

Dated the 6th August 2015

TO: The Clerk to the Senate

Re: PETITION TO THE SENATE PURSUANT TO ARTICLES 119 OF THE CONSTITUTION AND PART XXIV OF THE SENATE STANDING ORDERS CONCERNING CORRUPTION & WASTAGE IN NANDI COUNTY

BY

SHADRACK TARNO AND DAVID BUSIENEI

WE, the undersigned,

Citizens of the Republic of Kenya and residents of Nandi County;

DRAW the attention of the Senate to the following:

Concise Summary:

This Petition concerns matters raised in an unanswered and unacknowledged Petition to Nandi County Government dated 9th February and concerning the inefficiency, unresponsiveness and corruption of the Nandi County Executive; its failure to form the County Economic Budget Forum, failure to conduct Investment Profiling, Public Participation, Access to Information and Civic Education; failure to implement Development programmes as outlined in the County Integrated Development Plan (hereafter the CIDP), erection of a County Gate without mention in the CIDP and unauthorised by the County Assembly; failure to reply or even acknowledge correspondence and communications from us; and a Request to the Senate to investigate wastage, corrupt practices and corruption in recurrent expenditure and development projects in Nandi County.

THAT,

Detailed items:

- 1. The lack of available information from the County Executive, and obstructed access to information**, whether by negligence or deliberate fault, in breach of Article 35 of the Constitution of Kenya and ss 93 – 96 of the County Governments Act 2012:

Examples: -

- 1.1** Despite repeated requests by our members for a copy of the County Integrated Development Plan, and despite access thereto being offered on both the County Government and County Assembly websites, neither site permitted downloads when clicked on. The CIDP, originally drawn in 2014, was only made available to the public in electronic form in April 2015, and only after receipt of our Petition to the Executive dated 9th February 2015. Even now it is not available in hard copy to wananchi.

- 1.2 Ignoring our polite written requests for information. We wrote letters on many occasions commencing 25th May 2014 to various Ministries of the County Government, These letters were hand-delivered, but have been rudely ignored - we have not even received acknowledgments of receipt. The dates and recipients of these letters are set out below, in Paragraph 6.
- 1.3 Ignoring our polite requests given in person to various County Officers for access to information. This is in breach of Article 35 of the Constitution and s96 (1) of the County Governments Act. Further, there is no designated County Information Office, in breach of s96 (2) of the County Governments Act: not even a single Noticeboard in Nandi County. Nor does the County website carry any relevant up to date information. Contrast this with CDF offices, where relevant and helpful information is freely available.
- 1.4 Ignoring our Petition dated 9th February 2015. This Petition was hand delivered and was drawn in accordance with s88 of the County Governments Act. Section 89 imposes a duty upon county government authorities “to respond expeditiously to petitions and challenges from citizens”. We have not even received the courtesy of an acknowledgment of receipt of our Petition.
- 1.5 Ignoring Shadrack Tarno when he personally directed questions to County officers concerning Proposed market plots that have been fenced off in the County, without any prior consultation with market committees, and without notifying local residents of either the work to be done or the constructor’s identity
- 1.6 Ignoring our requests, delivered in person to various Officers, including the Inspector of Roads, concerning the lack of procurement and BQs on certain roads and bridges; in particular ignoring our request for information set out in our letter to the Governor via the County Secretary and dated 10-2-2015 concerning the following construction issues: -
 - 1.6.1 Danger, Chepsui bridge
 - 1.6.2 Kipsirwo, Kapsisywa bridge
 - 1.6.3 Kapsasur, Samoo bridge
 - 1.6.4 Temsoo water project
 - 1.6.5 All market plots that have been fenced since March 2013
 - 1.6.6 Renovation of Kapsabet Hospital staff houses
 - 1.6.7 All emergency roads (procured and directly awarded)
 - 1.6.8 Tarmacking of roads within Kapsabet town
 - 1.6.9 Kapsabet mortuary renovations
- 1.7 **Failing to comply with procurement rules and regulations** in breach of the Public Procurement and Disposal Act 2005 and related 2006 and 2013 Regulations, and other accounting rules and regulations, as highlighted and recommended by the Auditor General in its Reports for the periods 1-1-13-30-6-13 and 1-7-13=30-6-14. The following issues were noted: -
 - 1.7.1 **Computers, furniture and other equipment** was acquired for **1,777,540** through single sourcing and without specifications, nor were these items – or others- posted to the requisite fixed assets register
 - 1.7.2 **Hire of Graders** for **7,765,359.60** without tender documents or tender evaluation minutes
 - 1.7.3 **Tree Planting** for **5,687,730** without tender documents or tender evaluation minutes
 - 1.7.4 **The Executive paid MCAs 10,912,706** for a study tour in Uganda in May 2014, paid as expenses instead of issuing imprest in compliance with

apublic financial regulations. Worse, no documentary evidence was supplied for this expenditure, nor any reason given for the Executive to pay for MCAs., who have their own independent Budget and financial autonomy.

