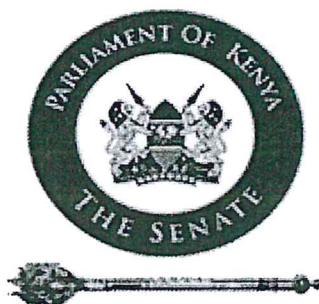
SEN. MWENDA JULIUS GATAYA, MP
SENATOR FOR THARAKA NITHI COUNTY
DATE: 17th October, 2022

Approved
18/10/22

④ Hon. Speaker
You may approve
18/10/22

Annex 2:

Minutes



MINUTES OF THE SECOND SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 27th OCTOBER, 2022 AT COUNTY HALL GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS, AT 11.00AM.

PRESENT

- | | |
|--|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 3. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 4. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 5. Sen. Mohamed Said Chute, MP | - Member |
| 6. Sen. Catherine Muyeka Mumma, MP | - Member |
| 7. Sen. George Mungai Mbugua, MP | - Member |
| 8. Sen. Hezena M. Lemaletian, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. Roselinda Soipan Tuya, CBS, MP | -Vice Chairperson. |
|--|--------------------|

IN ATTENDANCE

Sen. Mwenda Gataya Mo Fire, MP

Senator For Tharaka Nithi County

SECRETARIAT

- | | |
|------------------------|--------------------------------------|
| 1. Mr. Ahmed Odhowa- | - Principal Clerk Assistant II (HOD) |
| 2. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 3. Mr. Desmond Rasugu | - Clerk assistant III |
| 4. Ms. Regina Munyao | - Legal Counsel II |
| 5. Mr. Walters Omondi | - Legal Counsel II |
| 6. Mr. William Wambiru | - Fiscal Analyst II |

C

7. Ms. Lucianne Limo
8. Mr. Joseph Otieno
9. Mr. Elijah Ichwara
10. Mr. Peter Kaparo

- Media Relations Officer
- Audio Officer III
- Audio Officer II
- Sergeant at arms II

MIN/NO/011/2022

PRAYER

The meeting was called to order at 11.00am by the Chairperson followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/NO/012/2022

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted, with amendments, as proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Gorge Mungai Mbugua, MP as follows:

1. Prayer
2. Adoption of the Agenda
3. Briefing on the Request for Statement by Sen. Mwenda Gataya Mo Fire, Senator of Tharaka Nithi (*Committee Paper No. 3*)
4. Confirmation of Minutes of the Previous Meeting
5. Matters arising from Minutes of the Previous Meeting
6. Briefing on the Mandate of the Committee (*Committee Paper No. 2*)
7. Briefing on the Presidential Taskforce Report on Reforms of Parastatals (*Committee Paper No. 4*)
8. Any Other Business
9. Date of the Next Meeting and Adjournment

MIN/NO/013/2022

**BRIEFING ON REQUEST FOR
STATEMENT BY SEN. MWENDA GATAYA
MO FIRE, SENATOR FOR THARAKA
NITHI. (COMMITTEE PAPER NO. 3)**

Following a statement sought from the committee by Sen. Mwenda Gataya Mo Fire MP, Senator for Tharaka Nithi, the Senator was invited to appear before the committee in order to share more information on the Statement sought.

The Senator explained that since the relocation of county government services from Chuka town to Kathwana town as the gazetted county headquarters, the national government, through the county commissioner, had not yet transferred the national government administrative services to the town. He further stated that the general mood of the county residents was that Chuka town where national

government offices are stationed is expensive to access for most residents. Kathwana which is centrally located is more accessible for most residents of the County.

He appealed to the committee to facilitate the actualization of county headquarters by ensuring that the national government officers move to the designated county headquarters of Kathwana from Chuka Town.

Upon conclusion of the deliberations on this matter the committee resolved as follows-

- I. to write to the Cabinet Secretary for Ministry of Interior & National Administration to request for information on reason as to why the national government administrative services have not relocated to Kathwana town from Chuka town.
- II. that the committee undertakes a county visit to Tharaka Nithi County for a fact-finding inquiry.

MIN/NO/014/2022

**CONFIRMATION OF THE MINUTES OF
THE PREVIOUS MEETING**

Amendments to the minutes were proposed by Sen. Oburu Oginga MGH, that “**MIN/NO/06/2022** be amended to include that the Vice Chairperson Sen. Roselinda Soipan Tuya, CBS, MP was elected in absentia.

Further amendments to **MIN/NO/06/2022** were proposed by Sen (Dr.) Oburu Oginga MGH, MP, to include that the request of Sen. Omar Miriam Sheik MP, to attend the committee sitting on behalf of Sen. Roselinda Soipan Tuya CBS, MP pursuant to Standing order 216 was not acceded to by the Committee, since Sen. Omar Miriam Sheikh did not provide evidence of approval by the Speaker of her appointment by the party whip to act in the Sen. Soipan Tuya’s place pursuant to the provisions of Standing Order 216.

The minutes of the 1st Sitting of the Committee held on Monday, 17th October 2022 at 2:45. p.m. were confirmed with the amendments. They were proposed by Sen. George Mungai Mbugua, MP, and seconded by Sen. (Dr.) Oburu Oginga, MGH, MP.

MIN/NO/015/2022

**MATTERS ARISING FROM THE MINUTES
OF THE PREVIOUS MEETING**

The committee noted that the Vice Chairperson Sen. Roselinda Soipan Tuya, CBS, MP had been appointed as a Cabinet Secretary and subsequently resigned as a member of the Senate. It was resolved that the Committee shall await official communication relating to the replacement of the senator.

MIN/NO/016/2022

**BRIEFING ON THE MANDATE OF THE
COMMITTEE (COMMITTEE PAPER NO.2)**

The members were invited to note the contents of the Paper (Committee paper No.2). The paper contained information contained the following information-

- I. The mandate of the committee, the roles of the Chairperson and the roles of the multidisciplinary officers that form the Secretariat to the Committee.
- II. The key stakeholders that the committee closely works with in strengthening devolution.
- III. The Committee administration and management guidelines

The members were further requested to note the Exit Report, a copy of which was provided and the members were urged to take note of the Bills that lapsed with a view to republish them. Detailed discussions on the report were proposed to be undertake during the induction.

Upon conclusion of the deliberations on this Minute the committee resolved as follows-

- I. that the Committee prioritizes meetings with key stakeholders in the devolution space to set the tone of collective working relationship. In order of priority the is to invite for a meeting the Deputy President, the Council of Governors and the County Assemblies Forum.
- II. that the Committee plans meetings with non-state actors especially the civil society groups such as Katiba Institute, Institute of Social Accountability among others with the objective of engagements with them that could enable the Senate to enact well researched and informed legislation on devolution.
- III. that the Committee plan meetings with the established county regional economic blocs by the various counties to foster for cooperation and protection of their interests.

- IV. To start undertaking oversight of Donor funds and conditional grants that county governments receive following the recent supreme court judgement in *supreme court petition No.24 of 2019 (consolidated with petition no 27 of 2019) The Senate Vs CoG, Patrick Simuyu Khaemba, Ahmed Abdullahi Mohamed and others*. Sen. Richard Momoima Onyoka, EBS, MP, cited an example of Kisii County government which received Ksh.4.2Billion in donar funds but can't be accounted for.

MIN/NO/17/2022

BRIEFING ON PRESIDENTIAL
TASKFORCE REPORT ON PARASTATAL
REFORMS AND TRANSFERING OF
COUNTY FUNCTIONS. (COMMITTEE
PAPER NO. 4)

Members were invited to note the contents of the Paper (Committee Paper No. 4) which was a brief on Presidential Taskforce report on Parastatal Reforms and Transferring of functions to county governments. Discussions on the paper was deferred to a later meeting.

MIN/NO/18/2022

ANY OTHER BUSINESS

1. The Committee was briefed on the statement sought by Sen. Prof. Tom Odhiambo Ojienda concerning a matter of county-wide and inter-county concern on the border dispute between Kisumu, Nandi and Kericho Counties. The committee's legal counsel was tasked to ascertain the status of the County Boundaries Bill and consider taking up its enactment in order to resolve all boundary disputes.
2. The members deliberated on the preferred days of the committee sittings and resolved that the committee shall hold its sittings every Tuesday at 9am at Senate Committee room 5 and every Thursday at 11am at county Hall Ground floor boardroom.

MIN/NO/19//2022

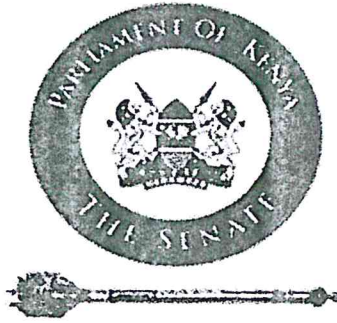
ADJOURNMENT AND DATE OF THE
NEXT MEETING

There being no any other business, the Chaiperson adjourned the meeting at 13:03pm.
The next meeting shall be held on 8th November 2022 at 9am at Senate committee room 5.

SIGNED.....

DATE.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE FIFTEENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON SATURDAY 21ST JANUARY, 2023 AT THARAKA NITHI COUNTY ASSEMBLY CHAMBERS IN KATHWANA TOWN, AT 10.00AM.

PRESENT

- | | |
|-------------------------------------|---|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson (<i>Ag. Chairperson</i>) |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. George Mungai Mbugua, MP | - Member |
| 5. Sen. Esther Anyieni Okenyuri, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 3. Sen. Mohamed Said Chute, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |

IN ATTENDANCE

- | | |
|--------------------------------|--|
| 1. Sen. Mwenda Gataya Mo. Fire | - Senator. Tharaka Nithi County |
| 2. Hon. Patrick Munene | - Member of Parliament
Igambang'ombe Constituency |
| 3. Mr. N.J Komora | - County Commissioner, Tharaka Nithi County |
| 4. Hon. John Mbabu | - Speaker, County Assembly of Tharaka Nithi |

5. Hon. Purity Mrithaa	- Member, County Assembly
6. Hon. Wanja Karuku	- Member, County Assembly
7. Hon. Nyaga Marengo	- Member, County Assembly
8. Hon. Kennedy Kamunyi	- Member County Assembly
9. Hon. Frankiline Mawira	- Member, County Assembly
10. Hon. Fatuma Murungi	- Member, County Assembly
11. Hon. Joseph Rinyima	- Member, County Assembly
12. Hon. Joel Mwaura	- Member, County Assembly
13. Hon. Gitonga Leonard	- Member, County Assembly
14. Hon. Jones Kabu	- Member, County Assembly
15. Hon. Zacharia Njagi	- Member, County Assembly
16. Hon. Mugao S. Kanyari	- Member, County Assembly
17. Hon. Mugao Morris	- Member, County Assembly
18. Hon. Kathuni Risper	- Member, County Assembly
19. Hon. Nevert Ntwiga	- Member, County Assembly
20. Hon. Lucy Muthoni	- Member, County Assembly
21. Hon. Lybeth G. Mbae	- Member, County Assembly
22. Hon. Kiriko J. Murimi	- Member, County Assembly
23. Hon. Joseph Njeru	- Member, County Assembly
24. Mr. Amos Sikweya	- Clerk of County Assembly

SECRETARIAT

1. Mr. Javan Loriko	- Senior Sergeant at arms.
2. Ms. Lucianne Limo	- Media Relations Officer I
3. Ms. Sylvia Nasambu	- Clerk Assistant II
4. Mr. Walters Omondi	- Legal Counsel II
5. Mr. William Wambiru	- Fiscal Analyst III
6. Mr. Desmond Rasugu	- Clerk Assistant III (<i>taking minutes</i>)
7. Mr. Elijah Ichwara	- Audio Officer III

MIN/SEN/DEVIR/082/2023

MEETING WITH THE COUNTY ASSEMBLY OF THARAKA NITHI COUNTY.