- 1.8 The non-supply of draft Bills** in electronic format or hard copy timeously before public participation fora, and the failure to give any feedback or response to contributions and comments whether made at those fora or later in written form.

- 2. Failure to form the County Economic Budget Forum**, and ensure due and proper participation, in breach of Article 10 of the Constitution of Kenya and s137 of the Public Finance Management Act 2012. Furthermore, this wilful neglect also ignored explicit recommendations so to do by the Controller of Budgets in the local County Government Budget Review Reports for both the half-year and the third quarter of FY/2014/2015. Moreover, the CEO of KNCCI and other members was categorically informed by County finance officials at a public participation forum in April that the County Economic Forum *had been* established and letters sent out. This is an example of misinformation deliberately promulgated by low-level County officials.

- 3. The lack of investment profiling and business policy documents or planning in the County.**
 - 3.1** The Chamber of Commerce has asked for investment profiling and offered its help to the Trade Ministry without any response. Nor have any business Policy documents been discussed and prepared; again Chamber offered to help. In short, there has been no Stakeholder consultation and participation. If such policy documents exist, they have not been disclosed, nor taken for public participation.
 - 3.2** Despite our warnings, the County proceeded with a Business Investors Conference, when wholly unready, thus failing to attract investors, embarrassing the local business community and worse, incurring unpaid debts to participants and rapporteurs. In short, instead of creating a business-friendly context, County's inaction and incompetent lethargy has caused the opposite.

- 4. Failure to properly conduct public participation** in breach of the spirit of the Constitution and ss91 and 92 of the County Governments Act.
 - Failure to supply draft Bills timeously for consideration before public fora, in both soft and hard copy and failure to supply all of them in hard copy for those who have no access to the internet;
 - Imposing unreasonable ultimatums for the submission of written comment - one ultimatum gave us a mere 24 hours to deal with 6 Bills;
 - Failure to acknowledge the massive effort we have put in to help County Government in submitting policy papers and critiquing and improving various draft Bills. We have worked hard and made written submissions, both in hard and soft copy but have not received any feedback. The following Bills and finance documents have received our oral and written input-
 - Nandi County Education Fund Bill
 - Nandi County Pre-primary and Early Childhood Education and Care services Bill
 - Nandi County Public Participation Bill

- Nandi County Disaster Management Bill
- Nandi County Rating Bill
- Nandi County Wards Development Fund Bill
- Nandi County Agricultural Produce Cess Bill

Evidence for this is to be found in our letter to the Governor of 4th November 2014

- The Budget for F/Y 2015/2016

Moreover there has been massive incompetence and delay in drafting this Budget with severe negative consequences for the County, as set out below: -

An Amended Budget was rushed by the Executive to the County Assembly on or about Friday 26th June, without any public participation, and was therefore not subjected to inquiry or scrutiny, yet was hurriedly passed on Tuesday 30th June, imposing a significant reduction on the Development Budget, yet retaining much of the Recurrent Budget, which includes a bloated Personnel Emoluments item of 1,529,824,801 for personnel who have neither been vetted nor assessed for their competence or fitness for purpose.

However, scrutiny by the Assembly as it passed the County Appropriation Act 2015 uncovered a **discrepancy of 112,479,576** – the income and expenditure did not balance. This is an avoidable and basic arithmetic and accounting error. It also demonstrates that the Finance Ministry either lacks capacity for its work and cannot perform standard accounting; or this error was deliberate. The Assembly sought to rectify this discrepancy by increasing the Development budget of the Ministry of Finance commensurately, but this in turn is problematic; The Office of Controller of Budgets avers that this negatively impacts upon the Ward Development Fund established in the previous Budget, and that this Budget accordingly is non-compliant. Furthermore, there are other anomalies - figures in the Amended Budget submitted by the Executive differ significantly from those in its original Budget, and yet again from those allocated in the Appropriation Act. One example is in the Budget for the Devolved Units and Special Programmes Ministry. RE in the original Budget totalled 67,026,000; Development was marked at 132,000,000. The Amended Budget reduced RE to 66,026,000 but D was marked, probably in error, under a column marked 2014/15 as 184,500,000! The eventual figures shown in the Appropriation Act are respectively 56,026,00 and 147,000,000 respectively.