The meeting commenced at 10:20am with a round of introductions by all those who were present. The Vice Chairperson commenced her remarks with emphasis to Article 6 of the Constitution of Kenya, which provides that governments at the National and County levels are distinct and interdependent and shall conduct their mutual relations

on the basis of consultation and cooperation. She stated that this clause is important because it ensures equity which is about the distinct functioning of county governments. She further stated that our kind of Devolution in Kenya requires both Intragovernmental and Intergovernmental cooperation for it to succeed. She asked the assembly to share with the committee on the kind of intergovernmental and intragovernmental relations they have had.

She went on to inform the assembly the one of the actions the committee took when it received the statement from Sen. Mwenda Gataya Mo. Fire, was to write to the Cabinet Secretary for Interior and Coordination of National Government to find out what was causing delayed operationalization of Kathwana headquarters. She also invited the County Commissioner to explain how the National government has been supporting the County and the challenges they have faced in setting up the County headquarters.

The County Commissioner thereafter made his remarks, and appreciated the initiative the Committee took to visit Kathwana as it was long overdue because of the sad state of affairs in the County headquarters. He further informed the committee that:

1. His office did relocate from Chuka town to Kathwana town on 19th December, 2022.
2. The former President H.E Uhuru Kenyatta on his tour to Tharaka Nithi County in 2017, promised that Kathwana town as the County headquarters will be able to take off.
3. That the Ministry of Interior and Co-ordination of National Government in the Financial year 2019/2020 allocated money to construct an office block for the office of the County Commissioner.
4. That the building which was constructed can only accommodate five departments; which are the County Commissioner's Office, The Deputy County Commissioner Igambang'ombe, Civil registration and national registration Bureau, the Critical Infrastructure protection Unit and the National Intelligence Service.
5. That the building requires connection of electricity and water and needs a perimeter fence.
6. That the office requires the service of the Kenya National Police, the Directorate of Criminal Investigations, as well as the other eighteen departments which are not yet functional in Kathwana Town.
7. That it will be difficult to accommodate all the departments in the building hence the need to build another complex building to meet this demand.

The Speaker of the County then welcomed the Committee to the county and stated that it was a great pleasure for the assembly to host the committee at the Assembly

chambers. He informed the committee that they have had a cordial working relationship with the National Government. In his remarks he further:

1. Stated that at the inception of County Governments in 2013, they have never as a County assembly received the grant by National Government which was supposed to build the new County headquarters whereas the County Executive has received it.
2. Stated that a big challenge they have is lack of independence of the County Assembly budget. Explaining that the assembly's funds must be approved by the County Executive Committee member in charge of Finance for the funds to be released. He thus proposed the need for an amendment to the Public Finance Management act so that the County Assemblies can directly withdrawal their funds without seeking approval from the County executive.
3. Informed that for the last eight years, the Assembly has been getting an allocation for the construction of its new building but the Executive has not been releasing the money to them arguing that there is an ongoing investigation by the Ethics and Anti-Corruption Commission on the construction of the building.
4. The National government needs to allocate sufficient money to its departments so that they can be able to fully move to Kathwana town.
5. They stated that Tharaka Nithi County has been marginalised for long by the national government and pleaded to the committee to have them be given attention to by the current national government.
6. That the Members of the County Assembly need a ward fund for development projects in the wards and requested the committee to help them establish a ward fund in the law.
7. Asked the Senate through the committee to help advocate for mortgage and car loan benefits for Members of the County Assembly.
8. Pleded to the committee to use its powers to fast track the operationalisation of Kathwana town into the full headquarters of Tharaka Nithi County.
9. Requested the committee to inform the County Governor to facilitate all the processes he has withheld from the effective functioning of the county Assembly.

The area Member of Parliament, who was in attendance, thanked the committee for visiting the county stating that this was the first Senate committee to visit the County and affirmed his support to the issues raised by the Assembly to the Committee. He further stated he looked forward to witnessing the Senate support County assemblies in delivering the promise of devolution.

The Vice chairperson in her concluding remarks assured the assembly that the Senate exists to protect County Governments and their interests, and that the Senate will work

with County Assemblies hand in hand to ensure that devolution is implemented. She further informed the assembly that as a committee they have already scheduled meetings with key stakeholders in devolution including the County Assemblies Forum in order to find out how the Assemblies can work better with the Senate for devolution to be implemented to the letter.

MIN/SEN/DEVIR/083/2023

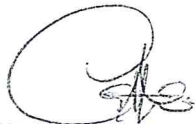
ANY OTHER BUSINESS

There was no any other business

MIN/SEN/DEVIR/084/2023

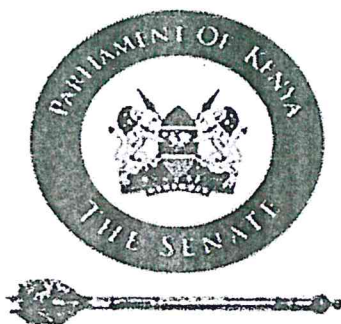
ADJOURNMENT AND DATE OF THE
NEXT MEETING

The Vice-Chaiperson adjourned the meeting at 11:40am with a word of prayer. The next meeting would be held at the residence of His Excellency, the Governor of Tharaka Nith.

SIGNED.....

DATE 16/02/23

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE SIXTEENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON SATURDAY 21ST JANUARY, 2023 AT RESIDENCE OF HIS EXCELLENCY THE GOVERNOR OF THARAKA NITHI COUNTY, AT 12.00 PM.

PRESENT

- | | |
|-------------------------------------|--|
| 1. Sen. Catherine Muyeka Mumma, MP | -Vice-Chairperson (<i>Ag. Chairperson</i>) |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. George Mungai Mbugua, MP | - Member |
| 5. Sen. Esther Anyieni Okenyuri, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 3. Sen. Mohamed Said Chute, MP | - Member |
| 4. Sen. Hezena M. Lemaletian , MP | - Member |

IN ATTENDANCE

- | | |
|-----------------------------------|---|
| 1. Hon. Muthomi Njuki | - Governor, Tharaka Nithi County |
| 2. Sen. Mwenda Gataya Mo.Fire, MP | - Senator, Tharaka Nithi County |
| 3. Hon. Wilson Nyaga | - Deputy Governor Tharaka Nithi County |
| 4. Mr. N.J Komora | - County Commissioner, Tharaka Nithi County |

- | | |
|------------------------|--------------------|
| 5. Mr. Alex Muratha | - County Secretary |
| 6. Mr. Giti Kijiru | - CEC, Housing |
| 7. Mr. Muthini Karangi | - CEC, Devolution |

SECRETARIAT

- | | |
|------------------------|---|
| 1. Mr. Javan Loriko | -Senior Sergeant at arms. |
| 2. Ms. Lucianne Limo | - Media Relations Officer I |
| 3. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 4. Mr. Walters Omondi | - Legal Counsel II |
| 5. Mr. William Wambiru | - Fiscal Analyst III |
| 6. Mr. Desmond Rasugu | - Clerk Assistant III (<i>taking minutes</i>) |
| 7. Mr. Elijah Ichwara | - Audio Officer III |

MIN/SEN/DEVIR/085/2023

PRAYER

The meeting was called to order by the Vice-chairperson at 12:20pm followed with a word of prayer by Eng. Giti kijiru.

MIN/SEN/DEVIR/86/2023

MEETING WITH THE GOVERNOR OF THARAKA NITHI COUNTY.

The meeting commenced with a round of introduction by all who were present. The Governor in his opening remarks welcomed the committee and stated his pleasure to have hosted them in Tharaka Nithi.

The Vice chairperson, who led the delegation, began by stating that the Committee had visited the County because of its concern by the statement raised by Sen. Mwenda Gataya. Mo.Fire about the delayed operationalization of Kathwana town. She informed the Governor that the Committee wrote to the Cabinet Secretary for Interior and Coordination of National Government, who confirmed in his response that indeed there was delay of having government administrative services in Kathwana town.

She further stated that the committee had met with the County assembly and held discussions about the same. She informed the Governor that the committee was also interested receive his views on the state of affairs in the county, and how the committee

can better Intergovernmental Relations between the County Executive and the County Assembly.

In addition, the Committee sought to know the following from the Governor:

1. Why the Executive had not disbursed money allocated for the County Assembly's chambers.
2. What are the Governor's views about the MCAs demand for Mortgage and car loans?
3. How and if the Governor has implemented the urban areas and cities act?
4. What are the plans of the county government to support the National Government's pillar of affordable housing?
5. What are the Governor's view on having county Assemblies have a ward fund which seems to be one of the issues that generates conflicts between the county assemblies and the Executive?

The Governor confirmed that County headquarters had not fully taken off but had made remarkable progress compared to what it was ten years ago when it lacked basic amenities. He stated that around the year 2016 the County had set aside money to start the construction of an administration office block but explained that the grant which the county received was taken to the Ministry of public works which has made it one of the greatest impediments for its completion. He stated that because of this agreement between the County government and the ministry of Public Works, the county is constrained from continuing with completion of the building since they are under a binding contract.

He also informed the committee that the county government had given land for the construction of the office of the County commissioner which is complete and also more for setting up the Kenya National Police county headquarters, to the Judiciary for setting up law courts and many other departments but which the National Government has not utilized.

He stated that the MCAs demand for mortgages are legitimate and informed the committee that in the year 2014, the County allocated money enough for all the twenty six MCAs to access mortgages and in the county but come the year 2018, all the money that was meant for mortgages and car loans were henceforth to be grants and not loans so this made those MCAs who were re-paying to stop paying, and those who had paid, were refunded back the money making the county lose all the money it allocated for the same. He however informed the Committee that the Executive has allocated thirty million Kenya shillings in this year's budget to be given in batches of ten million shillings every two months to the County Assembly for access of mortgages.

On the Issue of the stalled County Assembly chambers, he stated that the proposed building was costing a very unreasonable expense because of its size which he believes is much more than what the assembly of twenty six members need. He further informed the committee that in 2016 the Ethics and Anti-Corruption Commission had stopped the construction of the building and the contractor who was doing the construction had been subcontracted by the one who had been contracted by the County Assembly. He however stated that the Executive's plan on the same is that once the EACC gives a leeway for the construction to continue, they will restructure the building's size and build a chamber that is sustainable and only enough to accommodate the assembly's members. He further informed the committee that in the meantime, the Executive had offered the Social hall to the Assembly which they can temporarily use as they await completion of construction of their own chambers.

The Governor confirmed that the county was among the few counties that was doing urban planning and had partnered with the University of Nairobi tAnd stated that they had partnered with the National government and given them land to construct a prison out of town. Additionally, more land has been allocated to build more departments.

The Governor informed the committee that the county government is fully into the National governments plan of affordable housing and that they have donated 8.5 acres of land to National Government for construction of affordable houses.

On his views about ward fund, he stated that since there is no such a fund anchored in the law, the best way to have members of county assembly be part of development is to have a good working relationship with the Governor in a manner that involves them in identifying development projects in their wards and the Executive funds them.

The committee resolved to:

- 
- i. Plan a meeting with the EACC to inquire why the construction of the Assembly headquarters was stopped and;
 - ii. Plan a meeting with the Controller of Budget and inquire why they don't remit money for the Construction of the County Assembly Chambers.

Thereafter, Senator.Sen. Mwenda Gataya Mo Fire in his remarks stated that he was impressed by the comprehensive response by the Governor and his grasp of the issues affecting the smooth functioning of devolution in the county. He also expressed his gratitude to the committee for taking the statement that he se sought in the senate seriously and was very hopeful that action shall be taken.

The Vice-Chairperson in her concluding remarks stated that she impressed by the Governors expression of the issues raised and that the Committee was there to see how they can support the County Government to deliver services to the people.

MIN/SEN/DEVIR/087/2023

ANY OTHER BUSINESS

There was no any other Business.

MIN/SEN/DEVIR/088/2023

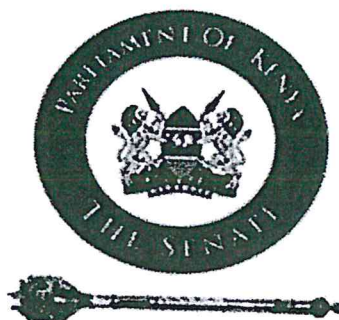
ADJOURNMENT AND DATE OF THE
NEXT MEETING

The Chairperson adjourned the meeting at 1.35pm. The next meeting shall be announced.

SIGNED.....

DATE..16/02/23.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE SEVENTEENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON SATURDAY 21ST JANUARY, 2023 AT THARAKA NITHI COUNTY COMMISSIONER'S OFFICE IN KATHWANA TOWN, AT 3.00 PM.

PRESENT

- | | |
|-------------------------------------|---|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson (<i>Ag. Chairperson</i>) |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. George Mungai Mbugua, MP | - Member |
| 5. Sen. Esther Anyieni Okenyuri, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 3. Sen. Mohamed Said Chute, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |

IN ATTENDANCE

- | | |
|--------------------------------|---|
| 1. Sen. Mwenda Gataya Mo. Fire | - Senator. Tharaka Nithi County |
| 2. Mr. N.J Komora | - County Commissioner, Tharaka Nithi County |
| 3. Mr. Julias Too | - Deputy County Commissioner Igambang'ombe. |
| 4. Catherine Gatweria | - County Civil registration officer. |

SECRETARIAT

- | | |
|------------------------|---|
| 1. Mr. Javan Loriko | -Senior Sergeant at arms. |
| 2. Ms. Lucianne Limo | - Media Relations Officer I |
| 3. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 4. Mr. Walters Omondi | - Legal Counsel II |
| 5. Mr. William Wambiru | - Fiscal Analyst III |
| 6. Mr. Desmond Rasugu | - Clerk Assistant III (<i>taking minutes</i>) |
| 7. Mr. Elijah Ichwara | - Audio Officer III |

MIN/SEN/DEVIR/089/2023

MEETING WITH THE COUNTY COMMISSIONER OF THARAKA NITHI COUNTY.

Following extensive visits to various County Headquarter sites, the meeting commenced with a round of introductions by all those who were present.

The County Commissioner welcomed the committee to his office and thanked them for the initiative to visit the county to witness the state of affairs of Kathwana headquarters. He informed them that the National government had allocated funds to commence the construction of an office in the financial year 2019/2020 block which is over 90 per cent complete. The remaining works are landscaping of the headquarters, erection of a perimeter fence, vehicle parking, water and electricity connection.

He further stated that as other National Government Departments move to Kathwana town, efforts should be made to post officers directly to Kathwana and also encouraging financial institutions to open branches in the town. He further stated that as it is, now Kathwana town lacks basic infrastructure such as office space to rent as well as accommodation for civil servants who will be posted in the area. He emphasized that construction of a residence for the County Commissioner as well construction of offices for the National police service is the prerequisite. He finalized by stating that a deliberate effort by the government to construct a complex to accommodate all other National Government will greatly ease the problem of offices.

The Vice chairperson stated the visit to the County had opened the mind of the committee on other important issues. She stated that she was so hopeful that Kathwana town will develop into a great County Headquarter in the coming years and that the

County was the place to model Intergovernmental cooperation for delivery of full headquarters for county governments.

She encouraged the civil servants working with minimal resources to work diligently and cooperate with each other and that will deliver to the citizens what they want. She concluded by assuring the County commissioner and his officers that the committee had seriously taken note of their challenges including the poor conditions of inmates in the area prison and police station; and promised to meet with the National government on the same matter of urgency.

MIN/SEN/DEVIR/090/2023

ANY OTHER BUSINESS

There was no any other business.

MIN/SEN/DEVIR/091/2023
MEETING

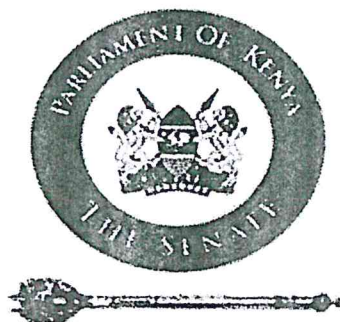
ADJOURNMENT AND DATE OF THE NEXT

The Vice-Chairperson adjourned the meeting at 3:43Pm. The next meeting shall be announced.

SIGNED.....

DATE...16/02/23

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE EIGHTEENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON SATURDAY 21ST JANUARY, 2023 AT KATHWANA TOWN MUNICIPAL COUNCIL OFFICE IN THARAKA NITHI COUNTY, AT 4.15 PM.

PRESENT

- | | |
|-------------------------------------|--|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson (<i>Ag Chairperson</i>) |
| 2. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 3. Sen. George Mungai Mbugua, MP | - Member |
| 4. Sen. Esther Anyieni Okenyuri, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 3. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 4. Sen. Mohamed Said Chute, MP | - Member |
| 5. Sen. Hezena M. Lemaletian, MP | - Member |

IN ATTENDANCE

- | | |
|--------------------------------|--|
| 1. Sen. Mwenda Gataya Mo. Fire | - Senator. Tharaka Nithi County |
| 2. Mr. N.J Komora | - County Commissioner, Tharaka Nithi County |
| 3. Mr. Julias Too | - Deputy County Commissioner
Igambangombe Subcounty |
| 4. Mr. Patrick Nyaga | - Chairperson, Kathwana Market |

	Committee
5. Ms. Rose Mbae	- Vice Chairperson, Kathwana Market
	Committee
6. Mr. Henry Kajogo	- Secretary
7. Mr. Peter Kathiga	- Member
8. Ms. Silvia Katinga	- Member
9. Ms. Lucyline Murethi	- Member
10. Mr. Peter Kibogo	- Member
11. Mr. Charles Nyaga	- Member
12. Mr. Kennedy Kiuva	- Member
13. Mr. Josephat Munene	- Member
14. Mr. Charles Kimwe	- Member
15. Mr. Henry Kiwiwere	- Member
16. Mr. Japheth Kirema	- Member

SECRETARIAT

1. Mr. Javan Loriko	- Senior Sergeant at arms.
2. Ms. Lucianne Limo	- Media Relations Officer I
3. Ms. Sylvia Nasambu	- Clerk Assistant II
4. Mr. Walters Omondi	- Legal Counsel II
5. Mr. William Wambiru	- Fiscal Analyst III
6. Mr. Desmond Rasugu	- Clerk Assistant III (<i>taking minutes</i>)
7. Mr. Elijah Ichwara	- Audio Officer III

MIN/SEN/DEVIR/092/2023

PRAYER

The Meeting was called at 4:15pm followed by a word of Prayer by Rev. Peter Kibogo.

MIN/SEN/DEVIR/093/2023

MEETING WITH THE KATHWANA MARKET COMMITTEE

The meeting commenced with a round of introductions by all those who were present. The Vice - Chairperson began by thanking the host Senator Sen. Mwenda Gataya Mo.Fire, M.P for the statement he raised in the Senate over the State of operationalization of Kathwana town as the headquarters of Tharaka Nithi. She stated that the visit was important for the committee to collect the views of the resident of the area to enable them understand how best they can approach the problem.

The Chairperson of the Kathwana Committee Market began his remarks by stating that the market committee fully supports the statement by the area senator that all National Government administrative services be relocated from Chuka town to Kathwana town, while Chuka, Chogoria and Marimanti towns become commercial towns.

He informed the committee that the following factors have made the county headquarters to stall:

1. All county departments, personnel, facilities and offices have not moved from Chuka to Kathwana.
2. Most of the county amenities that make the headquarters conducive, are not provided for since inception. That is, the departmental offices, staff offices, reliable water supply, hospitals and other institutions.
3. Failure to operationalize Kathwana Municipality and give government employees house allowance.
4. Failure to declare igambangombe subcounty to attract hardship allowances for the residents to reap big in the case of other municipalities.
5. Failure to provide passable/motorable road network such as Kathwana-Kamarambi road, Marima- Kathwana road, Chuka- kamakanyaga road

He made the following recommendations or the Senate to consider in addressing the issues, in order to actualize the operationalization of Kathwana town as the Tharaka Nithi County headquarters:

1. Immediately facilitate the relocation of all government administrative offices and personnel from Chuka town to Kathwana.
2. Provide money to facilitate the completion of the stalled county headquarters building.
3. Provide a budget for the construction of a referral hospital, law courts, residential houses for the county commissioner and the Deputy County Commissioner.
4. Provide Budget for conducive amenities at the headquarters e.g low-cost houses for civil servants, reliable water supply, and a recreational centre.
5. Provide personnel and operationalize Huduma centre at the headquarters.
6. Put up the National police services for security at the headquarters.
7. Facilitate electricity connectivity to all homes neighbouring the county headquarters as this will attract more headquarters.
8. Establish land registry and land control board for Igambang'ombebe Subcounty at the headquarters.
9. Request postal corporation of Kenya to upgrade the Kathwana postal office to a fully-fledged post office to offer essential services.
10. Consider all the Igambangombe schools for feeding programme.
11. Kathwana, Mandogo, Mugumoni and Kayeboni schools be improved to municipal model schools and hence centres of excellence.

He concluded by stating that they looked forward to getting a very positive consideration from the committee because the community had set aside more public utility plots under Kathwana for various purposes which the National Government can exploit.

The Vice chairperson stated that the committee had taken note of all the submissions of the residents of Kathwana and would take the necessary actions to address the issues.

The members stated that they had listened to all the stakeholders including the Governor, the County Assembly and got a full perspective which they will use to advocate for the operationalization of the headquarters of Kathwana.

The Vice Chairperson directed the secretariat to request the Governor for information on the status of the operationalization of the municipality.

MIN/SEN/DEVIR/094/2023

ANY OTHER BUSINESS

There was no any other business

MIN/SEN/DEVIR/095/2023

ADJOURNMENT AND DATE OF THE
NEXT MEETING

The Vice-Chairperson adjourned the meeting at 4:53Pm after a prayer by Rev. Peter Kibogo. The next meeting shall be announced.

SIGNED.....

DATE 16/02/23.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



**MINUTES OF THE THIRTY SECOND SITTING OF THE SENATE
STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY, 2ND
MARCH, 2023 AT GROUND FLOOR BOARDROOM, COUNTY HALL, AT
10:00 AM.**

PRESENT

- | | |
|-------------------------------------|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 3. Sen. Mohamed Said Chute, MP | - Member |
| 4. Sen. George Mungai Mbugua, MP | - Member |
| 5. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 2. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. Hezena M. Lemaletian, MP | - Member |

IN ATTENDANCE

- | | |
|-------------------------------|--|
| 1. Sen. Mwenda Gataya Mo.Fire | - Senator for Tharaka Nithi County |
| 2. Mr. David Too, OGW | - Director, Legal Services EACC |
| 3. Mr. Charles Rasugu | - Regional Manager EACC, Upper Eastern |
| 4. Mr. Francis Makori | - Coordination Officer, EACC |

SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Lucianne Limo | - Media Relations Officer |
| 2. Ms. Sylvia Nasambu | - Clerk Assistant II |

- | | |
|----------------------------|---|
| 3. Ms. Yunis Amran | - Fiscal Analyst |
| 4. Ms. Ann Kigoro | - Research Officer II |
| 5. Mr. Walters Omondi | - Legal Counsel II |
| 6. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 7. Ms. Celestine Jepkosgey | - Public Communications Officer III |
| 8. Ms. Lucy Mwaniki | - Sergeant at Arms. |
| 9. Mr. Tobias Juma | - Intern. |

MIN/SEN/DEVIR/159/2023

PRAYER

The Meeting was called to order at 10:29 am by the chairperson followed with a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/160/2023

MEETING WITH THE ETHICS AND ANTI-CORRUPTION COMMISSION

The Director Legal Services at EACC informed the committee that in the year 2016, ~~the Commission commenced an inquiry into the irregular procurement of architectural designs for the construction of the Tharaka Nithi County assembly chambers at a tender sum of Ksh. 62,764,622.00/- and the irregular procurement and award of a tender for the construction of the Assembly chambers for a sum of 369,642,688.00/-~~

He further reported that:

- 1) In respect to investigation on irregular procurement of consultancy services for architectural designs for the construction of the chambers, the investigations established as follows;
 - (i) The Tharaka Nithi County Assembly had advertised for expression of interest for consultancy services for architectural designs on 23rd January, 2014;
 - (ii) There were no approved architectural designs by the County Physical Planner;
 - (iii) There was no Contract Management Committee to advise on the payments;
 - (iv) Payments were authorized by the County Clerk and the Principal Finance Officer and made without the Procurement Department approval or acceptance by the Inspection and Acceptance Committee.