The result of this gross incompetence and mismanagement by the Executive is that the Assembly passed this bungled Appropriation Act on 1st July 2015, to which the Governor assented on 3rd July, but which should now be amended because it is based upon an incorrect Budget, and thus further expense and delay will ensue in preparing and passing a Supplementary Budget. Such mismanagement has a negative impact upon funding flows from Central Government.

Furthermore, the Executive have not paid staff salaries for the month of July: failure to maintain adequate operational reserves is another sign of incompetence

5. Failure to deliver civic education, and provide the appropriate institutional framework in breach of ss 98-100 of the County Governments Act 2012, and

ignoring our requests for information concerning this. We requested this in our letter to the Governor dated 3rd November 2014.

6. County Government habitually send **unqualified County officers** – who cannot answer sensible questions - to conduct public participation events, and has failed to provide any feedback to any of our submissions, whether made in fora or subsequently in writing. Furthermore, we repeat that County has failed to reply to any of our letters, and failed to commit anything in writing, even to the point of failing to acknowledge receipt. In order to ensure there could be no denial of receipt we yet again delivered by hand a letter - duly stamped as received by the Governor's office on the 18th of May 2015, which enclosed further copies of all our previous unanswered correspondence, and which protested – yet again - the continuing failure to deal with substantive matters and the procedural inefficiency and rudeness of ignoring our letters. True to form, this letter and enclosed correspondence bundle has never been acknowledged. This letter scheduled those previous letters as follows: -

Schedule of unanswered letters

Annexed to Petition to County Government dated 9th February

Copy letters, all hand delivered and severally dated to: -

May 2014, The Speaker to the County Assembly, copied to CEC Education and CEO Finance

25th May 2014, The Minister of Finance, re p.p and budget

27th October 2014, Chief Officer, Culture, Tourism and Co-operatives

3rd November 2014, The Governor, through the County Secretary

4th November 2014, The Governor concerning public participation

4th November 2014, The Governor, concerning the missing CIDP

4th November 2014, The Minister of Education, cc to CEC Finance

30th January 2015, The Governor, concerning the public participation process

30th January 2015, The Governor, concerning the CIDP

30th January 2015, The Chief Officer, Education, following up our letter of 4th November 2014

Not annexed to Petition dated 9th February 2015

4th November 2014, the Minister of Devolved Units, seeking information, cc to CEC Finance

30th January 2015, Chief Officer, Culture, Tourism and Co-operatives, chasing a reply to our letter of 27th October 2014

10th February 2015, The County Secretary, seeking information

10th February 2015, The Governor, from Chamber, re Investment Forum

23rd February 2015, The Governor, concerning development implementation

23rd February 2015, The Governor, 1st follow-up to the Petition

23rd March 2015, The Governor, 2nd follow-up to the Petition

20th April 2015, The Governor, 3rd follow-up to the Petition

21st April 2015, The Governor, absence of services re CIDP
30th July 2105, Chief Office, Finance

Further Detailed Items:

The following issues were raised in person at Municipal Hall by our representatives, and by email dated 3rd May 2015 to which - as usual- there has been no response: -

7. Relating to matters in the proposed Nandi County Budget 2015-2016: -

7.1 No provision is made in the Budget for an **Information Office** to comply with s96 (2) of the County Governments Act 2012. The proposed ICT office will not suffice and will not be legally compliant.

7.2 There is no provision in the Devolved Units budget for **civic education** - for the third year running, County will be in breach of the law – ss100 and 101 of the County Governments Act, which specifies the creation of a **Civic Education Unit**, and institutional framework - and will also thus again fail to fulfil Clause 2.2.5 at page 69 of the County Integrated Development Plan (CIDP).

7.3 The Budget includes **duplicated expenditure** by different ministries – both the Tourism Ministry and Ministry of Roads/Infrastructure claim money for wetlands/swamp conservation/protection.

7.4 Similarly with the proposed construction of **bus parks** by both the Roads Ministry and the Trade Ministry.

7.5 The proposed expenditure by the Finance ministry on an ICT centre *and* a Data centre is also a duplication.

7.6 Historic debt. The Budget makes neither provision for nor reference to significant debts owed by the County, some unpaid since 2013. These debts have accrued to contractors/constructors, the local hospitality industry, and events organisers. Examples include those involved in Miss Tourism Nandi County and ironically many participants in the recent Nandi County Investors Conference. The total approximates to 600,000,000. This is a major disincentive to investors and also removes money from circulating in the Nandi economy, as these creditors themselves have unpaid local suppliers. It is also dishonest. Examples include –

- Roma Ltd, 96million
- Pwani Ltd, 63million
- Jebess Construction, 28.5million
- Booster Ltd, 25million
- Jua Kali Shad, 17million
- Bada Construction, 900,000
- Tortoise, 3.1million
- Paul Choge, 5.1m
- Dan Muge, 870,000

7.7 The proposed expenditure on “Products value addition” in the Tourism budget is so vague as to be incomprehensible, and should therefore be declared void for uncertainty.

8 County has not formed and operationalized a **County Monitoring and Evaluation Committee (COMEC)** as set out in the CIDP (page xv) and by the Office of Controller of Budgets in its end of year Report F/Y 2013/2014, which recommended the urgent creation of a framework for **Monitoring and Evaluation** “in order to ensure projects are monitored and implemented within the specified period”. This has not been done, despite claims to the contrary in the County Medium Term Fiscal Strategy paper – another example of misinformation - and no provision has been made for this in the current Budget, either.

9 The CIDP (page 100, Para 6.12) proposes a **CIDP Implementation Secretariat**. This has not been done, and there is no provision in the Budget for this forum.

10 The CIDP (page 110, Para 8.10) specifies a **PPP node** as a contracting agency. This has not been done, and there is no provision in the Budget for this either.

11 **Investigations.** We call upon the House to conduct a general review and investigation into Development Projects generally throughout the County and in particular into the following: -

12 **Construction matters:** -

12.1 **Cattle dips**, official expenditure being approximately 60million, yet there has been no construction whatsoever

12.2 **ECD classrooms**, official expenditure approximately 180million, yet there has been no construction whatsoever

12.3 **Dispensaries**, official expenditure 80million, yet there has been no construction whatsoever. Furthermore few if any now have any drugs to dispense. What has happened to the budget for drugs?

12.4 **Polytechnics**, official expenditure 100million, yet there has been construction whatsoever

12.5 **Sub-county and Ward offices**, official expenditure 112million, yet there has been construction whatsoever

12.6 **Road Bridges**, at **Chepkunyuk**, where its safety is questionable by reason of the use of shoddy materials, and at **Kabiyemit**, where a bridge constructed in 2014 collapsed in May 2015.

13. **Bursaries.** Of an overall budget expenditure of 100million, approximately only 31million has been disbursed, as every Ward has received a minimum of 1million, so what has happened to the balance of 69million?

14. **Water.** The budget for 2014/15 itemised a proposed expenditure of 5million each per 30 Wards - a total of 150million - for local water supplies. The pipes have been laid in some areas, without tanks; in other areas, there are tanks that

have already cracked and are useless for water storage. The House is requested to investigate the expenditure and shoddy workmanship. An example is the Temsoo Water project.

15. Persons with disability. The budget for 2014/15 set aside the sum of 20million for empowerment and capacity building. Instead some food and fertiliser was distributed at Christmas 2014 in Kapsabet, but nothing else has been done. The Senate is requested to investigate this expenditure, and what has happened to the unspent funds.

16. Corrupt Practices, wastage and abuse of office.

16.1 Refurbishment of Kapsabet mortuary. The cost was billed at 4million, but work was only conducted to the approximate value of 300,000.

16.2 Refurbishment of Kapsabet District Hospital staff quarters. The cost was billed at 50million, but work was only conducted to the approximate value of 20million.

16.3 Construction of Mlango Gate. The cost was budgeted at 15million in 2014/2015. Yet it is repeated again in proposed Budget for 2015/2016 at 12,710,000. The construction appears to have been completed before the Budget was passed, and it is obvious even to a casual observer that this price is greatly inflated and some of the material used is sub-standard. This project was neither mentioned in the CIDP nor was there any prior public participation; and it was not given prior approval by the County Assembly, which reduced the figure by 6,000,000 in its amended Budget. Moreover, this construction is illegally built on the road reserve.

16.4 Construction of the Danger/Chepsui Bridge. The cost was billed at approximately 4million, and monies paid, but work was only conducted to the approximate value of 1.5million.

16.5 Construction of all emergency roads in the County. The cost of each has been greatly exaggerated, as against value received. An example is Chepterit-Kunurter road, double grading/re-done within a period of one month, initially by KRRRA, then again by County. Why? Who benefitted? **Further**, by classifying many projects as emergency projects, the County avoided all due and proper procurement procedures. 541million has been spent on roads - but where is the work?