After the findings of the investigations, a Statutory Report was compiled and forwarded to the Director of Public Prosecutions on 23rd October 2019 with recommendations that several persons including the Speaker, the Clerk, the Principal Finance Officer, the

Senior Legal Counsel Baseline Architects Limited, Baseline Architects Limited and Senior Quantity Surveyor, be charged with various offences under the Anti-Corruption and Economic Crimes Act, 2003. Following an independent review of the inquiry file, the Office of the Director of Public Prosecutions returned the inquiry file on 28th April 2020 for further investigations, with recommendations to cover additional areas to strengthen the evidence already on record.

- 2) In respect to alleged irregular procurement and award of tender for the construction of Tharaka Nithi County Assembly Block at a tender sum of Kshs. 369,642,688.00 the investigations have been completed where it has been established that the said tender was irregularly procured in contravention with the public procurement laws and regulations. The investigation also established criminal culpability of several persons and in line with the provisions of section 35 of the Anti-Corruption and Economic Crimes Act, the Commission will forward to the Director of Public Prosecution together with the file relating to consultancy services for independent review and necessary appropriate action, upon covering points in the related file.

He additionally stated that the Commission is still holding the two files of inquiry and will be able to forward them to the Director Public Prosecution in at most three months' time when the investigations could have been completed. He expressly stated that the EACC did not at all stop the Construction of the Tharaka Nithi County Assembly Chambers.

He also informed the committee that one of the issues that the Commission learnt in the course of its investigation was that the land where the Assembly chambers is being constructed has got an ownership dispute and this might have led the contractor to stop the construction. He however clarified that EACC was not investigating the land ownership, but it was just an issue that emerged in the course of its investigation.

He finally stated that the commission had no formal obligation of advising the County Assembly on whether to continue with the construction or not but all they can urge them is to follow the law.

The Chairperson stated that the committee was concerned with the long period of time that the EACC was taking to complete its investigations and regretted that this was a big drawback to the residents of Tharaka Nithi on getting the promise of Devolution. He urged EACC to fastrack the remaining process of the inquiry and finally stated that the committee will follow the matter to its conclusion.

MIN/SEN/DEVIR/161/2023

ANY OTHER BUSINESS

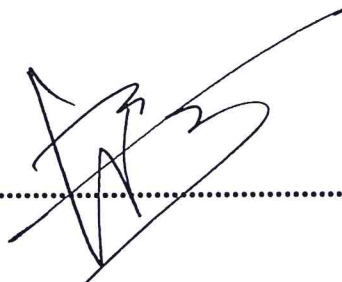
There was no any other business.

MIN/SEN/DEVIR/162/2023

ADJOURNMENT AND DATE OF NEXT
SITTING.

There being no any other business, the Chairperson adjourned the meeting at 11:38am. The next meeting to be held on Tuesday 7th February, 2023 at 10:00am at Committee Room 5.

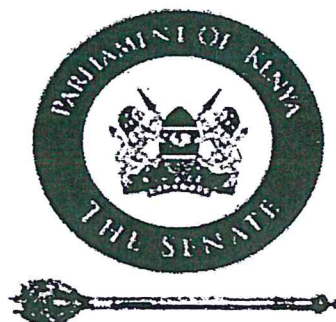
SIGNED.....



DATE.....

16.03.22

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE THIRTY THIRD SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON TUESDAY, 7TH MARCH, 2023 AT CPA ROOM, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS, AT 10:00 AM.

PRESENT

- | | |
|-------------------------------------|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 3. Sen. Mohamed Said Chute, MP | - Member |
| 4. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------------|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 2. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. George Mungai Mbugua, MP | - Member |
| 5. Sen. Hezena M. Lemaletian, MP | - Member |

IN ATTENDANCE

- | | |
|-------------------------|--|
| 1. Mr. Tuti Waweru | - Manager Legal Service, office of the Controller Of Budget. |
| 2. Mr. Mark Kipkoech | - Chief Fiscal Analyst, office of the Controller of Budget |
| 3. Mr. James Ngao | - Clerk Assistant, Makueni County Assembly |
| 4. Ms. Clementine Mukii | - Clerk Assistant, Makueni County Assembly |

SECRETARIAT

- | | |
|----------------------------|---|
| 1. Ms. Lucianne Limo | - Media Relations Officer |
| 2. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 3. Ms. Yunis Amran | - Fiscal Analyst |
| 4. Ms. Ann Kigoro | - Research Officer II |
| 5. Mr. Walters Omondi | - Legal Counsel II |
| 6. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 7. Ms. Celestine Jepkosgey | - Public Communications Officer III |
| 8. Mr. John ole Kampule | - Sergeant at Arms |

MIN/SEN/DEVIR/163/2023

PRAYER

The Meeting was called to order at 10:20 am by the chairperson followed with a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/164/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Mohamed Chute, MP and Seconded by Sen. (Dr) Oburu Oginga, MGH, MP as follows;

1. Prayer
2. Adoption of the Agenda
3. Meeting with the Controller of Budget to deliberate on matters affecting the construction of the Tharaka Nithi County Assembly Chambers.
4. Any Other Business.
5. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/165/2023

MEETING WITH THE CONTROLLER OF BUDGET.

The Controller of Budget did not attend the meeting but instead sent two of her officers; the Chief Fiscal Analyst and the Manager Legal Service, to represent her. Members deliberated on the failure of the Controller of Budget to appear before the Committee in person and resolved as follows:

1. To call off the meeting with the officers representing the Controller of Budget.

2. The Controller of Budget to be issued with a letter for a second invitation to appear before the Committee in person, with a warning that failure to appear will attract the powers of the committee to summon her in accordance to standing order 215 of the senate standing orders.
3. That in the second letter, the Controller of Budget to additionally be invited to make a response on the status of Pending bills in the counties and what her office is doing to solve the issue, and further, give a report on the use of Conditional grants and Donor funds by the various counties indicating the ones that have used the fund prudently, and those that have misappropriated

MIN/SEN/DEVIR/166/2023

ANY OTHER BUSINESS

The members expressed concern about the inconveniences caused by the late changes on the Venue for the meeting and they were informed that the changes were necessitated by events beyond the control of the Secretariat.

MIN/SEN/DEVIR/167/2023

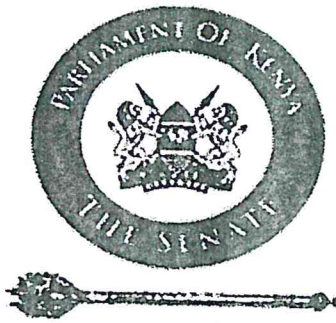
ADJOURNMENT AND DATE OF NEXT SITTING.

The Chairperson adjourned the meeting at 10:55am. The next meeting to be on notice.

SIGNED.....

DATE.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE THIRTY EIGHT SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON TUESDAY, 21ST MARCH, 2023 AT COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS, AT 10:00 AM.

PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 4. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 5. Sen. Mohamed Said Chute, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|----------|
| 1. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 2. Sen. George Mungai Mbugua, MP | - Member |
| 3. Sen. Hezena M. Lemaletian, MP | - Member |
| 4. Sen. David Wafula Wakoli, MP | - Member |

IN ATTENDANCE

- | | |
|---------------------------|--|
| 1. Dr. Margaret Nyakang'o | - Controller of Budget |
| 2. Mr. Tuti Waweru | - Manager Legal Service, Office of COB |
| 3. Mr. Mark Kipkoech | - Chief Fiscal Analyst, Office of COB |
| 4. Ms. Mary Owili | - Personal Assistant to COB |

SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Lucianne Limo | - Media Relations Officer |
| 2. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 3. Mr. Walters Omondi | - Legal Counsel II |

- | | |
|-------------------------|--|
| 4. Ms. Ann Kigoro | - Research Officer II |
| 5. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 6. Ms. Lucy Mwaniki | - Sergeant at Arms |
| 7. Mr. Johnstone Simiyu | -Audio Officer III |

MIN/SEN/DEVIR/187/2023:

PRAYER

The Meeting was called to order at 10:10 am by the chairperson followed with a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/188/2023

ADOPTION OF THE AGENDA

The Agenda of the meeting was adopted as presented after being proposed by the Vice-chairperson and seconded by Sen. Mohamed Chute, MP as follows:

1. Prayer
2. Adoption of the Agenda
3. Meeting with the Controller of Budget to deliberate on matters affecting the construction of the Tharaka Nithi County Assembly Chambers.
4. Any Other Business.
5. Adjournment and Date of the Next Meeting.

MIN/SEN/DEVIR/189/2023:

MEETING WITH THE CONTROLLER OF BUDGET TO DELIBERATE ON MATTERS AFFECTING THE CONSTRUCTION OF THE THARAKA NITHI COUNTY ASSEMBLY CHAMBERS.

The controller of Budget began her remarks by outlining the various roles her office is mandated to carry out with the key one being overseeing the implementation of budgets of the national and county governments by authorizing withdrawals from public funds. She expressly stated that her office has never declined or stopped the remittance of monies allocated for the construction of Tharaka Nithi County Assembly chambers. She informed the committee that for her to approve any funds, the county government must first ensure that the activity for the use of the funds is budgeted and provided for in the Appropriation act. She further stated that her office has no pending requisition from the county assembly of Tharaka Nithi.

She however, presented a letter dated 25th June, 2018 from the Chief Executive Officer of the Ethics and Anti-Corruption Commission to the Governor of Tharaka Nithi County advising the county government not to release funds for the construction of the County Assembly until investigations on the alleged procurement irregularities are completed and recommendations made to the Director of Public Prosecution.

The COB further presented a report on the status of pending bills in the Counties as at the end of February 2023 and provided the list of the twelve counties that have completed the verification process of the pending bills which indicates the amount that is eligible for Payment.

She highlighted some of the main causes for pending bills, the various challenges her office faces in regard to dispensing with pending bills, and the recommendations she makes to counties on dealing with them.

She additionally informed the committee that her office had come up with a proposed set of regulations aimed at closing the gaps that the whole management of Public Finance is faced with, which were presented to and passed at the National Assembly but did not pass in the Senate. She added that she is in the process of finetuning the regulations which will be resubmitted to Parliament for consideration.

She additionally informed the committee that conditional grants are domiciled in the Ministries and the funds can only move to the County Revenue fund once the county makes such a requisition to the ministry after which the Controller of budget approves the money to be transferred to the County Special Purpose Account.

After the deliberations on the issue of the construction of the Tharaka Nithi County Assembly and the status of pending bills, the Controller of Budget:

1. Stated that she will follow up on the matter by writing to the Ethics and Anti-Corruption Commission on their delayed completion of the investigations.
2. Stated that she will find out on the status of implementation of the other counties that received the conditional grant for setting up county headquarters and report back to the Committee.
3. Stated that her office was in the process of coming up with long term sustainable initiatives of dealing with pending bills which include, establishing a system where they assess each county on some operational areas to satisfy the office that the counties are able to account for whatever they are collecting in a transparent manner.
4. Informed the committee that her office is moving towards an accrual form of reporting, where when a county shows that they have pending bills, they must explain what happened to the funds that were supposed to pay for that bill. Meaning their financial statements must reflect both their assets and liabilities.

5. Stated that her office together with the Auditor General is developing a framework on what happens to the bills that are found ineligible after verification is done.

The Chairperson concluded his remarks by assuring the Controller of the budget of the committee's commitment to support her office in the areas the Senate needs to intervene for enhancing efficient and effective management of Public Finance in the Counties.

MIN/SEN/DEVIR/190/2023

ANY OTHER BUSINESS

There was no any other business

MIN/SEN/DEVIR/191/2023

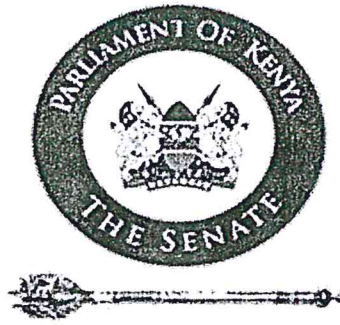
ADJOURNMENT AND DATE OF NEXT MEETING.

The Chairperson adjourned the meeting at 12:08 pm. The next meeting shall be held on notice.

SIGNED.....

DATE.....18/04/23.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE FORTY FIRST SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON TUESDAY, 18TH APRIL, 2023 AT CAUCUS 110, FIRST FLOOR, KICC BUILDING, AT 9:00AM.

PRESENT

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP. | - Member |
| 4. Sen. Mohamed Said Chute, MP | - Member |
| 5. Sen. Hezena M. Lemaletian, MP | - Member |
| 6. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 2. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 3. Sen. George Mungai Mbugua, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|---|
| 1. Ms. Lucianne Limo | - Media Relations I |
| 2. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 3. Mr. Walters Omondi | - Legal Counsel II |
| 4. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 5. Ms. Celestine Jepkosgey | - Public Communications Officer III |
| 6. Mr. Benard Marwar | - Sergeant at Arms |
| 7. Mr. Johnstone Simiyu | - Audio Officer III |

MIN/SEN/DEVIR/204/2023:**PRAYER**

The Meeting was called to order at 9:16 am by the chairperson, followed with a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/205/2023**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as presented after being proposed by Sen. Mohamed Chute, MP and seconded by Sen. David Wakoli, MP as follows:

1. Prayer
2. Adoption of the Agenda
3. Confirmation of Minutes of Previous Meetings (4sets)
4. Matters Arising from Minutes of the Previous Meetings
5. Consideration of the County Boundaries Bill, 2023 (Senate Bills No. 6 of 2023)
6. Consideration of the Report of the Committee on the County Boundaries Bill, 2023 (Senate Bills No.6 of 2023)
7. Consideration of the Report of the Committee on the relocation of National Administrative Services from Chuka town to Kathwana town, the gazetted headquarters of Tharaka Nithi County.
8. Any Other Business.
9. Date of the Next Meeting and Adjournment

MIN/SEN/DEVIR/206/2023:**CONFIRMATION OF THE MINUTES OF
THE PREVIOUS MEETINGS.**

The minutes of the thirty fourth sitting of the Committee that was held on Thursday, 16th March, 2023 at 10:00 am were confirmed as a true record of the proceedings after being proposed by Sen. David Wakoli, MP and Seconded by MP.

The minutes of the thirty-eighth sitting of the Committee that was held on Tuesday, 21st March, 2023 at 10:00am were confirmed with amendments after being proposed by the Vice chairperson and seconded by Sen. Mohamed Chute, MP.

The minutes of the thirty ninth sitting of the Committee that was held on Tuesday, 28th March, 2023 at 10:00am were confirmed as a true record of the proceedings after being proposed by Sen. David Wakoli, MP and Seconded by the Vice Chairperson.

The minutes of the fortieth sitting of the Committee that was held on Thursday, 13th April, 2023 at 9:00 am were confirmed as a true record of the proceedings after being proposed by Sen. David Wakoli, MP and Seconded by Sen. Mohamed Chute. MP.

MIN/SEN/DEVIR/207/2023

**MATTERS ARISING FROM MINUTES OF
THE PREVIOUS MEETINGS.**

There were no matters arising.

MIN/SEN/DEVIR/208/2023

**CONSIDERATION OF THE COUNTY
BOUNDARIES BILL, 2023 (SENATE BILLS
NO. 6 OF 2023)**

The members were taken through the matrix of the submissions by various stakeholders on the County Boundaries Bill, 2023 (Senate Bills. No.6 of 2023). The matrix covered all the specific proposals by the stakeholders, and the Committee adopted the proposals with amendments.

MIN/SEN/ DEVIR/209/2023

**CONSIDERATION OF THE REPORT OF THE
COMMITTEE ON COUNTY BOUNDARIES
BILL, 2023 (SENATE BILLS NO. 6 OF (2023)**

The members were taken through the report on the County Boundaries Bill, 2023 (Senate Bills. No.6 of 2023) that covered the background, objective, overview and consequences of the Bill. It further gave an overview of public participation, highlighting the various stakeholders who submitted their memoranda. Additionally, the report analyzed a clause by clause synthesis of the stakeholders' and Committee's observations on each of the clauses. Further, the report stated the Committee's recommendation on the Bill, which is that the Senate Passes the Bill with the proposed amendments.

Consequently, the report was adopted by the Committee.

MIN/SEN/DEVIR/210/2023:

**CONSIDERATION OF THE REPORT OF THE COMMITTEE ON
RELOCATION OF NATIONAL ADMINISTRATIVE SERVICES FROM
CHUKA TOWN TO KATHWANA TOWN, THE GAZETTED
HEADQUARTERS OF THARAKA NITHI COUNTY.**

The Members were taken through the comprehensive report of the Committee on the Statement sought by Senator for Tharaka Nithi County, Sen. Mwenda Gataya Mo. Fire,

MP, regarding the relocation of National Administrative Services from Chuka town to Kathwana town which is the gazetted headquarters of Tharaka Nithi County.

The Committee adopted the report with amendments, which were to have the term Taskforce in the recommendations on the Construction of the County Assembly Chambers, be replaced with Multi-Agency Technical Committee, which shall comprise of representative(s) of the:

1. County Executive Department in charge of Public Works and Housing
2. The County Assembly Service Board
3. The Ministry of Public Works and Housing
4. The Ethics and Anti- Corruption Commission
5. The Controller of Budget
6. The National Treasury; and
7. The Attorney General

MIN/SEN/DEVIR/211/2023 ANY OTHER BUSINESS.

There was no any other Business.

MIN/SEN/DEVIR/212/2023 ADJOURNMENT AND DATE OF NEXT MEETING.

The Chairperson adjourned the meeting at 11:25 am. The next meeting to be held on Thursday, 20th April, 2023.

SIGNED.....



DATE.....

18/04/23

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.

Annex 3:

Submissions



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14/11/22

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STATEMENT ON RELOCATION OF NATIONAL GOVERNMENT ADMINISTRATIVE SERVICES FROM CHUKA TOWN TO KATHWANA TOWN HEADQUARTERS IN THARAKA-NITHI COUNTY

Honourable Chair, at the sitting of the Senate held on 19th October, 2022, Senator Mwenda Gataya Mo Fire requested for a statement regarding the relocation of National Government administrative services from Chuka Town to Kathwana Town Headquarters in Tharaka-Nithi County.

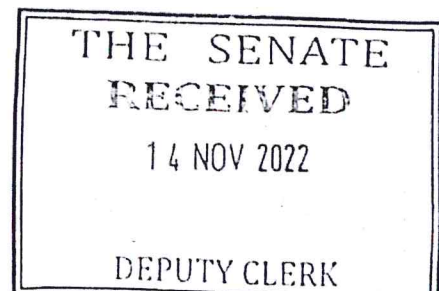
The Honourable Senator particularly sought;

- i. To be informed why there are no National Government Administrative Officers in Kathwana, which is the gazetted county headquarters, despite public participation and consensus, which defeats the spirit of devolution as investors, business people and the public are unable to receive services;
- ii. That the Committee facilitates the operationalization of Kathwana County headquarters and ensures public officers move to the designated county headquarters from Chuka Town; and
- iii. That the Committee recommends that the towns of Chogoria, Chuka and Marimanti be designated as commercial industrial towns.

I wish to state as follows:

Honourable Chair, the decision to relocate the Administrative offices to Kathwana was mooted in 2016 during a Presidential tour in the County, prior to 2017 General Elections. In the FY 2019/2020, the Government allocated funds for construction of an office block.

The office block was undertaken and is currently at 99% completion, with the following finishing works yet to be done: landscaping, erecting perimeter fence, parking lot and, water and electricity connection.



However, **Honourable Chair**, given the size of the building in question, it cannot accommodate all the National Government Departments. Currently, offices have been allocated for the following departments:

- i. County Commissioner's Office
- ii. National Intelligence Services
- iii. Civil Registration Department
- iv. Social Protection Department
- v. Critical Infrastructure Protection Unit
- vi. Deputy County Commissioner- Igamba Ng'ombe Sub-County

The following Departments have no space at all within Kathwana Town from where they can serve members of the Public:

- i. Education Departments
- ii. Teachers Service Commission
- iii. Forest Services
- iv. Children Services
- v. Youth Affairs Departments
- vi. Labour Departments
- vii. Probation Departments
- viii. Social Services
- ix. National Environment Management Authority
- x. National Land Commissions
- xi. Housing Departments
- xii. Gender Affairs Departments

The Kenya Police, though being a core Department don't have an office. They were allocated land but funds for construction have not yet been availed.

Honourable Chair, as much as Government officers are willing to relocate to Kathwana;

- i. There is no infrastructure to accommodate all the Government departments.

Public from Chuka town, with Fridays being reserved for field work and monitoring Government Projects in the County.

The weekly programme has been widely publicized and the public is well aware. In situations where the County Commissioner is not at the Kathwana office, there is an officer permanently deployed in the office to receive any matters that call for the County Commissioner's attention.

The Office of the Deputy County Commissioner- Igambang'ombe Sub-County, which shares the same building, Registration of Persons and Civil Registration offices are all operational at Kathwana. Construction of Kathwana Huduma Centre is also complete, and the facility already furnished, only awaiting deployment of officers.

Thank you, **Honourable Chair.**



KITHURE KINDIKI

CABINET SECRETARY

MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION

7TH NOVEMBER, 2022



**REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO
THE SENATE STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS ON EACC'S INVESTIGATION REGARDING
THE CONSTRUCTION OF THE THARAKA-NITHI COUNTY ASSEMBLY CHAMBERS**

=====
Thursday
2nd March, 2023
=====

REPORT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS ON EACC'S INVESTIGATION REGARDING THE CONSTRUCTION OF THE THARAKA-NITHI COUNTY ASSEMBLY CHAMBERS

1.0 Introduction

- The Ethics and Anti-Corruption Commission (EACC) is a statutory body established under the Ethics and Anti-Corruption Commission Act, 2011. The Act was enacted pursuant to the requirement under Article 79 of the Constitution of Kenya, 2010.
- The mandate of the Commission is to combat corruption and economic crime in Kenya through law enforcement, prevention, public education and promotion of standards and practices of integrity and ethics. The Commission also derives its statutory mandate from a number of other statutes namely, the Anti-Corruption and Economic Crimes Act, 2003, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Bribery Act, 2016, among others.
- This is a report to the Senate Standing Committee on Devolution and Intergovernmental Relations Committee on investigation regarding the construction of the Tharaka-Nithi County Assembly Chambers.
- The report is submitted pursuant to a written request by the aforementioned Committee vide a letter Ref: **SEN/DGAC/DEVIR/2023/007** dated **21st February, 2023**.