16.6 The fencing and beaconing of all market plots throughout the County. The cost thereof was highly inflated for each and every one.

16.7 The purchase and installation of lightning rods at inflated costs.

16.8 The printing of brochures at inflated costs for the sensitisation of the public about lightning, which brochures have never been used or distributed.

16.9 The purchase of substandard Office desks and chairs for County officers at inflated costs, some of which are now in the homes of the Officers and used personally. Accordingly we request the proper audit of office furniture, media equipment and computers. Furthermore, we request an audit and urge attempted recovery of all such items and other assets listed as passed from Wareng Council to Nandi County, examples being the disappearance of two vehicles, a Pajero and a tractor model 135.

16.10 Unavailability and incompetence of County officers as they are rarely to be found in their offices, are mostly unavailable to provide services, and mostly unable and/or unwilling to answer questions.

16.11 Kiborgok Tea and its operation and mismanagement; including the alleged theft of produce, and its consequent reduced output and low income.

16.12 Foreign and Domestic Travel by the County Executive totalling **140.6million** by the end of the third quarter of F/Y 2014/2015, an increase of 157.86% for the same period in the preceding year. The figure will now of course be even higher [Source: *Controller of Budgets*].

16.13 Inflated expenses and outgoings in both previous and the 2015-2016 Budget. Examples from the original Budget include projected expenses for the following: -

- **Electricity** for 6 departments, (Executive; Finance; Devolved Units; Youth; Education) all of which share the same building -**Total 2,310,000**
- **Water and sewage** for these same Ministries – **Total 1,310,000**
- **Devolved Units and Special Projects** only has 3 staff yet forecasts telephone charges at **900,000**
- **Courier/postal services** for a County government that does not write letters is projected at **2,726,093**
- There is a **confusion and plethora of expense categories and codes** involving massive duplication and exorbitant expenditure as follows: -
 - Accommodation (2210302)
 - Accommodation, Seminars, Workshops (221710)
 - Conferences, and Seminars (2210802)
 - Advertising awareness and publicity campaigns (2210504)
 - The combined total of these items is projected as
37,500,000 for the Executive
97,500,000 for the Finance Department
- These two departments also claim massive total expense under several categories Subsistence, Travel Costs, Domestic Travel and Foreign travel; **49,240,000** for the Executive
19,960,000 for the 15 member Finance Department
- **Tuition** (2210711) and **Trainings** (2210799) are projected at a total of **36,450,000**. This again includes Devolved Units, with 3 staff only, at 1,000,000. Yet there is also **Education & Library** (2211009) even though there are no libraries in any of the Ministries, totalling **9,900,200**
- **Other suspect categories** include
 - **Subsistence** (2210303) when Accommodation and Travel is also claimed
 - **Board Allowances** (2210809) which in 2014-2015 totalled **32,000** but now in 2015-2016 **totals 21,500,000**
 - **County Cohesion & Integration** (2990105) **45,000,000**
 - **Membership fees, subscriptions** (2211306) and **Subscriptions** (2210503) total **5,629,000**

16.14 The significance of these figures is also that by an Amended Budget, purportedly caused by reduced income estimates, Personnel Emoluments totalling 1,529,824,801 have been retained from the original Budget, but Development Expenditure has been reduced

In summary, we have made several attempts by different methods to raise these issues with County Government and have them addressed, but they have given no response

THAT, we have made the best efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response

THAT, none of these issues raised in this Petition is pending in any court of law, Constitutional or any other legal body

WHEREFORE your humble petitioners **PRAY** that the Senate duly and diligently respond to the matters raised in this Petition, and in particular:

1. Investigate, make inquiries and examine the issues raised herein
2. Exercise Parliament's authority to give directions to produce evidence, both oral and written and to answer, act and co-operate with such investigation to such persons and entities as the House shall think fit
3. Establish committees and/or tribunals and engage such professionals to conduct forensic and other investigations as the House shall think fit
4. Liaise with national agencies in order to accomplish a full and detailed inquiry into these matters
5. Prepare a Report and recommend such further action as the House shall think fit, including asset recovery from wrongdoers both by way of civil suit and criminal prosecutions
6. To do all and anything necessary permitted under the law and Constitution of the Republic of Kenya to establish and enforce the rule of law and due diligence and compliance therewith by the Executive and Assembly of Nandi County as soon as is reasonable and practicable

And your PETITIONERS will ever Pray etc.

Dated this 21st day of July 2015-07-21

Names of petitioners



Name of Petitioner, NCCSN, by our Chairman,

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Signature.....



Name of Petitioner, KNCCI by our CEO

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Signature.....