2.0 Preliminaries: Initial Reports

- On **10th February, 2016**, the Ethics and Anti-Corruption Commission (The Commission) received a report that Tharaka Nithi County Assembly officials had been involved in procurement irregularities for the construction of the in Tender No. TNCA/T/01/2015-2016 at a tender sum of **Kshs. 369,642,688.00/=**.
- In the Course of its investigation, in 2018 the Commission established basis to undertake further inquiry into allegation on irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block at a tender sum of **Kshs. 62,764,622.00/=**.

- It is important to note that the said reported allegations led to:
 - i. Inquiry into irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block tender sum of **Kshs. 62,764,622.00/=**; and
 - ii. Inquiry into Inquiry into the procurement for the construction County Assembly of Tharaka Nithi County at a tender sum of **Kshs. 369,642,688.00/=**.

3.0 Current Status: Inquiry into allegations of irregular procurement of design for the construction of Country Assembly of Tharaka Nithi County

- In respect to investigation on irregular procurement of consultancy services for architectural designs for the construction of Tharaka Nithi County Assembly Block at a tender sum of Kshs. **Kshs. 62,764,622.00** , the investigations established as follows;
 - i. The Tharaka Nithi County Assembly had advertised for expression of interest for consultancy services for architectural designs on 23rd January, 2014;
 - ii. There were no approved architectural designs by the County Physical Planner;
 - iii. There was no Contract Management Committee to advise on the payments; and
 - iv. Payments were authorized by the County Clerk and the Principal Finance Officer and made without the Procurement Department approval or acceptance by the Inspection and Acceptance Committee.
- **Section 35** of Anti-Corruption and Economic Crimes Act (ACECA), 2003, provides that; **(1)** Following an investigation the Commission shall report to the Director of Public Prosecutions on the results of the investigation. **(2)** The Commission's report shall include any recommendation the Commission may have that a person be prosecuted for corruption or economic crime
- Consequently, a Statutory Report was compiled and forwarded to the Director of Public Prosecutions on **23rd October 2019** with recommendations that several persons including the Speaker, the Clerk, the Principal Finance Officer, the Senior Legal Counsel Baseline Architects Limited, Baseline Architects Limited and Senior

Quantity Surveyor, be charged with various offences under the Anti-Corruption and Economic Crimes Act, 2003.

- Following an independent review of the inquiry file, the Office of the Director of Public Prosecutions returned the inquiry file on **28th April 2020** for further investigations, with recommendations to cover additional areas to strengthen the evidence already on record. **See attached copy of the relevant part of the Gazette Notice being the quarterly Report for the relevant period marked Appendix 1.**
- The Commission is currently addressing a number of issues raised by the Office of the Director of Public Prosecutions.

4.0 Current Status: Inquiry into allegations of irregular procurement for the proposed construction of Country Assembly of Tharaka Nithi County

- In respect to alleged irregular procurement and award of tender for the construction of Tharaka Nithi County Assembly Block at a tender sum of **Kshs. 369,642,688.00**, the investigation has been completed wherein it has been established that the said tender was irregularly procured in contravention with the public procurement laws and regulations.
- The investigation has also established criminal culpability of several persons and in line with the provisions of section 35 of the Anti-Corruption and Economic Crimes Act, the Commission will forward to the Director of Public Prosecution together with the file relating to consultancy services for independent review and necessary appropriate action, upon covering points in the related file.
- From the foregoing update on the status of investigation, it should be noted that the Commission did not stop the construction of Tharaka Nithi County Assembly Chambers.

5.0 Conclusion

The investigation is of **top priority** to the Commission due to the high public interest and the amounts involved. The Commission appreciates the oversight role played by the Senate ensuring prudent management of public funds. The Commission remains available to support the Committee to fulfil their objectives while delivering on its mandate to the people of Kenya.

Dated this Thursday, 2nd day of March 2023.



Twalib Mbarak, CBS
Secretary/Chief Executive Officer
Ethics and Anti-Corruption Commission (EACC)



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GAZETTE NOTICES

The Certified Public Secretaries Act—Appointment	PAGE 1962
The National Government Constituencies Development Fund Act—Appointment	1962
County Governments Notices	1962–1963, 1969, 1970, 1987
The Land Registration Act—Issue of New Title Deeds, etc. 1963–1965, 1969	
Statement of Actual Revenues and Net Exchequer Issues as at 30th April, 2020	1966
The Ethics and Anti-Corruption Commission—Fourth Quarterly Report	1970–1978
The Companies Act—Intended Dissolution, etc	1978
The Kenya Information and Communications Act—Application for Licences	1979–1980
The Insolvency Act—Creditors Voluntary Winding-up, etc	1980–1981
The Environmental Management and Co-ordination Act—Environmental Impact Assessment Study Report	1981–1986
Disposal of Uncollected Goods	1986
Change of Names	1986–1987
The Banking Act—Acquisition of Certain Assets	1987

SUPPLEMENT Nos. 73, 74, 75, 77 and 78

Legislative Supplements, 2020

LEGAL NOTICE NO.

86— The Customs and Excise (Railway Development Levy Fund) (Amendment) Regulations, 2020	PAGE 987
87— The Public Order (State Curfew) (Extension) Order No. 2 of 2020	989

CONTENTS

88— The Railway City Development Authority Order, 2020	PAGE 991
89— The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan Area) (Extension) Order, No. 2 of 2020	1003
90— The University of Embu Statutes, 2020	1005

SUPPLEMENT No. 40

Senate Bills, 2020

The Community Health Services Bill, 2020	PAGE 51
--	------------

SUPPLEMENT No. 70

Acts, 2020

The Supplementary Appropriation Act, 2020	PAGE 37
The Small Claims Court (Amendment) Act, 2020	65

SUPPLEMENT No. 76

National Assembly Bills, 2020

The Income Tax Bill, 2020	PAGE 337
---------------------------------	-------------

3. EACC/ISL/FI/INQ/02/2019

Inquiry into Allegations of Corruption and Procurement Irregularities Against Tharaka Nithi County Government Officials in the Procurement and Award of Tender to Supply, Install and Commission a Solid Waste Incinerator.

The commission commenced investigations following a complaint that in 2018/2019 Financial year, the Tharaka Nithi County Government irregularly procured a solid waste incinerator at KSh. 40,000,000/-.

Investigations established that the procurement process was initiated without the NEMA license or the Bill of Quantities which resulted in the County acquiring the solid waste incinerator at an inflated price of KSh. 34,998,500/-. Investigations further established that the tender process was flawed and further that Generation Electronic & Allied Ltd, a company owned by a relative to the Governor, Tharaka Nithi County, bought and imported the solid waste incinerator. Evidence further pointed at a case of money laundering by the Westomaxx Investment Ltd directors who signed a contract after submitting a forged performance bond from Madison Insurance. The contact sum was paid through Westomaxx Investment Ltd.

A report was compiled and forwarded to the Director of Public Prosecutions (DPP) on 8th October, 2019 recommending that fifteen individuals; the Governor, Tharaka Nithi County, Chief Officer Environment and Natural Resources, Ag. Director, Procurement, the two Directors, Westomaxx Investment Ltd, Director, Generation Electronic & Allied Ltd, two Finance Officers, the Architect, two Procurement Officers II, an Accountant, Environment and Natural Resources Officer, Director, Gentech Supplies Ltd and the proprietor, Gsort Ltd be charged severally and jointly with offences of conflict of interest contrary to Section 42(3), two counts of conspiracy contrary to section 47 (A) (3), five counts of abuse of office contrary to section 46 of the Anti-Corruption and Economic Crimes Act, 2003 as read with section 48 of ACECA, four counts of fraudulent procurement practice contrary to Section 66 (2) as read with section 77 (a) Public Procurement and Asset Disposal Act, 2015, uttering a false document contrary to Section 353 as read with section 349 of the Penal code, Fraudulent acquisition of public property contrary to section 45(1), two counts of money laundering contrary to section 42(3) of the Anti-Corruption and Economic Crimes Act, 2003 as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003 and unlawful failure to pay taxes contrary to section 45 (1) (d) as read with section 48(1) of the Anti-Corruption and Economic Crimes Act, 2003.

On 24th January, 2020, the DPP returned the file for further investigations

4. EACC/ISL/FI/INQ/6/2018

Inquiry into Allegations of Irregular Procurement of Design for the Construction of County Assembly of Tharaka Nithi County

The Ethics and Anti-Corruption Commission (The Commission) received a report that Tharaka Nithi County Assembly officials had been involved in procurement irregularities in the tender number Kathwana T.No. TNCA/T/01/2015-2016 for the proposed construction of the county assembly worth KSh. 369,642,688/-.

Investigations established that the Tharaka Nithi County Assembly had advertised for expression of interest for consultancy services for architectural designs on 23rd January, 2014. Investigation further established that there were no approved architectural designs by the County Physical Planner and neither was there a Contract Management Committee to advise on payments. Payments were authorized by the County Clerk and the Principal Finance Officer and made without the Procurement Department approval or acceptance by the Inspection and Acceptance Committee.

A report was compiled and forwarded to the DPP on 23rd October, 2019 recommending that the Speaker, Tharaka Nithi County, the Clerk, Tharaka Nithi County, the Principal Finance Officer, the Senior Legal Counsel Baseline Architects Limited and Senior Quantity Surveyor be charged with the offence of wilful failure to comply with the applicable procedures and guidelines relating to procurement contrary to section 45(2) (b) as read with section 48 of Anti-Corruption and Economic Crimes Act, 2003, four counts of abuse of office contrary to section 46 of Anti-Corruption and Economic Crimes Act, 2003, unlawful acquisition of public property contrary to section 45(1)(a) as read with section 48 of Anti-Corruption and Economic Crimes Act, 2003 and fraudulent payment from public revenues for

services not rendered contrary to sec 45 (2) (a) (iii) as read with section 48 of Anti-Corruption and Economic Crimes Act, 2003.

On 24th January, 2020, the DPP returned the file for further investigations.

5. EACC/ISL/FI/INQ/45/2016

Inquiry into Allegation of Misappropriation of Public Funds by the Samburu County Government County Executive Committee Member for Agriculture During the Purchase of Vaccines in the Financial Years 2013/2014, 2014/2015 and 2015/2016.

The Commission commenced investigations following an allegation that the Samburu County Executive Committee Member for Agriculture misappropriated public funds in the purchase of vaccines in the financial years 2013/2014, 2014/2015 and 2015/2016, respectively.

Investigations established that the Samburu Department of Agriculture prepared procurement plans for the financial years 2013/2014, 2014/2015 and 2015/2016 for the purchase of vaccines. Investigations further revealed that the Samburu County approved budget allocation of KSh. 22 million, 20 million and 32 million for the 2013/2014, 2014/2015 and 2015/2016 financial years respectively, for the purchase of vaccines.

The investigation further revealed that the department purchased the said vaccine(s) from a government institution known as Kenya Veterinary Vaccines Production Institute which does not handle cash and that all its transactions are done through the bank.

Additionally, the investigations established that there were procurement irregularities as the user department failed to seek and obtain approval from the Tender Committee before using direct procurement method and further that there was no written contract between Kenya Veterinary Vaccines Production Institute and the county government in relation to the said purchase procurement.

A report was compiled and forwarded to the DPP on 23rd October, 2019 recommending that administrative action against the Chief Officer, Agriculture and Deputy County Director for Agriculture be undertaken by the Samburu County Government.

Awaiting DPP's response.

6. EACC/KSI/FI/INQ/10/2016

Inquiry into Allegations of Abuse of Office by Officials of the County Government of Nyamira in the Recruitment of Staff in the Department of Gender, Youth, Sports, Culture and Social Services (GYSC&SS).

The Commission commenced investigations following a report received through an informant that there was an irregular/illegal recruitment in the Department of Gender, Youth, Sports, Culture and Social Services (GYSC&SS) in the County Government of Nyamira.

In June 2016, the County Government of Nyamira advertised for twenty (20) vacancies in different positions. The Nyamira County Public Service Board (PSB) proceeded to recruit forty-four (44) persons and later increased the number to 56 persons without the approval of the Cabinet.

Investigations established that the recruitment process was marred with influence peddling, corruption, nepotism and clannism. Further the investigations revealed that the County Executive Committee Member in the Department of Gender, Youth, Sports, Culture and Social Services, the Chairperson, Vice-Chair, and the Secretary, County Public Service Board used their official position to unduly influence the recruitment process in the Department.

Investigations further established that some of the recruited staff had presented forged academic certificates when applying for the positions while others did not qualify for the position offered. Investigations further revealed that although appointment and deployment letters were issued to all the 56 irregularly recruited staff they never reported to their respective stations. It was further confirmed that following protests from the Board members, County Assembly, Deputy Governor and the user department, the process was nullified.

A report was compiled and forwarded to the DPP on 23rd October, 2019 recommending that the County Executive Committee in the Department of GYSC&SS, the Chairperson, the Secretary and a

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211068, 0735466721, 0709910000
Email: cob@cobgo.ke/Info@cobgo.ke
Website: www.cobgo.ke



Bima House, 12th Floor
Harambee Avenue
P.O. Box 35616-00100
Nairobi Kenya

Ref: COB/SEN/002/VOL.3(64)

27th February, 2023

Mr. Jeremiah M. Nyegenye, CBS
The Clerk of the Senate
The Senate
Parliament Building
NAIROBI

Dear Mr Nyegenye,

RE: INVITATION TO A MEETING OF THE SENATE STANDING COMMITTEE ON
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS

Please refer to the above matter and your letter Ref: SEN/DGAC/DEVIR/2023/008 dated 21st February, 2023 inviting the Controller of Budget to apprise the Senate Standing Committee on Devolution and Intergovernmental Relations on the reasons why the remittances for the construction of the Tharaka Nithi County Assembly Chambers was stopped.

The Office of the Controller of Budget is established under Article 228 of the Constitution to oversee the implementation of the budgets of the national and county governments by authorising withdrawals of funds from public funds. Article 228(5) of the Constitution requires the Controller of Budget not to approve any withdrawals from public funds unless satisfied that such withdrawals are authorised by law. In authorising withdrawals, the Controller of Budget is guided by, inter alia, the Constitution, the Controller of Budget Act 2016, the Public Finance Management Act, 2012 and the attendant Regulations.

Section 109(6) of the Public Finance Management (PFM) Act, 2012 requires the County Treasury to obtain the written approval of the Controller of Budget before withdrawing money from the County Revenue Fund under the authority of an Act of the County Assembly that appropriates money for a public purpose, an Act of Parliament or County legislation that imposes a charge on that Fund, or the PFM Act, 2012 under Sections 134 and 135.

In order to guide the process of obtaining the approval of the Controller of Budget, my office developed guidelines for withdrawing funds from the County Revenue Fund. A copy of the Guidelines is attached for reference.

In the Financial Year 2022/2023 the total budget for Tharaka Nithi County is as contained in the table below:-

Arm of the County Government	Recurrent Expenditure Budget	Development Expenditure Budget	Total (Kshs.)
County Executive	3,187,581,364	1,787,401,959	4,974,983,323
County Assembly	485,000,000	30,000,000	515,000,000
Total (Kshs.)	3,672,581,364	1,817,401,959	5,489,983,323

The withdrawal sought against the budget allocation to the County Assembly of Kshs.515,000,000 as at end of February 2023 is as summarized below:-

Budget Classification	Budget Allocation (Kshs.)	Approved Exchequer Issues (Kshs.)	% of exchequer issues to the budget allocation
Recurrent Expenditure	485,000,000	233,382,171	48.1
Development Expenditure	30,000,000	2,134,514	7.1
Total	515,000,000	235,516,685	45.7

As of 28th February, 2023, the Office of the Controller of Budget had approved Kshs.235,516,685 for withdrawal from the County Revenue Fund in favour of Tharaka Nithi County Assembly. The exchequer issues for recurrent expenditure comprised of Kshs.119,451,486 for payment of salaries, Kshs.93,930,685 for Operations and Maintenance Expenditure and Kshs.20,000,000 for the Assembly's Car Loan & Mortgage Scheme. The Development expenditure of Kshs.2,134,514 was towards part payment for constructing the Speaker's Residence.

The budget allocation to the County Assembly for development expenditure of Kshs.30 million in FY 2022/2023 does not include an allocation for the construction of the County Assembly Chambers. For any approval for the withdrawal of funds, the County should ensure first ensure the activity is budgeted and provided in the Appropriation Act.

In conclusion, the Office of the Controller of Budget *has not declined or stopped the remittance of monies allocated for constructing the Tharaka Nithi County Assembly Chambers*. We do not have any pending requisitions for the County Assembly of Tharaka Nithi.

The above notwithstanding, we know that in the FY 2017/2018 EACC wrote to the County Government advising that the release of funds could only be considered once investigations were complete. A copy of the letter from EACC is attached for reference.

Yours Sincerely,



CPA Dr. Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: csenate@parliament.go.ke

REPUBLIC OF KENYA



PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

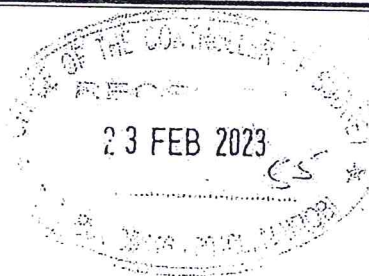
Clerk's Chambers
The Senate
Parliament Buildings
P. O. Box 41842-00100
Nairobi, Kenya

*DLG
CHA-CG*
*Please review and
prepare the require
information a
to add
meeting.*
see 23/2/23

Ref: SEN/DGAC/DEVIR/2023/008

21st February, 2023

Dr. Margaret N. Nyakang'o,
Controller of Budget,
P.O Box 35616 – 00100,
NAIROBI.



Dear Madam,

**RE: INVITATION TO A MEETING OF THE SENATE STANDING
COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS**

The Senate Standing Committee on Devolution and Intergovernmental Relations is established under standing order 228(3) of the Senate Standing Orders and is mandated to consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.

Standing order 53(1) of the Senate Standing Orders provides that a Senator may request for a Statement from a committee relating to any matter under the mandate of the committee that is of county-wide, inter-county, national, regional or international concern.

The Committee is currently considering a statement sought by the Senator for Tharaka-Nithi County, Sen. Mwenda Gataya Mo Fire, MP regarding the re-location of National Government administrative services from Chuka town to Kathwana town headquarters in Tharaka-Nithi County.

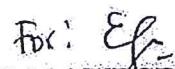
At its Sitting held on Thursday, 16th February 2023, resolved to invite you to a meeting of the Committee to apprise the Committee on the reasons why your office stopped the remittance of monies allocated for the construction of the Tharaka-Nithi County Assembly Chambers.

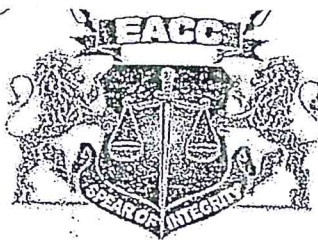
The purpose of this letter is to invite you to appear before the Committee on Tuesday, 7th March, 2023 to discuss the aforementioned issue. The meeting will be held in Committee Room 5, First Floor, Main Parliament Buildings at 10.00 a.m. We request that you

submit any documents that may be referred to at the meeting, on or before Friday 3rd March, 2023. The documents may be sent by email, to clerk.senate@parliament.go.ke and copied to senate.devir@parliament.go.ke.

Ms. Sylvia Nasambu, Clerk Assistant (Cell Number – 0723763703 Email – sylvia.nasambu@parliament.go.ke), is the Clerk to the Committee and is responsible for all matters relating to this matter.

Yours faithfully,

For: 
J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.



ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd./Jakaya Kikwete Rd. Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya
TEL.: 254 (020) 2717318/ 2720722, MOBILE: 0729 888881/2/3
Fax: 254 (020) 2717473 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:
EACC.ISL.6/15/2 (125)

25th June, 2018

The County Governor,
The County Government of Tharaka Nithi,
P.O Box 10-60406,
Kathwana.

Dear Sir,



RE: PROPOSED THARAKA NITHI COUNTY ASSEMBLY, APPROVAL FOR THE RELEASE
OF FUNDS TO PAY FOR ONGOING WORKS.

We confirm receipt of your letter referenced TN/OG/ADM/EACC/03 and dated 15th May, 2018 from the Deputy Governor, Tharaka Nithi County, in regard to whether EACC should allow the County Government of Tharaka Nithi to release funds for the ongoing construction of the County Assembly.

The Commission received a complaint on alleged irregular award of tender to Lexis International Limited for the construction of Tharaka Nithi County Assembly, Tender No. TNCA/T/01/2015-2016/01. Arising from this investigation was the need to interrogate the through which the architect firm Baseline Architects was contracted to do the drawings and design of the proposed County Assembly.

Investigations on the alleged procurement irregularities in tender No. TNCA/T/01/2015-2016/01 are still ongoing and the decision on the release of the funds can only be considered once investigations are completed and recommendations made to the Director of Public Prosecution.

Yours faithfully,

HALAKHE D. WAQO, CBS, MCI Arb.
SECRETARY/CHIEF EXECUTIVE OFFICER

ry

Copy to: The controller of Budget

REPUBLIC OF KENYA

Clerk's Chamber
Former Meru South County Council Offices
P.O Box 694
Email: tharakanithicountyassembly@gmail.com /
clerk@tharakanithica.go.ke



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"Assembly" Chuka
Telephone: 0202399828
Cell: 0710272056

COUNTY GOVERNMENT THE COUNTY ASSEMBLY OF THARAKA NITHI OFFICE OF THE CLERK/ SECRETARY COUNTY ASSEMBLY SERVICE BOARD

OUR REF: TNCA/E&S/CON/VOL.1/32/2023

20th March 2023

Mr. J.M Nyegenye, CBS,
Clerk of the Senate,
Parliament Buildings,
Po Box 41842-00100,
Nairobi -Kenya

Dear Sir,

RE: BRIEF ON THE CONSTRUCTION OF THE PROPOSED COUNTY ASSEMBLY CHAMBERS AND OFFICES

I refer to the above subject matter;

Following the visit of the Senate Standing Committee on Devolution and Intergovernmental Relations on its investigation, regarding the relocation of National Government Administrative Services from Chuka Town to Kathwana Town Headquarters, in Tharaka Nithi County. The Committee invited the County Assembly Service Board to make any further submission to the committee concerning the stalled construction of the County Assembly Chamber. Consequently, we hereby wish to submit to the Committee as follows:

TENDER COMMENCEMENT

The Tender for the construction of the Tharaka Nithi County Assembly offices and chambers was advertised on 9th December 2015 and its opening done on 23rd December 2015. After the evaluation process, Lexis International Limited being the most responsive tenderer was recommended for award of the Contract. The construction works were expected to commence on 8th March 2016 for a contract period of 80 weeks but due to unforeseen issues, the works commenced on 12th December 2016. The Project managers/consultants was Baseline Architects Limited who had



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earlier in 2014 won the tender through a Request for Proposal advertised on 23rd January 2014 and opening done on 13th February 2014.

However, upon award of the tender and handing over of the site to the contractor, various issues arose and the construction stopped. Some of the issues, which were under investigation by the Ethics and Anti-Corruption Commission, included allegations of influence on the award of the tender.

PROJECT PROGRESS

The works stalled due to non-payment of the certificates raised in respect of the Contractor and further because of the issues around EACC investigations as well as budgetary allocations challenges. In the financial year 2017/2018, the County Assembly Service Board requested for an approval of Kenya Shillings 36,814,450.70 as payment towards the contractor as part of 10% advance payment to the contractor. The Controller of Budget did not approve the requisition and no official explanation to the same was issued to the County Assembly Management.

EACC INVESTIGATIONS

Ethics and Anti-Corruption Commission commenced investigation 2016. The investigations, which were premised on the Procurement process, based on the following issues:

- a. Lack Approved architectural designs by the County Physical Planner.
- b. Payments not authorized by the Tender Committee or acceptance by the Inspection and Acceptance Committee
- c. Non- appointment of the Contract Management Committee as required by the law.

The County Assembly Clerk through a letter dated 14th July 2020 Ref TNCA/ADM/2/VOL.IV/319 addressed to the EACC sought clarity on the position of the matter. EACC had never provided any official response to the same. **(Annex.1)**

1) Whether there was an approved Architectural design by the County Physical Planner:

The subject procurement was procured under Sections 76-87 of the Public Procurement and Assets Disposals Act (PPAD), 2005. The said Section details how request for proposals are invited by a Procuring Entity (PE), evaluated, awarded and completed.

This was a procurement of Professional Services, which only required the production, and the submission of the architectural designs to the County Assembly. Baseline Architects Limited submitted the architectural designs in the year 2015 to the Physical Planner's



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A handwritten signature in black ink is located in the bottom right corner of the page. The signature is stylized and appears to be a cursive representation of a name.

...for approval and the same were duly approved in the year 2019. Neither Baseline nor the County Assembly had an absolutely control on the approvals procedures considering at that moment in time the County offices for public works were just setting up.

2) On whether no Contract Management Committee was appointed

The County Assembly on the 27th September 2017 appointed a Contract Implementation Committee for the purposes of managing and monitoring the construction of the Assembly building. That included Mr. M.K. Kariuki (Former Clerk of the County Assembly), Mr. Peter Muniu, Mr. Erick Nthumbi, Mr. Erick Murimi, Mr. Festus Kinoti and the Managing Director of the Baseline Architects Ltd.

The 2005 Public Procurement Asset Disposal Act and the 2016 PPAD Regulations through Legal Notice No.174 of 2006 under which regime the procuring of the architectural services was done and implemented did not, specify that the procuring entity must establish a contract management committee for all the tenders and RFPS entered into by the procuring entity. That notwithstanding the Contract Management Committee was duly appointed by the procuring entity. **(Annex.2)**

3) On Payments not authorized by the Tender Committee or acceptance by the Inspection and Acceptance Committee Issue:

The work of Inspection and Acceptance Committee is only provided for in the 2015 PPAD Act. The 2005 Public Procurement Asset Disposal Act being the law under which the subject services were procured and delivered did not demand the appointment of the Inspection and Acceptance Committee.

The County Assembly however, as a matter of caution did appoint a Contract Management Committee that undertook the work of management of the process. However, a clear reading of the 2015 Act does not make the appointment of the Inspection Committee mandatory. It was at the discretion of the Accounting Officer.

The Contract Management Committee did the work as would have been done by the Tender Inspection Committee had one been appointed which again was not mandatory under the Acts regulating public procurement at the time.



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4) Non-Approval of requisition by the Controller of Budget

During the Financial Year 2017/2018 there was an allocation for Kenya shillings 100 million. The County Assembly made a requisition of Kenya shillings 36,814,450.70 being the 10% advance payment to the contractor. The Office of the Controller of Budget did not approve this requisition and no reasons were provided for the same. This kept the project in limbo due to lack of funds to both the contractor and the consultant.

5) Justification of fees paid to consultants.

As per the CAP 525 of the Architects and Quantity Surveyors Act provides for circumstances under which an Architect or a Quantity surveyor would be paid and as such the stages are provided in the schedule in accordance to the Act. The whole consultant is paid 18% of the construction contract amount which was tabulated as follows $368,144,507 \times 18\% = 66,266,011$. In accordance with the guide of the Cap 525 of the said act on the stages that the consultants are supposed to be paid, Up to Scheme design the consultants are supposed to be paid $1\% + 2.5\% = 3.5\%$ of 6%. This translates to $3.5/6 \times 66,266,011 = 38,655,173$, being the amount due to the consultants by the time the drawings were being submitted. However, the employer has only paid ksh.20,000,000 which is almost half of what was due to the consultants by the time this payment was being made. Therefore, the payment to consultants is in accordance with the law and financial procedures on advance payments to contractors and consultants.

6) Was Contract valid on the basis of approved drawing

The Planning Act 2009 and Physical and land use Act, states no construction should commence without approved drawing. This Act does not forbid the employer to engage the contractor for construction; once the contract was awarded, however; the contractor should wait for the approval of the drawing to commence the works. Further, the Act in Sec. 57(6) states that upon drawings being submitted and no response received within 60 days, then the drawing is deemed to be approved. The Architect submitted the drawings for approval and by the time the contractor started works 60 days had lapsed and thus the approval was deemed approved and valid. The official approval, which is currently at the disposal of the Baseline consultants, was however received in 2019 later after works had commenced.



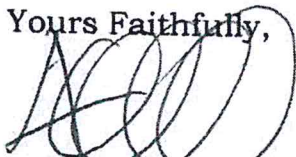
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- RECOMMENDATIONS AND WAY FORWARD**
- a. Notwithstanding that, EACC has been investigating the said subject matter for 7 years thus clawing back smooth service delivery to the People of Tharaka Nithi County. Taking into account that in their submission number of the issues under investigation were administrative procedures on the process, which can be attributed to the capacity and lack of relevant support institutions like public works during the inception of devolution. Now therefore; EACC terminates the investigations forthwith and provide an administrative advisory to the procuring Entity that is the County Assembly Service Board within 30days; such Administrative action be geared towards making administrative correction in the procurement process of the construction of the Chamber and the offices.
- b. That taking into account the recommendations of His Excellency the President on scaling down the cost of the project to Two Hundred Million Ksh.200,000,000 during his visit to Tharaka Nithi County on the 12th March 2022. A task force or a joint technical committee be appointed/constituted with the Membership drawn from of the County Assembly Service Board, the County Executive Department in charge of Public Works and Housing, National Treasury and the Ministry of Public Works to review the project and the contracts in totality. The Committee/Taskforce shall also advice the National and County Government on possible allocation conditional financial grants, technical support and/or any other related issues as the committee may deem necessary. The taskforce shall provide a progress report to the Senate within 90days.
- c. It is also recommended that upon scaling down the project cost, the Ministry of Public Works and the National Treasury allocates a grant of Kenya Shillings Two Hundred Million Ksh.200,000,000 in the subsequent Budgets. This will be taking into account that Tharaka Nithi County is one of the counties that was to benefit from the conditional grant from the National Government for the construction and setting up of the County Headquarters.

Yours Faithfully,



AMOS K. SIKWEYA

CLERK OF THE COUNTY ASSEMBLY



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COUNTY GOVERNMENT OF THARAKA NITHI
THE COUNTY ASSEMBLY
OFFICE OF THE CLERK



Clerk's Chamber
 Former Meru South County Council Offices
 P.O Box 694
 Email: tharakanithicountyassembly@gmail.com

Telegraphic address
 "Assembly" Chuka
 Telephone: 0202399821

OUR REF: TN/CA/ADM/2/VOL.IV/319

14th July, 2020

The Chief Executive Officer,
 Ethics and Anti-Corruption Commission,
 Integrity Centre,
 Kikwete/Valley Road Junction,
 P.O Box 61130-00200,
NAIROBI.



Dear Sir,

RE: CONSTRUCTION OF THARAKA NITHI COUNTY ASSEMBLY HEADQUARTERS AT KATHWANA.

The above refers;

The tender for construction of Tharaka Nithi County Assembly Chambers was advertised in 2015 and awarded to Lexis International Limited with the works intended to commence in March 2016 for a contract period of 80 weeks.

However, upon award of the tender and handing over of the construction site to the contractor, various issues arose and construction stalled. One of the issues was investigation by the EACC on alleged allegation of influence with regard to awarding of the tender to Lexis International Limited the status of which up to date has not been ascertained. The County Assembly is in pursuit of reviving the stalled construction of the Assembly Chambers and is seeking your confirmation that it can proceed with the contract.

In this regard the County Assembly humbly requests for information and status of the investigation as this will enable the County Assembly plan and allocate funds towards completion of the building and at the same time avoid issues of litigation with the said contractor by not fulfilling its part of the contract.

Yours Faithfully,

AMOS K. SIKWEYA
CLERK OF THE COUNTY ASSEMBLY

"XNNRX 2"

69

THE COUNTY ASSEMBLY OF THARAKA NITHI



Telephone: 064-630071

P.O Box 694

Chuka.

Email: tharakanithicountyassembly@gmail.com

OFFICE OF THE CLERK

24TH OCTOBER 2017

TO:
THE MANAGING DIRECTOR,
BASELINE ARCHITECTS LIMITED,
NAIROBI.

FROM: ASSEMBLY CLERK

RE: CONTRACT IMPLEMENTATION COMMITTEE (COUNTY ASSEMBLY BUILDING)

The above matter refers

Kindly note that you have been appointed as a member of the above mentioned committee or you can nominate your representative.

Kariuki M.L.
M.K KARIUKI
ASSEMBLY CLERK

[Handwritten signature]

THE COUNTY ASSEMBLY OF THARAKA NITHI



Telephone: 064-630071

P.O Box 694

Chuka.

Email: tharakanithicountyassembly@gmail.com

OFFICE OF THE CLERK

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M.K. Kariuki
M.K KARIUKI
ASSEMBLY CLERK

A large, stylized handwritten signature in black ink, likely belonging to the Assembly Clerk.

THE COUNTY ASSEMBLY OF THARAKA NITHI



P.O Box 694

Email: tharakanithicountyassembly@gmail.com

CHUKA

OFFICE OF THE CLERK

DATE: 27/09/2017

FROM: ASSEMBLY CLERK

TO: FESTUS KINOTI

RE: LETTER OF APPOINTMENT

Pursuant to section 151 (1) of the Public Procurement and Assets Disposal Act 2015, you are hereby appointed as a member of the contract implementation committee for the purpose of managing and monitoring the construction of the assembly building as per the provisions of section 151 (2) of the Act.

M. K. Kariuki

M. K KARIUKI

ASSEMBLY CLERK

A handwritten signature in black ink, appearing to be 'Festus Kinoti', is located in the bottom right corner of the page.

THE COUNTY ASSEMBLY OF THARAKA NORTH

Local Government and Regional Development

Public Office

CHORE

OFFICE OF THE CLERK

DATE: 21/09/2011

FROM: ASSEMBLY CLERK

TO: ERIC NTHUMBI

RE: LETTER OF APPOINTMENT

Pursuant to section 151 (1) of the Public Procurement and Assets Disposal Act 2005, you are hereby appointed as a member of the contract implementation committee for the purpose of managing and monitoring the construction of the assembly building as per the provisions of section 151 (2) of the Act.

Kariuki M. K.

M. K. KARIUKI
ASSEMBLY CLERK



THE COUNTY ASSEMBLY OF THARAKA NITHI



P.O. Box 694

Email: tharakanithicountyassembly@gmail.com

CHUKA

OFFICE OF THE CLERK

DATE: 27/09/2017

FROM: ASSEMBLY CLERK

TO: PETER MUNIU

RE: LETTER OF APPOINTMENT

Pursuant to section 151 (1) of the Public Procurement and Assets Disposal Act 2015, you are hereby appointed as a member of the contract implementation committee for the purpose of managing and monitoring the construction of the assembly building as per the provisions of section 151 (2) of the Act.

M. K. Kariuki

M. K. KARIUKI

ASSEMBLY CLERK

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